



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Case

**Respondent:** Tai Tarian

**Heard at:** Cardiff **On:** 27, 28, 29, 30 August 2019

**Before:** Employment Judge RL Brace

**Representation:**

Claimant: Miss Helen Randall (Counsel)

Respondent: Miss Sarah Clarke (Counsel)

## CORRECTED WRITTEN REASONS

### Background

1. The claim before me is one of unfair dismissal brought by Mr Darren Case against his previous employer Tai Tarian. Prior to the commencement of this hearing, on 23<sup>rd</sup> of August 2019, the claimant's representatives confirmed the claimant withdrew his disability discrimination claim.
2. Mr Case is represented at this hearing by Miss Helen Randall of Counsel, and the respondent has been represented by Miss Clark of Counsel. Both parties have had legal representation since the inception of these proceedings and, at the internal disciplinary proceedings, the claimant had been accompanied by his trade union representative.
3. I have heard evidence over the course of three days and heard evidence from witnesses for the respondent, and from the claimant and both parties have had the opportunity to cross examine each other's witnesses.
4. I have also been provided with a bundle of documents, of some 1000 pages, spread over two lever arch files.

Issues

5. The claimant asserts that the dismissal was both substantively and procedurally unfair.
6. In relation to the substantive unfairness, the claimant has asserted that it was unreasonable of the respondent, to treat participation in the private WhatsApp group, as misconduct meriting dismissal in that:
  - a. it was not reasonable for the respondent to conclude that the claimant had
    - i. regularly and consistently demonstrated negative behaviours, as outlined in the respondents "Our Behaviours" policy; or
    - ii. bullied or harassed on any ground;
  - b. That it was not within the range of reasonable responses to dismiss the claimant taken into account the mitigation put forward of:
    - i. brevity of period of misconduct;
    - ii. lack of intent of the claimant, in that it was intended the Whatsapp messages should remain private;
    - iii. the claimant's unblemished record;
    - iv. remorse shown by the claimant;
    - v. the claimant's poor mental health and changes in his medication.
7. The claimant asserts that the dismissal was also procedurally unfair and relies on four grounds as follows:
  - a. The claimant was not allowed to record the disciplinary hearing;
  - b. The claimant was not provided with the opportunity to respond to findings of fact, namely impact of mental health;
  - c. The claimant was not provided with the opportunity to respond to definitions of bullying used by the disciplinary officer; and
  - d. The respondent did not take full account of the claimant's medical condition.
8. At the outset of the hearing Miss Randall confirmed that the respondent was no longer seeking to challenge the fairness of the dismissal on the basis of certain of the arguments that have been presented in the ET1 claim form and/or or the witness statement of the claimant as follows:
  - a. Claire Way should not have been the disciplinary officer;

- b. There had been a failure to adduce an important witness;
  - c. There had been failure to conclude the grievance before the disciplinary; and
  - d. disparity of sanction.
9. These were therefore not matters upon which the witnesses were cross-examined and a decision was also taken by both parties to reduce the number of witnesses called as a result and I therefore did not hear evidence from
- a. Wayne Gwilym, Head of Organisational Development or Kelly Mordecai, Personnel officer, for the respondent; or
  - b. Justine Beresford, an ex-work colleague of the claimant.

### Findings

10. The respondent is a social housing landlord and the claimant commenced employment with them on 3 September 2002. On 5 December 2016 the claimant commenced in the role of Income Officer. Until the disciplinary proceedings which ultimately led to the claimant's dismissal, the claimant had never been subject to any disciplinary proceedings and had an exemplary work record.
11. The claimant has unfortunately suffered a number of physical injuries and impairments, and from 2008 had been treated by his GP for stress and anxiety as reflected in his GP's letter dated April 2018. He has attended Well-being through work, and in 2014 attended a few specific sessions including mindfulness. His then line manager, Mr Windos, was aware of this at the time.
12. In June 2017, the claimant advised the respondent, through his current manager, Ian Hale (Income Team manager) and Mark Windos that he suffered from stress and anxiety and that work had been a contributing factor.
13. The claimant and Mr Hale had a further conversation in January 2018, when the claimant advised of personal difficulties at home. At that time the claimant indicated that it was a personal matter and he did not want time off work. Mr Hale was aware that the claimant was on medication for his anxiety.
14. Throughout 2016 / 2017 the claimant and Mr Hale had also engaged formally on a biannual basis through the respondent's "Making a Difference" or "MAD" dialogue and positive comments were made by Mr Hale regarding the claimant's behavior.

