EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107855/2020

FINAL HEARING

Held on 3, 4, 5 and 6 November 2020

Employment Judge M Robison

Mr H D Williams	**Claimant** **Represented by** **Ms L Neil** **Solicitor**
Scottish Water	**Respondent** **Represented by** **Mr R Turnbull** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claim for unfair dismissal is not well-founded and is therefore dismissed. The claims for arrears of pay and holiday pay are also dismissed.

REASONS

Introduction

1. The claimant lodged a claim with the Employment Tribunal on 26 July 2019 claiming unfair dismissal, arrears of pay (bonus) and holiday pay. The respondent lodged a response, resisting the claims.

2. At the outset of the hearing, Ms Neil confirmed on behalf of the claimant that he is seeking re-employment, and in submissions confirmed that he is seeking re-engagement, not re-instatement.

3. At the hearing, the Tribunal heard evidence first from the respondent's witness, Mr Philip Beardmore, dismissing officer. The Tribunal also heard from the claimant, and briefly from his wife, Mrs Alison Williams.

4. During the hearing, the Tribunal was referred by the parties to a joint file of productions (referred to by page number).

Findings in Fact

5. On the basis of the joint statement of agreed facts, the evidence heard and the productions lodged, the Tribunal finds the following relevant facts admitted or proved:

6. The respondent is a statutory corporation that provides water and sewerage services across Scotland established and regulated by the Water Services etc. (Scotland) Act 2005, having its headquarters in Dunfermline.

7. The claimant was employed by the respondent from 25 August 1986 until 2 April 2019 as a network maintenance operative (NMO) working within the water response team. Latterly, following an accident at work, he was engaged as a "runner". His normal working hours were 37 hours per week between 8 am and 4 pm, Monday to Friday.

8. The claimant's team leader was Scott Campbell. Steven Slaven and John Kyle, customer & operational support advisers, would deputise for Mr Campbell in his absence. Mr Campbell's manager was Stewart Baillie, team manager. The other team manager was Craig Low. Mr Baillie's manager was

Philip Beardmore, customer services business manager in the water response team.

9. The claimant's most recent contract of employment dated February 2004 states: "[i]n addition to "your guide to terms and conditions", the following Policies and Procedures form part of your conditions of employment: code of Conduct for Employees; disciplinary; use of Scottish Water Vehicles. You must comply with the terms of any policy that may be notified to you by Scottish Water in relation to its business. Copies of these, and other Scottish Water Policies and Procedures, are available on the Intranet, from your Line Manager or Human Resources."

10. 'Your Guide to Terms & Conditions', which states that:
    - The core service hours are between 7am – 7pm, Monday to Friday.
    - "If you wish to vary your hours to meet personal, social or domestic needs every effort will be made to accommodate this provided reasonable notice is given."
    - "Casual overtime (i.e. all non-contractual overtime) will only be paid for hours actually worked."
    - "Scottish Water Policies and Procedures, are available on our Intranet […] and from People Connect [Scottish Water's HR team]."

Respondent's Policies and Procedures: relevant extracts

11. The respondent's policies and procedures apply to all employees. All policies and procedures were issued to all staff, including the claimant, and were available on the intranet and from HR.

Disciplinary policy

12. The respondent's disciplinary policy sets out a non-exhaustive list of examples of the types of behaviour that could be viewed as gross misconduct, including: misappropriation of Scottish Water property; fraud; deliberate falsification of records; serious act of insubordination; unauthorised access to computer records.

13. The Policy states that:

- "every effort will be made at the earliest opportunity to improve an employee's performance and conduct or behaviour through counselling and coaching…If this approach proves to be ineffective or when the alleged offence is of a sufficiently serious nature, the formal disciplinary procedure will be used."
- "The results of any investigation will be discussed at the hearing with the employee who will be given the opportunity to present their case."
- "The facts will be evaluated and a decision communicated to the employee either at the end of the hearing, after an adjournment, or in writing afterwards."
- "At all formal stages of the procedure and at any fact finding meeting, an employee may be accompanied by a union representative or fellow employee."
- "The policy of Scottish Water is to operate within the appropriate statutory requirements and best practice as formulated in the ACAS Code of Practice."
- "Managers/Team Leaders should develop trusting relationships with their team members to encourage them to discuss freely any problems that arise. Wherever possible, problems should be resolved without recourses to the formal stages of procedure. There should be an attempt to gain a commitment from the employee to improve."
- "Reasonable notice of a fact finding meeting should be given in advance to the employee concerned."
- "The investigation should be conducted by someone other than the manager who will conduct any disciplinary hearing."
-

Telematics policy

14. The respondent has vehicles which are equipped with a system that records the vehicles' data, called "telematics data". The system records data concerning the vehicles including start/stop time, location, mileage and speed. The telematics policy which is agreed with the recognised trade union is renewed regularly, with the most recent issue date being December 2016.

15. It states that, “Telematics is a simple method of quick and precise location of our operational vehicles. The system provides the ability to track vehicle movements, both live and historically.” The policy quotes six key benefits for use of the policy. None of the six key benefits relate to discipline of employees. The six benefits are: 1. improvement in vehicle utilisation and productivity; 2. reduction in costs to run and maintain our fleet of vehicles; 3. increased compliance with UK and European legislation; 4. reduction in taxation and NIC burden; 5. health and safety improvements; 6. improvement in information used in business.

16. The Telematics Policy states:

- “This Policy outlines the key elements of the application of the Telematics system to ensure the full benefits are met and that use of the information is both fair and reasonable to our staff”.
- “Telematics is not being introduced as a time management system however it will allow managers to understand where employees spend their time. It is recognised that employees may have concerns over the use of data through telematics.”
- “Access to Telematics data shall be limited to those authorised for the purpose of delivering the key benefits mentioned above. This includes members of the ICC, Resilience and Security Team and other nominated individuals across the business.”
- “Staff who use Telematics should only have access to data which is relevant to work planning and resourcing for which they are directly responsible. To gain access to the system a request should be submitted to the CVT Information Management Team.”
- “Team leaders have a responsibility to check Masternaut data and if private use is suspected, they should escalate this to their manager and the CVT. Drivers are expected to understand and sign up to the acceptable use of the Organisation’s commercial vehicles, as outlined in CVT policy 23: Use of Commercial Vehicles.”
- “Currently allowable journeys e.g. going to shops for a sandwich at lunch time will continue to be recognised as legitimate.”

- "[…t]here will be no direct use of telematics information for disciplinary purposes."
- "Where concerns about the use of the vehicle or the employees' time arise, there will be an informal conversation with the employee to raise these concerns. If these concerns cannot be addressed immediately then coaching, counselling and relevant training should be given to employees to support behavioural or performance change, within an agreed timescale."

The Fraud Management Policy

17. The Fraud Management Policy defines fraud as: "The intentional distortion of financial statements or other records, by persons internal or external to the organisation, which is carried out to conceal the misappropriation of assets or misreport information, whether or not for direct personal gain".

18. The Fraud Management & Response Policy states:
    - "In all our activities we will ensure a consistent and comprehensive approach to legal and regulatory compliance and we operate a zero tolerance to fraud. We expect all individuals who work for or on behalf of Scottish Water to meet the standard detailed within this policy and the associated policies and procedures."
    - "Scottish Water's policy on fraud is to: deter it in the first instance; detect it quickly; investigate it efficiently; recover losses wherever possible; discipline anyone who perpetrates fraud; and prosecute offenders when appropriate."
    - "All cases of actual or suspected fraud will be vigorously and promptly investigated and appropriate action will be taken. Disciplinary action will be considered not only against those found to have perpetrated fraud but also against any Managers whose negligence and/or actions are held to have facilitated frauds."
    - "Wilful breaches of these principles, rules and regulations will result in disciplinary action."
    - "As a public-sector organisation, we are governed by The Ethical Standards in Public Life etc. (Scotland) Act 2000. Codes of Conduct for

Members and Employees, based on our vision and behaviours and on the legislative requirements, are made available to all applicable parties."

- "Anyone who finds evidence of (or suspects) fraud should report this to their line manager, another senior manager or Director".
- "Scottish Water will also carry out disciplinary procedures, where appropriate."

Commercial Vehicle Use Policy and Procedure

19. The Commercial Vehicle Use Policy and Procedure states:
    - that the Use of Commercial Vehicles Policy's scope "extends to all personnel within Scottish Water who use vans, HGVs, plant and trailers, whether owned or hired. This excludes all lease cars."
    - "Scottish Water is a publicly owned organisation and must be seen to be using public funds wisely. Scottish Water vehicles may only be used on official business. An employee may only take a vehicle home for operational purposes."
    - "No Scottish Water vehicle other than lease cars should be used for any private journey, other than authorised travel between an employee's home and place of work for operational purposes only. Vehicles should not be used in any other private capacity."
    - "With reference to policy 21, any employee who will be driving a Scottish Water owned vehicle should be issued with a telematics key fob. Employees must use this key fob at all times when driving a Scottish Water owned vehicle".

20. On 3 March 2017, the claimant received training on this policy which included being told that he could not use the respondent's vehicles for personal use as it could have insurance and tax implications.

Code of Ethical Conduct Policy

21. The Code of Ethical Conduct Policy states:
    - "In all our activities we will ensure a consistent and comprehensive approach to legal and regulatory compliance and we operate a zero tolerance to bribery and fraud. We expect all individuals who work for or

on behalf of Scottish Water to meet the policy standard detailed within this Code and the associated policies and procedures."

