



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Ibrahim Mohamed

**Respondents:** Acis Group Limited

**Heard at:** Nottingham  
2022

**On:** 31 October 2022 & 1, 2, 3 November

**Before:** Employment Judge M Butler (sitting alone)

## Representation

**Claimant:** In person

**Respondent:** Mr J Barron, Solicitor

# RESERVED JUDGMENT

The Judgment of the Tribunal is that the claim of unfair dismissal is not well-founded and is dismissed.

# RESERVED REASONS

## The Claim

1. By a claim form presented to the Tribunal on 20 April 2021, the Claimant brought claims of unfair dismissal, race discrimination and for other payments which included unpaid wages/unauthorised deductions from his wages. The Claimant

was employed by the Respondent from 22 January 2018 until his summary dismissal for gross misconduct on 11 February 2021. He was employed as an Area Service Manager by the Respondent which is a not for profit registered provider of social housing, accommodation and providing assistance to people without homes. It is a registered charity.

2. The Claimant was required to use his own motor vehicle for business purposes on behalf of the Respondent. When the Respondent discovered that his vehicle did not have a current MOT certificate, which thereby invalidated his insurance, he was dismissed for gross misconduct as this was in breach of the Respondent's Company Vehicle and Driving for Business Policy.
3. The Claimant claims his dismissal was unfair broadly because he thought his vehicle did have a valid MOT certificate and the fact that it did not was a simple mistake; and the Respondent failed to take into account his very serious family problems, particularly that he is a single father of five children with ongoing issues relating to his divorce and custody proceedings. The Respondent defends the claims on the basis that he was fairly dismissed for gross misconduct in that his lack of MOT, car tax and insurance endangered himself and members of the public and risked damaging the Respondent's reputation.
4. At an Open Preliminary Hearing before Employment Judge Brewer on 13 April 2022, the Claimant's claim of race discrimination was struck out. His claim for other payments has not been pursued. Consequently, the only claim before me is one of unfair dismissal.

### **The Issues**

5. Put simply, the only issues before me are whether the Respondent's decision to summarily dismiss the Claimant for gross misconduct fell within the range of responses of a reasonable employer and whether a fair disciplinary procedure was followed.

### **The Evidence**

6. For the Respondent I heard evidence from Miss Catherine Kelly, Head of Legal and Governance, and Mr Gregg Bacon, Chief Executive of the Respondent. The Claimant also gave evidence. All of the witnesses provided witness statements and were cross-examined.
7. There was also an agreed bundle of documents extending to 298 pages and references to page numbers in this Judgment are to pages in that bundle.

### **The Law**

8. Section 98 of the Employment Rights Act 1996 (ERA) provides:

*“(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 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,

(c) .....

(d) .....

(3) .....

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

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case."

9. I was referred to the following cases;

- ***BHS v Burchell [1978] IRLR379.***
- ***Iceland Frozen Foods v Jones [1982] IRLR439.***
- ***Dietmann v Brent London Borough Council [1987] ICR737 (QBD).***
- ***Foley v Post Office; HSBC Bank Plc (formerly Midland Bank plc) v Madden [2000] ICR1283 CA.***

### **The Factual Background**

10. In this hearing, I gained the impression that the parties had between them unnecessarily complicated the relevant facts by reference to matters which were not relevant to the issues. The only relevant facts are those relating to the reason for the Claimant's dismissal and the procedure followed. As is made clear by the disciplinary outcome letter dated 11 February 2021 sent by Miss Kelly to the Claimant (page 258-259), he was dismissed for "*using your personal vehicle for work purposes without valid tax, MOT and insurance*". No other reasons for dismissal were given. The letter from Miss Kelly was very brief particularly in circumstances where she was applying the ultimate sanction of summary dismissal but she had previously read out her detailed reasons for the summary dismissal at a meeting with the Claimant. She said in the letter, "*while we listened to your representations, the Company was not able to find any mitigating factors for a lesser sanction*".

