



EMPLOYMENT TRIBUNALS

Claimant: Mr W C J Evans

Respondent: Mexichem UK Limited

Heard at: Liverpool

On: 16-17 November 2023

Before: Employment Judge Ainscough
(sitting alone)

REPRESENTATION:

Claimant: In person (assisted by his wife)

Respondent: Ms Shaw, Solicitor

JUDGMENT

The claim for unfair dismissal is unsuccessful.

REASONS

Introduction

1. The claimant was dismissed from his role as the Packing and Logistics Operator for the respondent, a chemical manufacturer on 24 November 2022. The claimant commenced early conciliation with ACAS on 13 January 2023 and received the certificate on 16 January 2023. The claimant presented his claim of unfair dismissal on 13 February 2023. On 20 March 2023 the respondent submitted a response denying that the dismissal was unfair.

Issues

2. At the outset of the hearing, I clarified with the claimant about his comments in his witness statement about a claim for age discrimination. The claimant stated that the thought his age might have contributed to his dismissal.

3. I subsequently informed the claimant that if he wanted to pursue a claim for age discrimination, he would have to apply to amend his claim. The claimant confirmed that he was not making such an application and accepted that his claim was only for unfair dismissal.
4. I therefore confirmed that the issues I would be determining were as follows:
 - a. What was the reason or principal reason for dismissal? The respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.
 - b. If the reason was misconduct, did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:
 - i. there were reasonable grounds for that belief;
 - ii. at the time the belief was formed the respondent had carried out a reasonable investigation;
 - iii. the respondent otherwise acted in a procedurally fair manner;
 - iv. dismissal was within the range of reasonable responses.

Evidence

5. The parties agreed a joint bundle of evidence totalling 302 pages. I heard evidence Janet Sankey, the UK Operations Director who was responsible for dismissing the claimant. I also heard evidence from Michelle Harrison, Service Delivery Director who dealt with the claimant's appeal against dismissal. Finally, I heard evidence from the claimant. Both parties were given an opportunity to make oral and written submissions.

The Law

6. The unfair dismissal claim was brought under Part X of the Employment Rights Act 1996.
7. The primary provision is section 98 which, so far as relevant, provides as follows:

- “(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 sub-section (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 sub-section if it ... relates to the conduct of the employee ...
 - (3) ...
 - (4) Where the employer has fulfilled the requirements of sub-section (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 reasonable 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".

8. If the employer fails to show a potentially fair reason for dismissal (in this case, conduct), dismissal is unfair. If a potentially fair reason is shown, the general test of fairness in section 98(4) must be applied.

9. In a misconduct case the correct approach under section 98(4) was helpfully summarised by Elias LJ in **Turner v East Midlands Trains Limited [2013] ICR 525** in paragraphs 16-22. The most important point is that the test to be applied is of the range or band of reasonable responses, a test which originated in **British Home Stores v Burchell [1980] ICR 303**, but which was subsequently approved in a number of decisions of the Court of Appeal. The "**Burchell test**" involves a consideration of three aspects of the employer's conduct. Firstly, did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case? Secondly, did the employer believe that the employee was guilty of the misconduct complained of? Thirdly, did the employer have reasonable grounds for that belief? If the answer to each of those questions is "yes", the Employment Tribunal must then go on to decide whether the decision to dismiss the employee was within the band of reasonable responses, or whether that band falls short of encompassing termination of employment.

10. It is important that in carrying out this exercise the Tribunal must not substitute its own decision for that of the employer. The focus must be on the fairness of the investigation, dismissal and appeal, and not on whether the employee has suffered an injustice.

11. The band of reasonable responses test applies to all aspects of the dismissal process including the procedure adopted and whether the investigation was fair and appropriate. The appeal is to be treated as part and parcel of the dismissal process: **Taylor v OCS Group Ltd [2006] IRLR 613**.

