EMPLOYMENT TRIBUNALS

Claimant: Mr Ian Partington

Respondent: Royal Mail Group Limited

Heard at: Cardiff by CVP **On:** 10th May 2021

Before: Employment Judge G Duncan

Representation
Claimant: In person
Respondent: Mr Hartley, Solicitor

RESERVED JUDGMENT

It is the decision of Employment Judge G Duncan that the Claimant's claim for unfair dismissal is dismissed.

REASONS

Introduction

1. The Claimant is Mr Ian Partington. The Respondent is Royal Mail Group Limited. The Claimant worked as an Operational Postal Grade at the Newtown Delivery Office. The Claimant commenced his employment in 2014 and worked until his dismissal on 13 July 2019.

2. The Claimant has represented himself throughout the course of the proceedings. The Respondent was represented by Mr Hartley, Solicitor.

3. The Claimant, by way of ET1, received by the Tribunal on 4th September 2019, states that he was unfairly dismissed as a result of the events that followed an empty can of lager being found in the van in which he drove. He states that the reason for his dismissal was that he had lodged a grievance against his manager in March 2019 in respect of another issue. The Claimant states within the ET1 that he would like his old job back, another job with the same employer and compensation for loss of earnings.

4. The Respondent, by way of ET3 and accompanying Grounds of Resistance, denies that the Claimant was unfairly dismissed. The Respondent states that they undertook an appropriate investigation, embarked upon a fair procedure and fairly dismissed the Claimant in accordance with the various internal policies upon which they rely. In summary, the Respondent asserts that the Claimant accepted that he had consumed alcohol prior to driving a Royal Mail vehicle, used the Royal Mail vehicle for personal shopping whilst on duty and that on multiple occasions he had been to the pub to have a drink before driving home using a Royal Mail vehicle.

5. In consideration of the claims, I have received a bundle running to 284 pages. I have received witness statements and heard oral evidence from the following:

   a) Ewen Davies, Senior Operations Manager;
   b) Simon Walker, Independent Casework Manager; and,
   c) The Claimant.

6. At the outset of the hearing, I explained to the Claimant the process that would be followed in terms of the hearing of evidence. The Claimant confirmed that he had prepared a list of questions to ask the witnesses and that he was ready to proceed.

Findings of Fact

7. Whilst the fairness of the decision making of the Respondent is in dispute, there are a considerable number of agreed facts between the parties.

8. It is agreed that on 24 April 2019, Mark Farrington, Delivery Office Manager, was made aware that an empty can of lager was found in a Royal Mail van. As a result, Mark Farrington convened a number of meetings to investigate the matter. He interviewed Amy Prout, Graham Francis and Carl Danson on 24 April 2019 [198 to 200]. On 25 April 2019, he interviewed the Claimant [201]. The Claimant accepted that he had left the empty can in the van on 16 April 2019, that he buys his beer on the way home from work and that he had a drink at the end of his shift before driving home. The Claimant was clear that he would never drink and drive. He apologised for his actions and Mark Farrington thanked him for his honesty. The Claimant was suspended on a precautionary basis so to allow further investigation.

9. On 30 April 2019, Mark Farrington convened a fact finding interview with the Claimant. In the letter convening the same, it was made clear to the Claimant that he could request the attendance of a trade union representative or work colleague. The reply slip arranging the meeting is dated 27 April 2019 and indicates that he would have had at least three days' notice of the same. The meeting was moved from 29 April 2019 to 30 April 2019 at his request. At the meeting, he confirmed that he was aware of the drug and alcohol policies. The Claimant provided further information regarding how the beer can came to be in his van, namely, that he consumed a drink at home and as he left the house, in a rush, he entered the van realising that he still had the can in his hand. He states that there was not much left in the can so he poured it out on the road and decided to

keep the can in the van so to place it in the bin when he got to the office. He forgot to do so. He explained that he would often stop at Iceland on the way home from work in his Royal Mail vehicle. He stated that he would often go for a drink at the pub after work and that he again would use his Royal Mail vehicle to travel home. He denied that he had ever staggered from the van to his house. The Claimant reiterates that he has never had a drink of alcohol on the Respondent's premises or in the Respondent's vehicles. He again expressed remorse and regret for his actions [207 to 208].

