EMPLOYMENT TRIBUNALS

Claimant: Mr Barrie Davies

Respondent: Incentive Facilities Management Limited

Heard at: London South Employment Tribunal, Croydon (by video)

On: 5 & 6 October 2023

Before: Employment Judge Abbott

Representation
Claimant: in person
Respondent: Mr Anthony Johnston, barrister

JUDGMENT having been sent to the parties on 11 October 2023 (reasons having been delivered orally on 6 October 2023) and written reasons having been requested by the Respondent in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The Claimant, Mr Barrie Davies, was employed by the Respondent, Incentive Facilities Management Limited, as a Technical Services Manager at the Bluewater Shopping Centre. The Claimant's employment began on 7 August 2017 and ended on 14 April 2023 when he was summarily dismissed.

2. The Claimant brought a complaint of unfair dismissal to the Tribunal. The Respondent resisted the complaint. The complaint came before me for Final Hearing on 5 & 6 October 2023. The hearing was held fully remote through the Cloud Video Platform, with no material issues encountered during the hearing.

3. Oral reasons for dismissing the claim were provided on 6 October 2023, followed by the written Judgment which was sent to the parties on 11 October 2023. On 12 October 2023, the Respondent requested written reasons.

4. The Respondent was represented by Mr Anthony Johnston, counsel. It called evidence from 5 witnesses: Stephen Williams, Lewis Coates, Paul Allan, Michelle Fleming and Matthew Hadley, each of whom provided witness statements. The Claimant represented himself. He provided a witness statement and gave oral evidence. I thank all of them for their assistance in this matter. The Tribunal was also provided with a 174-page Bundle of Documents.

The law: unfair dismissal

5. Section 94(1) ERA provides that an employee has the right not to be unfairly dismissed by their employer. It is not in dispute that the Claimant was a qualifying employee and was dismissed by the Respondent.

6. Section 98 ERA deals with the fairness of dismissals. There are two stages within this section.

    a. First, the employer must show that it had a potentially fair reason for the dismissal, *i.e.* one of the reasons listed in section 98(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*" (section 98(1)(b)). Conduct is one of the potentially fair reasons.

    b. Second, if the employer shows that it had a potentially fair reason for the dismissal, the Tribunal must consider whether the employer acted fair or unfairly in dismissing for that reason. Section 98(4) provides that the determination of the question whether the dismissal is 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. The burden of proof at this stage is neutral.

7. In cases relating to conduct (as this case is), the Tribunal should apply the test set out in *British Home Stores Ltd v Burchell* [1978] IRLR 379. In summary, the employer must demonstrate that:

    a. it genuinely believed that the employee was guilty of misconduct;

    b. it had reasonable grounds on which to base that belief; and

    c. it had arrived at that belief having carried out an investigation into the matter that was reasonable in the circumstances of the case.

8. It is not for the Tribunal to substitute its own view of what it would have done in the position of the employer, but to determine whether what occurred fell within the range of reasonable responses of a reasonable employer, both in relation to the substantive decision and the procedure followed (*J Sainsbury plc v Hitt* [2003] IRLR 23; *Whitbread plc v Hall* [2001] ICR 699).

9. An investigation must be even-handed to be reasonable, and particularly rigorous when the charges are particularly serious (*A v B* [2003] IRLR 405).

The employer must consider any defences advanced by the employee, but whether and to what extent it is necessary to carry out specific inquiry into them in order to meet the *Burchell* test will depend on the circumstances as a whole – the investigation should be looked at as a whole when assessing the question of reasonableness (*Shrestha v Genesis Housing Association Ltd* [2015] IRLR 399).

10. The size and administrative resources of the employer's undertaking are relevant, as is the ACAS Code of Practice on Disciplinary and Grievance Procedures (the "ACAS Code"). The ACAS Code recognises that an employee might be dismissed even for a first offence where it constitutes gross misconduct.

