EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100436/2020

Hearing held by Cloud Video Platform on 28 & 30 June 2021

Employment Judge F Eccles

Mr M Ramzan	**Claimant** **In Person**
Stripestar Limited	**Respondent** **Represented by** **Mr N Singer - Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant was not unfairly dismissed by the respondent.

REASONS

BACKGROUND

1. The claim was presented on 23 January 2020. The claimant complained of unfair dismissal. The claim was resisted. In their response, accepted on 26 February 2020, the respondent denied having unfairly dismissed the claimant. The reason given for dismissal was misconduct.

2. The case was listed for a final hearing on 28 to 30 June 2021. The hearing was adjourned on 28 June 2021 to allow the claimant an opportunity to prepare a witness statement and for parties to finalise their Joint Bundle. The claimant was unable to attend the hearing on 29 June 2021 due to work commitments. The hearing was continued to 30 June 2021. It was agreed that the Tribunal would consider liability only and that if appropriate, the claim would be listed for a separate hearing on remedy. The hearing was held remotely by Cloud Video Platform (CVP). The parties provided the Tribunal with witness statements to stand as their evidence in chief. For the respondent the Tribunal heard evidence from Mr Gary Adair, Head of Business and Dismissing Officer and Mr John O'Donnelly, Dealer Principal and Appeal Officer. The claimant gave evidence. The parties provided the Tribunal with a Joint Bundle. The claimant represented himself. The respondent was represented by Mr N Singer, Counsel.

FINDINGS IN FACT

3. The Tribunal found the following material facts to be admitted or proved; the claimant was employed by the respondent from 10 August 2015 to 25 October 2019 when he was summarily dismissed. The claimant began working with the respondent as a Service Apprentice. By the time of his dismissal, he was employed as a Service Technician. The claimant was employed at the respondent's premises in Motherwell. The respondent operates a franchise of new and used car dealerships. They also undertake vehicle repairs and services. The dealership in Motherwell employs around 50 people. For the last two months of his employment with the respondent,

the claimant was working in the respondent's Preparation workshop where cars are prepared for resale.

4. On 12 September 2019 the claimant was issued with a Performance Improvement Notice (P12/57) ("Notice"). The Notice confirmed that the claimant was underperforming. The claimant was informed that he must achieve the respondent's minimum requirement of 8 hours per day to get himself "*back on track with (his) performance*". The claimant was warned that if his performance did not improve the respondent would proceed with disciplinary action. At the time of being issued with the Notice, the claimant's average monthly efficiency was recorded at around 80% of target. For September 2019, the claimant's efficiency was recorded at 146% of target. The claimant's increase in efficiency since 12 September 2019 was a matter of concern to the respondent and sufficiently high to merit investigation. The claimant was invited to an investigation meeting by his Service Manager on 8 October 2019 (P18/78). Relations between the claimant and his Service Manager were strained due to an earlier incident at which the claimant's behaviour had been disrespectful. The claimant's Service Manager had indicated that she was unhappy about his behaviour and told him that it was not "*the last he would hear of it*".

5. At the investigation meeting on 8 October 2019 the claimant was asked to explain what he had done differently during September 2019 to record such a significant increase in his efficiency. There were concerns that the claimant had claimed time for work on vehicles that he had not completed. The claimant explained that he had been "*actively looking for more work*" and accepted that he was "*needing a kick up the backside*". When asked if there were any jobs for which he had claimed time but not completed, the claimant replied, "*not knowingly, no*".