Relevant Findings of Fact

Claimant's employment

12. The claimant worked for the respondent from 1 February 2011 until 24 November 2022. The claimant's contract of employment provided that he was required to work a minimum of 36 hours per week and would be in receipt of a salary. The contract also provided that the respondent had a disciplinary procedure which was contained in the employee handbook.
13. The claimant worked Monday to Saturday, alternate weeks. This meant he worked every other Saturday from 7am until 3pm. The claimant was provided with a 30-minute lunch break during this shift.
14. The respondent's disciplinary procedure provided for the provision of a first warning, a final written warning or dismissal. Gross misconduct was defined and numerous examples of what would amount to gross misconduct were listed. One such example of gross misconduct was absence without leave.
15. Andrew Griffiths was the claimant's line manager. Neil Platt was the Medical Plant and Technical Plant Manager. Janet Sankey the UK Operations Director.
16. During the pandemic, the claimant was classed as an essential worker and worked on the respondent's site. Following Andrew Griffiths' identifying that the claimant had some performance issues as a result of a lack of training, the claimant was placed on a performance improvement plan on 26 April 2021 for a period of sixteen weeks.
17. On 26 July 2021 Neil Platt raised issues of concern with the HR department about the claimant's behaviour. It was the opinion of Neil Platt that the claimant created tension and conflict and Neil Platt was keen to manage the claimant and challenge his behaviours in the right manner.
18. On 29 October 2021, the Service and Delivery Manager Michael Stokes complained to Neil Platt that the claimant and his colleague Kevin Purcell had been seen smoking and vaping in a restricted area. Michael Stokes also complained that the claimant had been seen sticking two fingers up in the direction of Mr Stokes. The claimant was subject to an investigation in November 2021 and received a formal verbal warning on 3 December 2021.
19. On 26 May 2022, the Customer Service Team Leader Isobel Jones complained to Michael Stokes that the claimant had spoken to a colleague in such a way that the colleague had become extremely distressed. The claimant was subject to an investigation and subsequently agreed to apologise to the colleague. As a result, no further disciplinary action was taken.
20. On 17 March 2022, Neil Platt challenged the claimant because the claimant had failed to check whether there was any further work required on shift before clocking off.

29 October 2022

21. On Saturday 29 October 2022 the claimant, Kevin Purcell and Robert Hands were on duty at the respondent's site and were rostered to work from 7am until 3pm.
22. On Saturday 15 October 2022, Robert Hands had emailed colleagues on the alternative shift (colleagues who worked the opposite alternate Saturday shift) and asked whether anyone would cover his shift on 29 October 2022. On the same date, Stephen Johnson of the alternative shift told Robert Hands that he would cover the shift for him. However, Robert Hands subsequently decided to work on 29 October 2022.
23. The claimant and Kevin Purcell travelled to work together on that day and arrived to start work at 7.55am. The claimant and Kevin Purcell left the shift at 11.45am. At 12.30pm, Robert Hands left the site.
24. At 1.30pm Neil Platt entered the site and was concerned that the shift had left. Neil Platt called Robert Hands who informed him that he had left the site early as he had babysitter problems. Robert Hands confirmed he had not contacted Andy Griffiths to seek authority for his early departure. Neil Platt spoke with Kevin Purcell who informed him that he had left the shift for a brief period to attend a house viewing. Neil Platt was unable to speak to the claimant before Neil Platt left the site. All three members of the shift returned to the site to complete their shift until 3pm.
25. Neil Platt reported the matter to Janet Sankey. In response Janet Sankey queried who the Operational Support Manager was on that day, and Neil Platt confirmed that he had spoken to that person, Lee Burrage, who informed Neil Platt that he thought that shift only worked mornings as they routinely left at lunchtime.

Disciplinary Investigation

26. On 31 October 2022, Steven Hardcastle the UK SHE and Regulatory Manager was appointed to carry out an investigation as to the whereabouts of the shift on the 29 October 2022, the working practices of that shift, the extent to which management knew about the whereabouts of that shift, the work produced on that shift.
27. Steven Hardcastle spoke with all three members of the shift, Lee Burrage, Andrew Griffiths, Neil Platt and two members of the alternative shift. Steven Hardcastle also considered the shift log.
28. During the investigation, Robert Hands told Steven Hardcastle that, as far as he knew, when he left the site, the other two members of the shift were still on site. Kevin Purcell and the claimant informed Steven Hardcastle that they had left the site at 11.45am.
29. Steven Hardcastle noted that the last log of work was recorded at 10.30am. However, he also noted that the alternative shift stated that when particular tasks were completed, the shift would then ensure that the area was clean

and tidy and carry out preparatory work for the next shift. The alternative shift also confirmed that should they need to leave before the end of the shift, they obtained authority from Andrew Griffiths or Neil Platt. It was the collective view of the alternative shift that there was enough work to do between 7am and 3pm.

