



IN THE EMPLOYMENT TRIBUNAL (SCOTLAND)

5

**Judgment of the Employment Tribunal in Case No: 4105574/2023 Heard at
Edinburgh on the 24th June 2024**

10

Employment Judge J G d'Inverno

15

Mr C Mcdonald

**Claimant
In Person
Accompanied by
Ms A Wells (life
partner)**

20

Ross's of Edinburgh Ltd (SC502057)

**Respondent
Represented by:
Mr J Anderson
(Director)**

25

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30

The Judgment of the Employment Tribunal is:-

(First) That the claimant's complaint of Unfair Dismissal fails and is dismissed.

35

(Second) That the claimant's claim for one week's notice pay is dismissed.

(Third) That the claimant's claim for compensation in respect of accrued but untaken paid annual leave entitlement is dismissed following its withdrawal by the claimant at the outset of the Hearing.

5

10

Employment Judge:	d'Inverno
Date of Judgment:	31 July 2024
Entered in register:	31 July 2024
and copied to parties	31/07/2024

15

I confirm that this is my Judgment in the case of Mcdonald v Ross's of Edinburgh Ltd and that I have signed the Judgment by electronic signature.

20

REASONS

25 1. In this case the claimant gave notice of:-

(a) A complaint of Unfair Dismissal in terms of section 98(4) of the Employment Rights Act 1996

30

(b) A claim for one week's net notice pay, let it be assumed that his summary dismissal at the hands of the respondent was found by the Tribunal to be unfair

35

(c) A claim for compensation in respect of asserted accrued, but as at the Effective Date of Termination of Employment, 29th of September 2023 said to be outstanding, paid annual leave entitlement.

2. The respondents had entered appearance resisting the claims asserting:-

5 (a) That they had dismissed the claimant summarily (without entitlement to notice) for gross misconduct which is a potentially fair reason, and that the dismissal fell to be regarded as both procedurally and substantively fair in terms of section 98(4) of the Employment Rights Act 1996 ("ERA").

10 (b) That the claimant having been summarily dismissed for gross misconduct had no entitlement to notice pay.

15 (c) That the claimant had, as at the Effective Date of Termination of his Employment, taken his full proportionate entitlement of 21 days paid annual leave and accordingly, that no such entitlement remained outstanding upon termination of his employment and no sums were due to him in compensation therefore.

20 3. In the course of Case Management Discussion conducted at the outset, and confirmed by parties in the course, of the Hearing, the following matters were agreed as binding upon the Tribunal for the purposes of the Hearing:-

25 (a) That the claimant's dates of employment were from 10th of January 2020 until 29th of September 2023, on which latter date he was summarily dismissed by the respondent (i.e. without notice) for the asserted reason of gross misconduct (conduct).

30 (b) The respondent's admitted dismissal of the claimant, effective as at 29th of September 2023, was for reason of conduct, which is a potentially fair reason.

(c) The claimant was contracted to work a 37.5 hour week.

- (d) In the 12 week period prior to his dismissal, the claimant's average gross weekly earnings were £264.49 and his net weekly earnings were £243.37.
- 5 (e) The Effective Date of Termination of the claimant's employment was the 29th of September 2023.
- (f) The claimant's holiday year ran from the 1st of January to the 31st of December.
- 10 (g) The claimant enjoyed a full annual entitlement to 28 days paid annual leave.
- (h) As at the Effective Date of Termination of his Employment, the claimant had accrued a proportionate entitlement, in the then current holiday year, to 21 days paid annual leave.
- 15 (i) As at the Effective Date of Termination the claimant had taken his whole 21 days accrued proportionate leave entitlement.
- 20 (j) That no sums were due and resting owing to the claimant by the respondent in the name of holiday pay, on termination of his employment and, that the claim for outstanding holiday pay was withdrawn by the claimant and fell to be dismissed.
- 25 (k) The claimant was a member of the respondent's Pension Scheme in respect of which he enjoyed a 5% of earnings employer's contribution.
- 30 (l) In respect of his complaint of Unfair Dismissal, let it be assumed the same were to be successful, the claimant did not seek any remedy of financial award, whether by way of basic or compensatory award, in these proceedings. He advised the Tribunal that that position was one based upon legal advice

which he had obtained in relation to a separate cause of action for damages for personal injury which he proposed to take forward in another court. Rather, the outcome which he sought from the proceedings before the Employment Tribunal was that

5 “the respondent’s factory become a safe place to work”.

