EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103344/2019

Held in Glasgow on 5 and 6 August 2019

Employment Judge L Wiseman

Mr G Campbell	**Claimant** **In Person**
British Telecommunications plc	**Respondent** **Represented by:** **Mr G Price - Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The tribunal decided to dismiss the claim.

REASONS

1. The claimant presented a claim to the Employment Tribunal on the 3 April 2019 alleging he had been unfairly dismissed.

2. The respondent entered a response in which they admitted dismissing the claimant for reasons of gross misconduct, but denying the dismissal was unfair.

3. I heard evidence from Mr Paul Brannigan, Senior Garage Manager, who carried out the investigation; Mr Adam Murray, Regional Garage Manager, who took the decision to dismiss; Mr Adam Hudson, Regional Garage Manager, who heard the appeal and from the claimant.

4. I was referred to a number of documents in a jointly produced folder of documents. The claimant also produced a Whatsapp message which had been forwarded to him by Michael Barnes, which showed a message from Mr

Barnes to Mr Courtney and Mr Courtney's reply. This message on the claimant's phone was copied and accepted as an additional document.

5. I, on the basis of the evidence, made the following material findings of fact.

Findings of fact

6. The claimant commenced work with the respondent on an agency basis in January 2014. He worked as a Vehicle Technician. The claimant became a permanent employee with the respondent on the 11 January 2016.

7. The claimant earned £572.29 gross per week, giving a net weekly take home pay of £454.50.

8. The claimant sustained an injury to the tendons in his hand and was absent from work for six months from about April 2017.

9. The claimant was offered and accepted a secondment, involving the collection and input of data. He worked on secondment for a period of approximately 18 months before returning to his substantive post as a Vehicle Technician based in Glasgow on the 10 November 2018.

10. Mr Brannigan, Senior Garage Manager for BT Fleet, Glasgow, was the claimant's line manager. The claimant was on secondment when Mr Brannigan commenced employment.

11. Mr Brannigan made contact with the claimant prior to his return to Glasgow, to introduce himself and bring the claimant up to date with what was happening at the Glasgow base. Mr Brannigan informed the claimant there would be a three-month period of grace in terms of his productivity in circumstances where he was returning to work after the secondment.

12. Mr Brannigan was informed by the Police, on the 28 November 2018, that there had been a road traffic accident involving a Mitsubishi which had been at the garage for repair. The vehicle was recovered to the garage.

13. Mr Brannigan and Mr Andrew Barton carried out an inspection of the vehicle when it arrived at the garage. Mr Brannigan noted immediately that the off

side front wheel was detached. Mr Brannigan took photographs of the damage (pages 72 – 83).

14. Mr Brannigan compiled a (page 99) "post incident vehicle examination" report which noted all of the repair work which required to be done. The key issue related to the track rod (which attaches the steering mechanism to the wheels) which was not attached. Mr Brannigan concluded the cause of the accident had been the track rod end becoming detached.

15. Mr Brannigan spoke with Mr Gary McLaren on the 29 November because he had worked on the vehicle. Mr McLaren provided a statement (page 96) in which he set out the details of the work he had carried out. He had not worked on the track rod ends.

16. Mr Brannigan was aware the claimant had worked on the vehicle and so he asked him to provide details of the work he had carried out (page 98). The list of work provided by the claimant showed he had refitted the steering columns and used old nuts on the track rod ends.

17. Mr Brannigan invited the claimant to attend a fact finding meeting on the 5 December 2018. Mr Brannigan's handwritten note of the meeting was produced at pages 100 – 104. The claimant told Mr Brannigan that he had asked Mr Courtney, Technician in Charge, for a new pinch bolt and had been told to look for one he could use. The claimant had not subsequently asked Mr Courtney for a nyloc nut for the track rod end because he thought he would just get the same response. The claimant used the old nuts, and suggested this was common practice. The claimant accepted he had made an error when he failed to tighten the nuts.

18. Mr Brannigan suspended the claimant following this meeting (page 105) whilst investigations continued. The allegation against the claimant was that he had failed to comply with repair instructions resulting in a road traffic accident.