30. Robert Hands told Steven Hardcastle that he had to leave at 12.30pm as his brother was unable to care for Robert Hands' children because of a broken car. It was Robert Hand's contention that whilst he had originally arranged to swap his shift to look after his own children, he did not do this when his brother offered to do this for him.
31. Kevin Purcell told Steven Hardcastle that he had received a call at 10am asking if he would facilitate a house viewing. It was Kevin Purcell's position that he had intended to do this during his lunch hour and return to site. Kevin Purcell confirmed that he had started work at 7am.
32. Steven Hardcastle also spoke to the claimant who stated that he had to leave the site with Kevin Purcell because they had travelled to work together, and he needed to collect his car in order to collect his granddaughter from Liverpool later that day. Steven Hardcastle concluded that the claimant inferred that he intended to return to site to finish his shift.
33. Both the claimant and Kevin Purcell stated that they didn't know why they didn't contact either Andy Griffiths or Neil Platt to obtain authority to leave. It was asserted by both that they generally did not leave site early but if they did it had been custom and practice provided all the work had been done. The claimant also confirmed that he started work at 7am.
34. On 2 November 2022, Neil Platt sent an email to Steven Hardcastle in which he highlighted the incident on 17 March 2022 and the need to speak to the claimant about clocking off before checking if all work had been completed.
35. Steven Hardcastle concluded that all three shift members had failed to report their absence from work with their line managers. It was the view of Steven Hardcastle that Robert Hands had mitigation for leaving early but that neither the claimant nor Kevin Purcell were able to offer anything similar.
36. During the investigation Robert Hands was able to provide details of his original email dated 15 October 2022 seeking cover for the shift, together with photographs of his brother's car showing damage which prevented him from assisting with childcare.
37. Steven Hardcastle was also concerned that both Kevin Purcell and the claimant had stated that they started work at 7am when in fact the site record showed that they did not start work until 7.55am. It was also Steven Hardcastle's view that Kevin Purcell and the claimant had left the site early on more than one occasion.
38. Steven Hardcastle submitted his investigation report to Janet Sankey on 9 November 2022.

39. On 13 November 2022, Janet Sankey confirmed that all three members of the shift should be invited to a disciplinary hearing.
40. The claimant received his invite on 18 November 2022 in which he was told he would face the following allegations:-
 - a. "That on 29 October 2022, you arrived late to your shift which was due to start at 7am.
 - b. That when questioned about the above during the investigation, you provided an answer which has since become apparent was untrue;
 - c. On 29 October 2022 you left site at around 11.45am before the end of your shift (3pm) and without informing your line manager, therefore it was an unauthorised absence; and
 - d. That by doing so (above allegation) you are in breach of our "Brothers Keeper Safety Principle – leaving site without checking on the remaining team member and leaving them as a lone worker". "
41. The claimant was also provided with a copy of the disciplinary procedure.
42. Kevin Purcell received a letter containing the same allegations. Robert Hands received a letter containing the allegation that he had left the site before the end of his shift without informing his line manager and thus had an unauthorised absence.

Disciplinary Hearing

43. The claimant attended the disciplinary hearing on 24 November 2022 which was chaired by Janet Sankey who was accompanied by Lisa Hughes from HR. During that meeting, Janet Sankey confirmed the allegations contained within the invite. The claimant was told that the respondent had obtained evidence of his start time from the swipe card system. The claimant was also told that the respondent had obtained a copy of the CCTV footage to confirm the time he left the shift.
44. The claimant explained that he did not realise until two days after the investigation meeting that he had in fact started later than 7am because he had overslept. It was also the claimant's contention that there was a culture of finishing the work on a Saturday and then leaving before the end of the shift. The claimant asserted that no shift worked until 3pm on a Saturday. The claimant asserted that all managers knew there wasn't enough work to keep them occupied throughout the whole shift on a Saturday and that each shift routinely left early.
45. The claimant was asked if he had ever planned on returning to site and admitted that he had no intention of doing so. The claimant revealed that when he received the call from Neil Platt, he realised that he should go back. It was put to the claimant that that implied that he knew he should not have left early. The claimant admitted he knew he should have remained in work. Janet Sankey suggested that if leaving early had been custom and practice,

there needed to be a review of the work practice. Later in the hearing, the claimant stated that it was Kevin Purcell who had overslept.

