EMPLOYMENT TRIBUNALS

Claimant: Mr J Wood

Respondent: Samuel Smith Old Brewery (Tadcaster)

Heard at: Leeds by CVP **On:** 14 August 2020

Before: Employment Judge S A Shore

REPRESENTATION:

Claimant: Ms M Crowther, Counsel
Respondent: Mr B Hodgson, Solicitor

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim of unfair dismissal fails.

REASONS

Background

1. By a claim presented on 19 December 2019, the claimant made a claim of unfair dismissal, following a period of early conciliation that had begun on 22 October 2019 and ended on 8 November 2019.

2. The respondent is, as its name suggests, a producer of beers and ales. The claimant was employed as a drayman by the respondent from 27 July 2015 until his summary dismissal by letter dated 23 August 2019. His principal job was delivering the company's products by HGV. He was dismissed following two incidents while he was driving. The first occurred on 1 August 2019, when the claimant was driving one of the respondent's HGVs and was observed by officials from the Driver &Vehicle Standards Agency (DVSA) driving in the outside lane of

the A1, which was marked "No HGV". The second incident occurred on 19 August 2019, when the claimant collided with a barrier on the respondent's premises as he arrived at work. For ease of reference, I will identify the first incident as the "A1 Incident" and the second as the "Car Park Incident".

3. The claim was initially listed for a final hearing in person that was to have taken place on 30 March 2020, but that hearing was postponed because of the Covid-19 pandemic and relisted to take place as a video hearing on 14 August 2020.

4. Many of the facts in the case were agreed, but there were significant disagreements on a number of issues, which require determination by the Tribunal.

Issues

5. When the case had been listed initially, standard case management orders had been made. The parties had not agreed a list of issues, so I discussed the issues with the representatives and the following matters were agreed:

    5.1. It was agreed that the claimant was an employee of the respondent;

    5.2. It was agreed that he had the right to claim unfair dismissal because of his period of continuous service;

    5.3. It was agreed that he had not lost the right to claim for any jurisdictional or other matter;

    5.4. The respondent accepts that it dismissed the claimant. The reason for dismissal was stated to be the claimant's conduct;

    5.5. What was the reason for dismissal? The burden of showing the reason for dismissal is on the respondent;

    5.6. Was the reason for dismissal potentially fair? If not, the dismissal would be unfair;

    5.7. Was the decision to dismiss within a band of reasonable responses?

    5.8. If conduct was the reason for dismissal, did the respondent follow the three-stage test in **British Home Stores Limited v Burchell [1978] IRLR 379**:

        5.8.1. Did the respondent believe the claimant to be guilty of the misconduct;

        5.8.2. Did the respondent have reasonable grounds for believing that the claimant was guilty of that misconduct, and;

        5.8.3. At the stage at which it formed that belief on those grounds, had the respondent carried out as much

investigation into the matter as was reasonable in all the circumstances of the case?

5.9. Was the dismissal fair in accordance with section 98(4) of the Employment Rights Act 1996?

5.10. Did the claimant's conduct contribute to his dismissal?

5.11. If the dismissal was procedurally unfair, what percentage chance was there that a fair procedure would have resulted in a fair dismissal?

5.12. What is the appropriate remedy?

5.13. If compensation is the appropriate remedy, what amount would be just and equitable?

Housekeeping

6. The hearing was conducted by video on the CVP platform. There were a few problems with frozen screens, poor audio quality and connectivity, but these did not prevent the hearing progressing. I am grateful to the representatives, the claimant and the respondent's witnesses for their patience and good humour in the light of the frequent technological glitches that they had to endure.

7. When we discussed the issues in the case, Ms Crowther advised that the claimant would not be in a position to deal with remedy on the day of the hearing. In the event, that was not an issue for two reasons: firstly, his claim failed on liability, and, secondly, we did not finish closing submissions until after 5:00pm, so I had to make a reserved decision on liability and there was no time to have dealt with remedy.

8. At the outset of the hearing, I introduced myself and the participants to one another. Everyone confirmed that they could see and hear everyone else. Ms Crowther confirmed that the claimant's claim was one of unfair dismissal. Ms Crowther asked me if I had seen her skeleton argument, which I had not. A copy was provided during the morning and I read it in the lunch break. Mr Hodgson said that he had only received the skeleton on the morning of the hearing, but he had also had time to read it over lunch.

9. The parties had prepared an agreed bundle of 100 pages. If I refer to any pages from the bundle, the page number will be in square brackets, for example [76]. I had been sent some additional pages for the bundle [101 -105] by the respondent that had also been sent to the claimant on 13 August 2020. The respondent had also submitted a video file that was approximately 15 seconds long. The additional documents and video file were the subject of applications by Ms Crowther.

10. The claimant had prepared a witness statement dated March 2020. The respondent produced witness statements from Christopher Duffield, Packaging Manager at the respondent and the dismissing officer, and Gavin Scoreby, head brewer and appeals officer. At the end of the hearing I reserved my judgment.

Hearing and Evidence

11. I have not recorded every piece of evidence, discussion and submission in this decision. I made a full note of the hearing. I have only recorded in this decision, the matters that I consider relevant to my determination of the issues in the case.

12. When I had dealt with the introductions, confirmed that the sole claim was one of unfair dismissal and had agreed the issues, I asked the representatives if they had any housekeeping issues. Ms Crowther said that there were some issues with the documents in the case:

    11.1. The respondent had sent the claimant screen grabs from the video footage of the Car Park incident. The images had not been included in the bundle. I did not see the images at any time. Ms Crowther said that they were enhanced images taken at the point of impact, which the respondent says show the claimant holding his mobile phone in his right hand whilst driving. She submitted that the CCTV footage from which the screen grabs were taken were not part of the bundle of documents, although the claimant had seen the footage.

    11.2. We discussed the matter at some length. I had seen the footage the previous evening when the documents had been sent to me. I said that the footage did not appear to be very clear and I wondered how the screen grabs could clearly show what the respondent was purporting them to show.

    11.3. It was then disclosed that the footage I had seen was taken by filming the actual CCTV footage on a computer screen. That footage was then put on a memory stick and sent to the claimant. The original footage was of higher quality than the clip I and the claimant had seen.

    11.4. Ms Crowther submitted that the claimant had not had prior opportunity to see the screen grabs and that was unfair.

    11.5. I found that the late disclosure of the evidence was prejudicial to the claimant in a way that outweighed its probative value. Both the respondent's witnesses had said in their statements that they had seen the footage and were sure that the claimant was holding a phone at the time of the accident. They could be asked supplementary questions and be cross examined on the point.

    11.6. The disclosure had been too late and was prejudicial to a fair and just hearing, so if found that the respondents would not be allowed to produce the screen grabs.

    11.7. Ms Crowther's second application related to the additional 4 pages of documents that had been produced by the respondent [101-105]. These were two letters from the respondent dated 19 March 2010 and 21 May 2019 to two of its employees. Both employees had

been named by the claimant as examples of former colleagues who had been treated differently to him after committing driving misdemeanours.

11.8. Although production had been late and the allegations were made by the claimant in his witness statement that had been exchanged before the date originally set for the hearing in March 2020, I found that they were documents that rebutted the points made by the claimant and should be considered. I therefore refused the application to exclude the documents.

13. Ms Crowther asked if I had seen the skeleton argument that had been submitted on behalf of the claimant. I said I hadn't, but would check with my clerk to see if had been received by the Tribunal. If it had, I would read it over the lunch break. Mr Hodgson said he had received the document that morning and had skimmed through it, but had not had chance to read it properly. I indicated that he could read it over lunch, but that I would make sure he had had time to read the skeleton before we moved to final submissions. I read the submissions in the lunch break.

14. Christopher Duffield's evidence in chief was contained in a statement dated 12 March 2020 that consisted of 20 paragraphs. He was the dismissing officer. The main points of his evidence were:

13.1. The respondent received a letter from DVSA dated 1 August 2019 [40-41] stating that an HGV driven by the claimant on 1 August 2019 had been driven in breach of restrictions on the use of HGVs in certain lanes and had been driven at excess speed.

13.2. The transport supervisor, Mark Addinall spoke to the claimant on 6 August and produced a statement of what the claimant had said [45]. The statement recorded that when he had been asked why he had driven in the outside lane of the A1, the claimant had replied "I got sick of been (sic) stuck behind the cars that were only going at forty miles an hour."

13.3. Mr Addinall obtained the tachograph from the claimant's vehicle [44] and produced a report [42] that stated that the speed limit on the A1 was 60mph for HGVs of the sort driven by the claimant and that his vehicle was limited to 56mph. It was agreed by the parties that there was an advisory limit of 40mph in force on the part of the A1 where the claimant had been observed.

13.4. The claimant produced a response [43] to the DVSA letter (which appeared to me and the claimant's representative to be addressed to the Agency, rather than the respondent), in which he says he has no recollection of the incident. He asked to see video footage of his alleged offenses. He denied any wrongdoing.

13.5. Mr Duffield checked the onboard dashcam footage from the claimant's vehicle and decided that disciplinary proceedings were

warranted because the claimant had potentially committed criminal offences whilst driving the respondent's vehicle.

13.6. Mr Duffield invited the claimant to a disciplinary hearing by a letter dated 14 August 2019 [46-47]. The hearing was to be held on 22 August 2019. The disciplinary allegations were that on 1 August 2019:

13.6.1. The claimant had been seen by the DVSA driving on (sic) the outside lane, which had a width restriction of 6'6";

13.6.2. He was seen speeding by DVSA;

13.6.3. He was seen on his dashcam travelling at around 52mph past a 40mph sign;

13.6.4. He was seen on dashcam footage driving over three "No HGV" signs painted on the road, and;

13.6.5. Were seen on the dashcam footage driving at over 50mph for "the majority of the time".

13.7. The letter contained the DVSA latter dated 1 August 2019, Mr Addinall's statement, the claimant's statement and the tachograph from the claimant's HGV. The letter said that the dashcam (referred to as CCTV) footage was "available for viewing on site.