15. On 14 February 2018, the claimant set up a group chat with several of his colleagues on the social media site known as Whatsapp. The initial purpose of the WhatsApp group came was to keep in touch with one of the claimant's work colleagues, signed off work to undergo an operation.
16. Others were invited to join the WhatsApp group and the group became nine in number. The WhatsApp group named itself the "Wolfpack", a moniker from the film franchise "The Hangover". Not all members of the Income Team were included in the WhatsApp group. In particular, one colleague, referred to in these proceedings as Colleague A, was not included. The claimant indicated to the WhatsApp group, on the day that the group was established, that no one should add Colleague A to the group.
17. Almost immediately, on 16 February 2018, the claimant used the WhatsApp group to comment on the working practices of Colleague A. Colleague A had worked in the Income Team and alongside the claimant for some time. Colleague A had been away from work for a period from October/November 2017 and had returned to work in January 2018 on a phased return basis, building up to full-time hours by the end of January / beginning of February 2018. Colleague A had been off work for mental health related issues, but on return to work had struggled to reintegrate with the team.
18. The claimant and several of his colleagues, who were part of the WhatsApp group, formed the view that Colleague A spent the majority of their time at work surfing the Internet, browsing sites that had nothing to do with work.
19. With regard to the concerns held, on 16 March 2018 the claimant had told his line manager, Ian Hale, that he had been informed by work colleagues that Colleague A had been doing things other than their work. The claimant has not witnessed himself at that point what others had been saying about Colleague A. The claimant was told that if the claimant's colleagues had witness colleague a doing matters other than work, they needed to come forward with that information. This was related by the claimant to the WhatsApp group on the same date (page 889 Bundle).
20. The claimant had separately also raised with Mr Hale a number of concerns he held regarding some cases managed by Colleague A. There is a dispute between the claimant and Mr Hale as to whether the claimant had been responsible for managing Colleague A or had been asked to review their cases. I found that Mr Hale did not ask the claimant to review Colleague A's cases, rather the he had done so to seek to assist Mr Hale. Either way, the claimant was told that Mr Hale would be discussing the cases with Colleague A himself.

21. With regard to the content of the WhatsApp conversations, and how they related Colleague A, I was provided with a complete set of the screenshot of the WhatsApp conversations, some 500 pages in total, and my attention was drawn to the specific comments and/or conversations which had involved the claimant and which related Colleague A.
22. Whilst a considerable number of the comments made by the claimant about Colleague A related to or referenced their working practices, a number of the comments which had been made by the claimant, were personal in nature, for example making reference to:
  - a. Colleague A's speech (page 872 Bundle);
  - b. Weight (page 788 Bundle);
  - c. that they were "autistic" (page 869 Bundle);
  - d. their personal hygiene (page 971 Bundle).
23. The WhatsApp group also noted that Colleague A had been visibly upset in the kitchen at work as they had not felt part of the team (page 808 Bundle).
24. On or around 9 March 2018, through the WhatsApp conversation, the claimant made Colleague A, the subject of an office game that was run out in work in real-time on which he suggested that each member of the WhatsApp group should start talking about something to see if Colleague A could be distracted to join in. Whoever failed to engage Colleague A would need to do some press ups. Certain members of the WhatsApp group succeeded in engaging Colleague A and throughout the course of the afternoon messaged each other on the Whatsapp group chat regarding the course of the game.
25. On 16 March 2018 the claimant messaged the WhatsApp group regarding Colleague A and suggested that they should speak to Mr Hale, as their line manager about any concerns held. He suggested that those directly affected should do so in particular and he did not include himself as one of those directly impacted as he could not physically see how often Colleague A was using the Internet from where he had sat.
26. Matters appear to die down until 27 March 2018 when the claimant made a personal comment about Colleague A's personal hygiene.
27. On around 6 April 2018, certain members of the housing team approached the respondent's Letting Manager to advise them of the existence of the WhatsApp group. The use and content of the WhatsApp group conversations had upset a number of staff, who had been aware of its existence, but had not themselves been part of WhatsApp group. This did