46. The claimant submitted that Janet Sankey should take into account his record whilst working for the company and his 100% commitment to the company.
47. The claimant was informed at the end of the hearing that the first three allegations were well founded and that he was summarily dismissed without notice. The claimant complained that he had been sacked but Robert Hands had only received a warning. The claimant knew at this stage that Kevin Purcell had resigned prior to the start of his disciplinary hearing.

Claimant's appeal

48. On 2 December 2022 the claimant appealed the dismissal on the grounds that the decision was “unjustified, unfair and discriminatory, he had been singled out, treated differently to others and victimised”. The claimant also complained that “investigation did not take into account my 13 years of positive, loyal service to the company”.
49. On 18 December 2022 the claimant sent a four-page document in which he detailed further grounds of appeal. The claimant reiterated the custom and practice of leaving early on a Saturday and that it had applied across the board to all shifts. The claimant offered an explanation to the allegation that he had lied about his start time, as stress and panic and that timekeeping had never been an issue. The claimant denied a collusion between himself and Kevin Purcell to commit any wrongdoing. The claimant asserted that there was no management oversight on a Saturday, and he had never been challenged about leaving early before. The claimant also set out his previous history with the company and asked that it be taken into account. The claimant complained about the management of Neil Platt and the impact the investigation and dismissal had had on the claimant and his family. The claimant concluded that he considered the investigation and his dismissal to be a witch hunt by Neil Platt.
50. On 20 December 2022, the claimant attended the appeal hearing chaired by Michelle Harrison who was accompanied by Sharon Owen of HR.
51. The claimant had asked if the CCTV footage of the alternative shift leaving site the week before, could be obtained in furtherance of his argument that leaving before the end of the shift was custom and practice. The claimant was told that the respondent could not obtain CCTV footage of the alternative shift because of GDPR regulations. Michelle Harrison offered to progress that query further if the claimant considered it pertinent to do so. The claimant did not request that Michelle Harrison take this course of action.
52. During the hearing the claimant repeated the grounds of appeal and relied upon custom and practice as his explanation for leaving early. The claimant raised the inconsistent treatment of Robert Hands as a further concern. Michelle Harrison refused to discuss Robert Hands case further.

53. There was also a discussion between the claimant and Michelle Harrison about the difference in age between the claimant and Robert Hands.
54. On 4 January 2023, Michelle Harrison sent a letter to the claimant in which she informed him that the appeal had been dismissed.
55. Michelle Harrison dismissed the claimant's appeal on the basis that he was unable to provide specific evidence of any colleague leaving the shift early that the respondent could investigate. Michelle Harrison concluded that leaving early was not custom and practice. Michelle Harrison confirmed that leaving the shift over three hours early was unauthorised absence and amounted to gross misconduct.
56. Michelle Harrison was of the view that there was no inconsistency with the sanction given to Robert Hands because there had been a difference in the two cases and the mitigation offered by each employee. Michelle Harrison was also of the view that the claimant's treatment did not amount to age discrimination as he was not able to provide any evidence of such discrimination.
57. Michelle Harrison concluded the claimant had not been singled out by Neil Platt but rather that a line manager had taken his management responsibilities seriously.
58. Michelle Harrison confirmed that she did consider the claimant's service but noted that there were a number of instances in which he had been subject to disciplinary procedures and received a verbal warning.

Submissions

Respondent's Submissions

59. The respondent submitted that the claimant accepted that he was dismissed for all three allegations. The respondent contended that the claimant had not provided any evidence that the dismissal had been a witch hunt by Neil Platt. The respondent also submitted that the claimant was not asserting that the disciplinary procedure had not been followed.
60. The respondent submitted that it was unable to access the CCTV because it did not own the CCTV and could only access it when it knew of times that employees had left the site. The respondent contended that it was reasonable to speak to members of the alternative shift and rely on their evidence that they did not leave the shift early. The respondent submitted that the claimant only admitted to arriving late because the respondent had presented such evidence.
61. The respondent submitted that the dismissal and appeals manager had a genuine belief the claimant was guilty of misconduct. The respondent also submitted that whilst the claimant's employment history was considered, it was not outside the range of reasonable responses to dismiss.

