



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. K Masani  
**Respondent:** Teamwork UK Limited  
**Heard at:** London South  
**On:** 28 & 29/9/22  
**Before:** Employment Judge McLaren  
**Representation**  
Claimant Mr. P Solanki, friend  
Respondent: Mr. I Meredith, Director

## JUDGMENT

The decision of the tribunal is

**The complaint of unfair dismissal is not well founded. This means the respondent did not unfairly dismiss the claimant.**

## REASONS

### Background

1. The claimant described himself in the claim form as a general assistant Emirates portage. He worked at Gatwick airport for several years dealing with passengers and their baggage. It was accepted that in October 2020 he was moved to the oversize outer gauge (OOG) at Gatwick airport.

2. The claimant identified at a prior case management hearing that he required a Gujarati interpreter and this was provided. He also identified in advance a difficulty with speech and this was accommodated by allowing the claimant time to answer questions. Ms Shah confirmed she was able to communicate with the claimant in Gujarati. Throughout the hearing she had no difficulty in understanding the claimant.

### Evidence

3. I heard evidence from the claimant on his own behalf. He had not provided a witness statement so I allowed him to give his evidence verbally before he was questioned by the respondent. I also reviewed the claim form as his evidence. I heard evidence from Mr Ian Meredith a director of the respondent responsible for Quality, Health and safety and HR.

4. I was provided with a bundle of papers which had an index but were not paginated, this contained nine documents. The claimant said he did not have these so the tribunal copied these for him and provided an adjournment for him to read them. The claimant's friend was able to translate for him.

5. The findings of fact set out below were reached, on a balance of probabilities, having considered all the evidence given during the hearing, including the documents referred to by the witnesses, and taking into account my assessment of the witness evidence. I also considered the brief submissions made by both parties.

6. Only findings of fact relevant to the issues, and those necessary for the tribunal to determine, been referred to in this judgement. It would not be necessary, and neither would it be proportionate, to determine each and every fact in dispute. I have not referred to every document I have read and/or was taken to in the findings below, but that does not mean it was not considered if it was referred to in the witness statements/evidence.

#### Claims and Issues

7. The complaint brought was of unfair dismissal. No separate claim had been brought for wrongful dismissal. The claimant's friend referred on a number of occasions to the respondent having breached the claimant's contract. This was a reference to what the claimant said was a failure to provide appropriate health and safety protection during the pandemic. Reference was made to the Management of Health and Safety at Work Regulations 1999. While this alleged failure was brought up by the claimant in the appeal process and referred to in his claim form as "manager's gross negligence", it was presented by the claimant as a reason for his failure to follow security processes, it was not a claim in itself. The claimant did not say this any personal injury as a result of this alleged failure. He did not say that he raised any such complaint and therefore action was taken against him. No claim for such an alleged breach even if it were possible to bring such a claim in this jurisdiction, was brought before this tribunal.

8. The issues had been agreed at a prior preliminary hearing . Issues relating to remedy were agreed, but based on my liability finding I have not set these out here.

9. The issues on liability were related solely to unfair dismissal and were these.

#### Unfair dismissal

- a. What was the reason or principal reason for dismissal? The respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.

- b. If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:
- i. there were reasonable grounds for that belief;
  - ii. at the time the belief was formed the respondent had carried out a reasonable investigation;
  - iii. the respondent otherwise acted in a procedurally fair manner;
  - iv. dismissal was within the range of reasonable responses
  - v.
- c. did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant

### Findings of Fact

#### The employment contract/ training records/job duties

##### Job Duties

10. I was not provided with the contract of employment. The claimant confirmed in his evidence that he was employed by this respondent and at the time of the dismissal was not doing porterage on Emirates but was on the OOG.

11. Mr Meredith gave evidence about the process to be followed at the OOG. He explained that when oversized luggage was dropped off the operative had to check 3 things. They had to check the baggage tag, often stuck on the back of the boarding pass, to ensure the bar code on the tag on the luggage matched the bar code on the tag given to the customer. This would usually be scanned but where that was not possible, then a manual check would be done matching the numbers underneath the bar code. They had to see the boarding pass to check the luggage was going on the same flight as the boarding pass showed, and they had to check the passenger's identity via the passport. These checks had been put in after the Lockerbie incident to ensure that bags could not travel without a passenger and I was told this was a strict requirement. The claimant disputed that he had to check a passport, but did agree he was supposed to check the baggage tag and the boarding card.

