EMPLOYMENT TRIBUNALS

Claimant: **Mr Richard Watt**

Respondent: **Ministry of Defence**

Heard at: **East London Employment Tribunal**

On: **25 and 26 April 2024**

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

Representation

For the Claimant: Ms L Iqbal- Counsel

For the Respondent: Mr T Wilkinson- Counsel

RESERVED JUDGMENT

The claim for unfair dismissal is unfounded and is dismissed.

REASONS

Background and Issues

1. The Claimant was an SO2 Communications Officer employed by the Respondent between 25 November 2019 and 14 July 2023, at which time he was dismissed by reason of gross misconduct.

2. In his Claim Form received by the Tribunal on 12 October 2023, he claimed that he was unfairly dismissed by the Respondent. The Respondent in its Response Form disputed that the Claimant was unfairly dismissed and cited that the dismissal was by reason of gross misconduct and that it was a fair dismissal.

3. The issues for the Tribunal were firstly to determine what the reason for dismissal was and whether it was by reason of conduct as asserted by the Respondent. Thereafter, the Tribunal had to ascertain whether the Respondent acted reasonably in all the circumstances in dismissing the Claimant and in particular: -

(i) Did the Respondent believe that the Claimant had committed the acts of conduct relied on;

(ii) Had the Respondent reasonable grounds for that belief;

(iii) Had the Respondent conducted such investigation as was reasonable in all the circumstances of the case;

(iv) Was dismissal within the range of reasonable responses open to a reasonable employer?

4. The Tribunal had an agreed bundle of documents in front of it made up of 536 pages including the index made up of 7 pages. The Respondent called two witnesses to give evidence. The dismissing officer, Colonel Peter MacMullan and the appeal officer, Mr Andrew Garton. Both of these witnesses prepared written witness statements and were subject to cross examination. The Claimant was represented by counsel and presented a witness statement. He was also subject to cross examination. After the two-day hearing to consider the issue of liability, due to the seriousness of the allegations against the Claimant, I decided to reserve my judgement so that I could give full reasons for it.

Facts

5. The Claimant was employed by the Respondent as an S02 Communications Officer within the Regimental Headquarters Parachute Regiment with effect from 25 November 2019 until 14 July 2023 which was the effective date of dismissal. The Claimant's role was a civilian role involving external communications with the public, including the promotion of the Regiment by producing work such as social media content and campaigns. The Claimant's Permanent Duty Station (i.e. his normal place of work) was the Respondent's Colchester Garrison. Prior to his employment with the Respondent, the Claimant had significant experience working as a Civil Servant.

6. As part of his role as an SO2 Communications Officer, the Claimant travelled extensively within the United Kingdom. The Claimant was entitled to claim expenses for his mileage incurred on the Respondent's business, in accordance with the Respondent's policies and procedures. The Respondent's Business Travel Guide (the "Policy") sets out the Respondent's rules and procedure in this respect.

7. In relation to mileage, the Policy sets out that employees using their private vehicle to undertake business visits will be reimbursed a flat rate allowance per mile. The Policy provides that that rate decreases once claims have been made for 10,000 miles, from 45p to 25p per mile. These rates are in line with HMRC rules for tax purposes. The Policy also provides that an Equipment Supplement of an additional 2p per mile can be claimed where employees transport bulky equipment in the vehicle. Mileage claims could not be made for commuting from home to an employee's normal place of work.

8. Of particular importance, the Policy sets out a 'Home to Duty Liability'. This is the cost incurred in travelling between an employee's home address and their normal place of work. The Policy provides that Home to Duty Liability "*should be deducted from expenses incurred when undertaking business travel to/from the home and a business location*". The Policy gives an example of how this works in practice: if an employee normally travels

10 miles to/from their usual place of work (20 miles), but they instead travel 30 miles to/from a different business location (total 60 miles), their mileage claim should be reduced by 20 miles.

9. The Claimant's home address was in Brackley and, as such, his Home to Duty Liability (to the Colchester Garrison) was approximately 240 miles. This was the case even if the Claimant chose not to travel back to his home address between work commitments or was temporarily lodging elsewhere. The Claimant should therefore have deducted 240 miles from each of his claims for mileage, save where he travelled between business locations. If the Claimant's round journey was shorter than 240 miles then the operation of the Policy meant that no mileage could be claimed, as in this case the Claimant would had travelled less than he otherwise would have done if he had attended his usual place of work.

