



EMPLOYMENT TRIBUNALS

Claimant: Miss M. Francis

Respondent: Morgan Sindall Property Services Limited

Heard at: London Central (by CVP) **On:** 24 & 25 February 2022

Before: Employment Judge J Galbraith-Marten

Appearances

For the claimant: Miss M. Francis, in person

For the respondent: Ms. C. Ibbotson of Counsel

RESERVED JUDGMENT

The Judgment of the Tribunal is that the claim of unfair dismissal fails and is dismissed.

REASONS

1. This is a claim of Unfair Dismissal which is denied. Standard directions for the preparation of the case were given by the Tribunal without a Preliminary Hearing and the parties prepared an agreed Bundle of Documents and exchanged witness statements. There were no preliminary matters for the Tribunal to determine.
2. The Claimant claims that her dismissal was unfair within section 98 of the Employment Rights Act 1996. The Respondent contests the claim. It says the Claimant was fairly dismissed for misconduct as she was intoxicated at work (within the Respondent's definition) based on a non-negative random drug test

carried out on 22 September 2020 when the Claimant tested positive for cannabis. The Respondent maintains this was a breach of its Substance Misuse policy and therefore, it was entitled to terminate the Claimant's employment without notice because this constituted gross misconduct pursuant to its Disciplinary policy.

3. The Claimant represented herself and gave sworn evidence. The Tribunal also heard sworn evidence from Mr. R. Morris, Mr. A. Kenny, and Mr. L. Williams on behalf of the Claimant. The Respondent was represented by Ms. C. Ibbotson of Counsel who called sworn evidence from Ms. J. Hitchin, Customer Performance Manager, and Mr. G. McFarlane, Partnership Director. The parties provided a 431 page Bundle of Documents.

ISSUES

4. The issues for the Tribunal to determine in respect of liability and if required remedy, the parties having presented evidence in respect of both, are as follows:
 - 4.1 What was the principal reason for the Claimant's dismissal and was it a potentially fair reason under section 98(1) and (2) of the Employment Rights Act 1996? The Respondent asserts it was a reason relating to the Claimant's conduct.
 - 4.2 If so, was the dismissal fair or unfair within section 98(4) and, did the Respondent in all respects act within the band of reasonable responses? The Claimant states the dismissal was unfair because; (a) she was unaware of the Respondent's Substance Misuse policy, the Respondent not having drawn her attention to the policy during her induction, (b) she was unaware that cannabis remained in the body for a period of time after use, (c) the Respondent did not balance her right to a private life when utilising their policy, (d) any breach of the policy was unintentional on her part, (e) she was not in fact intoxicated whilst at work and, (f) the Respondent did not fully investigate the issues as it failed to speak to her colleagues regarding the induction course.
 - 4.3 Would it be just and equitable to reduce the amount of the Claimant's basic award because of any blameworthy or culpable conduct before the dismissal, as set out in section 122(2) of the 1996 Act, and if so to what extent? The Respondent's position was that a significant deduction should be made to reflect the Claimant's conduct.
 - 4.4 Did the Claimant, by her blameworthy or culpable conduct, cause or contribute to her dismissal to any extent, and is of, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award under section 123(6)? Again, the Respondent said that a significant deduction should be made to reflect the Claimant's conduct.

FINDINGS OF FACT

5. The Tribunal makes its decision based on the following facts, on the balance of probabilities, having considered all the evidence before it both oral and documentary. References to page numbers relate to the agreed Bundle of Documents.
6. The Claimant was employed by the Respondent as a Void Supervisor until her dismissal without notice on 29 September 2020. At the date of her dismissal the Claimant had 16 years' service. During her 16 years' service, the Claimant was subject to three TUPE transfers and her employment transferred to the Respondent on 1 August 2020 from Mears Limited.
7. The Respondent provides integrated property maintenance services in both the private and public sector. It undertakes planned and reactive maintenance and refurbishment of properties and works in association with Local Authorities. The Claimant was employed as a Void Supervisor on the Hammersmith & Fulham (repair and maintenance) contract.
8. As a Void Supervisor the Claimant was responsible for managing the repair and maintenance of empty properties in the Hammersmith & Fulham area. This required her to supervise the operatives on site, attend site meetings with the client and sub-contractors and this was a mixture of both office and site work. The Claimant confirmed in evidence that she spent most afternoons driving between sites to supervise work. It was agreed the Claimant had a clean disciplinary record.
9. Prior to the TUPE transfer, it was agreed the Claimant was provided with a measures letter the Respondent had provided to Mears Limited, the outgoing employer, on 31 July 2020 and included in the Bundle at pages 83-85. The Respondent set out the measures it would take in relation to the transferring employees. The Respondent confirmed that it would be implementing its employment policies following the transfer and specific reference was made to its Substance Misuse policy. The letter also confirmed that periodic testing was in operation and the Respondent operated a zero-tolerance approach and non-negative tests may be subject to disciplinary action.
10. The Claimant was provided with an induction by the Respondent following her transfer and that took place over 3 days at the Novotel in Hammersmith between 3 and 5 August 2020. The Claimant and her colleagues were shown various power point presentations during the induction.
11. One slide that formed part of the induction was included at page 72 of the Bundle, and it informed the attendees that various policies were available on the intranet or available from their Line Manager or Human Resources. One of the policies referred to was the Respondent's Substance Misuse policy.
12. A second slide shown to the Claimant was at page 89 of the Bundle and it stated the Respondent had a nil tolerance approach to drugs and alcohol.

