EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4109155/2019

Hearing Held at Dundee on 15 and 16 January 2020

Employment Judge I McFatridge

Mr Daniel Morris	**Claimant** **In person**
Tokheim Solutions UK Limited	**Respondent** **Represented by** **Mr Allison,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that

1. the claimant was not unfairly dismissed by the respondent;

2. the claimant was not wrongfully dismissed by the respondent; and

3. the claim for holiday pay does not succeed.

The claims are dismissed.

REASONS

1. The claimant submitted a claim to the Tribunal in which he alleged that he had been unfairly dismissed by the respondent. He also alleged that he was due a sum in respect of notice pay and holiday pay following the termination of his employment. The respondent submitted a response in which they denied the claims. It was their position that the claimant had been summarily dismissed for gross misconduct and that the dismissal was procedurally and substantively fair. They denied that any holiday pay or other sums was due. At the hearing, evidence was led on behalf of the respondent from Mr P Davidson their Service Director and Mr S Watts their Sales Director. Mr J Davies the respondent's Field Service Manager was cited to appear as a witness by the claimant and gave evidence on behalf of the claimant as did the claimant himself. A joint bundle of documentary productions was lodged. On the basis of the evidence and the productions I found the following essential factual matters to be proved or agreed.

Findings in fact

2. The respondent is a substantial company with around 200 employees who are based in Dundee but provide services to petrol forecourts throughout the mainland UK. The claimant was employed by them as a Field Service Technician. As such he worked from home and would travel to petrol forecourts to carry out maintenance and repairs on their equipment. His employment commenced on 31 March 2014 and his latest employment contract issued on 31 December 2015 was lodged (pages 68-71). It notes that the claimant's hours of work are 8:00 am (leave home) to 5:00 pm (on site) each weekday with an hour for lunch. Hours on a Saturday and Sunday when the claimant worked Saturdays and Sundays are the same. The claimant was paid on the basis of a salary for hours worked during the week and received overtime for the hours worked when he worked shifts on a Saturday and Sunday. In addition to this the claimant was entitled to charge overtime when he arrived at home after 5:30 pm.

3. As noted in the contract the claimant was deemed to start work when he left his house at 8:00 am in the morning. He was expected to work until 5:00 pm and be on site leaving for home at 5:00 pm.

4. The claimant was issued with a vehicle by the company as well as a company mobile phone and a tablet. The tablet was a key part of the mechanism by which the respondent kept in touch with their Field Service Technicians, allocated them work and obtained data which they could report back to their customers.

5. Generally speaking, the respondent has service level agreements with their customers which provide for a certain response time. In negotiations with customers it is essential that the respondent has accurate information which is provided by the engineer using the tablet to accurately record his movements during the day. Generally speaking, a Field Service Technician will be issued with a number of jobs which are allocated centrally and appear on the tablet. The employee will then log on to his tablet in the morning and find out what jobs he has been allocated that day. The tablet will then tell them where they are going. With certain customers the respondent has service level agreements which provide for extremely tight response times. As a result the Head Office will often stipulate the order in which jobs are to be carried out as well as saying which jobs should be carried out. If the Head Office have not allocated an order then the Field Service Technician is free to carry out the jobs in whichever order he finds most convenient. In the average day the office staff will send out a list of around four to six jobs. The technician will then attend the first job and will complete a dropdown menu on his tablet so as to advise that he is leaving home en route for a job. He will then enter in his tablet when he arrives at the job, when he starts work, when he finishes work. He will also complete details of the job and the materials used. After that, he requires to enter when he starts travelling on to the next job, when he stops for lunch, when he starts after lunch etc. The tablet has an internal sim card which communicates with the respondent's Head Office using the mobile phone network.

6. On occasions, just as with mobile phones, the tablet will find itself in an area where there is poor or no mobile phone coverage and it will drop the

connection. Generally, such spots are extremely localised extending to no more than 100 yards or so. The tablet will then pick up the connection when it is next in an area of coverage.

7. In addition to time spent either working on jobs or travelling to and from jobs or having lunch, the technician also has the option of advising Head Office through his tablet that he is "TNA". This stands for "Time Not Allocated". This is working time which is not allocated to a particular customer. One example of this would be lunch. Another example would be where the technician is dealing with parcels.

8. Because the technician works from home there is a requirement that the technician can send and receive parcels of spare parts. The respondent has an arrangement with a national courier company for this purpose. When a technician removes parts from a job then usually they will be returned to the respondent by courier so that they can be refurbished. It is expected that a technician will spend one or two hours on this each week. Usually this work would be done from home. The technician would be expected to put down time spent doing parcels as "TNA".

9. As well as using the information generated from the tablet to provide the basis of reports to customers on whether or not the service level agreement is being met the respondent also use this information to look at certain key performance indicators. These key performance indicators are looked at both individually based on the performance of an individual technician and also regionally and nationally so as to see how the technicians in a particular area are performing. The respondent has divided the country up into six areas and there are usually around 10-12 technicians in each area. The two performance indicators which the respondent use most are jobs per day and first time fix. The respondent has a general target that a technician will do around 4.2 jobs per day. They also have a target for getting the job completed correctly the first time of around 80-90%.

10. The claimant worked in Region D.

11. The claimant reported to a Mr Knowles who in turn reported to a Mr Davies. As a general rule Mr Knowles and Mr Davies would run the

KPIs for every single technician on a monthly basis. They then used this information as a management tool to assist with managing the group of technicians.

12. In addition to the information recorded on the tablet the tablet also records geo location information. Generally, this geo location information was not available to either Mr Knowles or Mr Davies however if they had occasion to ask for it then they could request that this be provided by a member of staff based in Dundee who had the ability to interrogate the geo location information and provide Mr Knowles or Mr Davies with specific information as to where the tablet actually was at a particular point in time. This information could be shown on a map.

13. As one would imagine, given the nature of the job, there is a certain amount of give and take between management and technicians in relation to what happens at the end of the day. As noted above the contractual position is that the technicians are paid to be on site until 5:00 pm. Obviously if a technician finishes a job late in the day then there may be occasions when it is more appropriate for them to simply start to drive home rather than go to do another job which will result in them having to work beyond 5 o'clock, getting home after half past five and having to be paid overtime. The expectation was that this was something which technicians would discuss with Mr Knowles and he expected things to work on a swings and roundabouts basis. He was aware that it made a considerable difference to the KPIs and consequently to whether or not the service level agreement had been met if technicians were routinely finishing early. There was also an issue about seeking to take a shorter lunch hour in order to finish their jobs and get away early. This was something which Mr Knowles had advised the claimant was not acceptable. Generally speaking the view of respondent's management was that whilst they were prepared to accept there were swings and roundabouts this issue of finishing times was something they needed to keep a close eye on and actively manage.

