EMPLOYMENT TRIBUNALS

Claimant: Mr M Akinrin

Respondent: National Car Parks Limited

Heard at: London South Employment Tribunal (in person)

On: 1 and 2 December 2021
(with Tribunal deliberations on 9 December 2021)

Before: Employment Judge Abbott, Mrs L Grayson and Mr P Mills

Representation
Claimant: Mr F Akpan-Inwang of Apex HR Consulting Ltd
Respondent: Mr I McGlashan of Watershed Europe Ltd

RESERVED JUDGMENT

1. The claim for unfair dismissal is not well-founded and is dismissed.

2. The claim for direct race discrimination is not well-founded and is dismissed.

3. The claim for breach of contract (wrongful dismissal) is not well-founded and is dismissed.

4. The claim for unlawful deduction from wages is not well-founded and is dismissed.

REASONS

Introduction

1. The Claimant, Mr Olumuyiwa ('Michael') Akinrin, was employed by the Respondent, National Car Parks Limited, as a Customer Service Assistant at the Respondent's Southside Wandsworth car park in South West London. His employment with the Respondent began on 26 January 2016 and ended with him being dismissed without notice with effect from 2 December 2019.

2. The Claimant brought claims for unfair dismissal, direct race discrimination, breach of contract (wrongful dismissal) and unlawful deduction from wages. The Respondent resisted all of the Claimant's claims.

3. The case came before the Tribunal for Final Hearing on 1-2 December 2021. The hearing was held in person at London South Employment Tribunal in Croydon. The Final Hearing was originally listed for 3 days (1-3 December 2021), but the Tribunal was only available to sit for the first 2 of those days. There was sufficient time to complete evidence and closing submissions in those 2 days, and the Tribunal re-convened on 9 December 2021 to deliberate. This is the unanimous Judgment of the Tribunal.

4. The Respondent was represented by Mr Ian McGlashan. It called evidence from Ms Kathryn Magee (who conducted the Claimant's disciplinary hearing) and Mr Michael Buckley (who heard the Claimant's appeal), who each provided witness statements and gave oral evidence. The Tribunal heard evidence from the Respondent's witnesses first. The Respondent also relied upon a witness statement from Mr Charanjeet ('Steve') Tak, who conducted the disciplinary investigation into the Claimant. Mr Tak did not attend to be cross-examined and we were told that he was no longer employed by the Respondent. The Tribunal took this into account when assessing the weight that Mr Tak's evidence could be given.

5. The Claimant was represented by Mr Francis Akpan-Inwang. The Claimant provided a witness statement and gave oral evidence. He also called one other witness: Mr Simeon Doherty, the Trade Union Representative from the GMB union who accompanied the Claimant at his appeal hearing, who provided a witness statement and gave oral evidence.

6. The Tribunal was also provided with a 261-page Bundle of Documents, an agreed cast list, an agreed list of key documents and a draft list of issues. The parties also provided written submissions, to complement their oral submissions, at the end of the hearing.

7. At the outset of the hearing there was a dispute over the bundle, which arose because the initial bundle prepared by the Respondent had erroneously omitted the Respondent's Investigation Process Policy. In the second version of the bundle, a different version of the Respondent's Discipline & Grievance Policy was included, which the Claimant did not accept was the correct version. The correct version was added in the third iteration, as well as the Investigation Process Policy. This was the bundle provided to the Tribunal.

8. As all relevant documents were in the third version of the bundle, the Tribunal decided that we would use that bundle for the hearing, notwithstanding that there were some differences in page numbers to the version that the Claimant's witnesses had cross-referred to in their witness statements. This occasionally slowed down cross-examination as all participants sought to ensure we were on the same page, but did not unduly interfere with the progress of the hearing. The version of the Discipline & Grievance Policy relied upon by the Tribunal was the one advocated for by the Claimant ([248-261] of the bundle).

Issues for determination

9. A List of Issues was included in the Order of Employment Judge Brian Doyle made following a Case Management Hearing on 4 February 2021. The agreed List of Issues provided by the parties at the start of the hearing updated EJ Doyle's list, and the Tribunal was content that the List was appropriate. The issues to be determined, therefore, were:

Unfair dismissal

1. Whether the respondent dismissed the claimant for a potentially fair reason falling within sections 98 (1) or (2) ERA.

2. Whether the respondent acted reasonably or unreasonably in treating the potentially fair reason as a sufficient reason for dismissing the claimant, considering section 98(4) ERA. In particular whether:

2.1 the respondent had a genuine belief that the claimant had committed gross misconduct

2.2 it was reasonable for the respondent to hold that belief

2.3 the respondent reached that belief after it had carried out as much investigation as was reasonable in the circumstances

2.4 the respondent adopted a fair procedure

2.5 the respondent pressurised the claimant into signed a prepared statement

2.6 on 7 November 2019, the claimant's supervisor, Pala [Palakrishnan Thamothermeillay] told him to sign a statement that the respondent had prepared

2.7 Cluster Manager, Steve Tak, 'interrogated' and 'threatened' the claimant at an investigatory meeting

2.8 Steve Tak said at the investigation meeting 'would you like to resign or wait 'til you are sacked'

2.9 the respondent changed the allegations that the claimant faced between the investigatory meeting and suspending him. The allegation changed from 'poor time keeping and not following procedures' to 'falsification of documents and dereliction of duties'

2.10 the respondent was entitled to use evidence from the claimant's proxy card during the disciplinary process.

3. Whether the decision to dismiss fell within the range of reasonable responses that a reasonable employer may have adopted in the circumstances.

4. If the respondent dismissed the claimant unfairly, whether any award of compensation should be reduced to reflect the likelihood that the respondent would have lawfully dismissed the claimant in any event, pursuant to *Polkey v A E Dayton Services Limited* [1987] ICR 142.

5. If the respondent dismissed the claimant unfairly, whether any award of compensation should be reduced to reflect the claimant's contributory fault.

6. Whether the claimant has taken reasonable steps to mitigate his loss.

7. If not, what loss the claimant would have suffered had he taken those steps.

8. Might the respondent have made the claimant redundant in any event?

Race discrimination

9. Equality Act 2010, section 13: direct discrimination because of race. The respondent dismissed the claimant. The claimant is black. His manager, Steve Tak is Asian Indian. Did Mr Tak treat the claimant less favourably because he is of a different race to Mr Tak.

