



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103138/2019

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Held in Glasgow on 8 and 9 July 2019

Employment Judge F Eccles

10 **Mr J Reilly**

**Claimant
In Person**

15 **First Glasgow (No.1) Limited**

**Respondent
Represented by:
Mr S Peacock -
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The Judgment of the Employment Tribunal is that the claimant was not unfairly dismissed by the respondent and the claim for holiday pay is not well founded.

REASONS

Background

1. The claim was presented on 24 March 2019. The claimant claimed unfair
25 dismissal and payment of outstanding holiday pay. The claimant sought
reinstatement. The claim was resisted. In their response accepted on 24
April 2019, the respondent gave the reason for dismissal as misconduct and
claimed that no holiday pay was outstanding to the claimant. The claim was
listed for a final hearing. At the final hearing, the claimant appeared in person.
30 He was accompanied by a friend, Mr D Malloy. The respondent was
represented by Mr S Peacock, solicitor.

2. The tribunal was provided with a bundle of productions by both parties. The
respondent's bundle became a joint bundle on the basis that the claimant's

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documents were contained in the respondent's bundle. The parties provided the tribunal with witness statements. The respondent's witnesses were Julian Mulholland, staff manager; Mark McSkeane, staff manager; and John Gorman, head of operations. The claimant gave evidence. Witness statements were taken as read and in the case of the respondent's witnesses, from their evidence in chief. In advance of the hearing, the claimant has sought two witness orders, requiring Mark Anderson and Vincent Hargan to attend to give evidence on his behalf. Witness orders were refused. The claimant decided not to renew his application for witness orders for the final hearing.

Findings in fact

3. The tribunal found the following material facts to be admitted or proved; the claimant was employed by the respondent as a bus driver on 23 November 2008 to 31 January 2019 when he was dismissed for gross misconduct. The respondent was a bus company. It operates a number of bus services in the Glasgow area. It employs around 798 drivers based at the Caledonian depo in Glasgow. At the date of his dismissal, the claimant was aged 56. The claimant's average pay before tax was £644 per week. His average take home pay was £523 per week. The claimant was summarily dismissed.
4. On 24 January 2019, the claimant experienced difficulties with the bus he was driving. Each bus has a vehicle defect card containing a checklist to be completed by each driver before the bus is taken out of the depot. The driver is obliged to check the vehicle is fit for service and record any defects found throughout the day on the defect card. The claimant took over the bus from another driver, M Anderson, who had recorded a defect 'no gears' which had caused a breakdown. This had caused some delay to the claimant starting his route, about which he felt annoyed. While on his route, the claimant began to experience difficulties with the bus. In order to get the bus moving he had to apply pressure to the wheelchair ramp by jumping on it, putting it back into position. Around 300 metres from the terminus, the claimant decided to return the bus to the depot being unfit for service. He did not feel able to continue driving the vehicle with passengers on board whilst the

brakes were playing up. At around 14:25, the claimant messaged the respondent's control centre as follows: "Hey guys this thing will need to come off having to come out of cab when I stop to jump on the bloody platform to get it moving". Around two minutes later, the claimant drove the bus to the terminus. At 14:35, the respondent's control office sent a claimant as follows: "Driver, please complete lost mileage at depot, and put on it to advise you to return bus to depot." Before sending the above message, central control had noted that the bus was moving. The claimant replied to central control at around 14:36: "Out of service on my way back in". The claimant proceeded to return to the depot from the terminus, a journey of around thirty five minutes.

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5. The claimant noted on the vehicle defect card (115) under defects: "Brakes seizing on. When bus stops and doors open, wheelchair ramp?". When the bus was returned to the depot, the brakes were checked and no fault was found with them. The claimant completed a lost mileage report (116) recording lost mileage from Newton Mearns to Glasgow Toll. The reason for the lost mileage was given as 'breakdown'. The claimant named himself as the official who issued the instruction to turn short.

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6. Central control were concerned that the claimant had returned the bus to the depot without permission from central control. There were concerns that the claimant had not wished to 'wait all day'. The claimant had already had to wait at the pickup for his bus at the relief point for around 30 minutes. This had annoyed him.