19. Mr Brannigan interviewed Mr Ross Courtney on the 16 December and a note of the questions and answers provided were produced on page 131. Mr Courtney was the Senior Technician on shift at the time the claimant was

working on the vehicle in question. Mr Courtney denied the claimant had asked him for pinch bolts or track rod end nuts (nyloc nuts) to be ordered. He agreed the claimant had made him aware certain components on the vehicle in question had become damaged and would require ordering, but none of these related to pinch bolts or track rod end nuts. Mr Courtney rejected the suggestion the claimant had asked him if it was common practice to reuse old nyloc nuts on steering components.

20. Mr Brannigan produced a Misconduct Investigation Report (page 108) in which he set out the reason for the investigation and the allegations against the claimant, the evidence he had collected which included the job card for the vehicle, the claimant's statement, Mr McLaren's statement, Mr Brannigan's vehicle inspection report, the photographs and the typed notes of the fact finding meeting. Mr Brannigan also made reference to the Carweb, which is a technical resource available to all vehicle technicians.

21. Mr Brannigan concluded the repairs carried out by the claimant had been below an acceptable standard insofar as he had failed to replace the self-locking nuts on the track rod ends and had not torqued (tightened) the old nuts he had used. Mr Brannigan recommended the case be progressed to a disciplinary hearing.

22. Mr Adam Murray, Regional Garage Manager, invited the claimant to attend a disciplinary hearing on the 19 December 2018. The claimant was accompanied by his trade union representative Mr David McClune. A note of the meeting was produced at page 133. Mr Murray had the parts in question available at the meeting.

23. The claimant's position was that he had not replaced the nuts because new nuts were not available. The claimant maintained he had earlier asked Ross Courtney for a pinch bolt and had been told to either use one from his tool box or try to find one to use. The claimant felt, based on that experience, that there was no point in asking Mr Courtney for track rod end nuts because it would be the same answer. The claimant therefore proceeded to use an old nut. The

claimant accepted it had been an "oversight" to fail to torque the nut to the correct tension.

24. Mr Murray spoke with Mr Brannigan after the disciplinary hearing to investigate whether Mr Brannigan had put the claimant under pressure regarding productivity, and to investigate whether nyloc nuts were available on site. A note of the questions put to Mr Brannigan and his responses was produced at page 125. Mr Brannigan confirmed he had advised the claimant there would be a three month period of grace following his return from secondment, and that he would be fully supported to bring his figures back up to the level of others. Mr Brannigan had met with the claimant and Mr Andrew Barton once to discuss the issue of bonus payments. Mr Brannigan considered the claimant had left the meeting happy with the support being provided and timeframes offered.

25. Mr Brannigan confirmed the nyloc nuts were available on site. He explained there had been a staff meeting on site on the 28 November at which staff had been told nuts were available on site. Some staff had been unsure how to read the stickers identifying stock sizes, and this had been explained. He confirmed all staff had been informed that nuts were available on the racking and that track rod ends were supplied with lock nuts. Photographs of the nuts available on the racking were taken (page 127 and 128).

26. Mr Murray did not speak to Mr Ross Courtney again. He had regard to the statement produced with the investigation report.

27. Mr Murray wrote to the claimant on the 7 January (page 146) to confirm his decision to summarily dismiss the claimant. A document entitled "Rationale for Decision …" was included with the letter (page 121), together with various appendices including the questions put to Mr Brannigan and his responses; the photographs of the nuts; Mr Courtney's statement and a typed note of the disciplinary hearing.

28. The rationale set out the key points raised by the claimant during the disciplinary hearing which were:

- there were no nyloc nuts in stock and he had not been shown any after the staff meeting on the 28 November;
- he asked Ross Courtney to order a new nut and had been told no;
- new track rod ends do not come with a new retaining lock nut;
- he was told by Mr Brannigan on his first day back that if his productivity did not pick up within a month he would be taken down the disciplinary route;
- the excess grease surrounding the track rod end boot was a result of the track rod becoming insecure and hitting the ground;
- he replaced the nut with one he found in the workshop after Ross Courtney refused to order a new one;
- when fitting the bottom wishbone pinch bolt he needed to knock the bolts through and
- the excess grease around the CV boot was fresh and not present when working on the vehicle.