11. The approach to be taken to procedural fairness is a wide one, viewing it if appropriate as part of the overall picture, not as a separate aspect of fairness. Any procedural defects in the initial disciplinary hearing may be remedied on appeal provided that in all the circumstances the later stages of a procedure are sufficient to cure any earlier unfairness (*Taylor v OCS Group Ltd* [2006] IRLR 613).

Findings of fact

12. The relevant facts are, I find, as follows. Where it has been necessary for the Tribunal to resolve any conflict of evidence, I indicate how I have done so at the relevant point. References to "[xx]" are to page numbers in the Bundle of Documents. Only findings of fact relevant to the issues, and those necessary for me to determine, have been referred to in this judgment. I have not referred to every document that I have read and/or was taken to during the hearing in the findings below, but that does not mean such documents were not considered if referred to in the evidence and/or in the course of the hearing.

13. The Claimant was employed by the Respondent as a Technical Services Manager from 7 August 2017 until his dismissal on 14 April 2023, based at the Bluewater Shopping Centre. His responsibilities involved leading and managing the Technical team, including providing on-site engineering and maintenance support to the Respondent's client Landsec, which owns Bluewater. The disciplinary policy to which the Claimant's employment was subject was provided at [50-53]. It includes a list of example behaviours that will normally be considered as misconduct (section 9) and gross misconduct (section 10).

14. Prior to the events that led to his dismissal, the Claimant had an unblemished employment record.

15. At around the end of November / early December 2022, problems had arisen with three Air Handling Units (AHUs) at the Bluewater site. AHUs are gas burner units that are used to circulate air around their environment and to keep a temperate climate. One of the three AHUs in question was one referred to as EV01, which is located in the Winter Garden, a dining area of Bluewater.

16. On 8 December 2022, the Claimant made the decision to call in an external

gas specialist, Boiler Care Kent, to carry out investigation work on the problematic AHUs. Landsec has a process in place which requires a "permit to work" to be requested where access is required to landlord areas or equipment – as would be necessary in order to access the AHUs. Mr Allan acknowledged in his evidence, which I accept, that the need for a permit may be bypassed in "extraordinary circumstances". In this instance, the Claimant did not request a permit for Boiler Care Kent to attend.

17. An engineer from Boiler Care Kent, Mick Holding, attended the site that evening and conducted electrical tests on the AHUs. In respect of EV01, as is shown in the Job Sheet at [146], having conducted tests, he advised that there was no power being given to the overheat stat, which could be due to a faulty relay / contactor or no command signal to the stat. The overheat stat is a safety switch that ensures the system will cut out if it begins to overheat. Mr Holding left EV01 off pending further investigation and suggested that checks be done of the air flow to the heat exchanger.

18. At 10.20pm on 8 December 2022, the Claimant sent an image to Lewis Coates, a Technical Services Engineer in his team, of the EV01 overheat stat, together with the text "Call me early and I'll explain" [64A]. The image showed the overheat stat in an overridden state – specifically, two yellow cables with red crimps at the end had been disconnected and an uncrimped brown cable inserted between the upper and lower connection points. Bypassing the overheat stat in this manner means there is nothing to prevent the AHU from overheating. I accept the evidence of Mr Coates, which was largely agreed by the Claimant, that to leave the overheat stat bypassed in this way whilst the AHU was in normal operation was very dangerous, exposing the possibility of the AHU exploding with potentially catastrophic consequences.

19. On 9 December 2022, there was a discussion between the Claimant and Mr Coates. Mr Coates' unchallenged evidence was that the Claimant asked him to find some crimps to put on the end of the brown cable in the picture and that he refused to do so. There were no further discussions between the Claimant and Mr Coates regarding EV01.

20. On the night of 14 December 2022, a fire damper specialist from DMA, Graham Shaw, attended site to ascertain if the dampers being shut was causing a lack of airflow through EV01. It was established that the main ductwork damper was indeed shut, and DMA restored it to the open position, thereby allowing EV01 to be operative from that date onwards.