13.8. The letter stated that the incident was a very serious matter that may result in immediate dismissal without notice.

13.9. After the invitation letter was sent and before the disciplinary hearing that had been scheduled, the claimant was involved in another accident, the Car Park incident, on 19 August 2019. He was driving into the respondent's premises in his own car at approximately 5:30am when he collided with a barrier that smashed the windscreen of the claimant's car on the passenger side and damaged the bodywork of his car. I was shown photographs of the damage and the surroundings [56-65] and had been provided with a 15 second video of the collision.

13.10. Mr Duffield says that when he checked the CCTV footage of the collision, "it was apparent that Mr Wood was using his mobile telephone at the time the collision occurred." Mr Addinall spoke to the claimant about the collision and produced a statement of what was said [53]. The claimant was asked to write out his own account, which he did [50-52].

13.11. He stated "I was driving round the back of the yard to park my car as I always have done. I used the bottom entrance, as do all of the draymen at that time in the morning, because the top entrance is usually locked at this time of morning and it is the only way round. I

went through the gate, turned the corner, looked to my left to see if my colleague had already collected that waggon. I was travelling across the centre of the yard and was unaware of any obstruction. There had recently been a barrier fitted where the waggons tip their kegs at the end of the day. There was a gate fitted to the barrier that I was unaware of. The gate was in the blind spot behind the front right pillar of my car and not that easy to see. I travelled across the centre of the yard and was unaware that the gate was open and in the path of where I have travelled for the last 4 years with no obstruction being there for the entirety of my employment with Samuel Smiths. I was looking to my left not aware of the new barrier that has newly been built there, this resulted in me hitting the barrier."

13.12. Mr Duffield wrote to the claimant on 19 August 2019 [66] and suspended him on full pay. The disciplinary hearing set for 22 August was confirmed and further allegations were made against the claimant:

13.12.1. He had driven the wrong way on a one-way system;

13.12.2. He had driven in excess of the 10mph speed limit, and;

13.12.3. He had driven whilst using his mobile phone.

13.13. The letter [66] told the claimant that photographs would be made available and that CCTV footage was available for viewing on request. The letter stated that the allegations were very serious and could result in immediate dismissal for gross misconduct.

13.14. At the hearing on 22 August 2019, the claimant was represented by a work colleague, Paul Buchanon. The hearing was recorded an undisputed transcript was produced to the Tribunal [67-73]. At the end of the hearing, Mr Duffield took legal advice and decided he needed to clarify some matters with the claimant, so invited him back to a second hearing on 23 August [73].

13.15. The claimant was again represented by Mr Buchanon at the second hearing, which was again recorded and an undisputed transcript was produced [74-77]. Mr Duffield asked the claimant about the statement that had been made by Mr Addinall in which he said the claimant had explained that he had driven in the outside lane of the A1 because he had got sick of being stuck behind cars driving at 40mph.

13.16. Mr Duffield concluded that the claimant was guilty of gross misconduct and set out his findings in a letter dated 23 August 2019 [78-80]. His findings can be summarised as:

13.16.1. The claimant made the comment to Mr Addinall that he had been sick of being stuck behind cars travelling at 40mph;

13.16.2. The warning signs stating “No HGVs” were clear;

13.16.3. The claimant had ignored advisory warning signs suggesting a 40mph limit;

13.16.4. The Car Park Incident had happened whilst the claimant was already subject to disciplinary action because of the A1 Incident;

13.16.5. He had been driving at excess speed in breach of speed restrictions;

13.16.6. He had been using his mobile phone, which had been in his hand at the time of the collision;

13.16.7. It was accepted that others went the wrong way down the one-way system, but the claimant should have taken extra care, and;

13.16.8. The metal barrier should have been secured, but if he claimant had been driving with due care and attention within the 10mph speed limit and had not been using his phone, he would have seen the barrier and avoided the collision.

13.16.9. Mr Duffield considered the appropriate sanction and decided that summary dismissal was appropriate.

15. In answer to supplementary questions from Mr Hodgson, Mr Duffield said that the claimant had initially wanted a colleague called Mr Docherty to represent him, but that was not possible because he had been rostered to work in Scotland on the day of the disciplinary hearing. The claimant had then asked for Paul Westmoreland to represent him, but he had refused because he was the only person who was working on a particular work task that day. The claimant had then chosen Mr Buchanon.

16. When the Car Park Incident had happened, it had been reported to Mr Duffield. He had looked at the CCTV footage and noticed that other vehicles had entered the site by going the wrong way round the one-way system and had navigated round the barrier. The claimant had not appeared to brake before his car impacted the barrier. His head was looking down and it looked like the claimant was holding a mobile phone in his hand.

17. Mr Duffield had shown the video of the Car Park Incident to the claimant at the disciplinary hearing on a laptop. He had run the video through and had tried to pause it at the point of impact. Mr Duffield was taken to the transcript of the first disciplinary hearing [70] and was asked about the part where he had described the footage to the claimant. He had said “Right, you’ve got your phone in your

hand there. You can see it better on the other camera, on the other computer, sorry, it's a bit blurred on that one, but your arm's up, your left hand is on the steering wheel and your arm's up with the phone when you can zoom in on it. Do you agree with…"

18. The claimant's recorded response was "It was, I agree with what's there."

19. Mr Duffield said he was 100% sure that what he had described to the claimant was what he had seen on the CCTV footage.

20. Mr Duffield answered thorough, detailed and skilful cross-examination questions from Ms Crowther. He said that he regarded both Incidents on their own as being sufficient to warrant summary dismissal on the grounds of gross misconduct. He was taken to the dismissal letter dated 23 August 2019 [78-79] and it was put to him that the letter had combined both incidents into one finding of gross misconduct. Mr Duffield agreed and said that this was because both incidents had happened close together. Either one would have been sufficient for a finding of gross misconduct.

21. When he was asked about the letter to Mr Addinall from the DVSA dated 1 August 2019, Mr Duffield said that on receipt, Mr Addinall had looked at the dashcam in the claimant's HGV. He had not spoken to Steve, the claimant's co-driver in the HGV because the dashcam footage and tachograph were sufficient. Mr Duffield said he had watched about 15 minutes of the dashcam footage, which covered the period that the claimant had driven in the outside lane of the A1. He agreed that the DVA letter dated 1 August 2019 had only referenced a period of observed driving between 6;50am and 7:00am on that morning.

22. Mr Duffield had conducted the disciplinary investigation and Mr Duffield had taken over when it was decided that the matter should proceed to a disciplinary hearing. There was a n exchange between Ms Crowther and Mr Duffield about the workplace representative for the claimant at his disciplinary. Mr Duffield said that he had told the claimant that the disciplinary could be postponed because of the unavailability of Mr Buchanon. That was challenged. Mr Duffield strongly refuted the challenge.

23. Mr Duffield accepted that the claimant had not seen the dashcam footage of the A1 Incident or the Car Park Incident before the disciplinary hearing, but said that both letters inviting the claimant to the disciplinary hearing offered an opportunity for him to see the footage. He had not asked to see it.

24. Ms Crowther then moved to the Car Park Incident and the second disciplinary hearing. Mr Duffield said that the claimant had said that he could not remember exactly what he had said to Mr Addinall (as evidenced at page [74]). The claimant had then gone on to say that he had said exactly what Mr Addinall had put in his statement. He accepted that the claimant had been travelling up to 54mph, rather than 55mph as recorded at page [75] and that the A1 was subject to a 40mph advisory speed limit at the time.

25. It was put to Mr Duffield that he had treated the claimant differently to other drivers because of the letter from the DVSA. He strenuously denied this and said that if

the company had looked at the dashcam or tachograph, it would have led to a disciplinary, irrespective of whether the DVSA were involved. Ms Crowther noted that the claimant had admitted he had made a mistake [76], but put it to Mr Duffield that others had had 13 accidents in a single year without being disciplined. Mr Duffield did not accept that there was such a person.

26. At this point I asked Ms Crowther whether her questions were designed to build a case of inconsistency. She accepted that the claimant's disciplinary case was not on all fours with the former colleague who was alleged to have had 13 accidents in a year.

27. In respect of the Car Park Incident, Mr Duffield confirmed he had viewed the CCTV footage and had decided to suspend the claimant, who had left on a delivery run. He rebutted the suggestion that he had not needed to suspend the claimant.

28. Mr Duffield denied that the claimant had been instructed to drive the wrong way round the one-way system, but accepted that it was common practice for the draymen, who started work at 5.30am, to do so. He was of the opinion that the claimant was at fault. Additionally, he saw from the CCTV footage that the claimant was not looking where he was going. Mr Duffield admitted that the claimant had not seen the CCTV footage before the disciplinary hearing, but repeated that the claimant had had every opportunity to do so or ask for a copy. He had done neither.

29. He was then taken to page [69], where the claimant was shown the CCTV footage. Mr Duffield agreed that the footage showed the claimant stopping before he entered the respondent's premises, checking his phone and carrying on. He did not accept that the gate that the claimant collided with was "just round the corner" and commented that all the other draymen who had entered before the claimant had avoided colliding with the barrier. He was asked if he accepted that the claimant was looking for his co-driver, Steve, and replied that he did not. His reason was that the claimant's head was facing down at the point of impact, not facing left. When he had gone through the earlier gate, he would have been able to see where the wagons were parked.