14. On 2 October 2018 the claimant was called to a disciplinary hearing. The invitation was lodged (page 75). The claimant was advised that

"A full investigation of the facts surrounding the complaints against you has now been completed. The allegations against you are as follows:

- Unauthorised absence 08:00-09:00 on Saturday 29/08/18
- Extended lunch breaks on Saturday 29/09/18 & Sunday 30/09/2018
- Failure to adhere to holiday process resulting in detrimental effect on business operations – unauthorised holiday taken 01/06/18 & holiday booked for 03/08/18 prior to authorisation."

15. The claimant duly attended the disciplinary hearing on 11 October. Following the disciplinary hearing he received a written warning in terms of the respondent's disciplinary policy. The letter confirming the written warning dated 12 October 2018 was lodged (page 76). The letter stated

"Further to your disciplinary hearing on 11 October 2018 regarding serious misconduct – unauthorised absence, extended lunch breaks and failure to adhere to holiday process, this letter constitutes a Written Warning as deemed appropriate by the Company. A copy of this letter will be placed in your personnel file.

……

A full investigation of the facts was made by the Company and having put the specific facts to you for your comment you provided no reasonable explanations for your actions.

…...

This Written Warning will remain active from 11 October 2018 for a period of 12 months; expiry will be on 10 October 2019. If within this time there is further cause for dissatisfaction in respect to similar or any other misconduct, more serious disciplinary action may be taken. You are required to follow all company policies, rules and regulations and it is hoped that this warning will lead to a sufficient improvement so that such further action will not be necessary. …."

The claimant was given the right of appeal which was mentioned in the letter. He did not appeal the decision or the written warning.

16. In early January 2019 Mr Davies and Mr Knowles carried out their usual KPI check in respect of all of the Field Service Technicians. They noticed

that on 31 December the claimant had entered in his tablet that he left home to go to his first job at 9:07. He was meant to start at 8:00 am. Normally if the claimant had been, for example, doing parcels at home then they would expect him to put TNA for the period between 8:00 am and 9:07. They decided to investigate the matter further and requested the GPS geo location data from the person at the Dundee office who could provide this. The data was provided in early January. An extract of the map tracking the GPS co-ordinates together with the respondent's deductions therefrom was lodged (pages 82, 83, 84, 85, 86, 87). A table showing the tablet entries correlated with the geo location data was produced by the respondent and lodged at page 202. This shows that the claimant was still at home at 9:03 am. He arrived on site at 10:19 which was the time that he said he did in the information in his tablet. Later in the day however it showed the claimant leaving the site at 14:20 whilst according to his tablet he did not finish the job on the site until 15:23. The geo location data showed that at 15:23 the claimant was some 70 miles north of the site. The claimant's tablet entries then indicated that the claimant had started travelling home at 15:29, arriving at his home at 18:47. The geo location data showed that in actual fact the claimant was near his home at 16:23.

17. Mr Davies also decided to check with the customer's records as to when the claimant had actually arrived on site and obtained a copy of the security log for the claimant's visit to the second site where the claimant had indicated on his tablet that he had arrived at 14:16, this showed the claimant arriving at 13:19.

18. Mr Davies decided that he would be prepared to deal with this matter informally and asked Mr Knowles to have an informal discussion with the claimant about the matter. Mr Davies' understanding was that Mr Knowles had done this however it would appear that Mr Knowles did not in fact contact the claimant about this. Mr Knowles did however have various conversations with the claimant at various times where he emphasised the importance the respondent placed on their technicians doing as many jobs as possible in the day and also indicated that it was not permissible for a technician to work over their lunch break and then leave early which is

what Mr Davies and Mr Knowles suspected had happened on 31 December.

19. At some point in February 2019 Mr Davidson as part of his normal conversations with Mr Davies over the performance of Mr Davies' section shared with Mr Davies the fact that Area D, which was the area in which the claimant worked, appeared to have poor KPI statistics. It appeared to Mr Davidson that Area D was the worst performing area by quite a wide margin. He asked Mr Davies why the area was under performing. Mr Davidson's job involves him in a lot of interaction with customers. He passed on these interactions to Mr Davies. He asked Mr Davies how things could be improved. He told Mr Davies that he expected the jobs per day to be higher. He also tasked Mr Davies with investigating what the issues were. He was concerned as to whether it was behavioural, whether there were performance issues or any training requirements.

20. Towards the end of February (beginning of March 2019) Mr Davies carried out his normal monthly KPI check. He noticed that there appeared to be a number of discrepancies with the claimant's entries in his tablet. He identified these discrepancies simply by looking at the information provided on the tablet since as a matter of routine he did not check the GPS/geo location data. He noted that on 17 February the claimant appeared to have done one job in the morning and then taken 1 hour 23 minutes for lunch before doing one in the afternoon. On 25 February he was concerned because the claimant only did two jobs during the whole day both of which were on the same site. On 26 February the claimant appeared to have taken 1 hour 42 minutes for lunch. There was also an over-run on 27 February. Mr Davies asked Mr Knowles to get the GPS/geo location data for those dates. He also at some stage asked Mr Knowles to get the geo location data for 4 March. By this time he was concerned as to what the claimant was doing. Having obtained the GPS geo location data Mr Davies, having consulted with HR, decided to start a disciplinary investigation. He collated the GPS data for 17, 25, 26, 27 February and 4 March. This was lodged (pages 90-111). The respondent produced a table linking the tablet entry times which the claimant had submitted with the GPS geo location data. Mr Davies decided that

31 December should also be taken into account. As a result of comparing the data provided by the claimant by making entries on his tablet with the actual GPS data it was considered that this showed the following:

1. On 31 December Mr Morris' tablet recorded that he started lunch at 13:16 and ended at 14:14. He had booked into the Sedgemoor South site at 13:19 and worked over his lunch.
2. On 31 December his tablet recorded him starting to travel home at 15:29 and arriving home at 18:47. The gps data recorded that he left the site at 14:20 and at 15:29 was some 70 miles north of the site.
3. On 17 February his tablet recorded him leaving home for his first job at 8:00 am whilst the GPS data recorded him at home at 8:56.
4. On 17 February his tablet recorded him arriving on site at 9:45 whilst his GPS data recorded him arriving on site at 10:10.
5. On 17 February his tablet recorded him arriving home at 18:42 whilst the tablet GPS shows he switched off the tablet at 16:45. On 17 February the claimant had made entries in his tablet recording his departure to the first job at 8:59 whilst the GPS data recorded him still at home at 9:31.
6. On 25 February the claimant's tablet entries recorded him starting to travel home at 16:14 whereas the tablet geo tracking information records him leaving the site at 15:50 some 25 minutes earlier.
7. On 25 February 2019 the entries in the claimant's tablet made by him showed him arriving home at 17:03 whereas the tablet GPS tracking show him at home at 16:20.
8. On 26 February 2019 the tablet entries made by the claimant record him leaving at 7:59 am whereas the GPS on his tablet shows him still at home at 8:18.
9. On 27 February 2019 the entries made by the claimant on his tablet record him leaving home at 8:00 am whereas the tablet's GPS tracking shows him only a few hundred yards from home at 08:24.
10. On 27 February 2019 the entries made by the claimant in his tablet record him leaving to travel home at 16:23 whereas the tablet GPS records him leaving the site at 16:02.