not include Colleague A, who remained ignorant that they were the subject matter of many of the negative comments.

28. As Income Team Leader, Ian Hale was tasked with finding out more about WhatsApp group and contacted a member of the Income Team, who was part of the WhatsApp group, who agreed to share the information with him. Some photographs were taken of some of the messages within those WhatsApp conversations. Other members of the WhatsApp group subsequently came forward and provided copies of the WhatsApp group chat.
29. Mark Windos (the Income Manager) was appointed investigating officer and, at some point in the investigation, a full copy of the group WhatsApp chat was provided to him.
30. On 11 April 2018, the claimant was suspended pending an investigation into allegations of potential gross misconduct. The letter of suspension of the same date, referred to the respondent's "Conflict Resolution Procedure" and confirmed that the acts arose during the claimant's involvement in the Wolfpack WhatsApp discussions, and in the workplace during the period February 14 2018 to 11 April 2018.
31. In response, on 12 April 2018, the claimant emailed the respondent asking if the respondent could make a referral for him to occupational health as soon as possible, as he had suffered with stress, anxiety and depression for many years, and the events of the previous 24 hours had exacerbated his condition. It was confirmed to the claimant that an occupational health appointment would be arranged and that he was to attend an investigating meeting on 13 April 2018.
32. the invite to the investigation meeting recited the same allegations as those set out in suspension letter, namely that the claimant had alleged to have:
  - a. Regularly and consistently demonstrated negative behaviours as out as outlined in the "Our Behaviours" policy;
  - b. Discriminated on the grounds of any protected characteristic contrary to the Equality Act 2010;
  - c. Harassed or bullied on any grounds.
33. The claimant attended an investigation meeting 17 April 2018 before the Mr Windos, who was assisted by the respondent HR Officer. As part of his investigation, Mr Windos:
  - a. interviewed all those been investigated for potential gross misconduct and misconduct, including the claimant;

- b. interviewed other team members, including Colleague A, who was still not aware of the content of the WhatsApp group or, in particular, that they had been the subject of many of the negative comments. At the interview Colleague A did indicate that since her return she felt new and excluded, but that they could not put a finger on what led to this feeling
  - c. interviewed other members of the housing department considered to be relevant;
34. An analysis of the WhatsApp group posts was also undertaken, and the results of that analysis were included in table form (contained in the Bundle). This analysis graded or rated the WhatsApp post according to the level of negativity from:
- a. "very negative" which had a rating of 12,
  - b. "negative" which had a rating of 6: to
  - c. "Mildly negative" which had a rating of 2.
35. If a member of the WhatsApp group had been perceived to have started or had started the run of negative comments, an additional score of 2 was given. The nine members of the WhatsApp group were then scored, according to the contribution, using the scoring matrix to assess the level of severity of their actions, both in terms of negativity of the post and incitement.
36. Note of the investigation interview with claimant were in the Bundle. At the investigation interview the claimant stated that some of the comments were what he termed 'errors of judgement', and that the comments were in response to and out of frustration with Colleague A not doing their work and that this was affecting the team. He also stated he had been baited into comments by other members of the group and did not feel he had done anything worse than other members.
37. The claimant stated that the comments he made were directly related to his poor mental health of the previous six months, which had raised with his managers, who had chosen to take no action. The claimant also stated that Colleague A had been neglecting their work and this had been raised to management, but no action had been taken.
38. The claimant did not consider his comments were bullying as there had never been a direct or implied intent to threaten or harm. He also maintained that the comments were never intended for a wider audience. He conceded that there were errors of judgement, but disagreed that there had been there had been sufficient regularity, as the WhatsApp group had only been set up 40 days.

