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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102199/2020

Held by CVP at Glasgow on 23, 24, 25 February & 12 March 2021

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Employment Judge Frances Eccles
Tribunal Members Mr I Ashraf
Mr R Taggart

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Claimant

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Rolls Royce Plc

**Respondent
Represented by
Ms L Gould
Counsel**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The **unanimous** Judgment of the Employment Tribunal is that (i) the claimant was not unfairly dismissed by the respondent & (ii) the claims of disability discrimination under Sections 13 and 15 of the Equality Act 2010 are not well-founded and shall be dismissed.

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BACKGROUND

1. The claim was presented on 16 April 2020. The claimant complained of unfair dismissal, direct disability discrimination under Section 13 of the Equality Act 2010 and discrimination arising from disability under Section 15 of the Equality Act 2010. The claim was resisted. In their response, accepted on
5 30 June 2020, the respondent denied having unfairly dismissed the claimant. The reason given for dismissal was misconduct. The respondent denied having discriminated against the claimant. Following exchange of medical evidence, the respondent conceded that as a person with Post-Traumatic Stress Disorder (PTSD) the claimant is a disabled person for the purposes of
10 proceedings under the Equality Act 2010.

2. The case was listed for a final hearing. 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
15 stand as evidence in chief. The claimant gave evidence and called Robert Banks, a former colleague to give evidence in support of his claim. The respondent called George Addison, Manufacturing Manager and Paul Keddie, General Manager to give evidence. The parties provided the Tribunal with a Joint Bundle to which supplementary documents (P80 to 82) were
20 added at the start of the hearing. The claimant was represented by Ms S Mechan, Solicitor. The respondent was represented by Ms L Gould, Counsel.

FINDINGS IN FACT

3. The Tribunal found the following material facts to be admitted or proved; the claimant was employed by the respondent as a Process Operator from 8
25 November 2010 until 5 February 2020 when he was summarily dismissed. The claimant was employed at the respondent's Inchinnan site where the respondent has a workforce of around 600 employees. At the date of his dismissal the claimant was aged 45. His average weekly pay was £830 with an average weekly take home pay of £531. The claimant was a member of
30 the respondent's pension scheme.

4. On 18 December 2019 the claimant arrived at work shortly before 3 pm when his shift was due to start. It was the claimant's usual practice to arrive at work a few minutes early to catch up with colleagues coming off the earlier shift. On 18 December 2019, the claimant had a chat with Robert Banks, a close colleague who had been working on the earlier shift. Robert Banks reported that another employee, Gary Stewart, had spent a large part of the earlier shift complaining about the claimant and criticising his change of shifts and work generally. The claimant was annoyed and upset by what Robert Banks told him.
5. On his way to the Inspection Area, the claimant met Gary Stewart. Both the claimant and Gary Stewart were agitated. The claimant challenged Gary Stewart about his remarks during the earlier shift. A heated argument followed with Gary Stewart and the claimant swearing at each other in a loud and aggressive manner. Their exchange included the claimant telling Gary Stewart "*I don't give a fuck what you are*" - Gary Stewart had recently taken on the role of shop steward. The claimant knocked Gary Stewart's bag off his shoulder. The claimant raised his hands towards Gary Stewart. There was physical contact between the claimant and Gary Stewart. Another employee, Anne- Marie Roe, stepped between them to prevent matters escalating further. The incident was witnessed by at least four other employees, some of whom found it upsetting. The incident was reported to management. The respondent takes personal conduct of employees in the workplace very seriously. They have limited tolerance for physical and verbal misconduct. Employees receive training on dignity and respect towards others in the workplace. The claimant last received such training in August 2019 (P19/125). The incident on 18 December 2019 was sufficiently serious for both the claimant and Gary Stewart to be suspended from work.
6. The claimant was informed by letter dated 18 December 2019 (P20/126 -128) that he had been suspended from work on full pay as he "*had an altercation with another employee on site at 3.00pm on Wednesday 18th December 2019*" and "*owing to the seriousness of the issue*" The claimant was also

informed that an independent officer would be appointed to investigate the matter and that he would be contacted about the investigation in the coming days.

- 5 7. The claimant was invited by letter dated 19 December 2019 (P21/129-130) to attend an investigation meeting. The claimant was informed that the allegation to be investigated was that he had "*an altercation with another employee on site at 3.00 pm on Wednesday 18 December 2019*". The claimant was informed that there was a need to investigate a potential breach of the respondent's Discipline & Grievance Procedure Agreement (P16) and the respondent's Code of Conduct, At Our Best: Our Code (P18) (Code of Conduct). The respondent appointed Jim Shaw, Production Leader as Investigating Manager and Lesa Lofts, Case Management Specialist, as Supporting Officer to investigate the allegation against the claimant.
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- 15 8. The claimant was interviewed by Jim Shaw on 23 December 2019. The claimant was accompanied by Robert Young, GMB representative. At the investigation meeting the claimant provided Jim Shaw with a written statement (P23/138 - 139) in which he described feeling annoyed at Gary Stewart for questioning his work and that they had "*a bit of a shouting match*". The claimant described physical contact between himself and Gary Stewart and of being "*separated*" when approached by Anne-Marie Roe. The claimant described the incident as being "*extremely taken out of context*". He apologised for putting those who witnessed the incident in "*a horrible position*". He apologised to management.
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- 25 9. During the investigation meeting, the claimant confirmed that it was Robert Banks who had told him that Gary Stewart was "*mouthy about him*" all day. He described Gary Stewart's bag falling off his shoulder and that when Gary Stewart turned round, thinking that he was going to slap him. He described holding on to Gary Stewart's arm to prevent him making contact with him and Gary Stewart holding on to his shoulder. The claimant confirmed that he had attended training on personal conduct in the workplace. When asked if there
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had been any physical contact the claimant confirmed that he “*touched his arm*” and referred to Gary Stewart putting his hand “*either on top of my arm or shoulder*”. He denied that there was any “*punch, kick or anything like that*”. The claimant denied that there was any animosity between them. He referred to Gary Stewart as a friend. He described the incident as a “*spur of the moment thing*” and a “*situation*” that should not have happened. He referred to the conversation as having “*just escalated*”. He stated that he was glad it never came to “*blows*”. When questioned further about Gary Stewart’s bag, the claimant described it swinging off towards him. He described putting out both arms. He referred to being an ex-infantry soldier, trained to “*deflect and subdue*”. He described thinking of the bag sliding off Gary Stewart’s shoulder as “*an attack*” and of putting his arms forward. He confirmed having put “*both hands up*”. He confirmed that there had been some physical contact and raised voices. He denied that any “*punches were thrown*”. The respondent prepared a note of the investigation meeting with the claimant (P22).