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7. The concerns of central control were referred to Jillian Mulholland, staff manager. Julian Mulholland was concerned about the report from central control and decided that it was appropriate to investigate the matter. She wrote to the claimant via letter dated 24 January 2019 (111) confirming that he had been suspended from duty with immediate effect on full pay. The claimant was informed that he was required to attend an investigatory interview with Jillian Mulholland on 25 January 2019. The claimant was informed that dependent on the outcome of the investigation, he may be required to attend a disciplinary hearing at a later date with formal action up to and including dismissal could be taken against him. The claimant was

requested to attend in full uniform and of his right to be accompanied by a trade union representative or fellow worker of his choice.

8. The claimant attended an investigatory meeting with Jillian Mulholland on 25 January 2019 (P119 to 124). At the investigatory meeting, the claimant explained that he had sent a message to the control room but that they did not get back to him. He claimed to have waited 5 to 10 minutes for messaging them again to say that he was bringing the bus in due to a defect and that they got back to him right away telling him to fill in a lost mileage form. He questioned how long he was supposed to wait. He questioned whether he should have to wait indefinitely. He was reminded of the proper procedure of contacting the control room and reporting the defect and waiting until he was instructed about whether it was safe to bring the bus back to the depot after speaking to an engineer or a fitter required to attend. The claimant stated that while he was not an engineer, he was the person responsible for the bus and stated that he was in charge of the bus on the road and not someone in the office. He stated that the defect had already been recorded. He said that Michael Anderson was wrong in recording the defect 'as gears'. He suggested that Jillian Mulholland speak to Michael Anderson and Vinnie Hannigan. Jillian Mulholland questioned the claimant as to why he did not telephone the depot. The claimant stated that the depot already knew about the defect on the bus. He claimed that Mike Anderson had already been told to bring the bus back for the same defect. He claimed that they were only going to tell him to do the same. The claimant said that he was raging. He reminded Jillian Mulholland that he had never been suspended or reprimanded for anything before. He claimed that he should have stopped right away but did not. He claimed to have done the right thing. He questioned how long he would have to wait.

9. Jillian Mulholland was concerned that the claimant had failed to follow the respondent's procedures and health and safety policy. She wrote to the claimant on 28 January 2019 as follows:

"Mr Riley,

Disciplinary hearing

You are currently suspended from duty without loss of earnings to allow an investigation to take place into a non authorised action whilst on duty.

5 You are now required to attend a disciplinary hearing with Mark McSkeane on Wednesday 30 January 2019 at 1300 hours to discuss your failing to company procedures.

Relevant documentation in relation to this matter is attached to this letter.

- 1 Copy of defect card
- 2 Copy of supervisor report
- 10 3 Excerpts from the ticketer messages

We are required to put you on notice that the outcome of this hearing may be that disciplinary action up to and including dismissal is taken against you.

You are entitled to be accompanied at this interview by a trade union representative or a fellow worker of your choice.”

- 15 10. The claimant attended a disciplinary hearing on 30 January 2019. Again, he chose not to be accompanied. The hearing took place before Mark McSkeane. The claimant explained that the bus had a defect. It would not move unless he jumped on the wheelchair ramp. He explained that he had a previous incident with a bus where the brakes seized on and the bus just
20 stopped dead. He said this was different and he knew about it. He said that the previous driver had reported the defect. He agreed that the bus was unsafe. He explained that he would get the passengers home and then deal with it. He explained that he would have been told to return the bus to the depot had he made contact with central control. He required whether Mr
25 McSkeane had spoken to Mike Anderson about the defect. He disagreed that his actions caused any danger to others. He claimed that he was qualified to come to the decision based on what happened with the previous driver and what he said. Mark McSkeane was concerned that the claimant did not show good awareness of safety for himself and others and took it upon

himself to jump on a platform to get a bus moving. He expressed concerns the claimant was not qualified to assess the bus and continued with the bus that was unsafe. He expressed concern the claimant did not get authorisation to return the bus to the depot from a company official. The claimant explained the problem was only when the bus stopped. He claimed there was no danger. He claimed that Vinnie Hannigan had asked him in the control room to take the bus out after it had been known to be defective. He required whether there was any CCTV. Mr McSkeane indicated that the claimant's actions may have placed the respondent's operator's licence at risk. He stated that the claimant had carried out an unauthorised action and an unsafe act. The claimant disputed that it was an unsafe act. The claimant stated he was raging over the overaction.