10. Did Mr Tak treat the claimant and other black employees less favourably than employees of his own race, by telling them to sweep up and mop the stairs, wash the stairs, paint the walls, clean urine, clean up vomit and faeces around the car parks but never ask the same of employees of his own race?

~~11. Did Mr Tak force another black employee, Mr Alaran, to resign by treating him poorly?~~

Breach of contract (wrongful dismissal)

12. Whether the respondent was entitled by contract and by statute, pursuant to section 86(6) ERA, to dismiss the claimant without notice or pay in lieu of notice.

13. If not, to how much notice was the claimant entitled?

Unlawful deductions from wages

14. Whether the respondent failed to pay the claimant a day's pay on 14 November 2019 when it suspended him on full pay.

10. Issue 11 is shown as struck-through as the Claimant confirmed in opening that this allegation was not being pursued. We address it no further.

Findings of fact

11. The relevant facts are, we find, as follows. Where it has been necessary for the Tribunal to resolve any conflict of evidence, we indicate how we have done so at the relevant point. References to "[xx]" are to page numbers in the Bundle of Documents. Only findings of fact relevant to the issues, and those necessary for us to determine, have been referred to in this judgment. We have not referred to every document that the Tribunal read and/or was taken to in the findings below, but that does not mean such documents were not considered if referred to in the evidence and/or in the course of the hearing.

12. The Claimant is a Black African.

13. The Claimant commenced employment with the Respondent on 26 January 2016 as a Customer Service Assistant. A statement of his terms and conditions is at [49-57].

14. The Claimant's manager throughout his employment was Mr Charanjeet

('Steve') Tak who, as a Cluster Manager, had responsibility for several car parks, including those where the Claimant was based. Mr Tak is Asian Indian.

15. Aside from resolving customer concerns and patrolling the car park, the Claimant's role included, among other things, cleaning all areas of the car park as required and painting car parks as requested. This was part of the role for all Customer Service Assistants, and examples of Asian Sri Lankan Customer Service Assistants carrying out these tasks (as recorded in patrol logs) are at [205-214]. The Claimant's written evidence was that Asian colleagues were "*never asked to carry out such tasks or subjected to the same demands*" (paragraph 70.VI of his witness statement). This was denied in Mr Tak's written statement. When this evidence, and the patrol logs at [205-214], were put to the Claimant during oral testimony, he shifted his position stating instead that he and his colleagues of the same race were "*asked to do more*". The Tribunal did not find the Claimant's evidence on this topic to be reliable in view of the contemporaneous evidence of the patrol logs which undermined what the Claimant said. We find that all Customer Service Assistants, irrespective of race, were asked to carry out cleaning and painting tasks as required.

16. The Claimant's employment was also subject to several policy documents, including:

    16.1 HR Policy: Absence Management [62-77];

    16.2 HR Policy: Discipline and Grievance [248-261]; and

    16.3 HR Policy: HR – Investigation Process [244-247].

17. From the start of his employment up until the events that led to his dismissal, the Claimant had no record of disciplinary or poor performance issues. The Performance Review documents in the bundle [92-109] identified no significant issues. Nor is there any indication of problems in the relationship between the Claimant and his appraiser, Mr Tak. On the contrary, Mr Tak helped to facilitate the Claimant having an interview for a Business Analyst role with the Respondent in 2018 [91, 109]. Prior to the events that ultimately led to his dismissal, the Claimant had raised no grievances against Mr Tak.

18. At the time of the events that led to his dismissal, the Claimant generally worked the night shift at the Respondent's Southside Wandsworth car parks (Southside 1 and Southside 2), 7pm to 7am, four days on and four days off. The Claimant worked alone, covering both car parks. Southside 1 was closed to the public from 2am, and Southside 2 was closed to the public from 10pm. Both reopened at 6am. The day shift, during which both car parks were open throughout, was covered by two Customer Services Assistants.

19. The Claimant was required to complete a Worktime Record Sheet to record his start and finish times when working. He was also required to complete a Car Park Patrol Log during his shifts.

20. In order to access, by car, the car parks at which he worked, the Claimant

used a "proxy card" that was issued by the Respondent. When the proxy card was used, the Respondent's systems automatically logged the times of entry and exit. These records remain stored in the system for 90 days. In the absence of any reason to find otherwise, the Tribunal finds that the times recorded in these records are accurate.

21. On 29 October 2019 the Claimant lost his proxy card and reported this to Mr Tak. Mr Tak instructed one of his Team Leaders, Mr Palakrishnan ('Pala') Thamothermeillay, to block the Claimant's old proxy card and organise a new one. In the process of doing so, Mr Thamothermeillay identified that on several occasions during the previous 90 days the Claimant appeared to have arrived late for his shift and/or left early. He reported this to Mr Tak. Mr Tak instructed Mr Thamothermeillay to speak to the Claimant regarding this issue.

22. On 7 November 2019 Mr Thamothermeillay spoke to the Claimant. There were competing accounts as regards what happened on this occasion.

    22.1 The Claimant's evidence was that Mr Thamothermeillay attended with a "statement" that was already prepared and instructed the Claimant to sign it, the Claimant asked what it was about and Mr Thamothermeillay responded that the Claimant should just sign it and then Mr Tak would speak to him about it, the Claimant refused and never took the "statement" and is unaware of what it said. When asked in cross-examination why he believes it was connected this these issues, the Claimant initially answered that he only linked everything together a week later, but changed that answer when asked why he did not raise it at his disciplinary hearing, saying instead that it was only after he was sacked that he made the link. However, the answer was changed again when the Claimant was asked why he did not raise this during his appeal, the Claimant finally saying that it was only after his appeal was finished that he made the link.

    22.2 Mr Thamothermeillay did not give evidence. However, the Respondent relied upon a Patrol Log extract which on its face appears to date from 7 November 2019 and is a log made by Mr Thamothermeillay in the following terms: "*Spoken with Michael Akinrin about not doing his contracted hours. Starting late regularly and leaving early. We have evidence via CCTV and his proxy card usage. He has been made aware that what he has been doing it completely not acceptable and that Steve Tak will be taking up these issues with him.*" The Claimant denied having ever seen this log entry until shortly before the Tribunal hearing.

    22.3 Mr Tak's written evidence was that he did not tell Mr Thamothermeillay to get the Claimant to sign a prepared statement, and that the Claimant never raised with him that this incident had occurred. However, Mr Tak's evidence was not tested in cross-examination, which affects the weight it can be afforded.