12. I find that there were required security checks as part of the OOG duties, that were extremely important and that the claimant was aware of at least some part of these. Failure to carry these out was set out as an act of gross misconduct in the staff handbook.

##### Training

13. Mr Meredith explained that the claimant had regular training and the bundle contained a number of certificates evidencing this. The claimant did not challenge the documents and indeed confirmed he had taken part in this training. and I accept the documentary evidence and Mr Meredith's testimony supported by the claimant that this was the case.

14. Mr Meredith also gave evidence that when the claimant changed roles to the OOD he was given induction training which explained his duties and what

had to be checked. The bundle contained a signed note from the claimant's line manager confirming this training had occurred. The claimant disputed this and said it was not true but did agree he was told what to do in the role by colleagues. I am satisfied that the claimant was trained on the job on how to carry out the role. He was able to describe it both in the appeal process and in the hearing today.

#### Level of English

15. I also find, as the claimant agreed, that the training was provided in English. Mr Meredith told me that the claimant had to have a reasonable level of English to carry out his role. On the balance of probabilities I find this to be the case. The claimant did not raise language issues until the appeal process and indeed attended the disciplinary meeting without an interpreter. I find it was reasonable for the respondent to carry out meetings in English without an interpreter and to rely on what the claimant said in these meetings.

#### Credibility

16. The claimant, even taking into account that English is an additional language, was inconsistent in his evidence before me. For example he stated in his pleadings and in his evidence initially that he was not provided with PPE. It was only once he watched the video in the hearing and it was pointed out that he was wearing a mask and gloves that he accepted this but then said they were his own and his point was that the respondent had not provided them.

17. He disputed that he had been trained although he had referenced having done GSAT in the appeal hearing and in evidence then agreed he had done the training the certificates showed, but this was not provided not by the respondent but the airport. The claimant in submissions stated he was not trained in the OOG but only as a porter and yet in his evidence he agreed he had on the job training.

18. On the balance of probabilities I therefore prefer the evidence of Mr Meredith over that of the claimant where there is a conflict between the two. I accept Mr Meredith's evidence on what was required and what was trained because the carrying out of security checks was fundamental to the respondent's business and because Mr Meredith was consistent throughout while the claimant was not.

#### Investigation into the incident

19. The respondent was fined by the airport because some passenger golf clubs were not secured. The respondent began to investigate what had occurred. It was accepted that there was some delay between the incident on 31 January and the start of the investigation on 7 February. I do not find this was significant or made the process unfair in any way, I find it arose as Mr Meredith explained because of shift patterns. I find that the gap between the incident and the investigation was not a long one

20. Mr Meredith told me that the line manager, Ionel Stancu, was asked to find out what had happened. He watched the security video of the incident and realised that there were 3 issues, not just a problem with oversize luggage.

21. On 7 February 2021 the claimant was interviewed by the Site Manager and asked about the golf bag being insecure, checking the boarding pass and the baggage tag. This was document 1a in the bundle. The claimant was asked to explain what had happened on 31 January 2021. He explained that a passenger had come with a golf bag to drop at the OOG but it was not properly secured. The customer had said he could not wrap the bag because there was no wrapping service at the airport at that time. The claimant didn't inform anyone about this because he did not know that he had to.

22. The claimant was asked if he had checked the passenger's boarding pass with the tag attached to the bag and he said no, he did not check and "he checks only the tag and not the boarding pass".

23. He also did not scan the tag because the handgun scanner was not working that day. The claimant did not report the fault with the scan gun because he explained that it was quiet that day and he assumed there would not be so many bags to come.

24. Following this interview, in a letter dated the same day, the claimant was suspended from duties. It was confirmed in this letter that serious allegations of gross misconduct had been made against him in relation to failure to follow process regarding oversized baggage which is a potential breach of security at the airport. Three specific issues were raised.

25. The claimant was advised that the suspension was not viewed as the company having prejudged the matter, but was to allow the matter to be investigated. The suspension was on full pay. No procedural complaint is raised about the suspension and I find it was a reasonable step in the process.

