



EMPLOYMENT TRIBUNALS

Claimant: MR J CROOKS

Respondent: SKY IN HOME SERVICES LIMITED

Heard at: Watford **On:** 16 December 2020

Before: Employment Judge Skehan

Appearances

For the Claimant: In Person

For the Respondent: Ms Ferguson, Counsel

RESERVED JUDGMENT

1. The claimant was fairly dismissed by reason of his conduct and his claim for unfair dismissal fails.

REASONS

1. By claim form received at the Employment Tribunal dated 14/01/2020, the claimant claimed unfair dismissal only. The respondent's notice of appearance was accepted by the tribunal and the matter was defended.

Miscellaneous Matters

2. The claimant did not bring his copy of the bundle to the hearing. The claimant was provided with a further copy of the bundle and time to review it. Although witness statements had been exchanged in accordance with the tribunal directions, the claimant had not read the respondent's witness statements. A further period of time was allowed for the claimant to read the

respondent's witness statements. These delays resulted in insufficient time for judgment to be provided on the day of the hearing. I apologise to the parties for the delay in producing this written reserved judgment and reasons. The delay on my part was caused by the Christmas break and Covid19 related competing responsibilities.

The Issues

3. At the outset of the hearing, we revisited the issues to be determined by the tribunal. It was noted that:
 - 3.1. The principal reason for the claimant's dismissal was agreed to be a reason relating to the claimant's conduct in particular a breach of the respondent's health and safety process and procedure relating to an incident on 10 July 2019 where it was alleged that the claimant had, when working at heights failed to use and eyebolt, ratchet strap or rope grab.
 - 3.2. The claimant alleged that the investigation was flawed, he was not guilty of the alleged conduct and the procedure followed by the respondent was flawed and the dismissal was both procedurally and substantively unfair.
 - 3.3. If there is a finding of unfair dismissal, did the claimant cause or contribute to the dismissal and if so by how much should the basic and/or compensatory award be reduced? In the event that the dismissal was unfair due to the respondent following an unfair procedure should the compensatory award be reduced or limited to reflect the chance that the claimant would have been dismissed in any event and that the employer's procedural errors accordingly made no difference to the outcome. This is commonly referred to as a Polkey deduction (or reduction) following the case of *Polkey v AE Dayton Services Ltd* [1987] IRLR 503.

The Law

4. In a claim of unfair dismissal, it is for the respondent to show a genuinely held reason for the dismissal and that it is a reason which is characterised by section 98(1) and (2) of the Employment Rights Act 1996 ("the ERA") as a potentially fair reason. The respondent relies upon 'conduct'. If the respondent shows such a reason, then the next question, where the burden of proof is neutral, is whether the respondent acted reasonably or unreasonably in all the circumstances in treating the reason for dismissal as a sufficient reason for dismissing the claimant, the question having been resolved in accordance with the equity and substantive merits of the case. It is not for the Employment Tribunal to decide whether the respondent employer got it right or wrong. This is not a further stage in an appeal.
5. In a case where the respondent shows the reason for the dismissal was conduct, it is appropriate to have regard to the criteria described in the well-known case of *Burchell v BHS* [1978] IRLR 379. The factors to be taken into account are firstly whether the respondent had reasonable grounds for its finding that the claimant was guilty of the alleged conduct; secondly whether the respondent carried out such an investigation as was reasonable

in the circumstances; thirdly whether the respondent adopted a fair procedure in relation to the dismissal and finally whether the sanction of dismissal was a sanction which was appropriate, proportionate and, in a word, fair. In relation to each of these factors, it is important to remember at all times that the test to be applied is the test of reasonable response.

6. A claim for unfair dismissal is a claim to which section 207A applies and the relevant Code of Practice is the ACAS Code of Practice on disciplinary and grievance procedures.
7. Section 122(2), ERA 1996 provides that a tribunal may reduce the basic award if it finds that the claimant's conduct before dismissal was such that it would be just and equitable to reduce it. Section 123(6) of the ERA provides that the compensatory award may be reduced by finding of contributory conduct by such proportion as considers just and equitable.