    The Tribunal did not find the Claimant's evidence on this point to be reliable. It is implausible that Mr Thamothermeillay presented the Claimant with a

prepared statement on this occasion. The Claimant did not raise this allegation in the investigation meeting or disciplinary meeting, and his explanation for why not shifted during the course of cross-examination. We also did not accept the Claimant's evidence that, during the conversation, he demanded that Mr Thamothermeillay ensure the CCTV footage of the conversation be saved. Again, it is implausible that this occurred in circumstances where the Claimant made no request for the CCTV footage to be looked at during the investigation meeting, disciplinary meeting or appeal. The Tribunal concludes that, on the balance of probabilities, the patrol log is an accurate record of the conversation.

23. On 14 November 2019 Mr Tak attended the Southside site to conduct an investigation meeting with the Claimant. The front page of the investigation file [135] records the allegations as "*Poor time keeping*" and "*Not following procedures*". Again, there were competing accounts as regards what happened on this occasion.

23.1 A written record of the interview is at [138-139] and is signed by both the Claimant and Mr Tak. The interview was brief (lasting from 06:05 to 06:37, with a break from 06:14-06:26). In material part, the exchanges were recorded as follows:

"*ST – Can you confirm your contract hours + times?*

MA – 48 hrs, 7pm -7am

ST – You sent me a message for a lost proxy card.

MA - Yes

ST – Upon issuing your card, Pala (TL) noticed your entry/exit time were not as agreed in your contract. Can you explain

MA – BREAK TAKEN AT 06.14.

Start 06.26

MA – I sometimes come to work on those times due to traffic issues which I was not able to help. Also I leave work based on the arrival of my colleage [sic]. I never leave when no one is here but based on the agreement I had with my colleague, that I could leave when his is on site.

ST – You are aware of your contract.

MA – Yes

[…]"

23.2 The Claimant's evidence was that, in addition to the above, Mr Tak said to the Claimant "*would you like to resign or wait 'til you are sacked?*". He only signed the record of interview because he wanted to get away from Mr Tak's presence.

23.3 Mr Tak's written evidence was that he did not threaten the Claimant or invite him to resign as alleged. However, Mr Tak's evidence was not tested in cross-examination, which affects the weight it can be afforded.

The Tribunal did not find the Claimant's evidence on this point to be reliable. The Claimant did not raise this allegation in the disciplinary meeting or the appeal. He signed the record of interview. Notably, the Claimant wrote parts of the record of interview himself, including his "*I sometimes…*" answer quoted above. This is not consistent with the Claimant's evidence that the meeting was an interrogation and Mr Tak was behaving in a threatening way. We also take into account the apparently problem-free relationship that the Claimant and Mr Tak had prior to this (see paragraph 17 above) which makes it less plausible that Mr Tak behaved as the Claimant suggests he did. Even bearing in mind that it was untested by cross-examination, Mr Tak's account is the more plausible one. The Tribunal concludes that, on the balance of probabilities, the record of interview is an accurate record of the conversation, and that Mr Tak did not threaten the Claimant or invite him to resign as alleged.

24. Later on 14 November 2019, at around 5pm, Mr Tak telephoned the Claimant to inform him he would be suspended pending an investigation. This was confirmed in writing the following day, 15 November 2019. The suspension letter [141] records the allegations as "*Falsification of Company records*" and "*Dereliction of duties*".

25. A further letter was sent on 15 November 2019 inviting the Claimant to a gross misconduct disciplinary hearing [142-143]. Again, the allegations are recorded as "*Falsification of Company records*" and "*Dereliction of duties*". The Claimant was informed of his right to be accompanied by a colleague or trade union official, and warned that a possible outcome was dismissal without notice. The letter records that it attaches copies of the Discipline and Grievance Policy as well as copies of the investigation notes dated 14 November 2019, relevant parking activity history, relevant car park patrol logs and relevant worktime record sheets. In his oral evidence the Claimant stated that he could not remember whether the documents were attached to the letter. Ms Magee (who chaired the disciplinary hearing) gave evidence that the Claimant did have a pack of documents with him at the disciplinary hearing, and the Tribunal considered Ms Magee's evidence in this regard to be reliable. We find that the documents listed in the letter were enclosed with the letter.

26. Though not summarised in this way in the pack sent to the Claimant, the table below records the incidents of late arrivals / early departures (excluding those where the Claimant was no more than 1 minute late or early in leaving) and inconsistent patrol logs / worktime record sheets that were identified in the investigation based on the materials in the bundle.

Date	**Proxy card arrival time**	**Inconsistent log entry**	**Proxy card exit time**	**Inconsistent log entry**
20-21.08.19	19:06		06:23	

Date	Proxy card arrival time	Inconsistent log entry	Proxy card exit time	Inconsistent log entry
26-27.08.19			06:02	
27-28.08.19	19:03		06:55	
28-29.08.19	19:04		06:41	
02-03.09.19	19:06			
03-04.09.19	19:14	Recorded starting patrol at 19:10 [116]		
18-19.09.19	19:16	Recorded starting patrol at 19:10 [117]		
19-20.09.19	19:16			
20-21.09.19	19:13	Recorded as working from 19:00 [118]		
26-27.09.19	19:15	Recorded as working from 19:05 [118]	06:56	Recorded as working to 07:00 [118]
27-28.09.19	19:15	Recorded as working from 19:10 [118]	06:48	Recorded as working to 07:00 [118]
28-29.09.19	19:16	Recorded as working from 19:05 [118]	06:56	Recorded as working to 07:00 [118]
04-05.10.19	19:13	Recorded as working from 19:05 [127] Recorded starting patrol at 19:10 [123]		
05-06.10.19	21:31	Recorded as working from 21:08 [127] Recorded starting patrol at 21:10 [124]		

Date	Proxy card arrival time	Inconsistent log entry	Proxy card exit time	Inconsistent log entry
06-07.10.19			06:54	Recorded as working to 07:00 [127]
07-08.10.19	19:12	Recorded as working from 19:00 [127] Recorded starting patrol at 19:05 [125]	06:47	Recorded as working to 07:00 [127]
12-13.10.19	19:09	Recorded as working from 19:00 [133]		
13-14.10.19	19:05	Recorded as working from 19:00 [133]		
14-15.10.19	19:07	Recorded as working from 19:00 [133]		
15-16.10.19	19:23	Recorded as working from 19:15 [133] Recorded starting patrol at 19:20 [131]	06:15	Recorded as working to 07:00 [133]

