EMPLOYMENT TRIBUNALS

Claimant: Mr Derren Cartledge

Respondent: Amazon UK Services Limited

Heard at: Manchester On: 24 & 25 February 2022

Before: Judge Abigail Holt (sitting alone)

REPRESENTATION:

Claimant: Mr Diarmuid Bunting (Counsel)
Respondent: Mr Ronnie Dennis (Counsel)

JUDGMENT

The judgment of the Tribunal is that:

I. **The claimant was not unfairly dismissed and so the claim for unfair dismissal does not succeed and this claim is dismissed.**
II. **The claim for outstanding holiday pay is dismissed.**

REASONS

Introduction

1. The Claimant was employed by the respondent as an Associate/Picker from 16 October 2017 until he was dismissed for gross misconduct on 28 October 2020 at the Respondent's "MAN2" warehouse premises/"fulfilment centre" in Warrington. The claim arises from an allegation that the Claimant drove dangerously in the Respondent's car park late at night on 22 July 2020 and which resulted in a finding of gross misconduct by the Respondent. The Claimant alleges that the dismissal was unfair. The Respondent alleged that his dismissal was fair by reason of gross misconduct.

Claims and Issues

2. The issues that I have to determine are:

   i. What was the principal reason for the claimant's dismissal and was it a potentially fair reason under section 98 Employment Rights Act 1996? The respondent relies upon the Claimant's conduct pursuant to section 98(1) and (2)(b).

   ii. Did the respondent act reasonably in all the circumstances in treating the Claimant's driving on 22 July 2020 as a sufficient reason to dismiss the Claimant, in accordance with equity and the substantial merits of the case? Relevant to this issue will be questions as to:

      a. Was the Respondent's investigation reasonable?
      b. Were the Respondent's grounds for dismissal reasonable?
      c. Did the Respondent follow a reasonable procedure?
      d. Did the Respondent's decision to dismiss the Claimant fall within the range of reasonable responses?

   iii. Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed? If so, should the Claimant's compensation be reduced and by what percentage?

   iv. What remedy should be awarded (if the Claimant succeeds in his claim)?

3. I note that the Claimant argued that, in order to be fair, the dismissal must have been a fair response to the misconduct in question and submitted that the respondent failed to consider different/lesser sanctions contained within their disciplinary policy.

4. The Claimant also argued that the issues listed at para 2(iii) and (iv) immediately above, that is, whether the Claimant would have been fairly dismissed in any event even if a fair procedure had been followed (commonly referred to as Polkey), should be considered alongside the other liability issues. I announced at the end of the hearing on 25 February 2022 when I reserved my decision that the final issue, that of remedy, would only be determined if the Claimant's claim succeeded.

Procedure

5. The Claimant was represented by Mr Bunting at the hearing. Mr Dennis represented the Respondent.

6. The hearing was a face-to-face. There were no problems with the verbal communication issues which were clarified as the hearing progressed.

7. I was provided with an agreed bundle of documents (running to page 122A). The bundle had been prepared in advance of the hearing, but unfortunately it was only made available to me at 10:30 am on the day of the hearing, a factor which contributed to my having to reserve my decision. I have referred to page numbers in the bundle in brackets: [eg 123]. I was also provided with a separate bundle of witness statements.

I read the witness statements and the documents in the bundle which were referred to in those statements or to which the Tribunal was directed by the parties. It should be noted that, at the beginning of the hearing, I clarified that the parties both had exactly the same documents. At the hearing I was provided with helpful skeleton arguments by Counsel for both parties.

8. The Tribunal heard evidence from the Respondent's witnesses (who had all provided witness statements dated 27 January 2022):

i. Mr Jonathan Wiggins (Area Manager)

ii. Mr Tom Bates (Operations Manager)

iii. Mr Christian Stewart (Senior Operations Manager)

After they had confirmed their witness statements, Mr Bunting asked them cross-examination questions. Later, the Claimant confirmed his witness statement (dated 27 January 2022) and then answered cross-examination questions put by Mr Dennis.

9. After the oral evidence had been given, each of the parties made submissions.

10. The Tribunal was grateful to the Claimant and the respondent's Representative for the way in which the hearing was conducted, namely calmly and respectfully as was entirely appropriate.

Background facts and context

11. The Claimant was contracted to work 40 hours per week with the Respondent, but in July 2020 his hours had been temporarily reduced to 30 hours per week. He earned £466 gross (£380 net) per week. He says that he was a member of the Respondent's pension scheme and that he received other (medical/dental) benefits which were worth around £30 per month.

12. The Claimant says that he enjoyed working for the Respondent. He says that the Respondent was happy with his work and that he had hoped to seek promotion within Respondent in the future. Prior to the events that led to his dismissal, he had a clean disciplinary record.

13. As per para 9 of the Claimant's witness statement, the way that the Respondent organised the Claimant's shift patterns whilst he was on reduced hours during a period of phased return meant that he was required to take his 15-minute break right at the end of his shift ie immediately before he left. I do not understand why the Claimant was not simply allowed to leave 15-minutes early, but this is what he had agreed to. However, the situation that the Respondent had created (and which the Claimant had agreed to) meant that the Claimant (and indeed others, I learnt during the course of the hearing), entirely predictably, used his break time to collect his car, drive and park up within the car park parking bays closest to the staff entrance/exit door behind which the "clocking in" recording facility was located. This meant that, as soon as the break was over, the Claimant could dash back into the warehouse, clock off, and leave.

14. During the hearing I learned that there were various visitors' and disabled parking bays in section of the car park closest to the staff entrance/exit where regular staff members were not supposed to park. In general terms I gleaned that this arrangement was a source of irritation and tension for both the workforce and the Respondent because members of the workforce such as the Claimant resented this system and the Respondent was plagued with soon-to-go home members of staff parking in parking spaces close to the door in an unauthorised manner.

15. At the hearing I was shown still photos and CCTV footage (two clips) of the Respondent's car park. As will become apparent in the case, the Respondent imposed a speed limit for the car parks and services roads within the external parts of their premises. It varied in different places and was 5mph in places and 10 mph in others. The car park closest to the warehouse with the staff entrance/exit included speed bumps, demarcated pedestrian crossings, and various marked parking bays. Mr Alun Tame was the Respondent's security guard who worked, inter alia, in the car park.