6. The claimant was shown job cards for vehicles he had worked on and CCTV footage of him working on the vehicles. For four of the vehicles – a Hyundai i13 EJ15 CZV, Volkswagen Passat YN63 YNA, Renault Clio SJ65 CJE and

Fiat 500 SG67 XLL ("the vehicles") - the job cards recorded the claimant having completed a procedure on the vehicles' brakes known as "*strip and clean*". To complete the procedure of "*strip and clean*" it is necessary to remove the vehicle's wheels. The procedure also involves greasing the vehicle's brake pads. The claimant was shown CCTV footage of him working on the Renault Clio and the Fiat 500 for which he had claimed "*strip and clean*". The claimant agreed that he could not be seen removing the wheels of either vehicle on the CCTV footage. The claimant accepted that he had not undertaken the procedure of "*stripe and clean*" on either vehicle. He explained that he was able to remove rust on the vehicles' brake discs without removing the wheels, a procedure known as "*lipping*". The claimant was also shown CCTV footage of vehicles on which he claimed to have undertaken a procedure known as "*air con recharge*". The CCTV footage did not show the claimant fitting the air conditioning machine to the vehicles.

7. To "*strip and clean*", it is necessary to remove a vehicle's wheels to access and clean the brake pads. The procedure also involves applying grease to the brake pads. "*Lipping*" involves dislodging rust from a brake disc, normally by tapping the disc with a hammer. "*Lipping*" takes a matter of seconds. "*Strip and clean*" takes longer and is more labour intensive. The claimant was trained in and understands how to "*strip and clean*". "*Lipping*" is not normally recorded on a job card. The claimant understands the difference between the two procedures.

8. Following the investigation meeting, the decision was taken to suspend the claimant on full pay for potentially claiming time for work that he had not carried out. Later that day the claimant was invited to attend a disciplinary hearing on 10 October 2019. The claimant was notified in writing (P23/91) that at the hearing the question of disciplinary action against him would be considered with regard to "*gross misconduct - claiming time on job card write up for work not carried out on vehicles*". The claimant was informed that he had the right to be accompanied at the disciplinary hearing by a work colleague or a trade union official. The claimant was also informed that the respondent deemed the allegation against him to be very serious and as

such, dismissal was a possible outcome. The claimant understood the allegation being made against him. The letter to the claimant (P23/91) was sent by Mr Gary Adair, Head of Business who had been appointed to conduct the disciplinary hearing.

9. The disciplinary hearing was rearranged to take place on 22 October 2019. This was to allow the claimant additional time to prepare for the disciplinary hearing and to consult with a colleague who had agreed to accompany him at the hearing. In advance of the disciplinary hearing, Gary Adair viewed the CCTV footage that had been shown to the claimant at the investigation meeting and examined the job cards for the vehicles in the footage. At the disciplinary hearing the claimant expressed concern about being unprepared for the investigation meeting as it was called without warning. Gary Adair informed the claimant that the respondent was not obliged to give an employee advance notice of an investigation meeting. He was not satisfied that the claimant had been prejudiced by any lack of notice in relation to the investigation meeting. The claimant was shown CCTV footage and job cards for vehicles on which he had worked. Gary Adair questioned the claimant about how he had undertaken "*strip and clean*" without removing the vehicles' wheels. The claimant was given the opportunity to respond. The claimant referred to "*lipping*" the brake disc and that it was not always necessary to remove a vehicle's wheels. Gary Adair did not agree with the claimant that it was possible to "*strip and clean*" brakes without removing a vehicle's wheels. The claimant referred to "*strip and clean*" as "*just a term"* that is used. When questioned about "*air con recharge*", the claimant stated that the air conditioning machine is positioned at the front of the vehicle and therefore out of view for CCTV footage. It was the claimant's position that he had carried out the air conditioning procedure.

10. The claimant informed Gary Adair that job cards were completed before he had finished working on the vehicles, something that might explain the increase in his efficiency figure. When asked by the claimant, Gary Adair confirmed that the investigation had been carried out by the Service Manager.

The claimant asked why he had not been questioned earlier about the "*strip and clean*" procedure. Gary Adair explained that the respondent had the right to monitor employee performance at any time. The claimant asked if any of the vehicles had been examined to check whether the work had been carried out. The claimant requested that Gary Adair check the position regarding the air conditioning machine. The claimant explained that he was preparing an average of 5 cars a day. Gary Adair adjourned the disciplinary meeting until 25 October 2019 to make enquiries and consider the points raised by the claimant.