27. As the Claimant was unable to attend on the initially scheduled date, the disciplinary hearing was rescheduled to 27 November 2019 [144]. The hearing took place on that date and was chaired by one of the Respondent's Cluster Managers, Ms Kathryn Magee. A Customer Services Assistant from another site, Mr Matthew McPhee, was present as notetaker. The claimant attended accompanied by a friend who was not a work colleague or trade union official. After consulting with HR, Ms Magee informed the Claimant that his friend could not accompany him. Ms Magee offered the Claimant the opportunity for one of the staff at the Wandle site at which the hearing was taking place to sit in, but the Claimant declined this as he did not know anyone from this site. There was differing evidence on what happened next:

27.1 Ms Magee's oral evidence was that she offered the Claimant the opportunity to postpone the hearing to get proper representation, but the Claimant decided to proceed without a companion.

27.2 The Claimant's evidence was that he proceeded with the hearing

unaccompanied because he interpreted the disciplinary invite letter as indicating that, if he didn't, a decision would be made in his absence.

While Ms Magee's 'offer' is not recorded in the minutes of the hearing, the Tribunal considered Ms Magee's evidence on this point to be reliable. We find that Ms Magee did offer the Claimant the opportunity to postpone to organise proper representation, but this opportunity was declined.

28. The notes of the disciplinary hearing are at [145-151]. The Claimant signed them as accurate. The Tribunal finds that the notes are an accurate record of what was said at the meeting. The following aspects are material:

28.1 Ms Magee explained the allegations and the likely outcome (summary dismissal) should the case be proven.

28.2 The Claimant confirmed he had lived at his current address for two years.

28.3 The Claimant explained that there may be differences between the times recorded by his use of the proxy card and the times he entered on the patrol log because of "*the difference in time between clocks around [and because] he has a wrist watch he wears to work that only works when he is wearing it*".

28.4 The Claimant explained that the reason he sometimes left before 7am was because of "*agreement between me and my colleagues on the day shift – when he arrive[s] they can leave*". The Claimant identified three colleagues including the Team Leader, Michael Oldenshaw.

28.5 Ms Magee began to explain the issue relating to the logs, but abandoned this as she could not locate the relevant documents, and did not come back to it in the hearing. (Ms Magee's oral evidence was that she believed that she had shown the Claimant patrol logs, but could not recall for certain. Consistent with the note of the meeting, the Tribunal finds that she did not.)

28.6 Ms Magee explored with the Claimant the reasons for his very late arrival on 5 November 2019 (logged as being at 21:31). The Claimant explained that, on that occasion, he had an emergency and had called Mr Oldenshaw to explain that he would be late.

28.7 Ms Magee explored with the Claimant the reasons for his late arrival on 15 October 2019 (logged as being at 19:23). The Claimant explained that this was due to heavy traffic.

28.8 Ms Magee explored with the Claimant the reasons for his early departure on 16 October 2019 (logged as being at 06:15). The Claimant explained that "*whenever my colleagues arrive I leave*".

28.9 The Claimant stated that he was bothered by the suggestion that there was 'falsification of documents' in respect of these incidents. When Ms Magee offered to explain the allegation again, the Claimant declined.

29. The disciplinary outcome letter was issued on 2 December 2019 [152]. Ms Magee's decision was to uphold both of the allegations against the Claimant, for the reasons set out in that letter. She determined that this amounted to gross misconduct, and that the appropriate sanction was summary dismissal. It was put to Ms Magee in cross-examination that this was not her decision, but that she was pressurised to dismiss, but the Tribunal accepts her evidence that the decision was hers and that she considered all of the material before her. In particular, Ms Magee's evidence that she had no contact with Mr Tak regarding the disciplinary process against the Claimant was clear and credible, and the Tribunal was satisfied it could be relied upon as accurate. The Tribunal also accepts Ms Magee's evidence that she considered lesser sanctions than summary dismissal, but concluded the allegations were too serious to justify those.

30. The Claimant appealed this decision by letter dated 9 December 2019 [154], raising four grounds of appeal which can be summarised as:

    30.1 Not a fair disciplinary hearing;

    30.2 The outcome was predetermined, being based on assumed evidence without factual investigation, and inappropriate use of the car parking access card in evidence;

    30.3 Ms Magee failed to follow the ACAS Code and relevant company policies, and exhibited bias and prejudice against the Claimant;

    30.4 Mr Tak used the Claimant's loss of his proxy card as a tool for victimisation, oppression and abuse of authority.

31. The Claimant was invited to an appeal hearing, originally scheduled for 16 December 2019 but then rescheduled to 6 January 2020 at the Claimant's request [157-158]. The hearing took place on that date, chaired by Mr Michael Buckley, Area Operations Manager for the Respondent. Mr Chris Kent-Webster, a Cluster Manager, attended as note-taker. The Claimant attended, accompanied by his Union representative, Mr Simeon Doherty.

32. The notes of the appeal hearing are at [159-166]. The Claimant and his representative signed them as accurate, and Mr Doherty confirmed this in his oral evidence. The Tribunal finds that the notes are an accurate record of what was said at the meeting. The following aspects are material:

    32.1 Mr Doherty argued that (i) the proper process was not followed in the disciplinary, (ii) it was not appropriate for Ms Magee to have relied upon the proxy card records to monitor the Claimant's attendance and (iii) instead the lateness policy should have been applied.

    32.2 The Claimant raised, for the first time, the allegation that Mr Thamothermeillay had asked him to sign documents, and that he believed Mr Tak was behind this as "*I think he has a problem with me*".

    32.3 The Claimant stated that the disciplinary meeting was unjust because his representative was not permitted to enter, and because during the hearing Ms Magee "shut me down" and just wanted yes or no

answers.

32.4 The Claimant stated that he always accurately wrote the times in his logs.

32.5 The Claimant explained that, on the occasion he was very late, he had called Michael Oldenshaw to explain why, and logged the correct time in the log books.

32.6 The Claimant argued that Ms Magee failed to look at the attendance policy.

32.7 The Claimant explained that sometimes, when there was a long queue, he would park in another car park. This happened in evenings a lot. He would walk in to the office from that other site. He stated that not all staff have a proxy card and therefore there were two different ways of judging when someone was on shift, and that this worried him.

