2304875/2020

THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH by CVP**

BEFORE: **EMPLOYMENT JUDGE TRUSCOTT QC**

BETWEEN:

Mr G Roomes	**Claimant**
AND	
Peabody Trust and its subsidiaries	**Respondent**

ON: **13 July 2021**

Appearances:

For the Claimant: **Ms S Heijdra of Counsel**
For the Respondent: **Mr J Cook of Counsel**

JUDGMENT

The claimant's claim of unfair dismissal brought under Part X of the Employment Rights Act 1996 is not well founded and is dismissed.

REASONS

PRELIMINARY

1. The respondent was represented by Mr J Cook, barrister who led the evidence of Mr J Fryer, Caretaking Services Manager and Mr T Broad, Head of Environmental Services. The claimant was represented by Ms S Heijdra, barrister and he gave evidence on his own behalf.

2. There was one volume of documents to which reference will be made where necessary. The numbering in the judgment refers to the pages in the electronic bundle.

3. The hearing was confined to liability only due to shortage of time.

ISSUES

4. The issues were provided by the respondent and considered appropriate by the Tribunal.

1. What was the reason for C's dismissal? R relies upon C's conduct, which is a potentially fair reason for dismissal.

2. Given that conduct is relied upon as the reason for dismissal, the *Burchell* test is relevant:

   2.1. Did R genuinely believe that C was guilty of misconduct?

   2.2. If so, was that belief held on reasonable grounds?

   2.3. Did R carry out as much investigation into the matter as was reasonable in all the circumstances of the case?

3. Was the decision to dismiss within the band of reasonable responses having regard to all the circumstances of the case?

FINDINGS OF FACT

1. The respondent is a registered provider of social housing. It is regulated by the Regulator for Social Housing and in receipt of public funds.

2. The claimant was employed by the respondent from 3 April 2018 until 11 May 2020 when he was summarily dismissed on the grounds of gross misconduct [15]. No previous formal disciplinary action had been taken against him during his employment.

3. The claimant's job was Environmental Officer (Grounds) which primarily involved maintenance of canals and waterways. According to paragraph 2.1 of the contract of employment he was employed jointly by Peabody Trust and all of the Trust's subsidiaries from time to time [36].

4. On 13 March 2020, the claimant, Mr Chris Waite and another employee were called to Southmere Park in Thamesmead to assist in freeing a vehicle that had become stuck in mud. A number of other employees were already present at the location. At some point, the claimant walked away from his colleagues, he says, to relieve himself. He decided at this point to smoke what he claims was a pre-rolled CBD cigarette.

5. As the claimant was smoking, he was observed by Mr P Hull who had stepped away from the group of employees to make a telephone call to request assistance with the job. Mr Hull saw the claimant notice that he was being observed and he stubbed his cigarette out on a tree. Mr Hull considered this behaviour to be odd and asked the

claimant what he was smoking. Mr Hull smelled the stub which the claimant held out to him and noticed a distinctive smell of cannabis. The claimant claimed that the substance he was smoking was CBD. Mr Hull decided that he should return to the office with the claimant to discuss the issue further [55-56]. Mr Hull was annoyed with him as he had spoken to the claimant on previous occasions about smoking cannabis at work.

6. At the office, a meeting took place between the claimant, Mr Hull and Mr S Pyke, Estates Services Manager [51-53]. The claimant was asked to explain his conduct. The claimant said that the substance he was smoking was not cannabis but CBD. He said "I trying to give this up" and claimed that due to recent life events there had been a "lapse in my judgment". He claimed to have obtained the substance from a shop in Woolwich, but did not produce, when asked, any evidence, such as a packet, proving what specifically he had been smoking. The claimant also accepted having previously smoked cannabis and said that he had been self-medicating with CBD. The claimant initially said he had been smoking CBD for a "couple of years" but then corrected himself to say a "couple of months". Mr Pyke asked to see the substance but the claimant said he only had enough for one joint. Given that the claimant had admitted to smoking unprescribed drugs at work which was potentially illegal, Mr Pyke decided that it was necessary to suspend the claimant pending investigation [43-44]. The claimant did not receive the letter as it was sent to a previous address where he no longer lived.

