



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Buckton

**Respondent:** Restoration Force Limited

**HELD at Newcastle CFCTC**  
**Hearing by CVP**

**ON: 31 August 2023**

**BEFORE:** Employment Judge Johnson

## REPRESENTATION:

**Claimant:** In person (assisted by Mr B Knight – lay representative)

**Respondent:** Ms E Mayhew-Hills (litigation consultant)

# JUDGMENT

1. The claimant's complaint of unfair dismissal is not well founded and is dismissed.

# REASONS

1. The claimant conducted this hearing himself, with the assistance of his colleague Mr Knight. The claimant gave evidence himself but did not call any other witnesses. The respondent was represented by its litigation consultant Ms Eleanor Mayhew-Hills, who called to give evidence Mrs Leanne Nicholls (finance manager) and Mr Paul Benson (respondent's employee). Mr Buckton, Mrs Nicholls and Mr Benson had all prepared typed written statements, which were taken "as read" subject to questions in cross-examination and questions from the Tribunal Judge. There was an agreed bundle of documents marked R1 which had been uploaded to the Document Upload Centre.
2. By a claim form presented on 24 April 2023, the claimant brought a complaint of unfair dismissal. By its response form presented on 8 June 2023, the respondent

defended the claim. In that response form, the respondent admitted dismissing the claimant on 24 March 2023 for reasons which related to his conduct.

3. The claimant denied committing the act or acts of misconduct alleged by the respondent, which were alleged to have taken place during an investigation meeting on 15 March 2023. That meeting had been arranged to investigate allegations that the claimant had left his place of work early and without permission earlier that week. The respondent's case was that the claimant had behaved aggressively during that meeting and had refused to co-operate with the investigation. The respondent maintained that the nature of the claimant's behaviour was such that it amounted to gross misconduct, which justified summary dismissal. The claimant denied behaving aggressively or in any way inappropriately and maintained that his conduct in any event did not justify dismissal.
4. Acknowledging that the claimant was effectively a litigant in person, the Tribunal took some time at the beginning of the hearing to explain to him the correct approach which the Tribunal had to adopt in cases involving dismissal for reasons related to the employee's conduct. The Tribunal explained the following basic principles:-
  - 4.1. The respondent did not have to prove beyond reasonable doubt that the claimant had committed an act or acts of misconduct.
  - 4.2. The respondent had to show that they genuinely believed that the claimant had committed an act or acts of misconduct.
  - 4.3. There had to be reasonable grounds for that belief (it is insufficient for the respondent simply to state that it did believe that the claimant had done something wrong).
  - 4.4. There could not be "reasonable grounds" unless the respondent had carried out an investigation which was reasonable in all the circumstances of the case.
  - 4.5. If the respondent was satisfied that the claimant had committed an act or acts of misconduct, its decision to dismiss the claimant for those reasons had to be one which fell within the range of reasonable responses open to a reasonable employer in all the circumstances. The test is not "would most employers have dismissed in those circumstances?" but "might some reasonable employers have dismissed in those circumstances?".

The Tribunal was satisfied that Mr Buckton and Mr Knight understood that explanation.

5. Having heard the evidence of the claimant and the two witnesses for the respondent, having considered the documents to which it was referred and having heard the closing submissions of the parties, the Tribunal made the following findings of fact on a balance of probability.
6. The respondent is a company which provides specialist restoration services including water damage, structural drying, fire and smoke removal, mould and microbial remediation for all types of residential, retail and commercial properties. The claimant was employed by the respondent as a restoration technician. His employment began on 5 March 2018 and ended when he was summarily dismissed on 24 March 2023. During his employment the claimant was regarded as a capable and competent employee who had a clean disciplinary record.