13. A third slide shown to the Claimant was at page 102 of the Bundle and it also stated that a nil approach to drugs and alcohol on site was in place and random testing may be carried out.
14. A fourth slide shown to the Claimant was included at page 140 of the Bundle and this stated, *“the consumption or possession of alcohol or illegal drugs on the site is strictly prohibited. No person is to work on this site having consumed alcohol or drugs... Random testing may be carried out.”*
15. The Respondent’s Substance Misuse Policy was included at pages 55 – 62 of the Bundle. One of the aims of the policy is to *“ensure all employees understand the implications of alcohol, drugs or other substance misuse on the workplace.”* The policy states that employees must not attend work in an impaired state due to the influence of alcohol, drugs, or other substances. The policy further states that the Respondent will consider any contravention of the policy an infringement of its Disciplinary Policy and this could result in disciplinary action up to and including dismissal.
16. The Respondent had a system of random testing to *“ensure fairness within the policy and give a clear message that the misuse of alcohol, drugs or other substances cannot be tolerated by Morgan Sindall.”* Further, *“an employee who tests positive for drugs following a laboratory drug test that confirms the use of illegal drugs or the misuse of legal drugs or any other substance will be in breach of the policy and standard.”* Bundle page 58.
17. In addition to the Substance Misuse policy, the Respondent also has a Health, Safety, Environment and Quality Substance Misuse – Standard Procedure, that was included at pages 63 – 67 of the Bundle. In the roles and responsibilities section, employees are responsible for being familiar with the policy and accompanying standards and the implications resulting from a breach of the policy or standards. Again, it is emphasised that a breach of the Procedure will be taken very seriously by the Respondent and disciplinary action will be taken in the event of any infringement of the rules and this may include dismissal.
18. The Respondent’s definition of impaired because of drugs is found in the Procedure which states; *“any worker found to have consumed illegal drugs or misused drugs or any other substance (to be confirmed by an appropriate test) is deemed to be impaired due to the use of drugs and is therefore in breach of this policy.”* Bundle page 64.
19. The Claimant’s position was that she was not provided with a hard copy of the Substance Misuse policy during her induction training. The Claimant’s witnesses: Mr. Morris, Mr. Kenny and Mr. Williams confirmed they did not receive a hard copy of the policy at the Induction training. They also stated they received a copy of the policy at a toolbox training event on 22 October 2020.
20. The Respondent’s position was that a hard copy of the policy was provided on the second day of the induction training by Ms. Hannah Waddington, HR Consultant. However, Ms. Waddington did not give evidence.

