



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001195/2024

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Held in Glasgow on 9, 10 and 11 December 2024

Employment Judge S MacLean

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Mr A Drysdale

Claimant

Represented by:

Mr J Morgan, Barrister

Instructed by:

Mr B McLaughlin, Solicitor

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Royal Mail Group Limited

Respondent

Represented by:

Ms E Grant, Solicitor

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The judgment of the Employment Tribunal is that (1) the unfair dismissal claim is dismissed; and (2) the respondent wrongfully dismissed the claimant and is ordered to pay the claimant damages in the sum of Four Thousand, Seven Hundred and Thirty Four Pounds and Thirty Six Pence (£4,734.36).

REASONS

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Introduction

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1. The respondent employed the claimant as operational postal grade between 16 June 2008 and 9 May 2024. The claimant complains that the respondent unfairly and wrongfully dismissed him. The respondent admits dismissing the claimant. The respondent says that the dismissal was for gross misconduct and was substantively and procedurally fair. The respondent denies that the claimant was wrongfully dismissed. The respondent says that the claimant

was dismissed for gross misconduct which constituted repudiatory breach of contract.

2. At the final hearing, I heard evidence for the respondent from Ryan Murphy, customer operations manager; Dennis Brown, customer operations manager;
5 and Simon Walker, independent case manager. The claimant gave evidence on his own account. The witnesses referred to a file of documents.
3. Ms Grant provided outline written submissions, which included a list of issues, on which she addressed me orally. Mr Morgan gave oral submissions. He agreed with the issues that had been identified. I have dealt with the points
10 made in submissions whilst setting out the facts, the law, and the application of the law to those facts.
4. A dismissal may be wrongful but not unfair. In the unfair dismissal claim I must consider the fairness of the dismissal. In the wrongful dismissal claim I must consider whether there is a breach of contract. I have set out facts as
15 found that are essential to my reasons or to an understanding of important parts of evidence. For ease I have provided additional findings about the claimant's conduct as these findings are necessary for me to decide the wrongful dismissal case.

Findings in fact

- 20 5. From 16 June 2008, the respondent employed the claimant as an operational postal grade. He undertook the same duty for 10 years which he shared with a partner. The claimant has a clean disciplinary record.
6. The claimant's standard terms and conditions of employment (the T&Cs) state that employees with continuous service of 12 years or more are entitled to 12
25 weeks' notice of termination. The T&Cs also state that the claimant is expected to comply with the respondent's code of business standards and refer to various codes and procedures, including the conduct code, none of which form part of the claimant's contract of employment. The respondent does not have a policy dealing with assaults while on duty.

7. In late 2023, the claimant was asked by a customer operations manager to speak to customer about a complaint relating to a special delivery. The claimant did so, and the matter was resolved.
8. Around early February 2024, the regular customer operations manager (the regular COM) advised the claimant that a customer had complained that a parcel delivery had not been attempted when he was in the house, and he saw the driver sitting in the van (the original complaint). The claimant said that the customer was not telling the truth. The claimant had followed procedure, the delivery had been attempted, and he had posted a card (P739). The claimant had been delivering to the customer for 10 years and knew his father.
9. The regular CMO spoke to the driver who confirmed that the delivery was attempted. The CMO concluded the complaint. She did not advise the customer, or the claimant of the outcome.
10. On the third attempt to deliver the parcel there was no answer. The claimant spoke to the neighbour on the same landing as the customer (the neighbour) and left the parcel with him.

The 17 February incident

11. On 17 February 2024, the regular CMO was on leave. Ryan Murphy, was covering. The claimant did not have Mr Murphy's mobile number.
12. Mr Murphy was made aware of a complaint about a confrontation between a postman and a customer. Around 11.30am Mr Murphy telephoned the claimant. The claimant advised that he had been assaulted by a customer. He was shaken but okay. Mr Murphy asked if the claimant was able to finish his duty. The claimant said that he was. The claimant was allowed to finish on the street and go home.
13. Mr Murphy made a second telephone call to the claimant. Mr Murphy said he had taken advice, and the claimant should call the police. The claimant had spoken to the customer's brother. The situation had calmed down. The claimant wanted to put the incident behind him, and did not want the police

coming to his door when he was looking after his grandchild. Mr Murphy accepted the claimant's position and did not mention any policies.

14. Over the weekend, the claimant's injuries exacerbated. On 19 February 2024, the claimant telephoned Mr Murphy to report that he would be absent from work. He contacted his doctor and was absent from work between 19 February 2024 and 24 February 2024.

Fact finding

15. On 19 February 2024, Mr Murphy received in written record of the complaint which did not disclose the name or address of the complainer. It referred to an incident at 10.40am that, "the postman had hit a civilian three to four times" (the witness complaint).