29. Mr Murray responded to each of the points and made reference to his interview with Mr Brannigan and the photographs taken of the correct nut in stock in Glasgow. He also made reference to Mr Courtney's statement that he was not asked to order a new nut for the track rod end. Mr Murray did accept the claimant's last point and concluded there was no clear way of determining when the cut/hole occurred.

30. Mr Murray concluded that he had looked into all of the points raised and conducted further investigatory interviews with Mr Brannigan. He had also inspected all parts and documentation again. Mr Murray noted he had taken into consideration the fact the claimant had shown remorse and accepted full responsibility for the failing. He had also considered the claimant's service. However, against all of that Mr Murray had had to balance the fact of the seriousness of the charges, which he considered outweighed all other factors. The track rod end had not been correctly secured and this had resulted in a vehicle traveling at speed coming off the road and into a ditch. No-one had been injured but the potential for fatal injury had been high. Mr Murray also had regard to the fact the lack of quality shown throughout the job had led the

customer to question whether they would continue to use the respondent. Further, he had no confidence in continuing to employ the claimant.

31. Mr Murray did consider whether the lesser sanction of a final written warning would be appropriate, but concluded it was not because of the seriousness of the charges and the fact he had no confidence in the claimant's ability going forward.

32. The claimant's employment ended on the 9 January 2019.

33. The claimant appealed against the decision to dismiss. The appeal was heard by Mr Adam Hudson, Regional Garage Manager. The claimant attended and was accompanied by Mr David McClune, trade union representative. The claimant provided Mr Hudson with a statement from Mr Michael Barnes dated 30 January 2019 (page 155) which was in the following terms:

"Paul Brannigan spoke to Ross Courtney in the corridor about the incident involving Graeme Campbell. Paul asked Ross, did Graeme ask you for a new pinch bolt? Ross replied, yes he did. Paul then said to Ross, if anyone asks you about it then to deny it. Ross said that, I won't be telling any lies, and then left the situation. I was in the office sitting at the MOT desk when I heard this conversation and so did other members of staff".

34. Mr Hudson did not investigate this matter further because he concluded there was no information/date when the conversation was said to have occurred, and the bolt in question was not the failure which caused the accident.

35. The claimant also challenged that the photographs, produced by Mr Murray, showing the nuts available in the racking had been taken after the event and the nuts had not been available at the time. Mr Hudson dismissed this and concluded the real issue related to the fact the claimant had not tightened the nut he had used, and he accepted this.

36. The claimant alleged that Mr Brannigan had, prior to his return to Glasgow, made reference to the claimant not disclosing in his pre-employment questionnaire the fact he had had an injury to his hand, and suggested this was a breach of contract. The claimant asserted this conversation had been

overheard by two colleagues and he provided their names. The claimant also suggested he had not wanted to return to the workshop because of Mr Brannigan. The claimant made reference to the meeting where Mr Barton had been present when the bonus had been discussed.

37. Mr Hudson did not investigate these matters further because the claims were unsubstantiated with no evidence brought forward to support them, and the claimant had been unable to provide specific details when asked. Further, he did not consider the claims to be mitigation in this case because the claimant did not seek to argue that any of the points was a contributing factor in his failure to tighten the nut, and he had not raised these issues during the fact-finding meeting.

38. The claimant told Mr Hudson that an apprentice had been present when he asked Mr Courtney to order the pinch bolt, and was told no. Mr Hudson did not investigate this further because he concluded the issue was not relevant because the failures did not relate to a pinch bolt.

39. Mr Hudson decided to reject the appeal because the claimant accepted responsibility for the negligence which had contributed to the accident with the vehicle. Mr Hudson confirmed this in writing to the claimant and provided a copy of the rationale for his decision (page 150).

40. The claimant has, since dismissal, been in receipt of Jobseekers Allowance from February to July 2019. This has recently ended and the claimant is likely to move on to Employment Support Allowance.

41. The claimant has been handing his CV into any potential workplaces. He has attended for a couple of interviews but has not been successful.

42. The claimant has been helping out a friend at a garage in Paisley on the odd occasion and this has been unpaid. He also had two unpaid weekend trials for selling kitchens to see if he liked the work, but this did not come to anything.