30. Ms Crowther took the witness to the notes of the hearing at page [70], where he had said to the claimant "Right, you've got your phone in your hand there." Mr Duffield read the notes and said that this was where he had shown the claimant the CCTV footage showing him with his phone in his hand.

31. He was asked to explain his comment about "the other computer" and said that he only had a copy of the CCTV footage on the computer he had in the disciplinary hearing, which was not of the same quality as the original on the computer linked to the CCTV system. He did not take the claimant to the computer linked to the CCTV system, which had a bigger screen. It was put to him that he wasn't bothered what the claimant said because he had made his mind up that the claimant was on the phone. Mr Duffield said he could see on the CCTV footage in the disciplinary that the claimant was on his phone. Ms Crowther put to Mr Duffield that even after he had been shown the CCTV footage, the claimant maintained that his phone was on his lap. I did not allow the witness to answer that question,

as I found it to be an unfair representation of the facts as set out in the disciplinary notes. The notes record that before seeing the footage, the claimant said that he believed the phone was on his knee [70] and then suggested it may have been "in the footwell in the middle after he had hit the barrier" [70] before saying that he could not remember [70].

32. After seeing the footage, the claimant agreed with Mr Duffield's summary that it showed the claimant's left hand on the steering wheel and his right hand holding the phone [70] by saying "…I agree with what's there". He said nothing further about where his phone was in the first disciplinary hearing.

33. The claimant said nothing about where his phone was in the second disciplinary hearing. Mr Duffield agreed with Ms Crowther that the claimant had never again agreed that the phone was in his hand., but added that the claimant had never said he disagreed with Mr Duffield's assertion that he had been holding the phone. The claimant had not been clear.

34. Mr Duffield agreed that the claimant's speed had not been measured, but the company had asked someone to drive the same route as the claimant at 10mph and this showed that the claimant must have been speeding. He accepted that this had not been put to the claimant.

35. Ms Crowther asked Mr Duffield if he agreed that the claimant had said that he may have been "just over" the (10mph) speed limit [70]. He agreed, but looking at the notes of the disciplinary hearing when writing this decision, I do not feel that this was a fair question. On page [70], Mr Duffield asked the claimant if he agreed that he was going faster than 10mph. His recorded response was "Erm, I don't know, I mean, I can't have been travelling overly fast because I was looking to my left to see if the wagon was there."

36. Mr Duffield was then asked if the claimant's description of his speed as "not overly fast" was fair. His first response was affirmative, but he then added that he thought the claimant was going "quite a bit faster". It had been frightening to watch. Mr Duffield accepted that the claimant had acknowledged that he had gone the wrong way round the one-way system, but confirmed that he did not accept that the claimant had not been using his phone. The reason for his belief was the CCTV footage that showed the claimant with the phone in his hand and his head down. He had viewed the footage "a lot of times" as he had to be 100% right. He could not understand how the claimant had not seen the barrier.

37. Ms Crowther took the witness to the dismissal letter dated 23 August 2019 [78-79]. He confirmed that everything he had set out in his letter had been considered. He said that he had not given a lot of weight to the statement from Mark Addinall [45]. Mr Addinall had no reason to lie. The claimant had not disagreed that he had said something along the lines of what Mr Addinall had written.

38. We then returned to the A1 Incident and Mr Duffield agreed that the incident had occurred early in the morning when the road looked to be quiet. He could not remember the claimant saying that he and Mr Addinall had discussed a number of things for 10 or 15 minutes on the day that Mr Addinall's statement refers to. I indicated at the hearing that I couldn't recall the claimant saying that either, but

that I would check when I made the decision. I have checked the notes of the first and second disciplinary hearings and find that in neither hearing did the claimant say that he and Mr Addinall had spoken for 10 to 15 minutes on that day that Mr Addinall's statement refers to.

39. Mr Hodgson said that he thought the comment was made at the appeal hearing. I have checked and can confirm that the claimant said that he and Mr Addinall spoke for 10 to 15 minutes and "covered all different things."

40. It was put to Mr Duffield that the dismissal letter made no reference to the claimant's four years of good service. His response was that he expected everyone to turn up and do a proper job. The letter dealt with what was discussed at the meeting. The claimant's previous conduct was not irrelevant, but he had been found to have committed two acts of gross misconduct.

41. In answer to re-examination questions from Mr Hodgson, Mr Duffield could not recall if the claimant had mentioned his previous good service in the disciplinary hearing. On reading the notes of the second hearing [76], I note that the claimant said "I haven't had one accident, I haven't done anything, it's the first thing what I've done…". Mr Duffield said that the claimant had never suggested that he ought to speak to his co-driver, Steve.

42. Mr Duffield confirmed he had looked at all the footage from the morning of the Car Park Incident and that had shown about 4 draymen who had used the one way route the wrong way. The gate was in the same position all the time, until the claimant hit it.

43. Gavin Scoreby's evidence in chief was contained in a statement dated 12 March 2020 that consisted of 9 paragraphs. He was the appeals officer. The main points of his evidence were:

    43.1. A member of the respondent's HR staff handed him the claimant's appeal letter dated 28 August 2019 [81-83] and asked him to deal with the appeal.

    43.2. He wrote to the claimant on 30 August 2019 [84], inviting him to an appeal hearing on 6 September.

    43.3. Prior to the hearing, he considered all the documents that had been referred to in the disciplinary hearing and the transcripts of both hearings.

    43.4. The appeal hearing was recorded and an undisputed transcript was produced [86-96].

    43.5. He found there to be an important contradiction between what the claimant and Mr Addinall were saying about the conversation they had had. He had the claimant's verbal account, but only Mr Addinall's written statement.

    43.6. He therefore decided to speak to Mr Addinall on 12 September 2019. He recorded this questions and answers [97]. He then

considered all the matters before him and set out his decision in a letter dated 13 September 2019 [98-100]. He refused the claimant's appeal.

43.7. The main points in the appeal outcome letter were that:

A1 Incident

43.7.1. Mr Scoreby did not accept the claimant's assertion that he had not told Mr Addinall that he had gone into the outside lane of the A1 because he was sick of following cars travelling at 40mph;

43.7.2. The claimant had not been able to recall what he had said to Mr Addinall in the disciplinary hearing and it was now "convenient" that he could remember what he had said;

43.7.3. Mr Addinall's statement was not hearsay;

43.7.4. Mr Addinall had not been shown to have had any ulterior notice as alleged by the claimant;

43.7.5. The "No HGVs" signs were clear and it was not credible for the claimant to suggest that he drove in the way he did because he had not seen them;

43.7.6. It was acknowledged that drivers had not been disciplined in the past for speeding offences and that the claimant had exceeded an advisory limit;

43.7.7. However, the claimant's conduct was more than one of speeding. He had deliberately decided to ignore road regulations;

Car Park Incident

43.7.8. Having viewed the CCTV footage "very carefully", Mr Scoreby did not accept that the claimant had not been using his mobile phone;

43.7.9. At 05:37:42 on the footage, Mr Scoreby could "clearly see" the claimant looking at his phone in his right hand at the point of impact. He had then put the phone down and driven off;

43.7.10. It was acknowledged that it was common practice to take the route that the clamant had done, but he should have taken extra care;

43.7.11. It was acknowledged that the barrier should have been secured, but the reason for the collision was the claimant's lack of care;

43.7.12. After the collision, the claimant had continued to drive through the respondent's premises for 20 seconds with obscured vision through his windscreen;

Conclusions

43.7.13. The claimant's conduct across both incidents had demonstrated a complete lack of care on his part and a general tendency to ignore the rules of the road, and;

43.7.14. The only appropriate sanction was dismissal, despite the claimant's otherwise good record.

44. In answer to two supplementary questions from Mr Hodgson, Mr Scoreby said that he was 100% certain that the claimant had been holding his phone at the moment of impact. He was then taken to the two additional documents that had been added to the bundle at pages [101] to [105]. These were copies of disciplinary outcome letters dated 19 March 2010 and 21 May 2019 respectively.

45. In answer to cross-examination questions, Mr Scoreby confirmed that Mr Addinall had received the letter dated 1 August 2019 from the DVSA and had then briefly discussed it with him. His response had been to ask Mr Addinall to ass the matter to Mr Duffield to decide if it ought to be a disciplinary matter. He did not ask Mr Addinall to investigate. Mr Addinall had not said that he had seen the footage from the dashcam.

46. His understanding of gross misconduct related to the danger involved in both incidents. Mr Scoreby said he is responsible for health and safety at the respondent's premises. He felt that both incidents were health and safety breaches. The A1 Incident involved not following advisory signs and not following road signs. The Car Park Incident involved the claimant being on his phone whilst driving and driving the wrong way on a one-way system. The route he had used to enter was the route that HGVs used to exit the premises. His co-driver could have been coming straight at the claimant in their lorry.

47. Mr Scoreby understood his task to be a review of Mr Duffield's decision. The facts were largely admitted. The claimant should have followed the guidelines. It was put to Mr Scoreby that the claimant did not admit that he was on his phone, but his response was that the claimant had not denied it at any length. You could clearly see that he was on his phone, but when he was asked, he said he could not remember if he'd been on his phone. Ms Crowther then put three instances from pages [67] to [70] where the claimant had commented on the phone by saying "...it was on. I believe it was on my lap.", "I thought it was on my lap." And "I put the phone on my knee." Mr Scoreby acknowledged those statements, but denied that Mr Duffield's decision was "nailed on". He said he could have overturned the dismissal, but came up with his own dismissal.

48. It was accepted by the witness that the A1 Incident had lasted about 3 minutes on the CCTV and the Car Park Incident had lasted about 15 seconds. He was aware that the claimant's co-driver, Steve, had not been interviewed.