21. On 6 March 2023, a member of staff at Pizza Hut, one of the restaurants in the Winter Garden, reported a smell of gas. The Claimant was on annual leave on this day. Stephen Williams, the Respondent's Chief Engineer, attended the restaurant on the Respondent's behalf. He could not himself smell gas but organised for the gas board (SGN) to attend site to investigate. SGN did so and identified traces of carbon monoxide (22 ppm) within the ductwork of AHU EV01. The SGN engineer turned off EV01 as a result. Mr Williams's evidence was that this all occurred on 8 March 2023, but the document at page [95] of the bundle indicates he is mistaken, and the correct date is 6 March 2023.

22. On the afternoon of 9 March 2023, Mr Williams took Mr Coates and Joe Fordham, another Technical Services Engineer, to inspect EV01. They opened the box in which the overheat stat is located and discovered that the overheat stat had been bypassed. Mr Williams took a photograph which is at [58]. Mr Coates informed Mr Williams that the Claimant had asked him to bypass the overheat stat in December 2022 but that he had refused to do so. On the following day, Mr Williams reported the fact of the overheat stat being bypassed and Mr Coates' comments to the Respondent's Head of Compliance and produced an incident report, which is at [59].

23. Paul Allan, the Respondent's Head of Hard Services, was tasked with investigating the incident reported by Mr Williams. On the afternoon of 10 March 2023, he interviewed Mr Coates to discuss the matter, the notes are at [60-62]. Mr Coates reported to Mr Allan that the Claimant had, in December 2022, asked him to create a permanent bypass of the overheat stat, but that Mr Coates had refused to do so. A further interview took place later in the day, when Mr Coates recalled and reported the WhatsApp message that the Claimant had sent him on 8 December 2022 – the notes of that meeting are at [63-64].

24. At 9am on 13 March 2023, upon the Claimant's return from annual leave, Mr Allan interviewed the Claimant. The interview ended prematurely when the Claimant walked out. The notes of the meeting are at [65-66]. When it was mentioned to the Claimant that the overheat stat had been found in a bypassed state, according to the notes (which I accept are accurate), he responded as follows:

> "By who? Steve Williams by any chance? Funny- every time I take leave my professional integrity is questioned, and I always come back to a problem. It's funny isn't it. 5 Years I've been running a site and the only time there is ever an issue is when I'm on annual leave. If the company wants my resignation, they can have it today. I will walk today. If my integrity is shot then you can have my resignation today. I have no control of who goes into my plant. I don't have sole control over M&E, there is constant interference, and I am done with it. As far as I was aware that was put back."

25. Immediately after this, the Claimant went back to his desk in the Management Suite. Mr Williams was present in the office. The Claimant looked at Mr Williams and said "fuck you" to him. As the Claimant exited the office, he called Mr Williams a "no-good cunt". This was witnessed by another employee, Ms White, who prepared an incident statement [68], as in due course did Mr Williams [96].

26. Mr Allan decided it was necessary to suspend the Claimant on full pay pending completion of the investigation, and this was actioned on the same day.

27. Mr Allan's investigation continued. Over the course of 13 & 14 March 2023 he interviewed Mr Holding of Boiler Care Kent, Mr Fordham, Trevor Wheeler (another Technical Services Engineer who had been present at the time of SGN's visit) and Dave King (another Technical Services Engineer). The notes of those meetings are at [69-73] and [76-80]. A further investigation meeting was conducted with the Claimant on 16 March 2023, the notes of which are

at [87-90]. A report was also obtained from the appointed person for Gas Safe for the Respondent's parent company, which is at [91-93].