33. The appeal outcome letter was issued on 13 January 2020 [167-169]. Mr Buckley's decision was to uphold the Claimant's dismissal, for the reasons set out in that letter. The letter comprehensively addresses each of the grounds raised by the Claimant. The Tribunal found Mr Buckley to be a reliable witness. It was put to him in cross-examination that he had failed in his duty as appeal manager to fully review the package and even when he identified concerns with the process, these were not followed up with the right people. He fairly accepted in his evidence that Mr Tak's investigation was not perfect and that he was initially concerned by the brevity of the investigation meeting and the shift in the description of the allegations between the investigation and disciplinary phase, but on considering the totality of the package was satisfied that the allegations were clear by the time of the suspension letter. After the appeal hearing, Mr Buckley followed up with Mr Oldenshaw to confirm the Claimant's account of his lateness on 5 October 2019 (Mr Oldenshaw confirmed that the Claimant did contact him on that date, as he had said, but that this was the only time that the Claimant had done so). The Tribunal finds that Mr Buckley did consider the whole package, and the decision he reached in respect of the appeal was his own and was uninfluenced by others. The Tribunal also accepts Mr Buckley's evidence that he considered lesser sanctions than summary dismissal, but concluded the allegations were too serious to justify those.

34. The Claimant was paid his salary on a monthly basis. The Claimant's payslips [219-223] confirm that he was paid the same gross salary in each of July, August, September, October and November 2019 (the only difference being an additional payment for bank holiday work received in September).

35. On 13 December 2019 (after the Claimant's dismissal but before the hearing of his appeal), Mr Tak was responsible for chairing a disciplinary hearing for a White British Customer Service Assistant, referred to here as 'MM'. Like the Claimant, MM was accused of falsification of company documents and dereliction of duties (MM was also accused of using his own vehicle to drive between sites). Mr Tak upheld the allegations, determined

that this amounted to gross misconduct, and that the appropriate sanction was summary dismissal [216].

36. The Claimant presented his claim to the Tribunal on 4 April 2020. The claim was brought in time.

Relevant law

Unfair dismissal

37. Section 94(1) ERA provides that an employee has the right not to be unfairly dismissed by their employer. It is not in dispute that the Claimant was a qualifying employee and was dismissed by the Respondent.

38. Section 98 ERA deals with the fairness of dismissals. There are two stages within this section.

    38.1 First, the employer must show that it had a potentially fair reason for the dismissal, *i.e.* one of the reasons listed in section 98(2) or "*some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held*" (section 98(1)(b)). Conduct is one of the potentially fair reasons.

    38.2 Second, if the employer shows that it had a potentially fair reason for the dismissal, the Tribunal must consider whether the employer acted fair or unfairly in dismissing for that reason. Section 98(4) provides that the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) shall depend 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 shall be determined in accordance with equity and the substantial merits of the case. The burden of proof at this stage is neutral.

39. In cases relating to conduct (as this case is), the Tribunal should apply the test set out in *British Home Stores Ltd v Burchell* [1978] IRLR 379. In summary, the employer must demonstrate that:

    39.1 it genuinely believed that the employee was guilty of misconduct;

    39.2 it had reasonable grounds for that belief; and

    39.3 it had carried out an investigation into the matter that was reasonable in the circumstances of the case.

40. It is not for the Tribunal to substitute its own view of what it would have done in the position of the employer, but to determine whether what occurred fell within the range of reasonable responses of a reasonable employer, both in relation to the substantive decision and the procedure followed (*J Sainsbury plc v Hitt* [2003] IRLR 23; *Whitbread plc v Hall* [2001] ICR 699).

41. An investigation must be even-handed to be reasonable, and particularly

rigorous when the charges are particularly serious (*A v B* [2003] IRLR 405). The employer must consider any defences advanced by the employee, but whether and to what extent it is necessary to carry out specific inquiry into them in order to meet the *Burchell* test will depend on the circumstances as a whole – the investigation should be looked at as a whole when assessing the question of reasonableness (*Shrestha v Genesis Housing Association Ltd* [2015] IRLR 399).

42. The size and administrative resources of the employer's undertaking are relevant, as is the ACAS Code of Practice on Disciplinary and Grievance Procedures (the "ACAS Code"). The ACAS Code recognises that an employee might be dismissed even for a first offence where it constitutes gross misconduct. The employer is entitled to take into account the attitude of the employee to his/her conduct (*Paul v East Surrey District Health Authority* [1995] IRLR 305).

43. The approach to be taken to procedural fairness is a wide one, viewing it if appropriate as part of the overall picture, not as a separate aspect of fairness. Any procedural defects in the initial disciplinary hearing may be remedied on appeal provided that in all the circumstances the later stages of a procedure are sufficient to cure any earlier unfairness (*Taylor v OCS Group Ltd* [2006] IRLR 613).

Direct race discrimination

44. Section 13 of the Equality Act 2010 (***EQA***) prohibits direct discrimination. Section 13(1) EQA states:

> "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."

45. Race (including colour, nationality and/or ethnic or national origins) is a protected characteristic (section 9 EQA).

46. The primary focus in a direct discrimination case is on identifying why the claimant was treated as he was, before coming back to whether it was less favourable treatment because of the protected characteristic (see *e.g. Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11). It is well established law that a respondent's motive is irrelevant and, indeed, the possibility of unconscious discrimination is recognised (see *e.g. Nagarajan v London Regional Transport* [1999] IRLR 572, HL). Moreover, the protected characteristic need not be the sole or even principal reason for the treatment as long as it is a significant influence or an effective cause of the treatment.

47. The bare facts of (i) a difference in status and (ii) a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal could conclude that, on the balance of probabilities, the Respondent had committed an unlawful act of discrimination (*Madrassy v Nomura International plc* [2007] EWCA Civ 32). Something more is needed.

48. The provisions relating to the burden of proof are found in Section 136(2)

and (3) EQA:

> "(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision."