- "All Scottish Water employees are required to demonstrate the highest standards of integrity and impartiality in carrying out their duties. Compliance with the terms of this Code is a condition of employment with Scottish Water."
- "Employees must exercise due care over Scottish Water's funds and resources, including tools and equipment, to ensure that these are safeguarded and used only for Scottish Water's business purposes."
- "REPORTING BREACHES OF THE CODE OF CONDUCT - Scottish Water will promptly and thoroughly investigate any breaches or suspected breaches of the Code, and if necessary trigger the appropriate disciplinary process. These include theft, corruption or other financial irregularities."
- "If an employee finds evidence of or suspects wrongdoing, he or she should report this to his or her line manager, who will conduct preliminary investigations on site to establish the facts."
- "Further investigations will be carried out wherever necessary."

Code of Conduct for Employees

22. The Code of Conduct for Employees states:

- "All Scottish Water employees are required to demonstrate the highest standards of integrity and impartiality in carrying out their duties."
- "Compliance with the terms of this Code is a condition of employment with Scottish Water."
- "All employees must comply with the ethical behaviour expectations based on Scottish Water's values and adhere to the standard of conduct expected in the Dignity at Work Policy."
- "Any breach of this Policy will be fully investigated and may result in disciplinary action."
- "Employees must exercise due care over Scottish Water's resources, such as equipment, to ensure that these are safeguarded and used only for Scottish Water's business."

- "Scottish Water will promptly investigate and, if appropriate, take disciplinary action on breaches, or suspected breaches, of the Code. These include theft, corruption or other financial irregularities."
- "If an employee finds evidence of or suspects wrongdoing, he or she should report this to his or her line manager, who will conduct preliminary investigations on site to establish the facts."
- "Further investigations will be carried out wherever necessary."

Discipline, Employee Guidance

23. The Employee Guidance which is "designed to provide employees with guidance on how the disciplinary process should be implemented" states that:
    - "Before any formal disciplinary action is taken your line manager will do as much as possible to ensure that you have had appropriate support and guidance."
    - "Where appropriate your manager will offer you additional support such as coaching, training, Occupational Health or Counselling Support, or support under one of our other policies and procedures such as the Alcohol and Drug or Stress Policy."
    - "If there is no improvement in behaviour, attitude, values and adherence to policies and procedures as a result of the informal process being carried out, your manager may decide to go to a formal disciplinary."
    - "The disciplinary hearing is always held by a manager/leader who was not involved in the fact finding investigation."

Bonus and annual leave policies

24. The respondent has an annual leave and public holidays guidance document which provides: "Carry Over: Scottish Water encourages all employees to take all their holiday entitlement for a healthy work-life balance. If you have not been able to do so, you can carry forward one week of your holiday entitlement into the next leave year (e.g. up to 5 days or number of hours you are contracted to work per week). Any carry over must be taken within the first 4 months of the new leave year**."**

25. The claimant's contract provides that "accrued holiday pay will be paid on termination of employment except in the case of dismissal for gross misconduct where the statutory minimum will apply" and that "any untaken holiday should be used before the termination date."

26. The respondent has an employee annual out-performance incentive plan 2018/19 which has certain eligibility requirements. In particular, at paragraph 2 it is stated that, "all direct employees…with a minimum of 4 months service prior to the end of the financial year (31st March 2019) will be potentially eligible for payment subject to the conditions below". At paragraph 11, it is stated that "Payment will not be made to any employee dismissed by Scottish Water before the date of payment".

Grievances

27. Around June 2016, the claimant was party to a collective grievance made by his team against Mr Campbell and Mr Baillie. It was raised following a proposal by them to change the standby rota to mirror the rest of the water response team. That grievance was upheld at stage 2 on the basis that there was insufficient reason given for the change and the rota carried on as before.

28. On 18 October 2016, the claimant emailed HR making a complaint about how he and his colleague, Gareth Thomas, were being treated differently from their team members (page 159).

29. The claimant was advised by Pat Allen (HR) in an e-mail dated 20 October 2016, that these issues would be dealt with through Scottish Water's grievance policy and procedure (stage 2). The claimant was advised of the number for OH Assist Employee Assistance Programme.

30. A meeting took place on 1 November 2016 (page 163). It was chaired by Mr Beardmore. Both the claimant and Mr Thomas were accompanied by a trade union representative. Mr Beardmore acknowledged that communication should have been better and that in hindsight it might have been better to transfer both them to another team on return to work to allow another team leader to set them up. It was agreed that Mr Beardmore would speak to both

Mr Campbell and Mr Baillie. An outcome letter dated 15 November 2016 was issued to the claimant.

31. On 13 February 2017 Mr Beardmore chaired a further meeting (page 169). This was titled a "clearing the air meeting". Jamie Mackay, the temporary team leader, Mr Campbell, Mr Baillie, the claimant and Mr Thomas and their union representative, Ricki Hill, attended. The meeting ended with all including the claimant, Mr Thomas and Mr Campbell prepared to "draw a line" over things and make an effort to engage with each other.

32. On 3 March 2017, the claimant attended a "Tool Box Talks" meeting which was a refresher on the use of commercial vehicles policy (page 170).

33. On 5 June 2017, the claimant was involved in an accident at work and was absent on sick leave. When he returned from sick leave, occupational health advice was that he should return on restricted duties (page 174). When the claimant returned to work, he was engaged as a "runner".

34. The claimant came to believe that he was being denied opportunities to earn overtime. Although jobs were allocated by risk technicians, the claimant came to the view that this was at the instigation of Mr Campbell. He came to the view that his colleague, Garry Black, was being preferred.

Lead up to investigation

35. Mr Campbell was required to authorise the claimant's' overtime claims.

36. On 18 September 2018, the claimant attended a meeting with Mr Campbell regarding an overtime claim for an emergency call-out on 18 August 2018. The claimant's trade union representative, Bob Kirk, also attended. Mr Kirk advised that if payment was not made within two weeks, the claimant would raise a grievance for illegal withholding of payment. Payment was subsequently made in respect of that claim.

37. The claimant was provided with a new van in mid to late October 2018. This van was fitted with telematics equipment. This was in line with the respondent's policy to ensure that all rolling stock was fitted with telematics.

38. On 1 December 2018, the claimant submitted an overtime claim for £622.90 for the period 1 – 17 November 2018 (page 182). The overtime required the approval of Mr Campbell, and because it was for over £500, also of Mr Baillie.

39. In December 2018 Mr Campbell, considered the overtime claim as part of the approval process. On 11 December 2018, Mr Campbell met the claimant informally to discuss his overtime claims.

40. Mr Campbell queried who authorised the claimant's overtime claim, and was advised by the claimant that it was either Steven Slaven or John Kyle.

41. The claim included a duplicate entry for overtime on 15 November 2018. This was brought to the claimant's attention by Mr Campbell. The claimant put that down to a glitch in the system, and resubmitted the claim (page 187).

42. The claimant subsequently asked for the opportunity to submit the overtime claim again.

43. Mr Campbell contacted Mr Baillie to discuss the claimant's overtime claim and the reasons why he had refused to authorise it.

44. On 12 December 2018, Mr Baillie e-mailed Angela Valerio (HR manager) (copied to Mr Beardmore) which stated that the claimant's "overtime for the month of November has been denied by his Team Leader (Scott Campbell) for two reasons: we are uncertain who authorised this overtime; and the hours claimed are excessive". It stated that it was noted that the claims between 1 and 17 November were at a time when Mr Campbell was working from home due to a bereavement and then on leave (page 191).

45. That e-mail continues, "Scott invited Derek in for a chat to discuss his overtime claim to ask him to explain who authorised the overtime. Derek offered an explanation that either Steven Slaven or John Kyle (who both work for Scott) authorised it. When Scott tried to confirm with both Steven and John they couldn't be 100% sure around all the claims, sometimes saying they couldn't remember.

    Further to this we requested via CVT the telematics data for the vehicle to assist us in verifying the claim. This data has not verified his claim, in fact it's

the opposite as he has claimed for hours worked when the vehicle was stationary at his home. To be clear he has not claimed hours when the vehicle has not moved at all, it's the start and stop time that are in question. From a basic calculation I think of the 32 hours claim, 12.25 are invalid.

The telematics data has also highlighted almost daily use of the vehicle out of hours, including weekends which will need explained. There is also a day when he had a half days leave and the vehicle travelled from his home to a retail park in Glasgow then home again, and one day when the vehicle did not move at all that will require an explanation.

I think all of the above merits a full fact finding investigation and I would like more detail of the telematics as the current report is basic, only showing start location and time then finish location and time. To fully investigate this we require the full movements of the vehicle (eg on one overtime claim the address claimed does not match the telematics). Can you advise if it is alright for me to request this data from CVT or has it to come through yourself".

46. Ms Valerio responds in an e-mail dated 12 December 2018, "I'm happy for you to request this. Seems like a full FF is required on all counts. Please let the team know if you need any help or someone to review the report once compiled" (page 191).

47. On 12 December 2018, the claimant e-mailed Mr Kirk on the subject of "overtime", to advise that "now there's other discrepancies and won't be getting dealt with till after new year and I am very angry about how leniently he is approaching this as it's not his wages and Xmas affected with my family very angry" (page 195).

48. On 12 December 2018, Mr Kirk forwarded that e-mail to Mr Beardmore, stating "received this from DW. Don't think this is a satisfactory outcome so will probably have to start grievance procedure".

49. On 12 December 2019, Mr Beardmore asked Mr Baillie whether the claimant had been told that the lack of payment was due to a number of discrepancies (that could not be corrected) and that it will be subject to a FFI (page 195).