The Evidence

8. I heard evidence from Mr Knight, who made the decision to dismiss the claimant and Mr Raven who dealt with the appeal behalf of the respondent. I heard evidence from the claimant on his own behalf. All witnesses gave evidence under oath or affirmation. Their witness statements were adopted and accepted as evidence-in-chief. All witnesses were cross-examined. As is not unusual in these cases the parties have referred in evidence to a wider range of issues than I deal with in my findings. Where I fail to deal with any issue raised by a party, or deal with it in the detail in which I heard, it is not an oversight or an omission but reflects the extent to which that point was of assistance. I only set out my principal findings of fact. I make findings on the balance of probability taking into account all witness evidence and considering its consistency or otherwise considered alongside the contemporaneous documents.
9. The claimant was employed as a field service engineer and his continuous employment commenced on 15/02/2017. He was dismissed on 30/08/2019. The claimant's role was to install and maintain satellite systems to residential and commercial properties. This mainly involved working at customer properties. A large part of the claimant's role involves working at height using ladders to access satellite dishes at anything up to 30 foot above the ground. The conduct allegations leading to the claimant's dismissal arose from an incident on 10/07/2019 where the respondent alleges that the claimant breached its health and safety procedure for safe ladder working while at height. Specifically, the respondent says that the claimant failed to use an eyebolt, ratchet strap and rope grab.
10. To assist the tribunal the parties confirmed at the outset their agreed understanding of the relevant safety equipment. This was common ground between the parties. An eyebolt' was a bolt, drilled into the wall, to secure the ladder to the wall. This was a requirement when an engineer was working on a satellite dish using a ladder at height. It was accepted by Mr Knight that an eyebolt was not necessarily required where an engineer was working on cabling as it would require multiple bolts to be drilled into a

customer's wall. A ratchet strap was a strap that attached the engineer's ladder to the eyebolt. A rope grab was a rope attached to the top of the ladder that ran down the ladder. It was expected that the engineer's harness would be attached to the rope grab.

11. The claimant was an experienced engineer and conversant with the respondent's health and safety policies. The respondent conducts random unscheduled 'Home Safe' checks, where a supervisor visits an engineer unannounced on site to check that health and safety procedures are being adhered to. I was referred to a previous check carried out by Ms Chinn on the claimant completed on 20 December 2018. During this check it was observed that the claimant was working safely using a required safety equipment including an eyebolt, ratchet and correct ladder setup.
12. Ms Chinn and Mr Chadwick carried out a Home Safe check on the claimant on 10 July 2019 that gave rise to the allegations. Ms Chinn carried out the subsequent investigation in relation to the alleged breach of health and safety. She did not attend the tribunal to give evidence. The claimant says that Ms Chinn and Mr Chadwick arrived at his job and were inside the house speaking to the customer. They walked outside and the claimant was at the bottom of his ladder. The claimant says that he explained he was cable clipping not working on the satellite dish. The claimant was told to pack up and go on lunch which he did. The claimant was requested to meet Ms Chinn at a hotel for his next appointment. Ms Chinn explained that the that the claimant had breached health and safety procedures, and the claimant had an investigatory meeting with Ms Chinn that afternoon. Ms Chinn told him 'not to worry about it'.
13. The notes of the investigation meeting, provided in the tribunal bundle, provide:
 - 13.1. Ms Chinn told the claimant that she had just come to see him on a customer job and found the claimant on the top of a ladder with no eyebolt, ratchet strap, rope grab or cow's tail (additional safety measure) attached. Mr Chadwick was also present. This was considered a breach of the respondent's health and safety requirements. The claimant was asked to explain his position.
 - 13.2. The claimant told Ms Chinn that he was fully aware of the health and safety requirements. He was initially strapped up but that he had finished his work on the satellite dish. He discovered that the cable was not long enough and had to move his ladder to go higher to access the cable and unclip it to get more length. He did not put the strap back in as he was only getting the cable and clipping. The claimant acknowledged that he was a qualified health and safety officer and understood the importance of health and safety requirements.
 - 13.3. The claimant said that he was aware that engineers needed to be strapped for doing dish work but not the cable clipping.
 - 13.4. Ms Chinn noted that the claimant's meter was at the top of the ladder, indicating that the claimant was working on the satellite. The claimant had no rope grab or cow's tail connected or ratchet strap and eyebolt.