11. Mark McSkeane decided that the claimant was guilty of gross misconduct. He decided it was appropriate to dismiss the claimant with immediate effect. He was concerned that the claimant had failed to have regard to the respondent's safety procedures. He decided that on 24 January 2019, the claimant had not only chosen to drive bus number 33121 on two separate occasions with a serious break defect and to bring the bus back to the depot without authorisation, placing the safety of himself and others in jeopardy.

12. Mr McSkeane wrote to the claimant confirming the outcome of the disciplinary hearing on 31 January 2019.

13. At the start of his employment, the claimant was provided with the respondent's driver handbook (p47 to 68). In the driver's handbook, the respondents state that their first value is safety: "safety is our number one priority. Every First employee has a responsibility for safety. The right attitude towards safety and putting in place the right policies, procedures, equipment, training and support will help us to live the safety of culture." At section 2.1 of the handbook entitled: "what should I do if my bus has a defect?" The handbook provides: "if a bus becomes disabled, the driver should, if possible, park it conveniently outside the line of traffic and stop the engine. Defects must be reported as they occur, without delay, by radio to radio control to the nearest inspector. Defects must be noted on the vehicle defect

card. **Buses must not be drawn without official permission. Failure to comply may result in summary dismissal.”**

14. The claimant was issued with a statement of terms and conditions (P78 to 85). Per paragraph 4 of the statement of terms of conditions, the claimant's holiday year is given as 1 November to 31 October. His annual holiday entitlement was 22 days plus 9 public holidays. At the date of the claimant's dismissal, he had taken 12 days holiday. He was entitled to 8 days holiday. The statement of terms and conditions provides that if the employee's employment terminates partway through the holiday year, his/her entitlement to holidays during that year will be assessed on a pro rata basis. The employee agrees that deductions from final salary or any other monies due to him/her on termination of employment, may be made in respect of any holidays taken in excess of his/her entitlement. During the first year of service, employees are entitled to 1/12th of 16 days for each completed calendar month of service plus public holidays.
15. In terms of the respondent's health and safety policy (p89 to 108), paragraph 11.13 provides that: "ensure that any defects of the vehicle or its equipment are reported promptly to the relevant person and that any vehicle developing a safety critical defect is parked safely without causing obstruction until it can be recovered. In such a situation, a driver should stay with his or her vehicle unless instructed otherwise. The respondents consider any defect regarding brakes, suspension or [?] to be safety critical."
16. The claimant appealed against the decision to dismiss him. An appeal hearing was arranged for John Gorman, head of operations. It took place on 12 February 2019. At the appeal hearing, the claimant stated that he always thought that if any bus has a defect, it's a risk. He said that the previous driver had the same problem and brought the bus back in with the same problem. He did not see that what he was doing was any different. The claimant denied that he had not given the central control enough time to get back to him. He stated that he would have thought they would have told him to stop if there was a defect. He said he was assuming they knew all these details and so he carried on. The claimant did not accept he had done

anything wrong. He questioned whether Mr Gorman had spoken to either Mike Anderson or Vincent Hargan. After the hearing, John Gorman contacted Jillian Mulholland and requested that she speak to Mike Anderson about whether he had told John Riley that he had to jump on the ramp. Jillian Mulholland confirmed to John Gorman that Mike Anderson confirmed that he did speak with the operation supervisor about having to 'lift the ramp, put it back down and stamp on it at times, the same as you have to do with most buses'. Jillian Mulholland had not spoken to Mike Anderson during the investigation because he had noted the defect was a problem with gears, and there was no mention of the ramp. She was also unable to find any record of him being instructed to bring the bus back to the depot for a defect. Vincent Hargan had confirmed to Jillian Mulholland with the operation supervisor on duty that Mike Anderson had brought the bus back to the depot as his relief i.e. the claimant was standing in the depot. During the course of the appeal hearing, the claimant questioned that Jillian Mulholland had carried out a proper fact finding investigation.