7. Later that day, Mr Pyke telephoned the claimant to ask if he could call at his home to see what the substance was that he was smoking but was told that he was not at home but in Woolwich. Mr Pyke intended to visit the Seventh Sun shop in Woolwich where the claimant said that he had purchased the product he was smoking to ascertain whether the shop sold such products. The claimant later met Mr Pyke at a McDonald's in Plumstead and showed him a new pack of "CBD buds and leaves". The claimant had purchased this product from a different store and was not the specific substance the claimant had been smoking on the morning of 13 March [63-64].

8. Mr S Crew was appointed to investigate the allegation. He interviewed the claimant and interviewed/obtained statements from eight other employees including Mr Hull, Mr Pyke and Mr Waite [49-68]. In the course of the investigation, it emerged that the claimant had been discovered smoking cannabis in the workplace on two previous occasions, had been warned informally and had apologised for his conduct. Mr Crew concluded that it was plausible that the claimant had been smoking an illegal substance at work and that there was a risk that this could bring the respondent into disrepute. He recommended that the matter proceed to a formal disciplinary hearing.

9. Mr J Fryer was appointed as disciplinary manager. The claimant was sent a letter dated 14 April outlining the disciplinary charge and inviting him to a disciplinary hearing on 22 April [45-46]. He was informed of his right to be accompanied and that dismissal was a possible outcome. The claimant did not attend the hearing on 22 April. Mr Fryer telephoned the claimant and ascertained that the respondent had two addresses on its HR system for the claimant and that the letter had been sent to the claimant's former address [69]. Mr Fryer rescheduled the meeting for 28 April and sent a further invitation letter to the claimant's correct address [47-48].

10. At the meeting on 28 April, the claimant explained that he had not received a copy of one of the appendices from the investigation report. Mr Fryer obtained a copy of the missing appendix from Mr Crew and decided to adjourn the hearing until 30 April so that both he and the claimant had a proper opportunity to consider all of the documents.

11. In advance of the reconvened meeting, Mr Fryer obtained guidance from Mr Andy Howard, Enforcement Team Leader, about whether the CBD buds and leaves that the claimant alleged he had been smoking on 13 March was an illegal substance. On 29 April, Mr Howard forwarded an email that was sent to him by an unidentified contact in the police who expressed the view that "*CBD flowers and buds remain illegal in the UK as being in possession of the relevant part of cannabis and/or hemp plant, assuming it was not a licensed medicinal product and prescribed as such*". Mr Fryer carried out his own research on this topic, spoke with connections in the police and discussed the matter with Mr Howard. Mr Fryer was satisfied, on the basis of these enquiries, that possession of CBD buds and leaves was illegal and contravened the Misuse of Drugs Act 1971.

12. The disciplinary hearing was reconvened on 30 April [74-80]. Mr Fryer explained at the outset that the purpose of the meeting was to determine whether there was a case to answer and if so what sanction (if any) should be applied. The claimant was warned that a potential outcome was dismissal and confirmed that he did not wish to have a companion. He was given the opportunity to provide a full account of his actions. Mr Fryer asked how the claimant would respond to being told that CBD was an illegal substance. The claimant responded that he would be "*shocked because it's sold over the counter*" and added "*[s]o I'm guilty as charged*" [75-76]. The claimant acknowledged that given the smell of the substance people could have thought it was marijuana [76]. The claimant confirmed that he did not have a prescription for the drugs from his doctor [77]. It was put to the claimant that on two previous occasions the issue of him smoking cannabis at work had been raised with him. The claimant recalled one such occasion [78-79]. The claimant was asked whether he had informed management that he was smoking CBD at work. He replied "[*n]o as I believe I would have shot myself in the foot – majority of people in senior positions would take the view that it is drugs*".

13. Mr Fryer decided to adjourn to carry out further investigation and consider what the claimant had said in the meeting before reaching a decision. His further research confirmed his previous view that it was illegal to possess "CBD buds and leaves".

