EMPLOYMENT TRIBUNALS

Claimant: Mr A Jarvis

Respondent: Veolia ES (UK) Limited

Heard at: Liverpool **On:** 16 and 17 May 2022

Before: Tribunal Judge Callan (sitting alone)

REPRESENTATION:

Claimant: In person
Respondent: Ms. G. Roberts (counsel)

RESERVED JUDGMENT

The judgment of the Tribunal is that the complaint of unfair dismissal is not well-founded. This means the respondent fairly dismissed the claimant.

REASONS

Introduction

1. The claimant was a driver employed in the respondent's Hazardous Waste logistics division and was an outbased driver working from Thomas Hardie at Trafford Park. He commenced his employment on 05/01/1998 and was dismissed for gross misconduct on 16/11/2020.

2. By a claim form presented on 28/02/2021, the claimant complained that he had been unfairly dismissed.

3. The respondent resisted the claim in its response form and maintained the claimant was fairly dismissed by reason by reason of his misconduct.

Issues

4. The issues to be determined were agreed at a Preliminary Hearing held on 15/10/2021 and confirmed at the outset of this hearing:

4.1 Whether or not the respondent can prove the sole or principal reason for the dismissal;

4.2 Whether or not that reason was one which related to the claimant's conduct;

4.3 If not, whether or not that reason was some other substantial reason (SOSR) such as to justify dismissing an employee in the claimant's role;

4.4 Whether the respondent acted reasonably or unreasonably in all the circumstances of the case in treating that reason as a sufficient reason to dismiss the claimant;

4.5 If the dismissal was found to be unfair, the respondent would argue that the claimant's compensation should be reduced on the ground that, had the respondent acted fairly, the claimant would or might have been dismissed in any event. The respondent would also seek a reduction in compensation to reflect what the respondent said was alleged culpable and blameworthy conduct.

Evidence

5. On behalf of the respondent, I heard evidence from Mr. Flavio Federici, Fleet Systems and Support Manager who investigated the alleged misconduct, Mr. Ian Burwood, Business Manager who conducted the disciplinary hearing, and Mr. Jeffrey Sears a Director, who heard the claimant's appeal against dismissal. The claimant gave evidence on his own behalf. I was also provided with a bundle of 446 pages, and I read those documents referred to by the witnesses in addition to the pleadings and case management summary of the Preliminary Hearing held on 15/10/2021.

Relevant Legal Framework

6. Section 98(1) and (2) of the Employment Rights Act 1996 (ERA) provides as follows:

"(1) In determining for the purposes of this Part whether the dismissal 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.

(2) A reason falls within this subsection if it –

(a) …

(b) relates to the conduct of the employee"

7. Section 98(4) of ERA provides as follows:

"Where the employer has fulfilled the requirement 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."

8. It is for the employer to show the reason for dismissal and that it is a potentially fair one, such as conduct: this is not a high threshold – it is designed to deter employers from dismissing for trivial or unworthy reasons. If the reason *could* justify the dismissal, the enquiry moves on to the question of reasonableness (**Kent County Council v Gilham** [1985] ICR 233).

9. In conduct dismissals it is well-established that there are three aspects which have to be considered: did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case? did the employer hold a genuine belief that the employee was guilty of the misconduct alleged? and did the employer have reasonable grounds for that belief. The band of reasonable responses test applies to each stage of the dismissal process, that is, the investigation, dismissal and appeal. Furthermore, even if these three stages are satisfied, it must still be within the band of reasonable responses to dismiss rather than to impose a lesser disciplinary sanction.

10. Where the dismissal is for alleged gross misconduct, the tribunal must nevertheless determine whether it was within the range of reasonable responses to treat the conduct as a sufficient reason for dismissing the employee summarily (**Burdett v Aviva Employment Services Ltd.** [2014] 11 WLUK 420).

The Facts

11. The respondent is a waste management company. The claimant was an HGV driver in its Hazardous Waste logistics division. At the time of his dismissal, he was an out based driver working from Thomas Hardie, Trafford Park, Manchester. The hazardous waste logistics site he was allocated to was based at Garston, Liverpool. His duties were to transport hazardous waste materials to hazardous waste stations for disposal.

12. The claimant had been transferred into the employment of the respondent by operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended). His continuous service commenced on 05/01/1998. He was employed as an HGV driver throughout.

