



# EMPLOYMENT TRIBUNALS

**Heard at:** Southampton (by video)                      **On:** 7 and 8 October 2021

**Claimant:** Mr Clinton Taylor

**Respondent:** Royal Mail Group Limited

**Before:** Employment Judge Fowell

**Representation:**

**Claimant:** Mr P Berry, CWU Union Representative

**Respondent:** Ms S Percival of Weightmans LLP

## JUDGMENT

1. The claimant was unfairly dismissed.
2. The claimant shall be reinstated to his former employment by Monday 29 November 2021 (the date of reinstatement).
3. In particular:
  - a. The respondent shall henceforth treat the claimant in all respects as if he had not been dismissed.
  - b. The respondent shall pay to the claimant the sum of £1,700 for the pay he might reasonably have expected to receive (having regard to his subsequent earnings) between the date of termination of his employment and the date of reinstatement.
  - c. The claimant's pension entitlements must be restored to him by the date of reinstatement.
  - d. The claimant's shares in the respondent company must be restored to him, subject to the claimant giving credit for the amount received on termination for the shares.

# REASONS

## Introduction

1. Mr Taylor was a postman for over 20 years. He was dismissed for what was said to be gross misconduct, for deliberately failing to deliver items on his route. As a result he brings this complaint of unfair dismissal.
2. This important right is set out in s.94 Employment Rights Act 1996 (ERA). By s.98(4)
  - ...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.
3. Since Royal Mail is one of the largest organisations, with about 139,000 members of staff, it follows that the highest standard of fairness is to be expected. The question however is not whether Mr Taylor was in fact guilty of this offence but, broadly speaking, whether in the circumstances it was reasonable of Royal Mail to conclude that he was, and if so whether the misconduct was sufficiently serious to justify his being dismissed.
4. As is well-established, that question can be broken down further as follows:
  - a. Was there a genuine belief on the part of the decision-maker that Mr Taylor deliberately failed to deliver items;
  - b. Was that belief a reasonable one;
  - c. Was it formed after as much investigation as was reasonable in the circumstances; and
  - d. Was the decision to dismiss him "within the range of reasonable responses" open to an employer in the circumstances?
5. This "range of reasonable responses" test reflects the fact that whereas one employer might reasonably take one view, another might with equal reason take another. Tribunals are cautioned very strictly against substituting their view of the seriousness of an offence for that of the decision maker. This applies not just to the reasonableness of the decision to dismiss but also to the process followed in

coming to that conclusion. If a failing is identified in the disciplinary process it is necessary to ask whether the approach taken was outside that range, i.e. whether it complied with the objective standards of the reasonable employer: **Sainsbury's Supermarkets Ltd v Hitt** [2003] ICR 111

### **Procedure and evidence**

6. In addressing these issues I heard evidence from Mr Taylor, and on behalf of the company from:
  - a. Mr James Thompson, a Delivery Office Manager, who took the decision to dismiss him; and
  - b. Mr Joe Miranda, an Independent Case Manager, who held the appeal.
7. There was also a bundle of 158 pages. Having considered this evidence and the submissions on each side, I make the following findings, starting with the procedure followed.

### **Findings of Fact**

*Saturday 18 July 2020*

8. The events in question took place on Saturday 18 July 2020. Mr Taylor was at work as normal from 7 am and was assigned to a delivery route known as Duty 411. This was not his normal route but he was providing cover for the usual postman, and had done it once a week for the last five months or so, so it was reasonably familiar territory. As a relief worker he was given a shift lasting 8 hours 20 minutes rather than the normal 7 hours 36 minutes, as he was not expected to be as proficient. The day starts with sorting the post for each round, before heading off to do the deliveries. Sorting out the post for route 411 took him till about 8.30 that morning.
9. The Delivery Office Manager at the depot was a Mr Emmanuel Hakeem. He was therefore two levels above Mr Taylor. It seems that they did not get on particularly well. There is some disagreement about what occurred, which I will not attempt to resolve at the outset, but it is agreed that at about that time, 8.30, Mr Hakeem came over to see Mr Taylor on the shop floor and asked him to prepare another round, 401, in addition to his normal duties. Such requests are not unusual.
10. There is some dispute about how that conversation went. According to Mr Taylor, he said yes but he was just going on his meal break. (This was the usual procedure before heading out on a round) Mr Hakeem on the other hand says that Mr Taylor responded unreasonably. According to the statement Mr Hakeem made a few days later, he replied "Ok, I am just going for my break and on my return I will prep it. Just to let you know if I do some prep, I will leave some loops."