16. Mr Murphy invited the claimant to a fact finding interview which took place on 22 February 2024 concerning an allegation, "Customer complained regarding an assault on them by an OPG" (the February FFI). A trade union (TU) representative accompanied the claimant. The claimant explained what had happened. He acknowledged that he should have reported the incident to a CMO sooner but his "mind was all over the place". The claimant also explained he did not call the police because he had spoken to the customer's brother and there was no further threat. The claimant highlighted his injuries and Mr Murphy took photographs. The photographs showed bruising to the back of the claimant's hand, the back of his leg and back of his arm. The TU representative said that the guidance on being assaulted on duty was not clear. The claimant's injuries showed that an attack had taken place. The claimant covered the route for 10 years and had a clean conduct record. Mr Murphy prepared a note of the February FFI.

17. On 22 February 2024, Mr Murphy met with the customer and took notes which he typed on his return to the delivery office (the customer note). The customer note was undated and unsigned. It referred to the conversation on the stairway. It mentioned a discussion between the claimant and the neighbour on the Monday (12 February 2024). The customer note stated that when the customer went to get his dog the claimant threatened him saying that he knew

where the customer stayed and his pals would be at the door. When the claimant came out of the next close he threw down his bag and shouted, “fucking square go then” and punched the customer in the face. The customer punched back in self-defence then his brother stepped in to separate the fight.

5 A neighbour saw this from their window.

18. Mr Murphy thought it may be relevant to speak to the person who made the witness complaint. Mr Murphy telephoned using contact details to be told he must have the wrong number. Mr Murphy sought advice from the people case advice team and was told to proceed with what he had.

10 19. The claimant returned to work on 4 March 2024, when he was suspended by letter dated 6 March 2024. The reason for the precautionary suspension was a “customer complaint regarding an assault while on duty”. The letter stated that the claimant should not approach witnesses or discuss details of the complaint with work colleagues.

15 20. The claimant was invited to attended another fact finding interview with Mr Murphy on 9 March 2024 (the March FFI) before which the claimant was sent the customer note.

20 21. The claimant was accompanied by a TU representative at the March FFI. The claimant was advised that depending on the outcome of the investigation dismissal could be a penalty for consideration. If so, the matter would be referred to another manager. The claimant confirmed that he had spoken to the customer on 17 February 2024. He had wanted peace of mind as he had not been told the outcome of the investigation into the original complaint. Had he been told, that it was closed he would not have approached the customer.

25 The claimant had done this before. The TU representative commented that it was not unusual practice to approach a customer regarding a complaint, but it was to be attacked by one on delivery. Mr Murphy, who was not the regular COM did not look into the local practice or undertake further investigation. He prepared notes of the March FFI.

22. On 19 March 2024, the claimant was advised by Mr Murphy that as the potential penalty exceeded his authority the case was being referred to Dennis Brown, CMO who would contact him.

Formal conduct meeting

- 5 23. Mr Brown received a copy of the witness complaint, the notes of the February and March FFIs, and ancillary correspondence. In the invitation dated 5 April 2024, the claimant was invited to a formal conduct meeting (conducted remotely) on 9 April 2024, to consider the following allegations stated as being in breach of the respondent's business standards and values:
- 10 i. Gross misconduct on 17 February 2024: behaving inappropriately by challenging a customer for submitting a complaint against you.
- ii. Gross misconduct on 17th February 2024: behaving inappropriately whilst performing your duty role. This resulted in both a physical and verbal altercation with a customer.
- 15 iii. Gross misconduct on 17th February 2024: failing to report a significant health and safety matter to either your manager or the police that occurred when on delivery.
24. The claimant attended the formal conduct meeting and was accompanied by his TU representative. Mr Brown took notes. The claimant said that no one
- 20 had asked him to speak to the customer but on another occasion a named COM had had asked him to do so. The claimant denied swearing but confirmed that he asked the customer why he had complained. He denied threatening the customer. The claimant said that no one witnessed the verbal altercation. He saw the neighbour looking out the window when he was
- 25 looking for his hearing aid. The claimant said that the customer hit him and he hit back to protect himself. He referred to the photographs of his injuries taken by Mr Murphy and offered to show Mr Brown. The claimant mentioned speaking to the customer's brother and Mr Murphy. The claimant said that he did not call the police. He thought the incident was over and did not want the
- 30 police attending his house while his grandson was visiting. The claimant did

not return to the delivery office as he finished on the street. He did not think he had to as Mr Murphy had called him. Mr Brown “put it to” the claimant that he did not contact Mr Murphy or the police because he instigated the situation. The claimant said that was nonsense. He did not want the police involved. He only punched back because he was being punched and had to protect himself. Mr Brown referred the claimant to the business standards. The claimant accepted that verbal or physical altercation could damage the respondent’s reputation. He did not have any personal issues. Mr Brown carried out no further investigation.