11. On 27 February the claimant's entries on his tablet showed that he arrived home at 17:09 whereas the GPS on his tablet records him arriving home at 16:30.

12. On 4 March 2019 the entries made by the claimant on his tablet recorded his departure to the first job at 9:01 whereas the GPS tracking on his tablet indicated he was still at home at 9:35. On 4 March 2019 the information entered by the claimant on his tablet showed him starting to travel home at 16:25 whereas the GPS on his tablet showed him leaving the site to start travelling home at 16:01.

13. On 4 March 2019 the entries by the claimant on his tablet indicate he arrived at home at 17:33 whereas the GPS on the tablet shows him arriving at home at 16:31.

21. Mr Davies put together a pack which contained the various GPS records (pages 82-111) together with Mr Davies' comments as to what they showed outlined on each sheet. He then sent this to the respondent's HR department.

22. The claimant was not formally advised by Mr Davies that he was under investigation at this time. Mr Knowles, who was the claimant's line manager, did advise the claimant at some point in early March that they would be having a "meeting about his time keeping".

23. Around 15 March the respondent's HR department contacted Mr Davidson and indicated that they wished him to carry out a disciplinary hearing involving the claimant. At that stage they simply told Mr Davidson that there was to be a disciplinary hearing and asked him which days would suit. Mr Davidson indicated that he would be able to conduct a hearing in the Birmingham area, where the claimant was based on 20 March. At that time Mr Davidson was not sent any further documentation about the allegations against the claimant.

24. On 18 March the respondent's HR department wrote to the claimant inviting him to a disciplinary hearing which to take place on 20 March 2019. The letter was lodged (pages 80-81). There was included with the letter copies of the GPS data and other papers prepared by Mr Davies (pages 82-111). The letter stated

"A full investigation of the facts surrounding the complaints against you has now been completed. The allegations against you are as follows –

- Abuse of the recording procedures by entering inaccurate information on the tablet.
- Failing to devote all of your working time to our business.

……

Please not the following further supporting documentation (copies enclosed) will also be produced at the hearing –

- Various tracking information for 31 December 2018, 17 February 2019, 25, 26 and 27 February 2019 and 04 March 2019.
- Information from intervention reports for the above dates."

The letter went on to advise that the hearing would be conducted by Stewart Knowles, Field Area Supervisor and Paul Davidson, Customer Service Director. It went on to state

"Since the Company views these allegations as gross misconduct, I must inform you that the outcome of this disciplinary hearing could result in your summary dismissal."

25. At the same time as the investigation pack was sent to the claimant a copy was sent to Mr Davidson. Mr Davidson had not been involved at any stage in the investigation and had not previously been made aware by Mr Davies that he was carrying out this investigation. Mr Davidson assumed that the investigation had arisen following the various conversations which he had had with Mr Davies in February regarding the poor performance of Area D. He was not aware that the investigation had started because of concerns which Mr Davies had had regarding his routine check of the claimant's KPIs.

26. The letter to the claimant of 18 March was sent to him by e-mail. The investigation documents were sent as attachments. The claimant was unable to open the attachments since he did not have the appropriate programme for doing this on his work supplied tablet. The claimant did not raise this issue with the respondent at any time prior to the disciplinary

hearing. The claimant advised that he would be asking his colleague SR to accompany him to the meeting. The documentation was sent to SR. SR was also unable to open the documents initially but contacted the respondent's HR department to arrange for them to be sent in a different format which SR could open.

27. The disciplinary hearing took place on 20 March. The claimant attended accompanied by SR. Mr Davidson and Mr Knowles attended on behalf of the respondent. Mr Davidson was the decision maker and Mr Knowles was there because he was the claimant's line manager. Mr Knowles had previously been involved in ordering up various GPS reports on Mr Davies' instructions and to that extent had participated in the investigation albeit the decisions in the investigation had been carried out by Mr Davies who was Mr Knowles' manager.

28. Mr Davidson took notes at the meeting. He typed these up either the following day or the day after when he returned to Scotland. Mr Davidson's notes were lodged (pages 112-114). I considered these to be an accurate although not verbatim record of what took place at the disciplinary hearing. At the commencement of the meeting the claimant raised the issue that he had been unable to open the documents which had been sent to him as attachments however he said that he had now been able to view the documents on SR's tablet. He indicated that he was happy to proceed. Mr Davidson advised him that he could have contacted HR and had the attachment sent in a different form. He verified that the claimant was happy to proceed. Mr Knowles indicated that he had thought that the previous disciplinary held in October with the claimant would have put a stop to the issues however this did not happen hence the reason for the meeting. Various individual items were discussed. The claimant indicated that he may have been doing parcels on one day when he had left at 9:00 am rather than 8:00. Mr Davidson made the point that there was no information regarding this. With regard to leaving early Mr Morris indicated he may have worked through lunch and travelled home. Mr Knowles noted that on the day in question he had booked lunch between 13:14 to 14:14 (31 December). The claimant accepted that he was clear that he could not take his lunch later in the day and stated "Know

that there has been an issue previously with other engineers and been discussed by SK." The claimant said that he had decided to work lunches otherwise he would have got home a lot later. He said he didn't want to be a headache asking for a late lunch as he knew this was an issue. The claimant indicated that on one day where he was supposed to have not left until after 9:00 am this must have been a mishap with the tablet. He did not expand on this. He stated that there had been so many conversations about late starts. There was an issue regarding the day when the GPS tracker had showed the claimant very close to his home at 9:31 (25 February). The claimant indicated that it might have taken him 31 minutes to drive a few hundred yards if there was traffic on the road.