13. The claimant was salaried and worked 48 hours per week under a collective agreement called the “wheels agreement”. The agreement provided that if drivers worked above an average of 48 hours per week during a 26 week reference period, they would be provided with time off in lieu as payback. The working practices were such that those subject to the wheels agreement could accrue an average of 3 weeks time off in lieu in each reference period. The respondent entered into consultation with trade union representatives in respect of the wheels agreement, which commenced in October 2019 and concluded in January 2021. The aim was to change the working practice of how time off in lieu was allocated.

14. The Hazardous Waste Division had a Planning Department which compared drivers’ actual start times against their requested start times along with the time they spent driving using timesheets, tracker information and tachographs. This was to allow the Planning Department to ensure that drivers were being deployed efficiently.

15. A discrepancy was identified in the claimant’s timesheets which he completed and his vehicle’s ignition times. A desktop investigation was conducted using information from his timesheets, defect report sheets, tachograph, tracker and vehicle CCTV. This identified consistent discrepancies in the claimant’s declared start and finish times of around a total of 50 minutes per day. The claimant was self-declaring his arrival time as 05.30 am but frequently his ignition was turned on and his tachograph card inserted after 06.00 am. The claimant was also manually entering defect checks on his vehicle as taking place shortly after 05.30 am. Flavio Federici, Fleet Systems and Support Manager, was appointed to investigate the matter.

Disciplinary investigation

16. In addition to the above, Mr. Federici was provided with CCTV footage from Thomas Hardie for the week commencing 28/09/2020 which showed the claimant arriving shortly before his vehicle’s ignition was turned on and not at 05.30 am as manually entered by him on his timesheet. Similarly, at the end of the working day,

the claimant was declaring checks having taken place at times which were later than the actual time and on some occasions around 20 minutes after he had left the site.

17. Mr. Federici also checked the claimant's vehicle CCTV to determine what vehicle checks he was completing at the commencement and end of his shifts. The checks were both a legal requirement and company policy. The policy stated that:

"Sufficient time must be allocated to the driver at the start and end of the shift in which to complete the walk around check, usually around 15 minutes, due to the diverse range of vehicle and body types within the Veolia UK fleet, the check time may vary.

…

The time may be less at the end of the day…"

18. Examination of the vehicle CCTV showed the claimant completing checks at the start of his shift on most days but rarely at the end of the shift. Mr. Federici was concerned to see that the length of time the claimant spent on the vehicle checks was around two minutes on each occasion.

19. On 09/10/2020, the claimant was suspended by Neil Mason, Business Manager, pending disciplinary interview. The letter suspending the claimant stated that he was suspended on full pay pending investigation into an allegation of "Theft, fraud, bribery and/or corruption. Specifically inaccurate recording of your working time on the following: timesheet; drivers daily vehicle check and defect sheet; and tachograph."

20. On 15/10/2020, the claimant was invited to an investigation interview with Mr. Federici which took place on 28/10/2020. The allegation was stated to be "Fraudulent completion of timesheets: this allegation refers to inaccurate times being entered on your timesheets and inaccurate manual entries being completed on your tachograph recording equipment for weeks commencing 07/09/2020 and 28/09/2020." The claimant was informed he could be accompanied either by a work colleague or trade union representative.

21. At the investigation meeting, the claimant attended unrepresented. He was asked about his start times on his timesheets and defect reporting sheets during the week commencing 07/09/2020 and 28/09/2020. He had declared his starting time as 05.30 am on each occasion. The claimant stated that he was an outbased driver and that he was declaring his start times as 05.30 am. He said that he was not at work on 18/09/2020 as he attended a funeral that day.

22. Information from vehicle tracking was discussed which showed the time the ignition was turned on. The claimant said that he understood his start time was when he turned up for work and not when his vehicle ignition was turned on. He was asked what he was doing prior to the ignition being turned on to account for the times he had declared. He said there were various things which could occur such as the vehicle park being locked due to someone oversleeping and sometimes vehicles were blocked in. He was asked to describe the vehicle checks he conducted and in

particular, those which could be done with the vehicle ignition being off. The claimant said that it depended on whether he had done a full round check the previous evening. He would check tyres, wheel nuts, and fire exit lights, amongst other things. He was asked why he did not put his tachograph card in the recording equipment immediately after arriving at the vehicle and remove it when he left the vehicle but rather chose to complete a manual entry. His response was that it depended upon what he was doing.

23. The claimant was asked to confirm that screenshots taken from the CCTV for the week commencing 28/09/2020 showed him arriving in his car and he agreed they did. He disputed that he would gain anything from recording his working time inaccurately and that all he was doing was "rounding numbers" and that he would round down as well as up.