- (m) In the event that the Tribunal were to find the dismissal to be unfair, the claimant would be entitled to receive one week’s net pay in lieu of notice.

10

The Issues

4. Parties were agreed and the Tribunal records, that the issues requiring investigation and determination at Hearing were;

15

(First) Whether, the respondent’s admitted summary dismissal of the claimant effective as at 29th September 2023 for the accepted reason of conduct (gross misconduct) falls to be regarded as fair or unfair in terms of section 98(4) of the Employment Rights Act 1996.

20

(Second) Let it be assumed the dismissal is found to be unfair did the claimant from the 14th of February 2024 being the date upon which he was medically certified as fit to return to work, take reasonable steps to mitigate his loss.

25

Sources of Documentary and Oral Evidence

5. Each party lodged a bundle of documents, for the claimant extending to 8 pages, C-1 to C-8, to which was added an additional page C-9 itemising the benefits in respect of which the claimant had been in receipt (jointly with his
- 30 life partner Ms Wells) in the period 1st October 23 to 31st January 2024; and for the respondent, extending to 59 pages, R-1 to R-59; and to some of both which the Tribunal was referred to by parties in the course of evidence and or submission.

6. The claimant gave evidence on his own behalf, on affirmation, answering in addition questions put to him in cross examination and questions put by the Tribunal.

5

7. For the respondent the Tribunal heard from Mr Anderson, its Director and representative, who gave evidence on oath and answered questions put in cross examination and by the Tribunal.

10 **Additional Oral Evidence**

8. Evidential enquiry having concluded at the end of the first day's Hearing with parties reconvening on the second day to make submissions, the claimant, through his assisting life partner Ms Wells, advised the Tribunal that there were two questions to which, he had responded in the course of giving his evidence, on the previous day, by saying that he "*did not know why*" but, following a discussion with Ms Wells overnight, he believed he was now in a position to answer. He explained that his previous inability to answer was as a result of feeling anxious. He asked that he be allowed to return to the witness stand and be given a further opportunity to answer the questions. The respondent's representative objected to that application on the grounds that it would appear that the claimant's ability to answer, and therefore impliedly the content of any answers given by him, had been prompted by a discussion with Ms Wells and that it was inappropriate, in those circumstances, that he be allowed a second opportunity to give evidence.

15

20

25

9. Having given consideration to both parties positions, the Tribunal concluded, on balance, that it would be in the interests of justice to allow the claimant to provide answers to the two particular questions, these being:-

30

10. The two questions were:-

- 5 (a) Firstly, why he had not taken any steps, beyond securing some part time employment in January to find/look for and secure further other employment with a view to mitigating his loss; and,
- (b) Secondly, why he had not appealed against the decision to dismiss him.

10 11. In so allowing the claimant to give further evidence, the Tribunal advised parties that the respondent's representative would have the opportunity to put further questions in cross examination to the claimant arising from the answers which he might now make to the questions and further, in light of the mechanism by which he now found himself able to answer the questions, that
15 is to say through discussion with his life partner Ms Wells, the weight to be attached to any such answers was likely, in the consideration of the Tribunal, to be less than had the answers been provided directly by the claimant at first instance in the course of his giving evidence on the first day.

20 12. The affirmation was administered of new to the claimant who returned to the witness table and provided answers to the two questions in turn. The respondent's representative did not exercise his right of further cross examination.

25 **Findings in Fact**

13. On the documentary and oral evidence presented the Tribunal, in addition to the matters which it has recorded as agreed between the parties, made the following essential Findings in Fact, restricted to those relevant and
30 necessary to the determination of the issues.

14. The respondent carries on the business of manufacture of "sweets" which includes the boiling of sugar for use in the manufacture process and the

generation of “product” which is shaped and divided into various sweets, through the use of machinery.