14. Mr Fryer decided that the appropriate sanction was summary dismissal. His rationale for the decision is set out in the dismissal letter dated 11 May 2020 [71-73]. Mr Fryer's reasoning was that he was satisfied that the claimant had possessed and smoked an illegal substance in the workplace, the claimant's conduct was in breach of the respondent's disciplinary policy and code of conduct, the claimant had been informally warned twice about the same conduct and had failed to modify his behaviour, there was a risk that the respondent's health and safety policy had been breached given that the claimant had admitted to smoking an unprescribed drug which was illegal and he was required to operate heavy machinery; the claimant's actions risked bringing the respondent into disrepute.

15. The claimant lodged an appeal on 12 May [81-83]. On 13 May, the claimant was invited to an appeal hearing on 22 May to be chaired by Mr Broad [84]-[85].

16. At the appeal meeting, the claimant was given an opportunity to speak to his grounds of appeal [90-93]. He accepted that he had previously been spoken to by Mr Pyke on an occasion when he had been discovered smoking cannabis at work and that he had apologised to him [91]. The claimant raised a number of matters including that there was a "witch hunt" against him apparently due to a previous dispute between the claimant and Greenwich Council [91], that he had "heard there is a racist element to Mr Hull" though had not experienced this himself [92], that his colleagues had "snitched" [92], that Mr Fryer had asked him inappropriate questions about his personal circumstances [92-93] and that the sanction was too harsh [93].

17. Mr Broad took time to consider his decision and decided to reject the appeal. He set out his reasoning in a detailed letter dated 29 May [86-89].

SUBMISSIONS

18. The Tribunal heard brief oral submissions from both parties with a skeleton argument for the respondent.

LAW

19. In determining whether or not a dismissal is fair, there are two stages. First, the employer must establish the principal reason for the dismissal and show that it falls within the category of reasons which the law specifies as being potentially valid reasons.

20. The list of potentially fair reasons is set out in section 98 of the Employment Rights Act. Misconduct is a potentially fair reason.

21. The determination of the question whether the dismissal was fair or unfair, is established in accordance with section 98(4) of the Employment Rights Act, which states:
(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) 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

(b) shall be determined in accordance with equity and the substantial merits of the case.

22. In the context of misconduct, the test of a fair dismissal is that it is sufficient if the employer honestly believes on reasonable grounds, and after all reasonable investigation, that the employee is committed the misconduct. In considering reasonableness in this context, the judgment in **British Home Stores Ltd v. Burchell** [1980] ICR 303 contained guidelines, cited in most tribunal cases involving dismissal

for misconduct and are contained in the following quotation from the Employment Appeal Tribunal's judgment at paragraph 2:

> "What the tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in question (usually, though not necessarily, dishonest conduct) entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. That is really stating shortly and compendiously what is in fact more than one element. First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. […] It is not relevant, as we think, that the tribunal would itself have shared that view in those circumstances. It is not relevant, as we think, for the tribunal to examine the quality of the material which the employer had before him, for instance to see whether it was the sort of material, objectively considered, which would lead to a certain conclusion on the balance of probabilities, or whether it was the sort of material which would lead to the same conclusion only upon the basis of being sure' as it is now said more normally in a criminal context, or, to use the more old-fashioned term, such as to put the matter beyond reasonable doubt'. The test, and the test all the way through, is reasonableness; and certainly, as it seems to us, a conclusion on the balance of probabilities will in any surmisable circumstance be a reasonable conclusion."

23. The Court of Appeal further considered **Burchell** in **Graham v. Secretary of State for Work and Pensions (Jobcentre Plus*)*** [2012] IRLR 759 by Aikens LJ at paragraphs 35-36:

> "35 …once it is established that employer's reason for dismissing the employee was a "valid" reason within the statute, the ET has to consider three aspects of the employer's conduct. First, did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case; secondly, did the employer believe that the employee was guilty of the misconduct complained of and, thirdly, did the employer have reasonable grounds for that belief.
>
> 36 If the answer to each of those questions is "yes", the ET must then decide on the reasonableness of the response by the employer. In performing the latter exercise, the ET must consider, by the objective standards of the hypothetical reasonable employer, rather than by reference to the ET's own subjective views, whether the employer has acted within a "band or range of reasonable responses" to the particular misconduct found of the particular employee."

24. The Tribunal considered the cases of **Sandwell & West Birmingham Hospitals NHS Trust v. Westwood** 2009 UKEAT/0032/09 and **Eastland Homes Partnership Ltd. v. Cunningham** 2014 UKEAT/027/13 and considered the nature of the misconduct and whether the characterisation by the respondent that it was gross misconduct was reasonable.