39. On 20 April 2018, the occupational health report was provided from the referral which had been made after the suspension, which highlighted the claimant's medical situation, with symptoms relating to stress, anxiety and depression being ongoing, and that the claimant had felt issues regarding a colleague's work ethic had a direct impact on his own work and teamwork which exacerbated his stress. The report also confirmed that the claimant had advised that changes in medication had affected symptoms of low mood, stress and anxiety. The claimant reported that it had affected his personality. He was however considered fit to attend a disciplinary hearing.
40. The disciplinary hearing took place before the respondent's head of Specialist Services, Clare Way, on 4 May and was accompanied by an HR adviser. The claimant was accompanied by his trade union representative and the investigating officer, Mr Windos, was also present.
41. The claimant asked to record the hearing, but Ms Way did not allow him to do so as he was being represented by a trade union representative and she did not consider this to be a reasonable request. The investigation officer presented the management case against the claimant and the claimant's trade union representative had the opportunity to ask questions of him regarding his report and investigation.
42. The claimant's trade union representative then read out a prepaid statement of case (contained in the Bundle, which ran to some 12 pages). The claimant read out his own statement that he he had also prepared. This also ran into some eight pages (also contained in the Bundle).
43. Notes of the disciplinary hearing were provided within the Bundle. The claimant has challenged the accuracy of the notes and has indicated that some critical comments from him, particularly with regard to verbal expressions of remorse, have not been included in the notes.
44. Despite the claimant having been accompanied at the disciplinary hearing by a trade union representative, and despite claimant having subsequently lodged a grievance, part of which related to the disciplinary hearing, no reference is made to the accuracy of note either by the trade union representative or within the grievance. I therefore did not find there was any evidence to indicate the notes were anything other than an accurate record of the matters discussed.
45. At the disciplinary hearing the claimant
- a. accepted that his comments were 'unfortunate';
  - b. admitted he had overreacted to the situation with Colleague A;
  - c. believed his contribution to be no more or less than others;



- d. stated that he rarely started chats and that his posts were reactive to others' comments;
  - e. that his mental health affected his behaviour, in terms of him overreacting due to periods of stress and anxiety. He explained the discontinuation symptoms of the change in medication;
  - f. that the WhatsApp chat regarding Colleague A would not have arisen if management had addressed the issues of concern.
46. The claimant explained the impact of his mental health on his personality that he said tended to manifest itself as anger and frustration directed toward Colleague A, and his own wife. The claimant accepted that some of his comments were not justified by his frustrations with Colleague A, that he was sorry but that it was his way of venting his frustration.
47. At the conclusion of the disciplinary hearing the claimant's trade union representative read out a 10-page closing statement.
48. The claimant also produced a letter from his GP dated 23<sup>rd</sup> of April 2018 which confirmed that:
- a. since 2009, the claimant had suffered stress and anxiety;
  - b. this had manifested itself in anger in 2010 for which the claimant had received counselling;
  - c. the claimant's medication, which he had been on since 2014, had been changed in November 2017, again in December 2017 and March 2018, and that the claimant has suffered some withdrawal and discontinuation subsystem symptoms which included hostility
  - d. the claimant's anxiety was continuing but medication and CBT/counselling were helping;
  - e. this had caused relationship problems
  - f. the claimant was advised to take some off, which he had not wish to take.
49. The GP concluded that he hoped that the claimant's anxiety and medication changes, which may have led to alterations in his anxiety levels and side effects, would be taken into account in any disciplinary hearing prior to reaching a decision on the disciplinary allegations.
50. Prior to a decision being reached on the disciplinary allegations by the respondent, on 13 May 2018 the claimant raised his grievance against his line manager and the investigating officer including, but not limited to allegations that they had:
- a. failed to address his concerns about Colleague A's work ethics;
  - b. failed to offer support regarding his stress and anxiety.