7. The nature of the respondent's business involved work which was carried out throughout the country. The nature of the work meant that employees had to travel some distance to various sites to undertake their work. Due to the distances involved, those employees were frequently required to stay overnight close to the place where their work was being performed. Arrangements for accommodation were made throughout the respondent's office and the employees were notified by the office as to those accommodation arrangements. The claimant accepted that he was frequently required to stay overnight as part of his duties for the respondent.
8. On the morning of Monday 13 March 2023, the claimant collected a fellow employee to travel from Teesside to Cumbria to undertake work. The claimant was the driver of the respondent's vehicle. When he collected that colleague, the claimant informed the colleague that he would not need the rucksack which he was carrying, as they would not be staying overnight. The Tribunal found that Mr Buckton had no authority to inform the colleague that they would not be staying overnight, but that this indicated that the claimant had already decided that he would not be doing so.
9. At approximately 2.15pm on the Monday afternoon, the claimant and the colleague left the site in Cumbria to return home. By that time, they had not received any information from the respondent's office as to arrangements which had been made for their overnight accommodation that night. Mr Buckton accepted that he had made no attempt to contact the office to enquire as to those arrangements.
10. Leanne Nicholls, the respondent's finance manager, learnt at approximately 4pm that the claimant and his colleague were on their way home. Ms Nicholls was concerned that the claimant and his colleague had left site at 2.15 and they therefore had not undertaken a full day's work. Furthermore, arrangements had been made for overnight accommodation which would lead the respondent to incur unnecessary expense in respect of that accommodation, for additional fuel in travelling to and from Cumbria and in respect of a day's wages which would be paid to the claimant and his colleague, even though they had finished work early. As a result, Ms Nicholls decided to invite the claimant to a meeting so that he could explain those matters.
11. By text message on the afternoon of Monday 13 March, the claimant was invited to attend a meeting at 9am on Tuesday 14 March at a local café, which is also owned by Ms Nicholls. Copies of the exchange of emails between Ms Nicholls and the claimant appear in the bundle. In those emails, the claimant insisted that 48 hours' notice was required before he could be required to attend an investigatory meeting. Ms Nicholls explained to the claimant that this was an informal meeting and that 48 hours' notice was not required. Furthermore, the claimant was not entitled to have a work colleague with him with what was intended to be an "informal chat". The claimant states in his email, "Notice that I have been called into the office tomorrow. I would like to point out that 48 hours' notice needs to be applied. So therefore I will not be attending." In a second email the claimant stated, "Like I've previously stated, 48 hours' notice needs to be applied that is the LAW". The claimant's last email on 13 March states, "This is the last email I'll be sending, 48 hours needs to be applied, also need to send out a formal letter to my address with company headed paper regarding that you have called me into the office regardless of any kind of chat. I now feel you are trying to harass me so if it doesn't stop now you leave me with no other choice but to instruct my solicitor to take matters further and take it to a Tribunal." Ms Nicholls replied stating, "Should

you fail to attend the meeting, this will be regarded as misconduct and will be addressed through our formal disciplinary process.” The claimant replied stating, “If you feel the need to go down the path of a disciplinary hearing then I have no objection to this. I will happily turn up at an informal meeting with a representative of my choice.”