10. The Policy provides that employees "*are required to demonstrate the highest standards of financial propriety…commensurate with being a Crown Servant*" and "*You will be deemed accountable for the veracity and probity of your claims…If fraudulent activity is identified you may face dismissal, civil recovery actions or criminal proceedings*". Although the Policy sets out that employees who are unsure about what claims they may make should seek guidance from their managers, the responsibility for accurate claims ultimately lies with the employee.

11. The Civil Service Code, which applied to the Claimant during his employment with the Respondent, requires Civil Servants to "*carry out your fiduciary obligations responsibly (that is make sure public money and other resources are used properly and efficiently*)" and "*always act in a way that is professional and that deserves and retains the confidence of all those with whom you have dealings*".

12. At paragraph 12 of the Respondent's disciplinary Policy, Gross misconduct is defined as *'repeated serious offences or conduct serious enough to do irreparable damage to the working relationship between the employee and employer. The likely sanction is dismissal. Examples of gross misconduct may include: • theft, corruption or fraud….'*

13. On 14 November 2022, the Claimant sent an email to the Respondent stating that he had reached 10,000 business miles and asking to be granted a "*business exemption*" to the reduction in the rate he was now paid for his mileage expenses. The Claimant attached a copy of the Policy to his email.

14. As the Claimant's mileage was very high, an audit of his expenses was carried out by his manager. This audit revealed that a significant number of the Claimant's mileage claims had not been made in accordance with the Policy. The amount of the Claimant's excess mileage was calculated, albeit the Claimant was not deemed to have claimed excess mileage where a claim had been made outside of the Policy but was nevertheless less expensive than a correct claim (for example, where the Claimant had incorrectly claimed from his home to a job, but the mileage from Colchester to the job would have been higher). The audit concluded that the Claimant had overclaimed mileage amounting to £716.95.

15. In around February 2023, and in line with the Respondent's disciplinary procedure, an investigation was commissioned into the claims made by the Claimant for travel expenses. The allegation to be investigated was whether the Claimant had submitted travel and subsistence claims during the financial year 2022/2023 in breach of the Respondent's policies, rules and guidance.

16. The Claimant was sent a letter on 7 February 2023 notifying him of the investigation and informing him of the allegation. The investigation was carried out by an independent colleague. During the investigation, the Claimant's expenses claims were audited again, and the Claimant was asked to provide further evidence. The Claimant submitted his own evidence and a statement as part of the investigation, which were duly considered.

17. The key findings of the investigation were that: a. The Claimant had consistently failed to deduct Home to Duty liability without the agreement of his line manager. b. 60% of all claims submitted by the Claimant during the financial year 2022/2023 were for excessive mileage. The investigation concluded that there was a disciplinary case to answer by the Claimant.

18. The Claimant was subsequently invited to a disciplinary hearing, which took place on 5 July 2023. The meeting was chaired by Colonel Peter MacMullan a senior officer who had not been involved in the investigation, and the Claimant was accompanied by a colleague. It was asserted at the Tribunal hearing that Colonel MacMullan was not an independent person as he had previous involvement in the matter and therefore, he was biased. I find that although he was initially copied into emails relating to the Claimant's disciplinary investigation, he was not involved in the investigation process until he was charged with dealing with the disciplinary hearing. As a result, I find that he was independent and not biased. At the hearing, the Claimant asserted that he was at the time of this disciplinary investigation subject to a work review process that was the real reason for the initiation of this investigation and or the real reason for his dismissal. However, the Claimant did not produce any evidence to support this contention. Colonel MacMullan denied that the decisions he took in respect of the disciplinary action that he was charged with were not impacted in any way with extraneous matters such as any work review action that had been taken against the Claimant. I accepted his evidence.

19. The disciplinary hearing took place on 5 July. At the hearing, the Claimant confirmed early in the meeting, '*when doing a long journey to Brechin, Catterick or Plymouth, I do not claim for the whole journey. I always pay for the mileage from home to duty.* ' He claimed that his home address was registered in Brackley and confirmed that, *'I don't book any mileage or claims that go to Brackley'*. Despite being aware that he could not claim travel expenses for his home to duty, he admitted that on some of his claims, he did not deduct the home to duty charge from his travel expenses and offered to pay the overpaid expenses back. He confirmed that he was willing to repay approximately £700. After initially admitting that he never claimed home to travel expense allowance and offering to pay the overpaid amount back, the Claimant concluded towards the end of the disciplinary meeting that he was not aware that he had to work out the home to duty liability and deduct it and that he had never come across the home to duty policy before and that he was unaware of it.