51. That grievance was dealt with, prior to the decision on the claimant's disciplinary which upheld that:
- a. action had been taken in respect of concerns regarding Colleague A; and
  - b. that appropriate support had been provided in respect of the claimant's mental health issues.
52. On 23 May 2018 the claimant attended the adjourned disciplinary hearing and was advised that he was being dismissed with immediate effect. This was confirmed by letter dated 1 June 2018. The letter is detailed and runs to some six pages. I don't repeat within the body of this judgment the content of that letter in detail, but I found that the matters set out in the letter formed the basis of Ms Way's decision. In brief, Miss Way concluded the following:
- a. she did not consider mitigation part by the claimant to be justification or explanation for his actions;
  - b. she felt that the claimant did not demonstrate insight into his conduct;
  - c. Rather than accept responsibility the claimant sought to allocate blame on Colleague A and his concerns that management had failed to deal with Colleague A;
  - d. the claimant had not shown demonstrated true remorse;
  - e. She was not satisfied that this behaviour would not be repeated;
  - f. she rejected arguments that his behaviour did not constitute bullying and that as this was dialogue on a private WhatsApp group should be of no concern;
  - g. with regard to the claimant's mental health, she did not consider medical evidence suggested that the claimant's involvement in the WhatsApp group was driven by his mental health or changes in his medication.
53. On 8 June 2008 in the claimant submitted a letter of appeal setting out the grounds of his appeal challenging the findings and why he felt the decision to dismiss was procedurally and substantially unfair.
54. An Appeal hearing took place on 2 July 2018 and at that appeal the claimant was allowed to submit a report, that his solicitor had obtained from Dr Clarke-Walker, consultant psychiatrist. The respondent did not engage in a letter of instruction to Dr Clarke-Walker. The report provided an opinion particularly on what was termed the claimant's impaired executive functioning involving judgement, impulsivity and consequent behaviours would lead to the comments on the WhatsApp group.

55. An appeal hearing took place which was not re-hearing of the matter but a review of the decision. The appeal manager, Ms Linda Whittiker, concluded that:
- a. it was irrelevant that Colleague A was unaware of the contents of the WhatsApp group;
  - b. The claimant had been afforded ample opportunity to respond to findings of fact;
  - c. With regard to the medical evidence, she did review Dr Clarke-Walker's report, but did not accept the claimant's actions had been driven by his mental health condition and medication. To support this conclusion, she relied on the fact that the claimant had been capable of being rational and nice in person to Colleague A and that as a result his behaviour had not been driven by his condition and/or medication change despite the conclusions in Dr Clarke-Walker's report.
56. This was her verbal evidence contained in a statement and on cross-examination and indeed in her letter providing the outcome of the appeal.

#### The law

57. With unfair dismissal, I first have to consider the reason for the dismissal and whether it was a potentially fair reason for the dismissal. In this regard, the Respondent asserted that the reason for the Claimant's dismissal was her conduct which was a potentially fair reason for dismissal pursuant to section 98(2)(b) Employment Rights Act 1996 (the "Act").
58. After considering the reason for dismissal, on the presumption that I identified a potentially fair reason for dismissal, I then have to consider whether the application of that reason in the dismissal for the Claimant in the circumstances was fair and reasonable in the circumstances pursuant to section 98(4) of the Act
59. If I concluded that conduct was the reason for dismissal, then I had to bear in mind the very well-established authority of BHS v Burchell which requires me to apply a three stage test and consider whether the Respondent genuinely believed that the Claimant was guilty of gross misconduct, whether the Respondent had reasonable grounds upon which to sustain that belief and also, at the stage it formed that belief on those grounds, the R had carried out as much investigation was reasonable in all the circumstances.
60. I also needed to consider whether the sanction of dismissal was appropriate in the circumstances bearing in mind requirement for me to

apply the range of reasonable responses test set out in the case of Iceland Frozen Foods v Jones.