12. The meeting did take place on Tuesday 14 March. When the claimant arrived at Ms Nicholls café, he sent a text message to her to state that he was waiting outside, but would not come into the building as he was feeling unwell. Ms Nicholls asked the claimant to come into the building as she would need her laptop to conduct the meeting. The claimant again refused. The claimant returned to his vehicle, stating that he needed to get some water. He then returned to the café. He noticed that Mr Paul Benson, another employee, was waiting with Ms Nicholls. The claimant demanded to know why Mr Benson was there and Ms Nicholls explained to the claimant that, because she was dyslexic, she required Mr Benson to be there to take a note of the meeting. The claimant then insisted that there was no need for notes to be taken of the meeting, as it was an informal meeting and he would refuse to attend if notes were to be taken. Ms Nicholls relented and the claimant agreed to enter the building to have the meeting with Ms Nicholls. However, Ms Nicholls instructed Mr Benson to wait in an adjoining room because the nature of the claimant’s behaviour had made her feel uncomfortable.
13. Mr Benson’s evidence was that he waited in an adjoining room, that the wall between the two rooms was a thin partition wall and that there was a glass panel in the door which enabled him to see what was going on within the room. Mr Benson’s evidence was that he could hear what was being said by Ms Nicholls and Mr Buckton. The claimant’s evidence to the Tribunal was that Mr Benson could not see what was going on and could not hear what was being said.
14. Ms Nicholls invited the claimant to provide an explanation as to why he had left site at 2.15 the previous day, without finishing his shift and without permission from management. Ms Nicholls also wanted to know why the claimant had left site without first checking as to arrangements for overnight accommodation. Ms Nicholls’ evidence to the Tribunal was that Mr Buckton adopted an obstructive and un-co-operated attitude throughout the meeting and that his behaviour became increasingly aggressive as the meeting progressed. Mr Buckton laughed at Ms Nicholls when she attempted to ask questions of him, challenged her capacity to conduct such a meeting and when given the opportunity to provide an explanation for his behaviour the previous day, simply replied “no comment”.
15. Ms Nicholls’ description of the meeting was that the claimant “would laugh and throw himself back on his chair, making it swing on two legs. When giving his answers, he would throw his body forward towards mine and close any distance between us.” Ms Nicholls recollection of the claimant’s response was that he simply said, “No comment. I know my rights and you don’t know yours. I’m going to say no comment.”
16. Mr Benson’s version of events confirmed that given by Ms Nicholls. When the claimant was first made aware that Mr Benson was to attend the meeting, he said “He is family he shouldn’t be here. This hasn’t been settled properly. I feel ambushed.” Mr Benson described the claimant as “waving his arms around, shouting and acting very erratically.” Mr Benson’s evidence to the Tribunal was that Ms Nicholls asked him to stay in an adjoining room because she was concerned about the claimant’s aggressive manner. Mr Benson went on to

describe the claimant's conduct as "incredibly rude to Ms Nicholls throughout the meeting. He simply wouldn't listen to her. He kept laughing and saying "I've looked this up, you're doing this wrong."

17. As a result of the claimant's behaviour during the meeting, Ms Nicholls sought and obtained advice from the respondent's HR consultants. As a result of that advice, it was decided to carry out an investigation into the claimant's conduct at the informal meeting. The investigation was carried out by Ms Helen Pearson on behalf of Croner. A copy of the investigation report appears in the bundle. The claimant has not challenged any part of that investigation report. Ms Pearson's recommendation to the respondent was that disciplinary action should be taken against the claimant.
18. By a letter dated 20 March 2023, the claimant was invited to a disciplinary hearing to explain his conduct. A copy of the letter appears in the bundle and states as follows:-

*"1 It is alleged that you were insubordinate towards a member of management in that on 13 March 2023 without reasonable excuse you left site without confirming the hotel arrangements with the office, resulting in a financial loss to the company for the unused hotel bill and tried to justify your actions by stating, "I sent an email".*

*b) It is alleged that you displayed insubordination towards your employer in that on 13 March 2023 without reasonable excuse you left site and refused to ring the office before doing so stating, "why does he have to ring the office."*

*2 It is alleged that you displayed objectionable behaviour towards Leanne Nicholls when requested to attend an informal meeting. You initially refused to comply with a reasonable management instruction.*

*PB should be made aware that if upheld either of the above allegations could be considered serious misconduct.*

*3 It is alleged that you have taken part in activities which have caused the company to lose faith in your integrity namely you've demonstrated aggressive and violent behaviour towards the company's management/owner. Further particulars being:*

*(a) It is alleged that on 14 March 2023 without reasonable excuse you behaved in an aggressive and intimidating manner towards Leanne Nicholls, group finance manager, causing her to feel intimidated, alarmed and distressed about your conduct and to fear for her own safety from you.*