16. The following background issue was not raised at the hearing, but the car park was part of the Respondent's premises and, as such, a part of their "workplace". I take judicial notice of the fact that the Workplace (Health, Safety and Welfare) Regulations 1992 applied to the car park, as a result of which, pursuant to regulation 17, the Respondent was obliged to organise the workplace, including the car park, so that the pedestrians and vehicles could circulate in a safe manner.

17. On 22 July 2020 the Claimant was due to formally finish his shift at 23:20. Below is a chronology of events that I have taken from the Claimant's skeleton argument which details the events on the night of 22/23 July 2020.

18. Because of the Claimant's driving he came to the attention of the Respondent's management team who investigated events of 22 July 2020, by obtaining witness statements from staff members present in the car park at the time. The investigation also obtained the CCTV security footage of the car park. The following is a chronology of the events of 22 July 2020 and the investigation and disciplinary process that followed on from it:

C[1]'s employment commenced [57]	16 October 2017
C drove over empty parking bays, parked in disabled bay near the exit and then exited car park in Fiat Panda car [CCTV, document 35]	23:12 on 22 July 2020
C seemingly parked elsewhere and exited the car. Thereafter, he 'signed out' of work (C para 26) and seemingly returned to the car.	~23:15 on 22 July 2020
C parked across empty bays and then exited car park in Fiat Panda car [CCTV, document 34]	23:22 on 22 July 2020
Sarabjit Singh, Richard Archer & Faisal Gass drafted statements [79, 80 & 81]	23 July 2020

[1] Key: C = Claimant

Jonathan Wiggins (Area Manager) wrote to C inviting him to disciplinary investigation meeting to be held at 11:00 am on 28 July 2020 [82]	27 July 2020
Jonathan Wiggins (Area Manager) and C attended first investigatory meeting [84]. The hearing was adjourned as C was feeling unwell.	11:00 on 28 July 2020
C commenced period of sickness absence (C para 8)	28 July 2020
Alun Tame (MAN2 Security Supervisor) drafted statement [88]	2 August 2020
Jonathan Wiggins wrote to C inviting him to a disciplinary hearing to be held on 5 October 2020 [89]	29 September 2020
Jonathan Wiggins (Area Manager) and C attended second investigatory meeting [91]	5 October 2020
Jonathan Wiggins prepared investigation report [94]	12 October 2020
Paul Smith (OB Operations Manager) wrote to C inviting him to formal disciplinary meeting to be held on 21 October 2020 [98]	20 October 2020
Tom Bates (OB Operations Manager), who had stepped in for Paul Smith, and C attended disciplinary hearing [100]. The hearing was adjourned [104].	21:30 on 21 October 2020
Tom Bates (OB Operations Manager) wrote to C inviting him to reconvened disciplinary hearing to be held on 28 October 2020 [106]	26 October 2020
Tom Bates (OB Operations Manager) and C attended reconvened disciplinary hearing [107a]. After an adjournment, C was dismissed [107c]. C was given dismissal letter [109].	28 October 2020
C submitted appeal [110]	31 October 2020
Adam McMahon (Senior Operations Manager) wrote to C inviting him to an appeal hearing on 10 November 2020 [112]	4 November 2020
Christian Stewart (Senior Operations Manager), who had stepped in for Adam McMahon, and C attended appeal hearing [114]	10 November 2020
Christian Stewart (Senior Operations Manager) wrote to C to confirm appeal outcome [121]	11 November 2020
C commenced ACAS Early Conciliation [1]	27 November 2020
Early Conciliation ended [1]	10 January 2021

C issued employment tribunal proceedings [2]	14 January 2021

Evidence at the hearing

19. At the beginning of the hearing, I was shown the CCTV footage in the case which was played on the Respondent's solicitor's laptop. The first time through I watched in silence. After that, I watched the CCTV footage again and invited comments from the advocates to help clarify matters.

20. Having watched the CCTV footage the Respondent then called their witnesses one at a time to answer questions: Mr Jonathan Wiggins (Area Manager); Mr Tom Bates (Operations Manager); Mr Christian Stewart (Senior Operations Manager). Thereafter, the Claimant gave oral evidence. All these of four witnesses relied on detailed witness statements which stand as evidence "in chief", that is to say that what is written in the witness statements is as if they had spoken the matters contained in the statements to me.

Mr Jonathan Wiggins

21. Mr Jonathan Wiggins is the Respondent's Area Manager. In his witness statement he says that the car park security officer, Mr Tame witnessed the incident involving the Claimant in the car park on 22 July 2020, reported it to Mr Wiggins about an hour after the event and told Mr Wiggins that the Claimant had been speeding in the car park in a blue car, and that "*the vehicle was swerving from side to side in a very dangerous manner*" [para 5 WS[2]]. Mr Wiggins logged the incident, obtained the car park CCTV footage and watched it. Mr Wiggins interpreted the footage as showing that the Claimant had parked in a disabled bay, Mr Tame had approached the Claimant's car, the Claimant had driven off and circled the car park in circumstances whereby Mr Wiggins thought that the speed was excessive. Mr Wiggins thought that the speed limit was 5mph at the time (it transpired that, in fact, it was 10mph, a matter which was contentious in the case). Having examined the CCTV footage Mr Wiggins then decided to investigate the incident further and started a formal investigation.

22. Mr Wiggins considered the Respondent's Disciplinary Policy and noted that the policy stated that "*examples of gross misconduct, for which employees may be dismissed without notice, include:*

> *(a) a serious breach of health and safety rules, working unsafely or behaving in a way that puts your own or another person's health and safety at serious risk; and*
> (b) *a serious and/or material breach of Amazon's policies*".
>
> Mr Wiggins was also aware that the Respondent's health and safety policy stated that it was each employee's individual responsibility to "*take reasonable care to ensure the health and safety of yourself and others who may be affected by your actions at work*".

[2] WS = witness statement

23. Mr Wiggins watched the CCTV footage again, discussed the matter with Mr Tame and obtained "his version of events", asked Messrs Sarabjit Singh, Richard Archer and Faisal Gass to provide witness statements and noted their descriptions of the Claimant's driving on the 22 July 2020. The witnesses all prepared their statements independently of each other. Having reviewed the CCTV and the witnesses' evidence in the context of the Respondent's health and safety policy, Mr Wiggins decided that there was a potential disciplinary case for the Claimant to answer and that he needed to obtain the Claimant's version of events. Consequently, he asked the Claimant to attend a meeting the following day on 28 July 2020.

