



# EMPLOYMENT TRIBUNALS

**Claimant:** Chanda Landa

**Respondent:** Jaguar Land Rover Limited

**Heard at:** West Midlands

**On:** 26<sup>th</sup> 27<sup>th</sup> 28<sup>th</sup> June 2023

**Before:** Employment Judge Steward

## Representation

Claimant: Mr Cottam and Mr Jewell (Legal Advisors)

Respondent: Ms Ahmad (Counsel)

# JUDGMENT

The decision of the Tribunal is:

1. The claim of constructive unfair dismissal fails.

# REASONS

## Introduction

1. The claimant was employed by the respondent as a production operative. The role was within the FA2 trim and final area based at the Solihull branch. The claimant gives different dates for the commencement of the employment and states his dismissal date was the 29.1.21 whereas the respondents state the dismissal was on the 5.2.21.
2. The claim is for unfair dismissal. The claimant states his dismissal was unfair within S.98 of the Employment Rights Act 1996. The respondent contests the claim stating the claimant was fairly dismissed for misconduct.
3. The claimant was represented by 2 legal advisors. On the first day by Mr Cottam and thereafter by Mr Jewell. The respondent was represented by Counsel Ms Ahmad. The bundle contained 240 pages. The respondent called 3 witnesses. Lee Angliss who conducted the investigatory. Dean

McGuire who conducted the disciplinary and Peter Skinner who heard the appeal. These witnesses gave evidence on days 1 and 2. The claimant gave evidence on day 2. On day 3 submissions were made. At the start of the hearing on day 1 Ms Ahmad provided a 'respondents opening' document which was shared with the claimant. Prior to submissions Ms Ahmad produced a further document called 'respondents outline closing submissions' During the currency of the evidence the claimant made his mobile phone available to confirm various dates and as a result further text messages were downloaded and added to the bundle from pages 233 to 241. These were various messages between the claimant and Mr Lawrence and Mr McFall. They were relevant messages to the issues to be determined in the case. Likewise at the request of the claimant text messages were introduced at pages 105a and 105b.

4. The issues to be determined were set out in the case management order of Employment Judge Algazy QC of the 17.8.21 and were as follows.

1.1 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.

1.2 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:

- 1.2.1 there were reasonable grounds for that belief;
- 1.2.2 at the time the belief was formed the respondent had carried out a reasonable investigation;
- 1.2.3 the respondent otherwise acted in a procedurally fair manner;
- 1.2.4 dismissal was within the range of reasonable responses.

### **Relevant Law -Unfair Dismissals**

5. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that he was dismissed by the respondent under section 95, but in this case the respondent admits that it dismissed the claimant (within section 95(1)(a) of the 1996 Act) on 5<sup>th</sup> February 2021.

6. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

7. In this case it is not in dispute that the respondent dismissed the claimant because it believed he was guilty of misconduct. Misconduct is a potentially.

fair reason for dismissal under section 98(2). The respondent has satisfied the requirements of section 98(2).

8. Section 98(4) then deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend 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 shall be determined in accordance with equity and the substantial merits of the case.

9. In misconduct dismissals, there is well-established guidance for Tribunals on fairness within section 98(4) in the decisions in **Burchell 1978 IRLR 379** and **Post Office v Foley 2000 IRLR 827**. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer (**Iceland Frozen Foods Limited v Jones 1982 IRLR 439**, **Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23**, and **London Ambulance Service NHS Trust v Small 2009 IRLR 563**).

### Findings of fact

10. Page 89 in the bundle contains the original contract of employment and page 92 onwards the standard conditions of the contract. At page 94 the respondents make it clear that employees must 'conduct themselves in a manner which maintains the basic confidence and trust' and at page 96 employees must 'maintain standards of conduct which do not jeopardise the basic confidence and trust on which your employment contract is based.'

