Reference number
2306263-2024

EMPLOYMENT TRIBUNALS

London South Employment Tribunal
18-20 March 2025 (video)

Claimant:	Alexander Williams Unuakhalu
Respondent:	CIS Security Limited
Before:	Judge M Aspinall (sitting as an Employment Judge)
Appearances:	Mr Leonard Lennard, for the Claimant Mr Steven Overs, for the Respondent

Judgment

The claims for unfair dismissal, notice pay, and holiday pay are not well-founded and are dismissed. The wrongful dismissal claim is also dismissed as it was withdrawn during the hearing because it would constitute double recovery alongside the notice pay claim.

Reasons

Background to this case

1. Mr Alexander Unuakhalu, the Claimant, was employed by CIS Security Limited, the Respondent, as a Response Security Officer from 25 August 2015 until his dismissal on 10 June 2024, a period of almost nine years. The Claimant's role required him to hold a valid Security Industry Authority (SIA) licence, which permitted him to work as a security officer in the private security industry.

2. On 2 February 2024, the Claimant was arrested and taken into police custody regarding allegations of assault against his child. The Claimant telephoned his line manager, Mr Wayne Nye-Jones, from the police station on that day and again on 3 February 2024 to inform him of his situation. Following this initial contact, there was no further communication from the Claimant to the Respondent until 26 March 2024, a period of approximately six weeks.

3. On 26 March 2024, the Claimant was released from custody and left a 30-second voicemail for Mr Nye-Jones informing him that he had been remanded in custody during his absence. The Claimant made no further attempt to communicate with the Respondent after this brief voicemail.

4. During this period of absence, the Respondent made several attempts to contact the Claimant. Mr Nye-Jones gave evidence that he attempted to contact the Claimant via mobile and WhatsApp on multiple occasions, including 12 and 29 February 2024. The Respondent also asked its Control room to try to contact the Claimant's next of kin, but without success. When these attempts proved unsuccessful, the Respondent became concerned for the Claimant's welfare and asked a duty manager to visit the Claimant's home address. When there was no answer, the Respondent reported the Claimant as a missing person to the police.

5. In early May 2024, the Claimant received correspondence from the Respondent which had

been sent during his absence. This included letters inviting him to investigatory meetings on 14 May, 23 May, and 28 May 2024, and to disciplinary hearings on 31 May and 6 June 2024. The Claimant did not attend any of these meetings or hearings.

6. On 13 May 2024, Mr Leonard Lennard, acting on behalf of the Claimant, sent a letter to the Respondent. This letter, on Justice Calls Debt Recovery letterhead, was accompanied by a signed letter of authority from the Claimant. The letter addressed the allegations against the Claimant and requested copies of the Respondent's Leave Absence Guide and Special Leave Policy.

7. The disciplinary hearing proceeded in the Claimant's absence on 6 June 2024. Following this hearing, the Respondent dismissed the Claimant by letter dated 10 June 2024. The letter cited four allegations that had been upheld: being absent from work since 17 February 2024 without prior authorisation; failing to obey a reasonable instruction to inform the SIA about criminal charges; failing to attend investigation meetings; and failing to attend a previous disciplinary hearing.

8. On 17 June 2024, Mr Lennard submitted an appeal on behalf of the Claimant. The Respondent informed the Claimant that they would not correspond with his chosen representative and required confirmation of an appeal directly from the Claimant. No direct appeal was received from the Claimant, and the Respondent advised him on 18 June 2024 that as no appeal had been received from him personally, the matter was closed and his termination stood.

The complaints

9. The Claimant has brought several complaints to the Tribunal arising from the termination of his employment with the Respondent.

10. The Claimant's primary complaint is one of unfair dismissal, contrary to section 94 of the Employment Rights Act 1996. He contends that his dismissal was procedurally and substantively unfair. The procedural unfairness, he argues, stems from the Respondent's failure to follow a fair disciplinary process, particularly in respect of the investigation conducted, the refusal to consider written representations made on his behalf, and the failure to properly consider his appeal.

11. The Claimant also brings a complaint of wrongful dismissal at common law. This claim is based on the assertion that the Respondent was not entitled to dismiss him without notice as his conduct did not amount to gross misconduct justifying summary dismissal. During the hearing, the wrongful dismissal claim was withdrawn as it would constitute double recovery alongside the notice pay claim.