25. Mr Brown noted that the claimant admitted to punching the customer. He believed that the claimant was not honest because of what Mr Brown considered were discrepancies in his accounts, and he did not contact his manager and/or police after being involved in a physical altercation where he was injured. Mr Brown believed that the customer had nothing to gain from being deceptive in his statement. He believed the claimant had challenged the customer regarding a complaint, and was then involved in a physical altercation which resulted in an assault of the customer. Mr Brown considered the claimant’s length of service, clear conduct record and mitigation that he was acting in self-defence. Mr Brown considered lower penalties but as the claimant had shown no responsibility or remorse, he concluded that the claimant should be dismissed for gross misconduct.

26. The claimant was advised of the decision to dismiss him and of his right of appeal. On 10 May 2024, the claimant appealed because the penalty was unwarranted based on the nature of the incident.

Appeal hearing

27. Simon Walker invited the claimant to an appeal hearing by conference call on 4 June 2024. Mr Walker said that appeal was a rehearing and the claimant’s reasons should be full and evidence should include material presented at his previous interviews, anything the claimant wished to expand upon and any new evidence. The claimant was accompanied by a TU representative.

28. It was confirmed that the grounds of appeal were the severity of the decision; the investigation was not thorough enough to dispute that the claimant was the victim of a vicious attack, and there was a lack of care shown by his managers. The TU representative elaborated on but was consistent with the claimant's earlier version. The TU representative said that managers could have been more supportive by asking the claimant back to the office. He advised that the claimant had reported sick on the Monday due to the injuries that he had suffered. He questioned the absence of the photographs taken by Mr Murphy and the delay in obtaining a statement from the customer. No investigations were undertaken by Mr Brown, who did not speak to the claimant's work partner. The claimant raised the customer's credibility and questioned why Mr Brown preferred the customer's evidence. The claimant accepted that he got things wrong and made mistakes; he should have contacted the CMO, returned to the office and contacted the police. Mr Walker then questioned the claimant. The claimant disclosed the name of the CMO who had previously told him to speak to a customer. He also disclosed the name of the neighbour who he saw at the window when it was over but was not sure what he saw. The claimant disclosed the name of his work partner and that he had told him he had been attacked. The claimant confirmed that the customer did not report him to the police. Mr Walker pressed the claimant on why he did not report it to the police. The claimant reiterated that it was all done on the day. The claimant confirmed that he had not been contacted by the police. He commented that the customer was on community service and would not have reported it to the police. The claimant was reminded that the discussion was confidential and he should not discuss this with friends or colleagues.
29. On 24 June 2024 Mr Walker telephoned Mr Murphy who explained when and how the customer note was obtained. Mr Murphy thought that the customer was thinking about reporting the incident to the police but did not want to press charges. This was not mentioned in the customer note.
30. Mr Walker sent questions by email to the regular COM on 24 June 2024. She no longer worked in the delivery office and had difficulty recalling dates and

exact conversations given the time that had elapsed. She stated that the claimant was told not to contact the customer and he had been informed that the original complaint had been concluded.

5 31. Mr Walker then wrote to the customer enclosing a copy of the customer note and asking for his further recollections. The customer returned the reply slip stating that he did not agree that the customer note was accurate. The customer stated that the claimant was shouting in his face in the close. He shouted that the customer would regret this and knew where he stayed. The customer said the claimant punch and kicked him on the hand. He stated that
10 he already suffered with mental health and anxiety and he goes out less in case the claimant came to his door. The customer provided details of the neighbour who witnessed the incident.

15 32. Mr Walker spoke to the customer on 1 July 2024. During that discussion the customer said that the customer note was more or less an accurate record. The customer said that the neighbour heard what was said in the stairway. The customer had spoken to the neighbour about the incident. The customer described the claimant punching and kicking him and the customer punched back. He then referred to the original complaint. The customer said the claimant struck the side of his head with his fist and kicked his hand. He said
20 he struck the claimant once. The customer said he reported the matter to the police but when they came to take a statement he did not want to press charges.

25 33. On 2 July 2024, Mr Walker contacted the neighbour and spoke to him by telephone on 5 July 2024. The neighbour said that he called the police. He said the police spoke to the customer but the neighbour did not want to get involved. The neighbour described opening the door and seeing the claimant “swearing and bawling” at the customer whose door was wide open. The neighbour said the claimant threw his bag on the claimant was looking around and punched the customer twice on the head. The neighbour did not see the
30 customer attack the claimant. He said the customer did not punch the claimant. The brother then arrived and intervened. The claimant was looking around for something. The neighbour thought the claimant had lost his

hearing aid. He noticed the brother pick something up and hand it to the claimant. The neighbour remembered the claimant saying before the violence that he knew where the customer stayed and would be round with his mates to sort thing out.