11. Leaving loops means leaving some items undelivered, a serious matter, so this was him saying "if you make me do this there will be consequences."
12. Mr Taylor took his meal break at that point and got back at about 8.50 to 8.55. He says that he still had to tie up the bags for the letters and parcels on his own round and put them in a van. He went down to the yard and had a brief discussion with a colleague, Scott Barnes, who, he says, noticed that Mr Taylor had a good many parcels that day. He then went off to find a delivery van. (This was in the middle of Covid precautions and whereas previously they might share a van, that was no longer possible, so he had to find one that was free.) He got back to the shop floor at about 09.00.
13. At that point, it seems, Mr Hakeem saw him again on the shop floor and asked him if he was going to go and help with 401. Mr Hakeem's statement records Mr Taylor as saying once again that this meant would be leaving some loops, and Mr Hakeem telling him he would not be cutting any loops. Mr Taylor puts it slightly differently. He says that Mr Hakeem told him that he would not be leaving any deliveries from his round and that if he thought that was the case he should call his union representative.
14. In any event, Mr Taylor did call his union representative, Mr Duncan Mills, who had by then gone out on his own round. He did this on his mobile from the shop floor, at frame 401. On Mr Mills' later account, he realised at about 09.15 that he had missed calls from Mr Taylor and rang back. Mr Taylor told him that Mr Hakeem had asked him to do this extra preparation work and might now struggle to finish his round. Mr Mills told him to set out on his round and if he was running behind to use the normal procedure of ringing the depot at 1.00 pm to report the position. This, he felt, was guidance that Mr Taylor, would have known well in any event.
15. The frames are physical structures for each round, with the parcels placed at the top and other items of post placed in other compartments. Once a postal worker is familiar with his or her round this becomes a lot easier but it is more time consuming to sort and prepare an unfamiliar round. It took him until about 9.45 to finish it. At one point he was joined by a colleague, Sonia Lopes, who Mr Hakeem had sent over to help him. This was a surprise to him as they were not supposed to work in pairs during Covid. However, she was familiar with the frame, and sorted the post very rapidly, much more quickly than Mr Taylor who is very meticulous in these matters. She was only there for about ten minutes. Later on, Mr Taylor wondered if she had been sent over to report back on his progress.
16. The postman for this round was due to set out at 10.00, and before he did so Mr Taylor gave him a detailed handover. There are numerous flats on the round and the handover itself took a few minutes. Mr Taylor then spoke to Mr Hakeem again before he set off on his own round. This time he went into the office. It was about 10.10 by then. According to Mr Hakeem's statement, Mr Taylor told him that he would be leaving the large parcels for his round. Mr Hakeem responded again

that he would not accept any cut-off, that he had time to complete the delivery, and advised him to contact his union representative. Mr Taylor then proceeded to call Mr Mills again from the office. That took 5 or 10 minutes. He told Mr Mills that he would be leaving the large parcels behind.

17. Mr Taylor on the other hand says that he told Mr Hakeem that he may not be able to complete his rounds, was told to call Mr Mills again, and then had an uncomfortable wait in the office before eventually getting hold of him after more missed calls. They spoke with him on the loudspeaker, and all three agreed that Mr Taylor would take everything with him on the van and that he would call the office at 1 pm in accordance with normal procedure if he was running behind.
18. All this took some time to resolve and it is agreed that he then left the office at around 10.30 to start his deliveries.
19. The route involves a short drive before parking and unloading the van, which contains a trolley, the bags of mail and the parcels. There are in fact three parking points around the route. Mr Taylor explained that on parking he would put two full bags on the trolley and set off to deliver them. That would leave no room for the parcels but it was quicker and easier to deliver the letters first. Many of them are tracked or have timed deliveries so they are also important items. It was, he says, common practice to deliver the mail first then go back with the parcels at the end of the round. Delivering a parcel then involved driving to the house in question and doing an additional drop. There were 13 parcels that day, and taking them all round would take about 40 minutes, if the customers were in.
20. This was the procedure he adopted, leaving the parcels till last. At 12.58 he rang the office as agreed, because (he says) he felt that he would not be able to manage the whole round. No one answered so he had to leave a message. This was later transcribed as follows:

“... Message received@ 1258: Hello its Clinton here, Clinton Taylor on 411 today, I had a discussion with Emmanuel today that I wouldn't be able to complete and get all the big packets done. No one has answered the phone so I'm going to leave a message there to say that yep I've taken the big packets with me but it's too busy and I won't be able to get the big packets done and finish on time. so I'll be bringing the big packets back ok, thanks very much bye.”