10. Gary Stewart was also interviewed on 23 December 2019 (P24). He described raising concerns about the claimants’ shifts. He described the claimant raising the issue with him and saying, “*I don’t give a fuck what you are*”. He described the claimant pulling his bag off his shoulder. He described the claimant coming towards him. He described the claimant as “*shouting at me, not listening, ranting and raving*”. He described telling the claimant to “*get the fuck away from me*”. He confirmed that the claimant had raised his hands. He denied that the claimant had hit him. He confirmed that the claimant had touched him – “*his hands were up*” and “*he had the hold of my hands*”. He denied that either of them had thrown a punch. Gary Stewart described feeling “*terrified, didn’t know what he was going to do, he was really angry, shouting, I felt threatened and scared, I did not know what he was going to do*”. He confirmed that they had both used foul language and had raised voices. He described feeling “*quite scared*” about attending the meeting and feeling “*very threatened*”. He referred to the claimant as a “*trained soldier*” and to the claimant’s diagnosis of PTSD as “*common knowledge not first altercation*”.

11. As part of the investigation, Jim Shaw interviewed Nathaniel Hutchinson (P33), Anne-Marie Roe, (P34), Joan Pratt (P35) and Stephen Murray (P36) all of whom were identified as having witnessed the incident on 18 December 2019. They were all interviewed on 10 January 2020. Nathaniel Hutchison described seeing two individuals “*pushing each other and throwing punches*”. He confirmed having heard both individuals swearing. When asked about their body language he described “*each grabbing the others shirt, very close and very frustrated, trying to show they were macho, they started throwing punches at each other*”. He described having felt “*frustrated*”.
12. Anne-Marie Roe described seeing the claimant pushing Gary Stewart’s bag off his shoulder. She described stepping in between them. She described being the first to see the incident. She described the claimant as being “*riled up*”. She described Gary Stewart as being “*chalk white*” and thinking that he was “*quite shaken*”. When asked whether she heard any swearing, Anne-Marie Roe recalled raised voices but not specifically what was said. When asked about whether there had been any physical contact, Anne-Marie Roe described the claimant as having “*swiped with his right hand to knock Gary’s bag off his left shoulder*”. She described the claimant stepping towards Gary Stewart as he bent down to pick up his bag. When asked, Anne-Marie Roe stated that there had been no physical contact and that she had not seen any shirt grabbing or punching. She described herself as “*shaking*”.
13. Joan Pratt described witnessing the claimant and Gary Stewart having an argument. She described Gary Stewart’s bag being on the floor and the claimant coming towards him. She described Anne-Marie Roe stepping between them and putting her hand up towards the claimant “*to diffuse the situation*”. She described the claimant’s body language as “*angry*” and his tone of voice as “*loud, shouting*”. She could not recall any swear words or physical contact. When asked how the incident made her feel she responded, “*I didn’t like it*”. When asked whether she had information about shirts being grabbed, she replied “*Definitely not*”.

14. Stephen Murray described the claimant and Gary Stewart engaged in conversation that escalated after a couple of minutes. He described "*finger pointing*" and that the altercation started when Gary Stewart "*turned around*". He described the claimant "*outside waiting*" for Gary Stewart and a fight having started with a "*few blows*" exchanged. He described their body language as aggressive and the exchange of a "*few expletives*". He could not recall what swear words were used. He referred to "*punches, like body shots*" and "*hitting each other on the body*". When asked if he witnessed the claimant and Gary Stewart punch one another he replied "*absolutely*".
15. The claimant attended a follow-up investigation meeting with Jim Shaw on 15 January 2020 (P38). Robert Young attended the meeting with the claimant. The claimant was informed that information had been obtained from other employees about the use of bad language on the day of the incident. The claimant confirmed that he would probably swear and that there was the possibility that bad language was used. He could not recall whether the word "*fuck*" was used. He could not recall any pushing. He did not deny that there had been physical contact and that there was possibly "*shirt grabbing*". The claimant denied that there were any "*punches thrown*" and described information obtained to the contrary as being "*incorrect*".
16. At a follow up meeting on 27 January 2020, Nathaniel Hutchinson was asked about what he meant by "*punch*" – "*closed or open*". He could not confirm whether any of the punches had been "*closed*". Stephen Murray also attended a follow up meeting on 27 January 2020 at which he was shown a diagram (P45) of the incident and asked to demonstrate what he meant by "*punches thrown/body shots thrown*". He was unable to confirm if "*their hands were closed or open*".
17. Jim Shaw and Lesa Lofts prepared an Investigation Report (P40) which contained relevant documents including the respondent's Discipline and Grievance Procedure Agreement (P16), the Code of Conduct (P18), witness meeting notes and the claimant's training record.

18. George Addison, Manufacturing Manager was appointed as Hearing Manager. Having considered the Investigation Report (P40), George Addison was satisfied that the incident involving the claimant and Gary Stewart was sufficiently serious to require disciplinary action. He notified the claimant by letter dated 31 January 2020 (P41) that he should attend a disciplinary hearing to answer the following allegations;

1) *You physically assaulted Gary Stewart on site at approximately 3.00 pm on Wednesday 18th December 2019.*

2) *You used inappropriate language towards Gary Stewart on site at approximately 3.00 pm on Wednesday 18th December 2019 by saying "I don't give a f**k what you are".*

3) *You were arguing and shouting at Gary Stewart on site at approximately 3.00 pm on Wednesday 18th December 2019.*

19. The claimant was informed that as a result of the above allegations he may have committed an act of gross misconduct pursuant to the respondent's Discipline and Grievance Procedure Agreement (P16) namely:

(a) Physical assault

(b) Verbal assault

(c) Unacceptable conduct which results in a complete breakdown of trust and confidence.

The claimant was also informed that he may have breached the respondent's Code of Conduct (P18) namely;

a. ***Each one of us has responsibility to :***

- be accountable for our actions;*

- *Be aware of the shadow we cast and lead by example to promote and display the highest standards of integrity and professionalism;*
- 5 • *Consider how our decisions and actions affect those around us and make sure everyone has the help and support they need.*

20. The claimant was informed that he would be given an opportunity to respond to the allegations, put forward his version of events and raise any points that he wished to be considered. He was informed that a possible outcome from an act of gross misconduct was a sanction up to and including dismissal without notice. He was notified that he had the right to be accompanied at the disciplinary hearing by either a work colleague or a trade union representative. The claimant was provided with a copy of the Investigation Report and supporting documents (P40).