5 34. Mr Walker sent to the claimant, the witness complaint, the email exchange with the regular COM and the notes of his telephone conversations with Mr Murphy, the customer and the neighbour. The claimant sent comments raising several inconsistencies about who had complained to the respondent, who contacted the police and when; the number of punches alleged given by
10 the claimant. The claimant maintained that he had not been told the outcome of the original complaint.

35. On 12 July 2024, Mr Walker advised the claimant that his appeal was unsuccessful for the reason set out in a written report. Mr Walker said that he believed the claimant was the instigator of the events as he started the
15 dialogue. He believed that the dialogue was abusive and aggressive in tone. The claimant chose to respond in abusive terms which Mr Walker believed in their own amounted to gross misconduct.

36. Mr Walker believed that if the claimant's account was accepted he should have backed away, shouted for help, or walk away. He believed that the
20 claimant chose to react with violence. Mr Walker took account of the neighbour's evidence that the claimant threw the first punch. Mr Walker did not accept that it was a defensive act because of what the customer said, which the neighbour confirmed, and the claimant did not call the police. Mr Walker did not accept that Mr Murphy failed in a duty of care as he checked
25 on the claimant and the claimant said he did not need to return to the delivery office. Mr Walker said that he had found no evidence that the claimant was following previous advice about speaking to a customer. In any event it was not asking but a verbal assault. Given the claimant's service, Mr Walker considered that the claimant knew that his behaviours were gross misconduct.
30 Mr Walker considered that it was a case of proven gross misconduct and the claimant showed a lack of remorse or regret for becoming involved in an abusive and violent altercation.

37. At the date of termination the respondent had employed the claimant for 15 years. He was 60 years of age. His gross weekly salary was £420.84. His net weekly wage was £347.70. The respondent made pension contributions of £46.83 per week. The claimant has not commenced new employment. He has been in receipt of employment support allowance since 6 June 2024 at the rate of £181 per fortnight.

Additional findings about 17 February incident

38. While going about his duties and on his way out of the building, the claimant encountered the customer coming up the stairs with his dog that was not on a lead. The claimant asked the customer why he had complained. He said the customer should tell the truth. The customer was annoyed and replied that the claimant should do his job properly. The customer took out his mobile phone and told the claimant to wait until it was sorted. The claimant left the building and delivered mail at the next building. As the claimant was leaving that building, the customer, whose dog was now on a lead and tied to a fence, approached the claimant aggressively. The customer was around 20 years younger than the claimant who felt threatened. The claimant put the mail and PDA on the hedge. The customer punched the claimant. The claimant threw his hand up in defence making contact with the customer. The claimant slipped. He suffering blows to the upper right arm, left upper thigh and hand. The claimant lost his hearing aid. He was disorientated. The customer's brother arrived and intervened. The claimant looked for his hearing aid. He could not see it. He noticed the neighbour looking out his window.

39. The claimant was in shock. He continued his duty. The customer's brother then approached the claimant and returned his hearing aid. They spoke and agreed that was the end of the matter.

40. The claimant went to the delivery van and said to his work partner that he had been assaulted. He sat for a few minutes then carried on with the delivery.

41. Mr Murphy telephoned the claimant on his mobile telephone as he had been notified verbally that a complaint had been received of an altercation between

the claimant and the customer. The claimant said that he had been assaulted. He was shaken, but able to continue with the duty.

42. The claimant telephone his wife. He then returned a missed call from Mr Murphy's mobile telephone. Mr Murphy said that he had taken advice, and the claimant should call the police. The claimant was reluctant to do so. The situation had calmed down. As the claimant had spoken to the customer's brother, he wanted to put the incident behind him. The claimant did not want the police coming to his home when he was looking after his grandchild. The claimant completed the duty and went home.

43. Over the weekend, the claimant's injuries exacerbated. On 19 February 2024, the claimant telephoned Mr Murphy to report that he would be absent from work. He contacted his doctor. The claimant was absent from work between 19 February 2024 and 24 February 2024. Photographs were taken of the claimant's injuries which showed injuries to his upper right arm, left upper thigh and hand.

44. The police have not questioned or charged by the claimant about the incident.

Observation of witnesses and conflict of evidence

45. I considered that Mr Murphy and Mr Brown gave their evidence candidly. They explained why they had taken the approach that they did, and readily accepted in cross-examination that they might have done things differently. Mr Walker was experienced in conducting appeal hearings for the respondent. My impression was that he approached the appeal with an open mind. However he was at times defensive during cross-examination and reluctant to make any concessions.

46. The claimant gave his evidence in a straightforward understated manner. His evidence about the 17 February incident was consistent with what he said during the disciplinary process. His position was that he asked the customer about the original complaint. The customer replied aggressively. The claimant continued his duty at the next building. As he was leaving the

customer approached him aggressively and attacked him. The claimant punched the customer in self-defence.