11. The claimant states that on the 17<sup>th</sup> November 2020 he received a message from the Department of Health telling him to isolate for a period of 10 days. This was nearly 8 months into the Coronavirus National Pandemic and the details of the text can be found at page 101 in the bundle. The claimant had no symptoms of Coronavirus when he received the message. The claimant says he received the message at approximately 7pm on the 17<sup>th</sup> November 2020 (page 3 of the claimants statement para 11) though during his disciplinary hearing on the 4<sup>th</sup> December 2020 he mentions the time as 7.30pm. On both occasions the complainant states he thought he had contacted the virus because he was out shopping.

12. The claimant states the Coronavirus application was installed by his work colleague Declan McFall (page 3 para 12 of the claimant's statement). The claimant had contacted the Department of Health and was informed that the notification to self-isolate would only have occurred if the symptoms had been inputted on the device. (page 3 para 13 of the claimants statement) The claimant stated that Mr McFall had installed the app and had also inputted the information onto the phone. This was something that Mr McFall denied. At page 120 and 121 in the bundle is a record of a meeting with Christopher Lawrence the claimants work colleague. At page 121 Mr Lawrence stated that he didn't believe that Dec (Mr McFall) had 'put that in Chanda's phone. I saw him downloading it...he (the claimant) asked Dec what needs to do next, then I walked off to the toilet, when I came back the app was running. I don't believe that Dec put that in CL phone'. In the text exchange between the claimant and Mr Lawrence at page 105a in the bundle Mr Lawrence confirms again that he didn't see Dec 'set it all up for you because I was in the toilet'

13. In his statement at page 3 paragraph 13 the claimant states that he believed that Mr McFall was 'using me as a guinea pig to see whether the inputting of the information would work....'

14. The respondents state that the symptom information was physically inputted into the phone due to the text alert that was created. Lee Angliss deals with this in his statement at page 9 paragraphs 13-14. The non-self-triggered alert can be found at page 101a in the bundle. This is the alert generated through the NHS track and trace system. To create the alert at page 100 information needs to be inputted on several different pages and then needs to be submitted. Input by mistake is highly unlikely. Mr Angliss at page 10 of his statement paragraph 20 conducted an investigation on the 19<sup>th</sup> November 2020. He asked the claimant to open the app on his phone and talked the claimant through the 'manage my data' section of the app. The app on the claimant's phone showed that data had been inputted on the 17<sup>th</sup> of November 2020. The claimant said he had never touched the app. When asked if he knew who had inputted the information the claimant said it could have been Declan (Mr McFall) or his kids.

15. In the text exchanges between Mr McFall and the claimant at page 241 Mr McFall makes it clear to the claimant that he 'never done anything to your phone'. Mr Lawrence makes it clear that when he came back from the toilet on the 17<sup>th</sup> of November it was the claimant and not Mr McFall that was on the claimants phone.

16. The claimant said that the app was downloaded sometime around 2pm on the 17<sup>th</sup> of November 2020. He noticed the alert approx. 7-730pm the same day. Ms Ahmad is correct that I do not have to make any specific finding as to when the information was inputted into the phone. However, I am satisfied that the alert generated at page 100 in the bundle was as a result of information being put into the claimant's phone. This information would have been covid like symptoms to generate the alert that the claimant noticed on the evening of the 17<sup>th</sup> of November 2020. The respondents' witnesses gave clear evidence about this, and the claimant confirmed himself at page 3 para 13 of his own statement that the alert would only occur if symptoms were inputted into the phone. This was information directly from the Department of Health.

17. The text messages between Mr McFall and the claimant begin at page 233. The claimant tells Mr McFall that he must self-isolate for 10 days. At 234 the claimant states that he is 'glad about the 10 days' at page 235 the claimant states that he is 'proper happy' and puts a smiley faced emoji with starry eyes. At the bottom of page 235 there is a recording which was played during the hearing which appears to have been sent by Mr McFall (who was dismissed for inputting false covid symptoms into his phone falsely triggering a self-isolation) and this had the words 'merry Christmas you lucky chancer'. Given that the nation was 6-7 months in the grip of a National Pandemic with a high death rate and no vaccination and given the claimants own evidence that he was concerned about an at-risk relative he lived with, I find these exchanges extremely unusual and concerning.