29. The claimant indicated that there had been a priority for him to get home on time because he had bought a house and was doing a lot of work to it. With regard to 26 February the claimant indicated that he had been at the new house he was working on from 12:27 until 14:16. This was an hour and 45 minutes. He said that he must have got carried away with the work he was doing. Mr Davidson asked him if he felt it was ok with using an hour of company's time to use on the house. The claimant said that was not how he wanted things to come across. Mr Knowles again referred to the previous meeting stating

> "After last meeting why would this not be an issue."

The position regarding 27 February was raised and the claimant said he felt that 4 o'clock was "time to pack up". He said that it would not make any impact if it was only 20 minutes to half an hour each day and said that there should be some give and take. There was a discussion regarding what should happen if a job finished around 4:00 pm. The claimant said he felt he could either sit on site or start travelling so he would start travelling home. He indicated that 4 o'clock was a fair day's work so he thought it was okay to travel home then. Mr Knowles indicated that the claimant was aware that he knew that he should phone the office to see if there were any more jobs if there were none still to be done on his tablet.

30. There was a discussion about the 4 March. The claimant said he had left a fuel can and didn't want to admit it so he was running around looking for

it. Mr Davidson felt that this explanation was unlikely to be correct. He was aware that the fuel cans in question are large 20 litre cans and that it was highly unlikely that this could be left behind at a customer. In any event it did not explain the various discrepancies. The claimant was asked if there was anything further to add and then stated that if not there should be give and take over early finishes as sometimes he worked late and didn't always claim. He said that February was a bad month as his focus was on his house hence the early finishes. He said he was committed to the company, he didn't complain about jobs about where he was being sent. Mr Davidson indicated that they would take a short break. The claimant and his representative left the room.

31. After the adjournment the claimant and his representative called back into the room and Mr Davidson indicated that the claimant would be summarily dismissed.

32. Mr Davidson travelled back to Scotland after the meeting. He discussed the matter with HR who prepared a letter for his approval. The letter was sent on 25 March confirming to the claimant that he had been summarily dismissed. The letter was lodged (page 115). The letter was not received by the claimant until 27 March. On 26 March the claimant had written to the respondent asking for confirmation of his dismissal since he had not received anything at that stage. This letter was lodged (page 116). The respondent's letter of dismissal (page 115) stated

> "….
> After full consideration of all information, it was felt that you provided no reasonable explanation for your actions. Due to the seriousness of the issues raised and the lack of remorse shown for your actions, it was decided that the correct course of action was for you to be dismissed from the employment of Tokheim Solutions UK Limited."

The claimant was advised that his dismissal was effective from 20 March. He was told payment will be made for overtime and expenses in the April payroll although it was noted that there might well have been an overpayment to him.

33. Mr Davidson's view was that the claimant had made the false entries in his tablet as per the list above. He also considered that the second part of the allegation was proved in that the claimant was supposed to work for the respondent between 8:00 and 5:00 with one hour for lunch. He felt that it was clear that the claimant had not done this on the various days in question where he had either started work late or left early or taken a longer lunch hour than was permitted.

34. In terms of his contract of employment (page 69) the claimant was entitled to 33 days' holiday per annum. The holiday year was 1 May to 30 April in each year. Having been dismissed on 20 March the claimant was entitled to 30 days' holiday in the holiday year 2018-2019. He had already taken 30 days' paid annual leave by his date of dismissal and was therefore not entitled to any payment in respect of holidays accrued but untaken as at the date of termination of his employment. The claimant's final salary statement was lodged (page 78).

35. The claimant had been advised of his right to appeal in the letter of 25 March (page 115). He had been told that if he wished to appeal he must do so in writing which required to be received by the Human Resources department by Monday 1 April 2019. Following the delay in the claimant receiving the respondent's letter of 25 March he contacted HR who agreed that this date be extended to 5 April. The claimant wrote to the respondent intimating his appeal in a letter dated 30 March 2019. This letter was lodged (page 117-118). It is as well to set out the terms of this letter in full.

> "Firstly, I wish to thank you for the appeal date to be put back to the 5th April 2019 in order for me to get my appeal to you on time, your letter dated 25/3/19 was franked on 27/3/19 and I only received this correspondence on the morning of 29th March and the appeal deadline was 1/4/2019. After speaking to Ms Duffy in Ms Bell's absence and explaining this, she extended the date. I did try to speak to Ms Bell but was informed by Ms Duffy that Ms Bell had not been at work for some time and a controller confirmed this so I was surprised at a letter fraudulently signed in Ms Bell's name dated 25 March 2019 by Ms Duffy.

I attended the disciplinary hearing on 20 March 2019 with SR as my representative. We were only informed of this by telephone call about 2 weeks prior and later an e-mail a few days before, but no formal letter from you in respect of your gross misconduct allegations against me, and in light of your allegations against me, I would have been expected to be suspended during the investigative period and given more time to prepare my answers to the allegations against me and not me having to work right up to my hearing.

At the hearing my Field Supervisor and Customer Services Director were in attendance (Stewart Knowles and Paul Davidson), I believe minutes were taken, however these were not given to either me or Steve to read over and to agree that they were a good reflection of the hearing at the end and I have not received a copy of them so we are both unsure as to the accuracy of the minutes.

I was very stressful at the hearing and now cannot fully remember a lot of its content, however I do recall various tracking information for various days and I did explain that at the time I was working some distance from Birmingham, and yes I did leave site 10-15 minutes early which I know is a practice for many field engineers to do, the M5/M6 motorways which I travel up and down most days have had horrendous road works causing delays, and if I can avoid these and there has been no other work put through on my tablet, I started my journey home. Some of the days mentioned I was late getting home but did not put through for an overtime payment because I had left site early, and have not put in for overtime payments except for the weekends I have worked.

You accuse me of not devoting my working time to your business and found me guilty of this, but as stated above I do not believe this to be true. I feel like I've been singled out unfairly. My sick record is excellent, I have had no sick days to my knowledge in the 5 years I have been in your employ. I have had many holiday requests denied over the years and have lost holiday hours due to holiday denials. I was never paid for my lost holiday allowance. Also on occasion I have had holiday booked cancelled due to 'lack of staff', so is this still a true fact of not devoting work time to the company.

I have no evidence of time scales now as my tablet/phone were removed from me and I have no access to my Tokheim e-mail account from my own phone.

You further accuse me of the abuse of the recording procedures by entering inaccurate information on the tablet. I deny this entirely. The information recorded on the tablet was correct in that it was filled out accurately and was signed off on site. Unfortunately due to the low quality of the tablet, it died and needed charging. Once the tablet powered up I made sure I pulled over to submit the job.

You essentially accuse me of showing lack of remorse and this to be a part of your decision making process to dismiss me. This is a very poor and unfair reason to be included in your letter providing explanation for your decision. As I stated above I was stressed and not given enough time to digest the accusations against me and to view the evidence you had against me. Steve Rodgers can also back up my claim to this.