21. No one rang him back and he carried on with his round, returning to the depot at 1535, 15 minutes after his intended finish time. On arrival he met Mr Darren Ferguson, another manager, who was on duty till 18.00. His statement, made a few days later (p.44) was as follows:

“At approx. 1530 hrs I saw Clint Taylor pull up in the yard. I approached Clint and asked whether he was bringing anything back. He told me that he was bringing some parcels back as he said earlier in the morning. I asked Clint why he brought tracked parcels back and not standard as this is premium product and that I would

find difficult to clear this late on in the day. Clint explained that this was discussed this morning with Emmanuel. I said to Clint that I understand that this was discussed but this is still premium product not given enough priority over standard parcels. Clint said to me that he understands this but he did not have enough time to complete. I counted 7 tracked parcels and 6 standard parcels from his returns. All parcels were addressed for Castle Lane West as I reviewed addresses which were at beginning and middle of the delivery.”

### *Investigation*

22. The following Monday, 20 July, Mr Taylor went into work as usual. Mr Ferguson asked him about what had happened on the Saturday, and he was then sent upstairs to wait. At around 11:00 Mr Hakeem told him that he should go home and he would receive a call. The next day another manager, Gareth Smith, called and told him he was suspended. That was confirmed by letter and he was invited to an Fact Finding Meeting on 27 July over ‘alleged intentional delay of the mail’. This was Mr Taylor’s first disciplinary process in his 23 years with the Royal Mail.
23. That Fact Finding Meeting was held by Mr Smith, and Mr Taylor was accompanied by his union representative, as he was throughout. He was not aware of it but by then some other investigation steps had taken place. The first step had been to obtain a short statement from Ms Lopes. It emerged at this hearing that she provided this by 11.30 on the day in question, not long after Mr Taylor had set out on his round. It stated (p.36):

“it was so ‘painful’ to watch Clint sort less than 15 letters while I sorted all of the [rest] I witnessed Clint sort a letter in the slot, remove it, check it again and replace it, with almost every letter. I’m not saying that he knew the frame though.”
24. The statements from Mr Ferguson (quoted above) and Mr Hakeem had also been obtained by this stage too. Mr Hakeem’s statement in particular indicated that Mr Taylor had been intent from the outset on bringing mail back undelivered if made to help prep frame 401.
25. In the meeting Mr Smith took Mr Taylor through the events of the previous Saturday. Much of his account was later accepted at the disciplinary hearing. In particular, he said that he finished prepping his own frame at 0830, that Mr Hakeem then asked him to prep route 401, he was just about to go on a break at the time, he did so. Then he went off to the yard with 13 parcels to put in the van. When he came back to the shop floor Mr Hakeem spoke to him again about doing 401. Mr Taylor rang his union representative, who told him to follow the normal “cut-off” procedure. He also said that while he was prepping frame 401 he calculated that he would need to set off by 10.10 to finish the delivery element, even without taking the large parcels, alternatively that he would then struggle with the parcels. (p.84) There seems little difference between the two forms of words.
26. He denied telling Mr Hakeem that he would be cutting loops, just that he had a

busy day and that he may have to leave parcels if he was at the depot too long. As to the incident at 10.10, he said that the majority of the office had left by then, and he told Mr Hakeem that he would not now be able to complete it all. Mr Hakeem was disbelieving, did not accept his timeline and did not come and see his workload. Instead Mr Hakeem told him not to leave the office until he had spoken to his union representative. So he sat there feeling stressed, dialling Mr Mills, and waiting for him to pick up.