- The claimant said that this was because he had left the equipment there earlier when working on the satellite dish and then moved the ladder to do the cable clipping.
- 13.5. The claimant explained that he was trained that a rope grab was not required while clipping and he felt safe and secure on the ladder. The claimant is a qualified health and safety officer. The claimant explained that he ran up the ladder second time when he was told to pack up as he panicked.
14. Ms Chinn also had a meeting with Mr Chadwick on the afternoon of 10 July 2019. The interview notes record that:
 - 14.1. When Mr Chadwick walked through to the back of the house in the back garden he noticed the claimant making his way off his double section ladder setup. The claimant was about halfway down. The ladder setup had a microlight attached. There was no eyebolt in the wall, no ratchet strap attached to the ladder. There was also no use of a rope grab. Mr Chadwick noticed that there was a meter hanging over the top of the ladder and other items indicating that the claimant was working on the satellite dish.
 - 14.2. Ms Chinn told the claimant to come down straightaway. Mr Chadwick asked the claimant to start packing away his equipment. The claimant proceeded to climb back up his ladder without attaching himself to the rope grab to fetch his meter.
 - 14.3. Ms Chinn told Mr Chadwick that the claimant stated he was cable clipping at the time of their visit. Mr Chadwick said that the cable was pre-existing there was nothing to clip. In his opinion the claimant has been working at the satellite dish.
 15. Ms Chinn provided an investigation summary dated 28 July 2019. She revisits the statements taken on the day of the incident and concludes that:
 - 15.1. The claimant has been employed by the respondent for two years and five months and there have been no previous concerns in relation to his work. His previous Home Safe visits have shown that he was able to work safely.
 - 15.2. The claimant says that he was a cable clipping and was trained that he was not required to be strapped to the ladder when carrying out such work;
 - 15.3. the claimant should be called to a formal conduct meeting to answer an allegation of gross misconduct relating to a breach of health and safety process and procedure arising from the job in question specifically failing to eyebolt, ratchet strap, rope grab.
 16. The disciplinary hearing was carried out by Mr Knight. The claimant was provided with the documentation generated by the investigation carried out by Ms Chinn prior to the disciplinary hearing. The claimant was invited to a disciplinary meeting by letter dated 29 July 2019. This letter stated that the allegation if upheld would constitute gross misconduct which may lead to dismissal. Due to errors on the respondent's part, this meeting was not held until 30 August 2019.