50. Mr Baillie advised him in an email response that he had advised the claimant during a telephone call earlier that day of the reasons why his overtime had been declined and that a formal investigation was taking place. Mr Baillie confirmed to the claimant that this meant that he would not get payment before Christmas (page 194). Following a request by his union rep, part-payment of 15.75 hours was authorised on 18 December (page 198).

51. Mr Campbell and Mr Baillie met with Mr Slaven and Mr Kyle on 17 December 2018 to discuss the overtime claim.

Investigation

52. On 20 December 2018, the claimant was invited to attend a fact-finding meeting be held on 8 January 2019. The issues for investigation were stated to be:
    - "How you and by whom you were given authorisation for overtime you may have worked in November 2018;
    - The correctness of hours you claimed in your overtime claim for November 2018;
    - The possible use of a Scottish Water hired vehicle for non-work related tasks;
    - Occasions where you are believed to have finished work and gone home early before your contracted hours have been completed".

53. The letter stated that both Mr Baillie and Craig Low would be conducting the fact finding meeting. The claimant did not raise any concerns at the time about Mr Baillie or Mr Low being part of this process.

54. The claimant did not receive a pack of documents in advance of either of the investigation meetings.

First fact-finding investigation meeting

55. The first fact-finding meeting took place on 8 January 2020. The claimant was accompanied by his trade union representative, Johnny Walker. After around three and half to four hours, the meeting was adjourned due to the claimant getting upset.

56. On 30 January 2019, the claimant carried out an eLearning course called Fraud Awareness for Employees. He was asked to undertake this course by Mr Campbell.

57. On 8 February 2019, the fact-finding investigation meeting reconvened.

58. Notes were taken of the fact finding investigation meetings (page 235 – 249). The notes of the meetings were sent to the claimant. There was email correspondence concerning the minutes.

59. In particular, on 28 February 2019, the claimant emailed Mr Baillie explaining that he would not provide a signature to the minutes. The claimant stated in particular that there had been no agreement about the use of telematics indirectly.

60. The draft minutes were adjusted in two places to take account of the claimant's concerns (pages 255 – 269) . Although these were the only issues which the claimant raised in e-mail correspondence, namely concerns about the use of telematics data, and the interpretation of the answers at questions 60 and 78, he still refused to sign the minutes.

61. On 7 March 2019, Mr Baillie emailed the claimant to say that he believed that the notes of the meetings were a fair reflection of what was said.

62. A fact finding summary report (undated) (pages 250 – 253) was prepared by Mr Baillie and Mr Low in which they concluded that there were several breaches of the respondent's disciplinary policy, namely deliberate falsification of overtime claim; use of a hired vehicle for personal use both during work time and out of hours over a minimum of 18 months; failure to work contracted hours over a minimum of 18 months; and leaving work early without consulting or informing team leader.

63. The fact finding summary included google maps (pages 274 – 283) and telematics data sheets for November 2018 (lodged at pages 284 to 388) and December 2018 (not lodged), as well as an extract from a document referring to the use of telematics which was shown by the union rep at the meeting, namely "The SWC meeting of the 24th November 2005 reaffirmed their official joint statement 5th October 2004 that there will be no direct use of telematics

information for disciplinary purposes. This position has been supported and reinforced by telematics user group" (page 389).

64. Their recommendation that the claimant should be subject to disciplinary action considered and actioned by Mr Beardmore.

Disciplinary hearings

65. On 11 March 2019, the claimant was invited by letter to a disciplinary hearing to be held on 27 March 2019 to consider the allegations investigated.

66. The letter enclosed the disciplinary procedures. The letter warned that due to the seriousness of the allegations, the disciplinary could potentially result in dismissal.

67. The claimant was provided with the investigation report and the pack of documents gathered as part of the investigation that Mr Beardmore had also been given and considered.

68. On 12 March 2019, the claimant sent a WhatsApp message to Mr Campbell, saying: "I've still got hols pending put in 27th Feb". Mr Campbell replied by WhatsApp message saying "Only showing 5 being carried over". The claimant replied to that saying: "This is all my holidays if you want to check that I took up to and including Xmas which left 14 days still to use which are in the second picture".

69. On 14 March 2019, the claimant emailed to challenge the independence of Mr Beardmore as the chair of the disciplinary hearing on the basis that he was the manager of Mr Baillie. Freda Brooks, Mr Beardmore's management assistant, emailed in reply, "I had a chat with Pat Allan in our People team regarding the wording of your FFI letter. She confirmed that the word independent means that the manager who takes any Hearing will be independent from the FFI, ie not part of the team who carried out the fact finding investigation."

70. Ms Brooks said that she was happy if the claimant wished to call her regarding this and asked to confirm his attendance. The claimant emailed in response confirming that he would attend the disciplinary hearing.

71. On 27 March 2019, the disciplinary hearing took place. The claimant was accompanied by his trade union representative. On 2 April 2019, a reconvened disciplinary hearing was held.

72. Notes were taken of the disciplinary hearing (pages 398 to 405).

73. The claimant was advised at the end of the reconvened hearing that allegation 1 was unfounded but that allegations 2 to 4 were upheld.

74. This outcome was confirmed by letter dated 4 April 2019 confirming the decision to dismiss him. That letter included the following:

75. Regarding allegation 1: "During the 1st hearing on 27th March you were able to provide evidence of authorisation of overtime, although there was some dubiety about your claim on the 04/11/18 where you had said that you used your initiative to travel to Ryan Way to assess the job. In relation to your claim on 28/11/18 for travel to a training course, you stated that you were not aware that this should have been claimed as TOIL. I therefore concluded that your claims, for the majority, had been authorised or you had at least been asked to carry out the tasks relating to the claims. I have therefore discounted Allegation 1".

76. Regarding allegation 2: "At the reconvened hearing on 02/04/18 I explained that I had revisited the issues from the first hearing relating to the accuracy of the hours and I took into account that no allowance had been made for vehicle checks or wash up time. I was able to present my assessment of your claim based on what I consider to be reasonable allowances for the vehicle checks and wash-up time. Typically 10-15 minutes at most should be allowed for the daily vehicle pre use check and an absolute maximum of 1 hour wash up time which is normally afforded to those who are carrying out the digging duties. After half way through reviewing the list together, it was clearly stated again by your union representative that I was using the GPS-telematics data which your union representative was unhappy about.

    I asked you directly whether your overtime claims were false. You said that they were but you went on to explain that your actions were because you were not thinking straight given all your personal issues you were dealing with. I

stated that I found that difficult to accept. You were thinking clearly enough to make a claim, you just needed to insert the correct hours. The outcome of my assessment is that there is still an unexplained discrepancy of approximately 12 hours over multiple occasions.

I had asked you at the first hearing how you were actually recording hours and you explained on some occasions you used the hours provided by others that were on the same job. I explained that that makes no sense because your start and finish point is different. I did not accept this as a justifiable reason, it is your overtime and should be based on your hours worked. Even making what I consider more than reasonable allowances for vehicle and rest time I cannot find any evidence to persuade me that numerous claims you made for overtime were not fraudulent. Allegation 2 is therefore upheld."

77. With regard to allegation 3, "You acknowledged that you had repeatedly used the vehicle for personal use, in breach of policy. You were categorical that at no time was anyone, including your daughter, allowed to travel in the vehicle. I reminded you that whatever your circumstances, the risk and ramifications of using a works vehicle to carry passengers is unacceptable. At the first meeting you recognised this and I did state it was hard to believe that given the number of occasions you were at your daughter's school at pick up time, that you never took her in the vehicle however I have no evidence of this.

You admitted having used the company vehicle at the weekend for other personal tasks on several occasions. This is unacceptable, especially as you admitted to altering the mileage entered on your vehicle check sheets to hide this use of the vehicle at the weekend. This was a deliberate attempt to mislead Scottish Water and conceal your actions. You also stated that you were not aware of the commercial use policy although it had been formally briefed to you in 2017. However, following our discussion, it was clear that you did understand that employees cannot use their vehicle for personal use at any time and you acknowledged that you had not discussed the personal use with your team leader in advance to seek permission. Allegation 3 is upheld".

78. With regard to allegation 4, “At the first hearing we discussed the multiple occasions (17 occasions, amounting to 21 hours) of early finishes. I could find no evidence of any attempt to re-address this deficit. You had explained that they were attributed again to your personal difficulties and the need to return early to check on your daughter. I pointed out that there was no prior discussion with your team leader, fellow team member, union official or HR consultant to seek permission or support. I therefore find this to be a direct breach of your employment contract and your terms and conditions where you are expected to work your contracted 37 hours each week. Allegation 4 is therefore upheld”.

79. The claimant was therefore dismissed for: fraudulently claiming overtime for at least 12 hours that he had not worked; repeatedly using Scottish Water’s vehicle for personal use against the Use of Commercial Vehicles Policy for at least a year and half; and finishing work early and without authorisation on 17 separate occasions amounting to 21 hours.

Appeal

80. On 8 April 2019, the claimant emailed Mr Beardmore to confirm that he wished to appeal. Mr Beardmore forwarded this on to Helen Hewitson (HR).

81. On 11 April 2019, the claimant’s wife, Allison Williams, emailed Mr Beardmore and stated that the claimant’ grounds for his appeal are: “The constant direct use of telematics in order to dismiss which is a breach of policy.”

82. On 26 April 2019, the appeal hearing was held chaired by Lewis Deas, business improvement manager in CSD Support & Development. Pamela Inglis, international people consultant, attended to take notes. The claimant was accompanied by his trade union representative, Mr Walker, and another trade union representative who was the regional officer from Unite, Jamie O’Connell.