28. Mr Allan produced an investigation report on 29 March 2023. His report accurately summarises the state of the evidence before him. In summary, the evidence before Mr Allan was this:

    a. EV01 had had to be shut down on 6 March 2023 by SGN due to the levels of carbon monoxide being emitted.

    b. Inspection by Mr Williams and Mr Wheeler indicated that the heat exchanger in EV01 was cracked in various places, which was an indication that it had overheated.

    c. Inspection by Mr Williams, Mr Coates and Mr Fordham had discovered that the overheat stat had been bypassed.

    d. In December 2022, the Claimant had sent WhatsApp messages to Mr Coates and Mr King with an image of the overheat stat in a bypassed state which bore close resemblance to the state in which the overheat stat was found in March 2023.

    e. Mr Coates said that the Claimant had asked him to permanently bypass the overheat stat in December 2022 and that he had refused to do so.

    f. The Claimant accepted that a bypass had been temporarily put in place whilst the unit was being tested by Mr Holding, but that it had been put back into its proper state before Mr Holding left.

    g. The Claimant denied that he had asked Mr Coates (or anyone else) to permanently bypass the overheat stat and indicated that there may have been some miscommunication. He explained he would have no reason to leave a permanent bypass in place since the problem was ultimately identified as being with air flow.

    h. The Claimant suggested that it was a regular occurrence that, when he went on annual leave, he would return to find that elements of his plant had been tampered with. He also referred to his unblemished record and the work pressures that he was under.

    i. Mr Holding denied having put in place the bypass even as part of his testing, noting this could cause "problems untold".

    j. Mr Coates, Mr King, Mr Fordham and Mr Wheeler all denied having any involvement in bypassing the overheat stat, noting the danger that doing so would cause.

    k. Mr Fordham reported that on 14 December 2022 (so 6 days after Mr Holding had been on site) he had observed EV01 overheating and tripping out. This was an indication that the overheat stat was not functioning properly at that time.

    l. Mr Fordham said that he had heard, by way of hearsay, that the

Claimant had asked other engineers to put a permanent bypass in place.

m. The Claimant accepted that he had not obtained a "permit to work" for Mr Holding but justified that on the basis that it was an emergency call-out.

n. The Claimant admitted the obscene language that he had directed towards Mr Williams on 13 March 2023, but rationalised that based on an alleged vendetta that Mr Williams had against him.

29. Mr Allan concluded based on the evidence that there was a case to answer based on conduct falling under four separate example behaviours identified in the Disciplinary Policy as are listed in his report at [99], namely:

a. Misconduct, 9.1.12 – Obscene language or other offensive or inappropriate behaviour.
b. Gross Misconduct, 10.1.11 – Causing loss, damage or injury through serious negligence.
c. Gross Misconduct, 10.1.12 – Serious or repeated breach of health and safety rules or serious misuse of safety equipment.
d. Gross Misconduct, 10.1.18 – Serious neglect of duties, or a serious or deliberate breach of your contract or our procedures.

30. As regards the bypass, Mr Allan's view based on the evidence was that the bypass of the overheat stat must have been in place from December 2022 through to March 2023.

31. On 29 March 2023, the Claimant was invited to a disciplinary hearing. The invite letter, at [102-103], clearly set out the allegations against the Claimant, attached Mr Allan's report and all supporting documents, referred to summary dismissal as a possible outcome and referred to the right to be accompanied. The allegation of behaviour falling under 10.1.18 was not pursued against the Claimant, though the underlying factual issue (the lack of a permit for Boiler Care Kent's work in December 2022) was pursued under 10.1.12 instead.

32. The disciplinary meeting took place on 4 April 2023, chaired by Michelle Fleming, Regional Manager. The Claimant was accompanied by a work colleague. The notes of the meeting are at [105-114]. The Claimant accepted in his evidence that he was given a full and fair opportunity to advance his case during the hearing and I find that he did. During the meeting, the Claimant raised that he no longer had access to his work computer, so could not check whether there was any report produced by Boiler Care Kent following the visit on 8 December 2023, but would expect there to be one. Mrs Fleming stated that she would check. The Claimant also suggested that EV01 would have been checked as part of regular planned maintenance inspections during the period between December and March; that Mr Coates' account was questionable since he had not at any point prior to March 2023 raised the request that the Claimant had allegedly made of him to permanently bypass the overheat stat despite the evident safety issues; that EV01 could be accessed by anyone who could get to the roof of the Winter Garden; and the animosity that Mr Williams had towards him. At the end of the meeting, the Claimant also raised a grievance regarding Mr Williams, and

concerns over his workload.