I have undergone a lot of training for Tokheim, I have worked a lot from my home staying overnight(s) previously when requested to do so away from my family life and commitments, I have trained other employees and assisted them when they have contacted me for advice and I believe I am still an asset for Tokheim Solutions LTD.

As you may be aware the employment tribunals will look at whether you as my employer acted reasonably under the law. I would very strongly disagree that you have acted reasonably.

You should also review your internal procedures within the HR team, as fraud and misrepresentation are very serious crimes which essentially make any correspondence void.

I look forward to receiving the appeal hearing date."

36. On 9 April the respondent wrote to the claimant inviting him to a hearing which was due to take place on 12 April. The hearing was to be conducted by Steve Watts the respondent's Sales Director. Mr Watts had had no contact with the claimant prior to this. He was simply asked by Maria Duffy of the respondent's HR department if he was available to do an appeal. He had experience of disciplinary procedures. He was sent all of the

documents in the case including the letter from the claimant, the minutes of the disciplinary meeting and the investigation pack.

37. Following receipt of the letter the claimant requested more information from the respondent and asked if the date could be postponed. This was agreed. The appeal hearing took place on 23 April 2019. The claimant attended accompanied by SR. Mr Watts was accompanied by a Stacey Quarmby of the respondent's HR department who took notes. Ms Quarmby's notes were lodged (pages 122-125). I considered these to be an accurate, although not verbatim, record of what took place at the hearing.

38. Mr Watts advised the claimant that the appeal process was not an opportunity for a re-hearing of the original decision but to consider the grounds of appeal. The claimant was invited to advise why his dismissal was unfair and indicated that he had prepared a statement. He then read the statement and produced copies for those present. The claimant's statement was lodged (page 126-127). Once again it is probably as well to set this out in full.

> "I am appealing against your decision to dismiss me following disciplinary hearing couple of weeks ago on the following ground
>
> - I was not given enough time to check dates and movements, doing boxes etc, as was recorded in the minutes of that meeting I was only allowed a quick read through of my colleagues technology as I couldn't open the software. The minutes were done by Stuart Knowles whilst he was questioning me and not a HR/Impartial person typing up an accurate account of the meeting that should also have been checked and signed by me as an accurate account. I received the minutes after requesting them after receiving my dismissal letter and there was discrepancies in language and reflection of the meeting, also discrepancy in my dismissal letter as was actually wrote by Maria Duffy HR assistant and not as signed by Maria Bell HR Manager who was off work at that time which is a mis-representation in itself, and who also was not at the meeting.

- My time keeping seems to be an issue with the tablet pings, the tablet does have difficulties it don't always have a coverage and will ping when coverage is available, I have been phoned when I've actually been on site and working when I have been asked where I am. I was very stressed at the hearing, however I do recall various tracking information for various days and I did explain that at the time I was working some distance from Birmingham, and yes I did leave site 10-15 minutes early which I know is a practice for many field engineers to do, the M5/M6 motorways which I travel up and down most days have had horrendous road works causing delays recently, and if I can avoid these and there has been no other work put through on my tablet, I started my journey home, some of the days mentioned I know I was well late getting home but did not put through for an overtime payment because I had left site early, and have not put in for overtime payments except for the weekends I have worked. I have received no verbal/written warnings from any supervisors about this, which I find to be unfair that I was not given the chance to check my work practices, and to remain on site until the time allowed and then book in overtime payments as was pointed out to me by Mr Davidson as the correct procedure, (despite costing the company in extra overpayments.) I understand from colleagues since that this has now been discussed and put into place since my dismissal.
- In the dismissal letter I was accused of not devoting my working time to your business and found me guilty of this, but as stated above I do not believe this to be true, also my sick record is excellent, I have had no sick to my knowledge in the 5 years I have been in your employ. I have had many holidays requests denied over the years and have lost holiday hours due to holiday denials, also on occasion I have had holiday booked cancelled due to 'lack of staff', so is this still a true fact of not devoting work time to the company.
- I was also accused me of showing lack of remorse shown at the hearing, but as I stated above I was stressed and not given

enough time to digest the accusations against me and to view the evidence you had against me. SR can also back up my claim to this. I have no evidence of time scales now as my tablet/phone were removed from me and I have no access to my Tokheim e-mail account from my own phone, I have requested these in correspondence with Maria Duffy, a lot of requested information has been refused and classed as 'irrelevant' to the appeal hearing, which could show me in a better light than what was shown at the meeting.

- Also in my defence, I have undergone a lot of training for Tokheim, I have worked a lot staying overnight(s) previously when requested to do so away from my family life and commitments. I have trained other employees and assisted them when they have contacted me for advice and I believe I am still an asset for Tokheim Solutions LTD."

39. The reference in the penultimate paragraph to information requested by the claimant from the company was a reference to the fact that the claimant had been in contact with HR and requested a print out of his record including KPI information for the period from 2015 to date. This information was provided to the claimant. The claimant also requested this information in respect of his colleagues but the respondent refused to provide this information on the basis it was not relevant. The information which the respondent provided in respect of the claimant's work record was lodged (pages 140-198).

40. Having read out the statement at the appeal Mr Watts asked the claimant a number of questions. He asked the claimant if he had told anyone that he couldn't view the documents. The claimant indicated that he had spoken to SR and had then viewed the documents on SR's tablet. The claimant in concluding his statement also confirmed that he had spoken to a few engineers since his dismissal and "they are all now on a knife edge about leaving site early". There was also a discussion regarding the claimant's holiday requests and the training he had been on. The claimant indicated that from his KPIs his position was that his finishing times now were no different to what they had been back in 2015. With regard to the

tablets the claimant stated that his job was as an engineer and not to look after the tablet. He said that sometimes the battery might run out and that sometimes you could tap on the screen and accidentally log on to a site. He felt it was unfair for the company to open an investigation on him and not let him know. At the end of the hearing Mr Watts indicated that he would consider and provide the claimant with a written outcome.

41. Following the meeting Mr Watts investigated the position. Mr Watts had previously worked as a Field Service Technician and knew in general terms what was involved in the job. He spoke to two individuals he knew who currently worked as Field Service Technicians and discussed with them the issues raised by the claimant regarding his tablet. They did not confirm any of the difficulties which the claimant referred to. He also spoke to HR and discovered that contrary to what the claimant had said this was not his first disciplinary for timekeeping issues and that in fact the claimant was on a live written warning for inter alia timekeeping from October.