17. The notes of the disciplinary meeting say that Mr Knight acknowledged that the claimant claimed to be cable clipping not working at the satellite dish. This was confirmed by the claimant. Mr Knight clarified for the tribunal that an eyebolt and ratchet strap would not be a necessity for cabling work. Mr Knight told the claimant that the investigation records that the claimant did not use a cow's tail or rope grab. The claimant agrees with this statement. The claimant explains that the eyebolt was in line with the satellite dish, but due to the claimant moving the ladder for cable clipping, the strap was not attached. The claimant said that neither Ms Chinn nor Mr Chadwick saw him up the ladder. Ms Chinn's statement that she saw the claimant on the top of the ladder was false.
18. Mr Knight adjourned the hearing to speak to Ms Chinn and Mr Chadwick. Both confirmed their original statements were accurate. Ms Chinn said she witnessed the claimant descending from the double section ladder. His rope grab was not attached to the rope, the SM3 satellite meter was on the ladder and attached to the LNB part of the dish, the ladders were set up in the position where you would access the dish and no eyebolt or strap was in place. Mr Chadwick also confirmed his original statement is accurate he said he witnessed the claimant descending from the double section ladder the ladder was in line with the dish there was no rope grab attached to the rope, there was a black cap on the eyebolt hole suggesting that it had not been used, the SM3 satellite meter was hung on the ladder and attached to the LNB section of the satellite dish. Mr Knight reconvened and proceeded with the disciplinary meeting, informing the claimant that both Ms Chinn and Mr Chadwick had confirmed their original statements as accurate.
19. The claimant reiterated that his ladder was not in line with the satellite dish. The claimant said that his SM3 was attached, but he was not working in line with the satellite dish but working on the cabling adjacent to the dish which is why he was not eyebolted to the wall.
20. Mr Knight's evidence was, and the notes record Mr Knight as saying, 'looking specifically at the rope grab, two people have said you were not using the rope grab. What is your view on that?'. The claimant responded 'I have been taught that when working at the cable, the rope grab is not required. That has always been my belief.' After a break for lunch the disciplinary notes record Mr Knight asking the claimant which one of his mentor's advised him that a rope grab was not needed for cable clipping. The claimant refers to a list of names referring to various individuals who told the claimant that a rope grab was not required when cabling and his normal practice of not using a rope grab was observed by various managers who made no comment about it. The claimant said that all of them had seen him working at height, clipping without a rope grab.
21. The claimant during under cross examination told me that he was in fact using his rope grab when cabling on 10 July 2019. The claimant said that Ms Chinn had lied about the claimant not using a rope grab and his position throughout the disciplinary process was that he had been using a rope grab for the cabling. Mr Knight's notes were inaccurate. The claimant accepted

that at no point prior to the day of the hearing had the claimant asserted in writing that he was using a rope grab questions the respondents notes. The claimant said he had concentrated on the allegation relating to an eyebolt/ratchet strap. It was put to the claimant that his failure to use the rope grab was discussed expressly, as recorded in Mr Knight's notes. The claimant responded that he could only go by what was written down. He had signed the notes when he was deflated and worn down without properly reading them. The claimant told me that the F connectors mentioned by Ms Chinn and Mr Chadwick were connected to the cable not to the dish. The cable was the same height as the dish but to the left-hand side. The claimant told me that he always used a rope grab and for cable clipping and he was always attached to his rope grab. The claimant acknowledged that to fail to use a rope grab would be a serious health and safety breach.

22. The claimant acknowledged that the second time he went up the ladder he was not attached to his rope grab but he was in shock and panicked. The claimant asked Mr Knight take into account that he had never breached health and safety at work or had an accident and he would not knowingly put himself at risk as he had a family that he wished to return to.
23. I note the internal paperwork completed by Mr Knight on making his decision. He notes that the claimant denies the allegation made and claims that he did not use his rope grab while clipping cable as directed by other members of staff previously. The claimant's disputes that he was seen on his ladder without safety equipment as both Ms Chinn and Mr Chadwick were inside the property while he was working on the ladder and he was off the ladder by the time they had come outside. Mr Knight concludes that on the basis of the information provided by Ms Chinn and Mr Chadwick that the claimant has breached the respondent health and safety procedures while working at height on a ladder without the use of fall arrest equipment. He made the decision to terminate the claimant's employment summarily. Mr Knight's decision was communicated to the claimant by letter of 30 August 2019.
24. The claimant submitted an appeal on 6 September 2019. Within the claimant's appeal letter he notes that during the Home Safe visit he was wearing all of his PPE and this was not noted by either Mr Chinn or Mr Chadwick. He was not told at the time of the visit that there was a health and safety breach, just to pack everything up and go to lunch. He has previously passed all of his health and safety checks. He would not put himself or others at risk and health and safety is important to him. He had previously refused to carry out jobs due to health and safety issues and explained to customers the importance of eyebolt's insisting that work would not be completed without it. He was not made aware that dismissal would be the likely outcome as he was told at his suspension, 'not to worry about it'.
25. The appeal was dealt with by Mr Raven. The appeal hearing was initially scheduled for 30 September 2019. On this day the claimant attended without a companion but said he would like to be accompanied. The meeting was adjourned to allow the claimant to find a companion. There was some