24. At the meeting on 28 July 2020 the Claimant gave his explanation of events, they watched the CCTV together and the Claimant acknowledged that he was aware of the Respondent's health and safety policy. The meeting was stopped and adjourned after 55 minutes because the Claimant was feeling unwell. Thereafter Mr Wiggins obtained a witness statement from Mr Tame.

25. The meeting was reconvened on 5 October 2020 when they watched the CCTV footage. The Claimant said that he might have breached the speed limit but was "in control" of his vehicle, although he reported that the steering had not felt right and that the brakes had been sticking. At the end of the meeting the Claimant signed the notes. After the meeting, Mr Wiggins prepared an investigation report which concluded that he thought that it was arguable that the Claimant had put the health and safety of others at risk by the way that he had driven in the car park on 22 July 2020, and that this was in breach of the Respondent's health and safety rules.

26. In cross-examination at the hearing before me, the highlights of Mr Wiggins' evidence were that he:

i. Recalled that the driving incident on 22 July 2020 had been recorded by him on the Respondent's computer system/record as a "near miss" incident, but that this was only recorded after Mr Wiggins had watched the CCTV footage.

ii. Even though he thought that the speed limit in the part of the car park which is relevant to the claim was 5mph at the time, he *did* think that the Claimant's driving was in excess of 10mph.

iii. The Claimant was on his team of staff that he was responsible for and the incident had been reported to him by Mr Tame, but he did not think that this had clouded his objectivity.

iv. Mr Wiggins confirmed that, on the night in question and when watching the CCTV with the Claimant, that they had watched a non-pixilated version of the footage that was better quality than the version that had been played at the hearing and that they had watched it on a bigger screen than the one that I was shown the footage on at the hearing.

v. Mr Wiggins acknowledged that witness Mr Singh had discussed with Mr Tame the fact that he believed that he had been nearly knocked down by the Claimant.

vi. Mr Wiggins acknowledged that he ahd taken advice on how to proceed with the case against the Claimant by discussing it with his manager, Mr Paul Smith, as well as the HR department.

vii. Mr Wiggins did not know what HR documents had been created or disclosed in the case, but thought that the HR "system" had changed since the incident and seemed unsure about what differences the change would generate.

viii. Mr Wiggins was adamant that he had kept an open mind during the investigation on the basis that he saw the *potential* for the Claimant having committed gross misconduct only.

ix. Mr Wiggins did not see that there was anything untoward about the Claimant only having been given 24-hours notice for the meetings, stating that it was standard practice for the Respondent's investigatory meetings.

x. Mr Wiggins could not say why he had not clarified the actual speed limit within the car park at the time of the meetings with the Claimant.

Mr Tom Bates

27. Mr Tom Bates is the Respondent's Operations Manager. In his witness statement he states that the Claimant was not somebody the team of people he was responsible for and he did not believe that he had spoken to the Claimant until the matters giving rise to the investigation. I note that, initially, Mr Paul Smith had been asked to deal with the Claimant's disciplinary meeting but was unable to do so, and so Mr Bates was asked to take over from Mr Smith on 21 October 2020. On that day he was asked to conduct the Claimant's disciplinary hearing later the same day. He says that *"To the best of my recollection this was the first time I had heard about the incident, and I was not involved in the incident or the investigation of it".* Mr Bates noted that the Claimant was given the opportunity to bring a trade union representative or work colleague to the disciplinary hearing on 21 October 2020.

28. Mr Bates explains in his witness statement that it was his role to assess the evidence obtained through the initial investigation, put the allegations to the Claimant and listen to his responses. Thereafter it was his responsibility to ask any further questions and consider if any additional investigation or evidence was required. Having done that, he knew that he would then have to decide whether to dismiss or uphold the allegation against the Claimant. He knew that if he decided to uphold the allegation, then he would then need to consider what disciplinary action, if any, was appropriate. I note that [para 8 Mr Bates' WS] he was aware that he would also need to consider that, if any of the allegations were upheld, then whether the Claimant's conduct was sufficiently serious to fall within the definition of gross misconduct as set out in the respondent's disciplinary policy.

29. Before the meeting Mr Bates viewed the CCTV footage referred to above, reviewed the notes of the earlier disciplinary investigation meetings undertaken by Mr Wiggins, looked at the four witness statements gathered by Mr Wiggins during the investigation as well as Mr Wiggins' investigation report.

30. In the meeting between Mr Bates and the Claimant, the Claimant had explained that the reason why he had been swerving in the carpark was because the tyre pressure on one side of his car was low and causing the vehicle to pull to the right. The heart of the Claimant's response is summarised at paragraph 13 of Mr Bates' witness statement where he says *"[The Claimant] further said that there had been no malice involved in his interactions with the security guard during the incident, and that he was revving the engine because of an issue with the car's brakes and this caused him to lose control of the car at points, but that this was completely unintentional. [The Claimant] also said that the security guard was standing in the middle of the road with his phone, and that he therefore thought it would be better if he just drove off."* The Claimant then left the room for a short period whilst Mr Bates considered the evidence and when they resumed he asked the Claimant again to explain why he was speeding in the carpark. Mr Bates records that *"The reasons he gave were that the brakes were jamming and that this was causing the car to veer to the right."* Mr Bates then asked the Claimant whether he thought that the carpark was a safe place to be testing his car when he knew that it had a mechanical fault. It is recorded that the Claimant responded to say that *"He was aware that it was squeaking, but that it was his mother's car and he was simply checking what was wrong with it."*

31. In his witness statement Mr Bates explains that he wanted to give the Claimant the opportunity to acknowledge the risk inherent in the situation and understand his own part of it so, he says, he asked the Claimant on various occasions during the hearing whether the Claimant could see why the situation was unsafe and whether he would have done things differently. In the light of the Claimant's responses, Mr Bates concluded that the Claimant showed *"a little insight and a refusal to accept any responsibilities for his actions"*. Mr Bates comments that the Claimant maintains that he was simply checking that the car was functioning OK and that he was not driving in a dangerous way.