42. Mr Watts was aware that the respondent uses information from the tablet to support the service level agreements in discussions they have with customers on a regular basis. These conversations are designed to show that the respondent is complying with their contract. He felt that if there were problems with the tablet then SR would have intervened to confirm this but noted that he had not supported the claimant in this way at any point. Mr Watts felt Mr Davidson was correct in his view that it was crucially important that the claimant input correct information on the tablet since the consequences for the respondent if this was not done could be severe. He also ascertained from the engineers that each Field Service Technician is supplied with a mains charger and a vehicle charger for their tablet and there would be absolutely no reason for it to run out of charge on a regular basis. He also ascertained from them that any loss of coverage would be in a very small area perhaps 100 yards. This could not account for the discrepancies. With regard to the timings he noted that the claimant had confirmed that he had been told that he would be facing a disciplinary hearing approximately two weeks beforehand. He noted that he received two days' notice of the meeting and that this was in accordance with the respondent's disciplinary procedure which was

lodged (page 72-74) and he understood from HR that 48 hours' notice was considered sufficient. He did not consider the claimant's assertion that all engineers were guilty of inputting false data to be relevant. He was concerned that if he told a customer that this compliance with the service level agreement was 98% and the customer then told him that actually it was only 90% because the tablet data produced by engineers was inaccurate this would cause the respondent considerable difficulties.

43. Mr Watts considered the claimant's assertion that it was strange the company had not suspended him. Mr Watts' position was that he did not find this to be strange albeit he did not know what the normal procedure would be. He did not see anything sinister in the fact Mr Davies had not specifically told the claimant that he was investigating his timekeeping.

44. Mr Watts also spoke to Mr Davies to confirm what the previous disciplinary hearing in October had been about.

45. At the end of the day Mr Watts did not consider that the claimant had made out any of his appeal points. He decided to uphold the decision to dismiss. He wrote to the claimant on 26 April 2019 confirming this. This letter was lodged (pages 128-129). With regard to the specific points Mr Watts set out his finding in bullet point fashion. He said

> "• *DM stated I was not given enough time to check dates and movements, doing boxes etc, as was recorded in the minutes of that meeting I was only allowed a quick read through off my colleagues technology as I couldn't open the software.*
>
> You were verbally notified of the Disciplinary hearing a week prior by your line manager, Stewart Knowles and followed up with a phone call from HR Manager, Maria Bell. The formal written disciplinary invite and supporting documents were sent to you 48 hours before the disciplinary stating that if you are unable to attend the hearing you must contact HR immediately and if you had any questions to let us know. Steve Rogers emailed to advise he could not open the word documents on his tablet and these were subsequently resent to him in PDF format. The disciplinary hearing invite letter also stated that since the company viewed these allegations as gross misconduct, we must

inform you that the outcome of the disciplinary hearing could have resulted in your summary dismissal. This ground for appeal is therefore not upheld.

- *DM stated my time keeping seems to be an issue with the tablet pings, the tablet does have difficulties it don't always have a coverage and will ping when coverage is available. I have been phoned when I've actually been on site and working when I have been asked where I am.*
- *DM stated that regarding the tablet timings his job is as an engineer and not to look after a tablet, sometimes the battery may run out, sometimes you can tap the screen and accidentally log on to a site*

Field Service Technicians are provided with company property that they must use to complete their duties e.g. mobile phone, tablet, van, tools etc and the tablet is a critical part of a FST job and plays a vital part in the overall running of the business. This ground for appeal is therefore not upheld.

- *I have received no verbal/written warnings from any supervisors about this, which I find to be unfair that I was not given the chance to check my work practices and to remain on site until the time allowed and then book in overtime payments as was pointed out to be by Mr Davidson as the correct procedure, (despite costing the company in extra overpayments).*

You received a Written Warning in October 2018 for unauthorized absence and were advised during that hearing that your start time is 08:00 (leave home) and finish time is 17:00 (on site) with a one hour unpaid lunch break as per your terms and conditions of employment. This ground for appeal is therefore not upheld.

- *As I said in the meeting, time keeping is a wider issue in that most field engineers that I know start a few minutes later and/or finish a few minutes earlier each day … this is custom and practice among my colleagues and the company's decision to single me out and treat me in a different way to my colleagues is unfair.*

> The evidence held provides confirmation that your start/finish times as well as extended lunch breaks exceeded that of 'a few minutes' and as stated above, you were clearly advised in the Disciplinary meeting in October 2018 of the expectations regarding start and finish times as well as lunch breaks. This ground for appeal is therefore not upheld."

46. Following the termination of his employment the claimant made appropriate attempts to mitigate his loss by finding other work. He was successful in finding new employment on 1 July 2019. On 13 December the claimant was dismissed from this employment and as at the date of the hearing was still unemployed.

Matters arising from the evidence

47. It appeared to me that Mr Davidson, Mr Watts and Mr Davies were all trying to assist the Tribunal by answering questions truthfully. I had no hesitation in accepting their evidence as credible and reliable. It was noteworthy that Mr Davidson's understanding was that Mr Davies had initiated his investigation of the claimant because of the conversation which Mr Davidson had had with Mr Davies regarding the poor performance of Area D. On the other hand Mr Davies' evidence was that whilst he accepted that he had had such a conversation with Mr Davidson the investigation actually started following his routine check on the KPIs of the Field Service Engineers which had highlighted various issues regarding the claimant's timekeeping. I considered Mr Davies' evidence was correct albeit I could see that, having been purposely not involved in the investigation, Mr Davidson had assumed a connection between the investigation and his conversation with Mr Davies which was not in fact correct. So far as the claimant's evidence was concerned the claimant was unwilling to be specific regarding various issues put to him by the Respondent's representative. He was much happier talking in generalities. It was also noteworthy that he was much happier talking about what he considered to be failures on the part of the employer rather than providing factual information as to those matters in relation to which he was giving evidence. With regard to the disciplinary hearing the claimant was extremely critical of the minutes prepared by Mr Davidson but gave no actual evidence as to what he said had been discussed at the

hearing. His position appeared to be simply that because Mr Davidson had not clearly set out the attendees and time and place of the hearing in a head note and had not thereafter asked for the minute to be countersigned by the claimant and SR then the minute was invalid and could not be relied upon. In evidence the claimant sought to rely upon what he considered to be various shortcomings in the performance of the tablet which he was required to use in connection with his work. The respondent's representative objected to this line on the basis that he had not put any of this to any of the previous management witnesses. Given that the claimant was unrepresented I decided that it would be appropriate to hear this evidence nonetheless under reservation. Having been allowed to give this evidence however the claimant then failed to do anything other than talk in generalities and it was not at all clear to me what, if any, specific criticisms were being made of the tablet other than the fact that like a mobile phone it requires to be charged and like a mobile phone will sometimes be out of coverage. None of the criticisms in my view appear to impact on the reasonableness of the way the respondent had treated the information provided in the tablet. The claimant made the point that he considered that his data protection rights had been infringed by the fact that the tablet tracked his movements using GPS although he had not raised this at any stage prior to the hearing. I consider this to be irrelevant.