26. In his appeal letter the claimant said that when he was asked for his account of events on 7 February this was during a shift while he was serving customers, he could not understand Mr Stancu properly as it was noisy and he was confused and is not fluent in English. The claimant says his lack of English meant he could not understand properly and in effect he was pressurised into signing the statement

27. Mr Meredith disagreed and said he had been told that the meeting was in a private room at the end of the shift. Again, on the balance of probabilities and the claimant's credibility, I prefer the evidence of the respondent. It seems unlikely that such a meeting would take place in public. The claimant did not mention this until the appeal letter and, as noted above, he was inconsistent in his evidence.

28. I also find that the claimant was operating a job role and had been given training in English and had not suggested he could not understand. He was being asked about basic parts of his role and for these reasons, and those given above, I find that it was reasonable of the respondent to ask him about events at work in English without an interpreter and to rely on his responses.

29. The claimant now challenges the fact that he was not shown the video at the investigation but I find that it was reasonable not to do so. This was an investigation and the claimant showed no difficulty in recollecting the events so as to require this step for the process to remain a fair and reasonable one. .

#### The disciplinary hearing

30. The claimant was invited to a disciplinary hearing in a letter of 8 February 2021. The meeting was to take place on 12 February at Gatwick airport. The letter set out three allegations identified, these were failures in the security process, failure to follow the reporting process, and failure to ensure that the baggage was in safe condition for transit. He was advised that each of these allegations were identified in the respondent's disciplinary procedure as gross misconduct.

31. The claimant was advised that Mr Williams, the Operations Director, would chair the meeting and a note taker would be in attendance. The claimant was advised that he was entitled to be accompanied by a work colleague or a trade union representative of his choice. He was sent a copy of the disciplinary procedure and a statement and was told that any CCTV footage would be available at the hearing "if it was applicable".

32. The meeting duly took place on 12 February and minutes of that meeting were enclosed as attachment 3 in the bundle. The CCTV footage was not shared. The claimant did not ask to see it and Mr Meredith gave evidence that the decision was based on the claimant's admissions and therefore the CCTV footage was not relevant at that point.

33. In this meeting the notes record the claimant saying that he understood the reasons that the disciplinary hearing was being held and had read all the supporting documentation regarding the investigation. He also confirmed that the investigation documentation was a true reflection of the incident. The claimant was invited to add anything and responded by saying he had asked the passenger about the golf clubs but the passenger was in a rush so he put the bag down on and in his opinion it was in safe condition. He did not follow procedures in relation to unsafe baggage items as he felt the bag was okay. The scanner was not working and had been passed over to him from the previous shift in this condition. I find that the claimant was given a fair opportunity to raise any point he wished and did not make any suggestions about the way in which investigation process had taken place which he now raises.

34. The claimant confirmed that he did not check the boarding pass, he asked the passenger if he had one and the passenger said that he did. This was a clear breach of the procedure and the claimant knew that. The claimant ended by asking the respondent to consider his excellent work record, the fact was undergoing treatment for a health condition and that he had a family. I find that the claimant therefore understood the seriousness of the issue and that it was one for which he could be dismissed.

35. The claimant did not attend this meeting with a colleague or trade union representative and confirmed that he was happy to continue on his own. He made no mention of difficulties with English, nor did he ask for an interpreter.

36. Mr Williams considered the position and on 15 February wrote to the claimant concerning the disciplinary hearing. The decision to dismiss was based on one allegation only the claimant given the benefit of the doubt on the other two allegations and these were not upheld. The dismissal was based solely on the claimant's admission that he had failed to ask the passenger for the boarding pass, only asked him and did not visually see or check the boarding pass .

37. Mr Williams concluded that this was a direct and blatant failure to comply with airport security procedures. This was characterised as gross misconduct and the claimant was told that his last day of employment with the company was 12 February 2021. I find Mr Williams reached this conclusion based on the claimant's admission and therefore had a genuine belief that the claimant had committed this act of misconduct.

38. I find that Mr Williams, the decision-maker, acted reasonably in relying on the claimant's admission which was a repetition of an admission that had been given during the investigation meeting. The claimant gave no indication at that time that he was confused or unable to understand what was being said to him and I find it was reasonable for the respondent to proceed on the basis of the claimant's unambiguous admission.

39. The claimant in his closing submissions makes a point he did not make previously which is that Mr Meredith knowingly did not allow his managers to show the claimant the video. This was not put to Mr Meredith at any point in the hearing. I find, however, that as the letter of invitation said the video would be available if applicable and it was not shown because the claimant admitted the matter and there was no need to clarify the position by showing him the video.