49. It is thus for the Claimant to prove facts from which the Tribunal could conclude, in the absence of any evidence from the Respondent, that the Respondent committed an act of discrimination. Only if that burden is discharged is it then for the Respondent to prove that the reason for the treatment was not because of a protected characteristic (see, *e.g.*, *Royal Mail Group Ltd v Efobi* [2021] UKSC 33). This will typically be based upon inferences of discrimination drawn from the primary facts and circumstances found by the Tribunal to have been proved on the balance of probabilities. Such inferences are crucial in discrimination cases as it is unlikely there will be direct, overt evidence that a Claimant has been treated less favourably because of a protected characteristic (see, *e.g.*, *Anya v University of Oxford* [2001] IRLR 377, CA).

50. Notwithstanding the above, in *Efobi*, Lord Leggatt repeated Lord Hope's reminder in *Hewage v Grampian Health Board* [2012] UKSC 37 that it is important not to make too much of the role of the burden of proof provisions:

> "They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other."

Breach of contract (wrongful dismissal)

51. An employee is not entitled to notice of termination if they have fundamentally breached the employment contract, *e.g.* if the contract is terminated because the employee is guilty of gross misconduct. It is not enough for the employer to show (as for unfair dismissal) that it reasonably believed that the employee committed gross misconduct, but that the misconduct was actually committed (*British Heart Foundation v Roy* UKEAT/0049/15).

Unlawful deductions from wages

52. Section 13(1) ERA provides that:

> "An employer shall not make a deduction from wages of a worker employed by him unless—
>
> (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
>
> (b) the worker has previously signified in writing his agreement or consent to the making of the deduction."

53. A deduction is a complete or partial failure to pay what was properly payable

on a particular occasion (section 13(3) ERA).

Conclusions

Unfair dismissal

Issue 1: Whether the respondent dismissed the claimant for a potentially fair reason falling within sections 98 (1) or (2) ERA.

54. The burden falls on the Respondent to show a potentially fair reason for dismissal.

55. The Tribunal has found as a fact that the disciplinary manager, Ms Magee, determined that the Claimant had committed gross misconduct and that was the reason she dismissed him. The appeal upheld that decision on the same basis. Conduct is a reason listed in section 98(2) ERA. No credible alternative reason was advanced by the Claimant – the Tribunal accepted Ms Magee and Mr Buckley's evidence that they were not pressurised by anyone else (in particular, by Mr Tak) in coming to their decisions.

56. Accordingly, the Tribunal finds that the Respondent dismissed the claimant for a potentially fair reason falling within section 98(2) ERA.

Issue 2: Whether the respondent acted reasonably or unreasonably in treating the potentially fair reason as a sufficient reason for dismissing the claimant, considering section 98(4) ERA.

57. The burden in relation to this issue is neutral.

58. Before setting out the Tribunal's overall conclusion on this issue, we first address the particular sub-issues identified in the List of Issues which feed into that overall conclusion.

Sub-issue 2.1: Whether the respondent had a genuine belief that the claimant had committed gross misconduct

59. The Tribunal accepted the evidence of Ms Magee that she genuinely concluded, based on the evidence before her, that the Claimant had committed gross misconduct. It was not suggested with any force by the Claimant that Ms Magee was not genuine in her belief. The same applies in relation to Mr Buckley as the decision-maker in the Claimant's appeal.

60. Accordingly, the Tribunal finds that the Respondent did have a genuine belief that the Claimant had committed gross misconduct.

Sub-issue 2.2: Whether it was reasonable for the respondent to hold that belief

61. The Tribunal has found that there was evidence before Ms Magee (and Mr Buckley on appeal) of the Claimant's relevant parking activity history, relevant car park patrol logs and relevant worktime record sheets. These materials showed various incidents of late arrivals / early departures and inconsistent patrol logs / worktime record sheets. There was no factual dispute as to the accuracy of the parking activity history.

62. Ms Magee invited the Claimant to provide an explanation for these incidents, and she deemed the explanations provided by the Claimant not to be acceptable ones. In the Tribunal's judgement, that was a reasonable position to take. It was objectively reasonable for Ms Magee to regard the Claimant's explanation regarding there being different times on different clocks as not acceptable, noting that it was not a reason put forward by the Claimant in the investigation meeting and, in any event, it lacked credibility as an explanation for the incidents. It was also objectively reasonable for Ms Magee to deem any local arrangement made between the Claimant and his colleagues as not being an acceptable reason for persistent lateness / early departure, nor for putting incorrect times into patrol logs or worktime record sheets. Any such arrangement would result in the Claimant being paid for more time than he was actually working, whilst concealing from his line manager his true working patterns – circumstances that a reasonable employer is entitled to regard as unacceptable.

63. Accordingly, the Tribunal finds that it was reasonable for the Respondent to believe that the Claimant had committed gross misconduct.

Sub-issue 2.3: Whether the respondent reached that belief after it had carried out as much investigation as was reasonable in the circumstances

64. The Claimant was critical of the investigation carried out by the Respondent. In his closing submissions, Mr Akpan-Inwang highlighted that the investigation meeting lasted only around 20 minutes, that no other witnesses were called as part of the investigation, and that no documents were presented or shown to the Claimant in the investigation stage. That Mr Tak did not explore in any detail the allegations, which at that stage were "poor time-keeping" and "not following procedures", was also criticised, as was the fact that the allegations changed to "falsification of company records" and "dereliction of duties" as the case moved to the disciplinary stage. It was also submitted that the fact that the letter of suspension and the invite to disciplinary hearing were both dated 15 November 2019 was an indication that the investigation was not robust and was contrary to the Respondent's own policy that a "*decision to instigate disciplinary action will be issued … only after the investigation and interviews have taken place*".

65. Criticisms were also raised in respect of the actions of Ms Magee – it was submitted that Ms Magee should have carried out further investigation at the disciplinary stage, specifically that she should have contacted potential witnesses (the three colleagues mentioned at paragraph 28.4 above) identified by the Claimant during the disciplinary hearing, but failed to do so.

66. As already noted, there was evidence of the Claimant's relevant parking activity history, relevant car park patrol logs and relevant worktime record sheets. These materials showed various incidents of late arrivals / early departures and inconsistent patrol logs / worktime record sheets. There was no factual dispute as to the accuracy of the parking activity history. The Claimant was given three opportunities to explain the incidents before his dismissal – in the meeting with Mr Thamothermeillay on 7 November 2019; in the investigation meeting with Mr Tak on 14 November 2019, and in the disciplinary meeting with Ms Magee on 27 November 2019 – and a further

opportunity in his appeal.