11. During the adjournment, Gary Adair asked a Master Technician to examine the Hyundai 130, Volkswagen Passat, Renault Clio and Fiat 500 (P26/96-103). The Master Technician reported to Gary Adair that the vehicles' brake pads had not been removed or cleaned There was no evidence that the vehicles' wheels had been removed, the brake pads had no grease on them and in some cases were still rusty. Gary Adair reviewed the CCTV footage of the air conditioning machine and decided that it was inconclusive as regards whether the claimant had undertaken "*air con recharge*" on the vehicles.

12. The disciplinary hearing was reconvened on 25 October 2019. Gary Adair explained to the claimant that the Service Manager had started the investigation because of the sudden increase in his efficiency figure. Gary Adair confirmed that the respondent is permitted to monitor an employee's performance at any time as stated in the respondent's handbook. The claimant requested a copy of the handbook. The claimant stated that he carried out overtime "*off the clock*". Gary Adair explained that he could only have regard to time that had been claimed "*on the clock*". The claimant asked to see copies of the vehicles' job cards. Gary Adair did not provide the claimant with copies of the job cards on the basis that the claimant had already seen them during the investigation process. Gary Adair informed the claimant that he had reviewed the CCTV footage of the air conditioning machine and that as it was inconclusive he would give the claimant "*the benefit of the doubt*". He informed the claimant that a Master Technician had

checked the vehicles for which "*strip and clean*" had been claimed and that he could find no evidence of the work being carried out.

13. Gary Adair concluded that the claimant had submitted falsified job cards and claimed for work that he had not completed. When reaching the above conclusion, Gary Adair had regard to the sudden increase in the claimant's efficiency figure. He had regard to job cards on which "*strip and clean*" had been claimed. He had regard to CCTV footage which did not show "*strip and clean*" being undertaken. He had regard to the checks undertaken by a Master Technician and that they did not disclose evidence of the work claimed by the claimant having been carried out. He did not accept the claimant's explanation that it was possible to "*strip and clean*" brakes without removing a vehicle's wheels. He did not accept the claimant's explanation that he had been "*lipping*" the brake discs and that "*clean and strip*" was a generic term for working on brakes. He was concerned that the claimant could benefit from increased pay for work that he had not undertaken. He had regard to the potential for reputational damage to the respondent of the claimant falsely claiming to have undertaken work on vehicles. He had regard to the implications for customer safety of the claimant falsely claiming to have undertaken work on a vehicle's braking system. Gary Adair concluded that the claimant had been dishonest about work undertaken and considered that his conduct was serious enough to amount to gross misconduct. He decided that the most appropriate sanction was to terminate the claimant's employment.

14. At the close of the disciplinary hearing on 25 October 2019 Gary Adair informed the claimant that he was satisfied that he had falsely claimed for work that he had not undertaken, putting the respondent's reputation "*on the line*" and compromising customer safety. In all the circumstances he did not consider a lesser sanction, such as a written warning, to be appropriate. He informed the claimant that he was left with no choice but to terminate his employment.

15. Gary Adair confirmed his decision to the claimant in writing on 28 October 2019 (P28/105). Gary Adair informed the claimant that his employment was being terminated without notice for "*falsely claiming time on job card write up by claiming safety related work not carried out on vehicles*". The claimant was informed that he had the right of appeal against the decision to dismiss him and that any appeal should be sent to Gary Adair within five working days of receiving his notice of dismissal.