47. In relation to the 17 February incident, the claimant's evidence differed from that provided by the customer and the neighbour. They did not give evidence at the hearing. None of the respondent's witnesses was present at the 17 February incident. For the purposes of determining the unfair dismissal complaint, I did not need to make findings about what happened. However, when considering the wrongful dismissal claim, I considered the evidence that was before me.
48. The witness complaint prompted Mr Murphy to telephone the claimant. Two versions of the witness complaint was produced, one of which had details of the address of the complainer. This was not accurate which explained why Mr Murphy had difficulty making contact. The complaint made by the customer was not produced. My understanding was that the witness complaint was the complaint referred to during the internal process.
49. The respondent's witnesses referred to the customer note. Mr Walker referred to subsequent telephone conversations with the customer and neighbour in July 2024. The respondent's witnesses explained what they believed happened. They preferred the explanation from the customer, which was supported by the neighbour.
50. I was unconvinced about the reliability of those statements. From the customer note which was obtained a week later, the customer and the neighbour had already spoken to each other, there was no reference to the police having been called, or statements given to the police, or to the neighbour having seen and heard the discussion in the stairway. This is in contrast with the notes of the telephone conversations in July 2024 where there are discrepancies as to who called the police, and the number of alleged punches to the customer. If the witness complaint was made by the neighbour, his description of the number of punches and kick by the claimant varied to his position in July 2024 when the neighbour also said that the customer did not punch the claimant. This did not reflect the injuries sustained

by the claimant and what the customer said. The neighbour's version appeared embellished. While there were some discrepancies in the claimant's account, I considered that it was more likely than not to have happened in the way he described. It was in my view plausible that he was shocked immediately after the incident by which time Mr Murphy had telephoned him. It was also believable that the claimant felt that the incident was over, and did not want the police attending his house.

Deliberations

51. The claims to be determined were unfair dismissal and wrongful dismissal. Unfair dismissal is a statutory concept which considers the reasonableness of the employer's belief. Gross misconduct is a contractual concept. I first considered the unfair dismissal claim.

Unfair dismissal

52. It is undisputed that the claimant was dismissed. The critical question was whether the dismissal was fair under section 98 of the Employment Rights Act 1996 (the ERA).

53. The respondent asserted that the reason for dismissal was the claimant's conduct, which is a potentially fair reason. The claimant did not propose any alternative reason.

54. Following the 17 February incident, the claimant was suspended. There was an investigation following which the claimant was invited to a formal conduct meeting to respond to three allegations of misconduct. The claimant admitted that he spoke to the customer about the original complaint; that he was involved in a physical altercation with the customer in self-defence; and he did not report the incident to his CMO or the police. Following the formal conduct meeting the claimant was dismissed. I was satisfied that the respondent had shown the reason for dismissal was conduct, and this is a potentially fair reason under section 98(2)(b) of the ERA.

55. Having concluded that the reason for dismissal was conduct, I turned to consider, the burden of proof being neutral, the test for conduct dismissals

whether the respondent had reasonable grounds for the belief in the alleged misconduct and at the time it formed that belief had the respondent carried out as much investigation as was reasonable in the circumstances.

56. Mr Brown's evidence was that at the time of the dismissal he believed the claimant had instigated the matter by asking the customer why he raised the original complaint. Mr Brown considered that there was no practice in dealing with complaints in this way. Mr Brown also believed that the claimant assaulted the customer and did not try to avoid or evade the physical altercation; and did not report the incident to his CMO or the police despite having injuries as a result. Mr Brown said this was why he dismissed the claimant.

57. Mr Walker's evidence was that after the appeal hearing, and the appeal investigations, he believed the claimant was the instigator of the events as he started the dialogue. He did not accept that the claimant had been previously advised by a CMO that this was acceptable. Mr Walker believed that the dialogue was abusive and aggressive in tone to which the claimant chose to respond in abusive terms. Mr Walker also believed that the claimant chose to react with violence while on duty. He did not accept that it was a defensive act.

58. I was satisfied that Mr Brown and Mr Walker held a genuine belief that the claimant inappropriately challenged the customer about the original complaint, became involved in a physical altercation, and did not report this matter to management or the police.

59. I then asked if the respondent had reasonable grounds for the belief in the alleged misconduct and at the time it formed that belief had the respondent carried out as much investigation as was reasonable in the circumstances.

60. I appreciated that the ACAS guide on Discipline and Grievance at Work emphasises the more serious the allegations against the employee the more thorough the investigation conducted by the employer ought to be.