61. When assessing the reasonableness of the Respondent's actions against those of a reasonable employer I was conscious not to substitute my own views as to the appropriateness or otherwise of the dismissal.

Conclusions

62. The reason for dismissal is not in dispute, which is that the claimant was dismissed for a reason related to his conduct.
63. In relation to the claim that the dismissal was substantively and fair I concluded that it was reasonable for the respondent to conclude that the claimant had both:
- a. regularly and consistently demonstrated negative behaviours through his posts in the WhatsApp group regarding Colleague A; and
  - b. had harassed and bullied Colleague A through the same posts.
64. Having reviewed the wording of the respondent's Conflict Resolution Procedures, and the exemplar provided of both misconduct and serious misconduct, I am satisfied that it was reasonable for the respondent conclude, the due to the number and regularity of the WhatsApp posts, made by the claimant, throughout an extended period from 14 February 2018 to the 11 April 2018, this was sufficient for the allegations to be reasonably brought within the ambit of gross misconduct and fell within the parameters of what could reasonably considered to be both regular and consistent.
65. Whilst I accept that the claimant's behaviour manifested itself only through one forum, namely the WhatsApp group, I did not consider this to be a relevant consideration for the respondent. I concluded that there was evidence before the respondent the former belief that the claimant had been a breached the standards expected of its employees.
66. I further concluded that on the evidence before it, the respondent was entitled to conclude that the claimant had been responsible for bullying and harassment. I did not accept the **claimant's** contention that there was a requirement, express or implied, that required the knowledge of the victim of the WhatsApp group whether relating to fact or content.
67. The claimant had at the disciplinary hearing referred to the ACAS definition of bullying. The respondent referred not just to this definition but also to the Tai Tarian Conflict Resolution procedure and National Bullying

Helpline definitions of bullying. The respondent argues that Colleague A was not a recipient of the behaviour as she had never been in receipt of the WhatsApp messages, that it had not caused her distress as she was not aware of the fact or content.

68. I did not conclude that three definitions, relied upon by Ms Way required knowledge of the victim of the WhatsApp groups to constitute bullying and/or harassment. It cannot be right the such conduct can only be caught by the definitions once the individual has knowledge of the conduct. There was significant evidence before the respondent in any event of both harassment and bullying, irrespective of the specific awareness of the subject or victim of the behaviour. In many cases an individual cannot put their finger on what was happening. It doesn't mean that there is no culpability of the authors or instigators of that behaviour.
69. With regard to the question whether dismissal was within the band of reasonable responses, I am asked to consider that the respondent did not properly consider the claimant's mitigation. Again, this is not my conclusion and I concluded that the dismissal did fall within the band of reasonable responses for the following reasons:
- a. I did not accept, as I have already indicated, the argument that this was conduct over only a limited period which should have been sufficient mitigation;
  - b. the fact that the claimant intended that the comments were to remain private, and that he would not have treated Colleague A in this way directly had been considered by the disciplining manager. There was nothing unreasonable in her conclusion that this was not a valid excuse. Her conclusions that:
    - i. the conversation had been brought to management attention; and
    - ii. the fact that she had a full transcript of the WhatsApp conversations, meant they had not been kept privatewere reasonable and supported her rejection of this argument;
  - c. the disciplinary outcome letter clearly referenced the claimant's length of service an unblemished record. There was nothing to suggest that Ms Way did not take that into account. Further, due to the seriousness of the behaviour, it was not unreasonable for her still to conclude dismissal was a reasonable sanction despite previous unblemished record, positive MAD report and length of service.