16. The claimant appealed against the decision to dismiss him by letter by 4 November 2019 (P29/106). The claimant identified his grounds of appeal as follows;

    1. *I wasn't given any warning of unsatisfactory performance in regards to the allegation at hand.*

    2. *I wasn't given an opportunity to improve or even be corrected.*

    3. *I wasn't given any further training in regards to the improvements required.*

    4. *There was no objective evidence that my performance was unsatisfactory.*

    5. *The hearing and appeal hearing are tainted by the fact you presented the hearing, acting as both judge and jury. I believe you are continuing to act improperly as you are now also the appellant body.*

    6. *I should also add that I feel the real reason the termination of my contract is to avoid paying my apprenticeship bonus of which I will be due the sum of £6000.00 on January 1st 2020, increasing yearly until January 1 2024 to the sum of £12000.00. I feel that these proceedings had been concocted to that end.*

    7. *I feel that the disciplinary action you have taken is unjust considering you have admitted to the fact that Lynsey McDade has been falsifying records with the invoicing of several jobs before completion to inflate*

figures with no action being taken. Meanwhile I have been dismissed without evidence being shown to me in regards to the vehicles in question.

17. In his letter of appeal (P29/106) the claimant also stated;

"*I have no doubt that the appeal proceedings will be as farcical and meaningless as the original hearing. I have been advised by my solicitor that an employment tribunal would expect me to appeal simply to allow the organisation of the chance to revisit this situation.*

I believe however given your approach to the case to date, that you will be unable to carry out the appeal to a satisfactory standard".

The claimant requested that the respondent retain the CCTV footage of the vehicles referred to during the disciplinary hearing.

18. Gary Adair acknowledged receipt of the claimant's letter of appeal on 11 November 2019 (P30/107). He informed the claimant that the appeal hearing would take place before John O'Donnelly, Dealer Principal based in Glasgow. The claimant was informed that he had the right to be accompanied at the hearing by either a work colleague or a trade union representative. In advance of the appeal hearing, John O'Donnelly made enquiries with a Service Technician at his dealership in Glasgow about the difference between "*strip and clean*" and "*lipping*". The Service Technician explained that "*strip and clean*" is a bigger task requiring the removal of a vehicle's wheels. He described "*lipping*" as a relatively minor task and as a result rarely recorded on vehicle job cards.

19. The appeal hearing was scheduled to take place on 14 November 2019. It was postponed to allow the claimant the opportunity to obtain a note of the disciplinary hearing and to consult with the colleague who had agreed to accompany him at the appeal hearing. The claimant was provided with copies of the disciplinary hearing notes (P25/94-95) and the CCTV footage of the vehicles.

20. The appeal hearing resumed on 21 November 2019. The claimant confirmed that he understood why he had been dismissed. John O'Donnelly informed the claimant that he was not satisfied that the grounds of appeal relating to the claimant's poor performance or non-payment of a bonus were relevant to the reason for his dismissal. John O'Donnelly referred to the vehicles on which the claimant claimed to have carried out "*strip and clean*" of the brakes. The claimant was given the opportunity to respond. The claimant stated that he had always "*lipped*" brakes, it was how he had been taught and had never been told otherwise. John O'Donnelly observed that there was no evidence of the claimant undertaking "*strip and clean*" on the CCTV. The claimant stated that he could be seen hammering the brakes on the Fiat 500 and Renault Clio. He said that he had mentioned both cars to his Service Manager and that she had appeared disinterested.

21. The claimant described his Service Manager as having a vendetta against him. He referred to a meeting on 3 September 2019 during which she complained about him speaking to her disrespectfully, something with which he agreed "*a bit*". He described a subsequent incident during which the Service Manager had tried to prevent him from speaking to the Master Technician and told him "*this would not be the end of it*". The claimant described the events that followed, including disciplinary action against him, as "*suspect*". He referred to the CCTV footage being date stamped on the day of his disagreement with his Service Manager.