67. Mr Buckley, who heard the appeal, candidly accepted in his oral testimony that he was initially concerned about the brevity of Mr Tak's investigation; however, he was satisfied that the totality of the fact-finding exercise carried out by Mr Tak and Ms Magee was sufficient to support the finding of gross misconduct. Moreover, Mr Buckley did himself follow up with one of the witnesses mentioned by the Claimant, Mr Michael Oldenshaw (see paragraph 33 above).

68. In the Tribunal's judgement, by the time the Claimant's case had gone through the investigation, disciplinary and appeal stages (i.e. looking at the whole, as *Shrestha* requires us to do), enough investigation had been done as was reasonable in the circumstances. The parking activity history provided irrefutable evidence of the Claimant's arrival / departure timings, and the patrol log and worktime record sheets speak for themselves. The Claimant was given multiple opportunities to give an explanation. Whilst two potential witnesses identified by the Claimant were not interviewed, it was reasonable for the Respondent not to pursue those lines of inquiry because, even if those witnesses did confirm there was a local agreement between the Claimant and his colleagues, it would not have changed the outcome as the Respondent was reasonably of the view that such arrangements were unacceptable.

69. Accordingly, the Tribunal finds that the Respondent carried out as much investigation as was reasonable in the circumstances.

Sub-issue 2.4: Whether the respondent adopted a fair procedure

70. Stepping back and looking at the procedure in its totality, the Tribunal concludes that the procedure was overall fair, for the following reasons:

    70.1 When the issues came to light, the Claimant was provided with two opportunities to provide an explanation (7 and 14 November 2019) before disciplinary action was commenced. The Tribunal rejects on the facts the assertion that the conduct of Mr Thamothermeillay and of Mr Tak respectively in these meetings was inappropriate (see paragraphs 22 and 23 above);

    70.2 The Claimant was provided with copies of all of the materials relevant to the allegations against him (*i.e.* the parking activity histories, patrol logs and worktime record sheets) in advance of the disciplinary hearing;

    70.3 Whilst the charges against the Claimant changed between the investigation meeting and the start of the disciplinary stage, this was justified by the findings of the investigation. In any event, (a) the allegations were clearly set out in the suspension letter and disciplinary hearing invitation letters and (b) Ms Magee ensured that the Claimant understood the charges against him, and the likely consequences of adverse findings, at the outset of the disciplinary hearing;

    70.4 The Claimant was provided with the opportunity to be accompanied at the disciplinary hearing by a work colleague or trade union official. He

instead arrived with someone who met neither of these descriptions. Ms Magee offered a postponement in order that the Claimant could find a suitable person, but the Claimant chose to proceed;

70.5 The Claimant was given a full opportunity to put forward his explanation in the course of the disciplinary hearing. Though Ms Magee did not question the Claimant in relation to every incident, she was reasonably justified in focusing on a sub-set (being those where the Claimant had arrived particularly late or left particularly early).

70.6 The Claimant was provided with the opportunity to be accompanied at the appeal hearing by a work colleague or trade union official. He availed himself of this opportunity by being accompanied by Mr Doherty, a trade union official.

70.7 The Claimant's appeal put heavy focus on a submission that it was inappropriate for the Respondent to use evidence from the Claimant's proxy card for the purposes of a disciplinary process. Mr Buckley rejected that submission and it was objectively reasonable for him to do so. The Respondent was not systematically using proxy cards to monitor staff attendance; however, the Claimant's persistent late arrivals / early departures came to light in the process of producing a replacement proxy card for the Claimant. There was nothing objectively unfair about the Respondent using the evidence that had come to light as the basis for investigating the Claimant.

70.8 It was also argued by the Claimant that the Respondent should have applied its lateness policy rather than the charges of falsification of records and dereliction of duties. We find that the Respondent was reasonably justified in the approach it took – as Mr Buckley described it in his oral evidence this was a case of "covert" lateness, which takes it outside of the scope of a policy that is based on employees reporting their lateness and making up lost time ([66]-[67]).

70.9 The Claimant was given a full opportunity to raise all relevant points, and provide his explanation for the incidents, in the course of the appeal hearing.

70.10 The Respondent carried out as much investigation as was reasonable in the circumstances (see sub-issue 2.3 above).

Sub-issue 2.5: Whether the respondent pressurised the claimant into signed a prepared statement; Sub-issue 2.6: Whether on 7 November 2019, the claimant's supervisor, Pala [Palakrishnan Thamothermeillay] told him to sign a statement that the respondent had prepared; Sub-issue 2.7: Whether Cluster Manager, Steve Tak, 'interrogated' and 'threatened' the claimant at an investigatory meeting; Sub-issue 2.8: Whether Steve Tak said at the investigation meeting 'would you like to resign or wait 'til you are sacked'

71. As noted in our findings on sub-issue 2.4, the Tribunal rejects each of these allegations on the facts: see paragraphs 22 and 23 above.

Sub-issue 2.9: Whether the respondent changed the allegations that the claimant

faced between the investigatory meeting and suspending him. The allegation changed from 'poor time keeping and not following procedures' to 'falsification of documents and dereliction of duties'

72. It is factually true that the allegations against the Claimant changed between the investigatory meeting and his suspension. However, as noted in our findings on sub-issue 2.4, this was justified by the findings of the investigation.

Sub-issue 2.10: Whether the respondent was entitled to use evidence from the claimant's proxy card during the disciplinary process.

73. We have addressed this issue under sub-issue 2.4 (see paragraph 70.7 above). There was nothing objectively unfair about the Respondent using the evidence that had come to light as the basis for investigating the Claimant.

Overall conclusion on issue 2:

74. It follows from our conclusions on the sub-issues set out above that, in the Tribunal's judgement, the Respondent acted reasonably in treating the potentially fair reason (conduct) as a sufficient reason for dismissing the Claimant. In coming to that conclusion, we have had regard to all the circumstances detailed above, as well as to the size and administrative resources of the Respondent. The factual allegations against the Claimant were investigated to the extent reasonable in the circumstances and, following an overall fair procedure, the Respondent reasonably concluded that the Claimant had committed the misconduct alleged.

Issue 3: Whether the decision to dismiss fell within the range of reasonable responses that a reasonable employer may have adopted in the circumstances.

75. As already noted, it is not for the Tribunal to substitute its own view on whether it would have taken the decision to dismiss considering all of the circumstances. The Tribunal must instead determine whether the decision to dismiss falls within the range of reasonable responses of a reasonable employer.