40. I also find that the claimant did not ask to see the video nor did he suggest that doing so would assist him. While he now says that it would have assisted his recollection, it is not a point he made prior to dismissal. Instead, in 2 meetings he admitted to conduct which, even based on his knowledge of what he says the procedure was, was clearly incorrect. On the balance of probabilities, I find it unlikely that he would have made such admissions if it was unclear about what had happened. Instead, if he had been unclear I find that he would have asked for the video evidence at that time as respondent had indicated was possible. It was therefore reasonable for the respondent to continue the process without playing the video. The respondent's decision was not based on video evidence, but on the claimant's clear, unequivocal and ready admission that he had allowed a passenger to leave a bag to put in the hold and had not checked that the passenger was flying on the same flight as his bag.

41. I find that the respondent followed a fair and reasonable procedure in accordance with their disciplinary policy. The claimant had been given adequate notice of the meeting and had been sent documentation which the respondent was relying on in advance. He was given another opportunity at the meeting to consider this documentation and was asked and given the opportunity to make any comment. He had been offered the right to be accompanied but had refused this. I also find that it was reasonable of the decision-maker to treat this as gross misconduct since it was a breach of security which is identified in its policy as falling in this category.

#### The Appeal letter

42. The claimant appealed against his dismissal in a letter of 20 February 2021. His appeal dealt with all three charges that are be put to him at the outset of the process although 2 not been upheld or relied upon. The introductory paragraph to his letter raised a number of new points that had not brought up prior to his dismissal.

43. The claimant stated that he had not had any training whatsoever, including no health and safety, hygiene or security rules training. He stated that he had not been provided with the correct uniform, health and safety gear like safety boots or Covid 19 training. He said he was not given enough time to prepare for the hearing, there was insufficient evidence and he was not provided with a Gujarati interpreter, which he said was a failure by the respondent to follow the disciplinary process (which does not provide an interpreter). He said that he had not handled the passenger's mobile due to Covid19.

44. His letter in relation to the security breach, which was the reason for his dismissal, protested his innocence. The claimant gave an entirely different account from what he had said previously and now stated that he had seen the passenger's boarding pass on that passenger's mobile and he was satisfied about this. He didn't handle the phone to check due to Covid19. Further he checked the authorised tag stuck on the bag and that had been tagged and authorised and already approved for transit. He said it was reasonably foreseeable that the passenger had already passed all the tight security checks.

45. The claimant stated that he believed the penalty of dismissal was too severe, unfair, disproportionate and harsh. It was at this point he raised his complaint about the way in which the initial investigation statement was taken by Mr Stancu which I have addressed above. This was the first time that the claimant had raised language difficulties throughout the entire process.

#### The appeal hearing

46. An appeal meeting was set up and the claimant was notified of this in a letter of 23 February. He was advised if he required interpretation he needed to secure his appointed person to fill that role. He was also advised to bring any evidence that he wished to produce in the appeal hearing. The meeting was postponed once at the claimant's request and took place on 15 April 2021. At the meeting the claimant was accompanied by a friend and interpreter.

47. The notes of the meeting show that it was chaired by Mr Meredith. The claimant denied all allegations. The meeting opened with the investigation notes being read to him. The claimant stated as he had done in the appeal letter that he had been presented with the passenger's mobile in order to check the bag tag.

48. As a result the claimant was then shown the video. The notes record and Mr Meredith confirmed that the video was played twice during the meeting. Mr Meredith suggested to the claimant that the video showed that there was no physical checking of the bag pass and there was no mobile phone present at all as the claimant had said. The claimant responded saying that he saw the bag pass but didn't check it. This was a further admission.

49. The claimant also stated that he didn't have training or uniform and had done his GSAT test, that is the general security test all airport staff who have a security badge are required to take, some five years ago. Mr Meredith confirmed that he would consider the matter and send the outcome in writing.

#### Further investigations prior to the decision

50. Mr Meredith carried out some further investigations before making a decision and concluded that the claimant had signed records to confirm that he had a good understanding of the English word, both written and spoken and was



fluent. He also confirmed that the claimant had received training in Job Understanding, Safety Awareness, Wearing PPE, Manual Handling, Fire Awareness, COSHH, and Untagged Non-Weighted Baggage and Bag Tipping, along with the mandatory safety training required by the airport authority. Mr Meredith was satisfied this training had been given in induction and again in 2012, 2013, 2016, 2018 and 2020.