Credibility and notes on the evidence

43. The claimant, in his evidence to the tribunal, made several criticisms of Mr Brannigan. He alleged Mr Brannigan had told him the failure to disclose his hand injury on his application form was a breach of contract. He alleged Mr Brannigan told him he was committing fraud by claiming a bonus and was not pleased when the claimant went over his head to Mr Murray about this issue. The claimant did not suggest these matters had caused him to make an error of judgment regarding the track rod end nuts. The evidence appeared to have been given to demonstrate the character of Mr Brannigan.

44. The points were put to Mr Brannigan who denied them. I have not made any finding regarding whose evidence I preferred because this is not material to the case in circumstances where the claimant did not suggest Mr Brannigan's conduct had caused or influenced his failure in dealing with the track rod ends.

45. The claimant accepted he had not replaced the nut and had not tightened the nut. He criticised the respondent's investigation, disciplinary and appeal process because he believed Mr Courtney, Mr McLaren and the apprentice should have been questioned more closely. The claimant maintained Mr Courtney had been economical with the truth when he had been questioned by Mr Brannigan.

46. The Whatsapp message produced by the claimant was in the following terms:

Michael Barnes – Sorry big guy about the statement I didn't know you went along with it at the time I though you told him to bolt just say he made you if it comes to it but I don't think anything will happen.

Ross Courtney – That's ok mate, I nearly lost it with him today – was shaking in anger. Nothing has been said so far coz we all know he is lying about the nuts and bolts being on the shelf so that's probably enough.

47. The claimant invited the tribunal to accept this message (which was undated) (a) related to the incident in question; (b) that the "him" referred to was Paul Brannigan and (c) that it proved Mr Courtney had lied in his statement when questioned by Mr Brannigan.

48. I did not attach any weight to the Whatsapp message produced by the claimant because it was not a document which was available at the time the respondent's witnesses took their decisions. The message was on the theme that Mr Courtney had lied to Mr Brannigan. This issue was considered by the respondent and I have set out below why I concluded the respondent was reasonably entitled to believe what they were told by Mr Courtney.

49. I found the respondent's witnesses to be both credible and reliable. They gave their evidence in a straightforward manner and explained in detail why they had reached certain decisions.

50. Mr Brannigan was referred to Michael Barnes' statement (page 155) where it was suggested he had overheard Mr Brannigan saying to Mr Courtney that if anyone spoke to him about the claimant asking him for a pinch bolt, he was to deny it. Mr Brannigan denied this conversation happened. He told the tribunal Michael Barnes was a former employee who had left the company because of his failings. Mr Brannigan believed Mr Barnes had caused damage to property before he left, and he considered the statement to be another example of Mr Barnes' endeavours to damage the respondent.

51. The respondent has a process whereby the disciplinary and appeal hearings were recorded and sent to HR for transcription. The claimant was then provided with a copy of the transcribed notes. The transcribed notes produced after the disciplinary hearing were woefully inadequate because they were full of inaccuracies and missing words. The claimant was not provided with notes after the appeal hearing because Mr Hudson uploaded them to the system but, for some reason, they disappeared.

52. These points did not impact on the fairness of the dismissal (on this occasion). I however considered that if the respondent intends to produce notes of a meeting in this way, those notes should be intelligible.

Respondent's submissions

53. Mr Price produced a written submission which he spoke to. He referred the tribunal to the relevant statutory provisions and to the cases of **BHS Ltd v**

Burchell 1978 IRLR 379 and **London Ambulance Service NHS Trust v Small 2009 IRLR 563**.

54. Mr Price invited the tribunal to find the reason for dismissal was gross misconduct, namely the failure to replace locking nuts in accordance with technical guidance, and not tightening the nut appropriately or at all. These failures led to the accident.

55. Mr Price submitted the investigation had been conscientiously carried out by Mr Brannigan and Mr Murray. They looked at the prime causes of the accident and Mr Brannigan spoke with Mr McLaren because the claimant named him as being responsible for the work on the nyloc nut. Mr Price submitted the respondent was reasonably entitled to rely on Mr McLaren's statement that he had not worked on the track rod ends.

56. Mr Price acknowledged the claimant had raised issues of harassment/undue pressure by Mr Brannigan. He submitted this matter had been investigated by Mr Murray, who preferred Mr Brannigan's version of events. The information given to Mr Hudson at the appeal, and by the claimant at this hearing, was not raised before Mr Murray and was not sufficiently specific to be taken forward. The key point was that the alleged pressure was not considered adequately exculpatory for the failure that occurred. The claimant had not at any time suggested he was not up to doing the task.