*Disciplinary hearing*

27. Having given this account, Mr Taylor was invited to a disciplinary hearing, to take place on 7 August 2020. It was to be held by Mr James Thompson, a Delivery Office Manager at the same level as Mr Hakeem. Indeed, they manage neighbouring offices.
28. Reading the notes of that hearing, the tone is rather accusatory. The first substantive question about these events (p.60) starts:

Q - Can you explain why when your manager Emmanuel Hakeem (EH) asked you to prep some mail in 401 duty you told him straight away that you would be leaving mail for your delivery?
29. This clearly assumed that Mr Hakeem's account is correct. Mr Taylor denied that this was the case.
30. He was asked about the statement from Ms Lopes and he said that she was extremely fast and knew the round well. He was behind her with letters in his hand trying to sort things over and around her which was extremely difficult. He denied that he was intentionally working slowly.
31. He did however accept that he had made a decision, when he went into the office at 10.10, not to take the parcels. That was, he said, an old school thing, and made it easier for the manager to cover them another way. However, after talking to his union representative he agreed to take them.
32. Mr Thompson did not raise with him the point made by Mr Ferguson that all these parcels could have been delivered at the beginning and middle of the round.
33. Following that hearing, not before, Mr Thompson, had a series of investigation meetings with other managers. He spoke to Mr Hakeem, his opposite number, on 12 August. Mr Hakeem maintained that Mr Taylor told him he would be cutting loops. He said that Mr Taylor had enough time that day as he was not required to do any IPS sorting - Inward Primary Sorting – which was not explained to me but is an extra duty that may be required. Asked if he saw the amount on Mr Taylor's frame he said that the workload was light that day, and Mr Taylor had more time than others so on that basis he believed he had enough time.

34. He did however accept that he had told Mr Taylor not to leave his office until he had spoken to his union representative. He then went on, expanding on his previous statement, to say that even after this call on the speakerphone with Mr Mills, Mr Taylor told him that he would take the parcels, drive them out, then bring them back as he knew he would not have time to complete them. This point was not however put to Mr Taylor at this hearing or at any stage.
35. An interview was carried out with Mr Paul Fox, who was present at the meeting at 10.10. He said that Mr Taylor was adamant that he would be bringing his large parcels back and this was why Mr Hakeem insisted on him contacting his union representative. He also said that it was he who asked Sonia Lopes to help out.
36. The last person spoken to was Mr Smith, who held the Fact Finding Meeting and was his line manager. He provided the transcript of the voicemail message left at 12.58.
37. The notes of these interviews and some photos of the labels on the returned parcels were then sent to Mr Taylor on 13 August and he was asked for his comments. He replied the next day to add some further information of his own. In particular:
  - a. He mentioned that Scott Barnes could confirm that it was a busy round and that they split the big packets and special deliveries;
  - b. Mr Fox had been working on his computer at the time and talking to other people so only heard some of the conversation.
  - c. He denied what Mr Hakeem said about cutting loops, said it was not language that he used, and insisted that Mr Hakeem did not know or check how busy he was.
38. Nevertheless, Mr Thompson decided to dismiss in the circumstances. His decision letter is dated 17 August 2020. As already noted, he set out his findings of fact in some detail (p.84 onwards) and largely accepted Mr Taylor's timeline of events. However, he accepted what Mr Hakeem said about threatening to cut loops. He also accepted that Mr Taylor's conclusion was that he needed to leave by 10.10 in order to do the mail deliveries in the time remaining, and that before the call to his union representative he had intended to leave the parcels. Reliance was placed on the voicemail message at 12.58 which referred to him telling Mr Hakeem that morning that "I wouldn't be able to complete and get all the big packets done."
39. His conclusions were set out at section 4 of his letter (p.88). In particular:

CT [Mr Taylor] hours totalled 08 hours 20 minutes for Saturday 18 July 2020. The duty CT was covering was 07 hours 36 minutes. Duty 411 has indoor work allocated to it which could consist of IPS or Prep. It is reasonable to say that on Saturday 18th



July 2020 workload allowed for CT to complete his duty in time without bringing anything back. This is evident by CT stating he had a lot of large parcels which in fact turned out to be 13 as he never delivered any of them. Furthermore, with the reduction in manual mail and parcels especially on Saturdays as a result of the CV-19 pandemic meant CT had ample time to complete his duty in the allotted hours. Every day other people are requested to do tasks either indoor and outdoor in line with workload on the day. The office was lapsing outdoor deliveries that day [i.e. helping out on other rounds] and it was agreed with the local rep to take that stance due to low volumes.