76. We have already determined that it was reasonable for the Respondent to conclude that the Claimant had committed the misconduct alleged. The Tribunal accepts the evidence of Ms Magee that she considered all of the material before her (including the Claimant's explanations by way of mitigation), and that she considered lesser sanctions than dismissal but concluded the allegations were too serious to justify those. Mr Buckley gave evidence to the same effect, which we also accept. We find that this conclusion was within the range of reasonable responses, because:

    76.1 The findings against the Claimant were relevant to his honesty and to whether the Respondent could trust the Claimant in future;

    76.2 The Claimant was a lone worker, making it all the more important that his employer can trust him;

76.3 It was reasonable for Ms Magee to conclude that an employee that had committed the acts of misconduct that the Claimant had been found to have committed could no longer be trusted.

Conclusion on unfair dismissal

77. In view of the above findings, the Tribunal concludes that the claim for unfair dismissal is not well-founded and is dismissed. Issues 4-8 therefore do not arise to be determined.

Direct race discrimination

Issues 9 & 10: Did Mr Tak treat the claimant less favourably because he is of a different race to Mr Tak. Specifically, did Mr Tak treat the claimant and other black employees less favourably than employees of his own race, by telling them to sweep up and mop the stairs, wash the stairs, paint the walls, clean urine, clean up vomit and faeces around the car parks but never ask the same of employees of his own race?

78. The Tribunal is satisfied that this is a case in which it is possible to reach conclusions based on primary findings of fact, and therefore it is unnecessary to give careful attention to the burden of proof provisions (as per *Hewage*, see above).

79. It is appropriate in this case to first consider whether any of the instances of "less favourable treatment" relied upon by the Claimant did in fact occur. In closing submissions, the Claimant relied upon the following:

79.1 The conduct of Mr Thamothermeillay in the meeting of 7 November 2019. We have found on the facts that Mr Thamothermeillay did not act inappropriately in this meeting (see paragraph 22 above).

79.2 The conduct of Mr Tak in the meeting of 14 November 2019. We have found on the facts that Mr Tak did not act inappropriately in this meeting (see paragraph 23 above).

79.3 The allegation that Mr Tak told black employees to sweep up and mop the stairs, wash the stairs, paint the walls, clean urine, clean up vomit and faeces around the car parks, but never asked the same of employees of his own race. We have found on the facts that all Customer Service Assistants, regardless of race, were contractually required to and were required by Mr Tak to carry out a range of cleaning and painting tasks as requested (see paragraph 15 above). There is no factual basis for the allegation that the Claimant was treated less favourably than employees of Mr Tak's race.

79.4 That Ms Magee and Mr Buckley were accomplices in Mr Tak's discrimination against the Claimant in that they feigned ignorance. We have found on the facts that Ms Magee and Mr Buckley each came to their own decision on the Claimant's case without being influenced by Mr Tak (see paragraphs 29 and 33 above).

80. It follows, therefore, that no instances of "less favourable treatment" have

been made out on the facts. The inquiry therefore ends at this stage.

Conclusion on direct race discrimination

81. In view of the above findings, the Tribunal concludes that the claim for direct race discrimination is not well-founded and is dismissed.

Breach of contract

Issue 12: Whether the respondent was entitled by contract and by statute, pursuant to section 86(6) ERA, to dismiss the claimant without notice or pay in lieu of notice.

82. The central question on this issue is whether the Respondent has met its burden of proving, on the balance of probabilities, as a matter of fact, that the claimant was guilty of conduct which was of such a nature that it entitled the respondent to dismiss the claimant for that conduct.

83. The Tribunal is satisfied that the Respondent has met its burden and was therefore entitled by contract and by statute to dismiss the Claimant without notice or pay in lieu of notice. This is for the following reasons:

83.1 The Claimant's parking activity history, relevant car park patrol logs and relevant worktime record sheets showed various incidents of late arrivals / early departures and inconsistent patrol logs / worktime record sheets. There was no factual dispute as to the accuracy of the parking activity history.

83.2 None of the explanations provided by the Claimant, through the internal disciplinary and appeal process and before the Tribunal, provide a credible explanation for the discrepancies. In his evidence at the Tribunal, the Claimant gave evidence that a reason for his apparent late arrivals was that, due to queues at the car park on his arrival, he would often park at a free car park across the road from Southside Wandsworth. He would then enter the car park on foot, do what he needed to do to release the traffic, and then move his car into Southside a short time later. We did not find this explanation to be a credible explanation for the sheer number of incidents of late arrival. It is not believable that such queues were a regular occurrence. The Claimant also, for the first time, mentioned family issues that meant he struggled to leave home in time to get to work for the start of his shift. However, this had never been raised before and the Tribunal did not accept it as a justification.

83.3 It follows therefore that we find that the Claimant did falsify company records, in that on several occasions he entered times in patrol logs or worktime record sheets that indicated he was working before he had, in fact, arrived on shift. He was also working less hours than he was contractually obliged to do so and hiding this from the Respondent.

83.4 This conduct can properly be characterised as gross misconduct (as amounting to dishonesty) under the policies applicable to the Claimant's employment ([252]), entitling the Respondent by contract to dismiss the Claimant without notice ([51]).

Conclusion on breach of contract

84. In view of the above findings, the Tribunal concludes that the claim for breach of contract is not well-founded and is dismissed. Issue 13 therefore does not arise to be determined.

Unlawful deductions from wages

Issue 14: Whether the respondent failed to pay the claimant a day's pay on 14 November 2019 when it suspended him on full pay.

85. This part of the claim received little attention during the hearing. The defined issue focuses on a single date: 14 November 2019. As the Claimant was dismissed on 2 December 2019 (having been suspended on full pay since 14 November 2019), his salary for the month of November 2019 should be complete.

86. The Tribunal found that the Claimant was paid the same gross salary in November 2019 as in each of July, August, September and October 2019 (the only difference being an additional payment for bank holiday work received in September). Accordingly, it has not been established on the facts that any deduction was made on 14 November 2019 – the evidence is that no such deduction was made as the Claimant's November 2019 salary payment was complete.

Conclusion on unlawful deductions from wages

87. In view of the above findings, the Tribunal concludes that the claim for unlawful deductions from wages is not well-founded and is dismissed.

_____

Employment Judge Abbott

Date: 9 February 2022