57. The respondent investigated the claimant's position that Mr Courtney had given an instruction to use an old nut and/or failed to order a new nut. This issue related to a pinch bolt and not a nyloc nut and was considered not relevant.

58. Mr Price acknowledged the transcript of the disciplinary hearing contained errors, but submitted it was evident the key allegation was put to the claimant and that he knew the allegation he faced.

59. Mr Price invited the tribunal to find it had been reasonable for the respondent to concluded Mr Courtney had not been asked by the claimant to order any new nyloc nuts and had not been asked about the pinch bolt. The claimant

believed Mr Courtney was lying in his responses to Mr Brannigan, and in support of this he relied on Mr Barnes' statement and the Whatsapp message. The claimant challenged the respondent's failure to re-interview Mr Courtney, but Mr Price questioned what good this would have done because it was more likely than not that Mr Courtney would have told the respondent the same thing. Mr Price reminded the tribunal Mr Murray interviewed Mr Brannigan and had his statement that nuts had been available. In the circumstances Mr Price invited the tribunal to find it was reasonable for Mr Murray to conclude nuts had been available.

60. Mr Price submitted it had been reasonable for the respondent to conclude the claimant's story did not stack up. There was express guidance not to use the existing nut.

61. The claimant accepted he had used the old nut and had not tightened it. The claimant stated in cross examination that he knew the magnitude of the offence "100%".

62. Mr Price submitted the decision to dismiss fell within the band of reasonable responses because the risk to health and safety caused by the misconduct was alarmingly high; the nature of the failure; the potential impact to the business and the relationship with the customer and confidence in the claimant's ongoing employment had been destroyed.

63. Mr Price invited the tribunal, should it find the dismissal unfair, to make a reduction to compensation of 50% for contributory conduct and 50% for ***Polkey***. He also argued the claimant had failed to mitigate his losses and compensation should be limited to 12 weeks from the effective date of termination.

Claimant's submissions

64. Mr Campbell referred to the fact he had been "off the tools" for approximately two years. He had had a clean record to this point. He had apologised several times for his mistake, and felt he had not been given an opportunity to make amends.

65. Mr Campbell felt some people had been economical with the truth (and the Whatsapp message proved someone was lying), whereas he had told the truth: if the parts had been available he would have used them. He did ask for parts but was told no.

66. Mr Campbell referred to the respondent's transcript of the disciplinary hearing which he described as being "unreadable". The audio file of the appeal hearing had been lost and notes of the appeal hearing had been shredded. He felt this had hampered him in this case.

67. Mr Campbell was critical of the investigation because it had not been sufficiently robust.

Discussion and Decision

68. I had regard to section 98 Employment Rights Act which sets out how a tribunal should approach the question of whether a dismissal is fair or unfair. There are two stages: first, the employer must show the reason for the dismissal and that it is one of the potentially fair reasons set out in section 98(1) and (2) of the Employment Rights Act. If the employer is successful at the first stage, then the tribunal must determine whether the dismissal was fair or unfair under section 98(4). This requires the tribunal to consider whether the respondent acted reasonably in dismissing the employee for the reason given.

69. I also had regard to the case of **British Home Stores Ltd v Burchell 1980 ICR 303** where the Employment Appeal Tribunal (EAT) stated it is the employer who must show that misconduct was the reason for the dismissal and the employer must show:

- it believed the employee guilty of the misconduct;
- it had in mind reasonable grounds upon which to sustain that belief and

- at the stage at which that belief was formed on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances.

70. The respondent in this case admitted dismissing the claimant and stated the reason for the dismissal was gross misconduct. I noted the claimant did not dispute this was the reason for the dismissal and did not suggest there had been some other reason for his dismissal. I further noted this was a case where the claimant admitted he had used an old nut and had failed to tighten it: he admitted misconduct, although he put forward an explanation why this had occurred. I concluded, having had regard to this, and the points set out below, that the respondent had shown the reason for the dismissal was misconduct. This is a potentially fair reason for dismissal falling within section 98(2)(b) and I must now continue to decide whether dismissal for that reason was fair or unfair.