- 5 15. The respondents are a small business in which the principal shareholder and Director, the respondent’s representative, works alongside other employees, including the claimant, in the manufacturing process.
- 10 16. The claimant, along with his father, was one of two employees trained to operate the machinery upon which the claimant sustained an injury to one of his hands on the 28th of August 2023.
- 15 17. Following the incident the claimant was interviewed at the scene by the respondent’s Director and representative during which he was asked to give his account of what had happened, which he did and which was duly noted by the respondent’s Director.
- 20 18. The claimant thereafter left the workplace to attend hospital, and remained absent from it. He was absent on sick leave until the date of his dismissal, 29th September 2023.
- 25 19. During his sick leave the claimant continued to be paid.
- 30 20. The incident, of 28 August 2023, was captured on CCTV footage which footage the respondent’s Director, James Anderson, viewed with his fellow Director and with the claimant’s Line Manager. All three concluded, contrary to the claimant’s oral account of events given to Mr Anderson at the time, the CCTV footage showed the claimant putting his hand below the safety guard into proximity with the moving parts of the machinery while, with his other hand, switching the machine on and thus sustaining injury.
21. The respondent’s Director, Mr Anderson, concluded that in so disregarding health and safety requirements, the claimant had conducted himself in a manner which constituted gross misconduct.

22. Mr Anderson considered that the conduct fell within the definitions of gross misconduct set out in the respondent's Staff Handbook (R-30 of the respondent's bundle) which is referred to in the claimant's written Particulars of Employment.
- 5
23. The claimant had been summarily dismissed by the respondent for gross misconduct, occurring during the currency of a final written warning, on the 24th of February 2023. The conduct on that occasion was swearing at a Director of the respondent and at members of staff.
- 10
24. Following a post dismissal apology, the claimant, had been, at his request, re-employed in early March of 2023.
25. On the 6th of July 2023 the claimant had engaged in an altercation with the respondent's Director during which he indulged in threatening behaviour and swearing and at the conclusion of which he resigned, walking out and leaving the premises.
- 15
26. On the Monday following the incident of 6th July the claimant returned to work and again asked to be reinstated which, in consideration of his positive qualities, the respondent's Director had agreed to.
- 20
27. On the 15th of August 2023, the claimant received a verbal warning for threatening and abusive behaviour towards his Supervisor. A copy of the claimant's disciplinary record is produced at pages 34 and 35 of the respondent's bundle.
- 25
28. Although on each occasion being advised of his right to appeal against the disciplinary finding and sanction imposed, the claimant did not appeal against the disposals on any occasion.
- 30
29. The claimant's training records, countersigned by him and itemising the training courses which he had received and successfully completed, are produced at pages R-37 to R-41 of the respondent's bundle.

5 30. The claimant had been specifically trained in the operation of the machine, on which he sustained the injury, by his father, in circumstances where the respondent's Director was present for and witnessed the majority of that training.

10 31. The claimant had operated the machine safely and without injury since shortly after the commencement of his employment and, on the completion of his training. He knew how to operate the machine successfully.

15 32. In the above context, and standing the claimant's disciplinary record, the respondent's Director concluded that he could have no confidence in relying upon the claimant not to disregard operating safety procedures going forward and thus, in his avoiding being a danger to himself and to fellow workers in the workplace.

20 33. On each of the previous occasions in which the claimant had undertaken to amend and improve his conduct he had, after a period of time, relapsed into further instances of misconduct.

25 34. The respondent's Director held the reasonable belief that the claimant was guilty of gross misconduct. That belief was based both upon the CCTV footage and the claimant's own account, given first hand to the respondent's Director, that the claimant had knowingly placed his hand into such proximity with the moving machinery such as to sustain injury. The respondent's Director held a genuine belief that the claimant could not be relied upon, were he to be retained in employment, to adhere to instructions to boil sugar in accordance with and to the temperature specified in the recipes, in circumstances in which he personally considered that the recipes were
30 wrong, nor to adhere to health and safety provisions such as to avoid being a danger to himself and to colleagues in the workplace.

35. In the circumstances the respondent had reasonable grounds for holding such belief.

36. The respondent concluded, in the circumstances including on a consideration of, the claimant's disciplinary record, the positive qualities which he brought to the performance of his duties, and the key role which in the person in the position held by the claimant required to undertake in a small business, that the sanction of dismissal in light of the claimant's gross misconduct, was the appropriate sanction.
37. In so concluding, the respondent had conducted inquiry into the incident which involved speaking with the claimant on the day of the incident and obtaining from him his account of what had occurred, and, along with his fellow Director and the claimant's Line Manager subsequently viewing the CCTV footage of the incident which, on their observation, showed the claimant putting his hand below the safety guard into proximity with moving parts of the machine while simultaneously turning the machine on, in circumstances which could not be explained as accidental.
38. In concluding as the respondent did, the respondent's Director had formed the belief that the claimant was guilty of gross misconduct on the grounds of consciously placing his hand into proximity with the moving parts of the machinery and simultaneously switching the machine on. He had carried out as much investigation into the matter as was reasonable in all of the circumstances of the case. While another employer might have decided not to dismiss the claimant, the respondent's decision to dismiss him was one which, in the circumstances, fell within the band of reasonable responses available to an employer.
39. Having reached the decision to dismiss the claimant, the respondent wrote to the claimant by letter dated 29th September 2023 advising the claimant that his employment had been terminated on the grounds of serious misconduct and concluding in the context of the claimant's previous disciplinary record that by his conduct the claimant put himself and others at risk of injury, and that his dismissal was effective as at that date, 29th September 2023. The letter concluded by advising the claimant that he had a right to appeal the