21. The claimant's disciplinary hearing was held on 5 February 2020. The disciplinary hearing was chaired by George Addison. Lesa Lofts attended as Supporting Officer. The claimant was accompanied by Robert Young. The claimant had prepared a statement in advance of the hearing. In his statement (P44) the claimant questioned the evidence of the employees interviewed during the investigation. He questioned Nathaniel Hutchinson's account of the incident. He explained that having had time to "*process the situation*", he now accepted that he had misinterpreted Gary Stewart's actions and that it had not been his intention to hit him. He also explained that his retaliation was not a "*return blow but in fact a block*" and that this could account for what Nathaniel Hutchinson had witnessed. The claimant disputed Anne-Marie Roe's recollection of him "*swiping*" Gary Stewart's bag from his shoulder. He questioned her description of him using his right hand to do this. He denied having approached Gary Stewart with the intention of engaging in a physical fight. He referred to his training which enables him to "*control such situations and to avoid them*". He described a large portion of Stephen Murray's statement as "*a total fabrication*". He described Nathaniel Hutchinson's

evidence as *“very conflicting and a fabrication of the truth”*. The claimant challenged Gary Stewart’s statement that he was scared. He described Gary Stewart as deliberately *“winding him up”*. He described Gary Stewart referring to him having PTSD as *“ridiculous and an attempt to vilify his character”*. The claimant denied physical and verbal assault. The claimant expressed concern about reference to him having a live disciplinary warning in the first letter inviting him to a disciplinary hearing. He agreed that the letter had been amended. The claimant did not dispute that he and Gary Stewart had behaved inappropriately, for which he apologised. He described as a *“bigger concern”* that two Managers had *“blatantly fabricated their testimonies”*. He described the incident as a *“very small, minor argument”*.

22. When questioned by George Addison, the claimant stated that he *“went to see”* Gary Stewart. He described Gary Stewart as giving him a *“barrage of abuse”*. The claimant denied having physically assaulted Gary Stewart. He stated that he was *“trying to explain to Gary why I changed shifts”*. He explained that Gary Stewart swung round to face him when his bag fell. When asked whether Gary Stewart was calm, the claimant said that they were arguing. He described thinking that Gary Stewart was *“going to hit him”*. He described having *“blocked it”*. He explained that he did not understand how the incident had *“blown into this whole thing”*. The claimant accepted that he had previously said there was physical contact. He denied that anything had occurred other than interlocking arms with Gary Stewart and his attempt to deflect a physical punch or strike. The claimant described *“blocking”* what he thought was a punch and stepping forward with an *“open palm”* in self-defence. The claimant described the incident as *“an argument, no more punches or anything thrown when separated that was it. I turned away”*.

23. In relation to the allegation of verbal assault, the claimant accepted that there had been a heated argument. He admitted swearing at Gary Stewart. He admitted saying *“I don’t give a fuck what you are”*. He described Gary Stewart giving him a *“barrage of abuse”* and that was *“how it started”*. He referred to their language as *“common shop floor talk”*. He stated that he had apologised, could not take it back and had been honest from the beginning.

24. In response to the third allegation of arguing and shouting, the claimant described himself and Gary Stewart as work colleagues. He had asked Gary Stewart what was his problem with him changing shifts. He had received a barrage of abuse. He referred to the “*stuff about being scared*” as “*absolute nonsense*”. He referred to changing his shift as “*the main factor of the whole situation*”. The claimant referred to the “*split-second hand coming up*” and that he thought he was going to be struck.

25. The claimant read his statement. George Addison summarised his understanding of the claimant’s position; the claimant did not physically assault Gary Stewart - there was physical contact which was a block/self - defence by the claimant to a perceived attack, a situation which he was trained to assess; both the claimant and Gary Stewart had used “*industrial language*” – the claimant questioned whether the use of such language was inappropriate and the claimant went to look for Gary Stewart after which things escalated into an argument between work colleagues. The claimant disputed that he went looking for Gary Stewart. He described following his usual routine.

26. George Addison adjourned the meeting and for around two hours considered the claimant’s response to the allegations against him. He referred to the Investigation Report (P40), the respondent’s Discipline and Grievance Procedure Agreement (P16) and the Code of Conduct (P18).

27. In relation to the first allegation of physical assault, George Addison took into account that, by the claimant’s own admission, there had been a heated argument with raised voices and the use of inappropriate language. He took into account that during the argument, the claimant had admitted there was physical contact between himself and Gary Stewart. While the claimant had explained that he was defending himself and George Addison accepted that no “*punches were thrown*”, he concluded that following a heated argument there had been unwanted threatening physical contact by the claimant and that a colleague had felt it necessary to step in. George Addison was satisfied that the claimant’s conduct amounted to physical assault.

28. George Addison considered the second and third allegations together. In relation to the second allegation of using inappropriate language towards Gary Stewart, George Addison took into account that, by his own admission, the claimant had said to Gary Stewart “*I don’t give a fuck what you are*” and that the claimant accepted that this was inappropriate. In relation to the third allegation of arguing and shouting at Gary Stewart, George Addison took into account that the claimant accepted there was a heated argument and that voices were raised. George Addison took into account that the claimant had apologised for the use of inappropriate language. George Addison considered that the claimant’s behaviour fell well below what the respondent’s expected or would tolerate from their employees. He was satisfied that the claimant’s conduct amounted to verbal assault. George Addison concluded that the claimant’s misconduct was very serious and in breach of the standards expected of employees. He took into account the claimant’s length of service and that he had no previous disciplinary record. He decided that the appropriate sanction for the claimant’s conduct was summary dismissal.

29. When the disciplinary hearing resumed, George Addison informed the claimant that he considered his conduct to be a serious breach of the Disciplinary & Grievance Procedure (P16) and Code of Conduct (P18) amounting to a complete breakdown in trust and confidence. George Addison informed the claimant that he had decided that he should be dismissed on grounds of gross misconduct with immediate effect. The claimant was informed of his right to appeal against the decision. The respondent prepared a written record of the disciplinary hearing (P43).

30. George Addison wrote to the claimant on 7 February 2020 (P47) confirming the outcome of the disciplinary hearing. He confirmed his decision that the claimant should be dismissed without notice due to gross misconduct as follows;

“*The reason for this disciplinary action is;*

- 1) *You physically assaulted Gary Stewart on site at approximately 3.00pm on Wednesday 18th December 2019.*

5 *On your own admission, it was a heated argument between yourself and Gary Stewart with raised voices and inappropriate language used. As part of this argument you have also admitted there was physical contact between yourself and Gary. Whilst you have explained that you were somehow defending yourself and although I accept that no punches were thrown, there was unwanted threatening physical contact made by you, which*

10 *followed on from a heated argument between you and Gary Stewart which also resulted in a colleague feeling it necessary to step in between you both. I class this as physical assault.*

This allegation has been proven.

- 15 2) *You used inappropriate language towards Gary Stewart on site at approximately 3.00 pm on Wednesday 18th December 2019, by saying: 'I don't give a f**k what you are'*

- 20 3) *You were arguing and shouting at Gary Stewart on site at approximately 3.00pm on Wednesday 18th December 2019.*

I have grouped my response to the second and third allegation together.

25 *On your own admission, you have confirmed that both of you and Gary Stewart used inappropriate language, there is no debate on that. You also stated that it was a heated argument, you were both shouting and you confirmed your voice was raised and you admitted that you said 'I don't give a f*** what you are' and you said that this was inappropriate, although you have apologised for this; it is not behaviour we expect or*

30 *tolerate from our employees and as such I class this as verbal assault.*

These allegations have been proven.

As a result of the allegations above:

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1. *You have committed an act of gross misconduct pursuant to the **Discipline and Grievance Procedure Agreement**, namely:*

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a. Physical assault

b. Verbal assault

c. Unacceptable conduct which results in a complete breakdown of trust and confidence.