18. The claimant was instructed at the investigation meeting on the 19<sup>th</sup> November 2020 not to communicate with anyone about the investigation (Page 109) and was reminded in his suspension letter dated the 19<sup>th</sup> November 2020 (pages 116-117) that he '*must not communicate with any of our employees, contractors or customers unless authorised by Lee Angliss.....*' However, the claimant clearly text Mr Lawrence and discussed the investigation with him on the 23<sup>rd</sup> November 2020. This was done literally minutes before Mr Lawrence went in for his interview with Mr Angliss as aforementioned at page 120-121 in the bundle. When asked why he had this text conversation with Mr Lawrence the claimant said that he needed somebody to speak too and could not speak to his wife. I found the claimants evidence on this point vague and unconvincing. The claimant knew he should not have been discussing the matter with Mr Lawrence but clearly was at page 102 it's the claimant who texts '*but the truth is dec helped me to install the append I don't know what went on after that and u was thereat first then you went to the toilet...and after that my battery died*'. This was at 14.23. This was 7 minutes before Mr Lawrence gave a witness statement into the investigation of the fraudulent use of the NHS app.

19. On the 25<sup>th</sup> November 2020 at the disciplinary meeting chaired by Mr McGuire the claimant was informed that his actions were potentially in breach of the respondents employees handbook namely (a) Gross misconduct for an act of fraud deception or other dishonest acts (b.) Gross misconduct for refusal to comply with a reasonable and authorised instruction. He was later dismissed for gross misconduct on the 27<sup>th</sup> of November 2020 after the meeting was adjourned to consider the evidence. The claimant has provided a sick note in the bundle at page 199 which has a period of absence from the 1<sup>st</sup> November 2020 to the 31<sup>st</sup> December 2020 due to stress anxiety and mental health issues. The claimant states this was handed into his supervisor Mr Scott. The respondents claim they only became aware of it during the disclosure stage of the tribunal process.

19. I am satisfied on the balance of probabilities that.

- a. The claimant's phone had manual symptoms entered into it to create the alert at page 100 in the bundle.
- b. The data had been inputted on the 17<sup>th</sup> of November 2020 and this was ascertained by checking the 'manage my data' on the claimant's phone during the investigation meeting on the 19<sup>th</sup> of November 2020.
- c. That Declan McFall did not input the covid symptoms into the claimant's phone. Mr McFall denied this in the text exchange with the claimant. Mr Lawrence did not see Mr McFall with the claimant's phone on the 17<sup>th</sup> of

November 2020. There was no apparent benefit in Mr McFall inputting the symptoms into the phone. The claimant was remarkably calm in this regard when he had the text exchange with Mr McFall at page 240. He shows no upset or challenge towards Mr McFall. When Mr McFall states *'that's not true though because it happened while you was at home and ill be telling him that'* the claimant remarkably replies *'I did tell him that myself'*

- d. The claimant seemed happy that he had received the alert and would need to self-isolate for 10 days. Given the state of the National Pandemic, the lack of vaccine and the implications not only for the claimant but members of his family this made no logical sense.
- e. It is more likely that the claimant entered the symptoms for covid manually into his phone at some point on the 17<sup>th</sup> of November 2020 given that he would benefit from time off that would not count towards absence management. There was no need for the claimant to book a test because he knew he did not have covid.
- f. The claimant was fully aware that he must not speak to anybody else about the investigation as set out in the letter dated the 19<sup>th</sup> of November 2020 and aforementioned above. The claimant clearly disregarded this as he texts Christopher Lawrence about the matter on the 23<sup>rd</sup> November 2020.
- g. The respondents conducted a fair and thorough investigation in all the circumstances. All three managers followed the correct disciplinary procedure. Advice was sought from the respondents IT expert on the issue. There was a proper investigation and disciplinary meeting. There was a right of appeal, and the claimant knew exactly what the charges were against him. Witnesses were interviewed, notes of meetings were sent to the claimant, and he was accompanied by a trade's union representative.
- h. I don't accept that the respondents received the sick note of the 1<sup>st</sup> of November 2020 as claimed by the claimant. If they had the claimant would not have been at work. He was at work on the 17<sup>th</sup> of November 2020. If the claimant had provided a note stating, he was suffering from stress anxiety and mental health issues the respondents would not have allowed him to stay on the production line. I accept the respondent's evidence that the first time they were aware of the sick notes were during the disclosure exercise in preparation for this hearing.