33. I accept Mrs Fleming's evidence that, following the meeting, she followed up with Mr Allan to check whether a report from Boiler Care Kent could be identified, but was told none could be found. I also accept her evidence that she further investigated whether it would be expected for the overheat stat, which is located in a screw-closed box, to be visually inspected during routine maintenance checks and was told that would not routinely be done.

34. On consideration of all the evidence before her (which I have already summarised) and the points raised by the Claimant during the hearing (which I accept she did consider), Mrs Fleming concluded that all of the allegations of misconduct were made out. She set out her findings in the disciplinary outcome letter dated 13 April 2023, which is at [115-118], in particular in points 1-3 on page [117], which read as follows:

> "1. The allegation of serious or repeated breach of health and safety rules or serious misuse of safety equipment is considered **proven**.
>
> - You have admitted to not following site and company process by following the permit to work procedure and obtaining a closure report from the contractor detailing the works that had taken place. It is understood this was an emergency call out, however, due to the nature of the location for the works and the high risk involved working with the components mentioned within the investigation, I have found that no due care, nor a reasonable level of responsibility were applied, as is expected in your position as Technical Services Manager.
>
> 2. The allegation of causing loss, damage or injury through serious negligence is considered **proven**.
>
> - During your investigation meetings, you confirmed that you did authorise the bypass, despite you reassertion that it had been put back. The image sent to Lewis confirms the bypass and although you believed everything had been put back, there was no follow up image to confirm this to be the case. Boiler Care Kent have stated that they did not carry out the bypass. It is my understanding that even if fault finding, under no circumstances should the safety mechanism be tampered with; therefore, I have found that you acted negligently in allowing the initial bypass, and you have been unable to evidence the works you state were carried out by Boiler Care Kent or that the bypass had been put back. I have also found, having followed up with Paul Allan, Head of Hard Services, that the cracks that appeared in March were a result of the overheating which would have taken time to appear.
>
> 3. The allegation of obscene language or other offensive or inappropriate behaviour is considered **proven**.
>
> - By you own admission you did make the comments and explained it was out of character, however under no circumstances should any employee swear at another colleague."

35. As certain of the acts constituted gross misconduct within the Disciplinary Policy, Mrs Fleming had to consider whether summary dismissal was the appropriate sanction and she decided that it was. I accept her evidence that she took account of the Claimant's past record and his points of mitigation around work pressure, given these were specifically raised in the hearing.

36. The Claimant was accordingly dismissed with immediate effect upon receipt of the outcome letter on 14 April 2023.

37. The outcome letter provided for a right of appeal, which the Claimant did take up. His grounds of appeal were set out in an email of 19 April 2023 at [120-121]. He requested that he be accompanied at the hearing by an external HR consultant, but this request was refused as it was not within the Respondent's policy to permit that.

38. The appeal hearing proceeded on 25 April 2023, chaired by Matthew Hadley, an Account Manager for the Respondent. The Claimant was accompanied by a work colleague. The notes of the meeting are at [124-128]. The Claimant accepted in his evidence that he was given a full and fair opportunity to advance his appeal during the hearing and I find that he did.

39. Certain of the matters raised by the Claimant as part of his appeal required Mr Hadley to carry out further investigation, which he did so by way of email exchanges with Mr Allan which are at [131]. This included raising questions regarding regular maintenance of EV01, seeking to identify Boiler Care Kent's service sheets from December 2022, whether permits were obtained when the issue with EV01 occurred in March 2023, and seeking to identify the service sheets from the work on the fire dampers in December 2022.

40. Having obtained the further information (or been told it could not be found), I accept Mr Hadley's evidence that he fully considered the grounds of appeal in the light of that information and all of the other evidence provided and came to the conclusion that the dismissal should be upheld. This was notified to the Claimant in a letter dated 9 May 2023 at [135-136].