decision to dismiss him and that should he wish to appeal he should make contact with the respondent's office within the next 14 days ("that is, by 13th of October) 2023". The claimant although aware of his right to appeal consciously decided not to appeal and to accept the decision.

5

40. Had the claimant exercised his right to appeal, an Appeal Hearing would have been arranged at a time and in a location which would facilitate the claimant's attendance and participation. At the Appeal Hearing the claimant would have been afforded the opportunity of viewing the CCTV footage and commenting upon what it showed should he choose to do so, including the opportunity to say anything further which he wished to say either about the incident itself or in relation to his previous disciplinary record and the positive elements of his employment.

10

41. Although the respondent did not hold a formal disciplinary hearing before taking the decision to dismiss the claimant, in circumstances where on a reasonable investigation it considered that the claimant was guilty of gross misconduct by reason of failure to adhere to health and safety guidelines and in which the claimant had removed himself from the workplace, and continuing or further risking sickness absence, the existence of a formal appeal process and the offering to the claimant of a right to appeal against the decision, operated to cure any procedural unfairness which may have resulted from the lack of a formal disciplinary hearing.

20

25 **Submissions of the Parties**

42. The Tribunal having given parties guidance at the conclusion of the evidential Hearing on the first day, as to structure and content of submissions which would best assist the Tribunal in determining the issues. Each party addressed the Tribunal in submission or on the second day of Hearing. The respondent having led at the Hearing addressed the Tribunal first, followed by the claimant with the respondent's representative exercising a limited right of reply in conclusion.

30

Submissions for the Respondent

43. The respondent's representative invited the Tribunal to conclude that the dismissal fell to be regarded as fair. The claimant had been dismissed for reason of his conduct which, in relation to the incident in which he had injured himself by putting his hand under the safety dome into proximity with the moving parts of the machine when it was being operated, the respondent regarded as gross misconduct, endangering his own safety and the safety of other employees. The claimant had been the subject of a number of disciplinary sanctions and on two previous occasions, at the claimant's request, the respondent had agreed to give him further opportunities to prove himself, recognising the value in the positive qualities which he brought to the job which it had sought to balance against the negative aspects of his conduct. The elements of misconduct had included the claimant not following the prescribed recipes for the boiling of sugar from which product was created, and maintaining that he knew better than those who had prepared the recipes at what temperature the sugar should be boiled, of instances of threatening behaviour towards other colleagues including swearing at his employer and Director, the respondent's representative, and, of behaving threateningly towards his supervisor and Line Manager.
44. In the respondent's perspective, each opportunity afforded the claimant to improve his behaviour had resulted, ultimately, in further incidents of misconduct culminating with his disregard of safety procedures. While recognising that the respondent had not convened a formal disciplinary hearing in respect of the health and safety incident prior to deciding to dismiss the claimant, the respondent's representative made the point that, following his accident, and injury, the claimant had remained on extended sick leave and was not available for such a Hearing but, as was confirmed in the letter dismissing him which is produced at (R-1), he was afforded and had been offered the right to appeal against the decision to dismiss him, a right which the claimant had chosen not to exercise. Had he exercised the right to appeal, the Appeal Hearing would have been fixed for a date on which the claimant was fit and able to attend and participate. At that Hearing the

claimant would have had the opportunity of saying anything more than that which he had already said on the day of the incident, by way of explanation of what had happened, all of which would have been taken account of in the context of the CCTV footage. He would have also been able to make such submissions, as he wished to, about his previous record, in respect of which he had, likewise, never chosen to exercise his right of appeal against any warning or previous dismissal.

45. At the end of the day, the respondent had lost confidence in the claimant's ability to conduct himself appropriately in the work place. The respondent had no confidence that had it not dismissed the claimant there would be no further recurrence of misconduct, including in relation to the observance of health and safety procedures and the operation of machinery. The respondent had concluded that the claimant was a danger to himself and to fellow employees in the work place and, in those circumstances, had acted reasonably in imposing the sanction of dismissal.