32. Mr Bates then decided to adjourn the hearing and reconvene it a few days later, which he did on 28 October 2020. Before that hearing Mr Bates reviewed all the available evidence and the CCTV footage as well as the witness statements and the Claimant's comments during the disciplinary hearing. He explains [para 21 WS] that he assessed that the incident was serious and the way that the Claimant had driven in the carpark could have resulted in serious injury or damage to the respondent's property. He concluded that the allegation that the Claimant had been driving dangerously should be upheld. He found the explanations given by the Claimant to be "unconvincing" and insufficient to detract from the seriousness of his actions. He says that he did not believe that the Claimant was telling the truth about his brakes sticking because accelerating at speed would not be sensible if one was aware that a vehicle's brakes might be faulty. Further, even if the Claimant had genuinely been testing his car, then doing so in the carpark would, in Mr Bates' view, be inappropriate and unsafe.

33. Having considered all the evidence and the information available he then decided to uphold the allegation against the Claimant and notified him on 28 October 2020.

34. Mr Bates says that, in particular, he found that:

a. *"From the CCTV, the disciplinary investigation notes and the witness statements taken shortly after the incident it was clear that [the Claimant] had driven dangerously in the MAN2 carpark, and that he had driven in excess of the speed limit whilst swerving round the speed bumps, and accelerated in an erratic way near a pedestrian (Mr Tame and Mr Singh);* and

b. *[The Claimant's] actions during the incident could have resulted in a serious injury, or fatality."*

35. Mr Bates went on to conclude that the Claimant's driving amounted to gross misconduct. In reaching this decision, he says that he took into account the Claimant's length of service with the Respondent (13 years and 13 days) and the fact that he had no "live" disciplinary record and that this was a "one-off" incident. Ultimately, he concluded that the Claimant should be dismissed with immediate effect.

36. Mr Bates said that he did consider whether a final warning would have been appropriate but decided that a warning would not have eliminated the risk because, in those circumstances, the Respondent would still be employing an individual on-site who had driven dangerously in a moment of apparent anger thereby putting himself and others at risk.

37. In cross-examination Mr Bates confirmed that:

i. it was normal only to give 24-hours' notice for a disciplinary hearing and said that it was best practice to hear such allegations sooner rather than later *"to keep everything relevant"*.

ii. He confirmed that not just *anyone"* would be asked to conduct a disciplinary hearing of the type that he did, but said that it needed to be somebody who was impartial and who had the right experience/level in the business.

iii. Mr Bates was questioned about why he had not insisted that the Claimant read the investigation report, but stated that it was not his place to insist that somebody in the Claimant's position had read something.

iv. Mr Bates was also asked about the apparent ambiguity or misunderstanding surround the speed limit in the carpark at the point of the incident involving the Claimant. He was challenged about the assertion that he, i.e. Mr Bates, knew that the speed limit was 10mph whereas the Claimant had admitted that he was travelling over 5mph. Mr Bates was asked to confirm that the Claimant had not said that he had been speeding and Mr Bates confirmed that the Claimant did not say, in a disciplinary meeting, that he had been speeding, although he did not know whether he had admitted speeding in the investigatory meetings.

v. Mr Bates was also open about the fact that, during the adjournment (ie before 28 October), he had spoken to a member of the senior leadership team and HR department personnel to inform them that he intended to

dismiss the Claimant based on the disciplinary meeting and evidence. He confirmed that he had authority to make the decision without getting anybody else involved but said that senior management and HR liked to be informed if someone was going to be dismissed because they liked to know about a serious situation.

vi. Mr Bunting also asked Mr Bates detailed questions about what was shown on the CCTV and the position of the people in the carpark, Mr Tame and Mr Singh, vis a vis the Claimant as shown on the footage. The thrust of this part of the cross-examination was that Mr Bates had not looked in sufficient detail at the granular detail of what was shown on the CCTV footage and it was suggested to him that he decided not to try and get to the bottom of any inconsistencies between the Claimant and the various witnesses.

vii. Mr Bates was adamant that he had considered other disciplinary options.

viii. Mr Bates also confirmed that he had not decided, at the end of the meeting, to dismiss or not. He also confirmed that, in formally preparing the decision in writing he used a template, but that he typed up the decision himself. He confirmed that the decision to uphold the assertion of gross misconduct was based on his consideration of all of the evidence.

Mr Christian Stewart

38. Mr Christian Stewart is the Respondent's Senior Operations Manager. He explains in his witness statement that he was not involved in the initial disciplinary investigation or the disciplinary process, but that on 10 November 2020 he was asked by one of his colleagues in the HR department to consider the Claimant's appeal against his dismissal. He confirms in his statement that, whilst it seems he was replacing another colleague, Mr Adam McMahon, who was unable to attend the appeal hearing, that he understood his role in hearing the appeal and knew that he had to carefully consider the grounds of appeal raised by the Claimant and to consider the fairness of the decision made by Mr Bates to terminate the Claimant's employment without notice on grounds of misconduct.

39. At paragraph 9 of his witness statement Mr Stewart says that, in preparation for considering the appeal, he reviewed: the CCTV footage of the incident; the investigation report prepared by Mr Wiggins; the four witness statements produced during the investigation, the disciplinary decision sent to the Claimant by Mr Bates; and the notes of the disciplinary hearing. He also believes that he reviewed the notes of the investigation meeting.

40. At the appeal the Claimant had said that he did not believe that the security guard's witness statement (Mr Tame) was backed up by what the CCTV footage showed and was contradicted by other witness statements. Mr Stewart says that he reviewed this in detail with the Claimant at the appeal hearing. In particular, Mr Stewart discussed with the Claimant that in his witness statement, Mr Richard Archer had written *"The security guard in the carpark at the time [Mr Tame] told me that the car would have hit him if he had not moved out of his way"* but that the Claimant said that

this was not backed up by the CCTV footage; that Mr Tame was using his mobile phone at the time of the incident; and Mr Tame made no gesture to the Claimant to stop his car. I note [at para 14 WS] that Mr Stewart says that he agreed with the Claimant that it did not look like Mr Tame had moved out of the way of the car but, Mr Stewart says, he also believed that the Claimant could still have hit Mr Tame if he had not swerved to avoid doing so. He therefore says that he explained to the Claimant that he did not believe that this meant that his driving was not reckless and dangerous as it was still highly likely that the Claimant could have hit Mr Tame by accelerating away from the marked bay at speed.