49. He was asked about the 40mph advisory speed limit i=on the A1 and said that he would have expected a professional driver to follow advice. He was aware that draymen had used the one-way system incorrectly. He accepted that there had not been an accident on the A1 and that the DVSA had not pulled the claimant over.

50. It was put to Mr Scoreby that one of the claimant's appeal points was that he denied failing to obey the rules of the road. His response was that Mr Addinall was a friend of the claimants. He had stuck to his statement, which was clear and concise. The claimant had agreed that Mr Addinall had had no reason to lie. He agreed that he had placed weight on Mr Addinall's statement [99].

51. The meeting between Mr Addinall and the claimant wasn't a formal meeting. They were just chatting. There did not need to be a formal recording of the meeting. They may have talked for 10 to 15 minutes. They had a good relationship. It made sense that they would have chatted about the DVSA letter, as Mr Addinall was the claimant's supervisor.

52. Mr Scoreby was then taken to his record of his conversation with Mr Addinall on 12 September [97]. He accepted that the claimant's response had been "along the lines of he was sick of driving behind cars only going 40mph. Mr Scoreby had seen the dashcam from the claimant's HGV. He was driving in the right lane and stayed in it. No one had suggested he had been weaving in and out of the lane. Mr Addinall's comments were believed over those of the claimant. The claimant had said he could not remember and had then changed his story.

53. Ms Crowther suggested to Mr Scoreby that he had not considered how the company had treated other employees, but he denied this and said other employees were dismissed for similar offences. He rebutted the suggestion that a warning would have been an appropriate sanction.

54. I asked Mr Scoreby about Mr Addinall's statement about the Car Park Incident [53], in which he appeared to suggest that the incident was only reported to him after he had gone to the claimant. Mr Scoreby said that this was correct. The claimant had left the scene of the collision and had got into the passenger seat of his HGV.

55. The claimant, Joe Wood's, evidence in chief was contained in a statement dated March 2020 (sic) that consisted of 13 paragraphs. The main points of his evidence were:

    55.1. Prior to the A1 Incident, he had worked for the respondent since 2015 and had an excellent employment record. Management had received the letter dated 1 August 2019 from the DVSA "advising that one of their vehicles had been seen driving in a width-restricted lane of six feet and six inches.

55.2. He was surprised to receive notification that the respondent intended to take disciplinary action against him as he was "aware that numerous other drivers who had committed numerous offences which had been prosecuted through the courts who had never had any disciplinary action taken against them. The offence he had committed was "very minor and non-prosecutable".

55.3. There was an advisory speed limit of 40mph on the road, which was not mandatory. He accepts that he was in the wrong lane, but was not speeding. He should not have been in that lane, but it was not an act of gross misconduct.

55.4. He is unhappy with the way that the disciplinary process was carried out. He had wanted a colleague to represent him, but the colleague had been rostered to work in Scotland on the day of the disciplinary hearing. He chose Paul Buchanon to attend with him instead.

55.5. Paul Muller is an employee of the respondent who the claimant was told drove a 44-tonne articulated truck on a 7.5 tonne limit road. No action was taken against him.

55.6. With regard to the Car Park Incident on 19 August 2019, the claimant says that it became clear in the process that management had no idea what actually goes on in the yard and how drivers who attend work early had been instructed to enter the yard previously. They had all been instructed to use the exit gate, despite the one-way system in place. The top gate, which is the "correct" entrance was never open at the time that the draymen arrived at work.

55.7. The allegation against him was that he was travelling down the one-way system wrongly, going too fast and on his phone. He absolutely denies he was going too fast. He absolutely denies being on his phone. He had used his phone to ring his co-driver about the location of their wagon. After he had used the phone he "placed it in the centre console and proceeded to drive into the yard." He was looking to the left to see whether his truck was there, but could not have expected a barrier which had been erected recently to have been left open.

55.8. The barrier should have been left shut. There was no health and safety advisor at the brewery. The barrier being left open was lethal for draymen entering in the early hours because it was almost impossible to see. Instead of seeing the whole barrier, when it was open, it was only possible to the circumference of about three inches. He denied any responsibility for the collision, which was the fault of the respondent because of their admitted safety breach.

55.9. His case, therefore is that he did not do the things that were alleged against him. He accepts that he was driving in the wrong lane for a

short period of time whilst on the A1. None of this was sufficient to amount to gross misconduct.

55.10. He believes that he was dealt with in the way he was because the DVSA was involved. The comments by Messrs Duffield and Addinall show that they did not want a DVSA investigation on the premises. That was the real reason for his dismissal.

56. In answer to supplementary questions from Ms Crowther, the claimant said he could never view the CCTV footage of the Car Park Incident beforehand. In the appeal, it was opened on the computer. Today is the first time he had heard of the phone being in his hand. The collision had happened "Just after 5am in September. It was almost pitch black." You could not see him in the vehicle on the video he was shown on a laptop.

57. Mr Hodgson took the claimant to paragraph 8.2 of his ET1 and asked him to confirm that nowhere in that paragraph had he alleged any procedural irregularity in the disciplinary process. The claimant did not offer an answer, which was not very surprising, given that he is an HGV driver, not an employment lawyer.

58. The claimant said that he believed the two disciplinary invitation letters (7 August 2019 [44-47] and 19 August 2019 [66]) contained all the background information to the two disciplinary matters. It was put to the claimant that he had alleged that he had had no chance to see the CCTV footage, but had to admit that the first invitation letter [47] included the statement "CCTV footage is available to view on site.". He said he hadn't seen that.

59. He was also asked to look at page [66], which included the statement "CCTV footage is available for viewing on request." He noted the words and said that his comment about not seeing the CCTV related to the A1 Incident dashcam footage. He had received a memory stick with the Car Park Incident footage on it.

60. The claimant was challenged on his assertion that he had not been offered the chance to change his hearing date, but said that no offer had been made. The Scotland roster was on an eight-week cycle, but his chosen representative was moved onto the roster two days before his hearing. The claimant again denied that Mr Duffield had offered a postponement.

61. Mr Hodgson took the claimant to the transcript of the first disciplinary hearing [67] and suggested that it contained no issue about the representative point. Mr Wood said that it was a bit late for that: he had to deal with what he had been given. It was discussed at the beginning. If he'd known, he would have stressed it.

62. He confirmed he had retained Mr Buchanon for the appeal hearing because it made sense to keep him. He was comfortable with that decision. He was taken to the transcript of the appeal hearing where the issue of representation was discussed [92] and to an exchange where Mr Scoreby asked the claimant if he had let Mr Duffield know at any point that he had not had time to prepare for the

meeting or had he asked for a postponement. The claimant's answer started "No I hadn't…". His representative then said "He was happy to go ahead with it…" The claimant said that Mr Buchanon's comment was taken out of context. That answer was challenged by Mr Hodgson, who said that the whole context of the exchange was about his representative.

63. The claimant's response was that he did not know until after the first meeting that he could have postponed it. He'd had Mr Buchanon in the first meeting and stuck with him. He was OK with going ahead with the first meeting.

64. When asked about the procedural issues, Mr Wood said that "protocol wasn't really taken. He had raised this in his appeal letter dated 28 August 2019 [81-83]. He had not been dealt with properly. Representation was one example. He had never made a statement. What Mark (Addinall) had said about being stuck behind a vehicle…the claimant had never made a statement. That was Mark's word. There is no way of knowing if that is the truth.

65. The claimant acknowledged that the allegations could result in his dismissal and that it was crucial that the HGVs he drove were driven carefully. It was put to the claimant that he had driven in the outside lane in contravention of a "No HGVs" instruction. His response was "They said it was a six-foot six-inch limit. I was in a 7.5 tonne wagon that was ten inches bigger than six feet six inches. The letter from the DVSA said I was in the lane for 3 minutes. I was followed by the DVSA and I was in that lane for one minute. They didn't pull me over.

66. It was put to the claimant that the DVLA letter [40] said he had been followed for three miles. He said he could see that. He admitted being at fault. It was an advisory speed limit. When he received the disciplinary, it said he had been speeding. Only at the appeal did he see it was advisory. He was going at 52mph. He wasn't breaking the law. That's why speed was never really mentioned because Mr Duffield and Mr Addinall got it wrong.

67. Mr Wood denied that his driving was reckless or careless. He had been in the wrong lane. It was the early hours. There was no traffic. No one was at risk. Mr Hodgson suggested that the claimant was being dismissive and that his actions would cause concern to an employer. Mr Wood's response was that he had never said he had done nothing wrong. He should not have been in that lane. He knows it was a serious matter.

68. Mr Hodgson suggested that the reason he had driven like that was relevant to how serious the matter was. It was explained to the claimant that the issue that the question was trying to explore was the statement from Mr Addinall that the claimant had said he'd become sick of waiting behind cars travelling at 40mph. Mr Wood said that Mr Addinall's statement insinuated that he was sat behind vehicles, which clearly was not the case from the video. He was in the outside lane of three lanes. As the limit started, he remained in the lane: that is why he could not understand what Mark had said.

69. The evidence was the video. The video shows that Mr Addinall's statement did not make sense. His statement suggested that the claimant was overtaking and changing lanes. Mr Addinall and Mr Duffield had all seen the video and had not

got their facts right. He had not said what Mr Addinall had said, but he understood that if he had said it, it would cause the company a problem.

70. The claimant accepted he had not mentioned Mr Addinall in his witness statement, but had raise it in his appeal. He said he did not know why he had not raised it in his witness statement without reading it all. He was taken to the transcript of the second disciplinary meeting [74] on 23 August 2019 at which Mr Addinall's statement was read out. The claimant was asked if he agreed with it and replied "I can't remember exactly what I told him, to be honest." He was then asked if there were any bits he did or didn't agree with and replied "Erm, I don't believe I said that, it was worded slightly differently but I can't remember exactly what I told him."