10. As a result of the investigation, Mark Farrington passed the case to Ewen Davies, Senior Operations Manager, on the basis that the potential misconduct may have required a penalty that was outside his level of authority.

11. Ewen Davies reviewed the documentation available and considered that there was a case to answer. The Claimant was written to and it was confirmed that he was being charged with:

    a) Gross Misconduct in that on 16 April 2019 the Claimant consumed alcohol prior to driving a Royal Mail vehicle whilst on duty;

    b) Gross Misconduct in that the Claimant used a Royal Mail vehicle to do personal shopping whilst on duty;

    c) Gross Misconduct in that the Claimant admitted that he would on multiple occasions visit the pub to have an alcoholic drink before driving home using a Royal Mail vehicle.

12. The Claimant was invited to attend a Conduct Interview and informed of his right to be accompanied. The interview took place on 27 June 2019. In attendance was Ewen Davies, Mark Farrington as note taker, the Claimant and Pete Kelly, Mr Kelly being a Communication Workers Union Representative. The purpose of the interview was explained to the Claimant at the start and it was confirmed that the Claimant had received all relevant paperwork. The Claimant again accepted driving the van having consumed alcohol at his property, stated that he would visit shops using his van and that he would visit the pub after work for a pint of lager on approximately two occasions per week. He stated that he did not know that his actions were wrong. There is some discussion between the union rep and Ewen Davies regarding the definition of "under the influence" and whether the Respondent had "any proof". I understand the point that Mr Kelly was attempting to make, namely, whether he was over the legal drink drive limit – it being clear that there was no evidence to suggest this. However, Ewen Davies repeats the point that the Claimant had accepted that on multiple occasions he had driven the vehicle having consumed alcohol. The Claimant admitted that he had a drink problem and that he needed help. It was advanced on his behalf that the Claimant had not sought to deceive and that he had been entirely honest. The Claimant outlines some of the personal difficulties that he had encountered over the preceding years. Mr Kelly, on behalf of the Claimant, appears to advance a number of criticisms of the Respondent for failing to identify that the Claimant had a problem despite a report that he was alleged to have smelt of alcohol two years prior [229 to 234].

13. As part of the process, Ewen Davies interviewed Mark Farrington on 1 July 2019 regarding the allegation that the Claimant smelt of alcohol approximately two years prior. Mark Farrington stated that a member of staff reported that the Claimant was "reeking of ale" and so Mr Farrington spoke directly to the Claimant. He recalled that there was a stale smell coming from the van/Ian but that this was not alcohol and he put it down to hygiene. He was clear that the Claimant did not smell of alcohol and that since that time the Claimant always presented as fit to work. It was emphasised that the Claimant always had a coffee outside with other staff prior to going out on delivery and that there was no concern regarding his presentation [236].

14. By way of letter dated 13 July 2019, the Claimant was informed of the outcome of the meeting. It was confirmed that he was being dismissed for gross misconduct on each of the charges. The Respondent's rationale in respect of each of the three charges is detailed in the letter at pages 241 to 245. The Respondent places weight upon the Claimant's attendance at the Work Time Learning and Listening session on 29 Jan 2019 at which the Claimant confirmed that he received and understood the alcohol and drug policy. Reliance is placed on drivers having a personal legal responsibility not to drive whilst under the influence of alcohol and that in the Code of Business Standard, possessing, selling and using alcohol at work are not allowed. The Respondent details that the personal use of the vehicle to undertake shopping is in contravention of the Security Rules document signed by the Claimant on 22 January 2019 within which it is stated that the Claimant must keep to scheduled routes and only stop at designated areas. It is asserted that the Claimant ignored the policy. In respect of the third notification regarding visits to the pub, again, the Respondent relies upon the same sections of the Drugs and Alcohol Guide and Code of Business Standards. The Respondent states that the Claimant demonstrated a lack of responsibility and disregard for the policies. Further, given that the Claimant declared a drink problem, the Respondent states that the Claimant has failed to declare a health issue, namely, on 19 April 2018 and 20 October 2018, the Claimant left any such dependency out of his licence inspection records. The letter outlines that the mitigation on the Claimant's behalf was considered. The conclusion reached was that due to the seriousness of the offences, dismissal was appropriate. It was stated that lesser penalties were considered but given the serious nature of drinking and driving and use of Royal Mail vehicle for personal use there was no lesser penalty that was suitable.