20. The Claimant at the Tribunal hearing when cross examined initially confirmed that he was aware of the home to duty liability and that had he had not made travel expenses that included this element of his travel mileage expense claim. However later in cross examination, he changed his position when confronted with examples of occasions where he had claimed travel expenses from home to duty stating that he was unaware of the Policy. I noted that he took a similar stance in the disciplinary hearing as he did at the Tribunal hearing claiming initially to be aware of the Policy and then subsequently to be unaware of the Policy. Like Colonel MacMullan at the disciplinary hearing, I did not accept his evidence that he was unaware of the home to duty policy. He gave contradictory evidence to Colonel McMullen at the disciplinary hearing and did the same thing at the Tribunal hearing in front of me.

21. I also noted at the Tribunal hearing that the Claimant was an individual that was keenly aware of policy and procedure as he was able to quote other policies and procedures during his evidence before me. However, when it came to the home to duty policy, he feigned complete ignorance. I did not accept his evidence and find that he was aware of the Policy at the time he was making his expense claims and was aware that he had to deduct any mileage from home to duty under the Policy so that he did not over claim his travel expenses. Indeed, this was a logical conclusion to draw from the fact that he offered to repay travel expenses that included mileage from his home to duty in the sum of £700. I also noted at the disciplinary hearing that the Claimant admitted to negligently making incorrect claims for mileage that included the home to duty mileage. The Claimant did not challenge the travel expense claims at the disciplinary hearing or at the Tribunal hearing.

22. Colonel MacMullan considered the points raised by the Claimant but did not consider them to be sufficient mitigation. He did not believe that the Claimant was unaware of the provisions of the Policy relating to Home to Duty Liability. He found that the Claimant was aware of the Policy itself and had been familiar enough with it to know that his mileage rate reduced when he reached 10,000 miles, as he requested that he be treated as an exception (and at which point he himself provided the Respondent with a copy of the Policy). The Claimant had similarly been familiar enough with the Policy to claim the Equipment Supplement of 2p per mile. As a consequence of this and the fact that the Claimant confirmed at the beginning of the disciplinary hearing that he did not include his home to duty mileage in his mileage expense claims, Colonel MacMullan concluded that the Claimant was aware of the Policy and had dishonestly made the mileage expense claims in any event.

23. Colonel MacMullan considered the length of the Claimant's service when considering an appropriate sanction, but again concluded that this was not sufficient mitigation. In particular, considering the fact that the Claimant had worked within the Civil Service for around 17 years and had been a Higher Executive Officer for around four years, he concluded that it was reasonable to expect the Claimant to understand the Policy and that it was the Claimant's responsibility to ensure his compliance with it.

24. Having considered all the evidence available to him, Colonel MacMullan concluded that the Claimant was guilty of consistently failing to deduct Home to Duty Liability and that 60% of his claims in the financial year were excessive. He determined that such behaviour was fraudulent and intentional. The Respondent's disciplinary policy provides that fraud was categorised as gross misconduct, for which the sanction may be dismissal.

25. The Claimant had offered to reimburse the excessive mileage claims; however Colonel MacMullan did not consider that this should reduce the sanction applied to him. Colonel MacMullan concluded that the offer did not change the fact that the Claimant had made a significant amount of incorrect and excessive claims, and it was made after those claims had been discovered by the Respondent. Colonel MacMullan considered that he had lost all trust and confidence in the Claimant. This was particularly considering the obligations placed upon the Claimant by the Civil Service Code and the fact that his excessive mileage claims were funded from the public purse. The Claimant at the Tribunal hearing confirmed that he was aware of the integrity provisions of this Code. Colonel MacMullan determined that the appropriate sanction was his summary dismissal for gross misconduct.

26. The Claimant's dismissal was confirmed in writing on 10 July 2023. The Claimant's final day of employment was 14 July 2023. The Claimant was given the right to appeal the decision to dismiss him.