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2. *You have breached the **Company's Code of Conduct, At Our Best Code**: namely*

a. Each one of us has responsibility to:

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• Be accountable for our actions;

• Be aware of the shadow we cast and lead by example to promote and display the highest standards of integrity and professionalism;

• Consider how our decisions and actions affect those around us and make sure everyone has the help and support they need

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We talked about the matter fully at the disciplinary hearing and having taken your comments into account, considered the seriousness of your actions together with the reasons/explanation you put forward, I concluded that the appropriate sanction in the circumstances was to dismiss you from the Company.

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31. *The claimant appealed against the decision to dismiss him by letter dated 14 February 2020 (P51). His grounds of appeal were as follows;*

- *“There was no Physical Assault – it was a natural human reaction*
- *There was no Verbal Assault – it was only an argument*
- *At no point during the entire investigation, or for many months prior to the incident, has my recorded Post Traumatic Stress Disorder been taken into consideration or supported*
- *The sanction which was imposed was extremely harsh*
- *A similar incident occurred on site where actual threatening behaviour took place, and the imposed sanction was not dismissal.*
- *The witness statements were too contradicting, eliminating the possibility of a fair investigation*
- *You accepted there wasn't any punches thrown, proving two managers lied in their statements*
- *The misleading/inaccurate information regarding a non-existing live warning on my file was provided to all involved with the investigation*
- *Blatant discrimination, which I have faced for many years during my career and have now found myself facing again during this investigation*

I have admitted from the start that my behavior that day was not my best and I have never lied about my Post Traumatic Stress Disorder but instead have tried to overcome the daily battles I face because of it. I have spent my full career in Rolls Royce trying to better myself and in one instance I have been dismissed from the company.

I would like the decision to dismiss me overturned and a lesser sanction granted as I believe it would be beneficial to both the

Company and myself. The Company will retain a very hard worker while I can receive the support I need for my mental health, which has been greatly impacted during this whole situation”.

The claimant expressed a preference to attend his appeal hearing with Alan Ritchie, GMB full time official.

32. Paul Keddie, General Manager was appointed to hear the claimant’s appeal. Paul Keddie wrote the claimant on 19 February 2020 (P52) inviting the claimant to an appeal hearing on 25 February 2020. The claimant obtained legal representation and submitted a revised statement of his grounds of appeal (P53/250-256) as follows;

1. *Failure to conduct a reasonable investigation by confining the scope of the investigation to 18th December 2019 @15.00-15.01 (approx.) and what happened between Gary Stewart (GS) and A during that time.*
2. *Failure to conduct a reasonable investigation into the incident which took place on 18 December 2019 @15.00 – 15.01 in particular to establish who was the aggressor.*
3. *Failure to investigate, to include interviewing witnesses, the behaviour of GS on 18th December 2019 between the hours of 07.00 – 15.00 when he was reported as displaying bad tempered and inappropriate behaviour in respect of an authorised change of shift by A.*
4. *Failure by Rolls Royce (RR) to intervene in a breach of Trust and Confidence by GS in respect of A, his shift patterns and his entitlement to seek and be granted authorised changes to said shift patterns.*
5. *Failure by RR in their Duty of Care owed to A by failing to discipline/warn GS about his behaviour in respect of Ground 3.*
6. *Failure by RR in their Duty of Care owed to A to take steps to prevent the incident of 18th December 2019 when the behaviour, temper and attitude*

of GS toward A and his shifts as displayed, witnessed and commented upon was now apparent in the workplace and had been the subject of discussion with several other employees.

5 7. *Failure during investigation to recognise the conflict of interest of GMB union officials.*

8. *Failure by RR to challenge the capacity of GS in respect of his assertion that he was acting in an official GMB Shop Steward capacity when he spoke to several members of staff between 18th December between the hours of 07.00 – 15.00.*

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9. *Discrimination under the Equality Act 2010.*

15 33. On 21 February 2020, the claimant's legal representative sought a postponement of the appeal hearing (P74) on the grounds that the claimant's appeal should not be considered until the conclusion of disciplinary proceedings against Gary Stewart. The claimant's legal representative also sought time to familiarise herself with the relevant documents to advise the claimant. The request for a postponement was refused on the grounds that

20 the disciplinary proceedings involving the claimant and Gary Stewart "*while related*" were "*independent and also confidential*". The claimant's representative made a further application for a postponement (P76) of the appeal hearing on the grounds that the outcome of Gary Stewart's disciplinary proceedings were relevant to the claimant's appeal and that the claimant's

25 trade union representative was unable to attend the appeal hearing on 25 February 2020. The claimant's representative requested that she be permitted to attend the appeal hearing with the claimant "*subject to exactly the same conditions as would apply to a Union Representative*". The application was refused. The claimant's representative was informed that it

30 was not the respondent's policy to permit external legal representatives to attend employment related meetings with employees. The claimant's representative was advised that the respondent's HR were in contact with the local trade union officials to arrange representation to support the claimant

and that in accordance with the respondent's policy the claimant could also be accompanied by a work colleague or an external trade union representative.

5 34. The claimant attended the appeal hearing with his partner, Angela
MacKechnie who is a trade union representative. At the start of the appeal
hearing, which was chaired by Paul Keddie with HR support from Kathryn
Leedham, the claimant's grounds of appeal were identified as those
10 contained in his original appeal (P51). The claimant explained that the full-
time trade union official was unable to attend the hearing and that having
obtained legal advice he wished to proceed with the revised grounds of
appeal (P53). Paul Keddie adjourned the hearing to consider the revised
grounds of appeal (P53) and which the claimant read when the hearing was
reconvened. Paul Keddie asked the claimant to "*elaborate on his PTSD*". The
15 claimant referred to his army career and subsequent diagnosis. He confirmed
that it was "*common knowledge*" in the workplace that he was a war veteran
and has PTSD. He explained that Gary Stewart had referred to his PTSD
because he is a trained soldier and is scared of him. The claimant explained
that he had worked for the respondent for 10 years without incident and that
20 it was Gary Stewart who had caused the incident on 18 December 2019. The
claimant confirmed that his PTSD posed "*no risk*".

35. Paul Keddie summarised the claimant's grounds of appeal as Gary Stewart
"*building himself up*" for the claimant coming in to work. The claimant denied
25 that there had been a physical assault. He questioned how "*blocking*" could
be a physical assault. He denied that another employee had intervened to
separate him and Gary Stewart. The claimant referred to the incident as
having been "*blown out of proportion*". Paul Keddie informed the claimant that
he intended to interview some other people to obtain an understanding of the
30 points he had raised. He wanted to obtain more information about the
allegations made by the claimant in relation to Gary Stewart's behaviour
towards him. The respondent prepared a written record of the appeal hearing
(P54).