71. The claimant said that he could not remember. He acknowledged that the hearing was 16 days after his conversation with Mr Addinall. He was then taken to the second page of his appeal letter dated [82] in which he wrote "I strongly dispute [Mr Addinall's] version of what was said by me." The claimant's response was that Mr Addinall had been as unclear as he had been himself. It was put to him that he had accepted at the disciplinary hearing that he had said "something along the lines" of what Mr Addinall had put in his statement. The claimant did not answer. When it was suggested that Mr Addinall had no reason to lie, the claimant said he did not know why he said that.

72. Mr Hodgson took the claimant back to his appeal letter [82] in which he suggested that Mr Addinall may have had "some ulterior motive or agenda." This point had been fully debated in the appeal hearing. Mr Wood said that he didn't know. He agreed that Mr Scoreby spoke to Mr Addinall on 12 September [97]. It was put to him that Mr Scoreby had specifically explored the claimant's allegation. The claimant's response was that he couldn't say why Mr Addinall said what he did. He was taken back to the transcript of the appeal [87] where Mr Scoreby had asked if Mr Addinall had any reason to make the statement up. Mr Buchanon had said "Not that I know of." He acknowledged the question and answer. It was put to the claimant that he had been inconsistent, to which he said that Mr Addinall had changed his mind too.

73. Mr Hodgson then took the claimant to pages [104 to 105], a disciplinary outcome letter to Paul Muller dated 21 May 2019. It referenced his driving a 44 tonne HGV on a 7.5-tonne limit road and using a company vehicle for personal use. The outcome was that the allegation of driving an overweight vehicle was proven and Mr Muller was given a 12-month final written warning. The claimant said he believes that no action was taken against Mr Muller. He had only seen the letter the day before, so he had not had time to investigate. Mark Addinall had signed the letter and he would not have signed such a letter. The claimant said that they had treated him differently because of the involvement of the DVSA.

74. The claimant said that his ET1 was true where it said that he had been dismissed for an accident that was not his fault [8]. He was then taken to the first disciplinary meeting [69], where he admitted that the accident "was completely my fault." The claimant said that this was not in context. He didn't

understand the comment. He didn't think he had said that. He didn't know why it was like that. It wasn't his fault.

75. It was put to him that the top gate had been open. The claimant's response was that Messrs Duffield and Scoreby were completely unaware what had happened. People enter by the bottom gate every day. The top gate was closed nine times out of ten. A few of his team had keys for the bottom gate. The top gate may have been open, but no one would have gone that way.

76. Mr Hodgson suggested to the claimant that the fact that he was going the wrong way round a one-way system meant that he should have taken extra care. The claimant's response was "Yes. If they had health and safety in place it wouldn't have happened. It was pitch black. It was facing me in pitch black. The barrier was erected three weeks before. I had been on holiday two weeks. That barrier should have been secured.

77. It was put to Mr Wood's own case was that he wasn't looking where he was going. His response was that he was in shock. He rang Mr Addinall when he was setting off. Mr Hodgson repeated his question. The claimant responded that he had momentarily glanced the left side. He had not expected a big bar. He was aware of the 10mph speed limit and denied that he had exceeded it. He added that without a speed camera, there was no way of determining how fast he had been going. It was impossible to go fast.

78. Mr Hodgson read the claimant an extract from the disciplinary hearing [71], in which he had said "I was going round as I always had done…going slightly over the speed limit." The claimant said that was said when he was in a state of shock. He was unaware until afterwards how badly placed the barrier was. It was put to Mr wood that Mr Duffield had an admission from him. The claimant's response was that he was going "around the speed limit."

79. We were then taken to an independent report dated 19 August 2019 [54 to 55] by John Wynn of JPW Consulting Ltd. The first paragraph of the report was the claimant's statement about the Car Park Incident that he had made to Mr Addinall. The second paragraph was Mr Wynn's comments, which followed his inspection of the CCTV footage and included the comment "the [claimant's] vehicle came into view at speed and hit the yellow barrier." The claimant's response was that Mr Wynn could not determine how fast he had been going.

80. Mr Wood agreed that if he had been using his mobile phone at the time of the collision, it would have been extraordinarily serious and that he would have expected to have been dismissed. He stood by paragraph 10 of his witness statement, in which he absolutely denied being on his phone. He was asked to comment on the disciplinary transcript [69] where he was asked if he had been on his phone and had said "…It was on, I believe, it was on my lap, I don't know, I don't know, I can't remember." The claimants; comments were that he had always maintained his story. He had pulled up. He had rung his colleague. He believes he placed his phone in the centre console. After using the phone, he set off again and went round the back. They say the picture clearly shows he was on his phone, but you can't even see it's him inside the cab. He believes they have used it as a reason for getting out of health and safety for the barrier.

81. Mr Hodgson suggested that the above was not what Mr Wood had said on 22 August. He replied that he had said that the phone was in the centre console. Mr Hodgson put it to the claimant that he had said that the phone was on his lap. The claimant said he had said both.

82. The claimant was asked about another part of Mr Wynn's report [54], which stated that "When the CCTV footage is slowed down, Joe Wood can be seen in the driver's seat with his mobile phone in his right hand and his posture with his head pointing down, as the vehicle hit the barrier, smashing the window screen." Mr Wood confirmed he had read that. It was suggested that Mr Wynn's account of the CCTV footage was the same as those of Messrs Duffield and Scoreby. Mr Wood took exception to the suggestion and said that they were not consistent in the slightest. You can see the light is on the phone. The paused photo (which had not been produced because of an application by the claimant) showed the claimant protecting his face. They had only said that the phone was in his hand today for the first time.

Submissions

Claimant

83. Ms Crowther produced a 15-page skeleton argument, which I have considered in full. Ms Crowther spoke briefly to highlight the main points on behalf of the claimant:

    83.1. One of his main points was that the respondent did not have reasonable grounds to sustain a belief in the claimant's guilt (per **Burchill**).

    83.2. His misconduct did not constitute gross misconduct.

    83.3. The misconduct relied upon is "a complete lack of care and general tendency to ignore the rules of the road". That is why he was dismissed.

    83.4. What evidence did the respondent have? Three minutes of footage from the A1 Incident and 15 seconds of footage from the Car Park Incident. From that, the respondent concluded the claimant had shown a complete lack of care.

    83.5. That conclusion was not supported by the evidence of the claimant's four years of faultless driving.

    83.6. The failure to interview the claimant's co-driver was significant. It becomes more significant because the road was quiet. Does it show a complete lack of care? The reasonable answer must be "no".

    83.7. There were procedural defects.

    83.8. Even when the Car Park Incident is taken into account, the claimant's account was consistent.

83.9. Dismissal was not in the range of reasonable responses.

83.10. It was accepted that the circumstances of the claimant's dismissal were not the same as those of the colleagues he mentioned and that the law requires apples to be compared with apples, but the company used to pay the speeding fines of drivers.

83.11. The disciplinary procedure does not mention driving offences in the examples of gross misconduct.

83.12. Mr Duffield was clearly concerned by the intervention of the DVSA (I asked Ms Crowther what difference it would make if he was).

83.13. The evidence concerning the mobile phone in the Car Park Incident is central. We have the CCTV footage and the witness evidence. It was submitted that the footage we saw could not be seen clearly. The claimant was shown this footage. His evidence was not inconsistent. Mr Duffield had the opportunity to see the better-quality footage on the main computer.

84. Before Mr Hodgson made his final submissions, I advised the parties that in view of the claimant's evidence that it had been "nearly pitch black" when the Car Park Incident happened at approximately 5:30am on 19 August 2019. I had looked up the time of sunrise on the day of the hearing (14 August): it was 5:43am and I may take judicial notice of how light it was at the time of the incident.

Claimant

85. On the issue of procedural unfairness, Mr Hodgson made the following submissions:

85.1. It had not been pleaded in the ET1.

85.2. A list of alleged procedural problems were listed at paragraph 73 of Ms Crowther's skeleton argument, but none of them individually or combined made the dismissal unfair.

85.3. The claimant only raised his previous good record at the end of his appeal.

85.4. Mr Scoreby took the claimant's record into account in his appeal outcome.

85.5. It wasn't appropriate to suspend after the A1 Incident, but it was after the Car Park Incident.

85.6. It was clearly set out in the invitation letters that the respondent viewed the claimant's actions as potentially gross misconduct and it was explained as such in the outcome letters.

85.7. Mr Duffield said he gave the claimant the opportunity to move the hearing date. Mr Wood says different, but I was invited to look at the transcripts of the disciplinary and appeal hearings where no objection was raised at any point.

85.8. It was submitted that Mr Duffield and Mr Scoreby gave evidence that was clear and consistent, in contrast with the claimant, who was neither clear nor consistent.

85.9. Even if I was not with the respondents on the evidence, was the dismissal materially unfair?

85.10. The claimant admitted he had no problem in using Mr Buchanon in the disciplinary and appeal hearings. Mr Buchanon spoke frequently in both meetings.

86. With regard to the substantive issues, Mr Hodgson submitted that:

86.1. The claimant faced two separate allegations. Both he and Ms Crowther sought to downplay both allegations. It should be remembered that the claimant is an HGV driver who, in the A1 incident, was driving in a lane marked “No HGVs” at more than the advisory speed.

86.2. His observed driving in the outside lane was for a period of 3 minutes, which is not a minor transgression. His culpability was exacerbated by his deliberate choice to stay in the outside lane. On that point, the respondent came to the conclusion it did because of Mr Addinall’s evidence of what the claimant said to him.

86.3. Was the respondent entitled to reasonably believe Mr Addinall? They believed him because he was sure and consistent when compared with the claimant. Mr Addinall was honest when interviewed by Mr Scoreby on 12 September that he could not remember exactly what words the claimant had said to him some weeks after the event.