*(b) It is alleged that on 14 March 2023 without reasonable excuse you displayed serious insubordination towards Leanne Nicholls group finance manager by repeatedly questioning her management skills, namely her ability to have an informal discussion with you regarding the events of 13 March 2023.*

*PB should be made aware that if upheld either of the above allegations could be considered gross misconduct."*

19. A disciplinary meeting was arranged and took place on 22 March 2023 via video conference. The claimant had been provided with copies of the investigation report prepared by Croner.
20. A transcript was kept as the meeting was recorded. A copy of the transcript appears in the bundle. The claimant has not challenged the accuracy of any part of that transcript.
21. It was put to the claimant in cross-examination that he had again been un-co-operative and aggressive during the disciplinary hearing. In particular, the claimant had refused to answer questions put to him, frequently stating, "Next question?".
22. The Tribunal was satisfied that during both the investigation meeting and the disciplinary hearing (both conducted by Croner) the claimant was given a full, fair and reasonable opportunity to explain his conduct both on Monday 13 March when he left site and on Tuesday 14 March at the informal meeting with Ms Nicholls. Despite being given that opportunity, the claimant failed to provide any meaningful explanation for his conduct on either occasion. When asked during the Tribunal hearing why he had behaved in the manner described Ms Nicholls and Mr Benson, the claimant simply stated, "I deny all those allegations".
23. At the conclusion of the disciplinary hearing, Mr Mark Silvey of Croner recommended to the respondent that the claimant should be summarily dismissed for gross misconduct because of his behaviour at the meeting with Ms Nicholls on 14 March. The respondent accepted that recommendation and by a letter dated 24 March 2023 the claimant was summarily dismissed. A copy of that letter appears in the bundle and states as follows:-

*"It is my decision to summarily terminate your employment for the following reason:-*

*(1) You have failed to provide an acceptable explanation for:-*

*It is alleged that you displayed objectionable behaviour towards Leanne Nicholls. When requested to attend an informal meeting you initially refused to comply with a reasonable management instruction.*

*It is alleged that you have taken part in activities which have caused the company to lose faith in your integrity namely you've demonstrated aggressive and violent behaviour towards the company's management/owner.*

*I believe it is set out to demonstrate insubordination to your employer seemingly in the belief that there will be no consequences to your actions. Then, when you were required to attend an informal meeting to discuss your actions you sought to aggravate the situation by making basis objections to attend a meeting and then conduct yourself in an insubordinate and intimidating manner.*

*I am satisfied that these three points have been upheld. I have been mindful of your long service with the company. In mitigation I have taken into consideration the fact that you have been with the company for five years with no other disciplinary.*

*Your employment will terminate on 24 March 2023. You are not entitled to notice pay."*

24. The claimant was advised of his right to appeal and did so by a letter dated 29 March 2023. The appeal was conducted by a different consultant from Croner and took place on Monday 3 April, again by video conference. The appeal hearing was again recorded and a transcript of the meeting appears in the bundle. Again, the claimant has not challenged the accuracy of that transcript.
25. The main thrust of the claimant's appeal was that the respondent had failed to follow its own internal procedure, in that it had failed to give him a warning or final written warning before moving on to dismissal. That argument was also pursued by the claimant at the Tribunal hearing. It was put to the claimant that the respondent had indeed followed its procedure and that the entire procedure from the informal meeting through to the appeal hearing was fair in all the circumstances. The claimant maintained that the respondent had failed to follow its own internal procedure.
26. The claimant was informed that his appeal was dismissed by a letter 5 April 2023.

### **The law**

27. The relevant statutory provisions relating to complaints of unfair dismissal are contained in sections 94 and 98 of the Employment Rights Act 1996.

#### **Section 94 The right.**

- (1) An employee has the right not to be unfairly dismissed by his employer.

#### **Section 98 General.**

- (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 —

- (b) relates to the conduct of the employee,

- (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.