36. Paul Keddie contacted two other employees, Robert Youngs and Jim McGivern. He requested that they attend an investigation interview. Jim McGivern declined to attend an interview. He was just about to retire from the respondent's employment. He informed Kathryn Leedham by telephone that he had no prior knowledge of the incident on 18 December 2019 before being contacted later that day to be told that the incident had taken place. He did not wish to have any further involvement in the matter. Paul Keddie met with Robert Youngs on 18 March 2020 (P59). He questioned Robert Youngs about Gary Stewart's demeanour during the earlier shift. Robert Youngs said that Gary Stewart "*seemed okay*".

37. Robert Banks was invited to attend an investigation interview with Paul Keddie on 8 April 2020. He did not attend the interview having been furloughed on 13 March 2020 after which his employment as an agency worker with the respondent ended. Robert Banks is friendly with the claimant and was concerned that he had not "*said his piece*" about Gary Stewart's behaviour on 18 March 2019. He telephoned the respondent on 4 May 2020 and provided Kathryn Leedham with a statement (P64). He told Kathryn Leedham that Gary Stewart had been "*very vocal to the point of ranting and raving*" about the claimant and "*went ballistic*" when he saw how much work was left from the claimant's earlier shift. He described advising the claimant "*to watch what he was doing and that Gary Stewart had been vocal about his shift change*". Kathryn Leedham confirmed that she would send his statement to Paul Keddie and George Addison. She expressed concern about the claimant's dismissal and whether his statement would be used. She sent Paul Keddie a copy of Robert Banks' statement (P64).

38. Robert Keddie was satisfied that the disciplinary proceedings had correctly focussed on the altercation between the claimant and Gary Stewart at around 3pm on 18 December 2019. He was not persuaded that Gary Stewart's behaviour before then was of relevance beyond providing context to the altercation. Having considered the information obtained from Jim McGivern, Robert Youngs and Robert Banks, he was unable to conclude that Gary

5 Stewart had behaved in the manner described by the claimant and Robert Banks. Based on statements made by the claimant during the disciplinary proceedings, Paul Keddie was satisfied that having been told about Gary Stewart criticising him, he had made the conscious decision to seek him out in order to raise the matter with him. Paul Keddie was satisfied that the claimant's actions had led to the altercation taking place. He was satisfied that both Gary Stewart and the claimant were angry and aggressive towards each other and that both were shouting and swearing. He was not persuaded that it was necessary to establish specifically what had been said and by whom. He was satisfied that their conduct had been unacceptable and in contravention of the respondent's Disciplinary Procedure Agreement (P16). He was satisfied that there had been physical contact which added to the seriousness of the incident. He was satisfied that while punches had not "been thrown", the physical contact had included arm and shoulder grabbing in an aggressive manner amounting to physical assault. Paul Keddie considered such conduct to be contrary to the respondent's Code of Conduct (P18). He noted that the claimant had completed the respondent's training on personal conduct in the workplace. Paul Keddie was satisfied, having considered all of the information obtained during the disciplinary process, that the investigation had been sufficiently thorough, and that George Addison was entitled to find that there had been a breach of the respondent's Disciplinary Code (P16) and Code of Conduct (P18).

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30 39. Paul Keddie noted that the claimant had failed to use the respondent's grievance procedure to report any concerns about Gary Stewart. He concluded that a breach of trust and confidence by Gary Stewart was a matter that should have been raised by the claimant as a grievance and was not a relevant consideration in the decision to dismiss him for his own conduct on 18 December 2020. Similarly, Paul Keddie was not persuaded that there had been a breach of any duty of care on the part of the respondent towards the claimant. Paul Keddie was not persuaded that the respondent had failed to prevent the altercation. Paul Keddie was satisfied that by approaching Gary Stewart, the claimant had played a significant part in the altercation for which he should accept responsibility. Paul Keddie took into account that when

questioned about having PTSD, the claimant had confirmed that there was “no risk” of it giving rise to his behaviour. Paul Keddie accepted the claimant’s position that his PTSD did not impact on his behaviour at work. Paul Keddie was not persuaded that there had been a conflict of interest between the GMB trade union officials that might have prejudiced the claimant or that if declared, would have resulted in a different outcome to the disciplinary process.

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40. As regards the allegation by the claimant of discrimination relating to his PTSD, Paul Keddie was not persuaded that the claimant had been subjected to harassment by Gary Stewart. He was not persuaded that any comments made by Gary Stewart about the claimant having PTSD had influenced the investigation or George Addison when making the decision to dismiss the claimant.

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41. Paul Keddie decided to uphold the decision to dismiss the claimant and to refuse his appeal. He was not persuaded that there were grounds to overturn the decision for conduct that he considered to be “completely unacceptable”, a breach of trust and confidence and contrary to the respondent’s Disciplinary Procedure (P16) and Code of Conduct (P18). He had regard to the claimant’s length of service and lack of any previous disciplinary record. He was satisfied that the George Addison’s decision to dismiss the claimant was reasonable in all the circumstances.

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42. Due to restrictions caused by the covid pandemic and their impact on his work, it was not until 20 July 2020 that Paul Keddie wrote the claimant to confirm the outcome of his appeal. In his letter (P69), Paul Keddie informed the claimant as follows;

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“I have considered each point you raised in the appeal and have set out my response below.

Response to points raised in the appeal:

5 **1. Failure to conduct a reasonable investigation by confining the scope of the investigation to 18th December 2019@ 15.00 – 15.01 (approx.) and what happened between Gary Stewart (GS) and (A) during that time.**

10 *From my review of the investigation held, the individuals involved in the altercation, and witnesses who have been interviewed, I find that whilst reference has been made by you of information you were provided by another party, Robert Banks, I am satisfied that the altercation that took place between you and Gary Stewart was the event that in respect of the Discipline and Grievance Procedure Agreement, was a breach of the disciplinary policy and an act of gross misconduct on your part, which led to the sanction of your dismissal. I do not uphold this point of your appeal.*

15 **2. Failure to conduct a reasonable investigation into the incident which took place on 18th December 2019@ 15.00 – 15.01 in particular to establish who was the aggressor.**

Response:

20 *Having reviewed the investigation and hearing information, on the basis that when you came onto shift and were advised by Robert Banks of Gary Stewart's actions you went looking for Gary, this evidently led to the altercation between you and Gary, this conduct is a breach of the Code of Conduct.:*

25 *Each of us has a responsibility to:*

- *Be accountable for our actions;*
 - *Be aware of the shadow we cast and lead by example to promote and display the highest standards of integrity and professionalism;*
 - *Consider how our decisions and actions affect those around us and make sure everyone has help and support they need; and Create an environment in which everyone feels safe to speak up.*
- 30

We must make sure:

- *We are open to receiving improvement ideas or concerns and they are taken seriously and followed up appropriately;*
- *We treat those who speak up with fairness and without prejudice;*
- 5 • *We all have access to our Code, our Group Policies and other policies relevant to our role or place of work;*
- *We complete mandatory training; and*
- *Relevant topics within our Code are discussed regularly in our team meetings.*

10 *I do not uphold this point of your appeal.*

3. Failure to investigate, to include interviewing witnesses, the behaviour of GS on 18th December 2019 between the hours of 07.00 – 15.00 when he was reported as displaying bad tempered and inappropriate behaviour in respect of an authorised change of shift by A.