40. He went on to note that Mr Taylor had help from Sonia Lopes to complete his prep on 401, that he had (at one point) made a judgment not to take the parcels, that overtime was not warranted given the low volumes, and that the parcels in question could have been delivered at the start and middle of the round.
41. In his evidence yesterday he mentioned several times that the parcels could all have been delivered at the beginning or middle of the round. I noted that this was not a point that was raised with Mr Taylor in the disciplinary hearing, to which he replied that it was not necessary, because it had been raised in the Fact Finding Meeting. At the disciplinary hearing, he said, "I look for the remorse rather than the facts." He added that he dealt with all of the disciplinary hearings in the Bournemouth area and that he had dismissed three or four postmen or women this year for the same reason.

*The appeal*

42. The appeal was dealt with by Mr Miranda. Like Mr Thompson, he had not met Mr Taylor before and was in fact based in Watford. His role is purely to conduct such appeals, and to do so as a complete re-hearing. He explained that his approach is not to contact the decision maker if at all possible and so he reviewed the existing evidence prior to the appeal hearing on 9 September 2020.
43. By then, Mr Taylor had provided him with some further evidence in support of his case, contacting a number of his colleagues for assistance. He explained in his evidence that before his dismissal he had been guided by his suspension letter which told him not to contact anyone at work. Be that as it may, he felt that he had nothing to lose by the appeal stage. Summarising these statements:
  - a. The regular postman on Route 411 said that he does not normally carry out any IPS duties and that he occasionally goes over his finish time.
  - b. Another colleague (TB) said it was odd to see Mr Taylor working on frame 401 as this was an alien frame to him and it is known to be one of the most meticulous in the office. He had worked with Mr Taylor for five years and in his view he was working naturally as normal while prepping this frame.

- c. His union representative, Mr Mills, confirmed that he received four missed calls from Mr Taylor before 09.15 that morning and then again when he checked his phone at 10.20 there was seven more missed calls from him. And when he rang back Mr Taylor told him that he had been told by Mr Hakeem that he was not leave the office until he had spoken to his representative, which he thought was a very unusual stance for a manager to take and appeared designed to threaten and intimidate him. He confirmed that he told Mr Taylor that he should take out all of the work as instructed and then ring in at 1 pm. He felt that Mr Taylor was being set up.
  - d. Mr Mills added a personal statement, having known Mr Taylor for 11 years, about how hard-working and professional he was, and that his thorough approach pushing it out with management.
  - e. SH made a short statement to say that she witnessed Mr Thompson and Mr Hakeem laughing and joking around together in the delivery office yard area, in the first few days of Mr Taylor's conduct case, and it appeared that they were good friends.
  - f. A former colleague, NB, said that he had known Mr Taylor since 2005 and that he was a role model. He added that Mr Taylor had had a few issues with management in the past who were reluctant to have his round tested when he said that he couldn't complete it in time. He was simply told that if he could not complete it in time they would put someone on it who could. After that there was bad feeling between the management and Mr Taylor leading to an allegation of bullying and harassment against Mr Fox which took over two and a half years. It was only resolved after Mr Taylor was tested again with the area representative taking part. His view was that Mr Taylor was under extreme pressure from management from then on, who were watching his every move as to what delivery he was on.
  - g. SH, who normally did a van share with the route 411 postman, said that she was asked to cover that duty in August and there were three days' worth of mail and packets to deliver.
  - h. SL described an incident in May when he told Mr Hakeem that he had too much work that day and was told to take it all with him and call the office at 1 pm. When he did so he was simply told to get it all done. He tried his best to do so through fear of losing his job but was unable to complete all of the large parcels including tracked parcels. After that over the next few weeks he was threatened with an investigation into why he had brought items back into the office and had not completed the round.
44. Mr Taylor added his own covering letter stating that in his view the charges were malicious and trumped up.