21. On the 22 September 2020, the Claimant received a telephone call from Mr. McFarlane asking her to attend the Respondent's Goldney Road office as she had been selected at random to undertake an alcohol and drug test. The Claimant complied with that instruction. The outcome of the Claimant's urine drug test was provided at page 188 of the Bundle.
22. The Claimant consented to be tested and she understood that if a non-negative result was returned, the Respondent would be informed, and further laboratory analysis would be undertaken. The Claimant returned a non-negative result for cannabis.
23. At 2.25pm on 22 September 2020 the Claimant was informed by Mr. Darren Elbourn, Repairs Manager, that she had returned a non-negative test and he asked whether she was a user of cannabis. Mr. Elbourn did not give evidence to the Tribunal, but his note of the conversation was included in the Bundle at page 189.
24. The Claimant accepts she informed Mr. Elbourn that she smoked cannabis at weekends and occasionally on evenings. Throughout her evidence, the Claimant maintained that she is not a dependent cannabis user and there is no evidence suggesting that she is or was at the date of her dismissal.
25. Mr. Elbourn suspended the Claimant with immediate effect due to the non-negative test result and her work equipment including her laptop bag, phone and van were confiscated.
26. The Claimant's suspension was confirmed in writing on the same date and the Respondent informed her it would be investigating whether she was intoxicated or unfit for work through alcohol, illegal drugs or some other noxious substance or possession of illegal drugs – more specifically the non-negative drug test for cannabis on 22 September 2020.
27. The laboratory retest was included in the Bundle at page 191 and confirmed a positive reading of 107ng/ml, the cut-off point being 15 ng/ml. Dr. Hall, Consultant in Occupational Medicine, stated the result confirmed cannabis use and was consistent with the misuse of a controlled drug.
28. Mr. Elbourn conducted the disciplinary investigation, and his report was in the Bundle at pages 192 & 193. He recommended the matter proceed to a disciplinary hearing. Mr. Elbourn relied on the original test result, the laboratory retest and the information presented to the Claimant during her induction to support his recommendation. As recorded in his report, he believed the Claimant was provided with a hard copy of the Substance Misuse policy on 4 August 2020.
29. The Claimant was invited to attend a disciplinary hearing on 29 September 2020. She was informed that being intoxicated or unfit for work through alcohol, illegal drugs or some other noxious substance or possession of illegal drugs – more specifically the non-negative drug test for cannabis on 22 September

2020, potentially constituted gross misconduct and the outcome of the hearing may include disciplinary action up to and including dismissal.

30. Present at the disciplinary hearing were the Claimant and her companion, the Chair, Ms. Hitchin, and Ms. Waddington. The meeting commenced at 2.30pm.
31. During the disciplinary hearing the Claimant stated that the first time she had been provided with the Respondent's Substance Misuse policy was when she was invited to attend the hearing. She maintained she had not been provided with a copy at the induction nor had she signed any declaration confirming she had received and understood the policy.
32. The Claimant also stated she did not understand the lab results, nor did she understand the charge against her. In the Claimant's opinion, she was not intoxicated whilst at work. However, Ms. Waddington on behalf of the Respondent confirmed in the Respondent's opinion she was, as the test result indicated there were drugs in her system.
33. During the disciplinary hearing, the Claimant recalled she had seen a slide which stated the Respondent had a nil tolerance policy during the induction. However, she believed that related to activity whilst at work and she had not consumed cannabis whilst at work and as the policy wasn't fully explained to her, she was unaware of the consequences of smoking cannabis outside of work.
34. Ms. Hitchin considered the Claimant's mitigation and in the absence of any substantial mitigation, she confirmed the Respondent operates a zero-tolerance policy and therefore, she had no option but to terminate the Claimant's employment immediately. The disciplinary hearing concluded at 3.25pm and minutes of the hearing were included in the Bundle at pages 197 – 199.
35. The Claimant's disciplinary hearing was not the only one Ms. Hitchin and Ms. Waddington conducted that day. They also dealt with an identical allegation in respect of another employee and again took a decision to dismiss that employee. Ms. Hitchin's email of the 29 September 2020 confirming her decisions was included in the Bundle at page 200.
36. The Claimant appealed against her dismissal on 12 October 2020. She had three grounds of appeal; the findings and penalty were unfair, the Respondent failed to provide company policies and it failed to provide adequate training and awareness.
37. The appeal hearing took place on 15 October 2020. Present were the Claimant, her companion, the Chair, Mr. Gary McFarlane (who had called the Claimant to inform her that she had been selected to take part in the random drug and alcohol test on 22 September 2020), and Ms. Beverly Wilson, HR Consultant. Notes of the appeal hearing were in the Bundle at pages 214 – 227. Mr. McFarlane clarified the Claimant's grounds of appeal, and she confirmed the sanction of dismissal was in her opinion unfair, her position was not taken into

consideration during the disciplinary investigation, and she had received no support from the Respondent.