11. The Respondent's Company Vehicle and Driving for Business Policy states at page

74:

*“Where an employee’s only vehicle is used for business travel, this is subject to:*

- *Ensuring the vehicle is roadworthy and appropriately registered, taxed and MOT’d (and any other legal obligation as may change in the future).*
- *The employee holding appropriate insurance that includes business use. We have annual checks in place to ensure relevant insurance certificates are in place. Insurance should be for the named employee and not on the trade or other persons policy.”*

12. It seems that the Claimant along with others was required to give information about his driving licence and insurance policy by 31 January 2020.

13. It would appear that the Claimant did not provide this information despite having received the email requesting it which was sent on 10 December 2019 (page 101). Miss Kelly was referred to email correspondence from Lois Gorry to John Bargh pointing out that she had checked the Claimant’s driving licence online but confirmed he had not provided his insurance certificate. She concluded her email by saying:

*“We will be commencing the annual review for DVLA and insurance certificates again in January 2021 so we will pick this back up in the rounds, if you are comfortable with that?”*

14. When asked about not pursuing this particular check, Miss Kelly answered that: *“We trust employees to be honest and do the right thing”.*

15. In response to a question from me, Miss Kelly repeated that the Respondent requires employees to be honest and noted that the Claimant was having domestic issues and they wanted to be lenient. She described this as a *“difficult balancing act”*. She blamed the failure to pursue the checks, the Respondent’s own policy indicates will be carried out, by reference to *“the Covid 19 pandemic and the need to keep the business going.”* When asked whether it was more important to keep the business going or to protect the public by carrying out checks on relevant documentation, Miss Kelly seemed unable to explain why the relevance of leniency to the Claimant in not chasing him apparently came before public safety if the Claimant had been uninsured.

16. Notwithstanding the fact that the Claimant had not provided his documents, the Respondent took no further action until 25 January 2021 when Mr Bargh emailed Lois Gorry confirming she had checked the Claimant’s car on the Government Website which revealed that the car was untaxed, and the MOT had expired on 15 February 2020. The Claimant was then interviewed by Mr Bargh who suspended him pending an investigation.

17. It is the Claimant’s evidence that he had previously used his vehicle as one available for private hire in accordance with his own personal licence issued by

Rotherham Metropolitan Borough Council. The Claimant was able to produce an email from Rotherham MBC's Senior Licencing Enforcement Officer confirming that private hire drivers must submit their vehicles to a Council Private Hire Vehicle Compliance Test which is to a higher standard than an MOT and this rendered it unnecessary to obtain an MOT test certificate for that vehicle. Unfortunately, the Claimant did not renew his own licence on 8 August 2020 which meant that he was then subject to normal MOT test compliance which he had not done. In fact, he did submit his vehicle to a compliance test which it failed and subsequently passed two weeks later. During that two weeks he had used his vehicle in connection with the Respondent's business without a valid MOT certificate.