62. The respondent submitted that the claimant's evidence lacked credibility and contended that there were various examples in which he had given inconsistent evidence.

Claimant's Submissions

63. The claimant maintained that there had been procedural unfairness because he had been subject to an inconsistent sanction, and this amounted to a witch hunt rather than a fair investigation and the claimant was always going to be dismissed.
64. The claimant admitted that he left early and was unable to defend that position, but he contended he should not have been dismissed. The claimant submitted that the CCTV of the alternative shift should have been viewed and he would not have been dismissed. The claimant also contended that pertinent people were not spoken to in order for the respondent to obtain a fuller picture.
65. The claimant submitted that the dismissal and appeal manager failed to go beyond one year of his service and were only able to take negative examples from his service. The claimant disputed the opinion of Neil Platt about the previous incidents and asked the Tribunal to note that he was a punitive manager who lacked in compassion.
66. The claimant concluded that the respondent saw an opportunity to dismiss him and took it and that it amounted to an unfair and prejudiced dismissal.

Discussion and Conclusions

The claimant's dismissal

67. The claimant was summarily dismissed on 24 November 2022 by Janet Sankey following the disciplinary hearing. The reason for the claimant's dismissal was gross misconduct. In evidence, Janet Sankey admitted that the claimant was dismissed for the gross misconduct offence of unauthorised absence. Gross Misconduct is a fair reason for dismissal.
68. During the disciplinary investigation, the claimant admitted that he left work at 11.45am. During the disciplinary hearing, the claimant admitted to Janet Sankey that he had no intention of returning to the site until, he saw the missed calls from Neil Platt. The claimant also admitted that he did not seek authority from Andrew Griffiths or Neil Platt before leaving.
69. During the investigation Steven Hardcastle had obtained CCTV footage that showed the claimant leaving the premises at 11.45am. Following the claimant and his colleague explaining that it was custom and practice to leave the shift early, Steven Hardcastle had spoken to members of the alternative shift to find out if they also had this same custom and practice. It was their evidence that if they were to leave early, they would obtain authority from either Andrew Griffiths or Neil Platt. It was the view of the alternative shift that they had sufficient duties to work between 7 am until 3pm.

70. The respondent's witnesses gave evidence that the CCTV was not owned by the respondent but rather, the landlord of the site at which the respondent was a tenant. The respondent's witnesses confirmed that they could only obtain access to the CCTV if they were able to give the landlord specific times that they wished to view because of GDPR issues. As the claimant and Kevin Purcell had admitted that they left at 11.45am, the respondent was able to view that section of the footage. However, the claimant was unable to give a specific time at which a colleague on an alternative shift would have left to enable the respondent to obtain specific footage from the landlord.
71. The claimant contended that the respondent should have looked at the whole footage from that day. However, the respondent's witnesses were clear that the landlord restricted access to specific times for GDPR reasons. The respondent spoke to the alternative shift at the behest of the claimant but found no evidence of the alleged custom and practice. I have determined that the respondent undertook a reasonable investigation into the allegation of custom and practice and was able to form a genuine belief based on reasonable grounds that by leaving before the end of the shift, the claimant had an unauthorised absence, which amounted to gross misconduct.
72. The claimant told Steven Hardcastle that he started his shift at 7am. At that stage, the claimant did not know that the respondent had obtained evidence about his entry time at the site. The claimant's investigation interview took place on 7 November 2022. The claimant said in evidence that he realised two days after, by 9 November 2022, that he was in fact late because his colleague had slept in.
73. The claimant did not seek to correct his position on his start time prior to the disciplinary hearing on 24 November 2022. Steven Hardcastle had been able to obtain the swipe card evidence to show that the claimant had arrived on shift at 7.55am. This evidence was put to the claimant during the disciplinary hearing, following which he sought to correct his earlier position.
74. The respondent therefore had reasonable grounds to genuinely believe that the claimant was guilty of misconduct of arriving on his shift after the allotted time and subsequently misleading the respondent about his start time. The respondent also had reasonable grounds for genuinely believing that the claimant only admitted his late arrival when faced with the evidence collated by the respondent during the investigation. The respondent was particularly concerned that the claimant had made no effort between the investigation and disciplinary hearing to inform the respondent of his discovery.