38. During the appeal the Claimant maintained she had not had sight of the Substance Misuse policy and procedure until she received the disciplinary pack. She had interpreted the slides that were shown to her during the induction training and her understanding of zero tolerance was whilst at work.
39. The Claimant informed Mr. McFarlane of the documents she received during the induction training and that included the Respondent's Code of Conduct but not the Substance Misuse policy. Further, the Claimant had spoken with her colleague Mr. Morris, who she sat beside during the induction training, and he also confirmed he had not received the Substance Misuse policy at the induction training.
40. The Claimant did however accept that she had been shown the slide that referenced the Respondent's zero tolerance policy but again, she understood that related to conduct whilst at work as it did not refer to employees' private lives.
41. The Claimant also queried what intoxicated whilst at work meant. Ms. Walker referred the Claimant to the definition in the procedure.
42. The Claimant also outlined the lack of information provided by the Respondent in respect of the testing process. Mr. McFarlane stated: "*when you are at work, and you provide a service for a local authority there would be a level of expectation – we would expect that our employees do not have alcohol or illegal drugs in their system*". In response, the Claimant commented: "*100% I understand that, but it wasn't made clear to me.*"
43. Mr McFarlane explained the Respondent expected a level of responsibility from employees to familiarise themselves with policies and if employees don't understand the information, they should raise it. He stated the onus was on the Claimant and other employees to review and understand the company information provided to them.
44. The Claimant accepted during the appeal hearing there was a level of ownership when given policies to read them. However, in this instance, her position was she did not receive the policy. The Claimant asked Mr. McFarlane to check with her colleagues who attended the induction and whether they had received the policy.
45. Mr. McFarlane did not provide the Claimant with a decision at the conclusion of the appeal hearing and he made further enquiries. He spoke with the administrator who supported the induction event, he gathered and considered the power point presentations provided at the induction, he spoke with a Customer Services planner who attended the induction event, and he also spoke with a regional health & safety & environmental manager in relation to one of the courses that took place during the induction.

46. In addition, Mr. McFarlane was contacted by Mr. Elbourn by email on 22 October 2022. That email was included at page 246 of the Bundle. The email sets out that Mr. Elbourn had found a plastic wallet in the Claimant's confiscated laptop bag, and he scanned the documents he discovered and attached them to his email. Included within the documentation was the Respondent's Substance Misuse policy and this was included in the Bundle at pages 269.
47. The Claimant refuted that document was in her bag at the date it was confiscated i.e., 22 September 2020. There was a delay of one month between the date of confiscation and this discovery. No evidence was presented to the Tribunal regarding the whereabouts or security of the laptop bag during the intervening period.
48. Considering the Claimant's concerns regarding her colleagues' failure to also receive the Substance Misuse policy, Mr. McFarlane spoke to an employee who attended the induction training. That employee confirmed that he did receive a copy of the Substance Misuse policy and his copy was included in the Bundle at pages 270-285.
49. Mr. McFarlane provided the Claimant with the outcome of her appeal by letter dated 28 October 2020. His letter was included in the Bundle at pages 306 - 309. He concluded the Claimant was reasonably aware of the Substance Misuse policy as his investigations revealed the policy had been printed and was available on the second day of the induction. He was also mindful that the Claimant had accepted during the appeal hearing that she was aware the Respondent operated a zero-tolerance policy.
50. Further, the Claimant's signed attendance at the enabling IT induction established that she was shown how to access information via the Respondent's IT systems.
51. Another employee verified receipt of the policy during the induction training and a copy of the policy was found in the Claimant's laptop bag. The Substance Misuse policy was also highlighted in the measures letter dated 31 July.
52. Therefore, it was Mr. McFarlane's belief, the Respondent had made reasonable endeavours to provide the Claimant with the Substance Misuse policy and how to access it.
53. Mr. McFarlane did not accept the Claimant's interpretation of the information she received during the induction course.
54. The Claimant's appeal was rejected. Save for a trial period of 3 weeks in January 2022, the Claimant remains unemployed, and her only source of income is state benefits.

LAW

55. Section 98(1) of the Employment Rights Act 1996 states:

In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show:

- (a) The reason (or, if more than one, the principal reason) for the dismissal, and*
- (b) That it is either a reason falling within subsection (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.*

56. Conduct of an employee is one of the reasons set out in subsection (2).

57. Section 98(4) of the Employment Rights Act 1996 states:

Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)

- (a) Depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and*
- (b) Shall be determined in accordance with equity and the substantial merits of the case.*

58. In determining an unfair dismissal claim based upon a dismissal by reason of conduct, the case of **British Home Stores Limited v Burchell [1980] ICR 303** sets out a threefold test. The Tribunal must decide whether:

- 58.1 the employer had a genuine belief that the employee was guilty of the misconduct alleged;
- 58.2 it had in mind reasonable grounds upon which to sustain that belief; and
- 58.3 at the stage at which that belief was formed on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances.