83. On 26 April 2019, Mr Deas informed the claimant by letter that his decision was to dismiss the claimant’ appeal.

84. There was no agreement reached with Mr Campbell that the claimant should be entitled to carry forward 10 days holidays from the previous year to take in April.

Submissions

85. After the hearing on evidence, Mr Turnbull lodged lengthy written submissions, extending to over 40 pages and 221 paragraphs. Ms Neil also lodged written submissions extending to around 15 pages. These submissions, so far as necessary and appropriate, are discussed in the deliberations section of this judgment.

Relevant law

86. The law in relation to unfair dismissal is contained in the Employment Rights Act 1996. Section 98(1) of this Act provides that, in determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason for dismissal and, if more than one, the principal one, and that it is a reason falling within Section 98(2) of the 1996 Act or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. Conduct is one of these potentially fair reasons for dismissal.

87. Section 98(4) provides that where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair, having regard to the reason shown by the employer, depends on whether, in the circumstances, including the size and administrative resources of the employer's undertaking, the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissal and this is to be determined in accordance with equity and the substantial merits of the case.

88. In a dismissal for misconduct, in *British Homes Stores Ltd v Burchell* [1980] ICR 303 the EAT held that the employer must show that: he believed the employee was guilty of misconduct; he had in his mind reasonable grounds upon which to sustain that belief; and at the stage at which he formed that belief on those grounds, he had carried out as much investigation into the matter as was reasonable in the circumstances.

89. Subsequent decisions of the EAT, following the amendment to the burden of proof in the Employment Act 1980, make it clear that the burden of proof is on the employer in respect of the first limb only and that the burden is neutral in respect of the remaining two limbs, these going to "reasonableness" under section 98(4) (*Boys and Girls –v- McDonald* [1996] IRLR 129, *Crabtree –v- Sheffield Health and Social Care NHS Trust* EAT 0331/09).

90. The employer does not need to have conclusive direct proof of the employee's misconduct – an honest belief held on reasonable grounds will be enough, even if it is wrong. The *Burchell* test was subsequently approved by the Court of Appeal in *Panama v London Borough of Hackney* 2003 IRLR 278. The principles laid down by the EAT in the *Burchell* case have become the established test for determining the sufficiency of the reason for dismissal.

91. In considering the reasonableness or unreasonableness of the dismissal the Tribunal must consider whether the procedure followed as well as the penalty of dismissal were within the band of reasonable responses (*Iceland Frozen Foods Ltd –v- Jones* [1982] IRLR 439). The Court of Appeal has held that the range of reasonable responses test applies in a conduct case both to the decision to dismiss and to the procedure by which that decision was reached (*Sainsbury v Hitt* 2003 IRLR 23). The relevant question is whether the investigation falls within the range of reasonable responses that a reasonable employer might have adopted.

92. The Tribunal must therefore be careful not to assume that merely because it would have acted in a different way to the employer that the employer therefore has acted unreasonably. One reasonable employer may react in one way whilst another reasonable employer may have a different response. The Tribunal's task is to determine whether the respondent's decision to dismiss, including any procedure adopted leading up to dismissal, falls within that band of reasonable responses. If so, the dismissal is fair. If not, the dismissal is unfair.

Tribunal's deliberations and decision

Observations on the witnesses and the evidence

93. The only witness for the respondent was Mr Beardmore who was the dismissing officer. He gave evidence in a straightforward and clear way and I found his evidence to be credible and reliable in its entirety. He was well-informed with a strong command of all of the details of this case, illustrated for example by the document which he had prepared (for the disciplinary hearing) setting out all of the relevant times and giving the claimant the benefit of the doubt regarding wash up time and checking time. This indicated that he had considered the matter thoroughly and with careful attention to detail.

94. He answered questions candidly, confidently and comprehensively while willing to concede alternative interpretations in respect of documents which may not necessarily favour the respondent's position, and also accepting how matters could be differently interpreted by the claimant. He remained patient and measured throughout, although as the only witness for the respondent he was required to answer questions regarding issues he had not been directly involved in. I got no impression that he was at any time uncomfortable when giving evidence as submitted by Ms Neil. I interpreted any hesitation as him being careful about his evidence, especially when commenting on the actions of others. I got the impression that he was a competent manager who went to some lengths to accommodate and deal with the concerns of staff.

95. In contrast I found the claimant to entirely lack both credibility and reliability. I did not find him to be at all candid in the way that he gave his evidence. He seemed to have difficulty in answering the questions, even indirectly. Either he did not understand the questions, or he was answering what he thought he was supposed to answer to support his case. Certainly, I found many of the answers to questions at best confusing.

96. I agreed with Mr Turnbull that some of the evidence which the claimant gave either to be a gross exaggeration or to be simply incredible, for example if I understood him correctly when questioned about his answers in the disciplinary hearing he claims that he had been forced through intimidation

tactics to admit the misconduct. His explanation was just not plausible; as Mr Turnbull submitted, he admitted to it because the overwhelming evidence showed the claims were false. Further his explanation for his answer to the question whether he had ever used the vehicle for private use was obfuscatory.

97. The claimant seemed incapable of reflecting objectively on the facts in this case, even in hindsight. For example, he was encouraged by his union to focus on the telematics data, but this was a technical argument. This was not least because, as Mr Beardmore said, he relied not only on the information from the telematics data, which did not corroborate the claimant's position but supported the allegations concerns, but also the claimant's late admissions. The claimant's insistence that the use of telematics in the procedure was inadmissible was unsustainable. Yet the claimant was still focussing on detail at this hearing regarding the counting of minutes which he claimed to have worked over hours due, maintaining his position in the face of the evidence and even at this stage asserting that he had not claimed for overtime he had worked.

98. There were a significant number of matters which the claimant raised in his evidence which had not been put to Mr Beardmore. I came to the view that these were not matters which he had brought to the attention of his solicitor and indeed that he was making up his evidence and changing his statement as he went along.

99. For these reasons, wherever there was a conflict, I had no hesitation in preferring the evidence of Mr Beardmore.

100. Although I indicated that I did not consider the claimant's wife's evidence to be relevant, Ms Neil called Mrs Williams to ask just one question and that related to her understanding that the meeting with Mr Beardmore had not taken place at the named hotel in Lanark. This of course derives from the conspiracy theory that there was a deliberate plan to get rid of the claimant because he was deemed to be a troublemaker.

101. I did not place any weight on that evidence. First, it had not been put in terms to Mr Beardmore that the meeting had not taken place. Ms Neil only asked him to confirm it had taken place at the hotel referenced. Secondly, I did not hear from the receptionist who it was claimed had confirmed the meeting did not take place, who may have been mistaken, or who may have been instructed not to release information to random callers regarding meetings, or as Mr Turnbull suggested may have thought she said “Scottish Gas”. Thirdly, as discussed above, I accepted the evidence of Mr Beardmore on this matter, in relation to this as well as all other matters in dispute.

Reason for dismissal

102. The burden of proof is on the respondent to show that the reason for dismissal is a potentially fair reason. The first issue to consider is thus whether the respondent has shown that the claimant has been dismissed and that the reason for the dismissal was misconduct.

103. Ms Neil argued that the reason given for dismissal was not the real reason. In her submission the respondent has failed to establish that the reason for dismissal was misconduct, the burden of proof lying with them. She argued that misconduct was not the real or principal reason for dismissal. She went on to argue that there were a large number of flaws in the disciplinary process which support her submission that the dismissal outcome was predetermined. These are addressed elsewhere in this judgment.

104. However, I first considered whether the reason given for dismissal is a sham or a pretext. Ms Neil submitted that the respondent wanted to dismiss the claimant, and this was because of his tendency to raise grievances and to challenge authority. The real reason she submits was because of the grievances raised, and this is evidenced by a history of troubled relationships with the claimant and those in his line of command, namely Mr Campbell, Mr Baillie and Mr Beardmore, against whom he had raised grievances in the past. This showed he was unafraid to challenge poor treatment of employees and poor management decisions, which he had been successful in overturning in the past.

105. Although the first grievance in June 2016 had been a collective grievance it was raised as a result of a decision of Mr Baillie, which was overturned. The second grievance was raised by the claimant in October 2016. She submitted that this related to Mr Campbell, Mr Baillie and Mr Beardmore. It concerned how he and another colleague, Gareth Thomas, were being treated, and their move to another team. Mr Beardmore had considered the grievance and implied that the claimant was in some way at fault.

106. She argued that a "fishing" expedition was required to find justification for his dismissal. In her submission therefore, the discrepancies in the overtime claim were not the true reason for the investigation into the claimant's conduct, but rather an excuse to instigate the disciplinary process. Ms Neil submitted that if the reason for dismissal is held to be due to the claimant's tendency to raise grievances and challenge authority, as is the claimant's position, this would not be a matter of misconduct and the respondent would not be entitled to dismiss him.

107. Mr Turnbull submitted that the respondent had shown that the reason for the claimant's dismissal was his conduct. He submitted that the reasons for dismissal, which were agreed in the joint statement of facts, clearly concern conduct. He submitted that the claimant's contention during the proceedings that his dismissal was down to the grievances is not supported by the facts; none of the grievances being against Mr Beardmore; this not having been raised during the disciplinary process; and the matters having been previously resolved.