41. I note that [para 15 WS], Mr Stewart says that the Claimant acknowledged that he was speeding in the MAN2 carpark, but stated that this was because of issues with the car brakes that he was investigating and still had not even been fixed by the time of the hearing. The Claimant alleged that the brakes were making a strange sound. Mr Stewart asked why the Claimant had decided to test the vehicle in the carpark. In response, the Claimant had said that he had decided to test the vehicle partly because there was no one else in the carpark at the time. [At para 16 WS] Mr Stewart says *"Despite making numerous attempts to understand [the Claimant's] explanations for his actions during the incident, I could not get things to match up. His responses did not seem in any way plausible to me based on the CCTV footage and the witness statements I have seen. [The Claimant] said that there was a mechanical issue with the car, yet he had driven the car to work without getting it checked. I believe that if there was a genuine mechanical fault with the car, he would not have done so; and if he had done so, that would itself be dangerous."*

42. Mr Stewart claims that he discussed with the Claimant in detail what the security guard, Mr Tame did, and the role of Mr Tame's phone at the time of the incident. In the appeal they had a discussion about other employees present during the incident sitting on a kerb and also the issues connected to dangerous swerving around speed bumps. [At para 9 WS], Mr Stewart says that *"From the CCTV it was clear to me that, contrary to [the Claimant's] assertions, this was a very dangerous situation that could have resulted in serious injury or a fatality, so [the Claimant's] refusal to acknowledge that his driving was in any way dangerous was shocking to me."* He notes that, at the end of the meeting, the Claimant had the opportunity to review the printed version of the notes taken during the meeting, but that the Claimant did not raise any objections with the accuracy and signed the notes.

43. [At para 20 WS], Mr Stewart sets out his train of thought in relation to the conclusions flowing from the appeal hearing. He considered the Claimant's length of service, his disciplinary record, the seriousness of the incident and the potential for injury and/or a fatality and the safety of those in the carpark and the wider MAN2 premises.

44. In cross-examination, Mr Stewart confirmed that:

i. whilst it was not common to be asked to step in to cover somebody else in conducting the appeal due to unforeseen circumstances that, nonetheless, this did not undermine the integrity of the appeal.

ii. He did not accept the assertion that he had put words into the Claimant's mouth by describing his driving as dangerous or reckless, but that his use of these words was simply his summary description of the incident.

iii. He did not agree with the assertion that somebody else had told him to use the word "dangerous" in describing the incident.

iv. He did not accept that the appeal was just a "rubber stamp" of the dismissal and confirmed that, had further investigations been needed, then he would have time for a further investigation.

v. Mr Stewart also confirmed that he had seen a version of the CCTV which was without pixilation, i.e. better quality than the one that was shown to me at the hearing.

The Claimant

45. I have seen a detailed witness statement from the Claimant which highlights his good disciplinary record prior to the incident under review and says that he enjoyed working for the Respondent. At paragraph 12 onwards in his witness statement the Claimant talks about the problems with his mother's blue Fiat in some detail and describes, what he effectively says was a "test drive" that he carried out in the Respondent's car park on the night in question. He discusses in granular detail what he did and his reasons for doing it, as well as the conversation that he had with Mr Tame. He disagrees stridently with what the Respondent's witnesses had put in their witness statements.

46. In his witness statement, the Claimant says that, at the investigation meeting he had watched the CCTV footage with Mr Wiggins but had not been comfortable because they had been crowding round a laptop at a time during the pandemic where he felt vulnerable on account of his household members. The witness statement discusses in very fine detail the Claimant's evidence about what happened at the time of the incident. He is at pains to emphasise, for example [at para 27 WS] to say that he had not driven aggressively in anger, but accepted that he had "lively discussions" with the security guard Mr Tame.

47. At the disciplinary meeting on 21 October 2020, the Claimant says that he was open an honest with Mr Bates and at paragraphs 29 onwards again talks about the detail of the incident. [At para 33 WS], the Claimant says that he found Mr Bates' decision difficult to understand because Mr Bates had also acknowledged that the incident was a "one-off", despite the fact that it could have resulted in serious injury or a fatality to a pedestrian or indeed the Claimant.

48. [At para 34 WS], the Claimant complains that the Respondent did not consider other possible sanctions including a final written warning and alleges that the Respondent disregarded mitigation put forwards, namely the mechanical problems that he experienced with his car on the night in question. He says [para 35 WS] that the decision to dismiss him was not proportionate.

49. I note that [para 37 WS], regrettably, the Claimant has a history of anxiety and depression and that his dismissal from the Respondent has only served to make his

condition worse. He has not been well enough to look properly for work since the dismissal and says that, in any event, the work that he would want to do would not be available until the Spring. He says he has been left in a very difficult position and would have accepted a lesser sanction, such as a demotion, or would have agreed to be moved to a different department.

50. I found the Claimant's oral evidence and his cross-examination responses to be difficult to follow quite a lot of the time. I noted that the Claimant was polite and courteous throughout, but at times his evidence was unclear and he seemed to say the first thing that came into his head and also, at times, contradicted himself. At the hearing this reminded me of [para 16 WS] Mr Stewart's evidence where he says that *"despite making numerous attempts to understand the Claimant's explanations for his actions during the incident he could not get things to match up"*. At times that was my reaction to the Claimant's oral evidence on cross-examination. In particular this was in relation to problems with his car. In general terms the Claimant kept asserting that the car was safe and there was nothing wrong with him driving it, yet at other times he seemed to be emphasising problems with the brakes and the steering. The Claimant also gave confusing evidence about the fact that he alleged that the vehicle was behaving strangely, squeaking, veering to one side, and yet he was at pains to say that when the vehicle was taken to an MOT shortly after the incident the vehicle was "OK".

51. A crucial piece of the evidence though was in relation to the speed. In oral evidence the Claimant confirmed that he always knew that the speed limit was 10mph in the in the carpark. He said that 5mph applied to another part of the carpark and asserted that he knew that he needed to go slowly. The Claimant admitted in cross-examination that he had used some coarse "industrial" language in his exchange with Mr Tame in the carpark and that he had been upset at the time (although he did not accept that this had adversely affected the standard of his driving). He also admitted that he had told Mr Tame that *"the car was a bit out of control"*. The Claimant also seemed to be saying that he had driven at speed in the carpark, but his explanation that it was not dangerous was because he had driven away from Mr Tame. His assertion throughout was that he was never at risk of hitting Mr Tame. The Claimant did not accept that he could have possibly collided with Mr Singh. It was put to the Claimant at the hearing that he had tried to blame others for the incident and also to blame the incident on problems with his car. Somewhat illogically, the Claimant's response was that he said he was *"not blaming, just saying that I had had car problems"*. The Claimant was not able to give a rational response to the assertion put to him by a Mr Denis that he appeared to admit at the appeal hearing that he was speeding and then blamed the car. His response to this was that the Claimant was referring to going over the zebra crossing and away from people at the time.