59. The Tribunal must then consider whether the sanction of summary dismissal was reasonable in all the circumstances.

60. The Tribunal must not substitute its own view for that of the employer unless the latter falls outside the band of reasonable response as set out in **Iceland Frozen Foods v Jones [1983] ICR 17** and **Sainsburys v Hitt [2003] ICR 111**.

SUBMISSIONS

61. Both parties made oral submissions, Counsel for the Respondent also submitted a closing note.

62. The Claimant referred to the Health & Safety at Work Act 1974 and information available on the Crown Prosecution Service website regarding the Road Traffic Act 1988.

63. The Claimant's points were as follows; (a) there was no line manager or leadership in place, (b) the Respondent failed to cascade important policies to the workforce and they failed to implement a declaration process in respect of those policies, (c) the Respondent failed to provide policies during the induction as confirmed by her witnesses who did not receive the Substance Misuse policy during the induction training and only received it later during a toolbox talk, (d) the Respondent failed to comply with the Substance Misuse policy as it did not ensure a reasonable balance with private life to ensure all employees understand misuse of substances outside work, (e) the Substance Misuse procedure provided a bullet point for appeal and a worker may appeal a positive test, but no information on how to appeal was provided, (f) no workplace representative attended whilst the Claimant undertook the drugs and alcohol random test, (g) Mr. McFarlane interviewed four witnesses during his appeal enquiries but he didn't speak to the colleagues the Claimant referred him to and, (h) the urine sample did not establish any level of impairment just that the Claimant had drugs in her system. In her submission at the date of the test, she was neither unfit for work nor impaired.
64. The Respondent's position is the Claimant admitted the misconduct and therefore, there is no issue as to whether there was a fair reason and the reason to dismiss fell within the band of reasonable responses.
65. The Respondent submitted the Claimant admitted she smoked cannabis, it is an illegal drug, and the Claimant's role required her to supervise labourers at empty properties and to drive to sites in company vans. There was a risk to the health and safety of her colleagues and other road users arising from her attending work whilst testing positive for cannabis.
66. Furthermore, testing positive for cannabis is a breach of the Respondent's Substance Misuse policy. The Claimant may not have understood that a positive test was a breach of the policy irrespective of where the drug was taken or the effect of the drugs on her system. However, either the Claimant knew and understood the policy or, the Respondent had taken all reasonable steps to advise her of the policy.
67. Therefore, it was reasonable for Ms. Hitchin to conclude that it was reasonable for the Claimant to have known about the policy as Ms. Hitchin had evidence of that, specifically; the measures letter (which the Claimant had read, noting the zero-tolerance approach which she interpreted as meaning "*at work*"), and the various slides presented at the induction that referred to the policy.
68. The Claimant confirmed during the disciplinary hearing that she had seen the slides and knew the Respondent had an intranet, but she didn't know how to access the policies. In the Respondent's view that was implausible. Mr. McFarlane in evidence confirmed the intranet was easily accessible. An HR advisor present during the disciplinary hearing told Ms. Hitchin she had printed the policy and it had been taken to the hotel where the induction had taken place. Some individuals at the induction had received the policy.

69. In respect of the appeal, Mr. McFarlane had additional evidence to come to a reasonable conclusion the Claimant should have known about the policy and how it applied to her situation. Again, he relied on the induction slides, confirmation from the HR representative that the information was present during the induction, the policy having been found in the Claimant's laptop bag, confirmation that another attendee had received the policy during the induction and another HR representative confirmed that no spare policies were left at the conclusion of the induction training.
70. Therefore, the Respondent submits the decision to dismiss was within the range of reasonable responses.