17. When central control noticed that the claimant was driving back to the depot, they contacted the control team to asked if they had instructed the claimant to bring the bus back to the depot. They then contacted the claimant by text message.

18. John Gorman was not persuaded that the claimant should not have been dismissed. He was particularly concerned the claimant denied any wrongdoing. He was satisfied that the claimant had failed to follow safety procedures and had returned the bus to the depot without authority. He was concerned that the claimant had returned the vehicle knowing that it was defective without authorisation.

19. John Gorman wrote to the claimant confirming his decision on 14 February 2019 as follows:

"Dear Mr Reilly

I refer to your appeal heard by me on 12/02/19. You were appealing against the decision to terminate your employment for Gross Misconduct, namely

driving a vehicle with a reported defect back to the depot, without authority and for withdrawing the bus from service without permission to do so. You were accompanied at the appeal by Mr Gerry McIver a work colleague.

5 The appeal was based on areas which you felt were not correct, namely the brake effect and that you now realised you had made a mistake in removing the bus from service. You confirmed that the process for dealing with this offence so far had been carried out properly and that you had seen all relevant documents to your case. You also felt that Gillian Mulholland had not carried out a thorough investigation, as in your view, the previous driver had been
10 told to return the bus to the depot for the same defect.

Following my review of your case and after carefully listening to what you had to say, I have to advise you that the decision taken at your disciplinary hearing was correct. You therefore remain dismissed from First Glasgow.

15 On coming to this conclusion I have reviewed all the evidence before me, including the minutes of previous meetings from the investigatory interview through to your formal disciplinary hearing where you were dismissed. I have also listened to what you had to say and taken on board the statement made on your behalf by Mr McIver who was accompanying you. As I clearly explained to you, my worry was the fact that you had reported a defect which
20 involved the brakes not releasing, then without giving the control room time to respond to this, you took the decision to 'jump on the platform' to ensure the brakes were released and returned the bus to the depot. I focused on this decision made by you to drive the bus back to the depot after reporting a brake defect. My view, which I explained at some length, was that the bus should
25 not have been moved, the dangerous position you put your passengers; other road users and yourself in was extremely serious and could have had tragic consequences. Jumping on the ramp so that the interlock would work and release the brake to allow the vehicle to be driven is not a decision you are qualified to make as a judgement call. You are fully aware of the systems we
30 have in place to support you should an event like this occur.

Your actions in connection with the decision to drive a defective vehicle were reckless and showed complete disregard for health and safety. I made it clear to you that at any point – given the defect was related to the mechanisms that trigger the vehicle brake – the defective mechanism could have applied the vehicle brakes below a certain speed and had the interlock lost connection through the movement of the bus it would have stopped the bus if you had been moving slowly in traffic for example. The outcome could have been catastrophic for anyone unsteady on their feet or other road users.

You also stated that the previous driver had returned the bus to the depot due to a similar defect. This is where you felt our Staff Manager did not investigate thoroughly. Having reviewed this myself, I found that the previous driver was instructed to bring the bus back to the depot to allow your driver changeover to take place as you were in the depot, not at the relief point following a delay to the service. The bus was not returned as you believe for a gear issue. That had been checked earlier in that drivers schedule and was cleared following advice, which allowed the bus to continue in service. Due to your concern with the investigation, I took the time to ask the depot team to track down the previous driver to allow him to be questioned regarding the information you said he informed you of. That driver stated he did not say to you he had to jump on the platform of the bus to keep it moving, he said he advised you that the bus 'was fast and had heaters'. I believe this clarification confirms what you were told at that stage of proceedings, namely that the investigation did conclude that the reason for the bus returning to the depot was not related to the defect you reported. Therefore I believe that the original investigation did cover that with my further enquiries confirming that outcome. Part of my review involved me consulting with our Fleet Engineer on the circumstances of the incident. He had confirmed to me that driving the bus with this defect was a prohibitional offence.