Submissions for the Claimant

46. The claimant invited the Tribunal to hold that the dismissal fell to be regarded as unfair on a number of grounds;

(a) firstly because the respondent had waited for a period of 4 weeks after conducting an investigation into the circumstances of his accident on the day on which it had occurred, before dismissing him during which time he, the claimant, was on sick leave. Although the claimant did not expressly say so, the inference arising from his submission was that he would have expected there to have been a formal Disciplinary Hearing at which he could have said something with a view to persuading the respondents not to dismiss him, before they took the decision to dismiss.

5 (b) In so far as the respondent sought to rely upon the content of the Staff Handbook the claimant, while accepting that the Staff Handbook may well have been displayed and available on the top left hand part of the Staff Notice Board, stated that he, for his part, had never seen it, by which the Tribunal upon seeking clarification ultimately understood him to mean had never had a reason to look at it.

10 (c) In so far as the respondent sought to rely upon the content of what they described as his "Contract of Employment", while he recognised that they had produced a document which bore to relate to him and to his employment, the copy which they provided was not signed neither by him nor by Mr Anderson on behalf of the respondent. The claimant submitted that he had
15 not been given a copy of any such document when he commenced his employment.

20 (d) In so far as the respondent's relied upon the records, produced at pages R-37 to R-41, as vouching the various training courses received and completed by him, the claimant submitted that he had not received full training on the operation of machinery because he had entered employment, not in the conventional way, but rather through a trial in terms of which he was initially assisting his father who was an existing employee. He
25 observed that his signatures where they appeared on the various training documents appeared a very similar one to each other. While accepting that that could be because he had signed them all, he equally speculated that it could be because someone else had signed them all.

30 (e) In relation to his various decisions not to exercise his internal rights of appeal against any of the disciplinary sanctions applied to him, including in particular the decision to dismiss him on 29th of September 2023, the claimant submitted that he had just

thought that it would be easier if he accepted the position rather than contesting it and making it a lot worse than it actually was.

47. As to why he had decided to make no efforts to find alternative employment, beyond the part time employment which he commenced on or about the 25th of January, he submitted that from the 14th of February 2024, being the date upon which he was assessed as medically fit to return to working, he had continued, from time to time, to experience some pain in his thumb from the injury.

10

48. The claimant had accepted in evidence that that was a conscious decision on his part not to seek additional or alternative employment such as would provide him with a similar income to that which he had received when working with the respondent. He had accepted in evidence that the 14th of February 2024, the date on which he was certified medically fit to return to working, would, in those circumstances, operate as a cut off point in respect of any continuing loss on his part.

15

49. The claimant separately confirmed that in the event of his complaint of Unfair Dismissal succeeding he did not, in any event, seek any financial remedy from the Tribunal.

20

Respondent's Reply

50. By way of limited reply, the respondent's Director and representative denied that the claimant's training records had in any sense been falsified by the respondent. The fact that the claimant's signatures and initials appeared similar at each place in which they had been inserted on the documents, was equally consistent with the claimant having himself applied those signatures and initials. Regarding training, while recognising that the claimant's entry into employment had not been by the conventional route taken by other employees, the respondent's Director asserted that the claimant had been fully and adequately trained on the operation of the machine. There were only two individuals in the workforce who were authorised to operate the

30

machine and the boiling fires. These were respectively the claimant and his father. The claimant had been trained in all aspects of the operation of the machine by his father, training for most of which the respondent's Director had himself been present and witnessed, it being the case that he worked on the shop floor alongside the respondent's employees on a daily basis in the manufacturing process. He submitted that, regardless of any dispute as to the extent of training received, the claimant had operated the machinery safely and without injury throughout his employment up until the date of the incident. The claimant was fully aware that he was not allowed to and ought not to put his hands near the moving parts of the machine when it was operating, as doing so would put him at risk of injury and also put his fellow employees at risk of injury. His doing so, which in the respondent's Director's assertion had been demonstrated clearly on the CCTV footage which he, along with the claimant's supervisor and his fellow Director had viewed. That footage showed the claimant deliberately putting one hand into proximity with the moving parts while with the other hand switching the machine on, and thus causing his injury. That was gross misconduct for which ultimately the respondent determined to dismiss the claimant.