15. The Claimant opted to appeal the decision. He was invited to an appeal hearing on 17 October 2019 convened by Simon Walker, Independent Case Worker. A clear explanation of the process was outlined at the start of the hearing. During the meeting, the Claimant raised that he felt that the dismissal may have been linked with a grievance that he had lodged regarding a difference of one hour per week overtime. He again accepted that there had been occasions that he would stop at the shop for personal food items and that he would use the vehicle to drive home following a visit to the pub. He stated that, in his view, the Retention of Vehicles policy was clear that he was off duty when driving too and from work. He challenged whether his conduct amounted to Gross Misconduct. The Claimant raised unfair treatment regarding alcohol and alleged that the Christmas Party

allowed for the consumption of alcohol on the premises. The Claimant alleged that the training documentation was incorrect and that Mr Farrington would leave documents out for all employees to sign. The Claimant reiterates that he had made mistakes but did not believe that he should be dismissed.

16. As a result of a number of allegations made by the Claimant, Mr Walker made further enquiries with Mark Farrington via email. The responses can be found at page 262 of the bundle. In respect of the grievance issue, Mr Farrington states it was resolved at local level. He states that with regards to training documentation he would try and organise all staff to receive the delivery of the material on the same day. It would appear that the record of the discussion was sent to the Claimant on 31 October 2019. The Claimant was given the opportunity to respond and did so by way of letter dated 2 November 2019 and accompanying photographs.

17. Mr Walker dismissed the Claimant's appeal by letter dated 8 November 2019 with decision document at page 274 onwards. Mr Walker responds to a number of the Claimant's concerns. He found no evidence to suggest that the investigations that flowed from the can being found were as a result of the previously raised grievance. It was made clear that no weight was attached to the uncorroborated allegation that the Claimant was seen staggering from his van. Mr Walker was concerned that the Claimant had changed his account relating to the frequency of his visits to the pub. He rejected the contended appeal point that the Claimant was not on duty at the time of stopping for personal items. The Claimant's appeal ground relating to the empty can of alcohol was rejected and the allegations regarding the Christmas Party were rejected on the basis of authorised social activity. Mr Walker was satisfied that the Claimant understood the need to fully familiarise himself with the training materials at the time they were signed. Mr Walker is abundantly clear that in his view the Claimant failed to adhere to the relevant policies relating to alcohol use and vehicle retention. Given the seriousness of the Claimant's actions, Mr Walker considered that dismissal was appropriate.

18. The facts in dispute are, in reality, limited. The Claimant, throughout his oral evidence, and through questions to the Respondent's witnesses, repeatedly alleged that the training documentation contained in the bundle at pages 169 and 173 were falsified. It was asserted that the date had been deliberately changed in an attempt to mislead the Tribunal. The Claimant stated that he had not attended the training dates as the documents suggest. He gave oral evidence to state that he, along with many other employees, would simply sign the documents without having viewed the training material. He criticised the amendments to the date at the top of the pages and alleged that this demonstrated some form of malice on the part of the Respondent. The Claimant does though accept that he signed the document to confirm that he received the training covering the relevant subjects. In my view, having heard the evidence, whether this document accurately reflects the training undertaken, or is simply an attempt to give the impression of compliance, is irrelevant. I reach this conclusion as the Claimant repeatedly states that the training that he received in respect of the relevant policies was more extensive due to his role as a union representative. He was keen to impress upon me that his training was a full

day in length rather than the short training sessions provided for the majority of employees. He stated that he understood the relevant policies both in his oral evidence and during the disciplinary process. I therefore do not make any specific finding that he attended training or not, but I do find, based upon the Claimant's oral evidence and responses throughout the disciplinary process, that he was aware of the relevant policies and the contents of the same.