27. The Claimant did appeal the decision to dismiss him. The appeal was made in writing by letter dated 25 July 2023. In the letter of appeal, the Claimant stated that he was unaware of the Home to Duty Liability and that he had not intended to defraud the public purse. He asserted that the penalty was not proportionate in the circumstances. Andrew Garton an officer of the Respondent who was not previously involved in the process was appointed as the appeal officer. The appeal hearing took place on 21 August and the Claimant was accompanied by Mr AS a Trade Union Representative. Mr Garton explained at the outset of the hearing what his role was and that he would not be rehearing the matter afresh. Rather he would assess whether it had been reasonable to dismissal the Claimant on the evidence provided to the Claimant at the time of the dismissal. Mr Garton prior to the appeal had read all the documents relevant to the Claimant's appeal which were the investigation report and appendices, the disciplinary hearing notes, and the disciplinary outcome letter.

28. The Claimant had alleged throughout the appeal process that he had been unaware of the requirement to deduct Home to Duty Liability ('HTDL') from his mileage claims. In Mr Garton's view there was no compelling evidence that the Claimant was not aware of the provisions of the Policy, which set out the requirement to deduct HTDL. It was Mr Garton's view that the Claimant was aware of the Policy as he was aware of other policies from the guidance. For example, he had claimed 2p per mile for carrying equipment; this provision was tucked away in the Policy whilst the requirement to deduct HTDL was front and foremost. The Policy was, in Mr Garton's eyes, straightforward and not complicated to understand. In Mr Garton's mind, the Claimant had been a civil servant for the last 17 years made so it was frankly unbelievable to him that he was not aware of the requirement to deduct HTDL. He had also read the notes of the disciplinary hearing in which the Claimant had confirmed that he had not booked mileage claims that '*go back to Brackley'*. This statement and others in the disciplinary meeting confirmed that he was aware of HTDL. As such, after considering all the evidence presented by the Claimant at the appeal hearing, Mr Garton considered the Claimant's incorrect mileage claims to be fraudulent and intentional.

29. When coming to his decision, he had regard to the Respondent's disciplinary policy. The disciplinary policy states that fraud was classed as gross misconduct, for which the Respondent may summarily dismiss the individual involved. Mr Garton believed that the Claimant had knowingly made the mileage claims without making the home to

duty deduction that he was required to make with the intention to defraud his employer. He also had regard to the Respondent's disciplinary policy, which states that "*Defence has a policy of zero tolerance to fraud" and "a. in Defence anyone found guilty of fraud and corruption offences should expect to be dismissed from service*.

30. Having carefully considered the information available to him, Mr Garton concluded that the Claimant's dismissal had been reasonable, the proper investigation and disciplinary procedures had been followed, and that his appeal should therefore not be upheld. He wrote to the Claimant on 25 August 2023 to confirm that his appeal was not being upheld.

Law

31. Section 98(1) ERA provides that it is for the employer to show the reason or principal reason for dismissal of the employee and 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. If the Respondent fails to do so the dismissal will be unfair.

32. If the Tribunal decides that the reason for dismissal of the employee is a reason falling within Section 98(1) or (2) ERA it will consider whether the dismissal was fair or unfair within the meaning of Section 98(4) ERA. The burden of proof in considering Section 98(4) is neutral.

33. Section 98(4) ERA provides:-

> "the determination of the question whether the dismissal is fair or unfair (having regards 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."

34. In the case of **Iceland Frozen Foods Ltd v Jones [1982] IRLR 439 EAT**, guidance was given that the function of the Employment Tribunal was to decide whether in the particular circumstances the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair. If the dismissal falls outside the band, it is unfair.

35. In the case of **Sainsburys Supermarket Ltd v Hitt [2003] IRLR 23CA**, guidance was given that the band of reasonable responses applies to both the procedures adopted by the employer and the sanction, or penalty of the dismissal.

36. The Tribunal should not substitute its own factual findings about events giving rise to the dismissal for those of the dismissing officer (**London Ambulance NHS Trust v Small [2009] IRLR 563**).

37. In the case of **British Home Stores v Burchell [1978] IRLR 379 EAT**, guidance was given that, in a case where an employee is dismissed because the employer suspects or believed that he has committed an act of misconduct, in determining whether the dismissal was unfair, an Employment Tribunal has to decide whether the employer who discharged the employee on the grounds of misconduct in question and obtained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at the time. This involved three elements. First, there must be established by the employer the fact of that belief, that the employer did believe it. Second, it must be shown that the employer had in its mind reasonable grounds upon which to sustain that belief. Third, the employer at the stage on which he formed that belief on those ground, must have carried out as much investigation into the matter as was reasonable in all of the circumstances of the case.