25. It may be that the foregoing issue is contained within consideration of sanction. In relation to sanction, there are, broadly, three circumstances in which dismissal for a first offence may be justified:
25.1. where the act of misconduct is so serious (gross misconduct) that dismissal is a reasonable sanction to impose notwithstanding the lack of any history of misconduct;
25.2. where disciplinary rules have made it clear that particular conduct will lead to dismissal; and
25.3. where the employee has made it clear that he is not prepared to alter his attitudes so that a warning would not lead to any improvement.

26. The ACAS Code of Practice on Disciplinary and Grievance procedures provides guidance on fair procedures.

27. In considering procedural fairness the Employment Appeal Tribunal in **Clark v. Civil Aviation Authority** [1991] IRLR 412 laid out some general guidelines as to what a fair procedure requires. But even if such procedures are not strictly complied with a dismissal may nevertheless be fair – where, for example, the procedural defect is not intrinsically unfair and the procedures overall are fair: **Fuller v. Lloyd's Bank plc** [1991] IRLR 336.

28. An employment tribunal must take a broad view as to whether procedural failings have impacted upon the fairness of an investigation and process, rather than limiting its consideration to the impact of the failings on the particular allegation of misconduct, see **Tykocki v. Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust** UKEAT/0081/16 dated 17 October 2016.

29. Procedural defects in the initial disciplinary hearing may be remedied on appeal provided that in all the circumstances the later stages of a procedure are sufficient to cure any earlier unfairness: **Taylor v. OCS Group Ltd** [2006] IRLR 613.

30. Procedure is part of the overall fairness to be considered by the tribunal and not a separate act of fairness – see Langstaff J in **Sharkey v. Lloyds Bank plc** UKEAT/0005//15 (4 August 2015, unreported):

> …procedure does not sit in a vacuum to be assessed separately. It is an integral part of the question whether there has been a reasonable investigation that substance and procedure run together.

31. Whilst there was some suggestion that the 'range of reasonable responses' test applies only to the decision to dismiss, not to the procedure adopted, this was rejected by the Court of Appeal in **Sainsbury's Supermarkets Ltd v. Hitt** [2003] ICR 111 CA. The Court of Appeal held in this case (at paragraph 30) that the 'range of reasonable responses' – or the need to apply the objective standards of the reasonable employer – applies:

> "…as much to the question of whether the investigation into the suspected misconduct was reasonable in the circumstances as it does to the reasonableness of the decision to dismiss for the conduct reason."

32. The Employment Appeal Tribunal in **Iceland Frozen Foods Ltd v. Jones** [1982] IRLR 439 summarised the way in which tribunals should approach the statutory question, saying at paragraph 24:

"(1) The starting point should always be the words of section 57(3)[1] themselves;

(2) In applying the section, an industrial [employment] tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the employment tribunal) consider the dismissal to be fair;

(3) In judging the reasonableness of the employer's conduct, an employment tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;

(4) In many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another;

(5) The function of the industrial [employment] tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair: if the dismissal falls outside the band, it is unfair."

33. The Tribunal must not substitute its own view of the circumstances giving rise to the dismissal, and the decision making, for that of the employer, see **London Ambulance Service NHS Trust v. Small** [2009] IRLR 563 CA where Mummery LJ gave the following guidance:

"41. On the liability issue the ET ought to have confined its consideration to facts relating to the Trust's handling of Mr Small's dismissal: the genuineness of the Trust's belief and the reasonableness of the grounds of its belief about the conduct of Mr Small at the time of the dismissal. Instead, the ET introduced its own findings of fact about the conduct of Mr Small, including aspects of it that had been disputed at the disciplinary hearing. For example, the ET found that the daughter, who did not give evidence to the ET, had not told Mr Small that her mother was hypertensive and diabetic. Further, on the point whether Mr Small had done a risk assessment before asking the patient to walk, the ET held that there was no evidence that he had failed to carry out a risk assessment, but Mr Suter gave evidence to the ET that the crucial issue before the disciplinary panel was that Mr Small had not carried out a proper patient assessment, before the decision was made.