22. The claimant questioned the accuracy of the efficiency figures. He questioned the possibility of other Technicians writing up notes on his job cards and described not clocking on for overtime as a way of increasing efficiency. The claimant questioned the timing of the Performance Improvement Notice and subsequent disciplinary action. He asked about the timing of the investigation. John O'Donnelly confirmed that the investigation started on 8 September 2019. The claimant agreed that his efficiency figures for September 2019 did not accurately reflect the amount of work he had carried out. The claimant described the practice of not clocking jobs worked as overtime and explained that he had been told to do this by the Service Manager. The claimant

suggested that it was the Service Manager who had falsified records. He identified eight vehicles on which he claimed jobs had not been completed during September 2019. John O'Donnelly explained that the calculation of overtime and bonuses is based on time spent on jobs. The claimant requested a statement from the Technician who had checked the vehicles. John O'Donnelly did not consider it necessary or appropriate to identify the Technician. The claimant requested a copy of any policy relating to staff monitoring and an explanation as to why the vehicles were not re-checked between his dismissal and appeal. John O'Donnelly decided it was appropriate to adjourn the appeal hearing to enquire about and consider the points made by the claimant.

23. During the adjournment, John O'Donnelly spoke to the Service Manager. She did not hesitate in accepting that there had been a disagreement between her and the claimant. She denied that this was the reason for the investigation. John O'Donnelly accepted her position and was satisfied that the Service Manager had not been involved in the decision to dismiss the claimant. He reviewed the CCTV footage. He was satisfied that it had been downloaded at the respondent's Head Office on 3 October 2019, almost a month after the disagreement between the claimant and his Service Manager. He interviewed three Technicians based at Motherwell who all confirmed that it was not common practice to "*lip*" brakes. All three Technicians informed John O'Donnelly that they would not describe "*lipping*" on a job card as "*strip and clean*". One stated that he could not recall ever having recorded "*lipping*" on a job card as it was not a common procedure. He spoke to two Master Technicians who confirmed that apprentices would not be trained to write up "*lipping*" on a job card as "*strip and clean*". John O'Donnelly accepted as accurate the information provided to him by the Technicians. He checked the job cards for the vehicles identified by the claimant and noted that he had signed off the work as completed. He reviewed the CCTV footage and saw the claimant hammering brake discs on vehicles for which he had claimed "*strip and clean*". He could find no evidence of the claimant removing the vehicles' wheels.

24. The appeal hearing resumed on 18 December 2019. John O'Donnelly informed the claimant of the enquiries he had made during the adjournment. John O'Donnelly reminded the claimant that he had been dismissed for claiming work that he had not done. The claimant responded that he was not sure whether he did or did not "*strip and clean*" while working overtime. When asked directly by John O'Donnelly whether he had done the work claimed, the claimant replied, "*how do you know that I didn't?*" The claimant questioned John O'Donnelly's independence and whether he was qualified to hear his appeal.

25. John O'Donnelly was not persuaded that the original decision to dismiss the claimant should be overturned. He was satisfied that the claimant had falsely claimed for work on vehicles that he had not completed. He wrote to the claimant confirming his decision on 18 December 2019 (P34/113). John O'Donnelly informed the claimant that having reviewed his letter of appeal and followed up the points made at the appeal hearing, he had concluded that the claimant had "*claimed for work that was never carried out*". He confirmed that the decision to dismiss the claimant stood.

NOTES ON EVIDENCE

26. The Tribunal found the evidence of both of the respondent's witnesses to be clear and straightforward. The Tribunal accepted their evidence as credible and reliable. They were both able to provide persuasive and thoughtful explanations for the decisions they had taken in relation to the claimant's dismissal and appeal respectively. When challenged by the claimant, their recollection of events was consistent. The Tribunal was persuaded that they had given sufficient consideration to the issues raised by the claimant and the points made by him during the disciplinary process.

27. The claimant's evidence was less persuasive. There was a lack of clarity for example about whether he was seeking to show that he had undertaken the work recorded on the job cards or that he had mistakenly described the work

undertaken as "*strip and clean*". His position was inconsistent during both the disciplinary process and before the Tribunal. Similarly, he was evasive when questioned about whether he had completed the work recorded on the job cards both during the disciplinary hearing and before the Tribunal.