71. I next considered the investigation carried out by the respondent. Mr Brannigan undertook the investigation and he obtained a statement from Mr McLaren and the claimant regarding the work they had undertaken on the vehicle. Mr Brannigan identified, based on this information, that the claimant had undertaken the work involving the steering and track rod ends.

72. Mr Brannigan inspected the vehicle, took photographs and invited the claimant to attend a fact finding meeting.

73. Mr Brannigan spoke with Mr Courtney to put to him the points raised by the claimant. In particular, he asked Mr Courtney whether the claimant had asked him about a pinch bolt, or suggested they needed to be ordered. Mr Courtney told Mr Brannigan that the claimant had not asked him for a pinch bolt or a track rod end nut. He also confirmed that it was not common practice to re-use old nyloc nuts on steering components.

74. The claimant suggested Mr Courtney had been economical with the truth when speaking with Mr Brannigan, and that Mr Brannigan should not have believed him. The claimant, in support of that position, referred to the statement of Mr Barnes and the Whatsapp message.

75. I, when considering the claimant's suggestion, had regard to two particular points. Firstly, I had regard to the fact Mr Barnes is a former employee. Mr Brannigan told the tribunal Mr Barnes left because of his mistakes. It appeared Mr Barnes had not left on good terms; however there was no evidence to suggest when Mr Barnes left employment, and accordingly I did not know whether this was before or after he prepared the statement.

76. Secondly, I had regard to the fact that in Mr Barnes' statement he referred to Mr Courtney telling Mr Brannigan that he *"won't be telling any lies"*. It could be inferred from this that Mr Courtney told the truth when subsequently questioned by Mr Brannigan, although his responses to the questions were at odds with what was set out in Mr Barnes' statement.

77. Mr Brannigan did not have any of this information before him when he interviewed Mr Courtney and accepted his responses. Mr Hudson did have Mr Barnes' statement but concluded the issue referred to was the pinch bolt and that was not relevant to the issue of the track rod end (nyloc) nut.

78. The question I must determine is whether it was reasonable for the respondent to accept the evidence of Mr Courtney, or whether further investigation should have been carried out. I decided it was reasonable for Mr Brannigan to accept the evidence of Mr Courtney. I reached that decision because Mr Brannigan had no reason to doubt what Mr Courtney was telling him. I further concluded that Mr Hudson's decision not to re-interview Mr Courtney was reasonable in circumstances where Mr Courtney had (allegedly) been asked about a pinch bolt, but the subject of the misconduct related to a track rod end nut.

79. The claimant was critical of the investigation because he considered the apprentice should have been interviewed. The claimant's position was that the apprentice was with him when he spoke to Mr Courtney about the pinch bolt. I noted Mr Brannigan and Mr Murray were not cross examined about why they had not interviewed the apprentice. Mr Hudson told the tribunal that he decided not to interview the apprentice because it was not relevant: the material issue was not whether the claimant had asked Mr Courtney for a

pinch bolt; the material issue was the fact the claimant had used an old nut and had failed to tighten the nut. The apprentice could not speak to those issues. I concluded, having had regard to the evidence of Mr Hudson, that the failure to interview the apprentice during the investigation was not a flaw.

80. Mr Murray interviewed Mr Brannigan regarding the issues raised by the claimant relating to management of the branch, pressure put on the claimant and the claimant's position that the nuts required were not available. Mr Brannigan provided an explanation and confirmed nuts were available and that employees had been informed of this at the "staff huddle". Mr Brannigan confirmed an issue had been raised by employees who wanted clearer labelling to show the part and not simply a reference to a part number. Photographs of the racking containing the nuts was provided.

81. The claimant suggested Mr Brannigan had not been truthful when telling Mr Murray the nuts were available and he further suggested the photographs had been taken after the event. I considered Mr Murray acted reasonably when he interviewed Mr Brannigan to investigate the points raised by the claimant. Mr Murray had no reason to doubt what he was told by Mr Brannigan, particularly when (a) there was reference to a staff huddle where the availability of nuts had been discussed and (b) the photographs demonstrated the racking contained boxes of nuts. In the circumstances I concluded it was reasonable for Mr Murray to accept what he had been told by Mr Brannigan.