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Response

During my review of this case I invited Jim McGivern and Robert Young to be interviewed to provide an account of their knowledge of the incident that took place. The information I have from the two individuals is that both had already

20 *left site when the altercation took place and both individuals only became aware of the incident when Fraser McLean called them later that day to inform them of the incident. I have subsequently interviewed Robert Banks, and this input does not change the fact that on 18 December when you arrived at work and were advised of Gary's behavior earlier in the day you went looking for*

25 *him, which subsequently led to the altercation between you both.*

I do not uphold this point of your appeal.

4. Failure by Rolls Royce (RR) to intervene in a breach of Trust and Confidence by GS in respect of A, his shift patterns and his

entitlement to seek and be granted authorised changes to said shift patterns.

Response

5 *This point has no relevance to the outcome of the decision. Any breach of trust would be dealt with separately to this investigation. I do not uphold this point of your appeal.*

5. Failure by RR in their Duty of Care owed to A by failing to discipline warn GS about his behaviour in respect of Ground 3.

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It should have been as evident to Jim McGivern and Robert Young as it was to Robert Banks, that A was in danger of becoming the subject of GS's aggressive and complaining behaviour when he arrived for his shift on the 18th.

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RR is vicariously responsible for the behaviour of GS, Jim McGivern and Robert Young who failed in their duty to protect A from the situation into which he walked when he arrived for work on the 18th.

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Response

As stated at point 2, prior to the incident taking place the company had no prior knowledge of an issue between the two parties, this only came to light as part of the investigation and subsequent disciplinary hearing. I do not uphold this point of your appeal.

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6. Failure by RR in their Duty of Care owed to A to take steps to prevent the incident of 18th December 2019 when the behaviour, temper and attitude of GS towards A and his shifts as displayed, witnessed and

commented upon was now apparent in the workplace and had been the subject of discussion with several other employees

Response

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As previously advised the company had no prior knowledge of the issue between the two parties prior to the altercation taking place. I do not uphold this point of your appeal.

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7. Failure during the investigation to recognise the conflict of interest in respect of GMB union officials.

Response

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Both Jim McGovern & Robert Young deny any prior knowledge of the issue between the two parties which represented any conflict of interest. I do not uphold this point of your appeal.

Discrimination under the Equality Act 2010.

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Response:

As previously advised the company had no knowledge of the alleged behaviours of Gary Stewart prior to the incident taking place on the day of the altercation. I do not uphold this point of your grievance.

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You were provided with a copy of the investigation report and its appendices prior to the hearing and before reaching my decision, I also interviewed Robert Young and invited Jim McGovern to be interviewed. Jim declined to be interviewed and has subsequently left the company. I do attach the notes

from the response received from Jim and notes of the telephone call with Robert Young.

To summarise, having carefully considered your overall appeal and having taken into account your comments and the representations made at the appeal, I've decided to uphold the decision to dismiss you.

There is no further right of appeal against this decision".

43. Gary Stewart failed to attend his disciplinary hearing. He had been absent from work due to ill health since February 2020. The decision was taken by George Addison on 10 July 2020 to dismiss Gary Stewart in his absence for verbal and physical assault amounting to gross misconduct.

NOTES ON EVIDENCE

44. The claimant did not dispute during the disciplinary proceedings and before the Tribunal that there had been physical contact with Gary Stewart, they had raised their voices and he had used inappropriate language. The Tribunal was satisfied that the claimant was made aware of the respondent's position in relation to such conduct in the workplace, having undertaken relevant training as recently as August 2019. When questioned about his knowledge of the respondent's Code of Conduct (P18), the claimant sought to downplay the extent of his training. On balance however, the Tribunal was satisfied that the claimant was made aware of the high standards of conduct expected by the respondent of employees in the workplace and their limited tolerance of physical and verbal misconduct.

45. The claimant sought to justify his conduct as an act of self-defence. The Tribunal was satisfied that George Addison was entitled to reject this as a sufficient explanation to justify the claimant's conduct. The Tribunal was satisfied that George Addison was entitled to conclude that the claimant knocked Gary Stewart's bag off his shoulder. This was the evidence of Anne-Marie Roe who was first on the scene of the incident and whose evidence the

claimant otherwise accepted. Acting in self-defence was also inconsistent with the claimant's evidence that he and Gary Stewart had a good working relationship and that there was no animosity between them. The claimant's evidence that they were on good terms and that he intended to do no more than raise the issue when they next met was inconsistent with his obvious sense of grievance towards Gary Stewart for having criticised his work and shift pattern.

46. The claimant sought to show that he had been prejudiced by issues involving the trade union during his disciplinary process. The suggestion that the trade union sought to downplay the conduct of Gary Stewart was not raised by the claimant in any detail before he gave evidence to the Tribunal. The Tribunal did not find that the claimant had established a reason to challenge the fairness of his dismissal based on Gary Stewart's relationship with the trade union. There was no persuasive evidence that this was a matter before George Addison that he was obliged to consider, and such issues raised on appeal were considered and not unreasonably rejected by Paul Keddie. Similarly, when challenged in cross examination as to the basis on which he claimed that Stephen Murray's evidence was a "*total fabrication*", the claimant was evasive and unable to provide an explanation other than Stephen Murray's recollection of events differed from his own.

47. The Tribunal accepted the evidence of Robert Banks that he had witnessed Gary Stewart criticising the claimant during the earlier shift and had reported this to the claimant. Significant parts of his evidence before the Tribunal concerning remarks made by Gary Stewart were not before Paul Keddie when considering the claimant's appeal. The Tribunal found that while he had a tendency to exaggerate his evidence to support the claimant, overall, Robert Banks was a credible witness. No evidence was led to challenge his recollection of Kathryn Leedham expressing concern about the claimant's dismissal. His evidence, however, was limited to what had occurred during the earlier shift and what he had reported to the claimant. It was not

suggested that he witnessed the incident for which the claimant was dismissed.

5 48. As regards the respondent's witnesses, the Tribunal found the evidence of both George Addison and Paul Keddie to be credible. Neither disputed that they had approached the proceedings with serious concerns about the findings of the investigation. Neither disputed that they agreed with the respondent's policy on personal conduct in the workplace and that, without good reason, the alleged conduct of the claimant was in breach of the Code of Conduct (P18). When questioned about whether he had determined the outcome of the disciplinary proceedings from the findings of the investigation and before allowing the claimant an opportunity to respond to the allegations against him, George Addison persuaded the Tribunal that he had not pre-judged the situation and had approached the matter with an open mind. The Tribunal was not persuaded that he was influenced at any stage in the proceedings by an incorrect reference to a previous warning in a letter inviting the claimant to the disciplinary hearing.