12. The Claimant further seeks payment in lieu of notice under section 86 of the Employment Rights Act 1996. He contends that as his conduct did not amount to gross misconduct, he was entitled to receive notice pay upon the termination of his employment.

13. In addition, the Claimant brings a claim for unpaid holiday pay, pursuant to regulations 14 and 30 of the Working Time Regulations 1998 and regulations 16 and 43 of the Working Time Regulations 1998. This claim relates to holiday pay allegedly owed to him for the last six months of his employment.

14. The Claimant's complaints were presented to the Tribunal on 21 March 2024. The Respondent contests all of these claims.

Issues for the determination of the Tribunal

15. Was the Claimant unfairly dismissed, contrary to section 94 of the Employment Rights Act 1996?

    a) What was the reason for the Claimant's dismissal?

    b) Was the reason for dismissal a potentially fair reason under section 98(1) and (2) of the Employment Rights Act 1996?

    c) If the reason for dismissal related to the Claimant's conduct:

        i. Did the Respondent have a genuine belief that the Claimant was guilty of misconduct?

        ii. Did the Respondent have reasonable grounds for that belief?

        iii. At the time it formed that belief, had the Respondent carried out as much investigation as was reasonable in the circumstances?

    d) Was the dismissal fair in all the circumstances of the case pursuant to section 98(4) of the Employment Rights Act 1996, including whether it was within the range of reasonable responses available to a reasonable employer?

    e) If the dismissal was procedurally unfair, would the Claimant have been dismissed in any event had a fair procedure been followed?

16. Was the Claimant wrongfully dismissed?

    a) Did the Claimant's conduct amount to gross misconduct entitling the Respondent to dismiss him summarily without notice?
    [Note: During the hearing, the Claimant's representative withdrew this claim, acknowledging that it would constitute double recovery alongside the notice pay claim.]

17. Is the Claimant entitled to notice pay?

    a) Did the Claimant's conduct amount to gross misconduct entitling the Respondent to dismiss him without notice?

    b) If not, what is the appropriate period of notice to which the Claimant was entitled?

18. Is the Claimant entitled to holiday pay?

    a) What was the Claimant's entitlement to annual leave?

    b) Was the Claimant paid all holiday pay due to him?

    c) If not, what sum is due to the Claimant in respect of unpaid holiday pay?

    d) Is the Claimant's claim for holiday pay out of time?

    e) If the claim is out of time, is the Claimant entitled to rely on the "series of deductions" provisions?

19. If any of the Claimant's claims are well-founded, what remedy is he entitled to?

    a) Should any compensation be reduced to reflect the Claimant's contributory fault?

b) Should any compensation be reduced to reflect the likelihood that the Claimant would have been dismissed even if a fair procedure had been followed (the "Polkey" principle)?

The hearing before the Tribunal

20. The Tribunal heard this case over three days. The Claimant was represented by Mr Leonard Lennard, who identified himself as the Claimant's close friend and pro bono representative. The Respondent was represented by Mr Steven Overs of Croner, a litigation consultant.

21. At the outset of the hearing, the Tribunal clarified the list of issues to be determined, which was agreed by both parties. The Tribunal also noted that during the hearing, the Claimant's representative withdrew the wrongful dismissal claim, acknowledging that it would constitute double recovery alongside the notice pay claim.

22. The Tribunal was provided with a paginated bundle of documents comprising 190 pages, though it was noted that not all documents in the bundle were relevant to the issues to be determined. The Tribunal was also provided with written witness statements.

23. The Tribunal heard oral evidence from the Claimant, Mr Alexander Unuakhalu. The Claimant confirmed the contents of his witness statement and was cross-examined by Mr Overs. During cross-examination, it became apparent that the Claimant had not written all of his witness statement as he was unable to articulate points within it, such as providing either a citation or explanation of the Supreme Court case on holiday pay that he referred to in his statement. It appeared that parts of his witness statement likely originated from Mr Lennard, which the Claimant simply adopted without fully understanding the content.