On further discussion around the actual defect you reported, you did accept that you had made a mistake. Unfortunately for you that mistake was a fundamental failure on your part which could have affected road safety and the company operator's licence. I think it was inexcusable for you to be so

impatient that after reporting a brake defect to central control, following a check of the vehicle tracking system, it showed that you were driving the bus towards the depot two minutes later.

5 I believe the choices you made were fundamentally wrong for obvious reasons. I have had to consider those choices whilst coming to my decision and I believe that this was a reckless act. Section 2.1 of the driver handbook 'what should I do if my bus has a defect' gives clear guidance. ***'Buses must not be withdrawn without official permission. Failure to comply may result in summary dismissal.'*** You stated that you were not aware of the driver handbook. I cannot accept that a driver of ten years' service is unaware of the driver handbook, which is issued to all First Glasgow drivers at commencement of employment. According to my records you were issued with, and signed for the book on 21/11/2008. I also considered that you had in fact contacted the control room but chose not to wait for an instruction before deciding to withdraw the bus from service so it is my contention, on the balance of probabilities, that you knew you had to be instructed by control to remove a bus from service.

15 I have had to seriously consider all of your actions before arriving at my final decision. I have noted your request for leniency in conjunction with your length of service and employment record, however I have decided the actions were serious enough to warrant gross misconduct.

20 Please arrange to return any company property you may have in your possession and your depot management team will arrange for any final monies to be paid to you if anything is outstanding.

25 You have no further right of appeal."

20. Since the claimant's dismissal, he has obtained alternative employment as a lorry driver. He was unemployed for a period of around four weeks. He obtained alternative employment from 4 March 2019. During his period of unemployment, the claimant applied for and received a nominal amount of Universal Credit. The claimant's earnings from his employment are around 30 £220 less than he received from the respondent.

Issues

21. The issues to be determined by the Tribunal were as follows:

- 5 (i) What was the principle reason for the claimant's dismissal and was it a potentially fair reason in terms of section 98 (1) and (2) of the Employment Rights Act 1996 (ERA)?
- 10 (ii) Was the dismissal fair or unfair in accordance with section 98 (4) of ERA? As the reason advanced by the respondent for dismissal was gross misconduct: did the respondent genuinely believe that the claimant was guilty of gross misconduct? Was the respondent's belief based on reasonable grounds and when the belief was formed on those grounds, had the respondent carried out as much investigation into the matter as was reasonable in all the circumstances?
- 15 (iii) Did this decision to dismiss fall within the band of reasonable responses including the procedure followed by the respondent; and
- (iv) If the claimant is found to have been unfairly dismissed, would he be reinstated and/or be awarded compensation?
- (v) Did the claimant receive all of the holiday pay due to him as at the date of his dismissal?

Notes on evidence

- 20 22. The majority of the facts in this case were not in dispute. The claimant did however in certain respects challenge the credibility of the respondent's witnesses. This was very much based upon the reasons which he gave for his dismissal. It was his position before the hearing that the true reason for his dismissal was motivated by the respondent's desire to remove him from their employment as a 'hire' and also because he would regularly challenge them on issues of health and safety. Neither of the above reasons were advanced by the claimant prior to the full hearing. In any event, the tribunal was unable to identify any evidence to suggest that the respondent's witnesses were in any way motivated on their participation in the decision to
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discipline the claimant for either of the above reasons. It is the claimant's position that Jillian Mulholland had failed to adequately investigate the allegation made against him. The tribunal was not persuaded that the way in which Jillian Mulholland approached the investigation was in any way motivated by a desire to remove him from the respondent's employment for reasons other than those related to his failure to follow procedure.