48. Mr Davies had indicated that he had told Mr Knowles to have an informal word with the claimant regarding the claimant's timekeeping on 31 December Mr Davies indicated that he had felt the informal route was appropriate given that he knew the claimant was already on a written warning and the infringement had occurred on New Year's Eve. His evidence was that he understood Mr Knowles had spoken to the claimant about this. The claimant's position in evidence was that Mr Knowles had not specifically spoken to him about 31 December. Mr Knowles did not give evidence on the subject and I was prepared to accept that Mr Knowles had not specifically spoken to the claimant about 31 December. On the other hand it is clear from the various statements made by the claimant during the disciplinary process that Mr Knowles had spoken to him about timekeeping issues at various times. It is entirely

possible that Mr Knowles felt that a general talk on timekeeping was more appropriate than make specific allegations about a particular date. In any event, I did not consider that a finding one way or the other would make any difference to the end result.

49. Although the claimant had made a claim in respect of three days' holiday pay the claimant did not give any evidence regarding this during the hearing nor did he ask any questions of the respondent's witnesses. During cross examination he accepted that if his holiday year ran from 30 April to 1 May then his holiday entitlement to 20 March pro rata would be 30 days.

50. Although I did not consider the matter to be particularly relevant the claimant maintained his position that he understood that Maria Bell, in whose name the dismissal letter went out had not been in the office for several weeks prior to the date the letter was sent and his understanding was that she had left the business. Mr Davidson's evidence was that Ms Bell had left the business in mid-May and he had been unaware of her taking any extended period of time off before this.

51. In my view it is not unusual for letters sent out from a department within a business to go out in name of the manager of that department and I did see any significance in that the letter had been put out in Maria Bell's name and signed by someone else on her behalf.

Discussion and decision

52. Both parties made submissions. The respondent provided their submission in writing which they supplemented orally. Rather than repeat the submissions at length I will refer to them where appropriate below.

53. The right not to be unfairly dismissed is contained in Part X of the Employment Rights Act 1996. Section 98 of that Act states

> "(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –
>
> (a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held."

54. In this case the respondent's position was that the reason for the claimant's dismissal was conduct which is a potentially fair reason for dismissing falling within section 98(2)(b) of the said Act. On the face of the evidence it appeared to be clear that this was in fact the reason in the respondent's mind for the dismissal. Although the claimant refers in his claim form and in his evidence to being "singled out" the claimant could not suggest any reason for his dismissal other than the respondent's belief in his misconduct.

55. Having established that in my view there was a potentially fair reason for dismissal I required to go on to consider the terms of section 98(4) which states

"(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case."

As is mentioned by the respondent in their submission assistance is given to Tribunals in the approach they should take to the question posed by section 98(4) in conduct cases by the decision of ***British Home Stores Ltd -v- Burchell [1982] ICR 303***. This sets out the well-known three-fold test:- (1) there must be established by the employer the fact that the employer believed that the claimant had committed the misconduct in question; (2) it must be shown that the employer had in his mind reasonable grounds upon which to sustain that belief; and (3) the employer at the stage at which it formed the belief on those grounds must

have carried out as much investigation as was reasonable in the circumstances of the case. I should say that at each point the burden of proof is in fact neutral. I would also agree with the respondent's representative that the case of ***Sainsbury's plc -v- Hitt [2003] IRLR 223*** provides that the band of reasonable responses test applies to all aspects of the disciplinary procedure and the employer's decision making including the reasonableness or otherwise of the investigation carried out.

56. In this case I was entirely satisfied on the basis of the evidence of Mr Davidson and Mr Watts that the respondent did have a genuine belief that the claimant was guilty of the misconduct alleged against him. Both witnesses indicated that they had considered the two allegations individually and had formed the view that the claimant was guilty in respect of both of these. The genuineness of their belief was not really challenged by the claimant.

57. In his evidence Mr Davidson was taken through the various maps and reports which formed the investigation pack compiled by Mr Davies. It was clear to me that he had a genuine belief that the claimant was guilty of all of the various instances charged where he had made entries into his tablet which did not coincide with the GPS data. Mr Davidson also clearly believed that the claimant was guilty of failing to devote his whole time to the business in respect of the occasions when he had either left home late to go to work, left work early or taken too long a lunch break. Mr Watts similarly formed that view.

58. With regard to the second question it appeared to me that both had ample grounds upon which to sustain that belief. The evidence from the investigation pack was compelling. In addition to this I accepted that, as described in the minutes of the investigation meeting, the claimant did not substantially dispute the allegations and his defence was along the lines that he was otherwise a good employee and was therefore entitled to leave work early on occasion. Much of the information in regard to the allegation that the claimant had left work early or left home late or worked a long lunch hour was actually based on the information entered by the claimant himself into his tablet albeit that when this was compared with the GPS data it became clear that the position was in fact much worse

than appeared from what the claimant had put into his tablet. It was clear to me that the second limb of the ***Burchell*** test had been met.

59. With regard to the third test I observe that the reasonableness or otherwise of the investigation requires to be considered on the basis of the band of reasonable responses test. This test which is well known in employment law makes it clear that there is no "one size fits all" approach but that it is accepted that certain employers may go about things in one way and certain employers may go about things in a different way. So long as the way the investigation was conducted is within the band of reasonableness then the Tribunal is not entitled to interfere. In this case I had absolutely no doubt that the investigation was well within the band of reasonable responses. Mr Davies had become concerned when he viewed the information supplied by the claimant via the entries to his tablet. This was against a background where Mr Davies had recently conducted a disciplinary hearing where the claimant had received a written warning for, amongst other things, timekeeping issues. In my view it was entirely reasonable for him to seek to obtain the GPS data.

60. Since the point was raised by the claimant I also consider that it was entirely reasonable for him to ask Mr Knowles the claimant's line manager to obtain this data for him and the fact that Mr Knowles obtained the data and passed it to Mr Davies did not in my view preclude Mr Knowles being involved in the disciplinary hearing. I also consider that it was entirely reasonable for the respondent to carry out these timekeeping checks without specifically telling the claimant that he was under investigation for his timekeeping.