18. I found Mr Bacon's evidence to be given in an honest and straightforward manner. Whilst he was asked a number of questions which were not relevant to the Claimant's dismissal, he answered those questions which were relevant without wishing to gloss over matters which highlighted fault on the part of the Respondent. For example, when asked by me about the emails at page 201-2 in respect of the delay in pursuing the Claimant's documents, Mr Bacon said that the Claimant had been off sick in February 2020 and then the pandemic took hold, so they left it. He added that in hindsight that was probably wrong and readily accepted that, although the Claimant did not provide his documents in January 2020 when asked for them, he would have had valid documents at that time given his vehicle was exempt from having an MOT test certificate in light of the fact that it had a Vehicle Compliance Certificate from Rotherham MBC. However, this did not excuse the fact that the Claimant did not have an MOT certificate for a considerable period of time and was well aware, as he had done before, that he could obtain an MOT certificate at the same time as his compliance test certificate.
19. The appeal outcome letter sent by Mr Bacon to the Claimant on 15 March 2021 (page 287-298) is extremely comprehensive and covers issues raised by the Claimant in relation to alleged race discrimination and his absences from work due to his family issues.
20. It is fair to say that the Claimant found the hearing before me to be difficult. He was clearly juggling looking after his children with the requirement to attend the hearing. He was at times a challenging witness. On numerous occasions he failed to let Mr Barron complete his question before beginning his answer and on several occasions challenged Mr Barron by asking, "*where are you going with this?*" He often became argumentative and it became difficult to get him to listen to me when I was explaining this.
21. The Claimant did accept that the Respondent's policies applied to him and this includes the Disciplinary Policy setting out some examples of gross misconduct, including a serious breach of the Respondent's policies. He accepted that he received the email at page 118 asking for his documents. He said he could not remember whether he showed his documents to his Line Manager. In relation to the email chain at page 119 the Claimant gave evidence that it was not a reasonable assumption that the email from Mr Bargh to Miss Gorry shows he had not given the DVLA documents to Mr Bargh. Again, in relation to the schedule at page 122 which

shows that as at 25 February 2020 the Claimant had still not provided his documents, he again argued that this was not evidence showing he had not produced the documents to Mr Bargh. This followed on from his evidence that he could not remember whether he showed his documents to Mr Bargh. Having said that the Respondent's policies applied to him, the Claimant sought to transfer the obligation to the Respondent when the policies show clearly that he was responsible for providing the documents.

22. The Claimant did make the valid point about the Respondent's failure to act when he had not provided his DVLA documents. At page 217, the Claimant accepted Mr Bargh ran this check but pointed out that by this time, 25 January 2021, the documents had already been outstanding for a year. Notwithstanding the fact that it was his obligation to provide the documents, he argued that if the Respondent had acted promptly by undertaking the checks sooner the matter could have been sorted out without the need for subsequent disciplinary proceedings. The Claimant also made the valid point that almost all of the correspondence regarding his documents is between other people to the exclusion of himself. Whilst these are valid points, they overlook the fact that he was not dismissed for failing to provide these documents.

23. The Claimant did accept that the check with DVLA at page 218 confirms that his vehicle was not taxed and had no MOT certificate, and it was appropriate for the Respondent to investigate. Of the suspension meeting following the letter at page 220, the Claimant says the subsequent minutes are not accurate and he denied being aggressive in that meeting. I found it unconvincing that the Claimant could remember that these minutes are allegedly inaccurate but could not remember whether he had provided his DVLA documents to the Respondent. The lack of chasing these documents by the Respondent is notable but it has to be considered in light of the fact that the Claimant was not dismissed for failing to produce his licence and insurance but for not having a valid MOT certificate. The Claimant has merged the two issues together but they are, in fact, entirely separate.

24. In his investigation meeting, the Claimant said, according to the minutes at page 231, that key workers were exempt from *"doing their MOT from mid-March to 30 December 2020"*. When questioned about this he said *"I might have said it, I can't remember, I might not. Its maybe an incorrect statement."* In relation to the follow up by the Respondent on this point to the Driver and Vehicle Standards Agency (page 232) which says there has never been such an exemption, the Claimant accepted this but said he could not remember as it was a long time ago. Of the invitation to the disciplinary hearing at page 234, the Claimant's evidence was muddled and confusing. The letter states that enclosed with it were the investigation meeting notes of which in his evidence he said *"I can't remember getting this (the letter) but if they said they did I suppose they did. I didn't check the enclosed documents before the disciplinary hearing as I have a lot going on. I can't remember. Yes I read the investigation meeting notes, I can't remember. I read them but can't remember the detail. The investigation notes are inaccurate"*. This evidence was entirely unconvincing. In relation to the disciplinary hearing notes which begin at page 239, there were a significant number of important matters that

the Claimant alleged were said but not recorded including;

- i) That he said the investigation minutes were inaccurate,
- ii) He did not know he had no MOT certificate,
- iii) He apologised for not knowing he didn't have an MOT certificate, and
- iv) He acknowledged the MOT was his responsibility going forward and he had made a mistake.