24. He was asked if he thought increasing his hours in this way would affect the outcome of the review of the wheels agreement which was underway. He said that he did not think so. He asked why his rounding up and down of his times was being questioned after 22 years and disputed that he had gained anything as he was salaried. It was pointed out to him that in the 6 months between July and December 2019, there were a total of 73 manual entries whereas in the period March to December 2020 this had risen to 160. He was asked why that might be. The claimant said that he did not know, but he had always done manual entries. He was asked if he had ever been spoken to about recording inaccurate times by his line manager and he said he had not. There was, however, a record from 2018 which stated he had been spoken to about the excessive number of manual entries at the end of his shifts. His response to his line manager at that time was that as he was on a salary, he had nothing to gain by this practice. However, the line manager pointed out to him that the additional time would affect his payback requirement and that therefore the practice had to stop. Despite this, the claimant continued with his practice of manual entries but this was not followed up by his line manager.

Disciplinary hearing

25. On 04/11/2020, the claimant was informed that the matter was going forward to a disciplinary hearing which would hear the original allegation and two further allegations which were: falsifying of records, in that vehicle inspections were not completed at the time declared on the reports; and negligence, in not completing vehicle inspections as set out and detailed within the Chemical Driver's Reference Book.

26. The claimant attended a disciplinary hearing on 12/11/2020 arranged to consider 3 allegations, which were: inaccurate times being entered on his timesheets for weeks commencing 07/09/2020 and 28/09/2020; inaccurate manual entries being completed on his tachograph recording equipment for weeks commencing 07/09/2020 and 28/09/2020; and inaccurate vehicle inspection recordings that were not completed at the time declared on the reports for weeks commencing 07/09/2020 and 28/09/2020. The allegations were considered to amount to potential gross misconduct. The claimant was warned in the meeting invitation letter that one

outcome of the meeting, if the allegations were established against him, could be dismissal without notice or pay in lieu of notice.

27. The respondent's disciplinary policy defined gross misconduct as "where there is/are acts so serious in themselves or have such consequences that they may call for a dismissal or actions short of dismissal without notice for a first offence." Examples in the procedure included "Theft, fraud, bribery and/or corruption" and "a serious breach of company or site rules on health and safety" but the list was "neither exclusive nor exhaustive and there may be other offences of a similar gravity which may constitute gross misconduct."

28. At the disciplinary hearing, the claimant was represented by his trade union representative, Phil Riley. The manager hearing the matter was Ian Burwood, Business Manager who was accompanied by Jane Ralston (Employee Relations Specialist). A note taker also attended. The claimant raised the issue that four drivers, including himself, were in dispute with the respondent over the wheels agreement. The respondent's proposal was to change the 6 weeks' payback scheme to a rostered payback of one week every 8 or 9 weeks. The dispute had been going on for around 6 months at the time of the hearing. Mr. Burwood noted that situation.

29. Mr. Burwood asked questions about the disparity between the declared start time of 05.30 am on the timesheets and the actual start times from the claimant's tachograph. Initially, the claimant stated that the ignition times were incorrect. When it was pointed out to him that the actual start times were from the tachograph, he stated that he had never been told that. The claimant confirmed he understood that the vehicle checks were a legal requirement.

30. The claimant was asked how long he thought it would take to conduct a thorough check of his vehicle and he said between 2 and 3 minutes. He was again asked how long he thought the checks would take and he said anything up to 15 minutes (the amount of time allowed by the respondent for the conduct of the checks). He was asked about the difference between the declared start time of 05.30 am on 07/09/2020 and the ignition start time of 06.02 am. He said maybe he was doing vehicle checks or completing paperwork.

31. The claimant said that he had not received any training on how to fill in the forms and considered the disciplinary to be a witch hunt as he was employed on the wheels agreement which the respondent wished to change and which was the subject of an ongoing dispute. He then stated that the extra time accounted for his travel time to his vehicle as he was an outbased driver. The claimant's representative stated that there had been 18 previous instances regarding driver's times but those had resulted in warnings whereas the claimant was subject to a disciplinary hearing alleging gross misconduct.