61. Looking at the disciplinary process as a whole it is clear that the only additional investigations which the claimant suggested be carried out were that the respondent looks at the data for his colleagues as well as for himself. This was based on the claimant's view that his colleagues were equally as guilty as he was. I do not consider anything at all untoward in the respondent refusing to do this. They were investigating the claimant's behaviour and in my view it would not have been appropriate for them to look at other people's records.

62. At the end of the day it appeared to me that the investigation was well within the band of reasonableness and that looking at matters as a whole the respondent was entirely justified in coming to the view that they did that the claimant was guilty of the misconduct in question.

63. The case of ***Polkey v A E Dayton Services Limited [1988] ICR 142 HL*** makes it clear that procedural fairness is an important part of overall fairness. As noted above, the claimant made various procedural criticisms of the respondent.

64. With regard to the provision of information in advance of the disciplinary hearing I note that the claimant was advised informally that he was to be invited to a disciplinary meeting and then received his formal notice two days before. Whilst this is a tight timescale I do not consider that there is anything in this which would contribute to procedural unfairness. He also makes the point that he could not open the attachments before the morning of the hearing. Again in the circumstances of this case I do not consider that this would contribute to any procedural unfairness. The crucial point is that at the hearing the claimant was asked if he was happy to proceed having seen the information provided to SR and the claimant said that he was happy to proceed. In my view it is not in any way procedurally unfair for an employer to proceed with a disciplinary hearing under those circumstances.

65. The claimant also suggests that he was somehow unaware of the seriousness of the matter before the meeting however the invitation to the meeting makes it clear that the respondent considers the matters raised to potentially amount to gross misconduct which might potentially lead to dismissal. This information had not been provided in the previous invitation to a disciplinary hearing which the claimant had received in October 2018. Furthermore, the claimant was told in his invitation letter that the meeting would be convened by Mr Knowles and Mr Davidson. Mr Davidson was Mr Davies' manager and it would have been obvious to him that the matter was considered to be more serious than the matters raised in the October disciplinary which had been conducted by Mr Davies and Mr Knowles.

66. The claimant was also critical of the fact that as noted above Mr Knowles was involved in the disciplinary whilst he had been involved in the investigation in the sense that he had obtained various print-outs for Mr Davies. As noted above I did not consider that his involvement in the investigation was other than fleeting. Mr Davies made it clear that he had made all of the decisions in the investigation himself. He had simply asked Mr Knowles to provide him with information. In any event Mr Davidson was clear that the decision to dismiss was made by him alone albeit that Mr Knowles had participated in the disciplinary hearing given that he was the claimant's line manager.

67. I do not consider that the criticisms the claimant made of the form of minutes produced by Mr Davidson or the fact that the letter of dismissal was signed on behalf of Maria Bell in any way amounted to a procedural irregularity.

68. I was slightly concerned that there was some suggestion that the claimant had already been disciplined for what happened on 31 December since Mr Davies' position was that he had decided that the matter should be dealt with informally because it was New Year's Eve and his understanding was that Mr Knowles had already spoken to the claimant about this. It would be unfair for the claimant to be disciplined for a matter where he had already received an informal warning. That having been said, the claimant's own evidence was that he had not actually received an informal warning in respect of 31 December. In any event, even if he had I would not have considered the matter sufficiently serious to lead to a finding that the dismissal was unfair procedurally or otherwise. It was clear from the evidence of the respondent's witnesses that they had based their decision on all of the entries more particularly those at the end of February, beginning of March.

69. I required to consider whether the decision to dismiss on the basis of the misconduct which the respondent had found to have occurred was itself within the range of reasonable responses.

70. In this case I note the evidence of the respondent's witnesses that the claimant works from home and that there is little opportunity for him to be

directly supervised by his managers. His managers rely on the information provided by the claimant. In this case I felt that there was a difference between the first and second parts of the allegation against the claimant. One part of the allegation related to the claimant not devoting his time to the business during working hours as he was legally obliged to do. In my view, if this had been the sole allegation against the claimant then it would not have justified his summary dismissal. Clearly, an employee who leaves early or attends work late or takes a longer lunch hour than he is entitled to is failing to devote all of his working time to his employer's business however in my view a reasonable employer would not summarily dismiss in those circumstances. In my view what changes things is the second allegation in this case. The second allegation was effectively that the claimant had entered inaccurate information on his tablet and abused the recording procedures. Both Mr Davidson and Mr Watts gave evidence that this struck at the very heart of the way the respondent managed their business. Both spoke to the fact that the information provided by the claimant and other Field Service Technicians on their tablets was used in negotiations with customers and was relied upon by the company as being accurate.

71. Mr Davidson to some extent and Mr Watts more specifically were quite candid in stating that the respondent's relationship with Field Service Technicians was one which required to be conducted with give and take on both sides. As Mr Watts said there was an unwritten rule that one applied swings and roundabouts in relation to finishing times. There would be days where an employee will get to leave work early if there is no work for him to do and other days where an employee will be expected to work late in order to get a job finished. The crucial point, as Mr Watts said, was that the Field Service Technician lets their supervisor know what is happening and records this accurately on his tablet. Mr Watts said the information provided on the tablet is treated by him as being factual and is what he bases his discussions with customers on. As he put it, when an engineer leaves at four o'clock and doesn't put this on their tablet this completely skews the information in the service level agreement.

72. Furthermore if, as the respondent reasonably believed to have happened here, the employee makes false entries in his tablets the employer cannot properly manage that employee's time. In my view given the second part of the allegation in this case there is no doubt in my mind that it was well within the range of responses of a reasonable employer to dismiss. The claim of unfair dismissal therefore falls.

73. The claimant also claimed notice pay although I accepted the respondent's position that he had not specifically made a stand alone claim of wrongful dismissal. In any event, I consider that any claim of wrongful dismissal could not succeed. The respondent's non-contractual disciplinary policy does provide that generally where one has received a written warning one can expect to receive a second or final written warning in respect of any subsequent breach of discipline before the respondent would dismiss. I also note however that the disciplinary policy specifically reserves the right for the respondent to dismiss summarily for gross misconduct. I also note that the second bullet point on the definition of gross misconduct on page 73 specifically refers to "deliberate falsification of records". It appears clear to me that the respondent did deliberately falsify records in this case and was guilty of gross misconduct. His claim for notice pay would therefore fall.

74. As noted above the claimant had in his pleadings indicated that he would be making a claim in respect of holiday pay. It appeared to me on the basis of the accepted facts that the claimant had received payment for his full holiday entitlement prior to the termination of his employment. This claim therefore also fails.

75. In all the circumstances I find the dismissal to be fair and the claimant's claims of holiday pay and notice pay are also dismissed.

Employment Judge: **Ian McFatridge**
Date of Judgment: **06 February 2020**
Date sent to parties: **06 February 2020**