24. For the Respondent, the Tribunal heard evidence from three witnesses: Mr Wayne Nye-Jones, the Claimant's line manager and the person who conducted the investigation; Mr Alex Morvan, the Employee Relations Business Partner responsible for policies and procedures within the company; and Mr Richard Beddoes, the National Account Director who made the decision to dismiss the Claimant. Each witness confirmed the contents of their witness statements and was cross-examined by Mr Lennard.

25. Due to time constraints, the parties were unable to make oral closing submissions. Instead, they were directed to provide written closing submissions, which were duly received by the Tribunal. The Claimant's representative provided written submissions dated 20 March 2025. The Respondent's representative also provided written submissions. Following receipt of the written submissions, there was further correspondence from both representatives regarding the scope of those submissions, particularly concerning references to case law on holiday pay.

26. After considering all the evidence and submissions, the Tribunal reserved its judgment.

The law

Legislation

Unfair Dismissal

27. The right not to be unfairly dismissed is contained in section 94(1) of the Employment Rights Act 1996 (ERA):

> "An employee has the right not to be unfairly dismissed by his employer."

28. Section 98 of the ERA sets out how the fairness of a dismissal is to be determined:

> "(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.

(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."

Notice Pay

29. Section 86 of the ERA sets out the rights to minimum notice:

"(1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—
(a) is not less than one week's notice if his period of continuous employment is less than two years,
(b) is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and
(c) is not less than twelve weeks' notice if his period of continuous employment is twelve years or more."

30. Section 88 of the ERA provides for rights to payments during the notice period:

"(1) If an employer gives notice to terminate the contract of an employee who has been continuously employed for one month or more, the employee is entitled—
(a) to be paid by his employer during the statutory minimum notice period, and
(b) to continue to enjoy during that period the other terms and conditions of his contract."

Holiday Pay

31. Regulation 16 of the Working Time Regulations 1998 provides:

"(1) A worker is entitled to be paid in respect of any period of annual leave to which the worker is entitled under regulation 15 and regulation 16, at the rate of a week's pay in respect of each week of leave."

32. Regulation 30 of the Working Time Regulations 1998 sets out the enforcement provisions:

> "(1) A worker may present a complaint to an employment tribunal that his employer—
> (a) has refused to permit him to exercise any right he has under—
> (i) regulation 10(1) or (2), 11(1), (2) or (3), 12(1) or (4), 13 or 13A;
> (ii) regulation 24(2) or (3), where the complaint relates to a rest break during a shift of more than 6 hours;
> (b) has failed to pay him the whole or any part of any amount due to him under regulation 16(1).
>
> (2) An employment tribunal shall not consider a complaint under this regulation unless it is presented—
> (a) before the end of the period of three months (or, in a case to which regulation 38(2) applies, six months) beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made; or
> (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three or, as the case may be, six months."

Security Industry Authority Licensing

33. The Private Security Industry Act 2001 established the Security Industry Authority (SIA) and gives statutory effect to the SIA licensing criteria. Section 3 of the Act makes it an offence to engage in licensable conduct without a licence. Section 9 of the Act provides for penalties for offences, including imprisonment for a term not exceeding six months and/or a fine.

34. The SIA licensing criteria require licence holders to inform the SIA within 21 calendar days of any charges for relevant offences, which include assault. Failure to comply with this requirement is a criminal offence under the Act.

Case law

Unfair Dismissal: The Burchell Test

35. In British Home Stores Ltd v Burchell [1978] IRLR 379, the Employment Appeal Tribunal set out the test for determining the fairness of a dismissal for misconduct:

> "What the tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in question (usually, though not necessarily, dishonest conduct) entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. That is really stating shortly and compendiously what is in fact more than one element. First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case."

Range of Reasonable Responses

36. In Iceland Frozen Foods Ltd v Jones [1983] ICR 17, the Employment Appeal Tribunal established the "range of reasonable responses" test:

> "[T]he function of the industrial tribunal, as an industrial jury, is to determine

> whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair."

Dismissal and Imprisonment

37. In Carr v Alexander Russell Ltd [2006] UKEAT/0698/05, the Employment Appeal Tribunal held that dismissal for absence due to imprisonment can be fair, even if the employee is later acquitted:

> "The reason for dismissal is the absence, not the alleged crime. If the employee is acquitted, then that does not retrospectively render the dismissal unfair. The employer is entitled to take into account the length of absence, the difficulties in keeping the job open, and any other relevant factors."