19. The Claimant alleges that the reason for the commencement of the investigation, and his subsequent dismissal, is that in the month prior to the discovery of the empty can of lager, the Claimant lodged a grievance regarding a failure on the part of the Respondent to recognise an hour of overtime per week. The grievance letter formed part of the appeal process documentation and can be found at page 265. I have considered the oral evidence of the three witnesses, and the documentary material, and I conclude that there is no evidence to support the Claimant's assertion that the investigation and dismissal were triggered by the grievance. Firstly, the grievance was lodged over one month before the can was discovered. Secondly, the investigation was commenced at a time at which the cause of the empty can being present in the van was unknown. Mark Farrington could not have known that the Claimant was the responsible individual when he interviewed the three other employees on 24 April 2019. Thirdly, Mark Farrington only had conduct over the initial investigation before relinquishing control of the process to Ewen Davies. The investigation concluded with the agreed position that the Claimant was responsible for the empty can and also that the Claimant had reported other behaviour that may justify a sanction outside his authority. There is no evidence to support the theory that Mark Farrington colluded with Ewen Davies and Simon Walker – both individuals operated out of different sites and were independent for the purposes of the process to follow. Fourthly, the chronology of events supports the Respondent's case that it was the discovery of the can that commenced the investigation. Finally, the grievance is agreed to have been resolved at a local level between Mark Farrington and the Claimant. I therefore reject the Claimant's contention that the trigger for the investigation and subsequent dismissal was collusion on the part of the Respondent's witnesses and I reject the suggestion that this was a deliberate attempt to force him out of employment as a result of the grievance lodged.

20. The crux of the disagreement between the parties relates to the interpretation of the relevant polices contained within the bundle. I have already found that the Claimant had knowledge of the Drug and Alcohol Policy [134] and Overnight Retention of Vehicles Policy [138]. Those policies are set against the wider canvas of the contents of the Respondent's employee handbook [35]. At page 46 of the handbook it is stated that employees must:

i) Take part in health and safety briefings, work time listening and learning sessions and meetings where required;
ii) Always follow the appropriate safety rules, standards and procedures, asking for an explanation if you are not sure;
iii) Use and maintain all controls, procedures and protection provided for your safety and the safety of others.

21. Within the Alcohol and Drugs policy at page 135 it is stated:

    "The consumption of alcohol, use or possession of illegal drugs, or any misuse of psychoactive substances while at work or on Royal Mail Group premises in any capacity is prohibited…

    Employees are expected to attend for work in a fit state and to be able to work safely and effectively. Being fit for work includes starting work free from the adverse influence of alcohol and/or drugs… and remaining so throughout working hours…

    All drivers have a personal legal responsibility not to drive whilst under the influence of alcohol, illegal drugs or psychoactive substances"

22. "Appendix 2 – Authorised Retention of Official Royal Mail Vehicles Agreement" at page 165 of the bundle, and signed by the Claimant on 8 March 2019 is a further relevant document in the context of the interpretation of the policies. I was referred specifically to:

    "Para 3 – I agree that when I am travelling between the office and home I am not on duty"

    "Para 11 – I warrant that at all times I will be fit and able to use the vehicle. This means ensuring that I am ready for duty in a fit and alert condition and not under the influence of drink or drugs"

23. As part of the Overnight Retention of Vehicle Policy at page 159 it is clearly stated that:

    "Personal use of the vehicle is prohibited under all circumstances"

24. Of some relevance is paragraph 3.1 on page 157 to state:

    "Vehicles covered by this permission will be insured under normal Royal Mail Business Insurance Arrangements, providing all conditions in this guide are met and adhere to. Unauthorised use of vehicles is not covered by Royal Mail Insurance"

The Law

25. The law that I must apply is settled and I do not propose to rehearse it in great detail. In relation to the unfair dismissal claim, it is for the respondent to prove the reason for dismissal in accordance with section 98 of ERA 1996. Section 98 lists the potentially fair reasons for dismissal. Where the employer does show a potentially fair reason for dismissing the Claimant, or where that is conceded, the question of fairness is determined by section 98(4). The question of 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 dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case.