- d. with regard to her conclusion the claimant did not show remorse, I have been invited to find that this is at odds with the fact that 2 points were deducted by her from the scoring matrix for remorse. Whilst I found that this did signify that Ms Way did find that there was some remorse, I did not conclude that this contradicted her overview the claimant showed no degree of contrition. Having reviewed the notes of the investigation meeting, disciplinary hearing and statements submitted by the claimant and the language used by the claimant, I concluded that it was not unreasonable for Ms Way to herself concluded this was not sufficient to mitigate his behavior.
70. Finally turning to medical evidence and the claimant's mental health, looking at the evidence that was before Ms Way, in particular the GP letter of 23 April 2018, I concluded that it was not unreasonable for her to reach the decision the claimant's judgement had not been impaired or that the claimant's attempts to back away from negative comments demonstrated a degree of responsibility for his actions.
71. It was not outside the range of reasonable responses for her to conclude that the claimant's mental health did not sufficiently mitigate the claimant's conduct and for the claimant to be dismissed notwithstanding his mental health and/or impact of chat change medication
72. However, I also considered whether that was still a reasonable response for the respondent to take following the claimant's appeal, in light of the further medical evidence that was available before Linda Whittaker. That report was obtained the claimant following his dismissal without input from respondent. It is not a joint the instructed report.
73. I have been asked to find that when this is taken into account, particularly Dr Clarke-Walker's opinion at paragraph 15 of the report, dismissal was not within the range of reasonable responses, only a lesser sanction was. I'm invited to find that his conclusion, was that claimant's actions were beyond his volition when directing dissatisfaction towards Colleague A; that despite knowing it was wrong he sent inappropriate WhatsApp messages anyway as a result.
74. I concluded that the explanation from Linda Whittaker, which was the conclusions of Dr Clarke-Walker (at paragraph 15) were hard for her to understand when taken in the context of the claimant's behaviour outside of the WhatsApp group; that the report made it difficult to reconcile the claimant's behaviour, was a reasonable explanation.
75. She concluded that on all the evidence before her, including the general behaviour of the claimant, the claimant had not behaved as though a 'dam

had burst' as had been contended by Dr Clarke-Walker. That was a reasonable conclusion.

76. I did not conclude that on the evidence before her, that the dismissal fell outside the band of reasonable responses as a result.

77. With regard to procedural failings alleged:

- a. The claimant was accompanied throughout by the trade union representative and had the opportunity to review the meeting notes and/or prepare his own notes. He had the opportunity to and availed himself of the opportunity to provide his own written notes. I found that the refusal to allow the claimant to record was not procedural failing or impacted on the otherwise fairness of the dismissal.
- b. I did not accept that the respondent should have given the claimant the opportunity to respond to the findings before dismissal, in relation to the impact of mental health, to be a procedural failing. In any event the claimant was provided with that opportunity at appeal stage and did in fact avail himself of the opportunity.
- c. With regard to the alleged failure to highlight to the claimant in advance the definition of bullying, there is no dispute that the respondent had a Conflict Resolution Procedure and the claimant was also fully aware of ACAS definition. I accept the representations from the respondent that these are well-known concepts and failure to put specific definitions to the claimant did not amount to procedural failing.
- d. Finally, with regard to the contention that the respondent did not fully take into account the claimant's medical condition, I did not conclude that the respondent disregarded both reports but considered that both Ms Way and Ms Whittaker had given consideration to all medical evidence before them at the relevant times and therefore no procedural failing with regard to the medical evidence had arisen.

78. I therefore did not conclude that the unfair dismissal claim was well-founded and dismissed the claim.

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**Employment Judge RL Brace  
Dated: 9 October 2019**

WRITTEN REASONS SENT TO THE PARTIES  
ON 12 October 2019.

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FOR THE SECRETARY OF EMPLOYMENT  
TRIBUNALS