42. The ET used its findings of fact to support its conclusion that, at the time of dismissal, the Trust had no reasonable grounds for its belief about Mr Small's conduct and therefore no genuine belief about it. By this process of reasoning the ET found that the dismissal was unfair. In my judgment, this amounted to the ET substituting itself and its findings for the Trust's decision-maker in relation to Mr Small's dismissal.

43. It is all too easy, even for an experienced ET, to slip into the substitution mindset. In conduct cases the claimant often comes to the ET with more evidence and with an understandable determination to clear his name and to prove to the ET that he is innocent of the charges made against him by his

[1] Said provisions of the Employment Protection (Consolidation) Act 1978 having been superseded by section 98(4) of the Employment Rights Act 1996.

employer. He has lost his job in circumstances that may make it difficult for him to get another job. He may well gain the sympathy of the ET so that it is carried along the acquittal route and away from the real question- whether the employer acted fairly and reasonably in all the circumstances at the time of the dismissal."

Dismissals Relating to Drug Use/Possession

34. There are no special rules that govern conduct dismissals in circumstances where the dismissal relates to the possession and/or use of non-prescribed drugs or other potentially illegal conduct. However, there are cases which have considered similar factual scenarios to the instant case.

35. In **Asda Stores Ltd v. Coughlan** UKEAT/0453/10, the EAT considered a case in which an employee had been dismissed for possession of cannabis in the workplace. The claimant, who had 21 years of unblemished service, purchased cannabis during a break. He stored it in his locker with the intention of taking it home after his shift. The smell attracted attention, the claimant's locker was searched, and the cannabis was discovered. The respondent's disciplinary policy considered unlawful possession of drugs to amount to gross misconduct and following an investigation the claimant was ultimately dismissed for gross misconduct. The ET decided that the dismissal was unfair (albeit with a 85% reduction for contribution), apparently on the basis that the respondent had paid insufficient attention to the claimant's personal mitigation and incorrectly applied its drugs and alcohol policy. The EAT overturned the ET's decision and substituted a finding that the dismissal was fair. In the EAT's view, the ET had misunderstood the respondent's drugs and alcohol policy and, despite directing itself correctly, had impermissibly substituted its view for that of the employer. How the employer chose to balance personal mitigation against the disciplinary offence was a matter for the employer. In the EAT's view at paragraph 18:

> "Dismissal for this single act of gross misconduct involving the acquisition and possession of unlawful drugs on the Respondent's premises plainly and unarguably fell within the range of reasonable responses…"

Cannabis and the Criminal Law

36. These paragraphs are based on the respondent's submission. Possession of a controlled drug is rendered unlawful by section 5 of the Misuse of Drugs Act 1971. Controlled drugs are listed in Schedule 2 of the Misuse of Drugs Act. Cannabis is specified as a Class B controlled drug in Part II of Schedule 2.

37. Section 37(1) of the Misuse of Drugs Act 1971 as amended by section 52 of the Criminal Law Act 1977 defines "cannabis" as follows:

> "'cannabis' (except in the expression 'cannabis resin') means any plant of the genus Cannabis or any part of any such plant (by whatever name designated) except that it does not include cannabis resin or any of the following products after separation from the rest of the plant, namely—
>
> (a) mature stalk of any such plant,
> (b) fibre produced from mature stalk of any such plant, and
> (c) seed of any such plant."

38. It follows from the above that cannabis "buds and flowers" of whatever type are illegal under the Misuse of Drugs Act given that cannabis is defined as meaning any plant of the "genus" and only the mature stalks, fibre made from mature stalks of the plant and seeds of the plant are excluded from the definition in section 37(1).

39. CBD is an abbreviation of the word "cannabidiol" which is a chemical compound found in the cannabis plant. Tetrahydrocannabinol ("THC") is the main psychoactive ingredient in cannabis. It is understood that it is possible to obtain cannabis buds and leaves which ostensibly contain high proportions of CBD and lower proportions of THC, though the term "CBD cigarette" appears to be a misnomer.