41. In parallel, Mrs Fleming dealt with the Claimant's grievance, with an outcome letter being sent on 12 May 2023, which is at [141-142]. The grievance was not upheld.

42. The Claimant commenced ACAS Early Conciliation on 10 May 2023. This ended on 12 May 2023. He presented his claim to the Tribunal on 25 May 2023, which was within 3 months of his dismissal.

Discussion

43. I now come to apply the law to the facts.

44. The first question I must ask is what the true reason for dismissal was and is it a potentially fair one. I have found as a fact that Mrs Fleming, the dismissing officer, based her decision to dismiss on her assessment that the allegations of misconduct against the Claimant were proven based on the evidence before her. I therefore find that the reason for dismissal was the conduct of the Claimant. This is a potentially fair reason within the terms of section 98(1) and (2) of the Employment Rights Act 1996.

45. I must then move on to consider the fairness of the dismissal. I already set out the terms of section 98(4) of the Act earlier and will not repeat them. I also set out the *Burchell* questions that the Tribunal applies to misconduct cases such as these.

46. The first *Burchell* question is whether the Respondent genuinely believed that

the Claimant was guilty of the misconduct. It follows from my conclusion on the true reason for dismissal that Mrs Fleming did genuinely believe that the Claimant was guilty of the misconduct, based on her assessment of the evidence before her. There is no evidence to suggest otherwise.

47. The second *Burchell* question is whether that belief was based on reasonable grounds. The Respondent submitted it clearly was and pointed to the following key evidence that was before Mrs Fleming: (1) The evidence of Mr Coates as to what he'd been asked to do by the Claimant – evidence that fundamentally contradicts the Claimant's suggestion that what was put in place on 8 December 2022 was fleeting, because Mr Coates' clear evidence was being asked to make that permanent, which he declined to do. (2) The evidence of Mr Holding, which flatly contradicted the Claimant's own account re the bypass. (3) The message sent by the Claimant to Mr Coates at [64A], a reasonable interpretation of which (it is said) was that the photo was to show Mr Coates what had been done. (4) The simple fact that what was found in the box in March 2023 was remarkably similar to the arrangement that that C had admittedly been involved in putting in place on 8 December 2022. In fairness to the Claimant, he more-or-less accepted in his testimony that the evidence that was before Mrs Fleming provided reasonable grounds for the conclusion that he was guilty - his concern was more with the evidence that wasn't there.

48. Having carefully considered the evidence that was before Mrs Fleming (and Mr Hadley on appeal), I consider there were clearly reasonable grounds for the conclusion that the Claimant was guilty of misconduct. Putting aside the admitted acts regarding the lack of a permit (which it was, in my judgement, reasonable for Mrs Fleming to conclude based on the evidence was not justified as an emergency given it was part of investigatory work) and the obscene language towards Mr Williams, the real crux of the matter was the bypass of the overheat stat. The evidence showed that the Claimant had been involved in putting a bypass in place on 8 December 2022. The Claimant suggested that it had been removed that same day, but Mr Holding denied any involvement in putting a bypass in place at all, and there was evidence from Mr Fordham which tended to indicate the overheat stat was still being bypassed by 14 December 2022. There was evidence from Mr Coates that the Claimant had asked him to put a permanent bypass in place, supported by the WhatsApp message. The Claimant's denial had to be weighed against that, though there was also evidence from Mr Fordham that Mr Coates had mentioned to him the Claimant's request. Finally, there was the startling similarly of the arrangement observed in March 2023 to that shown in the WhatsApp message, which tended to indicate the bypass had been in place throughout the period. In my judgement it was plainly a reasonable conclusion, based on that evidence, that the Claimant bore responsibility for the bypass being in place.

49. That brings us to the third *Burchell* question, of whether a reasonable investigation had been conducted. This was the real focus of the Claimant's case. His witness statement (which he referred to in closing submissions) makes 6 points which I will deal with in turn.