32. On 16/11/2020, Mr. Burwood wrote to the claimant setting out his decision to dismiss him without notice for gross misconduct. Mr. Burwood set out that in the week commencing 07/09/2020, the claimant had declared start times of a total of 2 hours and 30 minutes in excess of the tachograph recorded start times, and a total of 2 hours and 35 minutes at the end of the day in excess of the time recorded by the

tachograph. Mr. Burwood rejected the claimant's explanations such as undertaking vehicle checks which did not require the ignition to be switched on, completing paperwork, delays in getting keys or gaining access to his vehicle, and rounding up times. He did not consider they were acceptable reasons for not using the vehicle tachograph nor that they would account for the length of time in excess of that recorded manually by the claimant. The use of manual entries at the end of the shift gave Mr. Burwood particular cause for concern as the claimant's driver card would have been inserted on arrival back at the parking area so there was no plausible reason for removing it whilst still at site and making manual records.

33. With regard to the claimant's contention he could include travel time to the Thomas Hardie site as an outbased driver, Mr. Burwood rejected that reason as travel time from home to the vehicle parking area did not constitute part of the working day within the claimant's terms and conditions. Mr. Burwood acknowledged that as a salaried employee under the wheels agreement, the claimant did not have a direct financial gain, but nevertheless by overstating his hours he had the potential to receive additional payback of time which had not been worked and such a benefit would constitute a fraud. On this basis, Mr. Burwood found against the claimant in respect of falsifying and completing his records in a fraudulent manner.

34. In respect of the allegation of negligence in not completing vehicle inspections as set out in the Chemical Drivers' Handbook, Mr. Burwood found that the claimant knew that the checks were a legal requirement and that they were detailed in the Handbook, time sheet, and Drivers' Daily Vehicle Check and Defect Book. The claimant had been specifically asked about the vehicle checks he had completed, and the time taken to complete them. Initially, the claimant had said that the items for checking on his vehicle would take 2, 3 or 4 minutes but then when challenged, said this was only on some days and that other checks might be made where the vehicle had been used by another driver and they would take longer. When asked to clarify this further, the claimant had declined to answer. On the basis of the information and documentation provided, Mr. Burwood was not satisfied that the checks had been completed to the required level. On the basis of the evidence provided and the claimant's limited clarification, Mr. Burwood concluded that the allegation relating to negligence in not completing vehicle inspections to the standard required in the respondent's documentation was established.

35. Mr Burwood found that the allegations individually and collectively constituted gross misconduct. In respect of the appropriate sanction, having considered the claimant's length of service and mitigation, he decided the misconduct was so serious that it warranted summary dismissal.

Appeal

36. The claimant appealed against his dismissal. His grounds of appeal were that information had not been considered and that statements had been factually incorrect. He challenged that there was any personal gain in his overstating his hours as the payback was fixed and rostered until 2021. Further, as an outbased driver, he maintained he was allowed travel time and he had not been told otherwise.

37. The appeal hearing took place on 3 December 2020. The claimant was represented by his trade union representative, Steven Gerrard, Regional Secretary of Unite. The appeal was heard by Jeffrey Sears, Director. Also in attendance were Michelle Ellis (Interim Senior Employee Relations Specialist) and Rosemary Clark who took notes of the meeting. Notes of the hearing were provided in the bundle of documents.

38. At the hearing, the claimant raised issues with regard to his long service and clean disciplinary record. Mr. Sears found that Mr. Burwood did take those matters into account but the matters were so serious, and the claimant's responses to them unsatisfactory, so that a sanction short of dismissal was not appropriate.

39. The claimant said that Mr. Burwood had wrongly stated that he was booking hours fraudulently as the payback was fixed. It made no difference how much overtime he entered as the payback would remain the same – there was no totting up of hours and no extra payback. Mr. Sears noted that he understood that the claimant was salaried and that overtime worked is received as time off in lieu. However, he found that whereas there was no immediate financial benefit or time away from work as a result of the hours the claimant booked, the claimant was nevertheless establishing an inaccurate working pattern which included additional time (which had not been worked) in order to protect his existing roster and time off in lieu. He considered this to be fraudulent as it was deliberate, resulting in the concealment of facts relevant to how the company might act upon them.

40. The claimant raised that he was an outbased driver and he believed he had an entitlement to 15 minutes travel time and had been booking it for the last 10 years. Mr. Sears found that his workplace was the permanent parking place of his vehicle, that being the Thomas Hardie depot. There was not any entitlement to travel time and during the appeal hearing the claimant did not produce any formal correspondence to show he had been granted travel time.