86.4. In contrast, Mr wood became more sure as time passed.

86.5. There is a clear conflict of evidence.

86.6. The concept of reasonableness applies throughout the process (which I took to be a reference to the authority of **Sainsbury’s Supermarkets Limited v Hitt [2002] ICR 111**)

86.7. Under cross-examination, the claimant accepted that if he had deliberately breached the law (with regard to mobile phone use), it would rightly be regarded seriously.

86.8. In the Car Park Incident, the claimant had gone the wrong way up a one-way system, having driven past the open top gate. The

company accepts this was common practice, but it is still the exit for HGV vehicles.

86.9. The claimant was driving at excess speed. He was certainly exceeding 10mph. He initially accepted that, but has now rowed back from that position. The respondent's view was confirmed by the independent report [54-55]. The phrase "at speed" means "too fast".

86.10. The Tribunal had heard a significant amount of evidence about the mobile phone. It was ironic that Ms Crowther had made submissions about the lack of evidence of the screen grabs of the CCTV footage, when it had been excluded on her application. The claimant admitted that if he had done what he was alleged to have done in both incidents, they were both gross misconduct. On re-reading the evidence, I do not agree that the claimant made this exact concession. He said that if he had been holding his mobile phone, it would have been very serious.

86.11. The evidence before Messrs Duffield and Scoreby made them 100% certain that the claimant was holding his phone at the moment of impact. That is starkly contrasted by the claimant's own evidence, which Ms Crowther summarises at paragraph 59b of her skeleton as "C's version of events throughout has been that his phone was in his lap."

86.12. The respondent had genuine belief in the claimant's guilt.

86.13. There was no need for a massive investigation, as much of the facts were agreed, apart from the evidence of Mr Addinall and the whereabouts of the claimants; mobile phone.

86.14. It is not for the Tribunal to substitute its decision for that of the respondent.

87. I thanked both representatives for their submissions and advised the parties that I would make a reserved decision.

Decision

88. I start with a general comment on the credibility of the evidence I heard. I did not find the claimant to be a credible witness on any of the points of dispute between the parties. In general terms, he was at times unclear, obtuse, inconsistent and contradictory of his own evidence and the documents that were produced. By comparison, Messrs Duffield and Scoreby gave evidence in chief that was mostly internally consistent and logical, consistent with the documents produced and consistent with each other.

Findings of Facts not in Dispute

89. I make the following findings of fact on matters that were not in dispute (by which I mean that the evidence of the claimant and respondent was the same, or that the evidence of one party was unchallenged by the other):

    89.1. The claimant, Jon Wood, was employed by the respondent, Samuel Smith Old Brewery (Tadcaster) as a drayman from 27 July 2015 to 24 August 2019, when he would have received a letter of dismissal dated 23 August 2019 [78-79]. Prior to the two incidents for which he was disciplined and dismissed, the claimant had an unblemished record of service.

    89.2. The claimant's job largely involved him driving an HGV in which he delivered the respondent's products to customers. He worked in a team of two with a co-driver. All the respondent's HGV's are fitted with dashcams.

    89.3. The claimant was based at the respondent's premises at Tadcaster. The premises operated a one-way system of entry and exit for vehicles. Entry was via a gate known as the "top gate" and exit was via a gate known as the "bottom gate".

    89.4. The bottom gate was the exit for HGVs and other vehicles. A barrier had been erected between the car park and the bottom gate about three weeks before the Car Park Incident on 19 August 2019. The claimant had been on holiday for two weeks in the period between the barrier being erected and the Car Park Incident on 19 August 2019.

    89.5. He generally started work at 5:30am. At that time, the top gate was usually closed and locked and it was the practice of the draymen to use the bottom gate to enter the premises. The respondent was aware of this practice and did nothing to stop it before 19 August 2019.

    89.6. On 1 August 2019, the claimant was driving a 7.5 tonne HGV (registration number YD66UAW) on the northbound A1 in the Tyne and Wear are when he was observed by operatives of the DVSA between 06:50am and 07:00am. At the time, the A1 had three lanes, a speed limit of 50mph and a width restriction of six feet six inches. The width restriction was in force for approximately three miles. The claimant accepts that the vehicle he was driving was seven feet four inches wide.

    89.7. There were multiple signs at the side of the road and written on the carriageway indication "No HGV" in the outside lane. The claimant's HGV remained in the outside lane, apart from a brief incursion into the middle lane for approximately three miles. In addition, the speed of the claimant's vehicle exceeded the limit (of 50mph) in that area.

    89.8. The DVSA letter required the respondent to produce the tachograph for the claimant's vehicle and an explanation for the matters

alleged. The letter stated that further consideration could be given to reporting the matter to the Traffic Commissioner for possible further action.

89.9. The DVSA letter was received by Mark Addinall, who was the transport supervisor for the respondent. It was confirmed that the claimant and Mr Addinall were friends. Mr Addinall looked that the footage from the dashcam and spoke to the claimant about the DVSA letter on 6 August 2019. He then produced a disputed statement concerning their conversation [45]. The claimant also produced a statement [43] in which he denied all wrongdoing.

89.10. It was decided that the claimant should face disciplinary action for the A1 Incident. Mr Duffield wrote to the claimant on 14 August 2019 [46-47] inviting him to a disciplinary meeting on 22 August 2019. The letter confirmed that the matter was "very serious" and could result in the claimant's summary dismissal. He was advised of his right to be accompanied by a trade union representative or work colleague. The letter also stated "The CCTV is available for viewing on site".

89.11. The invitation letter set out the full details of the allegations, including three references to the CCTV from the dashcam evidencing the claimant speeding at "around 52mph past a 40mph sign", "driving in the outside lane over three clearly marked "No HGV" signs painted on the road", and; "driving at 50mph for the majority of the time".

89.12. There were two other allegations:

89.12.1. Driving in the outside lane in breach of the width restriction, and;

89.12.2. Speeding.

89.13. The claimant was not suspended following the disciplinary allegations. His co-driver was not interviewed about the A1 incident.

89.14. At approximately 5:30am on 19 August 2019, the claimant was entering the respondent's premises in his own car via the bottom gate when he collided with a gate that was hinged from a static metal barrier. The gate smashed the windscreen of his car. The facts of what happened are disputed. The collision was captured on the respondent's CCTV system. It was agreed that a 10mph speed limit was in operation in the respondent's premises.

89.15. Mr Addinall spoke to the claimant shortly after the collision and produced a brief statement about the conversation [53].

89.16. The claimant provided a statement for an undated Motor Accident Report Form [48-52]. Part of the statement said:

"I went through the gate, turned the corner, looked to my left to see if my colleague had already collected the waggon. I was travelling across the centre of the yard and was unaware of any obstruction. There had recently been a barrier fitted where the waggons tip their kegs at the end of the day.

There was a gate fitted to the barrier that I was unaware of, the gate was in the blind spot behind the front right pillar of my car and not easy to see. I travelled across the centre of the yard and was unaware the gate was open and in the path of where I have travelled for the last 4 years with no obstruction being there for the entirety of my employment with Samuel Smiths.

I was looking to my left not aware of the new barrier that has been newly built there, this resulting in me hitting the barrier."

89.17. The respondent commissioned an independent report into the collision from John Wynn of JPW Consulting Ltd, who visited the scene. No information was given about the qualifications or expertise that Mr Wynn had to write the report. The report included the statement from the claimant that I have quoted from in the paragraph above and a paragraph headed "Detail of Accident" by Mr Wynn, which includes the following:

"*When the CCTV footage is slowed down Joe Wood can be seen in the driver's seat with his mobile phone in his right hand and his posture with his head pointing down, as the vehicle hit the barrier smashing the window screen."*

89.18. The report came to the following conclusions (inter alia):

89.18.1. The claimant's vehicle hit the barrier at speed and pulled the barrier off its hinges, and;

89.18.2. The CCTV footage has captured Jow Wood, the driver, looking at his mobile phone.

89.19. Mr Duffield wrote to the claimant on 19 August and advised him that the disciplinary hearing scheduled for 22 August to determine the A1 Incident would also consider the Car Park Incident. The details of the allegations were that the claimant had been involved in an accident on 19 August and had:

89.19.1. Driven the wrong way on a one-way system;

89.19.2. Driven in excess of the 10mph speed limit, and;

89.19.3. Had driven whilst using his mobile phone.

89.20. The letter advised the claimant of his right to be accompanied by a work colleague or trade union representative. He was advised that the matter was "very serious" and may result in his dismissal

without notice for gross misconduct. He was advised that photographs of the scene would be forwarded to him and that "...the CCTV footage is available for viewing on request."

89.21. The disciplinary hearing took place over two days, 22 and 23 August. Mr Duffield was the disciplinary decision maker. The claimant attended both meetings and was represented by his work colleague, Pat Buchanon. There were no other attendees. The meetings were recorded and transcripts were produced [67-72 and 74-77]. There was no suggestion by either party that the transcripts were not accurate.

89.22. A second disciplinary hearing was necessary because Mr Duffield had not dealt with the statement made by Mr Addinall following his meeting with the claimant on 6 August 2019.

89.23. Mr Duffield wrote to the claimant on 22 August 2019 to ask him to attend the second hearing and explained the reason for it. At no point did Mr Wood suggest that he had not received the letter or that there was any procedural irregularity connected with the calling of the second hearing.