23. While it was suggested to Mr McSkeane that he was placed under some influence by a more senior member of staff, namely David Cameron, to dismiss the claimant, the tribunal was not persuaded from his evidence that this was the case. The claimant readily accepted when questioning Mr McSkeane that they had a good working relationship and it was unclear to the tribunal the basis on which Mr McSkeane would have become involved in a conspiracy to remove him from the respondent's employment. The tribunal found Mr Gorman to be a particularly impressive witness. He had undertaken a very thorough investigation into the issues raised by the claimant during the course of the appeal. There was no evidence to suggest that he was motivated by anything other than the very serious concerns about the claimant's failure to follow procedure when deciding whether or not to uphold the appeal. The tribunal found that he approached the matter in an impartial and fair manner.

Discussion and deliberations

24. In terms of section 94 of the Employment Rights Act 1996 (ERA), the claimant had the right not to be unfairly dismissed by the respondent. It was not in dispute that the claimant had been dismissed by the respondent. He claimed that his dismissal was unfair. The respondent denied any unfairness.
25. In terms of section 98 (1) of ERA, it is for the respondent to show the reason (or, if more than one, the principle reason) for the claimant's dismissal. The reason advanced by the respondent was the failure on the part of the claimant to follow procedures, in particular returning a bus to the depot without authorisation, amounting to gross misconduct. As referred to above, the claimant challenged the reason advanced by the respondent at the full

hearing. The tribunal however was not persuaded that the reason or if more than one the principal reason for the claimant's dismissal was in any way related to a desire to remove him from the respondent's employment given the level of his wages and/or because he would challenge the respondent's matters including health and safety issues. The tribunal was therefore satisfied on balance that the reason for the claimant's dismissal was gross misconduct.

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26. Conduct is a potentially fair reason for dismissal in terms of section 98 (2)(b) of ERA. The respondent having met the requirement to show the claimant was dismissed for a potentially fair reason, the tribunal went on to consider whether the dismissal was fair or unfair having regard to the claimant's conduct. In terms of section 98 (4)(a) of ERA, this will depend on whether in the circumstances (including the size and administrative resources of the respondents' undertaking), the respondent acted reasonably or unreasonably in treating the claimant's conduct as a sufficient reason for dismissing him. This must be determined in accordance with equity and the substantial merits of the case in terms of section 98 (4)(b) of ERA.

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27. When considering whether the respondent acted reasonably or unreasonably in treating the claimant's conduct as a sufficient reason for dismissing him, the tribunal had regard to whether the decision to dismiss fell within 'the band of reasonable responses' of a reasonable employer. It is not for the tribunal to consider how it would have responded to the claimant's conduct. It must consider whether a reasonable employer might reasonably have dismissed the claimant in response to his conduct.

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28. Whether the respondent acted reasonably or unreasonably will depend on the circumstances of the case. Applying the authority of *British Home Stores Limited v Birchall* 1980 ICR 303, this involves the tribunal being satisfied that (1) the respondent believed that the claimant was guilty of the misconduct for which he was dismissed; (2) the respondent had in mind reasonable grounds upon which to sustain that belief; and (3) at the stage which the respondent formed that belief on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances.

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29. The tribunal was satisfied that the respondent's witnesses believed that the claimant was guilty of returning the bus to the depot without authority. For the reasons given above, the tribunal was not persuaded that the respondent's witnesses were motivated to dismiss the claimant for reasons other than their belief that he had returned the bus to the depot without authority and therefore in breach of their health and safety procedures. The tribunal was satisfied that the respondent had reasonable grounds upon which to base their belief. The claimant did not deny that he had returned the bus without obtaining authority to do so. The claimant did not deny that he had moved the bus to the terminus after contacting the respondent's control room having identified a defect with the breaks. The claimant did not deny that he then drove the bus back to the depot without authority. The claimant did not deny that he refused to accept that he had done anything wrong. The claimant did not deny that he had failed to wait until the control centre had contacted him to confirm that he could return the bus to the depot. He did not deny that he returned the bus to the depot before being advised by the control centre that it was safe to do so.
30. The tribunal noted that Jillian Mulholland and Mr McSkeane had not spoken to witnesses identified by the claimant during the course of the investigation and disciplinary process. The tribunal however was persuaded that at the appeal stage, witnesses were interviewed and that they did not provide information to Mr Gorman that was sufficient to persuade him that the claimant was not guilty of returning the bus to the depot without authority. The claimant's evidence was clear that while he was in charge of the bus, it was his responsibility to ensure that it was in a safe condition. The tribunal therefore was therefore not persuaded that even if the claimant had been advised by Michael Anderson and Vincent Hargan that the vehicle had a defect, this would entitle him to return the bus to the depot without authority from the control centre.
31. It was material to this case that the claimant was entitled to an appeal and that during the appeal, Mr Gorman carried out an extensive investigation into the matters raised by him. This included Michael Anderson and Vincent