20 49. The Tribunal was persuaded that George Addison carefully considered and balanced the evidence before him when deciding the outcome of the disciplinary hearing. He accepted the claimant's position that there were no "*punches thrown*". His decision was based on conduct which for the most part was not disputed by the claimant. The Tribunal accepted that he did not find it an easy decision to dismiss the claimant, in particular given his length of service. He was persuaded however, having heard from the claimant, that the conduct was sufficiently serious to warrant dismissal in terms of the respondent's Disciplinary Procedure (P16).

30 50. As regards, Paul Keddie, the Tribunal was satisfied that on balance he approached the appeal with an open mind and had not prejudged the matter. He was clear in his evidence that he considered the reason for dismissal involving physical and verbal assault to be serious, in particular given the respondent's Code of Conduct (P18) concerning behaviour in the workplace. The Tribunal accepted his evidence that he had carefully considered the

points made by the claimant at his appeal and had investigated the claimant's position that George Addison had failed to take into account Gary Stewart's behaviour towards him during the earlier shift. The Tribunal was satisfied that Paul Keddie's further investigation included consideration of the statement provided by Robert Banks (P64) along with the points raised by the claimant during the appeal process,

ISSUES

10 51. 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 (ERA 1996)?

15 (ii) If the reason was a potentially fair reason, was the dismissal fair or unfair in terms of Section 98 (4) of ERA 1996?

(iii) If the reason was as stated by the respondent, gross misconduct:

(a) did the respondent genuinely believe that the claimant was guilty of gross misconduct?

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

20 (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 and the procedure followed by the respondent fall within the band of reasonable responses?

25 (v) Did the respondent discriminate against the claimant because of his disability by treating him less favourably than they treat or would treat others in terms of Section 13 of the Equality Act 2010 (EA 2010)? &

30 (vi) Did the respondent discriminate against the claimant by treating him unfavourably because of something arising as a consequence of his disability and if so, can the respondent show that the unfavourable treatment is a

proportionate means of achieving a legitimate aim in terms of Section 15 of the EA 2010?

DISCUSSION & DELIBERATIONS

UNFAIR DISMISSAL

5 52. In terms of Section 94 of 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. He claimed that his dismissal was unfair. The respondent denied any unfairness.

10 53. 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. While the claimant denied that his conduct was sufficiently serious to justify his dismissal, it was not a dispute that the reason for his dismissal related to his conduct during the altercation with Gary Stewart on 18 March 2019. No
15 alternative reason was advanced by the claimant. 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
20 conduct. In terms of Section 98(4) (a) of ERA 1996, this depends 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
25 of the case in terms of Section 98 (4)(b) of ERA 1996.

54. 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
30 "*the band of reasonable responses*" of a reasonable employer (**Iceland Frozen Foods Ltd 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.

5 55. Whether the respondent acted reasonably or unreasonably will depend on the circumstances of the case. Applying the authority of **British Home Stores Limited v Burchell 1980 ICR 303** involves the Tribunal being satisfied that;

10 (i) the respondent believed that the claimant was guilty of the misconduct for which he was dismissed.

(ii) the respondent had in mind reasonable grounds upon which to sustain that belief &

15 (iii) 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.

20 56. The Tribunal did not accept the claimant's submission that the respondent had failed to comply with its own Disciplinary Procedure (P16) and the ACAS Code of Practice. The Tribunal considered the procedure followed by the respondent. They undertook an investigation to establish the facts of the case which included interviewing the claimant and other employees who were understood to have witnessed the incident. The Tribunal was satisfied that the investigation was sufficiently wide in scope. It was concerned with determining the facts around the alleged "*altercation*" between the claimant and Gary Stewart and whether there had been breaches of the respondent's Disciplinary Procedure (P16) and Code of Conduct (P18). While it was submitted by the claimant that Marie Nelson should have been interviewed as someone who may have witnessed the incident, there was no evidence of what she would have added to the investigation and how it might have assisted the claimant. The Tribunal was not persuaded that anyone who had witnessed the incident was deliberately excluded from the investigation. The Tribunal did not accept the claimant's submission that the investigation was

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unreasonable because it did not specifically cover the conduct of Gary Stewart during the earlier shift. The claimant was not prevented from giving evidence about what was said to have occurred prior to the incident. Gary Stewart was not prevented from giving evidence about events during the earlier shift. In all the circumstances, the Tribunal was not persuaded that the scope of the investigation was unfairly narrow or otherwise unreasonable. Similarly, the Tribunal did not accept that the investigation “*inflated*” the evidence of those witnesses who claimed to have seen “*punches thrown*”. Even if this had been the case, as submitted by the claimant, George Addison did not rely on their evidence when making his decision to dismiss the claimant.

57. George Addison was not involved in the investigation. The Tribunal was satisfied that based on the findings of the Investigation Report (P40), he not unreasonably decided that there was a disciplinary case to answer. The respondent gave the claimant advance notice of the allegations against him and held a disciplinary hearing to allow the claimant the opportunity to answer the allegations. The claimant submitted that had the respondent followed its own procedure when trade union representatives are under investigation, the outcome could have been very different. The Tribunal rejected this submission as being speculative and without any basis in fact. The claimant was not a trade union representative. The respondent’s guiding principles for their Disciplinary Procedure state (at P16/76) “*normal disciplinary standards apply to (the) conduct*” of trade union officials as employees. There was no evidence that had the respondent notified the trade union that an official, in this case Gary Stewart, was involved in disciplinary proceedings that the outcome would have been any more favourable to the claimant.

58. Having considered the evidence before him at the disciplinary hearing, George Addison was satisfied that there had been a heated argument between the claimant and Gary Stewart which involved raised voices, inappropriate language, and physical contact. The claimant had admitted to this conduct during the disciplinary hearing. George Addison accepted the

claimant's evidence that "*no punches were thrown*". Where there was a conflict in the evidence about the level of physical contact and aggression, he did not prefer the evidence of Nathaniel Hutchison and Stephen Murray. He was however satisfied from the evidence before him that there had been unwanted threatening physical contact. In terms of the **Burchell** test, his belief that the claimant was guilty of physical assault was not disputed. Similarly, it was not disputed that George Addison believed, based on the heated argument between the claimant and Gary Stewart and language used, that that the claimant was guilty of verbal assault.

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59. The claimant did dispute that George Addison had reasonable grounds upon which to sustain his belief. The Tribunal was not persuaded that this was the case and on balance found that George Addison had approached the evidence available to him with an open mind. The claimant accepted that there had been a heated argument that involved him using inappropriate language. He had admitted to making physical contact with Gary Stewart. From the evidence before him, the Tribunal was satisfied that George Addison was entitled to believe that the physical contact had been unwanted and threatening to the extent that another employee had considered it necessary to step in and other employees had been upset by the incident. George Addison balanced the evidence before him. He did not accept the evidence that was most prejudicial to the claimant of punching and hitting. He took account of what the claimant told him and his version of events. The Tribunal was not persuaded that he attached significant weight, if any, to the evidence about whether the claimant "*sought out*" Gary Stewart. His focus was on what had occurred during the altercation.