89.24. After the second hearing, Mr Duffield wrote to the claimant on 23 August 2019 [78-80] and set out his decision. In respect of the A1 incident, in which Mr Duffield said that the claimant had been seen speeding and driving in the outside lane, he decided that:

89.24.1. The claimant had said to Mr Addinall that he was sick of being stuck behind the cars travelling at 40mph and he did not accept that the claimant had not seen the warning signs because:

89.24.1.1. Mr Addinall had been clear that the claimant had made the comment and the claimant had been unsure;

89.24.1.2. There was no reason for Mr Addinall to be unsure about the comments;

89.24.1.3. The warning signs were very clear, and;

89.24.1.4. Being fed up with driving slowly seems to be the only reason why the claimant might simply ignore the warning signs.

89.24.2. The claimant had intentionally ignored the speed and lane restrictions, although he noted that the restrictions were advisory.

89.25. In respect of the Car Park Incident, Mr Duffield decided that:

89.25.1. The Incident had happened whilst the claimant was subject to disciplinary action because of the A1 Incident;

89.25.2. The claimant had been driving at excessive speed and in breach of the speed restrictions;

89.25.3. The claimant was using his mobile phone;

89.25.4. His phone was in his hand, not in his lap as he had suggested;

89.25.5. It had been common practice first thing in the morning before the top gate had opened to enter through the bottom gate, but this should have prompted the claimant to take extra care, and;

89.25.6. The metal barrier should have been secured, but this is typical of how dangers arise on the road. If the claimant had been driving with due care and attention, within the 10mph limit, and not using his telephone, he would have seen that the gate was open and avoided the crash.

89.26. Having made the findings recorded above, the outcome letter advised the claimant that the appropriate sanction was summary dismissal without notice. The claimant was notified of his right to appeal.

89.27. The claimant appeal by a three-page letter dated 28 August 2019 [81-84]. His points of appeal can be summarised as follows:

89.27.1. The allegations relating to the A1 Incident were made on the basis of Mr Addinall and the DVSA stating that he had travelled at 52mph in a 40mph zone. This was a mistake that neither Mr Addinall or Mr Duffield rectified. If they had rectified their mistake at the outset, he would not have been sanctioned at all.

89.27.2. He was put at a disadvantage because he was “not allowed” the person he wanted to accompany at the disciplinary hearing. He had requested Ted, but two days before the hearing, a colleague had notified him that Ted had been scheduled to go to Scotland.

89.27.3. He was not told he could request a delay to allow Ted to attend.

89.27.4. The A1 incident related to a road and route that he travelled frequently and was aware of any potential hazards.

89.27.5. He had proceeded in a normal and safe manner.

89.27.6. It was quiet on the road and he was not driving at speed, although he accepted that “on occasion” he was travelling in the wrong lane.

89.27.7. His occupation of the wrong lane could have been for no more than three minutes, and he was observed for ten minutes. For the other seven minutes, he had driven without issue.

89.27.8. He denied he tended to ignore the rules of the road. He had not driven in a manner that was a danger to himself or anyone else.

89.27.9. The statement (of 6 August 2019) with Mr Addinall was just a conversation following the (A1) Incident. It covered many subjects and at no time was it suggested that there was any censure of his actions, or threat of disciplinary proceedings.

89.27.10. He was not put on notice or cautioned about the conversation.

89.27.11. He strongly disputed Mr Addinall’s version of what he had said. Mr Addinall’s evidence was “purely hearsay”. Mr Wood did not know why Mr Addinall had set out to discredit him, but suggested that there may be some ulterior motive or agenda.

89.27.12. The respondent had not taken action in the past, including speeding tickets and other road traffic violations.

89.27.13. There was nothing in his driving that would normally have led to such serious disciplinary action. It was obvious to him that the involvement of the DVSA had led the respondent to deal with the claimant in a way that was “different to the norm.”

89.27.14. The Car Park Incident on 19 August 2019 could not in any way be considered reckless or constitute lack of care.

89.27.15. He had used the gate he had been instructed to use in the mornings, which had been the practice for many years. It had been initially clear that management were not aware of the practice. It had been stated that the practice would be looked at and amended.

89.27.16. The use of the bottom gate was not an aggravating factor.

89.27.17. He maintained that the phone was not in his hand in use at the time of impact, but was retained (sic) from the floor after the impact.

89.27.18. His speed "would not have been excessive to any degree."

89.27.19. No incident would have happened if the barrier had not been stuck out instead of being secured open. He had always driven through without any impediment. The barrier had only been erected for approximately four weeks and no new protocols or guidelines had been issued.

89.27.20. It had been accepted in Mr Duffield's outcome letter of 23 August 2019 that the barrier should have been secured and had blown open. Mr Wood suggested that the idea of the gate blowing open was "not worthy of comment." Had it been securely fastened; the accident would not have happened.

89.27.21. He had taken responsibility "for actually being involved and for driving, without seeking at the time to lay the blame elsewhere and, as he was not hurt, thankfully, got his windscreen repaired the following day."

89.27.22. He assumed that this was the end of the matter, as he was the only one to suffer in any way. This now appeared to have been a naïve decision, given the way that the respondent had "sought to construe the incident as a convenient way to justify his dismissal; a convenient way to appease the DVSA, and; ensure no unwelcome visits to the yard.

89.27.23. On reflection, he should have pursued the respondent's negligence in the matter.

89.27.24. He agreed that the Car Park Incident could easily have led to his death. Whilst he did not seek to make issue of the incident or make a claim in any way, but took responsibility for his own involvement, the company had "shied away from taking any responsibility and had also displayed little care or consideration to loyal employees.

89.27.25. He had driven safely for over four years without incident. He considered that he drives in a competent and professional manner (which was endorsed by others) and he did not consider that his livelihood and professional career should be put in jeopardy.

89.28. The claimant was invited to an appeal hearing by Mr Scoreby in a letter dated 30 August 2019 [84]. He was reminded of his right to be accompanied. The appeal hearing was set for 6 September 2019.

89.29. The claimant, his representative, Mr Buchanon, and Mr Scoreby were the only attendees at the appeal, which was recorded. A transcript of the appeal [86- 96] was not disputed in any part by either side.

89.30. After the hearing, Mr Scoreby decided that he need to speak to Mr Addinall about the statement dated 6 August 2019. A note of that conversation was produced at page [97]. Mr Scoreby asked Mr Addinall what had been discussed in the meeting. His response was noted as:

> *The letter received by the company from the DVSA. Mark asked Joe why he was driving in a lane that clearly stated no HGV? Joe's response was along the lines of he was sick of driving behind cars only going 40mph.*

89.31. Mr Addinall had confirmed that he and Mr Wood had never had any issues between them.

89.32. Mr Scoreby wrote to the claimant on 13 September 2019 [98-100] with his appeal decision. He did not reconvene the appeal hearing to discuss the conversation he had had with Mr Addinall on 12 September. In summary, his decision was:

89.32.1. He had taken the claimant's assertions about being denied the representative of his choice at face value, but did not find that the claimant had been prejudiced in any way in presenting his response to the allegations. At the two disciplinaries and appeal, the claimant had been well prepared and able to present his response properly and fully.

89.32.2. He did not accept the claimant's denial of what Mr Addinall had said he had said. Mr Addinall had been clear.

89.32.3. He did not accept that claimant had not been using his telephone on 19 August. The CCTV footage clearly showed the claimant looking at his phone in his right hand at the point of impact.

89.32.4. He accepted that it had been common practice to use the bottom gate, but he should have taken extra care.

89.32.5. He accepted that the gate should have been secured.

89.32.6. He agreed with Mr Duffield's decision that the claimants' conduct across the two incidents demonstrated a complete lack of care. He had ignored road rues because he was bored and had driven whilst using his mobile phone.

89.32.7. Mr Scoreby added that the claimant had driven off with a badly damaged windscreen after the collision, which was also dangerous.

89.32.8. He agreed with Mr Duffield's outcome and upheld the dismissal.

Findings on Disputed Facts

90. I find that it was reasonable for Mr Duffield and Mr Scoreby to conclude that the claimant had travelled in the outside lane of the A1 on 1 August 2019 for a distance of approximately three miles because:

90.1. I find he had admitted doing so to Mr Addinall on 6 August 2019. Mr Addinall had no reason to lie or to try and make the claimant look bad. They were friends. Mr Addinall recorded the important part of their conversation in a statement. His statement was clear. The claimant had said he had become fed up of travelling at 40mph in a line of traffic, so went into the outside lane.

90.2. Mr Scoreby deserves credit for speaking to Mr Addinall on 12 September to check his statement. When he did so, Mr Addinall used the same description of what the claimant had said, but said that the words were "along the lines of…" After a gap of over a month, that is understandable.

90.3. The claimant did not mention Mr Addinall in his ET1. When he was asked about him in the second disciplinary hearing, Mr Duffield read out the whole of Mr Addinall's statement [74]. The claimant had been sent the statement with the first invitation letter, so must have been aware of it. However, when he was asked if he agreed with the statement, he said "I can't remember exactly what I told him, to be honest."

90.4. When he was asked which bits of the statement he agreed or disagreed with, the claimant said "Erm, I don't believe I said that, it was worded slightly differently, but I can't remember exactly what I told him." [74]

90.5. He was then asked to clarify what he had said, the last line, concerning being fed up with cars travelling at 40mph, the claimant said "I don't believe I said that." When he was asked what he had said, he replied that he "…could not remember." [74]

90.6. I find that as time went on, the claimant's memory of what he had not said to Mr Addinall improved to the point where he told me that

he had definitely not said what Mr Addinall had put in his statement. I find that implausible. It adds to the implausibility that the claimant never said what he actually did say to Mr Addinall.

90.7. The DVSA letter of 1 August 2019 [40-41] was never disputed as a record of fact.

91. I find that it was reasonable for Mr Duffield and Mr Scoreby to conclude that the claimant had driven at speeds in excess of the 50mph speed limit in place on the A1 on 1 August 2019 because:

91.1. The DVSA letter of 1 August 2019 [40-41] was never disputed as a record of fact. There was no mistake in the DVSA letter concerning the speed limit in place – it clearly said that a 50mph limit was in place.