However, I do not find these comments to be convincing because this is the first time the Claimant has raised them and they are not mentioned in his claim form or witness statement.

### **Findings of Fact**

25. In relation to the issues before me, I find the following facts:

- i) The Claimant commenced employment with the Respondent on 22 January 2018 as Area Service Manager. His contract of employment provided that *"in the performance of your duties it is deemed essential for you to have the use of a car"* for which he was paid a car allowance for the use of his own personal vehicle (page 68).
- ii) The Respondent's Company Vehicle and Driving for Business Policy provides that employees using their own vehicle for business travel are responsible for *"ensuring the vehicle is roadworthy and appropriately registered, taxed and MOT'd (and any other legal obligation as may change in the future) (page 74) and employees must "hold appropriate insurance that includes business use. We have annual checks in place to ensure relevant insurance certificates are in place."* (page 75).
- iii) In January 2020, all employees using their own vehicles for business travel were required to provide a licence summary and copy of their motor insurance policy to the Respondent by 31 January 2020 (page 79). The Respondent sent the Claimant an email reminder on 30 January 2020 to confirm his licence and insurance details had not been supplied (page 118).
- iv) These documents were not chased until 23 October 2020 when the Claimant's Line Manager sent an email to the HR Team querying whether they had received the Claimant's documents (page 202). This was forwarded to Miss Gorry who began her email saying, *"apologies that this seems to have dropped off the radar somehow"* and further, *"we will be commencing the annual review for DVLA and insurance certificates again in January 2021 so we will pick this back up in the round if you are comfortable with that?"* The email confirmed that Miss Gorry had run a check on the Claimant's driving licence on the same day confirming it was valid with no penalty points.

- v) As at 28 January 2021, the Claimant held a current private hire driver licence with Rotherham MBC. He also held a Private Hire Vehicle Licence for a vehicle owned and solely driven by him up to 8 August 2020. Until that date, the vehicle was exempt from having a roadside MOT as it was covered by a Council Private Hire Vehicle Compliance Test. The Claimant submitted his vehicle for that test on 9 August 2020, when it failed but passed when it was tested again on 21 August 2020. As the vehicle licence was not renewed, it was not licenced and was no longer exempt from the requirement to have an MOT certificate. Accordingly, the failure to have a valid MOT certificate for the vehicle meant that the Claimant was technically in breach of the Respondent's relevant policy.
- vi) On 25 January 2021, the Claimant's Line Manager ran a check on his car which confirmed the car was untaxed and the MOT certificate had expired on 15 February 2020. It was possible for private hire drivers to obtain an MOT certificate at the same time as their vehicle passed the Council Compliance Test.
- vii) Mr Barge then asked the Claimant to attend a meeting on 26 January 2021 and pointed out that he had no MOT certificate for his car. Notes of this meeting taken by HR are page 219. The Claimant explained he though he had a "Taxi MOT" in November and then went on to make a series of allegations against Mr Bargh. As a result of this meeting, the Respondent decided to suspend the Claimant whilst investigations were carried out and wrote to him accordingly (page 220).
- viii) The Claimant was invited to an investigation meeting to be chaired by Mark Parker, Planned Maintenance Manager, by letter dated 28 January 2021 and sent by Ms Angela Sleight, HR Advisor. The notes of that meeting are at page 229 in which Mr Parker confirmed that it seemed the Claimant's vehicle had been MOT'd within "*The last couple of days*" ie after the meeting with Mr Bargh. In the investigation meeting, the Claimant said that key workers "*were exempt from doing their MOT from mid-March to 30 December 2020 (page 231) which Ms Sleight discovered was inaccurate as there was not such exemption in place (page 232).*"
- ix) The Claimant was then invited to a disciplinary hearing for "*using your personal vehicle for work purposes without valid tax, insurance and MOT*", (page 234).
- x) The disciplinary hearing ultimately took place on 10 February 2021 with Miss Kelly chairing the hearing, Ms Sleight taking notes and Ms Diane Ludlam accompanying the Claimant. The meeting notes begin at page 239. The Claimant was able to explain the issues he had had with his ex-partner and how they had affected him.
- xi) The Respondent's Conduct Policy provides that matters viewed as amounting to gross misconduct include (page 55);
- Serious breach of company rules, including, but not restricted to health and safety rules and rules on computer use.