CONCLUSIONS

71. The Respondent's reason for dismissal was the Claimant's conduct and that was accepted by the Tribunal.
72. There is no challenge to the Respondent genuinely holding the belief that the Claimant was guilty of the conduct alleged, the Claimant accepted she had smoked cannabis the weekend prior to the administration of the test. Although the Claimant complained there was no information available regarding contesting the result, she accepted in evidence she had no grounds to do so.
73. As this is a conduct dismissal, the Tribunal has considered the application of section 98(4) within the context of the **Burchell** test. The Tribunal is required to examine the reasonableness of the Respondent's actions and conclusion. In doing so the Tribunal must take into account the size and administrative resources of the Respondent.
74. The Claimant makes no complaint regarding the disciplinary procedure the Respondent followed. There was an investigation, followed by a disciplinary hearing and then an appeal. The Tribunal is satisfied that a proper process was followed.
75. The Claimant does challenge the extent of the Respondent's investigation and whether it sufficiently investigated whether the Substance Misuse policy was distributed at the induction course.
76. The Claimant also takes issues with the wording of the slides presented at the induction course and where responsibility lay in terms of drawing her attention to the serious consequences of breaching the Substance Misuse policy.
77. The Claimant stated that responsibility lay squarely with the Respondent given she was a recently TUPE'd employee. The Respondent was clear that responsibility for understanding its various policies lies in part with the employee and more so for those who supervise and have positions of responsibility. The Respondent asserted it had used all reasonable endeavours to draw the Claimant's attention to the policy and its zero-tolerance approach.

78. The Tribunal finds the Respondent conducted a reasonable investigation in the circumstances. It retested the Claimant's original urine result, it conducted enquiries both before the disciplinary hearing and after the appeal hearing to understand the points raised by the Claimant. The only request the Respondent did not agree, was the request to speak to the Claimant's colleagues. Mr. McFarlane explained to the Tribunal that he preferred to speak to an independent employee outside the Claimant's friendship group and the Tribunal finds that reasonable.
79. The Tribunal is conscious the Claimant's main argument is that she did not receive a hard copy of the Substance Misuse policy and therefore, she did not appreciate the serious consequences of breaching that policy. It is not for the Tribunal to decide whether the Claimant did or did not receive a hard copy of the policy. The issue for the Tribunal is whether the Respondent acted reasonably in concluding that she did. The Tribunal is satisfied that the Respondent did have reasonable grounds, as referred to in paragraphs 67-69 above, to conclude the Claimant did receive a hard copy of the policy and/or was aware of its content.
80. Therefore, the three-fold Burchell test is satisfied. The Tribunal then considered whether the decision to dismiss was a reasonable sanction.
81. The Claimant maintains the sanction was too harsh given her clean disciplinary record and length of service. Ms. Hitchin also confirmed in her evidence there were no relevant live complaints relating to the Claimant and therefore, this was a first disciplinary offence.
82. The Respondent's position was summarised by both Ms. Hitchin and Mr. McFarlane. Ms. Hitchin stated in evidence that any alcohol or drugs misuse does impair judgment even if you don't think it does. Therefore, certain measures need to be taken to protect the business and individuals employed in the business. That is why the Respondent undertakes random testing for drugs and alcohol.
83. Ms. Hitchin further explained that although the Claimant did not feel she was impaired, that is a standard for the Respondent to judge in accordance with its testing regime. The Claimant was responsible for driving a company van. She was also responsible for sub-contractors, and she worked in void properties that presented health and safety risks. Any impairment in her view would put the Claimant and others around her at risk. Those issues were in the forefront of her mind when she took the decision to dismiss.
84. Mr. McFarlane's evidence supplemented this further. In evidence he said that to work and manage resources in a void environment, you need to be "*on your A game*" and any impairment, whether the effects were felt or not, could put others at risk. The biggest risk in his opinion was driving whilst under the influence and potentially becoming involved in a road traffic accident in a company van. This would bring the Respondent into disrepute and why a zero-tolerance policy was in existence.

85. The Tribunal asked the parties to address it on the drug driving regulations. The Claimant believed her urine test level was below the legal limit for cannabis and driving but that was an assertion and not grounded in any evidence.
86. The Respondent's Counsel confirmed that was not a relevant part of the Respondent's decision making so the Tribunal should not attribute weight to it notwithstanding Mr. McFarlane's evidence.
87. Accordingly, given the basis of the Respondent's decision, and notwithstanding this was a first disciplinary offence, the Tribunal finds that dismissal was within the band of reasonable responses. It was reasonable for the Respondent to conclude the Claimant had knowledge of the policy and she accepted in cross examination that she would not expect anyone to come to work drunk or high, but she did not equate her non-negative test result as giving rise to that situation as the effects of the cannabis had in her opinion worn off.
88. The Tribunal's Judgment is that the claim of unfair dismissal is not well founded and is dismissed.

Employment Judge J Galbraith-Marten

25 February 2022

Sent to the parties on:

03/03/2022.

For the Tribunal Office: