



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. I Khan

**Respondent:** Metroline West Limited

**Heard at:** London South, by video

**On:** 8 and 9 January 2025

**Before:** Employment Judge Cawthray

## Representation

**Claimant:** In person, not legally qualified. Assisted and supported by Mr. Hassan, not legally qualified

**Respondent:** Ms. Nicolaou, Solicitor

**JUDGMENT** having been sent to the parties on 24 January 2025 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## Introduction, evidence and procedure

1. At the start of the hearing I explained the procedure for giving and challenging evidence, and making submissions. I discussed the issues with the parties and explained the operation of the principles of law relating to unfair dismissal, Polkey and contributory fault.
2. No interpreter had been booked for the hearing, but the Claimant was happy to continue. The Claimant engaged well during the hearing and appeared to have no difficulty in understanding questions and answering as he wished.
3. The parties had agreed a bundle and all witnesses and produced written witness statements.

4. I reminded the parties at several points during the hearing about the issues that I needed to determine.

## **Issues**

5. The issues for determination are set out below.

### **Unfair dismissal**

6. Was the Claimant dismissed? Yes
7. What was the reason or principal reason for dismissal? The Respondent says the reason was conduct. The Tribunal need to decide whether the Respondent genuinely believed the Claimant had committed misconduct.
8. If the reason was misconduct, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant? The Tribunal will usually decide, in particular, whether:
  - there were reasonable grounds for that belief;
  - at the time the belief was formed the Respondent had carried out a reasonable investigation;
  - the Respondent otherwise acted in a procedurally fair manner;
  - the dismissal was within the range of reasonable responses.
9. At the start of the hearing I asked the Claimant to confirm why he considered his dismissal to be unfair. He said that he did not receive his last written warning from July 2023 until January 2024 and this delay meant he did not know what areas he needed to improve and did not have a chance to improve and also meant that his time for appealing had lapsed. He said Mr. Burroughs had told him his decision in July 2023 was very harsh and that he should appeal. He also said that he thinks the real reason for his dismissal is that he was on the highest paid driver rate.

## **Findings of facts**

10. The Respondent is a large bus company operating in London and surrounding areas.
11. The Claimant was employed as a bus driver, and he started on 11 October 2010, making him a long serving employee.
12. The Respondent has a Disciplinary Policy and a Driver Handbook. The Driver Handbook sets out the requirements of drivers, including stopping at all stops, allowing passengers to board if there is space and to drive in a correct and proper manner. The Claimant accepted that he was required to obey speed limits, not drive through red lights, maintain headway, pick up passengers and adhere to his timetable.

13. The Claimant's performance record shows that from 2016 there were a number of concerns regarding the Claimant's conduct and performance at work and show that the Claimant was spoken to and given advice and guidance but also verbal warnings on a number of occasions. The Claimant's record shows that he was given a written warning for dangerous driving in January 2018 involving exceeding speed limits (36 mph in a 30 mph zone and 45 mph in 40 mph zone) and a final written warning in April 2018 for failing to stop at a bus stop and let passengers board and for failing to maintain headway.
14. In the first half of 2023 a number of customer complaints and internal concerns were raised about the Claimant. He attended an investigation on 5 July 2023, undertaken by Mr. Gurpeet Sidhu, Operations Manager. Mr. Sidhu considered that there was a case to answer in relation to 12 matters.
15. On 10 July 2023 the Claimant was sent an invitation letter. The letter set out the 12 allegations against the Claimant, including driving through a red light and failing to stop for passengers, together with other matters such as failing to maintain headway.
16. The Claimant attended a disciplinary hearing on 14 July 2023. This hearing was conducted by Mr. Adam Burroughs, Operation Manager, and considered 12 allegations between 16 April and 18 June 2023. Mr. Burroughs discussed the allegations with the Claimant, and the Claimant understood the allegations and provided comments.
17. After adjourning to consider the matter Mr. Burroughs explained his decision to the Claimant verbally. The Claimant understood that he had been issued with a final warning and a final written warning.
18. The Claimant was issued with a written warning in relation to failing to serve a bus stop and running early and a final written warning in relation to driving through a red light. The Claimant was told about these warnings at the end of the disciplinary hearing. Mr. Burroughs sent his notes and the letters to the Lampton garage, the base from which the Claimant works, on 17 July 2023. Copies of the letters in the bundle are signed by the Claimant, above a typed received date of 17 July 2023.
19. The final written warning states: *"You were also informed that a failure to improve/repeat of similar misconduct under the Company's rules within 12 months is likely to lead to your dismissal."*
20. The Claimant was told of his right to appeal. The Claimant did not appeal. The Claimant did not make any enquiries about appealing.
21. The Claimant says he was not given copy of the written warnings until January 2024. Mr. Burroughs said that the Claimant had not raised any concern with himself, or Mr. Sidhu at the investigation meeting, that the warning letters had not been received until January 2024. The Claimant did not tell the appeal panel that he had not received the warning letters until January 2024. For the first time, in oral evidence, the Claimant said he told a trade union representative and colleagues that he had not

received his warning letters and that Mr. Burroughs was aware as the representative had spoken to management about it. The Claimant did not chase Mr. Burroughs for the warning letters, despite having his contact details and working out of a location that Mr. Burroughs also spent time at each week. No colleagues or trade union representatives raised the matter with Mr. Burroughs. There are no handwritten comments next to the signature box and the typed date of 17 July 2023 is not crossed through or amended in any way. Mr. Burroughs considered that the Claimant had received the letters.

22. Accordingly, on the balance of probabilities, taking into account the signed receipts and all the above evidence, I conclude that the Claimant did receive the warning letters in July 2023.
23. Transport for London operate random checks in which an assessor boards the bus as a passenger without the driver being aware. On 5 December 2024 the Respondent sent the Claimant a letter, following a random check. Within the letter it informs the Claimant he received an excellent score of 95, above the average score of 86.2 and said his performance in all areas was excellent. This letter relates to the Claimant's driving on the day of the check.
24. On 8 February 2024 the Claimant attended an investigation meeting conducted by Mr. Sidhu, Operations Manager. Adele Maroti attended as a notetaker. The meeting discussed a significant number of allegations resulting from public complaints and internal concerns since October 2023.
25. In the investigation meeting the Claimant accepted that he had failed to maintain headway, though gave a number of different reasons for this. He acknowledged that he had not stopped at the bus stop and collected the passengers, even though his bus was not full, and he accepted he had not kept to the speed limit. In response to Mr. Singh asking him why he had not obeyed the speed limit his response was "*Nobody follows the speed limit.*" And made reference to needing to ensure he did not run late. The Claimant was travelling at 33mph on a 20 mph stretch of road.
26. Mr. Sidhu considered there was a case to answer and the Claimant was invited to attend a disciplinary hearing.
27. The Claimant was sent an invitation letter dated 9 February 2024. The letter set out five allegations and enclosed copies of the evidence relied upon. The letter also informed the Claimant of his right to be accompanied.
28. The allegations were:  
  
Failure to stop and serve a bus stop resulting in public communication 19440299 on 17<sup>th</sup> January 2025 whilst driving Metroline vehicle VWH2283 serving the 120 route.

Poor/Dangerous driving result in public communication 19426971 on 14<sup>th</sup> January 2024 whilst driving Metroline vehicle VWH2282 serving the 120 route.

Poor service performance resulting in official report dated 1<sup>st</sup> October 2023, 17<sup>th</sup> October 2023, 30<sup>th</sup> October 2023, 31<sup>st</sup> October 2023, 8<sup>th</sup> November 2023, 12 November 2023, 12<sup>th</sup> November 2023, 15<sup>th</sup> November 2023, 2<sup>nd</sup> January 2023 and 23 January 2023.

Failure to adhere to the 20mph speed limit on 14<sup>th</sup> January 2024, whilst driving Metroline vehicle VWH2282.

Failure to adhere to the 20mph speed limit on 17<sup>th</sup> January 2024, whilst driving Metroline vehicle VWH2283.

29. The invitation letter also warned the Claimant of the possibility of dismissal and said:

*“Depending on the facts established at the hearing, if the hearing manager decides that your conduct amounts to gross misconduct or if you are subject to a live Final Written Warning, one of the outcomes could be your dismissal (with or without notice), but a decision on this will not be made until you have had a full opportunity to put forward your version of events and any mitigation.”*

30. On 13 February 2024 the Claimant attended a disciplinary hearing. The hearing was conducted by Mr. Burroughs. The Claimant did not bring any companion with him. Mr. Burroughs was aware that English was not the Claimant's first language but was satisfied that the Claimant understood what was being said and could properly engage. The hearing started at 12.30pm and ended at 16:20pm.
31. At the disciplinary hearing Mr. Burroughs discussed each allegation with the Claimant.
32. After being shown CCTV footage the Claimant acknowledged that doing 33 mph in a 20 mph area was not acceptable but said he was running late. At this Tribunal hearing, for the first time, the Claimant said it was not possible to speed as the buses have a speed limiter device. Mr. Burroughs explained that some buses are fitted with speed restriction devices, but not all, but the presence of the device does not mean that the bus cannot be driven above the speed limit. On balance, noting the contemporaneous CCTV footage and the evidence regarding speed restriction devices, I find that on the day that Mr. Burroughs was discussing with the Claimant, the Claimant had driven at 33 mph in a 20 mph area.
33. Mr. Burroughs discussed the Claimant's failure to stop at a bus stop where passengers were waiting, and the Claimant said the bus was full. Mr. Burroughs showed the Claimant the CCTV footage which demonstrated that the bus was not full. The Claimant acknowledged the bus was not full and suggested sometimes there were people who were

drunk or taking drugs at that stop and that may be why he did not stop. However, at the hearing today, for the first time, the Claimant said that controllers would instruct drivers to go past a stop. Mr. Burroughs said he had never known this to be the case. On balance, I do not accept the Claimant's evidence, noting that this explanation for failing to stop was not raised at the investigation, disciplinary or appeal hearing and was only mentioned during the final hearing today.

34. Mr. Burrough's asked the Claimant about running to time and keeping distance with other vehicles and the Claimant gave varying reasons for this. He also asked the Claimant about his failure to stop at a zebra crossing when there was a pedestrian waiting to cross. The Claimant accepted that he had not stopped at the zebra crossing.
35. Mr. Burrough's asked the Claimant if there was anything he wished to say in mitigation. The Claimant said he had made mistakes and asked for one more chance. Mr. Burrough's adjourned the meeting to make his decision. Mr. Burrough's reconvened the hearing and informed the Claimant that he had made the decision to dismiss the Claimant and explained that the Claimant had failed to take heed of the previous warnings.
36. Mr. Burroughs made typed notes of the hearing.
37. After the hearing Mr. Burroughs produced an outcome letter dated 13 February 2024. The Claimant was provided with the notes of the hearing at the same time as the outcome letter. The letter confirmed the Claimant had been dismissed with notice. The letter explained the reasons for dismissal. There is no mention, or inference, at all in any evidence that the Claimant's rate of pay formed any part of Mr. Burrough's decision making.
38. The Claimant appealed the decision to dismiss him on 13 February 2024. The appeal simply said the Claimant wished to appeal the decision.
39. The Claimant was invited to attend an appeal meeting in a letter dated 27 February 2024.
40. Mr. Heracleous, Garage Manager, and Mr. Wright, Garage Manager, were appointed as a panel to hear the Claimant's appeal. Neither Mr. Heracleous or Mr. Wright worked at the same base as the Claimant and both were more senior to Mr. Burroughs. Mr. Wright chaired the hearing.
41. The appeal hearing started at 9.30am and ended at 10.20am.
42. At the appeal hearing the Claimant was asked why he wanted to appeal and he said that he thought the sanction was too harsh, that everybody makes mistakes and that he wanted an opportunity to correct his mistakes. Mr. Heracleous' unchallenged evidence is that the Claimant understood what the final written warning meant, but that he was seeking a further chance and had learned his lesson. At the appeal hearing the panel asked questions and the Claimant made points he wished to make. At no point during the appeal hearing did the Claimant tell the panel that he had not

received the warning letters from July 2023.

43. The panel adjourned to consider the information. The panel concluded that the Claimant had not taken any steps to improve and continued to commit misconduct of the same type. The panel concluded that the Claimant posed a danger when driving and did not have confidence he would drive safely and in accordance with rules and instructions in the future. The panel upheld the decision to dismiss the Claimant. The panel reconvened the hearing and told the Claimant the outcome.
44. The Claimant was sent an appeal outcome letter dated 14 March 2024. The letter explained the reasons for upholding the decision to dismiss the Claimant. The letter enclosed the notes of the appeal meeting.
45. During the hearing the Claimant often gave lengthy responses to questions giving different reasons and accounts for events that had previously been discussed with him and recorded in notes of meetings.

## Law

### Unfair dismissal

46. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that she was dismissed by the Respondent under section 95, but in this case the Respondent admits that it dismissed the Claimant (within section 95(1)(a) of the Employment Rights Act on 11 May 2021.

*94.— The right.*

*(1) An employee has the right not to be unfairly dismissed by his employer.*

*(2) Subsection (1) has effect subject to the following provisions of this Part (in particular sections 108 to 110) and to the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 (in particular sections 237 to 239).*

47. Section 98 of the Employment Rights Act 1996 deals with the fairness of dismissal. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the Respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the Respondent acted fairly or unfairly in dismissing for that reason.
48. Section 98(4) then deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the

employee; and shall be determined in accordance with the substantial merits of the case.

**98.— General.**

1. *In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*
  - a. *the reason (or, if more than one, the principal reason) for the dismissal, and*
  - b. *that it is either a reason falling within 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.*
2. *A reason falls within this subsection if it—*
  - (a) *relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,*
  - (b) *relates to the conduct of the employee,*
  - (c) *is that the employee was redundant, or*
  - (d) *is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.*
- (3) *In subsection (2)(a)—*
  - (a) *“capability”, in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and*
  - (b) *“qualifications”, in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.*
- (4) *[Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*
  - (a) *depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted 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.*
- (6) *[Subsection (4)]4[is]5 subject to—*
  - a. *[sections 98A to 107]6 of this Act, and*
  - (b) *[sections 152, 153, 238 and 238A of the Trade Union and Labour Relations (Consolidation) Act 1992]7 (dismissal on ground of trade union membership or activities or in connection with industrial action).*

49. In misconduct dismissal there is well-established guidance for Tribunals on fairness within section 98(4) in the decisions of *Burchell v British Home Stores Ltd* IRLR 379 and *Post Office v Foley* 200 IRLR 827. The Tribunal must decide whether the employer had a genuine belief in the employee's



guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer (*Iceland Frozen Foods Limited v Jones* 1982 IRLR 439, *Sainsbury's Supermarkets Limited v Hitt* 2003 IRLR 23, and *London Ambulance Service NHS Trust v Small* 2009 IRLR 563).

50. In relation to the reason for dismissal, in *Abernethy v Mott, Hay & Anderson* [1974] ICR 323 it was held: "A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee".
51. Where a decision is made for more than one reasons, the Tribunal is obliged to identify the principal reason. The Tribunal is not restricted to finding the reason is that relied upon by the employer, or that argued for the employee, the Tribunal can make its own determination on the reason for dismissal.

#### Polkey

52. I agreed with the parties at the start of the hearing that if I concluded that the Claimant had been unfairly dismissed, I should consider whether any adjustment should be made to the compensation on the grounds that if a fair process had been followed by the Respondent in dealing with the Claimant's case, the Claimant might have been fairly dismissed.
53. Where a dismissal is unfair on procedural grounds, the Tribunal must also consider whether, by virtue of *Polkey v AE Dayton Services* [1987] IRLR 503, HL, there should be any reduction in compensation to reflect the chance that the claimant would still have been dismissed had fair procedures been followed.
54. The law in this respect is set down in the cases of *Polkey v AE Dayton Services Ltd* [1987] UKHL 8, *Software 2000 Ltd v Andrews* [2007] ICR 825; *W Devis & Sons Ltd v Atkins* [1977] 3 All ER 40; and *Crédit Agricole Corporate and Investment Bank v Wardle* [2011] IRLR 604.

#### Contributory Fault

55. I also agreed with the parties that if the Claimant had been unfairly dismissed, I would address the issue of contributory fault, which inevitably arises on the facts of this case.
56. The Tribunal may reduce the basic or compensatory awards for culpable conduct in the slightly different circumstances set out in sections 122(2) and 123(6) of the Employment Rights Act 1996. Section 122(2) provides as follows:

*“Where the Tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the Tribunal shall reduce or further reduce that amount accordingly.”*

57. Section 123(6) then provides that:

*“Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.”*

## Conclusions

58. The context and background to the dismissal is important, and therefore I have made findings of fact as required. However, the issues for determination are clearly set out under the section headed Issues above, and the only complaint is one of unfair dismissal.

## Reason for dismissal

59. The first issue for determination was: what was the reason for dismissal?

60. The Claimant suggests that the reason for dismissal was that the Claimant was paid at a higher rate. I do not consider there to be any evidence that the Claimant's rate of pay formed any part of the decision.

61. There was no evidence to suggest that the Claimant's rate of pay formed any part of Mr. Burrough's decision.

62. Mr. Burroughs is a manager with experience in dealing with disciplinary matters and was previously a bus driver.

63. The evidence given by Mr. Burroughs was clear, and further, the contemporaneous documents clearly explain that the reason for the Claimant's dismissal was his conduct. The Claimant was dismissed because he had two live warnings, one being final, and there were further misconduct matters of a similar nature. The Claimant, as set out above, since his disciplinary hearing in July 2023 had driven over the speed limit on two occasions, failed to stop at a bus stop, failed to stop at a zebra crossing and failed to maintain head way on a number of occasions. These were all matters relating to driver conduct, and similar matters had been raised with the Claimant previously.

64. I do not consider the Claimant's dismissal to be for any other reason.

65. I conclude that the Claimant's conduct was the reason for dismissal, and this was a potentially fair reason under section 98(2)(b) of the Employment Rights Act 1996.

66. As the Respondent has shown a potentially fair reason for dismissing the Claimant, the next legal issue for consideration is that set out in section 98(4) of the Employment Rights Act 1996. This provision always bears repeating:

*“(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*

- (a) depended on whether in the circumstances (including the size and administrative resources of the employers 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 the equity and the substantial merits of the case.”*

67. The test of fairness is tied into the reason for dismissal, which I have found to be conduct. It also considers the size and resources of the Respondent, in this case the Respondent is a large employer. A further key point is that the test looks at whether the employer acted reasonably or unreasonably. This effectively imports a “band of reasonable responses” test. The question is whether this employer acted reasonably given the reason for dismissal. It is not for me to substitute my view on what the Respondent should or should not have done.

68. When considering fairness in conduct dismissals the correct approach is set out in *British Homes Stores v Burchell* [1980] ICR 3030 and *Sainsbury’s Supermarkets Ltd v Hitt* [2003] IRLR 23. I must also have regard to the ACAS Code of Practice on Discipline and Grievance Procedures 2015 (the Code).

**Did the Respondent have a genuine belief the Claimant had committed misconduct and were there reasonable grounds for that belief?**

69. The next issue for determination is: did the Respondent have a genuine belief that the Claimant had committed misconduct and were there reasonable grounds for that belief?

70. I conclude that the Respondent did have a genuine belief based on reasonable grounds. Mr. Burroughs considered the documentary evidence available, and heard directly from the Claimant and discussed his behaviour, and the Claimant’s views with him. Mr. Burroughs formed his belief that the Claimant was choosing not to drive professionally and safely in accordance with the rules as required.

71. At the time of both the dismissal and appeal hearings the decision makers had reviewed the documentary evidence available (including various internal reports, external complaints and CCTV footage) and considered

the Claimant's comments at the disciplinary hearing and at the appeal hearing.

72. The Claimant acknowledged he had made mistakes. The decision makers took into account the context of the situation and the Claimant's behavior.

73. The evidence from Mr. Burroughs was clear on why he dismissed the Claimant, as explained in the outcome letter. Mr. Heracleous evidence on why the appeal was not upheld was also clear, and was unchallenged.

**Did the Respondent carry out a reasonable investigation?**

74. Again, this issue, being whether at the time the belief of misconduct was formed had the Respondent had carried out a reasonable investigation is a question of the band of reasonable responses.

75. The Claimant has not made any argument that a reasonable investigation was not undertaken.

76. As set out above, the Claimant attended an investigation meeting on 8 February 2024, and Mr. Burroughs also considered the evidence and discussed the allegations with the Claimant. contends that a reasonable investigation was not undertaken because no investigation meeting was held.

77. I conclude the investigation in this case was reasonable.

**Did Respondent otherwise act in a procedurally fair manner?**

78. Both the ACAS Code and the Respondent's own Disciplinary Policy are relevant in considering this issue. The key points are:

That an employer acting fairly will give sufficient details of the allegations and the evidence being considered in enough time before the disciplinary hearing;

The employee is permitted to be accompanied by a fellow worker or trade union representative;

The employer must consider whether or not disciplinary or any other action is justified and inform the employee in writing;

The employee has a fair chance to set out their case at a disciplinary hearing; and

That the employee is offered the right of appeal.