ISSUES

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

i. What was the reason (or if more than one, the principal reason) for the claimant's dismissal and was it a potentially fair reason in terms of Sections 98 (1) & (2) of the Employment Rights Act 1996?

ii. If the reason was a potentially fair reason, was the dismissal fair or unfair in terms of Section 98(4) of Employment Rights Act 1996?

iii. If the reason was gross misconduct as stated by the respondent;

(a) Did the respondent believe that the claimant was guilty of gross misconduct,

(b) Was the respondent's belief based on reasonable grounds &

(c) When the belief was formed on those grounds had the respondent carried out as much investigation into the matter as was reasonable in the circumstances.

iv. Did the decision to dismiss the claimant and the procedure followed by the respondent fall within the band of reasonable responses.

DISCUSSION & DELIBERATIONS

29. In terms of Section 94 of the Employment Rights Act 1996 (ERA 1996), the claimant had the right not to be unfairly dismissed by the respondent. It was not in dispute that the claimant was dismissed by the respondent. The

claimant claimed that his dismissal was unfair. The respondent denied any unfairness.

30. In terms of Section 98(1) of ERA 1996, it is for the respondent to show the reason (or, if more than one, the principal reason) for the claimant's dismissal. The respondent gave the reason for the claimant's dismissal as falsely claiming for work that he had not carried out amounting to gross misconduct. The claimant identified various ulterior motives for his dismissal. He referred to the disagreement with his Service Manager caused by his disrespectful behaviour towards her and her remark that "*this would not be the end of it*". He referred to the Service Manager having conducted the investigation meeting. He challenged the efficiency figure that had raised concerns about his work. He described the figure of 146% as "*totally unbelievable*" and suggested that the figure was closer to 110%. Either way, the Tribunal was persuaded that the increase in the claimant's efficiency was sufficiently high to reasonably raise concerns on the part of the respondent and to merit investigation. While the Tribunal did not doubt that relations between the claimant and his Service Manager were strained at the time of the disciplinary proceedings, from the evidence before it, the Tribunal was not persuaded that this was the reason for the claimant's dismissal. There was no evidence of the Service Manager having been involved in the disciplinary process after the investigation meeting. There was no suggestion that it was inappropriate of the Service Manager to review CCTV footage as part of performance management or to conduct the investigation meeting. John O'Donnelly questioned the Service Manager about the claimant's concerns and was satisfied that the reason for the claimant's dismissal was unrelated to their disagreement, which the Service Manager readily accepted had taken place. When questioned during the Tribunal hearing about the basis on which he sought to show that the Service Manager was motivated to dismiss him the claimant accepted that their disagreement was not the reason for his dismissal.

31. The claimant also referred to the respondent being motivated to dismiss him to avoid paying a loyalty bonus. Based on the evidence before it, the Tribunal was not persuaded that this was the reason for the claimant's dismissal. The Tribunal was not persuaded that payment of a loyalty bonus to the claimant was a factor taken into consideration by either of the respondent's witnesses during the disciplinary process. There was evidence of Gary Adair's concern that by deliberately overstating the work he had undertaken the claimant may be entitled to additional pay but this was unrelated to the loyalty bonus and in any event was not the principal reason for the claimant's dismissal. In all the circumstances the Tribunal was satisfied that the reason advanced by the respondent for the claimant's dismissal of falsely claiming for work that he had not carried out, was the principal reason for his dismissal.

32. Conduct is a potentially fair reason for dismissal in terms of Section 98(2)(b) of ERA 1996. The respondent having met the requirement to show that the claimant was dismissed for a potentially fair reason, the Tribunal went on to consider whether the dismissal was fair or unfair having regard to the claimant's conduct. In terms of Section 98(4) (a) of ERA 1996, this will depend on whether in the circumstances (including the size and administrative resources of the respondent's undertaking) the respondent acted reasonably or unreasonably in treating the claimant's conduct as a sufficient reason for dismissing him. This must be determined in accordance with equity and the substantial merits of the case in terms of Section 98(4)(b) of ERA 1996.