38. In Burns v Santander UK plc [2011] UKEAT/0500/10, the Employment Appeal Tribunal made clear that being in custody is not an automatic defence against dismissal for unauthorised absence:

> "The fact that an employee is in custody and cannot attend work is a consequence of his own actions and not a circumstance beyond his control. While an employer may choose to be sympathetic, they are not required to keep a job open indefinitely for an employee who is unable to work due to being in custody."

Serious Allegations and Investigation Standards

39. In A v B [2003] IRLR 405, the Employment Appeal Tribunal emphasized the importance of thorough investigations in cases involving serious allegations:

> "Serious allegations of criminal misbehaviour, at least where disputed, must always be the subject of the most careful investigation, always bearing in mind that the investigation is usually being conducted by laymen and not lawyers. Of course, even in the most serious of cases, it is unrealistic and quite inappropriate to require the safeguards of a criminal trial, but a careful and conscientious investigation of the facts is necessary and the investigator charged with carrying out the inquiries should focus no less on any potential evidence that may exculpate or at least point towards the innocence of the employee as he should on the evidence directed towards proving the charges against him."

Responsibility for Fair Procedure

40. In Crawford v Suffolk Mental Health Partnership NHS Trust [2012] EWCA Civ 138, the Court of Appeal emphasized that the responsibility for ensuring a fair procedure lies with the employer:

> "It is for the employer to ensure that a fair procedure is adopted. It is true that the union representatives conducting the appeal on behalf of these appellants could have made a complaint about this procedural defect, and it does not appear as though they did. It is a matter of pure speculation whether the appeal panel would have remedied the wrong had their attention been drawn to it or what the outcome would have been if it had. In my judgment, however, it cannot be enough for an employer to say that although a fair procedure was not adopted, the responsibility for failing to remedy it lies at the door of the employee for failing to alert him to the error."

Mitigating Factors in Gross Misconduct

41. In Britto-babapulle v Ealing Hospital NHS Trust [2014] EWCA Civ 1626, the Court of Appeal held that finding gross misconduct does not automatically justify dismissal; mitigating factors must be considered:

> "The Employment Tribunal had made a 'logical jump' from the finding of gross misconduct to the proposition that dismissal must then inevitably fall within the range of reasonable responses and that this gave, in the words of the EAT, 'no room for considering whether, though the misconduct is gross and dismissal almost inevitable, mitigating factors may be such that dismissal is not reasonable.'"

Third-Party Representation

42. In Kulkarni v Milton Keynes Hospital NHS Foundation Trust [2009] IRLR 829, the Court of Appeal considered the right to legal representation in disciplinary proceedings:

> "Where an employee is facing charges which, if proved, could effectively bar him from his profession, there may be circumstances where fairness requires that he is entitled to legal representation at an internal disciplinary hearing. However, this is not a general principle that applies to all disciplinary proceedings."

The evidence

43. The Tribunal was provided with a bundle of documents comprising 190 pages, though not all documents were relevant to the issues to be determined. The documentary evidence included correspondence between the parties, disciplinary documents, and policy documents from the Respondent.

44. The documentary evidence showed that the Claimant had been employed by the Respondent as a Response Security Officer from 25 August 2015 until his dismissal on 10 June 2024. His contract of employment, dated around January 2021, was included at pages 49-59 of the bundle. The contract set out the terms and conditions of employment, including provisions regarding holiday entitlement, absence procedures, and the consequences of gross misconduct.

45. The bundle contained evidence that the Claimant was arrested and taken into police custody on 2 February 2024. The Claimant made telephone contact with his line manager, Mr Nye-Jones, from the police station on 2 and 3 February 2024. Following this initial contact, there was no further communication from the Claimant until 26 March 2024, when he left a voicemail for Mr Nye-Jones informing him that he had been remanded in custody.

46. The documentary evidence showed that during the Claimant's absence, the Respondent had made several attempts to contact him. An AWOL (Absent Without Leave) record covering the period from 17 February 2024 to 30 March 2024 was included at page 150 of the bundle.