- Gross negligence.
  - Conduct that brings our name into disrepute.
- xii) Miss Kelly considered the Claimant's comments against the allegations concerning his lack of vehicle documentation and a further hearing was held on 11 February 2021 at which she referred to the disciplinary decision set out at pages 252-257 where she responded to each of the Claimant's comments. She considered in detail the issue in relation to the Council Vehicle Compliance Test and an MOT certificate and noted that when the Claimant's vehicle failed its Compliance Test on 7 August 2020, he continued driving it until it subsequently passed that test on 21 August 2020.
- xiii) Miss Kelly made scant reference in giving her decision to the Claimant's domestic problems and said in her confirmatory letter of 11 February 2021 (page 258) *"The Company was not able to find any mitigating factors for a lesser sanction. The Claimant was summarily dismissed for gross misconduct"*.
- xiv) The Claimant appealed by letter of 18 February 2021 (page 260) and attended an appeal hearing before Mr Bacon and Board Members, Ms K Smart and Mr N Whitaker. The meeting notes for the appeal begin at page 276 and it is clear that the topics covered were comprehensive. In that meeting (page 285) the Claimant said he took full responsibility for not having a current MOT certificate.
- xv) In a long and thorough outcome letter dated 15 March 2021 (page 287-298) Mr Bacon dismissed the Claimant's appeal.

### **Submissions**

28. The Claimant gave oral submissions and Mr Barron spoke to his comprehensive written submissions. I do not rehearse these submissions in detail in this Judgment but confirm I have considered them and taken them in to consideration in reaching my decision.
29. The Claimant focussed on the failure by the Respondent to chase him for his licence and insurance documents for almost a year after the first request. He continued his argument that there was nothing to show he did not provide those documents to his Line Manager. Despite not having submitted his documents, he said he was still allowed to drive on the Respondent's business which shows that they cared little about health and safety in reality and only relied on the failure to produce documents when it suited them. He said the dismissal was unfair because the delays were unacceptable, he always had the correct documentation and never knowingly drove without proper legal documentation.
30. Mr Barron submitted that the Claimant's evidence was unreliable because there were arguments about the inaccuracy of meeting minutes which were only brought up when the Claimant was cross-examined. The Claimant was aware or should have been aware that his car did not have an MOT certificate when it was necessary to have one. This was a clear breach of the Respondent's policy and

pursuant to its conduct policy, constituted gross misconduct or gross negligence for which an appropriate sanction is summary dismissal.