33. When considering whether the respondent acted reasonably or unreasonably in treating the claimant's conduct as a sufficient reason for dismissing him, the Tribunal must have regard to whether the decision to dismiss fell within "*the band of reasonable responses*" of a reasonable employer (**Iceland Frozen Food Limited v Jones 1983 ICR 17**). It is not for the Tribunal to consider how it would have responded to the claimant's conduct. It must consider whether a reasonable employer might reasonably have dismissed the claimant in response to his conduct.

34. Whether the respondent acted reasonably or unreasonably will depend on the circumstances of the case. Applying the guidance in the authority of **British Homes Limited -v- Burchill 1980 ICR 303** involves the Tribunal being satisfied that;

1) The respondent believed the claimant was guilty of the misconduct for which he was dismissed.

2) The respondent had in mind reasonable grounds upon which to sustain that belief &

3) At the stage at which the respondent formed that belief on those grounds, it had carried out as much investigation into the matter as was reasonable in all the circumstances.

35. The Tribunal was satisfied that both Gary Adair and John O'Donnelly genuinely believed that the claimant was guilty of falsely claiming for work that he had not carried out. They had reasonable grounds upon which to sustain their belief. The claimant had recorded that he undertook "*strip and clean*" on job cards. "*Strip and clean*" involves removing a vehicle's wheels. There was no evidence that the claimant had removed the vehicles' wheels on which he claimed to have undertaken "*strip and clean*". CCTV footage showed him undertaking a procedure known as "*lipping*". This is a different procedure to that of "*strip and clean*". The claimant had been trained to "*strip and clean*". He knew the difference between "*strip and clean*" and "*lipping*".

36. The Tribunal was also satisfied that when Gary Adair formed his belief that the claimant was guilty of falsely claiming for work that he had not undertaken, the respondent had carried out as much investigation into the matter as was reasonable in all the circumstances. The claimant was shown job cards and CCTV footage at the investigation meeting. The claimant accepted that he had not undertaken the procedure of "*strip and clean*" as claimed on vehicle job cards. In advance of the disciplinary hearing, Gary Adair viewed the CCTV footage of the claimant working on vehicles. At the disciplinary hearing the

claimant described undertaking the different procedure of "*lipping*". He was unable to explain how he had undertaken "*strip and clean*" without removing the vehicles' wheels. Gary Adair adjourned the disciplinary hearing to consider and make enquiries about points raised by the claimant. He arranged for the vehicles to be examined by a Master Technician who was unable to find any evidence of "*strip and clean*" on vehicles for which the procedure had been claimed. While it was not in dispute that the vehicles were inspected sometime after the work was claimed to have been done, the Tribunal was not persuaded by the claimant's submission that as a result Gary Adair was not entitled to attach any weight to the Master Technician's findings. As submitted by the respondent, the evidence from the Master Technician was only one factor taken into account by Gary Adair when determining whether the claimant was guilty of misconduct. The Tribunal was also not persuaded that Gary Adair was obliged to investigate whether the claimant had worked "*off the clock*". Gary Adair did not accept the claimant's suggestion that he had been encouraged to work "*off the clock*" to improve his efficiency figures. His concern was whether the work claimed had been done as opposed to when it was done. The claimant was unable to provide any persuasive evidence in this respect.

37. The Tribunal was also satisfied that before deciding to refuse the claimant's appeal, John O'Donnelly had completed a reasonable investigation into points raised by the claimant. He adjourned the appeal hearing to consider and make enquiries about points raised by the claimant. He spoke to the Service Manager about her alleged vendetta against the claimant and checked when CCTV footage had been downloaded. He spoke to Technicians about the difference between "*strip and clean*" and "*lipping*". He reviewed the CCTV footage and the job cards completed by the claimant. The Tribunal was satisfied that, like Gary Adair, he had reasonable grounds to believe that the claimant was guilty of falsely claiming for work that he had not carried out and that he reached his conclusion to refuse the appeal following as much investigation into the matter as was reasonable in the circumstances.