51. Mr Meredith also checked when the claimant had undertaken GSAT training which is required by the airport and the last course recorded was on 26 November 2020. This training is mandatory every five years and the claimant had first completed his training in 2012 and then again in 2017. Mr Meredith concluded that the claimant's answer in the appeal meeting was therefore incorrect when said he had not had this for some five years. Mr Meredith also spoke to the claimant line manager about his training and obtained a signed statement that the claimant had been given training in baggage procedures for the OGG function and was aware of the protocol for identifying the baggage with the passenger and the destination of travel. The line manager confirmed that the training was required in order to operate the security functions at Gatwick airport.

52. Mr Meredith also identified that the claimant had been issued with a uniform. He explained that an individual without a uniform was not permitted to operate and security would have removed anyone trying to do so. I accept his evidence on this point. The claimant was working in a secure area at an airport.

53. Mr Meredith also confirmed that the respondent had obtained stocks of gloves and masks and hand sanitiser. These were all available from line management and further stocks were distributed throughout the airport. In watching the video within the hearing Mr Meredith pointed out two distribution points comparatively close to where the claimant was sitting. The claimant's response was that he was not permitted to leave his desk during work and therefore could not obtain this. However, in watching the video it became apparent the claimant was in fact wearing a mask and gloves at the time. The claimant then clarified that he had PPE equipment but his complaint was that the company had not provided it, he said this was equipment that he had provided for himself.

54. In his submissions the claimant made a further new point that he only had one pair of gloves and one mask. He said that he could not leave his post during working hours to go to either of the PPE distribution points which can be seen in the video. On the day of the incident, however, the airport was almost empty and the claimant gave as his reason for not worrying about the scanner was that he knew that the shift was going to be a quiet one.

55. I find that the claimant would easily have been able to leave his post and obtain fresh supply of PPE had he felt the need. In any event, the availability or otherwise of health and safety equipment is not relevant. The allegation is that he did not check documents and there was no need to physically touch them in order to do that. Nonetheless, he position remains that the claimant had gloves and a mask on at the relevant time. I'm also satisfied by Mr Meredith's evidence, the video evidence and the documents he provided that the respondent had provided PPE to all of its staff. There was therefore no breach of health and safety as the claimant alleges.

The appeal chair's conclusion

56. Mr Meredith concluded that the claimant had changed his answer about what had happened on the day several times. In the disciplinary meeting with Mr Williams he said he did not check with the passenger about a boarding pass. He simply asked the passenger if he had one. In the appeal letter the claimant said he checked the tag and saw the passenger holding a boarding pass on his mobile.

57. At the appeal hearing the claimant then stated that he been presented with the boarding pass on the passenger's mobile phone. Mr Meredith concluded that the video did not show, as the claimant was now saying in the appeal hearing, that the passenger held out his phone to check the details of travel. He concluded that passenger was not holding a mobile phone at all but only paperwork in his left hand.

58. Mr Meredith was deciding only one allegation. He confirmed that the allegation regarding the bag being unsafe to travel had not been upheld because the claimant had believed it was okay for it to travel. Similarly, the allegation that the claimant had failed a reporting process had also been dismissed because the equipment was faulty. The appeal was against the one matter for which the claimant was dismissed, namely a breach of security procedure.

59. Mr Meredith concluded that the claimant had failed to check the passenger's boarding pass and therefore upheld the decision to dismiss the claimant for gross misconduct for failing to follow the security process by not physically checking the boarding pass as the passenger does not present either phone or a physical boarding pass to the claimant.

60. I find that he reached this conclusion having considered the account given by the claimant in the investigation, the disciplinary hearing, the appeal letter and the appeal hearing. Mr Meredith had a genuine belief that the claimant had breached security procedures. Mr Meredith reached his belief because the claimant had admitted it and further he genuinely believed that the video did not show any checking. Even at the appeal hearing the claimant confirmed he did not check the bag tag, which was a further admission.

61. Mr Meredith gave the claimant a full and fair opportunity to say what he wished to say at the hearing and he was given the opportunity to watch the video twice. Mr Meredith then carried out a further full and fair investigation and obtained training records and information about the provision of PPE. This dealt with all the points the claimant had raised. Mr Meredith treated the appeal in effect as a rehearing and investigated the position himself fully.