Submissions and arguments made at the hearing

52. In this case I have been greatly assisted by skeleton arguments prepared by both Counsel. Quite correctly, both Counsel have concentrated in their written and oral submissions on the process that the Claimant was subject to.

Claimant's Submissions

53. The Claimant argued that:

i. The Respondent has the burden of showing that the reason or principal reason for the dismissal was one of the five potentially fair reasons under section 98(1) of the Employment Rights Act 1996, in this case conduct being the reason being relied upon.

ii. That the Respondent had produced evidence that appeared to show that the reason for dismissal was conduct and so the burden passed to the Claimant to show that there is a real issue as to whether that was the *true* reason. It was for the Respondent to prove that any established potentially fair reason was the principal reason for dismissal as per s98 of the Employment Rights Act 1996. Linked to this, the Claimant had an evidential burden to produce *some evidence* which casts doubt on the employer's reason as per Maund v Penwith District Council [1984] IRLR 24 CA;

iii. The Claimant acknowledged that the Claimant had not provided evidence which casts doubt on the Respondent's reason. Therefore, the Claimant could not viably take issue with the reason for dismissal, other than to simply put the Respondent to proof as to the reason. Mr Bunting confirmed that the reason for dismissal is the set of facts known to the employer or the beliefs held by him which caused him to dismiss the employee, per Abernethy, Mott, Hay & Anderson [1974] IRLR 213 CA).

iv. Mr Bunting also argued that, even if a potentially fair reason for dismissal exists, it does not necessarily follow that that potentially fair reason was in fact the *principal* reason for C's dismissal and cited the example of Associated Society of Locomotive Engineers and Firemen v Brady [2006] IRLR 576 EAT.

v. If the Claimant was dismissed on the grounds of conduct, in order to determine whether the employer acted reasonably in treating that as a sufficient reason for dismissal in the circumstances (British Home Stores Ltd v Burchell [1980] ICR 303 EAT) then:
"[T]here must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case."

vi. Mr Bunting further argued on behalf of the Claimant that reasonable belief can effectively be reduced to the following issues:
    a. Did the employer carry out as much investigation as was reasonable in the circumstances? In this case the Claimant says that the Respondent's investigation fell significantly short of reasonable. The evidence against the Claimant was not subjected to any scrutiny. The CCTV footage, certainly in the format disclosed, is very unclear, but, nonetheless, the Respondent drew very clear conclusions from it. Also, the statements that the

Respondent relied upon are inconsistent, however the Respondent opted not to scrutinise them. Further, the process was evidently rushed and the Respondent appeared to have proceeded on the basis that this was always an '*open and shut*' case, which is indicative of *"the predetermination of its decision".*

b. Did the employer believe that the employee was guilty? In this case the Respondent may have believed that the Claimant was guilty of behaving in a way which put another person's health and safety at serious risk. However, as set out above and below, the Claimant argued that the Respondent in fact lacked *reasonable* grounds for any such belief.

c. Did the employer have in its mind reasonable grounds, based on the investigation, for holding that belief? The Claimant asserted that the Respondent did not have reasonable grounds for holding its belief that the Claimant acted intentionally or recklessly, which Mr Bunting emphasised were implicit within the allegation, in such a way which put another person's health and safety at serious risk. Therefore, the Respondent's process, at each of the investigatory, disciplinary and appeal stages fell short.

vii. Mr Bunting argued that, in addition to the Burchell test, for it to be fair, dismissal (rather than, for example, some lesser sanction) must have been a fair response to the misconduct in question.

viii. Mr Bunting urged me to focus upon whether dismissal was within the range of reasonable responses which a reasonable employer might have adopted, bearing in mind that one reasonable employer may react very differently to another (Foley v Post Office [2000] ICR 1283). In that regard, the Claimant argued that the Respondent failed to properly consider and/or apply the following parts of its disciplinary policy, namely: [page 74 disciplinary policy]: 'A first written warning will usually be given for … [f]irst acts of misconduct where there are no other active warnings on your disciplinary record and your conduct is more than minor'; [page 76 - Other Sanctions:] 'In addition to the above warnings, [the Respondent] may consider imposing any one or more of the following sanctions: demotion; transfer to another department or job; period of suspension without pay; loss of seniority; reduction in pay; ban on requesting a change of shift for the period of 90 days following a warning; prohibition on being considered for a pay review and/or a promotion whilst any warning is active; prohibition on applying to other positions of a higher level whilst any warning is active; and/or loss of future pay increment or bonus whilst any warning is active. Mr Bunting argued that, even if the Respondent had a genuine belief in the Claimant's "guilt" on reasonable grounds, action short of dismissal would have been appropriate. It was the Claimant's case that the Respondent had various options open to it but none were really considered.

ix. In summary, the Claimant asserted that the Respondent had not acted reasonably in treating the Claimant's actions as a sufficient reason to

dismiss him. Thus, the dismissal was not reasonable under s98(4) of Employment Rights Act.

54. The Respondent argued that the decision to dismiss the Claimant for gross misconduct was fair because:

i. The Respondent had carried out a reasonable investigation that was "thorough and comprehensive".

ii. The Respondent's conclusion that the Claimant had driven dangerously and that the driving could have resulted in a serious injury or fatality gave rise to reasonable grounds for the dismissal.

iii. That the Respondent had followed a reasonable procedure throughout.

iv. That the Respondent's responses and decisions culminating in their decision to dismiss him fell within the range of reasonable responses to his misconduct.