108. Mr Turnbull submitted that the claimant's claim that his relationship with managers and the previous grievances are relevant is a red herring in regard to the misconduct of the claimant. There is not sufficient evidence to conclude that the claimant was targeted or that his managers were motivated by the grievances; there were genuine reasons to be suspicious; and the claimant's evidence indicated that it was not only him who had problems with communication, overtime payments and complaints about management.

109. Clearly, given I had accepted Mr Beardmore's evidence, I accepted Mr Turnbull's submission in this regard. The grievances were raised and dealt

with in 2016/2017. I did not accept that any of the grievances were even indirectly against Mr Beardmore, and I did not accept that because he had been involved in resolving them that might mean that he bore a grudge against the claimant (particularly when the outcome was favourable to the claimant in respect of both). Most importantly, this rationale was not raised at any point during the disciplinary process. The claimant did not at any time during the whole disciplinary process make reference to his belief that his dismissal was a response to him having lodged grievances against his managers. I came to the view that if the claimant believed that a grudge was being held against him for raising these grievances, he would have been very quick to raise that through his union as soon as disciplinary proceedings commenced.

110. The claimant in this case relied on a conspiracy theory, which would involve all managers, Mr Campbell, Mr Baillie, Mr Beardmore, Mr Slavin, Mr Kyle, as well as Mr Beardmore's PA being involved. He claims that events were as a result of his poor relations with Mr Campbell and Mr Baillie, that Mr Beardmore was drawn in and conspired to ensure that the claimant was dismissed. I had no hesitation whatsoever in rejecting that suggestion. That was not least because this whole matter came to light because of the actions of the claimant himself in insisting on payment of an overtime claim which proved to be false, even threatening to lodge a grievance about the delay. I thought that the arguments about the use of telematics was a side show, diverting from the key issues in this case, discussed more fully elsewhere in this judgment.

111. I do not therefore accept that the misconduct allegation was a pretext or sham or excuse to instigate disciplinary proceedings against the claimant. I accordingly find that the claimant was dismissed for misconduct, which is a potentially fair reason for dismissal. This satisfies the first limb of the Burchell test.

Reasonableness of decision to dismiss

112. I then turned to consider whether the respondent acted reasonably in dismissing the claimant for misconduct. The burden of proof is neutral at this stage. I considered whether the respondent's belief in the claimant's

misconduct was based on reasonable grounds and following a reasonable investigation. I therefore considered the second and third limbs of Burchell which interplay in this case.

113. Mr Turnbull submitted that Mr Beardmore's belief was genuine, formed following two investigation meetings and two disciplinary hearings. Mr Turnbull set out in considerable detail in his written submissions the basis of this belief, including: the telematics data the accuracy of which was not disputed; the claimant's failure to explain that they were down to a mistake; the claimant's inconsistent and delayed explanations for his actions in respect of overtime including the fact he was using others' working hours and it was due to him being in a dark place and not thinking straight without supportive evidence; the claimant's inconsistent explanations for the other allegations, including his initial denial but subsequent admission that he had used the vehicle for private use and the fabrication of records to cover up that he had used it over the weekend which indicated he was willing to commit fraud and take steps to try to prevent his employer finding out so capable of fraud with his overtime claims; photographs and google maps showing the location of the vehicle; his belief that by not showing sufficient remorse in relation to his conduct, the claimant had failed to show an understanding of his actions; his reasonable belief that the claimant knew that his actions were wrong and could lead to his dismissal and in particular the claimant's various admissions.

114. Mr Turnbull submitted that the respondent's belief fell within the range of reasonable responses. The claimant had eventually apologised on the advice of his union representative, and it was reasonable for Mr Beardmore to be sceptical about how genuine that apology was. Even the claimant admitted on cross examination that he could see why someone might think he had been fraudulent with his overtime claims in light of his fraud with the records in an attempt to cover up his personal use of the vehicle.

115. Ms Neil submitted in essence that the respondent did not have a genuine belief in the claimant's misconduct because the outcome was predetermined; the claimant was dismissed because his team manager in particular had an

agenda against him, and this was specifically a reprisal to the claimant having raised grievances in 2016 and 2017.

116. Ms Neil went on to argue that there were a large number of flaws in the disciplinary process which support the assertion that the dismissal outcome was predetermined. These are considered in turn.

Commencement of investigation

117. The claimant argued that Mr Beardmore had been involved in the decision to commence the investigation. Ms Neil pointed to evidence that he was aware of the details of the claimant's alleged misconduct prior to the disciplinary hearing. In particular, he asked Mr Baillie in an email dated 12 December 2018 (which was copied to HR) if the claimant had been told that "due to a number of discrepancies (ie not something can be corrected) this matter will now be subjected to a FFI". She submitted that it is this email that is the catalyst for a formal investigation being undertaken into the claimant's conduct. She argued that this was indicative of a desire to subject the claimant to disciplinary proceedings prior to any real evidence against him being held and shows that there was another reason for the claimant's dismissal which was not reported by Mr Beardmore.

118. She submitted that, although the claimant had not seen the data relied upon in order to provide an explanation for his overtime claim at this stage, he was aware that the claim was incorrect and had offered to resubmit. Mr Beardmore did not, as he claimed, discount the duplicate entry, because it continued to be referenced in the fact finding investigation report and in the disciplinary hearing, at which the claimant was required to explain this entry again. Rather this was relied upon to exaggerate the respondent's view that the claimant had been dishonest in his recording of overtime hours. Ms Neil submitted that this shows that the respondent was unwilling from the outset to listen to the claimant's explanations regarding his overtime claim discrepancies.

119. Mr Turnbull submitted that the claimant's argument that he was singled out and that this was a phishing expedition and there was no basis to investigate should be dismissed given the respondent had a legitimate reason to

investigate the claimant in these circumstances where the matter started in the context of deciding whether to approve an overtime claim. An investigation was reasonable given the lack of clarity about whether it had been authorised; queries about claiming overtime for a training day, the two identical claims, the failure of the claimant to give an explanation for the claims, and the fact that the initial telematics data did not support the claim.

120. I did not accept that the evidence referenced supported Ms Neil's argument that Mr Beardmore was a party to the decision to commence the investigation. This had been proposed the day before by Mr Baillie and approved by HR in a response half an hour later (page 191). In any event, it does not in any way indicate that Mr Beardmore was "in on" any conspiracy to raise disciplinary action against the claimant. This is not least because these developments resulted from the claimant's insistence on his overtime claim being paid prior to Christmas; the fact that neither Mr Kyle nor Mr Slaven were able to confirm the overtime had been authorised; and the concerns not just with the duplicate entries and the training days, but the other discrepancies which were not verified by checking the telematics data.

121. Ms Neil also relied on a failure to provide the claimant with detailed information prior to the fact finding investigation. There was a failure to provide the telematics data which was gathered; to advise him of the meeting with Mr Kyle and Mr Slaven; or to provide him with their statements. This and the fact that the first fact finding meeting was held immediately after the claimant's Christmas break, as well as conducting the fact finding meeting like an interrogation, were all designed, she argued, to intimidate the claimant.

122. Mr Turnbull submits that the requirements of the Acas code were followed in regard to the commencement of the fact finding meetings. The Acas code does not require the respondent to provide advance notice of an investigation meeting, the questions to be asked or to provide a pack of the evidence gathered. Further, there is no strict requirement under the Acas code to provide witness statements, and in any event a failure to disclose witness statements to an employee will not be fatal, so long as the employee knows the substance of the case against them (relying on *Hussain v Elonex plc*

[1999] IRLR 420 and *Fuller v Lloyds Bank plc [1991] IRLR 336 (EAT)*). The evidence from Mr Slaven and Mr Kyle overall was actually largely favourable to the claimant and in any event had no relevance to the fairness of the dismissal. Likewise, the evidence provided by Mr Baillie and Mr Campbell ultimately makes no difference to the overall fairness.

123. I agreed with Mr Turnbull that there was no unfairness or unreasonableness in the way that the respondent instigated or commenced the fact finding investigation. In any event, the claimant was assisted by his trade union representative, and there was more than sufficient opportunity for the claimant to find out more about the charges against him if he thought he needed to.

Fact finding meetings

124. The claimant argues that the fact finding meetings were conducted like "an interrogation", which further supports the submission that they were designed to intimidate the claimant.

125. The claimant made much of the alleged failure of the respondent to make accurate notes in the investigation meetings. There were a good number of e-mails lodged relating to this matter.

126. Mr Turnbull argued that it was reasonable for Mr Beardmore to accept the minutes because they had been revised to include what the claimant and his representative had sought to change; he had sought clarity from the claimant and his representative on any further changes that they wished to make; that they responded to that highlighting what they viewed was important; and that they were not saying that the whole of it was inaccurate.

127. I did not accept that the fact finding meetings were conducted "like an interrogation". The claimant was accompanied by experienced trade union representatives. I noted that the first fact finding meeting was adjourned to accommodate the claimant's needs. Further, the claimant refused to sign the minutes, although the only two concerns he raised (as is clear from the e-mails) were accounted for in the final version. Yet he still continued to dispute their accuracy in this hearing without referencing one single specific inaccuracy. I accepted the minutes as accurate and I got no impression from

them or any other evidence that the conduct of the meetings was inappropriate.

Disciplinary hearing

128. The claimant argued at this hearing that Mr Beardmore was not an independent decision-maker. It is now argued that this is because he was aware of the details of the claimant's alleged misconduct prior to the disciplinary hearing, including being copied into e-mails sent by Mr Baillie to obtain the telematics data; and was a party to the decision to investigate (relying on the e-mail of 12 December 2018); had been involved in the previous grievances; and had a close relationship with Mr Baillie.