delay in rearranging the meeting. The claimant wanted his appeal to be held on the weekend and a proposed date of 7 December 2019 was put forward. After much correspondence between the parties, Mr Raven did not receive a response from the claimant in respect of the proposed weekend date. The claimant was concerned that this was after the expiration of the limitation period. Mr Raven held a further investigation meeting with Ms Chinn. He questioned why there were no photographs. Ms Chinn told him that there were two people present she would not take photographs of an engineer of the ladder as it may cause stress and be unsafe. Ms Chinn conceded that she should have taken photos when the claimant was safely down. Ms Chinn said that she did not raise the issue at the customer's premises as she did not want to any issue in front of a customer. Mr Raven also spoke to Mr Chadwick confirmed that he had observed the claimant on his ladder with no fall arrest. It was not attached to the rope and his cow's tail was not attached. Mr Raven also spoke to Mr Knight. Mr Knight acknowledged the absence of photos but considered that the witness statements available and confirmed during his adjournment of the disciplinary hearing allowed him to form a reasonable belief that the claimant had breached the health and safety process putting himself and others at risk. Mr Raven dealt with the claimant's appeal on paper and addressed his six appeal points in detail. The claimant's appeal was unsuccessful.

Conclusions

26. Both parties agreed and the tribunal finds that the claimant was dismissed for reason relating to his conduct. The specific conduct allegations relate to the alleged health and safety breach that occurred on 10 July 2019 in particular failure to use an eyebolt, ratchet strap or rope grab.
27. It is common ground that the claimant was not using an eyebolt or a ratchet strap. Mr Knight accepted that while an eyebolt and ratchet strap were essential for satellite dish work, they were not considered essential when engineers were carrying out cabling work as it would be inappropriate to make multiple holes in a customers' walls. The claimant's position throughout the internal process and the hearing was that he had not used an eyebolt or ratchet strap because he was cabling, not working on the satellite dish.
28. The claimant's position (as it is recorded within the documentation and Mr Knight's evidence) during the disciplinary process was that he had not used a rope grab, because he did not believe it was required and had been told not to do so by colleagues. The claimant's position during the tribunal hearing was that he had in fact used a rope grab and was attached to his ladder when undertaking the cabling at the customer's premises. The claimant maintains that Mr Knight's evidence and supporting documentation misrepresented his position. The claimant said at the hearing that failure to use a rope grab would be a serious breach of the respondent health and safety rules. In summing up he told me that a failure to use a rope grab and cabling would be potential misconduct that could lead to dismissal.
29. I have carefully considered the claimant's evidence and have weighed it against the evidence provided by Mr Knight and the contemporaneous

documentation, particularly the notes of the disciplinary meeting. Mr Knight provided open and helpful evidence to the employment tribunal. The notes of the disciplinary meeting record a detailed discussion in relation to the claimant's reason for not using a rope grab. The claimant has provided no evidence of any assertion on his part during the process that a rope grab was used nor has he ever prior to the tribunal hearing questioned the accuracy of the respondent's notes. I conclude on the balance of probability that the claimant's position during the disciplinary process was accurately set out by Mr Knight in that the claimant said he was not using a rope grab and sought to justify his position.