## Conclusion

20.As previously mentioned the requirements of S.98(1)(a) and (b) have been satisfied by the respondent. The respondents have shown that the reason related to the conduct of the claimant.

21.As the respondents have satisfied the requirements of S.98(1) they must also satisfy S.98(4)(a) and (b). This deals with fairness generally. It determines whether the dismissal was fair or unfair having regard to the reason shown by the employer. Did the employer act reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee given the equity and the substantial merits of the case.

22. Did the respondents have a genuine belief in the guilt of the claimant? It is clear from all the aforesaid above that the respondents clearly, based on the evidence and enquiries they made, had a reasonable belief that the claimant had inputted the covid symptoms into the app on his phone to trigger the self-isolation alert. It was reasonable to assume this was to obtain 10 days leave which would not count towards his absence and provide him with a benefit. The evidence on balance showed that the alert produced by the claimant was because of somebody inputting the covid symptoms on his phone. This was accepted by the claimant. The symptoms were inputted on the 17<sup>th</sup> of November and the alert was discovered by the claimant. Mr Lawrence never saw Mr McFall holding the claimant's phone. Mr Lawrence stated that the claimant downloaded the app and was enquiring what to do with it from Mr McFall. Mr McFall denied putting the information into the phone. The claimant suggested it was either Mr McFall or his children. Given the lack of opportunity for anybody other than the claimant to enter the information and given the context of the text messages between the claimant and Mr Lawrence and Mr McFall the respondents had a genuine belief that the claimant had inputted the covid symptoms for the reasons they suggested. I find that the respondents had a genuine belief that the claimant was guilty of gross misconduct. It was clear why they had dismissed the claimant.

23. The respondents held that genuine belief on reasonable grounds after carrying out a fair and thorough investigation. The respondents acted reasonably in all aspects of the case, the grounds for belief, the investigation, the penalty imposed and the procedure. The respondents acted within the range of reasonable responses open to an employer in the circumstances in all these 4 areas.

24. I have had the band of reasonable responses clearly in my mind when reaching my decision. It is immaterial what decision I would have made. I am satisfied that the respondents believed the claimant had committed gross misconduct. The respondents acted reasonably in treating this as a sufficient reason to dismiss.

25. The claimant was told not to contact others about the investigation on the 19<sup>th</sup> of November 2020 orally and then in writing. The claimant did so by discussing the case with Mr Lawrence on the 23<sup>rd</sup> of November 2020. Not only did the respondents have a reasonable belief that he had committed gross misconduct for an act of fraud deception or other dishonest acts, but they also had a reasonable belief, based on the evidence, that he had committed gross misconduct for refusal to comply with a reasonable and authorised instruction.

26. The decision to dismiss him for either matter was based on a reasonable belief in the misconduct after conducting a reasonable investigation in all the circumstances and the decision to dismiss fell within the band of reasonable responses open to an employer. The evidence of Mr McGuire set out the reasonable belief. There was no motivation to dismiss for poor absence. The two processes conduct, and absence management were not conflated. Dishonesty was a matter of gross misconduct. There was a consistency of sanction as Mr McFall was also dismissed.

27. Accordingly the claimant's claim for unlawful dismissal fails and is dismissed.

Employment Judge **Steward**  
Date 4<sup>th</sup> July 2023