129. I did not accept the claimant's submission in this regard. The claimant had questioned Mr Beardmore's independence at the time, by e-mailing his PA, to state "Phil is not an independent manager he is s.baillies manager". As Mr Turnbull pointed out in submissions, the matter was not raised again during the disciplinary process. That indicates therefore that the claimant accepted Ms Brook's response having consulted HR and being told that "independent means that the manager who takes any hearing will be independent from the FFI". I did not accept the claimant's interpretation of the evidence that Mr Beardmore was a party to the decision to investigate as discussed above. I got no impression from the evidence considered in the round that Mr Beardmore was anything other than impartial.

130. The claimant also claimed that he did not receive all of the relevant documents in the disciplinary pack, and in particular that he did not receive the summary investigation report.

131. Mr Turnbull submitted that it was fanciful to suggest that the investigation report was fabricated and created for the purposes of these Tribunal proceedings. The report was consistent with the minutes from the investigation meetings so the respondent would have no reason to have created that report in advance and for the purposes of this Tribunal. Even if he did not receive that report, its absence would not render dismissal unfair.

132. I accept Mr Turnbull's submission, that is that this did not impact on fairness, but in any event as discussed above I did not accept the claimant's evidence in this regard. It is simply not credible that the absence of the fact finding report would not have been noticed and followed up by the various experienced trade union representatives who represented him. Even if he did not receive it, it makes no difference to the outcome, and does impact on the reasonableness of the investigation or the fairness of the dismissal.

Failure to investigate

133. Ms Neil argues on behalf of the claimant that the respondent failed to investigate a number of matters which again supports her submission that the outcome was predetermined and that the scope of the investigation was unreasonable.

134. Ms Neil argues that the respondent failed to listen to the claimant's explanation for the discrepancies before during and after the investigation stage, as well as at the disciplinary hearing.

135. She argues that the respondent failed to investigate the claimant's mental health or the reasons given to explain his actions which she submits he openly admitted from the outset; she argues that the respondent failed to advise the claimant that he could bring forward his own evidence during the disciplinary process to support this explanation.

136. In particular, she argues that there was a failure to make any assessment of the claimant's mental state, no significant exploration of the issues in his personal life, and no attempts to make reasonable adjustments for the claimant due to his mental ill-health at any time during the disciplinary process. She argued that Mr Beardmore's rationale that the claimant's overtime claim should be accurate, because he was able to make it, is not logical and is indicative of an unbalanced, punitive approach taken. She argued that it is entirely conceivable that the stress which the claimant was under could lead to a lack of care in record keeping, but Mr Beardmore did not consider this as a possibility at any stage.

137. Mr Turnbull submitted that Mr Beardmore considered but discounted the possibility that the claimant had made mistakes in the overtime claims or his actions were due to his mental health and he had reasonable grounds to believe that they were not the reasons for the claimant's actions.

138. Mr Turnbull argued in particular that there is no evidence to demonstrate that the claimant's actions were due to any stress he felt at the time. He cross referenced to occupational health reports lodged, which were in any event confidential, which do not reveal any mental health issues. Nor was there any evidence to support the suggestion that his failure to come clean initially was due to his mental health or stress, or any reference to this reasoning during the entire disciplinary process. The claimant's explanations were inconsistent with his mental health being a factor. It was only after he became aware of the evidence against him that he raised this as an issue, so it was reasonable that Mr Bearmore should consider this explanation was not credible. In any event, this is not a discrimination claim.

139. I did not accept that the claimant's mental health issues, if he had such issues at the relevant time, in any way excused or explained his actions. As Mr Turnbull pointed out, the claimant did not raise this as a reason until the latter stages of the disciplinary process. I thought Mr Beardmore's rationale was entirely plausible and reasonable, as such actions are not obviously the actions of someone with mental health issues who would be more likely to overlook the need to make overtime claims than to claim overtime which had not in fact been done in error.

140. Similarly, Ms Neil argued that the respondent failed to investigate the reasons given by the claimant for the private use of the vehicle. While the claimant had admitted using the vehicle for personal use, again, the information relating to this usage was gained through improper means. This allegation arose solely from the respondent's use of telematics data. The claimant advised Mr Beardmore of his stressful personal difficulties and while he said he was not comfortable raising these issues with Mr Campbell, Mr Baillie or Mr Beardmore, he gave unchallenged evidence that he had raised the issue with Mr Campbell. No effort was made to investigate the issues disclosed by the

claimant and the claimant was not advised that he could present evidence to support his position at any time during the disciplinary process. Further the telematics policy does allow for some personal use of the respondent's vehicle, and they failed to recognise the inherent flexibility in the policy. A punitive approach was taken to the claimant for his actions. The claimant argues that telematics data was accessed which uncovered his home visits in an effort to seek justification for his dismissal.

141. Mr Turnbull argued that the claimant never told Mr Beardmore that the reason for not contacting Mr Campbell was because of his relationship issues with him. It was reasonable for the respondent to assume that it is not the reason for his behaviour when he does not give that as the reason. It was reasonable and within the band of reasonable responses to not choose to investigate or take into account those relationship issues when making the decision. But in any case, in all the circumstances, no lack of communication or relationships issues sufficiently excuses the behaviour the claimant was dismissed for.

142. I did not accept that the claimant's personal and family concerns in any way excused his failure to bring these matters to the attention of management; even if he perceived his relations with Mr Campbell, Mr Baillie and Mr Beardmore such that he could not approach them. The claimant also suggested that he had in fact raised this with Mr Campbell, but even if he did, there was no agreement reached with Mr Campbell regarding flexibility of hours to accommodate his personal issues. As Mr Beardmore said he could quite easily have raised the matter through his union who were very supportive of him, and evidently very quick to raise matters with management (such as the delay in paying overtime) when it suited them. He said that had the claimant raised the issue any request for an alteration of hours would be looked on sympathetically. But as Mr Turnbull pointed out, the claimant did not raise this as a reason until the latter stages of the disciplinary process.

143. Ms Neil pointed out that the claimant believed there to be other staff members using the respondent's vehicles for personal use, yet only he had been investigated for personal use of his work van. Had they investigated others, specifically John Kennedy, Garry Black (who admitted it) and "Dickie", they

would have found they too used the vehicles for personal use. He stated that he believed the claimant to be dishonest, but the claimant had openly admitted attending his daughter's school and his father's home during working hours. The claimant's explanations were consistent and provided from an early stage so that Mr Beardmore had no reason to conclude that the claimant had been dishonest.

144. I did not accept that submission. I agreed with Mr Turnbull who submitted that any findings in relation to others subsequently investigated did not excuse the claimant's actions. In any event, the claimant did not say that it was because others did the same or give evidence of others' similar misconduct, so that he did not raise it as an issue at the time. Thus Mr Beardmore was not aware of it, so it could not have been reasonable to have expected him to investigate this further at the time.

145. Ms Neil argued that the respondent failed to undertake any analysis into the claimant's start times. While the early finishes are accepted by the claimant (explained by his personal difficulties), no analysis was conducted of the claimant's start times, which, in a document produced by the claimant, shows his working day began some time before his contracted start time each morning. By the claimant's calculation, rather than having defrauded his employer, he had, in fact, not claimed all the hours of overtime he was due. The claimant's position was that Mr Campbell had permitted these early finishes to deal with his daughter's issues. His treatment was in contrast with Mr Black's who was also investigated for early finishes, but who was accepted to be operating under a "flexible working arrangement".

146. Mr Turnbull pointed out that the investigation summary report found there to be no evidence of the claimant starting early and this is consistent with the telematics data and consistent with the disciplinary hearing minutes. The claimant admitted that the evidence which he provided to the Tribunal did not correlate with start and finish times. Even if he did start early or leave early, he was not authorised to do so.

147. The claimant's claim to have in fact done overtime which he had not claimed for was not something which was brought up or explored during the

disciplinary hearing. I gathered that the claimant's table of start and finish times, which I understood Mr Beardmore was not aware, had been brought up at the appeal hearing, but I saw no reference to it. In any event, when this was explored in this hearing it transpired that the "start" times selected were not when the claimant left the house or when he arrived at the depot, but the time when he reached the motorway. I thought this was another attempt by the claimant to obfuscate to support his version of events. I was of the view that Mr Beardmore had very carefully and thoroughly explored the claimant's working hours, both start and finish, and given him the benefit of the doubt in respect of elements such as checking time and wash-up time. I did not accept the claimant's submission.

Use of telematics data

148. A key concern of the claimant throughout the disciplinary process, and in this Tribunal, was the use of telematics data to support the allegations and justify the disciplinary process, which he claimed is in breach of the telematics policy (and in breach of the data protection legislation).

149. Ms Neil submitted that the respondent was in breach of the telematics policy in using the telematics data in the manner in which they did. She argued that none of the successful allegations against the claimant could have been identified without the direct use of telematics data. The information gleaned from a search of the telematics data underpinned all three of the upheld allegations against the claimant.

150. Ms Neil submitted that the hours of overtime had been queried using improper means. In particular:

    a. Mr Baillie sought telematics data which was used to investigate the claimant. He requested an initial report from HR but there was no evidence to confirm that this was limited to the overtime claims in question and that it was an attempt to corroborate the claimant's overtime claims, as suggested by Mr Beardmore in evidence.
    b. Mr Baillie sought a second report, justified by reference to overtime claims which were not in question.

c. It was only at a meeting with Mr Slaven and Mr Kyle some five days later was it established that not all of the claimant's overtime claims had been authorised.
d. The telematics data was used to "fish" for further information which could be used to justify the claimant's dismissal.
e. The respondent's telematics policy sets out the six key benefits for use of telematics data, none of which relate to discipline of employees.
f. Access to telematics data is limited to those authorised for those purposes.