45. Mr Miranda took the view that there was no need to interview any of these individuals, nor does he appear to have been influenced in any way by this evidence. When asked about it at this hearing, and in particular about the decision not to interview Scott Barnes, who Mr Taylor said could shed some light on his workload that day, he explained that he was not sure that Scott Barnes would have been completely independent. Further, the two main people were the claimant and Mr Hakeem and it was a case of weighing up their evidence.
46. Having gone over the episode again in detail with Mr Taylor at the appeal hearing he decided not to allow the appeal. He felt that:
- a. Mr Taylor was fully aware of the importance of delivering those items on time and knew that tracked parcels should have been prioritised over a standard delivery mail;
  - b. Mr Hakeem had assessed the workload that day;
  - c. Mr Taylor had not had to perform any inward primary sorting which would normally form part of his duties;
  - d. he preferred Mr Hakeem's account that he had initially threatened not to complete his delivery; and
  - e. also placed weight on the evidence of Sonia Lopes. Indeed he found, for example, (p.129) that
- “When [Mr Taylor] finally started work on walk/ duty 411, he clearly tried to waste as much time as physically possible. To the point that his own colleague, Sonia, noted that he was sorting as slowly as possible, taking letters out of the ‘pigeon holes’ to double check they were in the right place. In just a few minutes, she managed to finish the sorting and move on.”
47. His view, in short, was that Mr Taylor had been intending from the outset not to deliver all the mail that day in an effort to thwart Mr Hakeem. He described it at this hearing as a power-play.
48. Before concluding this review of the evidence I will describe the agreed policies that apply to situations of this sort. Unsurprisingly, Royal Mail attaches the highest importance to the timely delivery of mail. They are regulated by Ofcom and their Conduct Policy specifically lists intentional delay of mail as gross misconduct. Each postman has to sign a declaration, as Mr Taylor did in 1997, to the effect that it is an offence to steal, destroy, open or even delay any item of post. And so, there is a specific policy to deal with incidents of this sort, agreed with the union, the Royal Mail & CWU National Joint Statement on Avoiding Delay (Commit to Deliver) and Reporting Standards”. It provides:

**Prior to commencement of delivery**

On completion of their preparation, where an employee believes that they may experience difficulty in completing their delivery within the authorised time allotted, they should approach their manager as soon as possible before setting out on delivery. It will be for the manager to discuss any problem and advise the employee what particular action should be taken, including the consideration of collection on delivery around associated post boxes to enable USO compliance.

When an employee has requested assistance on delivery, but the manager believes that assistance is not required, the decision, along with the advice given to the employee, should be recorded and associated with the daily traffic volume record.

...

The employee should be encouraged to see their union representative if agreement cannot be reached. Instances where there is a difference of opinion between the employee and the manager about what is possible during the shift will be looked at individually within the unit on the basis of factual evidence. Such differences will be addressed prior to the employee leaving the office for delivery.

The employee and manager should agree a specified time to phone if full completion of delivery workload within the allocated time proves not to be possible. If it becomes obvious that the delivery may be a problem, the employee can contact the manager before the arranged time.

49. This is therefore the background to the decision by Mr Hakeem to involve Mr Mills before Mr Taylor left the depot and the call at 1.00 pm. Clearly however the policy was not followed in all respects. No record was made of the disagreement, no examination took place of the amount he had to deliver, no one answered at 1.00 pm, and there was no call back or guidance from the manager during the round. Mr Miranda made clear that he did not consider this relevant as he viewed it as a case of deliberate refusal, not a genuine inability to complete the round on time.

## **Conclusions**

50. Those are essentially the two possibilities in this case. Either Mr Taylor was deliberately refusing to deliver the mail or there was simply too much for him to manage. That was the question facing Mr Thompson at the time of the disciplinary hearing, and also for Mr Miranda to decide at the appeal stage.
51. I accept that both witnesses had an honest believe in Mr Taylors guilt. Indeed, they seemed to regard it as clear cut. Equally however there was some steps which could have been taken as part of the investigation which were not, and some shortcomings in the process.