30. In reaching the decision to dismiss, did the respondent follow a fair procedure? Ms Chinn carried out an investigation, Mr Knight conducted the disciplinary process making the decision to dismiss and Mr Raven carried out the appeal process.
31. The claimant has raised several issues in relation to the investigation process. The burden on the employer is not to conduct a perfect investigation but to conduct one which falls within the band of reasonable response of a reasonable employer. I address each alleged flaw in turn:
 - 31.1. No pictures were taken at the home visit. It can be seen from the previous Home Safe visits that taking pictures is part of the normal process. Ms Chinn noted that it would be unsafe to take pictures of the claimant actually on the ladder. Pictures would not assist with whether or not the claimant was attached to the rope when using the ladder. As neither Ms Chinn nor Mr Chadwick actually saw the claimant working at the satellite dish, pictures would not show whether or not the claimant was working on the satellite dish as alleged by the respondent, or cabling as alleged by the claimant. Pictures taken at the customer's premises may or may not have indicated the position of the ladder with reference to the satellite dish. This was not recognised as an issue by Ms Chinn at the customer's premises. Weighed against an absence of photos, is the witness evidence available from Ms Chinn and Mr Chadwick taken on the same day as the incident, when what was seen is likely to have been fresh in their minds. There is no reason whatsoever for these two individuals to lie or collude in any way against the claimant. Ms Chinn has previously conducted home safe checks upon the claimant without issue. I conclude that while the absence of pictures is a potential flaw within the investigation, it does not place the investigation outside the band of reasonable responses.
 - 31.2. No mention of any alleged health and safety issue was raised with the claimant at the customer's premises. This matter was raised with the claimant that afternoon. Ms Chinn explained to Mr Raven that when she observed the claimant on site, the customer was standing behind her. Ms Chinn did not wish to raise issues with the claimant in front of the customer, hence she arranged to speak to the claimant privately after lunch. It is possible that had Ms Chinn brought potential issues to the claimant's attention once he was down the ladder, the issue as to the location of the ladder and whether the claimant was

cabling or working on the satellite dish could be comprehensively addressed. However, in viewing this in the whole, I consider that the customer's presence was an impediment to commencing the investigation immediately. The respondent's failure to raise this matter at the customer's premises does not bring the investigation outside the band of reasonable responses.

- 31.3. It is the case that no mention of further PPE worn by the claimant is made within the investigation notes. This appears to be irrelevant as the issues between the parties, being the absence of a eyebolt, ratchet strap and rope grab are clear. The presence of other PPE unrelated to the allegation does not assist the claimant.
- 31.4. The claimant highlights inconsistencies and improbabilities within Ms Chinn's and Mr Chadwick's investigation evidence particularly states that neither individuals saw him on the top of his ladder. It is the case that the investigation meeting notes Ms Chinn seeing the claimant at the top of his ladder, her confirmation to Mr Knight during the adjourned disciplinary hearing was that she saw the claimant's descending from his ladder. Ms Chinn told Mr Raven on 24 October 2019 that she had never stated that the claimant was at the top of the ladder. Ms Chinn clarifies that she saw the claimant on his ladder and saw him come down the ladder. While this is an inconsistency within Ms Chinn's evidence, it does not in any way affect the fairness of the investigation. It is common ground that the claimant had used his ladder as alleged. One issue is what the claimant had been doing prior to Miss Chinn and Mr Chadwick's arrival. This is not in any way assisted by where the claimant was on the ladder be it top, middle or bottom when observed by Ms Chinn and Mr Chadwick. Neither Ms Chinn nor Mr Chadwick at any time claim to have actually seen the claimant working on the satellite dish. I consider this to be a minor inconsistency that cannot reasonably be said to detract from the reliability of the remainder of the investigation or the fairness of the process. I do not consider that this places the investigation outside the band of reasonable response.
- 31.5. The claimant was told 'not to worry about it' during the investigation process. This is denied by Ms Chinn. The invitation letter sent to the claimant dated 29 July 2019 states that, 'I must advise you that these allegations, if upheld, would constitute gross misconduct which may lead to dismissal.' The respondent has taken reasonable steps to ensure that the claimant was aware of the possible consequences of the disciplinary hearing. Even if it is accepted that the claimant was told 'not to worry about it' during the investigation, I do not consider that such a comment, followed by a written warning setting out potential consequences could place investigation outside the band of reasonable response.
- 31.6. I have considered whether the above flaws could either independently or cumulatively faces investigation outside the band of reasonable response and conclude that they do not.