41. The claimant alleged that he was being victimised for being the drivers' "mouthpiece" in the wheels agreement dispute and the dispute arose because it no longer worked for the respondent. In support of this, the claimant raised differential treatment of others employed on a different agreement for similar infractions as they had been given warnings. Mr. Sears found that this was not the case and there were several instances of drivers having been dismissed due to discrepancies over hours worked.

42. A further ground of appeal was that CCTV evidence from the claimant's vehicle showing checks being undertaken was not referred to and therefore the investigation was incomplete. Mr. Sears did not uphold this ground as Mr. Federici had in fact viewed the footage from the vehicle's cameras as well as the site CCTV. The information observed from those sources was put to the claimant in the disciplinary process.

43. Mr. Sears' letter rejecting the appeal on 18 December 2020 set out at length his reasoning for upholding the decision to summarily dismiss the claimant.

Discussion and Conclusions

44. I now consider the issues in the case as set out above and apply the facts to the law in reaching my decision. Both Mr. Jarvis and Ms. Roberts addressed me in submissions at the end of the hearing and I have considered all the points raised (whether or not I have expressly referred to them).

Reason for the dismissal and genuine belief in that reason

45. The first matter I had to decide was whether the claimant's dismissal was for misconduct. I am satisfied that matters raised by the respondent fell within the it's disciplinary policy as potential gross misconduct and the reason for the claimant's dismissal was for such acts.

46. The claimant contended that the investigation was not by reason of a genuine concern about his conduct since he had been, on his case, filling in records manually throughout his career with the respondent, and the timesheets were signed off by his line manager. His contention was that the disciplinary was an act of victimisation against him as he was one of four drivers in dispute with the respondent in respect of the "wheels agreement" which treated them as salaried employees and under which they were afforded the benefit of a rostered three weeks off in every 26 weeks reference period. He denied he had thereby accrued a benefit whether fraudulently or otherwise.

47. The evidence was, however, that the claimant had been previously spoken to by his line manager in or about 2018 about the number of manual entries in his timesheets and told that they were to stop. Despite this, the claimant continued with his practice of entering manually records which showed his start times as being substantially earlier than his tachograph recorded. I reject therefore, the claimant's contention that this practice had been sanctioned by management and the disciplinary was an act of victimisation against him.

48. For these reasons, I find that the respondent's belief in the claimant's misconduct was genuine.

Reasonableness of investigation

49. The claimant criticised the use of CCTV relating to 2 weeks in September 2020 in determining the outcome of the disciplinary against him. However, there was no evidence to show that these two weeks were anomalous in any way, and the claimant had not argued that they were. In any event, there was an examination of the claimant's time sheets, tracker data, tachograph, defect report sheets, vehicle CCTV and CCTV from the depot where the claimant parked his vehicle. The data from the various sources was collated and tabulated to aid analysis.

50. The claimant was interviewed as part of the investigation, as were two others. One of the other interviewees was the employee who obtained the hard drive from the claimant's vehicle which was required as part of the investigation. That employee had told a "white lie" to the claimant about the reason why the hard drive was required. This was done so as not to cause alarm or concern to the claimant. I find this had no impact on the reasonableness of the investigation. It was the data, and whether it was reasonable to take it into consideration, rather than the means of obtaining the data which was the important matter.

51. Similarly, the claimant's line manager (Sanjay Dhimar) was interviewed in respect of the claimant's start times on or about 08/10/2020. Specifically, he was asked whether he had made a comment to the claimant that Chris Moloney (a senior manager) might rub his hands together if the claimant left. Mr. Dhimar said that he may have done and it was a throw away comment as there was no love lost between Mr. Moloney and the drivers, including the claimant in particular. Given that this was an issue raised by the claimant, I find that it was reasonable for the investigation to interview Mr. Dhimar who reported the remark. Having done so, I find that there was no evidence that this alleged animosity had any impact upon the disciplinary process.

52. At the appeal stage, the claimant raised that the investigation manager had not viewed footage from his vehicle and therefore the investigation was incomplete. Mr. Federici had in fact viewed that footage as well as the site's CCTV and insofar as it might be said that the claimant was disadvantaged in not being shown the footage, I would reject that contention as the material points such as the time of the checks and the duration of them were put to the claimant.