62. I find that Mr Meredith made the decision to uphold the dismissal having carried out a further investigation and following a fair process. The significant security breach was said to be an act of gross misconduct in the respondent's staff handbook and dismissal was therefore within the reasonable range of responses.

Other matters raised by the claimant

63. In his claim form the claimant provided new information that had not been given to the disciplinary chair or the appeal chair. The claimant said that he now remembered that he had asked the passenger to show him the boarding pass. He said in his claim form that when the person returns back, which you can see on the CCTV footage, he showed his paper boarding pass, that he saw that in his

hand and he was satisfied. The claimant explains in his claim form that he had originally said he thought the passenger had a mobile phone because most passengers do have boarding pass on their mobiles, but it was only after having watched the video he now remembered that it was a paper boarding pass that he was shown.

64. We watched the video on two occasions during the hearing and the claimant again said that the piece of paper the passenger had in his hand was a boarding pass and that he saw the information on that boarding pass and therefore had carried out the checks. Mr Meredith disputed that and said that he believed the video showed the passenger was waving a piece of paper in his hand, but at no point did the claimant check that piece of paper and it was not physically possible to see the details at the distance between the passenger and the claimant. The claimant disputed this but I prefer Mr Meredith's view as there was considerable distance between the claimant and the piece of paper. On the balance of probabilities I do not find it credible that the claimant could possibly have seen sufficient details on a small moving piece of paper that was not close to him the factor for himself with appropriate security checks had been made.

65. I find that this is a new explanation the claimant had not brought forward previously. He states that had he been shown the video earlier he would have remembered this and that he had checked the boarding pass. I have found, as he does not dispute, he was shown the video twice during the appeal hearing and, despite that video not showing a mobile phone and a piece of paper being waved around he made no reference to the paper and did not change his version of events that he had seen a mobile phone. I find it was reasonable of the respondent to rely upon the claimant's account given at the time as he had had an opportunity to see the footage upon which he now relies to support a different explanation. The respondent cannot of course take into account explanations which were not given to it.

66. The claimant also reiterated in his claim form that he had not been provided with PPE and so was unable to physically check the boarding pass. The CCTV footage shows he was wearing gloves and a mask and I find that therefore was not a reason for any failure to check. As I have set out above, the checking did not in any event require the claimant to touch a boarding card or a phone and indeed the claimant's most recent account of what happened was that he carried out a visual inspection and was able to do that without touching the documentation.

67. The claimant also set out in detail that he was working under pressure but when asked about this confirmed that on the day of the incident he was not under any pressure at all.

68. The claimant made a number of references to the respondent's failure in its duty of care and said he had not been trained. He himself confirmed at the hearing that he had training, but did not feel the respondent had discharged its obligation because that training was done by the airport. I found that he was trained. Who carried out the training is not relevant, he had received it.

69. The claimant also disputed that he had been given training on what he had to check. However during the hearing he confirmed that he was given on-the-job training about this . I also note that he was able to describe the process during

the appeal hearing and also when questioned on it during this tribunal hearing. I find that he had therefore received appropriate training on what he needed to do.

70. The claimant also made reference to breach of contract for failure to provide PPE. As set out above I found this was not the case, PPE was provided to the claimant.

#### Relevant Law

##### Unfair Dismissal

71. There are five potentially fair reasons for dismissal under section 98 of ERA 1996: capability or qualifications, conduct, redundancy, breach of a statutory duty or restriction and "some other substantial reason" (SOSR). In this case the respondent states that the reason was conduct.

72. Once the employer has established a potentially fair reason for the dismissal under section 98(1) of ERA 1996 the tribunal must then decide if the employer acted reasonably in dismissing the employee for that reason.

73. Section 98(4) of ERA 1996 provides that, where an employer can show a potentially fair reason for dismissal:

"... 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.

74. Where misconduct is said to be the reason for dismissal then, as set out in British Home Stores Ltd v Burchell 1980 ICR 303 EAT, the respondent must show that it believed the claimant guilty of misconduct, it had in mind reasonable grounds upon which to sustain that belief, and at the stage at which the belief was formed on those grounds, it carried out as much investigation into the matter was reasonable in the circumstances. It is not enough that the employer has a reason that is capable of justifying dismissal. The tribunal must also be satisfied that, in all the circumstances, the employer was actually justified in dismissing for that reason. It must consider whether in all the circumstances it was reasonable for the employer to treat that reason as sufficient reason to dismiss. In this regard, there is no burden of proof on either party and the issue of whether the dismissal was reasonable is a neutral one for the tribunal to decide.