The Tribunal's Conclusions

38. In the first instance, I have to find what the reason for dismissal was in this case. It is for the Respondent to show that the reason for the dismissal was one of the potentially fair reasons set out in section 98(2) of the ERA. After considering all of the evidence presented in this case, I find that the reason for dismissal was misconduct which is one of the permissible reasons under the above provision.

39. The Respondent's Policy states that *"The Home to Duty Liability (HDTL) is the travel cost incurred getting to/from your normal place of work. This should be deducted from expenses incurred when undertaking business travel to/from the home and a business location. This deduction does not apply to travel between business locations."* The Policy also provides, *"As a claimant you are required to demonstrate the highest standards of financial propriety"* and *"You will be deemed accountable for the veracity and probity of your claims." 'Fraud'* is defined by in the Respondent's Policy as *'false representation'* and the policy goes onto say that fraud constitutes gross misconduct, and that dismissal may be applied in cases of gross misconduct. The Policy provides that *"anyone found guilty of fraud and corruption offences should expect to be dismissed from service."*

40. In his appeal against dismissal to Mr Garton, the Claimant alleged that the decision to dismiss him was pre-determined and that prior poor performance '*factored into the decision'*. However, he did not produce any evidence at the Tribunal that this was the case apart from making a mere assertion that poor performance factored into the decision. When Colonel MacMullan was asked whether poor performance issues played a part in his decision-making process, he denied that it did and stated that it would not have been fair to the Claimant for him to take account of any extraneous factors and that he did not do so. In any event, I find that as no evidence was presented to the Tribunal to support the Claimant's contention that the reason for dismissal was poor work performance. The Respondent adduced overwhelming evidence that the reason for dismissal was misconduct.

41. As I have found that the reason for dismissal was misconduct, I have to ask myself whether, having regard to the circumstances (including the size and administrative resources of the employer's undertaking), the Respondent acted reasonably in dismissing for the reason alleged (section 98(4) of the ERA). I note that this is a neutral burden. The case law guidance requires the Respondent to have a genuine belief that the Claimant

was guilty of misconduct based upon reasonable grounds following a reasonable investigation (whether the level of investigation fell within the band of reasonable responses). I am satisfied in this case that the Respondent did have a genuine belief that the Claimant was guilty of serious misconduct and that this was based on reasonable grounds following a reasonable investigation.

42. As to whether the Respondent had a genuine belief based on reasonable grounds, the starting point for the Respondent was the audit of claims April – November 2022 ("the Audit"). That set out a total overclaim of £716.95. The Claimant did not dispute the accuracy of the Audit. In his grounds of appeal, he confirmed that it was correct. During the disciplinary process at both the disciplinary hearing before Colonel MacMullan and at his appeal hearing before Mr Garton, he alleged that he did not know about the HTDL. Both the disciplinary officer and the appeal officer did not accept that he did not know about the policy. As I have found in the facts section of this judgment, they were right to come to this conclusion based on the evidence that they considered at the time.

43. At the disciplinary hearing, the Claimant confirmed early in the meeting in respect of answers to Colonel MacMullan's questions that that he was aware of the HTDL as he, '*always pay for the mileage from home to duty'* and, '*I don't book any mileage or claims that go to Brackley'*. Given these answers, it was reasonable for the dismissing officer and the appeal officer to conclude that he was aware of the HTDL in the Policy. Despite being aware that he could not claim travel expenses from his home to duty, he admitted that on some of his claims, he did not deduct the home to duty charge from his travel expenses and offered to pay the overpaid expenses back. After initially admitting that he never claimed home to duty expenses and offering to pay the overpaid amount back, the Claimant stated towards the end of the disciplinary meeting that he was not aware that he had to work out the home to duty liability and deduct it, that he had never come across the home to duty policy before and that he was unaware of it. The Claimant took a similar position at the Tribunal hearing. When cross examined initially, he confirmed that he was aware of the home to duty liability and that had he had not made travel expenses that included this element of his travel mileage expense claim. However later in cross examination, he changed his position when confronted with examples of occasions where he had claimed travel expenses from home to duty stating that he was unaware of the Policy. I did not accept the Claimant's evidence that he was unaware of the home to duty policy. He gave contradictory evidence to Colonel McMullen at the disciplinary hearing and did the same thing at the Tribunal hearing in front of me. I find that it was reasonable for both the dismissing officer and the appeal officer to note the contradictions in the Claimant's answers and conclude that he was aware of the Policy and still decided to flout such policy by making false mileage expenses claims.