40. It is arguable that pure CBD products, such as, potentially, CBD oil may be legal. A Home Office document entitled "Drug Licensing Factsheet – Cannabis, CBD and other cannabinoids"[2] offers the following guidance:

> "CBD as an isolated substance, in its pure form, would not be controlled under the MDA 1971 / MDR 2001. If a CBD 'product' contained any controlled cannabinoids, unintentionally or otherwise (e.g., THC or THC-V), then it is highly likely that the product would be controlled. It is our understanding that it is very difficult to isolate pure CBD, and in our experience many products in fact do not fully disclose their contents or provide a full spectrum analysis at an appropriate level of sensitivity to accurately and consistently determine their true content or control status. Against this background, the presumption has to be one of caution - that is, that a CBD containing product would be controlled under the MDA 1971 /MDR 2001 as a result of its other cannabinoid content."

41. The position therefore is that products containing pure CBD as an isolated substance (defined as containing less than 0.2% THC) may not be illegal, but this appears to be a legal grey area. However, cannabis buds and flowers are illegal regardless of whether the plants have been bred or cultivated to contain a reduced level of THC.

DISCUSSION AND DECISION

Reason for dismissal

42. There was no dispute that the reason for the dismissal was the misconduct of the claimant in possessing and smoking a controlled substance at work.

43. There was no dispute that the claimant was in possession of CBD and had smoked this substance in the workplace. The claimant also accepted that he had been informally warned and apologised for similar conduct previously. Mr Fryer and Mr Broad were advised through Mr Howard that the substance in the claimant's possession was illegal [70]. Both supplemented the advice they had been given with their own research. Both genuinely believed the claimant had committed a criminal offence while at work. The claimant did not suggest that either Mr Fryer or Mr Broad did not genuinely believe he was guilty of misconduct or had an ulterior motive for dismissing him. The respondent had a genuine belief in the guilt of the claimant.

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[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/825872/factsheet-cannabis-cbd-and-cannabinoids-2019.pdf

44. Where the evidence of the claimant differed from the evidence of the respondent's witnesses, the Tribunal preferred the accounts given on behalf of the respondent. The evidence for the respondent was clear, concise and consistent with the documentation. The claimant required the respondent to "strict prove" that CBD is an illegal substance. The question for the Tribunal is not whether the CBD the claimant had in his possession was illegal but rather whether Mr Fryer and Mr Broad reasonably believed that it was. The claimant did not produce evidence that what he was smoking on 13 March was actually CBD. He simply produced a new packet of CBD flowers and buds after the fact which he claimed to have purchased from a different shop [78]. Taking the claimant's claims at face value, it is not CBD, as a chemical compound, that is illegal *per se*, but rather the fact that the claimant possessed and smoked buds and leaves from the cannabis genus which are classed as cannabis and therefore a controlled substance under the Misuse of Drugs Act. Both Mr Fryer and Mr Broad were satisfied that the substance which the claimant had possessed and smoked at work on 13 March 2020 was illegal. This was a reasonable conclusion for them to reach.

45. The Tribunal concluded that the respondent carried out as much investigation as was reasonable in all the circumstances. The claimant did not take any issue with the thoroughness of the investigation. Mr Crew carried out a detailed investigation which involved interviewing and/or taking statements from eight fellow employees in addition to the claimant. The claimant has not suggested that anyone else should have been interviewed or that there were any other lines of enquiry that ought to have been explored. The material facts of the incident that occurred on 13 March 2020 were not in dispute.

46. Both Mr Fryer and Mr Broad carried out further investigations at the disciplinary and appeal stage, particularly to satisfy themselves that the substance the claimant possessed and had been smoking was illegal. Even before a formal investigation was instituted, the suspending officer Mr Pyke also made attempts to investigate by trying to visit the shop where the claimant claimed to have bought the substance to make enquiries and by meeting the claimant at the Plumstead McDonald's to give him an opportunity to provide evidence of what precisely he had been smoking.

47. The Tribunal concluded that there were no procedural failings in either the disciplinary or appeal procedure.

48. There was an obvious risk of reputational damage to the respondent. The claimant was smoking an illegal substance, whilst at work and in uniform, as an identifiable member of the respondent's staff, in a public park. The Tribunal concluded that the dismissal fell well within the range of reasonable responses.

Conclusion

49. The claim of unfair dismissal claim is not well-founded and is dismissed by the Tribunal.

Employment Judge Truscott QC

Date 22 July 2021