61. Mr Morgan's oral submissions focussed on the allegations, which he pointed out related only to the 17 February incident. He also referred to the respondent's lack of policies about complaints and assaults on duty. Mr Morgan referred to *A v B* 2003 IRLR 405, where the EAT said that
5 allegations of a serious criminal behaviour must be the subject of the most careful investigation given the potential effect on the employee. However the EAT accepted that the standard of reasonableness will always be high where dismissal is the likely consequence, so the serious effect on future employment and the fact that criminal charges are involved may not in
10 practice alter that standard. Such factors merely reinforce the need for careful and conscientious enquiry.
62. I was mindful that I could not substitute my own view as to whether a reasonable investigation was carried out, or embark on an analysis of the quality of the evidence obtained so as to lead to my own view of the evidence
15 resulting in my conclusion as to what the respondent ought to have found as opposed to applying a range of reasonable responses tests to the investigation carried out by the respondent leading to its conclusion to dismiss the claimant.
63. I turned to the investigation by Mr Murphy. He was providing cover for the regular COM, and was inexperienced in investigations. He was managing the
20 claimant on 17 February 2024, and telephoned him twice. Mr Murphy received the witness complaint, was informed of the claimant's absence on 21 February 2024, and suspended him. Mr Murphy was involved before undertaking the investigation. While I did not consider that this precluded him
25 from conducting the fact finding, he made no contemporaneous record of his involvement on 17 February 2024. Mr Walker spoke to him on 24 June 2024, some four months later when Mr Murphy spoke from "recollection".
64. Between the February FFI (at which photographs were taken) and the March FFI, Mr Murphy met with the customer following which he prepared the
30 customer note. This was sent to the claimant but not approved by the customer. The claimant knew what the customer was alleging happened at the 17 February incident. Mr Murphy met with the claimant at the March FFI.

That discussion focussed on the claimant's approach to the customer about the original complaint.

- 5 65. The matter was escalated to Mr Brown who I considered had no previous involvement. From the discussion at the February FFI, and the letter advising of Mr Murphy's decision to do so, I considered that the claimant knew that disciplinary action, including dismissal was a possible outcome.
- 10 66. Before the formal conduct meeting the claimant was advised of the allegations to which he was to respond, and he was provided with the respondent's business standards. The claimant was suspended and could not communicate with witnesses. The allegations were serious and the claimant faced potential dismissal.
- 15 67. The investigation continued at the formal conduct meeting at which the claimant was accompanied by a TU representative. The claimant confirmed that he had not been asked to speak to the customer but he referred to a previous occasion when a CMO had asked him to speak to a customer about a complaint. The claimant confirmed asking the customer why he had complained but denied swearing at or threatening the customer. He said no one witnessed the verbal altercation but after the physical altercation when he was looking for his hearing aid he saw a neighbour at the window. The claimant said that he spoke to Mr Murphy. He explained why he had not called the police. The claimant denied instigating the matter. He said he punched back in self-defence.
- 20 68. I considered that Mr Brown had reasonable grounds for believing that the claimant instigated the discussion with the customer because the claimant admitted doing so. While Mr Brown believed that there was no practice in speaking to customers about complaints, I considered that given the claimant's comments about instructions from a previous CMO and comment from the TU representative, a reasonable employer would have contacted the regular CMO at the claimant's delivery office to ascertain the local practice, and what happened with the original complaint. The claimant's version of the verbal and physical altercations conflicted with the customer note. While the
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claimant admitted punching the customer, he said it was in self-defence. He admitted that he did not contact a CMO or report the incident to the police. Given that the customer note was ambiguous, unsigned and undated, I considered that a reasonable employer would have spoken to Mr Murphy to clarify the circumstances, timing and content of the customer note; to clarify what the claimant said to Mr Murphy when they spoke on 17 February 2024; and to request the photographs that had been taken at the February FFI.

69. None of this was done by Mr Brown. However the claimant appealed against the decision to dismiss.

70. I considered that Mr Walker had no connection with the claimant or the managers who had been previously involved in the proceedings. His approach was look at the case afresh and undertake his own investigation. I turned to consider this.

71. The claimant was invited to an appeal hearing, at which he was accompanied by a TU representative. The claimant was given an opportunity to provide further comments and mitigating circumstances. The TU representative summarised the claimant's position. The claimant accepted that he made mistakes. Mr Walker asked questions during which the claimant named the CMO who had previously asked the claimant to speak to customer about a complaint; named the neighbour who was at the window; named and commented on what he said to his partner at the time of the incident; and confirmed that the customer had not reported him to the police as he had not been contacted. The claimant did not indicate that he had any reason to believe that the neighbour would be partial toward the customer.

72. Mr Brown and Mr Walker did not look at the photographs of the claimant's injuries. I considered that given they were available, most employers would have looked at these photographs when invited to do so by the claimant. However as there was no dispute that there had been a physical altercation during which the claimant sustained injury resulting in his absence from work, I did not consider that it was outside the band of reasonable responses not to

do so especially as there were no photographs available of the customer's injuries.

5 73. Mr Walker spoke to Mr Murphy about his involvement on 17 February 2024 and the customer note. I considered that this was a reasonable approach given the absence of any contemporaneous notes by Mr Murphy.