44. The Claimant submitted that the Respondent did not find that he had any intention to defraud the Respondent. However, on the evidence in front of the Respondent I find that it was permissible for both the dismissing officer and then the appeal officer to conclude on the basis of the investigation and the Claimant's own contradictory answers during the disciplinary meeting that not only was he aware of the HTDL policy he deliberately made a number of mileage expenses without making the HTDL knowing that they were false. This conclusion was open to both officers to make on the evidence contained in the disciplinary investigation and the Claimant's answers at the disciplinary hearing.

45. I also noted at the Tribunal hearing that the Claimant was an individual that was keenly aware of policy and procedure as he was able to quote other policies and procedures during his evidence before me. However, when it came to the home to duty policy, he stated that he was ignorant of it. I did not accept his evidence and find that he was aware of the Policy at the time he was making his expense claims and was aware that he had to deduct any mileage from home to duty under the Policy so that he did not over claim his travel expenses.

46. I also find that other matters arose from the investigation that enabled the dismissing officer to reasonably conclude that the Claimant was aware of the HTDL. These included, 1. the fact that the Claimant had a copy of, or at least access to, the Travel Guide; 2. In submitting an expenses claim, it was his responsibility to ensure that it was accurate; 3. Despite an alleged lack of knowledge about the HDTL, at no point did the Claimant either read the policy to check the rules on travel expenses, or seek advice from a colleague; 4. That is despite sending an email enquiry about expenses on 14 November 2022, when the Claimant considered the position financially detrimental to himself.

47. As to whether the investigation was reasonable, I find that it was. The extent of the investigation inevitably reflected the fact that the Claimant did not dispute the calculations set out in the Audit. He did not dispute that the money was owed – offering, indeed, to repay it. There was no further investigation required into the contents of the Audit. As to whether the Claimant was aware of the HDTL, I have made findings on this above. Briefly, the Claimant confirmed in his answers to questions asked by Colonel MacMullan at the outset of the disciplinary hearing that he indeed was aware of the policy as he had not made mileage expenses that included HTDL. The Claimant stated at the hearing that the Respondent should have interviewed his line manager, AJ as part of the investigation. He relied upon an email dated 8 December 2022, in which AJ suggested that the Claimant had little understanding of the HDTL and that he had acted in ignorance. However, I find that it was not AJ's decision as to what the Claimant's intention had been in making the false claims for mileage expenses. This was a matter for the disciplinary officer after considering all of the evidence including the answers given during the disciplinary hearing by the Claimant. I do not find that the Respondent acted unreasonably in its investigation in not interviewing AJ. Colonel MacMullan had the email of AJ as part of the investigation and did indeed consider what AJ had to say in the overall balancing exercise that he applied.

48. In relation to the decision to dismiss for gross misconduct, I find that the Respondent is a publicly funded entity. Its values are clearly set out, including the requirement for integrity which the Claimant confirmed during the Tribunal hearing he was aware of. I find that knowingly submitting false claims is self-evidently a dismissible offence under the Respondent's disciplinary procedure as I have quoted above. The disciplinary officer considered proposed mitigating factors, but the decision to dismiss for knowingly submitting false mileage expenses without deducting HTDL was within the band of reasonable responses open to this Respondent.

49. In respect of the procedure that was followed to dismiss the Claimant, I find that the Respondent followed a fair procedure according to its own disciplinary procedure. There was an investigation, a disciplinary hearing and an appeal hearing. The Claimant was provided with all the relevant papers before each hearing. The Claimant exercised his entitlement to be accompanied at the disciplinary and appeal hearings and was given ample warning of each hearing. Both the disciplinary officer and appeal officer considered

the Claimants evidence and submissions and came to permissible conclusions that were open them. I find no procedural irregularity in the procedure followed by the Respondent based on the case law guidance. I also find that both the dismissing and appeal officers were independent and unbiased.

50. I am conscious that I could not substitute my own views but nonetheless, I am in agreement that dismissal for gross misconduct was within a band of reasonable penalties open to a reasonable employer in respect of the allegations of the Claimant's dismissal for '*committing misconduct involving fraud or dishonesty'* by claiming an excess number of miles in his travel expenses, including a failure to deduct HTDL. As a consequence, the Claimant's claim for unfair dismissal is dismissed.

Public Access to Employment Tribunal Decisions

51. All judgments and reasons for the judgments are published, in full, online at *www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Employment Judge M Hallen
Date: 2 May 2024