82. The question I must decide is whether the investigation carried out by the respondent was reasonable: did the investigation fall within the band of reasonable investigations which a reasonable employer might have done? I was satisfied the respondent interviewed the relevant people and carried out a reasonable investigation to gather the facts before deciding whether to proceed to a disciplinary hearing.

83. I must next consider whether the respondent had reasonable grounds upon which to sustain their belief that the claimant had carried out steering repairs without replacing the lock nuts (nyloc nuts) on the steering components, as instructed by technical guidance and had failed to tighten the nuts

appropriately or at all. The claimant accepted he had not replaced the locking nuts on the track rod ends and had used old nuts; and he accepted he had not tightened the nuts appropriately/at all. I considered that in circumstances where the employee has admitted the alleged misconduct, there were reasonable grounds upon which to sustain the employer's belief in this. The employer believed he had done this, and the claimant admitted he had.

84. I next have to consider whether it was fair for the respondent to dismiss the claimant for that reason. I had regard to the case **of Iceland Frozen Foods Ltd v Jones 1983 ICR 17** where it was said:

"the correct approach for the tribunal to adopt in answering the question posed by section 98(4) is as follows:

(1) the starting point should always be the words of section 98(4) themselves;

(2) in applying the section a tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the tribunal) consider the dismissal to be fair;

(3) in judging the reasonableness of the employer's conduct a tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;

(4) in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another;

(5) the function of the tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable response which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair; if the dismissal falls outside the band it is unfair."

85. This case makes it clear that it is not for me to decide whether I would have dismissed the claimant. I must ask whether the respondent's decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted. I, in considering this matter, had regard to the fact the claimant sought to mitigate what he had done by (i) saying he had asked Mr Courtney for a pinch bolt and been told none would be ordered and that he should find one to use. The claimant told the tribunal that having asked about a pinch bolt and received this response, he did not feel it was worth asking Mr Courtney about a nyloc nut. And, (ii) stating it was common practice to use an old nut.

86. I have set out above the fact I accepted Mr Hudson's evidence and explanation why he did not interview Mr Courtney again regarding this matter. The issue of whether the claimant had asked Mr Courtney for a pinch bolt or not was not relevant to what subsequently happened. The claimant admitted he did not ask Mr Courtney for a nyloc nut: he proceeded to use an old nut. The fact the claimant may have asked Mr Courtney for a pinch bolt and been told "no", did not mitigate the fact the claimant decided to use an old nut in circumstances where the technical guidance was available and clear and to the effect a new nut had to be used.

87. The claimant's position that it was common practice to use an old nut was not pursued strongly during the disciplinary proceedings or at this hearing. The claimant accepted the technical guidance was clear and he accepted he knew a new nut should be used. I noted Mr Courtney was asked specifically if the claimant had ever asked him if it was common practice to re-use an old nyloc nut, and Mr Courtney replied "no".

88. I was satisfied that Mr Murray was reasonably entitled to conclude that these matters did not mitigate what the claimant had done.

89. I accepted the accident could have had very serious consequences, even fatal consequences, not only for the driver of the vehicle but also for other road users. I also accepted the accident caused the customer to review whether it would continue to use the respondent for its repairs.

90. I was satisfied the respondent had carried out as much investigation as was reasonable in the circumstances of this case. I was further satisfied there were reasonable grounds upon which to sustain the respondent's belief that the claimant had acted as alleged. The rationale document produced by Mr Murray clearly identified and addressed all of the points raised by the claimant during the disciplinary hearing. Mr Murray acknowledged the claimant had shown remorse and accepted full responsibility for his failings; however Mr Murray did not accept the claimant's explanation mitigated what had happened. Mr Murray decided to dismiss because of the seriousness of the misconduct and the fact he had no confidence in the claimant.

91. I decided, having had regard to all of the points set out above, that the respondent's decision to dismiss the claimant for gross misconduct fell within the band of reasonable responses which a reasonable employer might have adopted. I say that because of the seriousness nature of the misconduct and having regard to the nature of the respondent's business.

92. I decided to dismiss the claim.

Employment Judge: Ms L Wiseman
Date of Judgment: 15 August 2019
Date sent to parties: 16 August 2019