151. Ms Neil argues that the true reason for the investigation into the claimant's conduct was not as the respondents assert it to be. The minor nature of the dispute as to overtime supports the claimant's position that discrepancies in his overtime was not the true reason for the investigation into the claimant's conduct.

152. Ms Neil also made submissions that the use of the claimant's telematics data was in contravention of the Data Protection Act 1998, and argued that Mr Baillie's underhand method of obtaining a detailed report on the claimant's whereabouts could not constitute fair use by any means and was entirely devoid of transparency. There was no evidence that the claimant's consent had been obtained to hold personal data.

153. Mr Turnbull submitted that there was no breach of the telematics policy or agreement with the union as alleged or at all. He explained in considerable detail the basis for his assertion that there had not been any direct use of telematics data for disciplinary purposes. The policy permitted managers approving overtime to refer to telematics data to determine whether an overtime claim could be substantiated. Once the evidence gathered did not substantiate the overtime claim, suggesting wrongdoing and warranting an investigation, the further use was reasonable to determine the suspicions of misconduct from the overtime, personal use of the vehicle, and leaving early. Its use was consistent with the six key benefits of telematics system.

154. Further, prior to commencing any disciplinary action, the respondent considered a variety of sources of evidence including: the overtime claim itself; what the claimant said, which failed to alleviate the concerns; and that overtime was claimed for that had not been authorised. This was all consistent with the respondent's custom and practice and with the respondent carrying out a fair and balanced investigation. The telematics data was the best evidence and could have uncovered evidence to support the claimant's position.

155. Further, while the claimant disputed the telematics use, he did not dispute what the telematics evidence showed and his evidence was actually consistent with what the telematics data showed, for example, admitting that he was at the school or at his father's house. It would not have been reasonable to have disregarded the telematics data or what the claimant said.

156. Ms Neil argued that the telematics policy had been breached in another respect. In particular, the respondent was in breach of the policy in failing to offer the claimant the benefit of informal conversations in regard to information identified through the use of telematics; or to offer any coaching, counselling or training to support behavioural or performance change as required by the policy. The policy does not say "where concerns arise" information can be used to discipline. In this case, the full telematics report was printed on 12 December 2018, at which time the claimant had had one informal conversation with Mr Campbell regarding his overtime. Had the telematics policy been followed, this incident would have been treated as a matter to be subject to "behavioural or performance" coaching.

157. Mr Turnbull's position on this argument was as Mr Deas explained at the appeal, there are occasions where an informal conversation is not appropriate due to the serious nature of the matter and this case was one of them. That the telematics data was not randomly selected as part of a spot check, but as a result of concerns about the overtime claims; and the disciplinary action was not just based on the telematics policy but other policies including the use of commercial vehicles policy and fraud policies. In any event, the claimant had been spoken to informally before a formal investigation commenced by his

team leader on 11 December 2018, with a follow up on Whatsapp, a conversation with Mr Baillie on 12 December, and correspondence about the delay in payment with his representative. Thus the informal approach proved ineffective and the matter was escalated in accordance with the disciplinary policy. Further, there was no evidence that further informal approaches would have resolved matters.

158. I fully accepted the respondent's position regarding the indirect use of the telematics data. In this case the claimant claimed overtime. He pressed for payment. It was in claiming overtime and in pressing for payment that this matter came to the attention of management. Management were initially simply making appropriate checks to ensure that the overtime claimed had been authorised and properly claimed.

159. I found it significant that, when following up the claim, and the pressure put on the respondent to pay before Christmas, Mr Baillie notes, as at 12 December 2018, that "we requested via CVT the telematics data to assist us in verifying the claim". This confirms that at the time it was initially used to assist in supporting the claim, when it was not clear whether it had been authorised or not.

160. Further, it is clear to that there were informal conversations about the claim (which was Mr Beardmore's position despite what Mr Deas said) and that the matter had not resolved as a result of these informal conversations. The extent of the discrepancies was a clear indication of how serious the matter was and therefore in any event that it was appropriate to move to the disciplinary stage.

161. Further and indeed crucially, as Mr Turnbull points out, the telematics data was not the only evidence relied on. Crucially, the claimant admitted during the disciplinary hearing the various breaches. If the claimant intended to suggest in evidence that he felt forced effectively to confess to the misconduct, I had no hesitation whatsoever in dismissing such a suggestion. As discussed above, I found Mr Beardmore to be a measured, careful and considerate manager when giving evidence, and I have no reason to suspect that he did not carry out the disciplinary hearing in the same way. In any event

there is no indication from the minutes of any kind of intimidation. I agreed with Mr Turnbull that the claimant eventually freely admitted the misconduct when he saw that the evidence in support of the allegations was overwhelming.

Reasonable belief

162. Ms Neil argued, relying on these various concerns, that it was clear that the investigation carried out was insufficient and that there was a wealth of failures in the process all of which were known to Mr Beardmore. He could not, as a consequence, have a reasonable belief that the claimant had been guilty of misconduct and the *Burchell* test had not been satisfied.

163. Mr Turnbull argued that looking at the evidence overall, the claimant did not contest any of its contents other than what he and his representatives considered to be a procedural error in relying on the telematics data. Instead, he admitted to submitting false claims, admitted leaving early without authorisation and using the vehicle for personal use over a year and a half. In that context, the respondent's approach was not outwith the range of reasonable responses. There was nothing more to be reasonably done. There was no further avenues to reasonably investigate. The claimant never suggested one during the entire disciplinary process.

164. As is evident from the above, I do not accept Ms Neil's submission and I concluded that the decision to dismiss was based on a genuine belief about the claimant's misconduct, following a reasonable investigation. This was not least because the claimant's admissions.

165. Before turning to consider whether the sanction of dismissal was reasonable in the circumstances, I require to deal with an alternative argument put forward by Ms Neil. Ms Neil argued that, in the event that the Tribunal does not accept that Mr Beardmore had knowledge of the flawed informal and formal investigation, Ms Neil invited the Tribunal to consider that the real reason for the dismissal was 'hidden' from him by Mr Baillie (relying on *Royal Mail Ltd v Jhuti* [2019] UKSC 55). She relied on the fact that Mr Baillie was the subject of both of the claimant's grievances, undertook the investigation

into the claimant's conduct and took the reins in ensuring that it began. He was required to authorise the overtime claim of the claimant. He had been criticised for his treatment of the claimant in the past. Although it is not known who requested the printing of the telematics report, Mr Baillie's authorisation was required for the claimant's overtime payment to be given. Mr Baillie met Mr Slaven and Mr Kyle without the claimant's knowledge to investigate his overtime claims without having sought a detailed account of the claimant's rationale first. Mr Baillie was then instructed to conduct the formal investigation which as Ms Neil has argued was a flawed process. She submitted that the flaws in the investigation undertaken by Mr Baillie and the underhand means by which he began his investigation, show his grudge against the claimant. If the tribunal does not accept Mr Beardmore's involvement in the decision, it should be accepted that Mr Baillie's actions showed readiness to manipulate concerns regarding the overtime claim for his own ends which was to ensure the claimant's dismissal.

166. Although Mr Turnbull did not address this point directly in submissions (because he was not aware of it), Mr Turnbull did make submissions that at no point before or during the investigation did the claimant, or his representative, accuse Mr Baillie of not being impartial or should not be the one that was undertaking the investigation. There was no suggestion by the claimant that evidence was fabricated or made up. The investigative steps were entirely neutral in that they could establish that there is no cause for concern whatsoever. The claimant was allowed to explain himself, put forward his evidence and his position. Each explanation put forward by the claimant in the investigation and at the disciplinary hearing was considered.

167. I did not consider it necessary to invite Mr Turnbull to make further direct submissions on this argument. That is because, self-evidently, I do not consider that the facts as found in this case support such a legal argument. Specifically, I found that Mr Baillie had reasonable grounds for his actions, for not authorising the overtime and for instigating the investigation. I have found no substance to the claimant's assertions that Mr Baillie had a grudge against him because of previous grievances lodged. I therefore did not accept the claimant's submissions that Mr Baillie's actions showed readiness to

manipulate concerns regarding one overtime claim to ensure the claimant's dismissal.

Reasonableness of the sanction of dismissal

168. Notwithstanding that I have found that the respondent's conclusion that the claimant was guilty of misconduct was based on a reasonable belief following a reasonable investigation, still I require to consider whether the sanction of dismissal was reasonable in the particular circumstances, and whether dismissal fell within the range of reasonable responses.

169. Ms Neil argued that the sanction of dismissal was not reasonable in the circumstances. She argued that the respondent failed to take account of the fact that the claimant was in difficult personal circumstances and the claimant was treated differently than other colleagues. Mr Beardmore failed to consider an alternative to dismissal, failed to consider that the claimant was fulfilling the role of runner at the time, does not consider the relationships in the claimant's team, nor the history of conflict between them which led to scrutiny of the claimant which was not applied to any other team member, and most significantly failed to consider the manner in which the allegations against the claimant were identified. Mr Campbell's part in the claimant's conduct was also not considered, in spite of the respondent's fraud policy indicating that facilitating fraud by way of negligence would be disciplined.

170. Mr Turnbull argued with regard to sanction that the decision to dismiss falls within the range of reasonable responses. Mr Beardmore considered alternatives to dismissal but given the very serious nature of the conduct and the inconsistency of the claimant's explanations, and the lack of remorse, he concluded that dismissal was the only option.