47. The bundle included letters from the Respondent inviting the Claimant to investigatory meetings on 14 May, 23 May, and 28 May 2024, and to disciplinary hearings on 31 May and 6 June 2024. These letters outlined the allegations against the Claimant: being absent from work without authorisation since 17 February 2024; failing to obey a reasonable instruction to inform the SIA about criminal charges; and failing to attend investigation meetings.

48. A letter dated 13 May 2024 from Mr Leonard Lennard to the Respondent was included at pages 146-149 of the bundle. This letter, on Justice Calls Debt Recovery letterhead, was accompanied by a signed letter of authority from the Claimant. The letter addressed the allegations against the Claimant and requested copies of the Respondent's Leave Absence Guide and Special Leave Policy. The letter argued that the Claimant's absence was not

unauthorised as he had notified his line manager from the police station and later informed him of his remand in custody. The letter also contested the allegation regarding the SIA notification, claiming incorrectly that the Claimant was not required to inform the SIA of charges until conviction.

49. The bundle also contained a dismissal letter dated 10 June 2024 (pages 174-175), which informed the Claimant that he had been dismissed for gross misconduct. The letter cited four allegations that had been upheld: being absent from work since 17 February 2024 without prior authorisation; failing to obey a reasonable instruction to inform the SIA about criminal charges; failing to attend investigation meetings; and failing to attend a previous disciplinary hearing.

50. The documentary evidence included the SIA licensing criteria dated February 2019, which stated at page 44 that "Both front line and non-front line Licence Holders need to tell the SIA within 21 calendar days of any convictions, cautions or warnings, or charges for relevant offences whether committed in the UK or abroad." Page 50 of these criteria listed assault as a relevant offence.

51. The documentary evidence also included a notice of discontinuance from the Crown Prosecution Service (pages 144-145) which detailed the charges against the Claimant, including assault by beating. This document confirmed that while some charges had been discontinued, the Claimant continued to face a charge of assault by beating in relation to allegations concerning his child, which remained pending for trial.

Oral evidence

52. The Tribunal heard oral evidence from four witnesses: the Claimant, Mr Alexander Unuakhalu; and for the Respondent, Mr Wayne Nye-Jones, Mr Alex Morvan, and Mr Richard Beddoes.

53. The Claimant gave evidence that he had been employed by the Respondent as a Response Security Officer from 25 August 2015 until his dismissal on 10 June 2024. He confirmed that he had been arrested on 2 February 2024 and had telephoned his line manager, Mr Nye-Jones, from the police station on both 2 and 3 February 2024 to inform him of his situation. The Claimant testified that he was subsequently remanded in custody until 26 March 2024, when he was released and left a voicemail for Mr Nye-Jones. He stated that he had no means of contacting the Respondent during his period in custody.

54. During cross-examination, the Claimant confirmed that he had not informed the Security Industry Authority (SIA) about the criminal charges against him, despite this being a requirement for SIA licence holders. He acknowledged that he was aware of this requirement but stated that he had followed Mr Lennard's advice that he did not need to report charges unless convicted. The Claimant accepted that he did not fully understand the SIA Licensing Rules despite being bound by them for many years.

55. When questioned about the reference in his witness statement to a Supreme Court case allowing holiday pay claims to "go way back," the Claimant was unable to identify the specific case to which he was referring or explain the legal principle involved. It became apparent that the Claimant had not written all of his witness statement and had simply adopted content likely originating from Mr Lennard without fully understanding it.

56. The Claimant also confirmed that after his release from custody on 26 March 2024, he made no further attempt to contact the Respondent beyond the 30-second voicemail he left for Mr Nye-Jones. He did not attend any of the investigatory meetings or disciplinary hearings scheduled by the Respondent, nor did he provide any written representations directly to the Respondent.

57. When questioned about his failure to return to work, the Claimant revealed that the Respondent had offered him work at a different site, but he had refused this offer. When pressed on his reasons for refusal, the Claimant stated that he would have been paid less for working at this different site, though he struggled to provide clear details about the pay difference or why this was insurmountable.

58. Mr Wayne Nye-Jones gave evidence as the Claimant's line manager and the investigating officer for the disciplinary process. He confirmed that he had been employed as a Regional Account Manager with the Respondent since November 2019 and was responsible for around 240 employees across approximately 26 client contracts. The Claimant worked as a response officer, primarily at weekends at the Kings College London KCL Champion Hill Residencies site.