50. First, failure to consider who else could have accessed EV01 between December 2022 and March 2023. Mr Allan was questioned about this, and it

was clear from his evidence that his interviews covered everyone who had both (i) access to EV01 and (ii) the technical wherewithal to put in place the overheat stat bypass. In my judgement, the Respondent could not reasonably be expected to investigate every other possible person who could have had access – that goes beyond the requirements of a reasonable investigation.

51. Second, failure to consider visual checks. I have already found that Mrs Fleming and Mr Hadley did investigate the position regarding visual checks, and the evidence they received was to the effect that the overheat stat box would not routinely have been opened as part of such routine maintenance. There is nothing in this point.

52. Third, the alleged closed line of questioning by Mr Allan. I have carefully reviewed the notes of the interviews conducted by Mr Allan, and I am satisfied that he conducted those interviews reasonably fairly. The interviewees were not led to incriminate the Claimant. Insofar as it is suggested there may have been tampering by other persons unknown, absent any basis from the Claimant to substantiate that, it is hard to see what Mr Allan could reasonably have done to investigate further than he did.

53. Fourth, the non-technical backgrounds of Mrs Fleming and Mr Hadley. I do not consider, in my judgement, this impaired their ability to fairly deal with the case. Both individuals conducted further investigation of points raised by the Claimant, getting technical input from Mr Allan as required.

54. Fifth, the suggestion that there were other instances of permits not being put in place. The difficulty for the Claimant here is that this is something of a "two wrongs don't make a right" point. It was in my judgement reasonable for the investigation to focus on whether or not the Claimant acted properly in respect of the lack of a permit on 8 December 2022.

55. Sixth, the alleged animosity with Mr Williams not being properly considered. This was a point raised to Mrs Fleming and Mr Hadley. I consider it was reasonable for it to be put to one side and dealt with by the separate grievance process. The evidence of Mr Williams was in no way core to the decisions that Mrs Fleming and Mr Hadley had to make about the allegations against the Claimant. It was never suggested by the Claimant that Mr Williams had procured the evidence of the other witnesses which formed the primary basis for the misconduct findings.

56. Aside from those points, the Claimant raised a concern around documents not being obtained relating to Boiler Care Kent's visit on 8 December 2022. However, as I have found, both Mrs Fleming and Mr Hadley did seek to identify those documents, but they could not be found at the time. Given Mr Holding's evidence to Mr Allan that he was not involved in the bypass at all, I am satisfied that it was reasonable not to do more by way of investigation. Moreover, the one document that has since come to light, the Job Sheet at [146], does not materially support the Claimant's case in any event.

57. Having considered carefully all of the materials, including the scope of Mr Allan's investigation as supplemented by the further investigations done by Mrs Fleming and Mr Hadley, I am satisfied that, overall, the investigation conducted was a reasonable one.

58. I must also consider the procedure as a whole. I am satisfied that the procedure was a fair and appropriate one. It involved the typical three stages: investigation; disciplinary hearing; appeal. I have already commented on the scope of the investigation, which I am satisfied was a fair one. The Claimant accepted that at both the disciplinary and appeal hearings he had a fair opportunity to put forward his position and did so. I have already dealt with the alleged flaws in the evidence gathering above and have found that the Claimant's allegations are without reasonable foundation.

59. That leaves the residual question of whether dismissal was within the range of reasonable responses for the employer. Given the factual finding that the Claimant was responsible for the overheat stat bypass being in place, and the undisputed safety implications of that, I find that summary dismissal was within the range of reasonable responses. As found by the dismissing officer, this was an act of gross misconduct within the terms of the Disciplinary Policy, and the potential consequences could have been catastrophic. Dismissal was plainly an option reasonably open to the Respondent.

60. Stepping back, then, and applying the test set out in section 98(4) of the Employment Rights Act 1996, I am satisfied in all the circumstances that the dismissal of the Claimant was a fair one. The complaint of unfair dismissal is therefore not well-founded and is dismissed.

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Employment Judge Abbott
Date: 26 October 2023

REASONS SENT TO THE PARTIES ON
Date: 01 November 2023

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FOR THE TRIBUNAL OFFICE