26. The correct approach to follow in conduct dismissals is based on the principles distilled from **British Homes Stores v Burchell [1980] ICR 303.** The Tribunal should have reference to the ACAS Code of Practice and take account of the whole disciplinary process. Applying **Burchell**, and **Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23**, the questions for the Tribunal are:

a) Did the Respondent genuinely believe that the Claimant was guilty of misconduct?

b) If so, was that belief based on reasonable grounds?

c) Had the employer carried out such investigation into the matter as was reasonable?

d) Did the employer follow a reasonably fair procedure?

e) If all those requirements are met, was it within the band of reasonable responses to dismiss the Claimant rather than impose some other disciplinary sanction?

Conclusions

27. I must firstly consider the reason for dismissal. The Respondent has adduced evidence to outline the steps taken during the disciplinary process as outlined above. I specifically reject the Claimant's contention that the reason for the investigation and the subsequent dismissal was the grievance filed in March 2019. I outline the basis for the finding at paragraph 19 above. Having considered the evidence in totality, I am satisfied that the reason for dismissal was conduct as asserted by the Respondent. I am satisfied that there is an absence of evidence to support the Claimant's suggestion that there is a causal link between the grievance and subsequent dismissal.

28. When considering the Respondent's actions, I have regard to the fact that the Respondent is a national company with considerable resources. The Respondent employs 120000 people in the UK and have the benefit of significant HR resources.

29. As outlined above, I must consider the following questions of the test outlined in **Burchell.**

    a) Did the Respondent genuinely believe that the Claimant was guilty of misconduct?

    The Respondent's interpretation of the policies upon which they rely is that the Claimant was not permitted to use a Royal Mail vehicle for personal use under any circumstances. Mr Davies clearly articulated that the vehicles are for business use only and are only taxed as such. I

have detailed above the relevant paragraphs of the policy to outline the fact that the use of Royal Mail vehicles for personal use is not covered by the Respondent's insurance. Despite this, the Claimant argues that there must be a fair interpretation to the policy. He asks the Tribunal to consider that a personal trip to Tesco to undertake a large weekly shop would be completely different to a short stop off at a local shop to pick up some milk on the way home. The policy though does not make any such distinction – it is clear that any personal use is prohibited, regardless of the reason. I consider that the Claimant's interpretation of this provision is a perfectly reasonable and a sensible reading of the relevant policy.

Further, the Respondent is entitled to have regard to the fact that, as part of the personal use alleged, the Claimant has accepted that on multiple occasions he has stopped at a local pub in order to drink an alcoholic beverage before continuing his journey home. This conduct is set against the backdrop of numerous policies that emphasise the importance of not driving a vehicle under the influence of alcohol. The policies do not specifically state that the employee need stay under the legal limit, as a criminal offence, in my view, it goes without saying. But the specific drafting of the documents to state "under the influence" of alcohol places a greater burden on employees as any consumption of alcohol is likely, to some extent, place that individual "under the influence" for the purpose of the policies. In my view, the Respondent's interpretation of the policy is entirely reasonable and it is clear that the expectation upon their employees is that they will not operate company vehicles under the influence of alcohol, whether on duty or off duty.

The Claimant states that the Respondent has unfairly interpreted the policies as paragraph 3 of the "Authorised Retention of Official Royal Mail Vehicles Agreement" states that time spent travelling between the office and work is classed as off duty. I accept the reasonable interpretation of the Respondent that this is intended for the purpose of preventing employees from being remunerated during the course of their ordinary commute to their place of work. In my view, it would be illogical to have numerous policies emphasising the need for employees not to engage in personal use of a vehicle, in any form, but then to allow personal trips to be made during the course of a commute to and from work, especially if that personal trip is to the local pub to engage in behaviour that would allow an employee to place himself in direct contravention of another section of the policy.