38. The claimant challenged the procedure followed by the respondent. In particular, he questioned the impartiality of the appeal procedure. While it was not in dispute that the claimant was informed that he should send a letter of appeal to Gary Adair, there was no persuasive evidence before the Tribunal that Gary Adair played any further part in the appeal procedure or influenced in any way John O'Donnelly's decision to refuse the appeal. From the evidence before it, the Tribunal was also not persuaded that John O'Donnelly lacked the necessary impartiality or position within the respondent's business to consider the appeal. The Tribunal was satisfied that John O'Donnelly had undertaken a thorough investigation into the issues raised by the claimant on appeal and had carried out an impartial assessment. The claimant submitted that he was not given an opportunity to speak at the appeal. The Tribunal having had regard to the evidence before did not accept this submission. The Tribunal was satisfied that at each stage of the disciplinary proceedings the claimant was given the opportunity to respond to the allegation against him of falsely claiming for work that he had not carried out.

39. The claimant referred the Tribunal to the ACAS Code of Practice. The Tribunal was satisfied that the respondent had complied with the Code. In particular, they had carried out an investigation of the potential disciplinary matter. They informed the claimant of the problem and that there was a disciplinary case to answer. The Tribunal was satisfied that the claimant understood what he was alleged to have done and was given sufficient time to respond. There was a disciplinary hearing. The claimant was allowed to be accompanied at the disciplinary hearing, The claimant was informed in writing of the outcome of the disciplinary hearing and provided with the right to appeal. The Tribunal was satisfied that the claimant had been provided with sufficient information, including job cards and CCTV footage to understand the reason for his dismissal and to present his appeal. The claimant did not claim that John O'Donnelly had acted unreasonably by not identifying the Technician who had examined the vehicles and the Tribunal was not persuaded that the claimant had suffered any prejudice as a result.

40. The claimant also referred to Tribunal to the ACAS Guide in relation to the sanction of dismissal. The claimant submitted that in all the circumstances, including his length of service, dismissal was excessive and that he should have been allowed an opportunity to improve his performance before being dismissed. The clamant questioned the accuracy of the figures relied on by the respondent to justify their initial concerns about his conduct. He submitted that had he wanted to inflate his efficiency figure he would have looked for a procedure that attracted more time than "*strip and clean*". He questioned how seriously the respondent treated the accuracy of figures relied upon by other employees, in particular management.

41. Mr Singer for the respondent submitted that in all the circumstances the decision to dismiss the claimant clearly fell within "*the band of reasonable responses*". Gary Adair was satisfied that the claimant had falsely claimed for work that he had not carried out. He was satisfied that the claimant's conduct was dishonest. The work that had been falsely claimed involved servicing and repairing brakes. Gary Adair was entitled to have serious concerns about the potential reputational damage to the respondent of a vehicle being offered for re-sale on which work to the vehicle's brakes had been claimed but not carried out. He was entitled to have serious concerns about customer safety. He was entitled to conclude that the claimant's conduct amounted to gross misconduct and that in all the circumstances a lesser sanction was not appropriate. The Tribunal was satisfied that in all the circumstances, the decision to dismiss the claimant fell withing "*the band of reasonable responses*".

CONCLUSION

42. The Tribunal concluded that the respondent had acted reasonably in treating the claimant's conduct as a sufficient reason for dismissing him and that in all the circumstances the claimant was not unfairly dismissed by the respondent.

Employment Judge: Frances Eccles
Date of Judgment: 02 August 2021
Entered in register: 10 August 2021
and copied to parties

This document should be treated as signed by me – Employment Judge F Eccles – in accordance with the Presidential Practice Direction of 1 May 2020.