32. I now turn to Mr Knight's decision to terminate the claimant's employment. The claimant raises procedural issues in relation to Mr Knight's conduct of the disciplinary proceedings:
- 32.1. The disciplinary hearing was long and adjourned on at least three occasions. The meeting started at about 11am and finished at approximately 4pm. I find that Mr Knight conducted a comprehensive disciplinary meeting. I do not consider that the length of the meeting prejudices the claimant in any way. His conduct falls within the band of reasonable response.
- 32.2. Mr Knight adjourned on one occasion to take further evidence from Ms Chinn and Mr Chadwick who confirmed their previous statements. No new information was provided by either individual that would reasonably require an adjournment to allow the claimant to consider it. I conclude that it was fair and within the band of reasonable response to proceed with the hearing.
33. Turning to the substance of Mr Knight's decision, Mr Knight examined the entirety of the information available to him carefully. He identified that the claimant had not been seen working on the satellite dish. He concluded from the evidence provided by Ms Chinn and Ms Chadwick that it was more likely than not that the claimant had been working on the satellite dish as alleged. In those circumstances the claimant was in obvious breach of the respondent's health and safety procedures. Further Mr Knight identified that even on the claimant's own evidence, he had he been working on cabling, he was not using the required rope grab and sought to justify this position. For the avoidance of doubt, I know that no emphasis was placed by Mr Knight on the claimant's use of his ladder when he said he was panicked by Ms Chinn and Mr Chadwick's direction to pack up his things.
34. Mr Knight takes considerable time during the disciplinary hearing to explore the claimant's failure to use a rope grab and revisits this with the claimant during the disciplinary meeting. This action alone on the part of the claimant was, as conceded by the claimant during the hearing, a serious health and safety breach. The respondent places considerable emphasis upon its health and safety requirements. Their importance is obvious in relation to the health and safety of the engineers working at height and the respondent's customers. It is common ground that a breach of the health and safety requirements in the circumstances would be considered a serious offence and classified as potential gross misconduct with dismissal being a potential outcome. Taking the entirety of the evidence into account I conclude that Mr Knight's decision to find it more likely than not that the claimant had been working on the dish as alleged and that he had failed to use the required safety equipment was one that falls within the band of reasonable responses from a reasonable employer.
35. I have also considered the appeal process carried out by Mr Raven. I conclude that the respondent took reasonable steps to allow the claimant to attend an appeal hearing. I do not consider it noteworthy that a weekend disciplinary process was more difficult to organise for the respondent and therefore there was a delay in providing available dates. I conclude that the

fact that the in-person appeal hearing did not proceed in the circumstances cannot reasonably be considered a flaw within the procedure sufficient to render the dismissal unfair. Mr Raven took a comprehensive approach to the appeal. He spoke to both Miss Chinn and Mr Knight prior to reaching his decision. He reviewed all the available documentation and in the absence of communication from the claimant, reasonably provided his detailed response in writing.

36. For the reasons set out above I conclude that the respondent had reasonable grounds for its finding that the claimant was guilty of the alleged conduct; the respondent carried out such an investigation as was reasonable in the circumstances; the respondent adopted a fair procedure in relation to the dismissal and finally the sanction of dismissal was a sanction which was appropriate, proportionate and fair. In relation to each of these factors I have applied the test of reasonable response.
37. For the sake of completeness, if I am wrong, in that should the fact that the claimant was not actually seen working at the satellite dish by either Ms Chinn nor Mr Chadwick result in an unfair dismissal finding in relation to use of an eyebolt and ratchet strap, I would be obliged to look at the claimant's conduct in respect of potential contribution. I have found that the claimant's position throughout the disciplinary process was that he was undertaking cabling without the use of a rope grab and sought to justify that position. As set out above, I have not accepted the claimant's oral evidence that he was using a rope grab the cabling work. I conclude on the balance of probability for the reasons set out above that the claimant was not using a rope grab while working at height. The claimant told me in the course of his summing up that failure to use a rope grab would be properly considered to be a serious breach of the respondent's health and safety process likely to amount to gross misconduct and, the reasons set out above, result in dismissal. By failing to use a rope grab as required, the claimant has in any event contributed to his dismissal. I conclude in those circumstances that any basic and compensatory award would be reduced by 100% due to the claimant's conduct.
38. For the reasons set out above I conclude that the claimant's allegation of unfair dismissal fails, and his claim is dismissed.

Employment Judge Skehan
Date:17/1/2021.....
Sent to the parties on:
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For the Tribunals Office