75. By the case of Sainsbury's Supermarkets Ltd v Hitt 2003 IRLR 23 tribunals were reminded that throughout their consideration in relation to the procedure adopted and the substantive fairness of the dismissal, the test is whether the respondent's actions were within the band of reasonable responses of a reasonable employer. In this case the Court of Appeal decided that the subjective standards of a reasonable employer must be applied to all aspects of the question whether an employee was fairly and reasonably dismissed. The tribunal is not required to carry out any further investigations and must be careful not to substitute its own standards of what was an adequate investigation to the standard that could be objectively expected of a reasonable employer.

#### Conclusion

76. I have considered the relevant law and applied this to my findings of fact, taking the issues list as a guide I conclude as follows.

77. Was the reason for the Claimant's dismissal a fair reason pursuant to section 98(2) of the Employment Rights Act 1996? Yes, the reason for dismissal was misconduct.

78. When misconduct is said to be the reason for dismissal then the respondent must show that it believed the claimant guilty of misconduct. I have found that both Mr Williams and Mr Meredith had a genuine belief that the claimant had committed an act of gross misconduct, namely a significant security breach.

79. I must also consider whether the respondent had in mind reasonable grounds upon which to sustain that belief. The disciplinary decision maker formed that belief based on the claimant's clear admissions given in the investigation process, which I have found it was reasonable to rely upon, and in the disciplinary hearing itself.

80. Mr Meredith upheld the decision to dismiss, again based on the claimant admissions and on a reasonable view of what the video showed. I'm satisfied that these admissions and the respondent's understanding of what the video showed amount to reasonable grounds upon which to sustain that belief. I have found that when the claimant did see the video he stuck with the account given in his appeal letter and only changed his mind after what happened sometime after the appeal outcome. Mr Meredith could only form his belief based on what the claimant told him at the time which was clearly inconsistent with the video evidence is no mobile phone is shown.

81. I must consider if, at the stage at which the belief was formed on those grounds, the respondent had carried out as much investigation into the matter as was reasonable in the circumstances. I have found that the respondent carried out the investigation meeting in appropriate circumstances, that is taking the claimant into a private room. I have found that it was reasonable of the respondent to rely upon the claimant's ability to speak English and answer questions appropriately. I conclude that in the light of the claimant's admission of wrongdoing that was sufficient investigation as was reasonable in the circumstances to lead to a disciplinary hearing. Again, I conclude that in the light of the further admission made by the claimant at the disciplinary hearing that it was reasonable of the respondent to rely upon that and to make no further investigation.

82. In his appeal the claimant did raise a number of other points and I find that these were all fully investigated by Mr Meredith before he reached his conclusion. I conclude therefore that the respondent had carried out as much investigation as was reasonable in all the circumstances. This included showing the claimant the video and getting his response.

83. Much was made by the claimant of the video evidence and not being shown it prior to the appeal. I conclude that that not providing the video at an earlier stage was within the reasonable range of responses in the circumstances when the respondent was faced with no hesitation in recollection, a claimant who understood the process and the importance of the security checking and gave an unequivocal admission. When the claimant was shown the video evidence he

continued to assert that he had seen a mobile phone and made no reference to the piece of paper he now says he looked at . He also admitted he had not checked the bag tag which in itself is a significant failure.

84. I've also found that the procedure was a fair one in which the claimant was given sufficient notice of hearing. One was postponed at his request. He was invited and was able to bring a friend or trading representative. He wishes this at the disciplinary meeting that brought I find an interpreter to the appeal hearing. At all stages he was provided with the evidence on which the respondent was relying.

85. Finally, I must consider whether in all the circumstances it was reasonable for the employer to treat the reason as sufficient reason to dismiss. I conclude that dismissal fulfilling the reasonable range of responses. The respondent is part of airport security and it is reasonable for it to conclude that failure to check that baggage which is to be loaded onto an aeroplane belongs to a passenger who is taking that flight. I conclude that this was clearly understood by all parties to the gross misconduct dismissal was an appropriate penalty. This is the case even take into account the claimant's previous unblemished record and length of service.

86. For all of these reasons the complaint of unfair dismissal does not succeed.

Employment Judge McLaren  
Date: 29 September 2022