### **Conclusions**

31. Before considering this matter in detail, I remind myself that the appropriate standard to be applied in making my decision is that of the reasonable employer. I must not and do not fall into the trap of making a decision based on what I would have done in the same circumstances.
32. I also remind myself of the reason for the dismissal of the Claimant by the Respondent. As set out in the dismissal outcome, the reason was a failure to have in place valid tax, insurance and an MOT certificate for his private vehicle whilst it was being used in the Respondent's business. A central theme of the Claimant's argument is the delay and failure to chase the production of his driving licence and insurance certificate, but this was not the reason for his dismissal. It is clear he was given leeway, in particular by Mr Bargh and the Respondent's HR Team, because of his difficult domestic circumstances. Whilst it may show a rather half-hearted acknowledgement of health and safety issues by the Respondent, nothing in their policies indicates that a failure to produce these documents would result in disciplinary action. Had the Respondent taken the same approach to the failure to have a current MOT certificate in respect of the Claimant's vehicle, I very much doubt that their subsequent action would fall within the range of responses of a reasonable employer.
33. As already remarked above, the Claimant was at times during the hearing a difficult witness. He was argumentative and frequently challenged Mr Barron by asking him questions or interrupting him before he had actually finished asking a question. I reminded him of this on numerous occasions apparently to no effect.
34. This was also representative of the Claimant's actions during the disciplinary process. I accept the Respondent's evidence that he was at times aggressive and argumentative. At times he gave me the impression that his evidence was being given on the hoof as it were. When challenged as to why his vehicle, having failed its Council Compliance Test was then driven for over 300 miles without any form of certificate over a 2 week period, he said the garage owner told him it was legal to drive without a valid certificate because of the Covid 19 pandemic. Indeed, the Claimant sought to persuade me that he had checked this on the DVLA website which he clearly could not have done as there was no such provision set out on that site.
35. As Mr Barron pointed out in his submissions, the Claimant often indicated he could not remember whether, for example, he had given his driving licence and insurance details to the Respondent's HR Team or Mr Bargh. I have set out above instances of him failing to remember things or events and his evidence that many minutes appearing in the bundle were inaccurate. There was a significant contradiction in this evidence given that there were so many matters he could not remember yet, for the first time in this hearing, he could apparently remember that very detailed minutes were inaccurate. Regrettably, this led me to consider his evidence with a

degree of circumspection.

36. Considering the procedure followed by the Respondent, I find that it is clearly compliant with the ACAS Code. Further, this satisfies the Burchell Test. When Bargh discovered the Claimant's, vehicle was not taxed and did not have an MOT certificate, there was a genuine belief on reasonable grounds that the Claimant was in breach of the Respondent's Driving Policy. He immediately arranged a meeting with the Claimant and with a member of HR present to share the information he had with the Claimant. I accept the Respondent's evidence that the Claimant became somewhat aggressive in this meeting and accused Mr Bargh of wanting to get rid of him and discriminating against him because of his race. That meeting was terminated prematurely, and an investigatory meeting arranged to be conducted by a Senior Employee who was outside the Claimant's Line Management.
37. It became clear as a result of the investigation that there was a case to answer and a disciplinary hearing was arranged.
38. I find that the investigatory meeting was properly convened and properly conducted with due regard being had to the Claimant's views. He was then invited to a disciplinary hearing, given appropriate documents (although he could not make up his mind in evidence whether he actually received them or not) and he was given the right to be accompanied which he exercised.
39. At the disciplinary hearing, the Claimant was given every opportunity to answer the allegation of gross misconduct against him. Miss Kelly decided that she was satisfied that he had committed gross misconduct in not having an MOT certificate.
40. Miss Kelly did in her outcome letter say she had considered the Claimant's mitigating factors. In the disciplinary hearing he relied extensively on his domestic problems and I am not convinced at any serious consideration of those problems took place. However, having said that, I do not believe this is fatal to the decision to dismiss as it is quite reasonable for an employer to ensure that vehicles used in the course of their business are, as a priority above all else, safe to be on the road.
41. The Claimant appealed this decision and in his grounds of appeal introduced further arguments which Mr Bacon considered in very great detail along with the arguments raised by the Claimant at the disciplinary hearing. The appeal hearing and the subsequent minutes were detailed and recorded accurately. The appeal was dismissed.
42. I have great sympathy for the effect of the Claimant's domestic problems upon him. He said in his submissions that he had always had the appropriate documentation for his vehicle when that was clearly not the case. I do not find, as he suggests, that his domestic problems justify failing to ensure the relevant certificates are in force.
43. The Respondent is a sizeable organisation with significant administrative support. In all the circumstances of this case, its procedure was faultless, and I find the decision to dismiss fell within the range of responses of a reasonable employer.

44. For the above reasons, the claim is dismissed.

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Employment Judge M Butler

Date: 15 December 2022

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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