28. To prove a potentially fair reason for dismissal, an employer need only show that the reason for the dismissal related to the employee's conduct. There is no requirement that the conduct in question be wilful on the part of the employee and the phrase "related to the conduct" does not necessarily require misconduct. There must however be some form of conduct personal to the employee in issue.

29. The starting point in most cases where misconduct was found to have been the reason for dismissal, is the approach formulated by the Court of Appeal in *British Home Stores Limited v Burchell* (1980 ICR 303) where it was stated:-

*“What the Tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the grounds of misconduct in question entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. That is really stating shortly and compendiously what is in fact more than one element. First of all, there must be established by the employer the fact of that belief – that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, that the employer at the stage at which he formed that belief on those grounds, at any rate of the final stage at which he formed that belief on those grounds, had carried out as much investigating into the matter as was reasonable in all the circumstances of the case.”*

30. In addition to that test, if the dismissal is to be fair, it must have been reasonable for the employer to have dismissed the employee for the misconduct in question. In other words, dismissal must be a fair sanction in all the circumstances of the case. That means that the Tribunal must focus on whether or not the sanction imposed fell within the band of responses which a reasonable employer might have adopted.
31. In misconduct cases, the employer must conduct an investigation into the allegations of misconduct which is reasonable in all the circumstances of the case. The claimant must be informed of the nature of the allegations against him, must be given a fair opportunity to prepare his response and where appropriate, must be permitted to be accompanied at any hearing which could lead to the termination of his employment or the imposition of any sanction.
32. In the present case, the claimant initially argued that he had not been allowed to be accompanied at either the informal meeting or the disciplinary meeting. The Tribunal found that not to be the case. The Tribunal found that the claimant had not been entitled to be accompanied at the informal meeting but had been entitled to be accompanied at the disciplinary meeting. The Tribunal found that the claimant had been invited to have a colleague with him but had declined to do so. The same applied at the appeal hearing.
33. The initial investigatory report prepared by Croner is both lengthy and detailed and had been disclosed to the claimant prior to the disciplinary hearing. The Tribunal was satisfied that the claimant was given a fair and reasonable opportunity to explain his behaviour before Ms Nicholls at the informal meeting. The claimant failed to provide any kind of meaningful explanation at the disciplinary hearing. Throughout the Tribunal proceedings the claimant maintained a bare denial of the allegations made against him by Ms Nicholls and Mr Benson.
34. When invited by the Tribunal to provide an explanation as to why the respondent would seek to dismiss him, the claimant maintained that the respondent had suddenly developed a dislike of him and were determined to dismiss him. It was put to the claimant that the respondent acknowledged that he was a competent employee, with five years' service and a clean disciplinary record and therefore why would they wish to dismiss him? The claimant's response was that Ms Nicholls sought to dismiss him so that she could secure a promotion and advance herself within the respondent's organisation. The Tribunal found this to be no more than a groundless and spurious allegation.



35. The Tribunal found that the claimant had been given a full, fair and reasonable opportunity to explain his behaviour towards Ms Nicholls and had failed to provide any such explanation.
36. The Tribunal found that the entire disciplinary process had been fair and reasonable in all the circumstances. The claimant was aware of the nature of the allegations against him. The claimant was given a fair opportunity to explain his behaviour but chose not to do so.
37. The Tribunal accepted Ms Nicholls' and Mr Benson's description of the claimant's conduct at the informal meeting and noted that the claimant's belligerent approach to the entire process continued during the disciplinary hearing. The claimant's insistence upon saying "no comment", or "next question" indicated that he had no intention of properly partaking in the process.
38. The Tribunal rejected the claimant's argument that he could not be dismissed without first having received a warning or final written warning.
39. The Tribunal found that the respondent's decision to dismiss the claimant for his conduct at the informal meeting with Ms Nicholls was a decision which fell within the range of reasonable responses open to a reasonable employer in all the circumstances.
40. For those reasons, the claimant's complaint of unfair dismissal is not well founded and is dismissed.

G Johnson

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**Employment Judge Johnson**

28 September 2023

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