10 74. While I considered that some employers may have contacted the CMO named by the claimant I could not say that Mr Walker's decision not to do so fell out with the band of reasonable responses. He sent an email to the regular CMO about the original complaint. She responded advising that the claimant had been told not to speak to the customer. I considered that this was a reasonable approach in so far as the CMO's instructions on speaking to the customer about the original complaint was concerned.

15 75. Mr Walker wrote to the customer about the customer note and then had a telephone discussion with him. The record of the conversation was then customer giving his recollection which was not challenged. Mr Morgan submitted that Mr Walker should have done so, and asked about the customer's conviction, if he was on community service, and why. Given that the customer was not an employee of the respondent and Mr Walker was carrying out an internal investigation, I considered that it was not reasonable for him to have probed into the customer's personal life during the telephone conversation.

20 76. Mr Walker wrote to the neighbour and then telephoned him four days after speaking to the customer. Given that Mr Walker was conducting an internal investigation and the neighbour was not an employee, I did not think it was unreasonable for him to ask open questions and note the response without further interrogation.

25 77. The additional information was sent to the claimant and he commented in writing. The claimant raised the inconsistencies and provided further comments. Mr Walker was aware of these comments when he made a decision.

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78. Mr Walker did not speak to the claimant's partner. I considered that while it might have assisted to know what the claimant said to his partner at the time, it was within the band of reasonable response not to have done so given that the partner did not witness the 17 February incident, and the claimant did not suggest that his partner was involved in any discussion about reporting the incident to management or the police.
79. Mr Walker made no enquiries with the police. Again I considered that some employers might have done so, but there was no dispute that the claimant had not reported the matter to the police. The claimant said that the police did not speak to him. The customer said that he did not want to press charges. The neighbour said that he did not want to be involved. In these circumstances I did not consider that it was unreasonable that the respondent did not contact the police.
80. I considered that Mr Walker had reasonable grounds for believing that the claimant instigated the events as he admitted to starting the dialogue with the customer. Mr Walker also had reasonable grounds for believing that the claimant had been told by the regular CMO not to speak to the customer as the claimant accepted that she had said that, if not on this occasion, on previous occasions. I was less convinced that Mr Walker had reasonable grounds for believing that the claimant had not been previously told to speak to a customer about a complaint, as Mr Walker made no enquiries of the named CMO. Mr Walker believed that the dialogue was abusive and aggressive in tone to which the claimant chose to respond in abusive terms. Mr Walker accepted the evidence of the neighbour who said he overheard the conversation. The neighbour was present but not involved in the 17 February incident. He ostensibly was an objective witness. While I did not agree with Mr Walker's assessment of telephone call with the neighbour, I could not say that for him to do so was not within the band of reasonable responses.
81. I considered that Mr Walker had reasonable grounds for believing that the claimant chose to react with violence while on duty. The claimant admitted that he punched the customer. While there was dispute over who punched first, Mr Walker relied on comments made by the customer, supported by the

neighbour. Mr Walker was also influenced by comments made by the claimant not involving the police. While I considered that other employers may reached a different conclusion about what happened, I could not conclude that Mr Walker did not have reasonable grounds for reaching the conclusion that he did based on the information before him.

82. I then turned to consider whether the respondent met the objective test in section 98(4): whether in all the circumstances (including its size and administrative resources), the respondent acted reasonably in treating that reason as a sufficient reason for dismissal.

83. I had to decide whether the respondent's decision to dismiss the claimant fell within the range of reasonable responses that a reasonable employer in those circumstances, and in that business might have adopted. It is an assessment of the reasonableness of the respondent's conduct not the level of injustice to the claimant.

84. Turning to the procedure, throughout the internal process the claimant was represented by his trade union. At the February FFI no decision had been made about any allegations. The claimant was asked about his recollection of events. Although Mr Murphy had been CMO that day, he did not form any view at that stage. Once the customer note was obtained, the claimant was suspended. While that decision was taken by Mr Murphy, it was precautionary. By the March FFI the claimant was aware of seriousness of the situation. This was confirmed by the decision to refer the matter to Mr Brown. The claimant was aware of the allegations against him before the formal conduct meeting and was provided with the documentation that Mr Brown was relying upon. He was given an opportunity to respond. The claimant was advised of the outcome, given reasons and a right of appeal. At appeal, further investigation was undertaken by an independent manager. The claimant was provided with copies of all the documents relied upon and given an opportunity to comment. The decision was taken afresh and reasons were provided.