20 **Applicable Law, Discussion and Decision**

51. There was no dispute between the parties as to the reason for the claimant's dismissal, namely the claimant had been dismissed for reason of his conduct. Conduct is one of the potentially fair reasons set out in section 98(2) of the Employment Rights Act 1996 ("the ERA") viz:-

"98

General

(1)

30

(2) A reason falls within this sub section if it

(a)

(b) relates to the conduct of the employee,

52. In circumstances where an employee is dismissed for a potentially fair reason, in the instant case for reason of conduct, the issue of whether the dismissal falls to be regarded as unfair is regulated by the terms of section 98(4) of the ERA viz:-

“(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 reasons 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.”

53. In so determining the issue of whether a dismissal which took place for a potentially fair reason, falls to be regarded as fair or unfair, it is not the function of the Tribunal to enquire into the facts surrounding the conduct such as to establish whether the claimant did or did not commit the conduct in question. Nor is it the function of the Tribunal to rehear a disciplinary hearing or, in the instant case, to hold a disciplinary hearing in circumstances where one did not occur. Nor must the Tribunal substitute its own decision for that of the employer. Rather, the function of the Tribunal is to judicially review the reasonableness of the employer’s actings in taking and acting upon a decision to dismiss the claimant, in accordance with the provisions of section 98(4) of the ERA.

54. The case of ***British Home Stores Limited v Burchell*** [1978] IRLR 379 EAT is authority for the proposition that where an employee is dismissed because the employer suspects or believes that he or she has committed an act of

misconduct, in determining whether that dismissal is unfair an Employment Tribunal has to decide whether the employer who discharged the employee on the ground of misconduct in question entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. This involves three elements:-

5

(a) First, there must be established by the employer the fact of that belief; that the employer did believe it.

10

(b) Second, it must be shown that the employer had in his mind reasonable grounds upon which to sustain that belief, and,

15

(c) Third, the employer, at the stage at which he formed that belief on those grounds, must have carried out as much investigation into the matter as was reasonable in all the circumstances of the case.

55. On the Findings in Fact which it has made, the Tribunal concluded that in so deciding to dismiss and in so dismissing the claimant, the respondent had satisfied the three part test set out in the case of ***British Home Stores Limited v Burchell***.

20

56. While recognising that not every employer would necessarily have decided to dismiss the claimant, in the particular circumstances, the Tribunal was unable to conclude on the evidence presented, that no reasonable employer, in the circumstances, would have decided to dismiss the claimant. The decision to dismiss accordingly falls within the band of reasonable responses which was available to the respondent.

25

57. The Tribunal concludes, in the circumstances, that the respondent's admitted dismissal of the claimant for the potentially fair reason of conduct, falls to be regarded as substantively fair in terms of section 98(4) of the Employment Rights Act 1996.

30

58. In relation to procedural unfairness, the Tribunal recognised that no formal disciplinary hearing was held. In cases of gross misconduct, however, where an employer forms the belief, upon reasonable grounds, that there is no real dispute on the facts and where it is clear that the misconduct is of a kind which goes to the root of the relationship between the employer and employee, the absence of such a formal disciplinary hearing need not fatally taint the decision to dismiss with unfairness. The procedural fairness of the decision falls to be regarded in the context of the overall procedure available and followed. In the instant case the respondent afforded the claimant a right of appeal which, had he exercised it, would have provided a vehicle by which any unfairness arising from the absence of a formal disciplinary hearing could have been cured. The claimant took a conscious decision not to exercise that right of appeal. In the circumstances, on the evidence presented and on the Findings in Fact made, the Tribunal is unable to conclude that in so dismissing the claimant the respondent's failed to follow a fair procedure.

59. The claimant's complaint of Unfair Dismissal is dismissed on its merits.

60. Standing the dismissal of the claim it is unnecessary for the Tribunal to make Findings in Fact regarding remedy. The Tribunal observes, however, that in light of the claimant's acceptance that the 14th of February 2024 would have operated as a cut off point for any continuing loss and further his confirmation that he did not seek any financial remedy in the proceedings before the Employment Tribunal, let it be assumed the claim had been successful, no basic or compensatory award would have fallen to be made.

30

35

Employment Judge:	d'Inverno
Date of Judgment:	31 July 2024
Entered in register:	31 July 2024
and copied to parties	31/07/2024

I confirm that this is my Judgment in the case of Mcdonald v Ross's of Edinburgh Ltd and that I have signed the Judgment by electronic signature.