52. My first concern is that in a case of this sort involving a dispute affect between Mr Taylor and Mr Hakeem it appears that Mr Hakeem's version of events was accepted without any real enquiry. Clearly he was a manager and in a responsible position, but equally, high standards of fairness are required in a case involving potential dismissal, particularly given Mr Taylors long and unblemished service.
53. It is also clear that at the dismissal hearing Mr Taylor Mr Thompson to speak to Scott Barnes about his workload that day. That could easily have been done.
54. No explanation for that failure was given by Mr Thompson and when it was put to Mr Miranda his view was that Mr Barnes' evidence was unlikely to be reliable. That itself is a concern. It may well be that Mr Barnes' recollection was not particularly good, or that he might have been keen to help Mr Taylor, but that is not something to decide in advance. It contrasts, for example, with the weight given to the evidence of Sonia Lopes, which supported the case against Mr Taylor.
55. I note too that Miss Lopes was not interviewed. Her handwritten note is very short and appears to have been the main basis for the view that Mr Taylor was deliberately dragging his feet that morning in order to waste time. Hence, it tipped the balance in favour of Mr Hakeem's account. However, there are some obvious difficulties with it. On the basis of this short document the conclusion was reached that Ms Lopez single-handedly prepared frame 401 in about 10 minutes, while Mr Taylor was ineffectually double checking every item of post. That is the view stated in the appeal document, quoted above. However it took Mr Taylor an hour and a half to prep his own frame and there is no suggestion that that was out of the ordinary, even for a frame with which he was familiar. There is evidence from the supporting statements gathered at the appeal stage, reinforcing the evidence from Mr Taylor himself from the outset, that this was a very difficult (meticulous) frame to sort and one which he was unfamiliar with. It ought therefore to have been obvious to Mr Thompson, if not to Mr Miranda, that Ms Lopez did no more than help out for a short period.
56. The explanation given by Mr Taylor, that he had to stand behind her and sort the post over her back while she busily sorted letters, being more familiar with the frame, is not therefore obviously wrong. Her statement stated that he was painfully slow, but that is not the same as the conclusion quoted above at paragraph 46(e) that he was 'clearly' trying to waste as much time as physically possible, or that he was sorting as slowly as possible. She does not state that he was going slowly on purpose and was never asked.
57. The only people interviewed appear to have been managers. Some concern is also caused by the fact that Mr Thompson and Mr Hakeem were in the same position at neighbouring delivery offices, and so regardless of whether or not they were personally friends, it would place Mr Thompson in a difficult position to form the view that Mr hakeem had been unfair to Mr Taylor, let alone on truthful. It

would also have made it more difficult for him to interview Mr Hakeem about the incident with anything like the degree of scrutiny required.

58. In that context I note that the interviews were carried out by Mr Thompson himself rather than the investigating officer. Further, the interviews with Mr Hakim, Mr Fox and Mr Smith were all carried out after the disciplinary hearing. Hence, although Mr Taylor had the chance to comment on them, they effectively had the last word. As already noted, none of the points raised in his written submissions seem to have been taken into account in the final dismissal letter, and none of them was followed up by way of interviews.
59. The dismissal letter appears to accept that Mr Hakeem asked Mr Taylor to prep frame 401 at about 08.30 just before he went on a meal break; that he saw him again at about 9 o'clock and reminded him to do so; that this took until nearly 10 o'clock to complete; that Mr Taylor then came to see him at about 10.10 to reiterate that he would not be able to complete the round.
60. It was perfectly open to Mr Thompson to conclude that Mr Taylor had stated by that stage that he was not going to take the parcels with him. Indeed that seems to be accepted by Mr Taylor because it was only after the second call to Mr Mills that he agreed to take the parcels with him. However, it is equally clear from Mr Hakeem's interview that Mr Hakeem told Mr Taylor not to leave the office until he had called his union representative, and so he was delayed for a further period of 15 or 20 minutes before he could set off.
61. Hence, although there was a lively suspicion by management that Mr Taylor had been dragging his feet over the preparation of frame 401, and was intent on not delivering all the parcels to show them that he was overloaded, (as shown by the request to Sonia Lopez to make a statement shortly after he left the office) the fact is that he was not able to leave the depot until 10.30. The allegation for which he was dismissed was intentionally delaying the delivery of mail, which can in my view only apply during the period after he set out on his delivery round.
62. It also seems to be accepted that Mr Taylor left the depot with the belief that he would not be able to complete his round on time. This seems an advanced stage of the morning to be leaving on a delivery. The only sure way of knowing whether there was any intentional delay on his part from then on would have been to examine the route and the amount of letters and parcels he had to deliver. On this point, the size of his delivery, it is clear too from the interview with Mr Hakeem that he did not go and inspect how many bags or parcels he had. He would later instead on his general view that the level of work in the depot that day was lighter than usual. That seems to be an inadequate basis for the conclusion that this was a deliberate failure on his part.
63. That concern is reinforced by the fact that no one responded to the call at about 1 o'clock that day, even though Mr Hakim knew that a call would be made. That is

also consistent with the attitude that he was not going to accept any failure to complete the round.