The Law

55. In summary, in making my decision I have had regard to the following matters within the legal matrix that applies to claims of unfair dismissal:

i. The Claimant claims that he has been subject to an unfair dismissal in the context of his driving on 22 July 2020 because he argues that his behaviour, in the context of his track record, was not such that the Respondent's definition of gross misconduct was fulfilled and that the disciplinary investigation, procedure and appeal were flawed. The Claimant asserts that he has a right not to be unfairly dismissed pursuant to s94 of the Employment Rights Act 1996.

ii. In contrast, the Respondent denies that the Claimant was unfairly dismissed contrary to section 94 of the Employment Rights Act 1996, whether substantively or procedurally and whether as alleged by the Claimant or at all. The Respondent also relies upon ACAS Code of Practice on Disciplinary and Grievance Procedures.

iii. The Respondent contends the redundancy had a potentially fair reason for dismissal within the meaning of Section 98 (i) and (ii) of the Employment Rights Act 1996, namely on the grounds of the Claimant's gross misconduct.

iv. In this case the Respondent asserts that they acted reasonably in all the circumstances in treating the Claimant's driving, purported explanations and his lack of insight as amounting to a breach of their own internal Disciplinary Policy and the ACAS code in the context of driving behaviour which was judged to be a serious breach of the Respondent's health and safety rules because it put the health and safety of their employees, and also the Claimant, at serious risk of injury or even a fatality.

v. I have to consider whether the procedure followed by the respondent was a fair procedure.

vi. If it was not fair, then I have to consider the case of Polkey v AE Dayton Services Limited [1997] ICR 142.

S94(1) & 98 of the Employment Rights Act 1996

56. Section 94(1) of the Employment Rights Act 1996 simply says that "***An employee has the right not to be unfairly dismissed by his*** **employer"**. Flowing from s94, the primary provision relevant to my decision in this case is section 98 which, so far as relevant, provides as follows:

> **"(1) 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 sub-section (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.**
> **(2) A reason falls within this sub-section if it …**
> **(b) relates to the conduct of the employee …**
> **(3) …**
> **(4) Where the employer has fulfilled the requirements of sub-section (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 reasonable 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".**

57. The proper application of the general test of fairness in section 98(4) has been considered by the Appeal Tribunal and higher courts on many occasions. It is noted that each case will turn on its own facts. The Employment Tribunal must not substitute its own decision for that of the employer: the question is rather whether the employer's conduct fell within the "band of reasonable responses": Iceland Frozen Foods Limited v Jones [1982] IRLR 439 (EAT) as approved by the Court of Appeal in Post Office v Foley; HSBC Bank PLC v Madden [2000] IRLR 827. I must be careful not to substitute my subjective views of the Claimant's conduct or his reaction to the investigatory process as per Graham v Secretary of State for Work and Pensions (Jobcentre Plus) [2012] EWCA Civ 903. I remind myself that the "range of reasonable responses" test applies not just to the substantive reasons for the dismissal, but also to procedural aspects of the employer's actions.

58. I also note that, in a case where an employer purports to dismiss for a first offence because it is gross misconduct, the Tribunal must decide whether the employer acted reasonably in characterising the misconduct as gross misconduct, and also whether it acted reasonably in going on to decide that dismissal was the appropriate punishment. An assumption that gross misconduct must always mean dismissal is not appropriate as there may be mitigating factors: Britobabapulle v Ealing Hospital NHS Trust [2013] IRLR 854 (paragraph 38).

59. In this I have to take into account the size of the Respondent's undertaking and equitable considerations including the Claimant's length of service and his clean disciplinary record as well as the ACAS Code referred to above.

Conclusions – applying the Law to the Facts

60. In making my decision I have not set out all the evidence I heard at the hearing on 24 and 25 February 2022, but have selected those details which are most important to my decisions. Just because I have not mentioned something does not mean that I have not considered it.

61. I find that the Respondent carried out a reasonable investigation. It was through and comprehensive. I so find because:

i. Mr Wiggins obtained and reviewed un-pixelated CCTV footage of the incident. He did so using a larger than laptop-sized screen, and had the ability to zoom-in to check particular details of the footage.

ii. Mr Wiggins obtained statements from those he identified as being present at the time of the incident and he then confirmed their identities by reference to the CCTV footage and turnstile gate records.

iii. Mr Wiggins carried out two separate investigation meetings with the Claimant, during which they viewed the CCTV footage together and discussed it.

62. I find that the Claimant's criticisms of the investigation to be minor and unfounded. In particular:

i. The witness statements generated by the investigation and relied upon by the Respondent are not materially inconsistent. In fact, I agree with Mr Dennis' arguments that, insofar as they differ at all, the differences are evidence of their authenticity and reliability, noting that the witnesses were deliberately kept apart when they were providing their statements to avoid cross-contamination of their evidence, which I find to be good practice on the part of the Respondent.

ii. I am not satisfied that the process was "rushed". In that regard, I note that the Claimant's first investigation meeting on 28 July 2020 was adjourned when he said he felt unwell, and not re-convened until 5 October 2020, over a month later. The disciplinary hearing followed well over two months later, on 21 October, and the appeal hearing one day short of three weeks thereafter, on 10 November. The entire process, from the incident on 22 July 2020 to the appeal outcome letter of 11 November 2020, took over three and a half months.

iii. I am satisfied that Mr Wiggins approached his investigation with an open mind, as demonstrated by the conscientious way he went about gathering evidence, obtaining statements, speaking to the Claimant and

discussing the CCTV footage with him. It goes without saying that the CCTV footage formed a body of impartial, objective evidence.

63. I find that Mr Bates had reasonable grounds to conclude that the Claimant had driven dangerously thereby putting pedestrians Mr Tame and Mr Singh at risk and, thereby, that the Claimant's driving could have resulted in a serious injury or even a fatality. In so finding I note that:

i. Even the pixelated CCTV footage which I saw showed the Claimant swerving around Mr Tame and accelerating towards the zebra crossing as Mr Singh walked across it.

ii. The written statements recorded that: Mr Singh "*saw [the Claimant] driving very aggressively towards the security guard and skidding the vehicle out of the way*" [79]; Mr Archer reported that Mr Tame told him that, "*he was shaking from the near miss*" [80]; and Mr Gass said he "*saw the vehicle driving fast towards the security person*" [81]. Mr Tame wrote: "*when I got closer to the car [the Claimant] revved his engine and swerved outwards then back inwards towards me missing me by a foot. I did not move as I didn't want to take a chance of slip, trip or fall and possibly get hit. [The Claimant] drove fast blowing black smoke out of his exhaust and swerving through the car park just missing another associate Sarabjit Singh … [Mr Singh] called over to me asking "did you see how close he was to hitting me, he just missed me". I told [Mr Singh] that I would find out who he is and report him straight away as [the Claimant] just missed me*." [88]

iii. Even on Claimant's own account he seems to accept that he drove dangerously and recklessly, although he purports to blame the vehicle, as if his driving of it was a matter beyond his control:

a. The Claimant said: "*I couldn't speak to him [Mr Tame] the way he was towards me. I decided to just move off as he approached. He was on his phone and didn't want any more aggravation. He was stood in the middle of the road on his phone. I had to sway out the way*." [meeting notes 85] "… *he [Mr Tame] got me a bit annoyed so the second time I saw him, I thought 'right I'm leaving', you can see smoke on the second time it was when I put the clutch down and then I took it off and it revved and then it sped up and resulted in the smoke. … The car got a bit out of control, I did the same thing on the right hand side as I did on the left. … … The second time when I did speed, I had the accelerator quite high, and then the car wouldn't move and then I put the accelerator a bit higher. Then I thought that was going to happen again but then it jumped forward* …" [meeting note 103].