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60. In terms of the **Burchell** test, the Tribunal was satisfied that at the stage at which George Addison formed his belief that the claimant was guilty of physical and verbal assault that the respondent had carried out as much investigation into the matter as was reasonable in all the circumstances. They had completed a thorough investigation that included interviewing employees who were understood to have witnessed the incident. The claimant was provided with a copy of the Investigation Report (P40) and the supporting

documentation that included all the statements obtained during the investigation. He was allowed an opportunity to answer the allegations made against him. It was accepted that the evidence of Robert Banks was not available to George Addison. The Tribunal was not persuaded however that had it been available, it would have made any material difference to the outcome of the disciplinary hearing. His evidence was concerned with events during the earlier shift as opposed to the incident which resulted in the claimant's dismissal.

61. The Tribunal carefully considered whether the decision by George Addison to dismiss the claimant for physical and verbal assault was "*within the band of reasonable responses*". It was not in dispute that the respondent's Disciplinary Procedure (P16) identified physical and verbal assault as conduct that may constitute gross misconduct. It was also not in dispute that the respondent's Code of Conduct (P18) emphasised the importance to the respondent of high levels of personal conduct by employees in the workplace. While the claimant sought to downplay the extent to which he had received training on the respondent's Code of Conduct (P18), the Tribunal was satisfied that he was made aware of the importance of personal conduct by employees to the respondent. The Tribunal was satisfied that when making his decision to dismiss the claimant, George Addison did not proceed on the basis that the claimant had received any previous disciplinary sanctions. George Addison considered the claimant's conduct on 18 December 2019 to be very serious. He did not accept that the claimant was acting in self-defence. He was satisfied that the claimant had actively engaged in a heated and abusive argument with Gary Stewart and that there had been physical contact which resulted in another employee feeling it necessary to step in. The Tribunal found that he was entitled to conclude that the claimant's conduct amounted to verbal and physical assault and that in all the circumstances the conduct was sufficiently serious to justify dismissal for gross misconduct. The decision to dismiss the claimant fell "*within the band of reasonable responses.*"

62. The claimant was provided with the opportunity to appeal the decision to dismiss him. The Tribunal was not persuaded that the respondent had acted unreasonably by refusing to postpone the appeal hearing because a decision had not been made in respect of Gary Stewart. There was also no persuasive evidence that the claimant was unable to obtain trade union representation. The respondent was not obliged to allow the claimant to be accompanied by a legal representative. There was no evidence of the claimant having informed Paul Keddie that he felt uncomfortable about his partner representing him at the appeal in her capacity as a trade union representative. There was no persuasive evidence that the claimant was prejudiced by the respondent's decision to refuse the application to postpone the appeal hearing. The Tribunal did not accept the claimant's submission that the appeal was rushed. The claimant had lodged his grounds of appeal on 14 February 2020 (P51). He was not required to lodge them within the period between receiving his letter of invitation to the appeal hearing on 19 February 2020 (P52) and the hearing on 25 February 2020. In any event, Paul Keddie considered in detail his amended grounds of appeal (P53) which had been prepared with the assistance of the claimant's legal representative. He carried out a further investigation into points raised by the claimant regarding the conduct of Gary Stewart during the earlier shift. He also considered the claimant's points regarding breach of trust and discrimination. In all the circumstances, the Tribunal was not persuaded that Paul Keddie acted unreasonably by refusing the claimant's appeal. The Tribunal was not persuaded that the claimant had identified grounds of appeal that ought reasonably to have led Paul Keddie to overturn the decision to dismiss him. The Tribunal was satisfied that Paul Keddie acted reasonably when deciding that events during the earlier shift were of limited relevance to the reason for the claimant's dismissal of having physically and verbally assaulted Gary Stewart.

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63. The respondent did not deny that there was some delay, caused in part by the impact of the covid pandemic, in informing the claimant of the outcome of his appeal. While it was not in dispute that this was unfortunate, the Tribunal

did not find that it caused sufficient prejudice to the claimant to cause his dismissal to be unfair. In all the circumstances, the Tribunal was satisfied that the claimant was not unfairly dismissed by the respondent.

DISABILITY DISCRIMINATION

5 64. In terms of Section 13(1) of the Equality Act 2010 (EA 2010), “a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others”. In this case, the protected characteristic was disability. It was not in dispute that because of PTSD the claimant is a disabled person for the purpose of proceedings under
10 the EA 2010.

65. From the evidence before it, the Tribunal was unable to conclude that the claimant had been treated less favourably by the claimant because of his disability. The investigation and subsequent disciplinary proceedings were
15 concerned with the altercation between the claimant and Gary Stewart. Both employees were found to be guilty of physical and verbal assault amounting to gross misconduct for which they were both dismissed. The claimant submitted that as a person with PTSD he was “cast in the mind” of the respondent’s employees as “an aggressive, violent person who is unable to
20 control his actions due to his disability”. The Tribunal was not persuaded that the evidence before it supported such a finding. The evidence did not show that the claimant having PTSD was the reason or part of the reason for the claimant’s dismissal or affected how George Addison or Paul Keddie viewed the claimant’s conduct. There was no persuasive evidence that Gary
25 Stewart’s remarks about the claimant having PTSD had been accepted or for that matter considered by George Addison during the disciplinary proceedings. When PTSD was raised by the claimant at the appeal hearing, Paul Keddie accepted his position that it had not caused the incident. The Tribunal was persuaded that on appeal, Paul Keddie accepted the claimant’s
30 position that his behaviour at work was unaffected by his PTSD. In all the circumstances, the Tribunal was not persuaded that the claim of direct disability discrimination was well-founded.

66. In terms of Section 15(1) of EA 2010, “a person (A) discriminates against a disabled person (B) if – (a) A treats B unfavourably because of something arising in consequence of B’s disability, and (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim”.

67. The claimant submitted that he was treated unfavourably because of the prejudice created by Gary Stewart when he “cast the claimant into the role of aggressor because he had PTSD”. From the evidence before it, the Tribunal was not persuaded that the claimant’s PTSD had caused prejudice towards the claimant or influenced the investigation or disciplinary process. The evidence did not show that the claimant’s PTSD had played a part in the decision to dismiss him. He was not found to be the “aggressor” by George Addison. The claimant’s position that his PTSD had not affected how he behaved at work on 18 December 2019 and at work generally was accepted by those involved in the disciplinary process. There was no separate claim of harassment brought by the claimant in relation to the alleged conduct of Gary Stewart. In all the circumstances, the Tribunal did not find that the claim of discrimination arising from disability was well-founded.

CONCLUSION

68. In all the circumstances the Tribunal concluded that (i) the claimant was not unfairly dismissed by the respondent & (ii) the claims of disability discrimination under Sections 13 and 15 of the Equality Act 2010 are not well-founded and should be dismissed.

Employment Judge: Frances Eccles
Date of Judgment: 14 April 2021
Entered in register: 21 April 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.*

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