Hargan being interviewed. Their evidence did not persuade Mr Gorman that the claimant had returned the bus to the depot without authority. It was the claimant's position before the tribunal that he had undertaken the same procedure on many occasions without being challenged by the respondent.

5 This was not a matter that the claimant had raised during the disciplinary or appeal procedure. In any event, the tribunal was not persuaded that this was sufficient to undermine the respondent's genuine belief in the claimant's guilt in relation to the incident on 24 January 2019. The tribunal was also satisfied that the respondents had carried out sufficient investigation into the matter

10 before the claimant was dismissed. While it would have been preferable for the respondents to have interviewed the claimant's witnesses in advance of his dismissal, the tribunal was satisfied that this matter had been rectified on appeal. In any event, the tribunal was not persuaded that the claimant was prejudiced in any way by the respondents failing to interview either Michael

15 Anderson or Vincent Hargan in advance of deciding to dismiss him. The respondents relied upon the empirical evidence of the defect card completed by the claimant which referred to brakes being defective. It was not in dispute that brakes are a critical defect.

32. The tribunal did not accept the claimant's argument that because the brakes were subsequently found not to be defective that he was entitled to have

20 returned the bus to the depot without authority. The tribunal accepted the claimant's evidence that in fact given that there was nothing defective with the brakes, it was questionable whether he had compromised anyone's safety. This however was not the point. The point was that the claimant having

25 identified a defect and identified it as involving brakes being a critical defect, had proceeded to return the bus to the depot without authority.

33. The tribunal was satisfied that had the claimant shown some remorse from his awareness of his failure to follow procedure and the serious nature of that breach, that the respondents may have, particularly Mr Gorman, decided

30 against dismissal. However the claimant's failure to recognise that his actions were contrary to the respondent's safety procedures by stating that

he would do it all again was seriously detrimental to his prospects of avoiding dismissal in the circumstances.

34. The tribunal considered whether the decision to dismiss fell within the band of reasonable responses. The tribunal recognised that the claimant had an unblemished record and had a lengthy service. This however does not assist the claimant because it would normally follow that having his level of experience, he would be fully aware of the importance of following procedures and in particular those concerning health and safety. The tribunal was satisfied that the respondents did take into account the claimant's record and length of service. The tribunal found that Mr McSkeane in particular had found the decision to dismiss the claimant difficult. As stated above, Mr Gorman did undertake a thorough investigation following the appeal hearing and before deciding to refuse the appeal.

35. As regards the claimant's interpretation of his contract of employment, the tribunal was not satisfied that the correct interpretation is to find that the claimant acquired the rights to a full year's annual leave at the start of each leave year. The contract of employment is clear that the right to annual leave will accrue on a pro rata basis during the course of the leave year. In these circumstances, the claimant having been employed for three months of his final leave year, was entitled to 5.25 days plus 3 public holidays. In these circumstances, the tribunal was not satisfied that the claim for holiday pay was well founded.

Conclusion

36. The tribunal found that the claimant had not been unfairly dismissed in all the circumstances. The tribunal also found that the claim for holiday pay is not well founded.

Employment Judge: F Eccles
Date of Judgment: 26 August 2019
Date sent to parties: 27 August 2019