b. During the disciplinary hearing he recognised his driving behaviour was "unsafe" [102].

c. During the appeal hearing when asked, "*you acknowledge it was reckless and dangerous*?" he replied, "I *was speeding, I did have an issue with my car*" [appeal meeting 115];

iv. I note that, in oral evidence the Claimant acknowledged that he knew that the speed limit at the point in the car park where he drove dangerously was 10mph.

v. Further, I do not find any of the explanations that the Claimant gave about problems with his car to be credible nor capable of justifying his driving. During the first investigation meeting he said his brakes were sticking and that one of his tyres was low causing the car to pull to the right [84] and the car, had "*been in repairs for a few days but have it back now*" [85]. During the reconvened meeting he said, "*I drove it to the MOT place. He could not find a fault with it and he said it would pass an MOT*" [93]. During the disciplinary hearing he said, "*All the things I mentioned about the car in the first meeting was not right as I found out after the meeting, because I took the car to the mechanics but it passed the MOT*" [103]. Even if the Claimant's car's brakes had been sticking, or his car had been veering to the right, this would not explain why he swerved around Mr Tame and accelerated towards Mr 4 Singh in the way that he did. I agree with Mr Dennis' argument that the Claimant's account to the Respondent, if anything, made his actions even more dangerous. This is because, if his brakes had been sticking and his car veering to the right, then this increased the risk he would collide with Mr Tame and Mr Singh, both of whom where on his right-hand-side as he drove past.

64. I am satisfied that the Respondent followed a procedure which was fair and reasonable and consistent with their own internal disciplinary procedure (and I note that the Claimant did not take issue with the Disciplinary Policy [set out 70-78] itself). In particular I note that:

i. The Claimant was offered, but declined, the opportunity to have a colleague support him at the meetings with the Respondent, including at the appeal.

ii. The Claimant had five opportunities to respond to the allegation against him: during two investigation meetings, two disciplinary hearings, and on appeal.

iii. The Claimant was provided with copies of all the evidence considered by Mr Bates in advance of the disciplinary hearing. The Claimant viewed unpixilated versions of the CCTV footage during both investigation meetings, and declined Mr Bates' offer to do so at the disciplinary hearing.

iv. The Claimant was warned that the allegation against him, if proven, could result in his dismissal [letter 20 October 2020, 98, and letter 26 October 2020, 106].

v. Each of the managers involved in the process approached their role in the process with an open mind. The fact that they were selected at relatively short notice, with Mr Bates standing in for Mr Smith on 21 October 2020 and also Mr Stewart taking on the appeal at relatively short notice, did not undermine anything that they subsequently did or decided in a case where the issues were relatively narrow insofar as they related to one incident of driving within a time frame of a few minutes.

vi. I note that the Claimant makes no criticism of the process in his internal appeal, Details of Claim, witness statement or skeleton argument.

65. I am satisfied that the Respondent's decision to dismiss the Claimant fell within the range of reasonable responses to his misconduct and I note that the test is not whether the dismissal was a "fair response", as Mr Bunting seems to imply in his skeleton argument, rather than, for example, some lesser sanction. I base my finding that the decision fell within the range of reasonable responses on the fact that:

i. Mr Bates found that the Claimant drove dangerously and recklessly through the car park, in a way that could have caused serious injury to Mr Tame, Mr Singh or himself.

ii. Throughout the internal processes, and he continued to do so at the appeal before me, the Claimant sought to shift the blame onto others or to problems with his car, rather than accepting responsibility for his decision to drive in the manner that he did.

iii. At no point did the Claimant promise not to drive in the same way again, including at the appeal hearing when he was twice invited to say whether he would now do anything differently, and failed to do so [117-118]. As such the Claimant demonstrated a lack of insight into the effect of his driving behaviour on his work colleagues.

iv. Mr Bates says, in terms, that he took account of the Claimant's length of service (3 years and 13 days) and clean disciplinary record before making his decision.

v. Mr Bates did consider, as part of his overall assessment of the case, whether or not to impose a lesser sanction, such as a final written warning, but concluded this would not eliminate the risk of a repeat occurrence.

vi. The Respondent's Disciplinary Policy includes, among examples of what may constitute gross misconduct justifying dismissal for a first offence [76]: "*a serious breach of health and safety rules … or behaving in a way that puts your own or another person's health and safety at serious risk*" [72]. The Health and Safety Policy asserts that: "*[The Respondent] views any breach of its health and safety rules extremely seriously. Accordingly, failure to comply with this policy is very likely to result in disciplinary action being taken against you, including the real possibility that you may be dismissed*." [55].

vii. I also record that I find that the Respondent acted reasonably in breaking the decision effectively into two steps: The Respondent acted reasonably in characterising the Claimant's behaviour as potentially gross misconduct and then in considering any possible mitigation and going on to decide that dismissal was the appropriate punishment (Britobabapulle v Ealing Hospital NHS Trust).

66. In making my decision, I have had regard to the national and international "reach" of the Respondent but note that the disciplinary investigation triggered in this case was appropriately thorough and the process and appeal were conducted carefully and proper consideration applied to all the evidence, including the Claimant's explanations.

67. Therefore, I conclude that the reason for the dismissal, namely gross misconduct, was fair.

68. Because I have found that the dismissal was fair, it is not necessary for me to determine whether the claimant could have been fairly dismissed in any event, nor to consider the application of the case of Polkey.

Summary

69. For the reasons I have explained above, I find that the dismissal was not unfair. The Claimant was dismissed by reason of gross misconduct and, in all the circumstances, the Respondent acted reasonably in treating that as a sufficient reason to dismiss the Claimant.

Tribunal Judge Holt sitting as an Employment Judge
28 March 2022

Date Judgment sent to the parties:
4 April 2022

For the Tribunal Office