79. I conclude that on balance, the Respondent did act in a procedurally fair manner.

80. The Respondent investigated in a proportionate way. The Claimant was notified of the allegations against him.

81. The invitation to the disciplinary hearing gave clear information about potential consequences and informed the Claimant of his right to be accompanied, but he chose not to be accompanied.
82. A disciplinary hearing was held with an independent manager, and the Claimant had a full opportunity to present his position. Mr. Burrough's considered the background context to the Claimant's conduct and considered mitigating factors. Mr. Burroughs did not make any decision until after hearing the Claimant's comments at the disciplinary hearing.
83. The Claimant submits that the real reason he was dismissed was because he was on a higher rate of pay and the Respondent deliberately provided the warning letters from July 2023 late so that he would not have chance to improve.
84. As I concluded above, Mr. Burrough's evidence, which I accept, was very clear and he made the decision to dismiss at the disciplinary hearing and after hearing from the Claimant. There was no evidence to suggest that the Claimant's rate of pay formed any part of the decision and as a matter of fact I found the Claimant was given the warning letters in July 2023. In any event, even if the warning letters had not been given to the Claimant at that time, the Claimant was clearly aware of the Respondent's concerns in July 2023 and the outcome of that disciplinary hearing as Mr. Burroughs had clearly explained his decision to him. Further, the Claimant had previously been given written warnings and final warnings in 2018 and therefore was aware of this process.
85. The Claimant was informed of the outcome both verbally and in writing. The outcome letter was clear and set out the decision.
86. The Claimant was offered the right to appeal, and did appeal. The Claimant attended the appeal hearing and a full and detailed consideration took place at the appeal stage. This approach is consistent with the ACAS Code of Practice.
87. Finally, considering section 98(4) in totality, if all the above tests have been met, I must consider whether dismissal within the range of reasonable responses. It is important to restate that I must substitute my view, I must consider if dismissal was one of the options open to the Respondent.
88. I appreciate that the Claimant considers the decision to dismiss him as harsh. However, given the reasonable finding that the Claimant had committed further acts of misconduct, whilst under two live warnings, one being final, and noting the process in totality and that the Respondent had considered the Claimant's representations, I conclude the Respondent's decision to dismiss the Claimant fell within a range of reasonable responses.
89. The Claimant's complaint of unfair dismissal fails.

Polkey

90. However, if I am wrong, and the dismissal was unfair, I have set out my conclusions on Polkey below.
91. Ms. Nicoloua submitted that if the Respondent did not adopt a fair procedure in dismissing the Claimant, that the Claimant would have been dismissed even if a fair procedure had been followed.
92. In undertaking this exercise I am not assessing what I would have done, I am assessing what this employer would or might have done. I must assess the actions of the employer before me, on the assumption that this employer would have acted fairly if had not done so before.
93. I find that had a different fair process been undertaken the outcome would still have been the same, the Claimant would have been dismissed. Mr. Burroughs considered the Claimant's conduct, the context for his behaviour and mitigating factors. There was nothing substantially new at the appeal stage, there was no different explanation for the Claimant's behaviour. I find the Respondent would still have concluded the Claimant's conduct amount to misconduct. I consider there was a 100% chance that the Claimant would still have been dismissed and the dismissal would have been within the range of reasonable responses.

#### Contributory fault

94. As per my conclusions in relation to Polkey above, if I am wrong, and the dismissal was unfair, I have set out my conclusions on contributory fault below.
95. The Tribunal may reduce the basic or compensatory awards for culpable conduct as set out in sections 122 and 123 of the Employment Rights Act 1996 as set out above.
96. Ms. Nicalous submitted that if the Claimant's dismissal was unfair that the Claimant's actions entirely caused his own dismissal and that it would be just and equitable to reduce any basic or compensatory award to nil, or to a reduced award.
97. I must firstly identify the conduct giving rise to possible contributory fault, secondly decide whether the conduct was blameworthy and thirdly, whether the blameworthy conduct caused or contributed to the dismissal to any extent.
98. I conclude that the Claimant's conduct giving rise to contributory fault was his continuing refusal to improve his driving, his driving over the speed limit and not stopping at a pedestrian crossing, him not stopping to pick up passengers and failing to maintain headway. In all the circumstances, I find that conduct was blameworthy. The Claimant had been spoken to about various concerns during his employment and had been issued with warnings and final warnings. The Claimant was aware of the requirements of his role, but did not seek to listen to the warnings and adjust his driving.

99. I conclude it was this conduct that wholly led to the dismissal and taking all into account I find that the basic and compensatory awards should be reduced by 100%.

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Approved by  
Employment Judge Cawthray

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Date 21 February 2025