171. He submitted that that Mr Beardmore did take the claimant's mitigating circumstances into account, particularly his family circumstances, but still decided dismissal was appropriate. Mr Beardmore considered his disciplinary record and length of service. He doubted whether the claimant fully understood his actions and learned from them, given the claimant's failure to

own up and be honest about his actions. He submitted that approach is reasonable and certainly not outwith the range of responses for an employer.

172. On the matter of inconsistent treatment, Ms Neil argued that even if he was guilty of misconduct, dismissal was not fair or reasonable because the claimant was treated more harshly than others in the same or similar situation.

173. In particular, Mr Beardmore conducted the disciplinary hearing in respect of the allegations against Mr Black and came to an entirely different conclusion, in spite of the similarity in conduct and in length of service. In contrast with Mr Black, the claimant had not been given the benefit of a flexible working arrangement

174. Further, the claimant advised that he was relying upon the hours recorded by others in order to make his claims. Mr Beardmore concluded that the claimant's actions, in relying on the time records of colleagues, to be an attempt to defraud his employer, and he should take responsibility for his own actions.

175. In contrast, in the subsequent investigation into his own incorrect overtime claims, Mr Black provided justification that he utilised the time record of other staff to make his own claims. Mr Beardmore (who also dealt with his disciplinary) found that there were "multiple discrepancies" in his claim and was not satisfied with Mr Black's record keeping; he accepted that he used his own vehicle at times (thus avoiding confirmation of his movements by use of telematics); and claimed overtime for 6 hour shifts, despite his van moving for only 3 hours. This was a greater discrepancy than any of the incorrect claims made by the claimant. In spite of the above, Mr Beardmore did not come to the conclusion that Mr Black's action was fraudulent.

176. Relying on various cases including *Hadjioannou v Coral Casinos Ltd* (1981) IRLR 352), *Paul v East Surrey District Health Authority* (1995) IRLR 309 *Procter v British Gypsum Ltd* (1992) IRLR 10, and *Securicor Ltd v Smith* (1989) IRLR 356, Mr Turnbull argued, inter alia, that it cannot be said that the incident involving the other employee has "truly parallel circumstances". Mr Black's circumstances are quite different in a number of respects, including

that the decision maker did not believe that Mr Black had committed fraud in respect of his overtime given that his manager put through the time (which was a mitigating factor), Mr Black never admitted to not having actually worked the overtime hours that he claimed for and in Mr Beardmore's view, there was not sufficient evidence for him to conclude otherwise. In contrast, Mr Beardmore did think the claimant had been fraudulent, had submitted false claims himself, had used his vehicle for personal use and left early on multiple occasions over a period of a year and a half. Further, Mr Beardmore believed that Mr Black had been more open and honest during the disciplinary process than the Claimant and took that into account in terms of mitigation.

177. I heard evidence from Mr Beardmore regarding the differences in the circumstances and I accepted that evidence as narrated above by Mr Turnbull. I accepted therefore that the claimant and Mr Black could not be said to be in "truly parallel circumstances", so the contrasting treatment of Mr Black could not be said to render dismissal of the claimant unfair.

178. Considering the sanction of dismissal in the round, I took the view that the claimant took advantage of the role which he undertook, and of the respondent's flexibility more generally. Mr Beardmore stressed in evidence that the respondent could not "man mark", which I understood to mean that they could not assign supervisors to oversee the work or the working hours which were being undertaken, so that they had to be able to trust operatives not to take advantage of that fact in the way that the claimant did. I entirely agreed with Mr Beardmore that the claimant's length of service went against him in that regard; he ought to have known full well that he should not abuse the trust placed in him to work the hours claimed in accordance with the company policies which had been brought to his attention. In this case, I have found that there was a very blatant abuse of trust on the part of the claimant, such that I had no hesitation in concluding that the sanction of dismissal was reasonable in all the circumstances.

179. Although I have found that dismissal was reasonable in the circumstances I deal here with Ms Neil's argument that there was an alternative way of looking at the matter if the Tribunal were to conclude that the claimant was guilty of

misconduct. She argued that notwithstanding that the Tribunal finds the claimant guilty of misconduct, the sanction of dismissal is unfair but that it was appropriate to make a minimal reduction in compensation. Relying on *East Lancashire Coachbuilders Ltd v Hilton* UKEAT/0054/06, Ms Neil argued that the principal reason for dismissal was his willingness to challenge authority and his history of doing so successfully, in reference to the grievances he raised. She argued however that the respondent took the opportunity of the claimant's misconduct as a pretext to dismiss him.

180. Ms Neil again argued in this context that his circumstances should be contrasted with those of Mr Black who had a good relationship with Mr Campbell and Mr Baillie and did not rock the boat and was not dismissed for similar misconduct. It is suggested that Mr Baillie took no involvement in Mr Black's disciplinary.

181. This point was addressed by Mr Turnbull. He argued that even if the Tribunal considered that there was something behind the claimant being targeted, the claimant still committed these very serious allegations including fraud. This is not sufficient to render the dismissal unfair. Mr Beardmore was clear that he was not aware of the claimant being target – all he did was rely on the evidence that was gathered and considered what the claimant had to say. Any relationship issues cannot have been the reason he was prevented from seeking authorisation or letting the manager know because the claimant all this time was actively trying to cover up his movements through amending the records so that he was not found out. That is not behaviour of someone who is trying to communicate with his team leader, but entirely the opposite.

182. I did not accept that this was a contributory fault type of case. Indeed the respondent having ultimately found that the claimant had acted fraudulently, there is, in my view, little question that the sanction of dismissal was disproportionate, given what was alleged the claimant had done in the context in which it had taken place. An employer's trust in their employees is a necessary ingredient of all employment relationships. Mr Beardmore saw no alternative to dismissal because the claimant had abused their trust. In all

these circumstances, I find that the sanction of dismissal falls within the range of reasonable response.

Appeal

183. I have found that Mr Beardmore's decision to dismiss was reasonable in the circumstances and that dismissal was substantively and procedurally fair. While defects can be cured on appeal, I did not accept Ms Neil's submission that there were such procedural defects in the disciplinary process up to the point of dismissal, and therefore her submissions relating to the conduct of the appeal were not relevant to the outcome in this case.

184. That said, although I did not hear evidence from the appeal manager (and would not necessarily expect to), I was not impressed with the way that the respondent dealt with the appeal. I noted from the appeal minutes that Mr Deas appeared to shut down any discussion about the telematics data, which was the very ground of appeal relied on. Although I agreed that the grounds of appeal were not well-founded, that does not mean that there should not have been a full discussion about it at the appeal hearing. In contrast with Mr Beardmore, Mr Deas did not appear to have a good understanding or grasp of the detail of this case. While I had reservations about the way that the appeal was conducted, these cannot be said, in this case certainly, to make a fair dismissal unfair.

Bonus

185. Ms Neil argued that the respondent was in breach of contract in failing to pay bonus to the claimant. The claimant received no payment of his annual bonus in 2019, in spite of him having worked for the respondent during the entirety of this financial year. She noted that the policy states at that "payment will not be made to any employee dismissed by Scottish Water before the date of payment". As there was no evidence confirming the date of payment, Ms Neil submitted that it should be awarded to the claimant. If payment was made after dismissal, given dismissal was unfair, he should be awarded payment of the bonus.

186. Mr Turnbull argued that, whether or not dismissal was unfair, the claimant was dismissed on 2 April 2019 before the date of payment which was June 2019. In any case, the claimant committed gross misconduct which was a fundamental breach of his contract which meant that he was not entitled to be paid the bonus.

187. In this case the date of dismissal was 2 April 2019. While there was no direct evidence from the respondent about the date of payment (I have noted Mr Beardmore said this was a matter which was dealt with by HR), I accept that no bonus would have been paid by 2 April 2019 given the financial year ended on 31 March 2019.

188. I agree in any event that the claimant had by then breached his contract of employment, such that he could not rely on its terms, and is therefore not entitled to payment of bonus.

Annual leave

189. With regard to the claim for holiday pay, the claimant sought eleven days annual leave. He argues this carry over was authorised by Mr Campbell, which he was entitled to do, in light of the fact that his daughter was scheduled for a medical procedure during his annual leave in 2018. While Mr Campbell now denies this agreement, the claimant had been dismissed by the time of his statement and there was little sympathy had for him within the department.

190. Mr Turnbull argued that there were no exceptional circumstances in the claimant's case and no arrangements made by the claimant and his team leader to carry over additional holiday beyond the five day maximum.

191. I heard evidence from Mr Beardmore regarding his usual practice relating to carry over beyond five days, which is permitted in exceptional circumstances. No evidence was produced by the claimant to support his assertion that Mr Campbell had agreed to allow him to carry forward eleven days. The evidence lodged by the claimant indicates that Mr Campbell was confirming that the claimant was only permitted to carry over of five days.

192. I have concluded that the rationale put forward by the claimant could not be categorised as exceptional, and that no such agreement was reached. In

these circumstances I find that the claim for unpaid annual leave is not well-founded, and is therefore also dismissed.

Conclusion

193. The Tribunal has concluded that dismissal for misconduct was within the range of reasonable responses open to the respondent in these circumstances, and therefore that the dismissal was not unfair. This claim does not succeed and is therefore dismissed. The claims for arrears of pay and holiday pay are not well-founded and are also dismissed.

Employment Judge: Muriel Robison

Date of Judgment: 4th December 2020

Entered in register: 9th December 2020

Copied to parties