53. I find that the conduct and extent of the investigation was within the band of reasonable responses.

<u>Dismissal and reasonableness of the sanction</u>

54. The claimant contended that as an outbased driver, he was given allowance for travel from his home to the workplace (Garston). There was no evidence of this having been agreed with the claimant and he was unable to substantiate that claim. He did not bring up this matter until the disciplinary hearing stage, despite having had ample opportunity to do so in the investigation meeting which took place over the course of 1.25 hours. His first raising his travelling time at the disciplinary hearing I find was disingenuous and whereas he was able to cite the wheels agreement, he was unable to identify the provision which allowed him to add daily travel to his vehicle as worktime or with whom he had reached such an agreement, and nor did his representative do so. At the appeal stage, he said that he was entitled to travel time of 15 minutes to the workplace but no agreement to that effect was produced.

55. In any case, his answers did not meet the point about the checks he undertook on his vehicle which were set out in the respondent's Drivers' Reference book and related documentation. He said in the investigatory meeting that the checks he undertook in the morning would be dependent upon whether he had undertaken a full round check the previous evening and he was somewhat evasive in

saying how much time the checks of his vehicle would typically take. At the disciplinary hearing, he resiled from having said that if he had checked the vehicle the previous night, he would not need to do a more thorough check the next day. He was then asked how long such checks took him and he said 2-3 minutes. When asked if he could check all the items listed in that time, he said it would take 2-3 to 5 minutes. When Mr Burwood said that he could only go on what the company said was the time it should take, the claimant said that it could take him up to 15 minutes, but his vehicle was a six wheel vehicle. He was asked why, when he arrived at 05.45 am, he made a manual entry to show his start time as 05.30 am. He did not answer the question satisfactorily and said he was keeping his tachograph up to date with his time sheets. I found that answer to be evasive.

56. He was again asked by Mr. Burwood to explain how long the checks took as he had previously stated they took only 4 minutes. The claimant stated that they could differ depending on whether he had been on holiday or someone else had used the vehicle as he would undertake a more stringent check on those occasions. He was asked several times how long it would take him to undertake a full check and he declined to answer.

57. The other criticisms raised by the claimant include the allegation by him as to a witch hunt as he was one of the four drivers subject to the “wheels agreement” which the respondent wished to amend. I am satisfied that the dismissing manager and the appeal manager were independent of the part of the business in which the claimant was deployed. They were made aware of the claimant’s contention that he was the subject of a witch hunt. However, having examined the evidence and heard from the claimant and his representatives, they were satisfied that the charges were made out. Mr. Sears was of the view that the health and safety implications of the failure to complete the safety inspections to the standards set down legally and in the respondent’s documentation, was particularly serious.

58. In respect of the severity of the sanction, in view of the falsification of records and the failure to perform legally required health and safety checks of his vehicle either at all, or to the standard laid down was of the most serious and improper kind and would, in all likelihood, destroy trust and confidence in the claimant as an employee. I cannot substitute my view for that of the respondent, and in my judgement the summary dismissal of the claimant is within the range of reasonable responses open to an employer in these circumstances which is the test I must apply.

Was the appeal fair and reasonable

59. At the appeal stage, it was pointed out to the claimant that the summary report showed he had conducted walkarounds taking 49 seconds on one occasion, and on 8 and 11 September no checks were conducted. The claimant was asked why that was, and it was at this point he suggested that he may have moved the vehicle a short distance in order to conduct the checks but this was not raised at either the investigation or at the disciplinary hearing. When asked why that was by Mr. Sears, the claimant stated that it had “only just come into my head”. I find it reasonable, therefore, for the respondent to reject his explanation.

60. The appeal was a hearing in front of an independent manager who examined the evidence, heard the appellant's arguments against the finding of misconduct and the sanction of dismissal. For the reasons given in paragraphs 30-37 above, I am satisfied that the claimant had a fair hearing and that the appeal was conducted reasonably. Having done so, Mr. Sears acted reasonably in dismissing the claimant's appeal.

Conclusion

61. In essence, the claimant's attack on the fairness of the dismissal fell short of showing the respondent acted outside the band of reasonable responses at any stage of the process.

62. Fundamental to his case, the claimant maintained that there was a witch hunt due to the dispute between the respondent and the four drivers in respect of the changes to the wheels agreement being sought by management. I reject that contention as it is not made out on the evidence.

63. This decision is reached on the balance of probabilities and applying the range of reasonable responses test having considered the documentary and oral evidence over the course of one and a half days.

64. For these reasons I dismiss the claimant's claim of unfair dismissal.

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Tribunal Judge Callan sitting as an Employment Judge
Date: 08 July 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
28 JULY 2022

FOR THE TRIBUNAL OFFICE

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