In light of my conclusions regarding the reasonableness of the interpretation of the policies, I must consider whether the Respondent genuinely believed that the Claimant was guilty of misconduct. Given the concessions made by the Claimant that he had driven to the office having consumed alcohol on 16 April 2019, the concession that he had used the van for numerous personal trips and that he regularly stopped off at a local pub to consume an alcoholic beverage before driving home, it is in my opinion that the evidence is overwhelmingly in favour of the conclusion that the Respondent genuinely believed that the Claimant was guilty of misconduct and that the belief fell squarely within the band of reasonable responses.

b) If so, was that belief based on reasonable grounds?

As I have found above, the belief was based upon the Claimant's own concessions during the investigation and disciplinary meetings. It was the Claimant's concessions relating to personal trips and operating a vehicle whilst under the influence that led to the commencement of the disciplinary process. Given that the Claimant's own concessions form the core of the evidence against him, it is my view that the Respondent's belief was based on reasonable grounds and that the Respondent's view that the Claimant's actions amounted to misconduct was within the band of reasonable responses.

c) Had the employer carried out such investigation into the matter as was reasonable?

The Claimant is critical of the investigation undertaken by the Respondent. The primary limb of his criticism is the absence of statements from individuals that he deems relevant to the investigation. Firstly, he states that the fact finding element was lacking as only three individuals were spoken to. The Respondent rejects the contention on the basis that the three individuals led to them being discounted as being the individuals responsible for the empty can and the Claimant accepting that he was responsible. It was agreed that the Claimant was the individual to blame and, in my view, there can be no criticism of the Respondent for ceasing this element of the investigation once the source of the empty can was identified by agreement. Any further investigation at this stage would have been irrelevant and completely disproportionate.

The secondary criticism is that the Respondent should have obtained a statement from the neighbour that reportedly raised concern regarding the Claimant's presentation. The Claimant, in his oral evidence, seemed to invertedly be inviting the Respondent to investigate matters upon which the Respondent placed absolutely no weight upon during the disciplinary and appeal process. Mr. Walker states specifically that he places no weight upon this allegation and it is, in my view, clear that the Respondent did not consider this to be a relevant issue during the course of the investigation. Further, where an issue arose around the allegation that the Claimant had been reported to have smelt of alcohol in 2017, the Respondent made appropriate attempts to investigate those matters and discounted them in favour of the Claimant. Mark Farrington specifically states that there was no concern regarding the Claimant's presentation throughout the two years following the report and that the initial report was rejected on the basis that the smell that emanated from the van was likely to have been a hygiene issue, alcohol was discounted. In my view, there was simply no need to obtain statements in respect of issues that were irrelevant to the investigation and that the Respondent did not rely upon in any event.

The third criticism relates to an alleged failure on the part of the Respondent to obtain a statement from Mr Breeze, a colleague that was working in the caller's office on the 16th April 2019. The Claimant

considers that speaking to Mr Breeze would have confirmed that he was given permission to drive the van home on the 16th April 2019 to get changed before returning the same. The reality is the Respondent does not doubt that the Claimant was entitled, and given permission, to take this journey. The point that the Respondent makes is that as part of that permission, whether through Mr Breeze or through the relevant policies, the drinking of alcohol prior to the driving of the van was prohibited. I therefore consider that there would have been no benefit to a statement having been obtained from Mr Breeze. I consider the Respondent's fact finding investigation to have been within the band of reasonable responses and I place particular weight upon the Claimant's own concessions made within the interview process when reaching this conclusion.

d) Did the employer follow a reasonably fair procedure?