85. I considered that there were flaws in the investigation before the claimant was dismissed. However I could not conclude when the matter was considered afresh by Mr Walker that these flaws were so significant as to amount to unfairness.
- 5 86. I then applied the range of reasonable responses test to the decision to dismiss. The claimant was aware of the allegations made against him: inappropriately challenging a customer about the original complaint; engaging in verbal and physical altercation with a customer; and failing to report the 17 February incident to management or the police. The claimant admitted raising the original complaint with the customer against the regular CMO's instructions. He admitted being involved in a fight in the street, while on duty with the customer, and striking him once. The claimant admitted that he did not report this to Mr Murphy until receiving his call. The claimant admitted that he did not report the matter to the police.
- 10 87. The claimant's position was that there were mitigating circumstances. First, he said that he had been previously asked to speak to customers about complaints. The TU representatives accompanying the claimant said there a practice. However that was not the position taken by Mr Murphy, Mr Brown and Mr Walker who said that customers were entitled to complain without reprisal, and employees should be protected from having to deal with unexpected customer responses. While I appreciated their position, there was no written policy about how complaints should be handled, which may have led to inconsistent messages being given by managers.
- 15 20 88. The claimant also said that he acted in self-defence. Mr Brown and Mr Walker considered this. Their view was that the attack was not random. It started by the verbal altercation which led to a fight which the claimant did not report. Mr Walker also considered that the claimant did not attempt to leave, call for help, or run away. Some employers may have taken the view that the claimant de-escalated the situation by leaving the building and continuing his duty. They may also have taken the view that being physically assaulted after discussing a complaint (which was not upheld) was unjustified and reacting in the heat of the moment was self-defence.
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89. The claimant did not report the 17 February incident. Mr Brown and Mr Walker drew adverse inferences from this. However I considered that some employers might not have done so where there was no policy about what employees were to do if assaulted (verbally or physically) by a customer, and the claimant spoke to Mr Murphy within half an hour of the incident.
90. There was no history of misconduct by the claimant. He was a long standing, experienced employee. Mr Brown and Mr Walker said that they took account of this and considered alternatives to dismissal. I did not consider that the decision to dismiss the claimant was pre-determined or an automatic conclusion.
91. While I appreciated the claimant's position the question for me was whether the respondent's decision to dismiss him fell within the range of reasonable responses that a reasonable employer in those circumstances and that business might have adopted. While I felt that some employers may have acted differently, I could not conclude that no reasonable employer would have considered that dismissal was the appropriate penalty for challenging a customer about a complaint, having been told not to, punching a customer (even in self-defence) and not reporting the incident to management.
92. I concluded that the dismissal was fair and, having reached this conclusion, I did not consider it necessary to go on to consider the question of remedy. The unfair dismissal claim is dismissed.

Wrongful dismissal

93. I then turned to consider the wrongful dismissal claim. This is a different complaint to that of unfair dismissal. The reasonableness or otherwise of the respondent's action is irrelevant. The question was whether the claimant was guilty of conduct so serious as to amount to repudiatory breach of the employment entitling the respondent to summarily terminate the contract?
94. The T&Cs state that the claimant is entitled to 12 weeks' notice of termination. The claimant was summarily dismissed. The claimant received no notice or

payment in place of it. I then considered if the claimant was in repudiatory breach of contract.

5 95. Ms Grant invited me to find that on the balance of probabilities the claimant was guilty of the misconduct with which he was charged which was much more than a minor act of disobedience.

10 96. As explained above, I was less persuaded by the statements provided by the customer and the neighbour. I considered that there were discrepancies between the witness complaint and the neighbour telephone conversation on 5 July 2024, and the customer note and telephone conversation on 1 July 2024. The claimant was experienced. He had previously spoken to customers about complaints without incident. The original complaint was investigated. The facts did not support the original complaint and it was concluded. There was no reason for the claimant to instigate a verbal or physical altercation with a known customer while at work. The claimant acted
15 in self-defence. He had lost his hearing aid, and his mind was all over the place. He spoke to Mr Murphy shortly afterwards. At the February FFI, he provided photographs of his injuries which were consistent with his explanation.

20 97. I concluded that while the claimant spoke to the customer about the complaint contrary to the CMOs instruction, this was not serious enough to amount to repudiatory breach of contract. The claimant had left the customer's building and was making deliveries at another building. There was no reason for the customer to reapproach the claimant. It was regrettable that the claimant punched the customer in self-defence. While I appreciated that delivery
25 workers are the face of the respondent's business, acting in self-defence when attacked did not amount to repudiatory breach of contract. I was not convinced that the claimant could not be trusted, the claimant accepted that verbal and physical altercation could damage the respondent's reputation.

30 98. I therefore concluded that the claimant's conduct was so not serious as entitling the respondent to summarily dismiss him. The wrongful dismissal claim was upheld.

99. I calculated the claimant's damages as loss of 12 weeks' pay at £347.70 per week (£4,172.40) and 12 weeks loss of pension contribution at £46.83 (£561.96) giving a total of £4,734.36. The claimant did not find alternative employment during the damages period. Accordingly the respondent is ordered to pay the claimant damages of £4,734.36.

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Date sent to parties**14 March 2025**