91.2. Mr Addinall's statement has the claimant admitting that he had moved from the middle to the outside lane because the traffic was only going at 40mph.

91.3. Whatever Mr Duffield's understanding at the disciplinary hearing was, the issue of the claimant's speed was discussed. At the bottom of page [67], Mr Duffield asked the claimant to look at the dashcam footage and said "And now you can see you are doing 52." The claimant's response is "Right".

91.4. Mr Duffield then puts it to the claimant that his speed increases to 54mph. His response is, again, "Right."

91.5. By the time that the claimant wrote his witness statement in March 2020, he only mentions that the DVSA letter had accused him of driving in a width restricted lane (paragraph 4). That is simply not the case.

91.6. Later in his statement (paragraph 6), the claimant says that Mr Duffield and Mr Addinall alleged he had been driving over the speed limit at the time he was in the width restriction. He says that they had both incorrectly read the road sign, which indicated an advisory 40mph limit. He says that he admits he was in the wrong lane, but not that he was speeding. I find that to be inconsistent with what he said at the disciplinary hearing.

92. I find that the evidence of Mr Duffield on the issue of the claimant's representative at the disciplinary hearing is much more credible than the claimant's. I find that the claimant hads failed to show on the balance of probabilities that his chosen representative, Ted, had been deliberately rostered to go to Scotland on a day that clashed with the first disciplinary hearing on 22 August 2019. I find that the claimant has failed to show on the balance of probabilities that he was not offered the opportunity to delay the disciplinary hearing when he found out that Ted was not available. I make those findings because:

92.1. I generally found Mr Duffield to be a more credible witness than the claimant for the reasons stated elsewhere in this decision.

92.2. Both disciplinary meetings were recorded and nowhere in the transcripts is there any mention or complaint by the claimant, or Mr Buchanon (who appears to have been an adequate substitute) about the absence of Ted or a refused request for a postponement. I cannot see that if the claimant was correct in his recollection hat he was disadvantaged.

92.3. The claimant's witness statement only says that he found out that Ted was unavailable two days before the hearing and that "I therefore had Mr Buchanon attend with me." When he was challenged about the lack of any record of his complaint in the disciplinary hearing, his response was that it had been discussed before. I find that implausible.

92.4. The claimant raises the issue of Ted in his appeal letter. In the appeal letter, he says that "I was not told that I could request a reasonable delay to allow [Ted] to attend." [81]. That is different from his evidence at the hearing that he had asked for a delay and had been refused. This is another example of the claimant bolstering his claim with new evidence that was not presented at the time.

92.5. The claimant never put in writing an allegation that he asked Mr Duffield for a postponement and that Mr Duffield refused such a request.

92.6. The claimant was happy to continue with Mr Buchanon as his representative in the appeal hearing.

92.7. Mr Scoreby took some time to discuss the absence of the claimant's chosen representative when he heard the appeal. In the appeal, the claimant agreed that he had the right to ask for a postponement (which rather suggests that he did not utilise that right by choice) and Mr Buchanon confirmed that the claimant was "…happy to go ahead with it." The claimant did not disagree.

92.8. Mr Scoreby took the claimant at face value on the issue and found that the absence of Ted made no difference. Given my findings of fact in this case, I agree with Mr Scoreby. I go further, however, and find that no postponement was requested by the claimant and he was content to proceed with Mr Buchanon.

93. I find that it was reasonable for Mr Duffield and Mr Scoreby to conclude that the claimant had driven into the barrier on the respondent's site whilst using his mobile phone on 19 August 2019 because:

93.1. I generally found Mr Duffield and Mr Scoreby to be a more credible witness than the claimant for the reasons stated elsewhere in this decision.

93.2. The issue of the CCTV footage important evidence in this case. I find that the claimant was offered the opportunity to see the original footage on site in the invitation letter dated 19 August 2019 and simply failed to do so.

93.3. The evidence of Mr Duffield and Mr Scoreby about what the best version of the footage showed was compelling. Both said that they were 100% certain that the claimant had his mobile phone in his right hand and was looking down at it at the moment of impact.

93.4. It is unfortunate that I was not able to see the best version of the footage that was available, but I had compelling and credible evidence from two witnesses who had.

93.5. Ms Crowther argued successfully that screen shots of the best footage, that the respondent says shows the claimant with the phone in his hand, should not have been admitted in evidence. I never saw the screen shots, but I find that it ill behoves the claimant to say that their absence is a reason for me to find in his favour. Their absence is a neutral point and requires me to determine the issue on the evidence I had available.

93.6. I find it unlikely that two witnesses that I have found to be credible on other matters would perjure themselves by saying that they had seen something that they were 100% sure about, if they had not.

93.7. In contrast, the claimant's evidence about the whereabouts of his mobile phone was inconsistent, contradictory and incredible. In his first statement [50-52], he does not mention his phone at all.

93.8. His assertion under cross-examination that it was "nearly pitch black" at the time of the incident is not in his witness statement. It is not in his explanatory statement with the accident report [50-52] and he does not mention it in the disciplinary or appeal hearings.

93.9. I therefore find his assertion that the footage he saw was so dark that you couldn't even make out it was him in the car is not credible. He is shown the footage at the first disciplinary hearing and says nothing that suggests that he could not make out what was happening.

93.10. I could see from the video footage that it was not anywhere near pitch black. Sunrise on the day of the hearing was 5.43am. I take judicial notice that it is not pitch black immediately before sunrise.

93.11. His account of where his phone is during the Car Park Incident is vague and inconsistent in the disciplinary hearing. On page [69], the claimant said he rang his co-driver (while outside the respondent's

premises) and had then put the phone "on the centre console on my lap". He then said that he didn't know. He didn't remember.

93.12. Mr Duffield then specifically asked the claimant if he was on his phone. His response was "it was on, I believe, it was on my lap, I don't know. I can't remember."

93.13. On page [70], the claimant is asked to look at the footage which Mr Duffield says shows the claimant with the phone in his hand. The claimant was asked if he agreed and replied "It was, I agree with what's there."

93.14. At the appeal, the claimant was asked about using his mobile phone and said "…it was either in the middle or on my lap and you can see from the video that – you can see a light from my phone and when I'd either, when I'd hit the barrier, it had either thrown it into the middle or it had gone into the footwell, I can't remember, it was ages ago."

93.15. By March 2020, when the claimant wrote his witness statement, he said "I also absolutely deny being on the phone." That absolute denial wasn't made when he was facing dismissal for gross misconduct. I find his evidence on the point to be inconsistent and incredible.

93.16. I gave no weight to the report of Mr Wynn, as I had nothing that told me that he was qualified to offer any opinion on the collision.

94. I find that it was reasonable for Mr Duffield and Mr Scoreby to conclude that the claimant exceeded the 10mph speed limit on the respondent's site on 19 August 2019 because:

94.1. He admitted as much. At page [70], he was asked if he agreed with Mr Duffield that he was travelling too fast and going over the speed limit and replied "Yeah, I was – it was obviously my fault."

94.2. His appeal letter [82] said "My speed would not have been excessive to any degree." I do not find that to be a denial of exceeding the 10mph speed limit.

94.3. At his appeal, Mr Scoreby asked the claimant if he thought he was going at more than 10mph. His answer was that he was "probably going around it".

94.4. By the time of his witness statement, the claimant absolutely denied that he was going too fast. I find it implausible that he would admit speeding in August and totally deny it in March of the following year.

95. In the light of the findings above, I find it reasonable for Mr Duffield ad Mr Scoreby to come to the conclusion on the balance of probabilities that the claimant had committed both disciplinary allegations.

Applying Findings of Fact to the Issues

96. I make the following decision on the issues in the light of my findings of fact:

96.1. The claimant was an employee of the respondent;

96.2. The claimant had the right to claim unfair dismissal because of his period of continuous service;

96.3. The claimant had not lost the right to claim for any jurisdictional or other matter;

96.4. The respondent dismissed the claimant;

96.5. I find that the respondent has shown that the reason for dismissal was the claimant's conduct;

96.6. The reason for dismissal was potentially fair;

96.7. The decision to dismiss was within a band of reasonable responses, not least because the claimant accepted that if he was found to have committed the disciplinary offences alleged, it would have been very serious. As a professional HGV driver, the claimant has a duty to other road users not to drive in a dangerous or careless manner. Some employers may not have dismissed the claimant for the disciplinary offences he was found to have committed, but I cannot find that no reasonable employer would have dismissed him. I find that dismissal was within the band of reasonable responses for both disciplinary offences on their own.

96.8. I find that the respondent followed the three-stage test in **British Home Stores Limited v Burchell [1978] IRLR 379**;

96.9. The respondent clearly believed the claimant to be guilty of the misconduct;

96.10. It had reasonable grounds for believing that the claimant was guilty of that misconduct for the reasons I have set out above;

96.11. At the stage at which it formed that belief on those grounds, the respondent had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. I see no reason to find that the failure to interview the claimant's co-driver about the A1 Incident was a flaw in the investigation. The respondent had the DVSA letter and the dashcam footage. I also find that the claimant's attempt to compare his treatment to that of former collages did not engage any the principles of inconsistency in cases such as **Hadjioannou v Coral Casinos Ltd: EAT [1981] IRLR 352**, and;

96.12. The dismissal was fair in accordance with section 98(4) of the Employment Rights Act 1996.

97. I did not consider the issues in relation to contributory fault, **Polkey** or remedy.

98. The claimant's claim of unfair dismissal fails.

Employment Judge S A Shore

Date 1 September 2020