64. The fact that Mr Hakeem insisted on Mr Taylor staying in the office until he had spoken to his union representative is also significant because it does appear to show an overbearing approach. And the fact that he was therefore quite some time, while the clock was ticking, with Mr Taylor saying that he could not complete the round and Mr Hakeem taking the view that he had to, must have applied considerable pressure. No attention appears to have been paid to this aspect, nor that there was a history of disagreements between Mr Taylor and management about the length of his round, although that was only raised at the appeal stage.
65. Drawing these threads together there are a number of shortcomings in the process.
  - a. The decision to allocate the disciplinary hearing to Mr Thompson, given that involved a direct conflict between the evidence of his fellow delivery office manager and the claimant put him in a difficult position and made it more difficult to give proper consideration to Mr Taylor's case. It ought therefore to have been handled at a higher level to begin with.
  - b. The failure to interview Sonia Lopez was a significant one, and undue weight was placed on her short note.
  - c. The failure to interview Scott Barnes was also a significant one since Mr Taylor asked for this to happen and there was no other evidence about the amount of work he had that day.
  - d. There was a lack of scrutiny of the account given by Mr Hakeem, in particular, Mr Hakeem accepted in interview that he did not check Mr Taylor's workload, despite which Mr Miranda concluded that he had.
  - e. Further, Mr Hakeem accepted that he effectively detained Mr Taylor in the office until 10.30 that morning, which was ignored.
  - f. The disciplinary hearing appears to have been conducted on the basis that Mr Hakeem's version of events was correct, that Mr Taylor was guilty, and that the only remaining question was the degree of his remorse.
  - g. These shortcomings were not addressed at the appeal stage, and in fact they were compounded by the failure to look into any of the significant new evidence presented at that stage.
66. I remind myself that the range of reasonable responses test applies to each of these points. Equally however a high standard of fairness is required and the failure to interview relevant witnesses is a particularly serious one. There ought, in short, to have been a conscientious investigation of all relevant witnesses,

including those supportive of Mr Taylor's case, prior to a disciplinary hearing which he would have the chance to address any concerns. That simply did not occur.

67. It follows that the view taken, that Mr Taylor was intent on failing to complete his round that day, was not formed after as much investigation as was reasonable in the circumstances and so the dismissal has to be regarded as unfair.
68. What was the true position? On that issue, on the conflict between Mr Hakeem and Mr Taylor, I only have direct evidence from Mr Taylor. His evidence also seems to be more consistent with the known facts. Without going over the same ground any further than necessary, the fact is that he was not able to leave his delivery round until 10.30 that morning, 3.5 hours after he arrived for work that day. The available time for delivery was therefore reduced from 8 hours 20 minutes to 4 hours 50 minutes. His explanation to me about it being easier to load two bags onto a trolley and deliver the mail first, then make a return journey for the parcels, was not contradicted by any of the evidence from the respondent. It disposes of the main point relied on by Mr Thompson in his oral evidence, that the parcels could have been delivered at the beginning or middle of the route. It also seems perfectly plausible and straightforward, particularly in circumstances where, as I find, he had more to deliver than he could manage in the time available. The fact is that he was a very experienced postman with a clean disciplinary record. He was also aware that a deliberate or intentional failure to deliver his round would lead to disciplinary action against him. He knew he was being scrutinised. It would have been extremely unwise and foolish for him to have worked more slowly than normal that day.
69. Overall therefore I have to conclude that he was not guilty of this offence at all and that a fair procedure would have found as much and so there is no scope for any reduction on 'Polkey' grounds or for contributory fault. I should add that it does not seem to me that any of his actions or statements before leaving the depot that morning could be regarded as misconduct on his part, nor were they raised as such during the disciplinary process.
70. For completeness, an intentional failure to deliver the mail is listed in the respondent's conduct policy as an example of gross misconduct, and so if that conclusion had been reached fairly that he was guilty of this offence I accept that dismissal would have been within the range of reasonable responses.
71. However, for all of the above, reasons the claim is upheld.

Employment Judge Fowell

Date: 19 October 2021

Reasons sent to the parties: 11 November 2021

FOR THE TRIBUNAL OFFICE