As detailed within my findings of fact, the Respondent commenced an investigation following the identification of the empty can and that investigation was fair. The investigation led to a number of agreed facts, namely, that the Claimant had used the vehicle for personal use and as part of that use, at times, he was under the influence of alcohol having either drunk alcohol before returning the van to the office or stopping off at the pub on the way home from work. The Claimant was invited to the conduct meeting with reasonable notice and was informed of his right to be accompanied, a right he exercised. The disciplinary meeting was chaired by an independent individual with no prior involvement of the investigation. When an issue arose over previous conduct in 2017, Mr Davies engaged in a further interview with Mark Farrington so to establish further facts that may assist him. Facts that, in reality, assisted the Claimant by making it clear that there were no prior concerns regarding his presentation whilst at work. The decision letter considers the relevant points that the Claimant raised in the interview. The Claimant thereafter appealed and the case was allocated to Mr Walker. Mr Walker was, again, independent and invited the Claimant to an appeal hearing. The appeal was heard on 17 October 2019 and would have afforded the Claimant ample opportunity to give careful consideration to the appeal points he wished to raise. I outline the above for completeness despite the fact that the Claimant makes no real criticism of the procedure that was followed. In my view, the procedure followed falls squarely into the band of reasonable responses.

e) If all those requirements are met, was it within the band of reasonable responses to dismiss the Claimant rather than impose some other disciplinary sanction?

In consideration of the Respondent's decision, I must firstly consider a number of points that the Claimant makes that are, in my view, tangential.

Firstly, he alleged that he was treated unfairly and inconsistently as he was targeted for allegedly drinking alcohol whilst on duty when Mark Farrington was allowed to convene a Christmas Party at which alcohol

was consumed on the Respondent's premises. I reject this point entirely. In my view, a sanctioned Christmas Party, as part of the normal social calendar at thousands of offices across the country, can in no way draw any comparison with the fact that the Claimant accepts using the Respondent's van for personal use and that, on occasions, the use was when he was under the influence of alcohol, specifically, but not limited to, driving home from the pub. I consider that the Respondent was quite entitled to reject this particular limb of criticism.

Secondly, the Claimant made numerous references in his oral evidence to individuals technically being "under the influence" when using hand sanitizer containing alcohol. He raised this in attempt to demonstrate that the Respondent's policies were technically flawed. Again, I reject this entirely and agree with the submission made on behalf of the Respondent that the policies make it clear that there should be no personal use of vehicles and that any use is prohibited under the influence of alcohol, whether on duty or off duty.

The real contention made by the Claimant is that he was treated unfairly as he was not on duty at the times that he had consumed alcohol and that the personal use was minor, namely, stopping off at the shop to pick up some milk, for example. In my reading of the documentation, I noted that the Claimant had repeatedly stated in interview and/or meetings that he was sorry for his actions and that he recognised that he had made a mistake. Despite this, the Claimant took a far more belligerent tone in oral evidence to the extent that I asked him to state exactly what he felt that he had done wrong. The Claimant answered "nothing". He maintains that in stopping off at the shop or pub, or drinking a can of lager before driving a van back to the office, or in stopping off in that van to consume a pint of beer before travelling the rest of the route home, is perfectly acceptable conduct. The Respondent, on the other hand, points me to the various policies that state that such behaviour is unacceptable and may amount to disciplinary action. In my view, having considered that the Respondent reasonably interpreted the policies, the Claimant's conduct, based upon his own concessions, places him squarely in breach of the aforementioned policies. The Respondent considers that the nature of those breaches was serious and significant, in my view, this is a stance that they were perfectly entitled to take and fits squarely within a reasonable band of responses. The policies make it clear that the personal use of vehicles is not permitted due to tax and insurance purposes. The Claimant, as an individual highly trained in respect of the impact of drugs and alcohol, was acutely aware that the Respondent took very seriously any such behaviour relating to driving under the influence. In my opinion, the totality of the accepted conduct on the part of the Claimant, read alongside the policies and the self-evident need for any company to ensure the safety of their staff and members of the public, places the Respondent's ultimate decision to dismiss squarely within the range of reasonable responses. The Respondent had regard to the Claimant's unblemished service and track record but despite this considered that only dismissal would be sufficient. In my judgment, this is a conclusion that they reached fairly.

30. Accordingly, I dismiss the claim.

Employment Judge **G Duncan**

Date 12th May 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 13 May 2021

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FOR EMPLOYMENT TRIBUNALS Mr N Roche