Range of reasonable responses

75. The claimant complains that there was inconsistency between the sanction given to the claimant and that given to Robert Hands. Robert Hands received a final written warning for leaving the site without authorisation. I have determined that the claimant's case is not comparable with that of Robert Hands.
76. Robert Hands faced one allegation of leaving the site without authorisation. Importantly, Robert Hands did not face an allegation in which his honesty was

questioned. In addition, during the investigation, Robert Hands was able to provide evidence that prior to the shift, he had sought cover because of childcare difficulties. Robert Hands did not take up this cover after his brother agreed to look after his children and through fear that he would have difficulty in repaying the cover because he was moving to a different shift.

77. Robert Hands had also provided evidence of the damage to his brother's car to prove that he was unable to attend at Robert Hands' home to look after his children. Robert Hands was not accused of dishonesty and had not previously had a dispute with his line manager about finishing work prior to the end of his shift.
78. The claimant had been accused of dishonesty and Janet Sankey and Michelle Harrison had a genuine belief based on reasonable grounds that the claimant had only admitted the late start after he was presented with the evidence. Janet Sankey was also concerned that the claimant had admitted during the disciplinary hearing that he had no intention of returning to site but had inferred during the investigation that he had intended to return to site. In addition, the claimant and Kevin Purcell were the only members of the shift asserting custom and practice. Robert Hands did not rely on that defence but rather admitted the unauthorised absence.
79. Janet Sankey and Michelle Harrison asked HR to provide them with details of the claimant's service in the previous twelve months. In the previous twelve months, the claimant had been subject to a disciplinary investigation from which he received a verbal warning and a second disciplinary investigation from which the claimant agreed to apologise for his behaviour.
80. Janet Sankey acknowledged that the claimant had worked well throughout the pandemic and had even attended work during annual leave to assist the respondent. Janet Sankey gave evidence that she was aware of the claimant's overall service history. However, both Janet Sankey and Michelle Harrison were clear that the positive elements of the claimant's service were cancelled out by the negative elements in the previous twelve months. It was their evidence that they based the decision to dismiss and to uphold the dismissal on the findings of the investigation and the conclusions drawn following the hearings.
81. In evidence, Janet Sankey was clear that the respondent's business involved the use of medication and hazardous products. It was Janet Sankey's position that the respondent had to be sure that those on site could be trusted. Janet Sankey was concerned about not only the alleged dishonesty of the claimant but further dishonesty that she discovered during the disciplinary hearing which meant that the only appropriate sanction for her, was dismissal of the claimant. I have therefore, determined that the claimant's dismissal was within the range of reasonable responses.
82. Robert Hands was not facing dishonesty allegations and did not cause Janet Sankey concern during the disciplinary hearing about whether he in fact was being honest. The respondent needed to be sure that it could trust employees, but Janet Sankey no longer had faith in the claimant.

Appeal

83. Michelle Harrison considered the grounds submitted by the claimant on 18 December 2022. Michelle Harrison specifically spoke with the claimant about his allegations of discrimination, being singled out by Neil Platt, inconsistent sanctions and custom and practice.
84. Michelle Harrison offered to attempt to view the CCTV footage of the alternative shift, but the claimant did not ask Michelle Harrison to progress this matter any further. Michelle Harrison also considered the claimant's service during the last twelve months of his employment and contended in evidence that she was aware of the claimant's overall service history.
85. The procedure followed at the appeal, was as per the ACAS Code of Practice.
86. Michelle Harrison's decision to uphold the dismissal was, given her lack of trust of the claimant, also within the range of reasonable responses.

Procedure

87. The claimant has not identified any particular part of the disciplinary procedure, which was not adhered to, nor whether it did not comply with the ACAS code of practice. The claimant was subject to an investigation meeting, disciplinary hearing and appeal hearing. The claimant was offered the right to be accompanied at both hearings but chose not to do so. The respondent recorded the hearings, provided the claimant with transcripts of the hearings and the outcomes in writing. I have concluded that there were no procedural defects in the disciplinary process.

Employment Judge Ainscough

15 December 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON
21 December 2023

FOR THE TRIBUNAL OFFICE

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