59. Mr Nye-Jones confirmed that the Claimant had telephoned him from the police station on 2 and 3 February 2024. He stated that there was no further contact from the Claimant until 26 March 2024, when the Claimant left a voicemail informing him that he had been released from custody. He testified that during the Claimant's absence, he had tried to contact the Claimant via mobile and WhatsApp multiple times, including on 12 and 29 February 2024, but received no response. He also asked the Control room to contact the Claimant's next of kin, but without success. A duty manager was sent to the Claimant's home address but was unable to get any answer. After exhausting all avenues to locate or contact the Claimant, the Respondent reported him as a missing person to the police.

60. Mr Nye-Jones testified that he had directly instructed the Claimant to inform the SIA about his criminal charges, as required by the SIA licensing criteria. He referred to a WhatsApp exchange with the Claimant on 8 April 2024, in which the Claimant stated that he would only inform the SIA if convicted of the offence he was charged with. Mr Nye-Jones stated that this approach was in breach of the terms and conditions of an SIA licence, which requires licence holders to report if they have been charged with an offence.

61. Mr Nye-Jones also confirmed that on 29 March 2024, the Claimant sent him a copy of a document dated 14 March 2024, confirming that the Crown Prosecution Service had discontinued some charges that had been brought against him. However, this document stated that the Claimant continued to be charged with assault by beating. On 17 April 2024, the Claimant sent another copy of a letter showing a change in his plea in relation to that charge, which advised him that he would need to find different legal representation to defend the charge.

62. Mr Nye-Jones testified that the Respondent had been willing to continue the employment relationship with the Claimant, even after his prolonged absence, if the Claimant had engaged constructively with the disciplinary process and fulfilled his regulatory obligations by reporting his charges to the SIA. He explained that the Respondent had offered the Claimant work at a different site, but the Claimant had refused this offer.

63. Mr Alex Morvan gave evidence as the Employee Relations Business Partner responsible for policies and procedures within the company. He testified that he had been employed in this role since November 2019 and was responsible for managing the Employee Relations team, developing HR-related policies, processes, and procedures, and managing substantial risk ER casework and litigation.

64. Mr Morvan explained the Respondent's absence policy, which required employees to notify their manager of any absence and to maintain regular contact throughout the period of absence. He confirmed that the Claimant had access to the company handbook and policies via "The Hub," an employee platform accessible via phone or browser. He also confirmed that there was no special leave policy or leave absence guide in existence, contrary to what the

Claimant had requested in the letter of 13 May 2024.

65. Mr Morvan detailed the sequence of investigatory meetings and disciplinary hearings that were scheduled for the Claimant. He explained that after the Claimant failed to attend the initial investigation meeting on 14 May 2024, further meetings were scheduled for 23 May and 28 May 2024, but the Claimant did not attend any of these meetings. Similarly, disciplinary hearings were scheduled for 31 May and 6 June 2024, but the Claimant failed to attend either of these hearings.

66. Mr Morvan also explained the SIA licensing requirements and the importance of licence holders reporting criminal charges. He testified that the SIA is responsible for vetting security professionals who apply for a licence to practice security-related duties in the UK. The SIA issues licences for a three-year period, after which renewal is required. Licence applications must be accompanied by a current DBS check, and any criminal convictions, cautions, or charges of a criminal nature can affect the validity of the licence. A provision of holding an SIA licence is a legal obligation to report these instances to the SIA as soon as practicable.

67. Mr Richard Beddoes gave evidence as the National Account Director who made the decision to dismiss the Claimant. He explained that he had been employed in this role since November 2017 and was responsible for managing the security operation for a large number of clients within the National Accounts portfolio. His role included handling client and colleague issues, and he was responsible for approximately £14 million worth of business, with three direct and around 400 indirect reports.

68. Mr Beddoes testified that he had considered all four allegations against the Claimant: being absent without authorisation, failing to inform the SIA about criminal charges, failing to attend investigation meetings, and failing to attend disciplinary hearings. He stated that each of these allegations individually constituted misconduct but taken together they amounted to gross misconduct justifying summary dismissal.

69. Mr Beddoes testified that he was aware of the letter dated 13 May 2024 from Mr Lennard but had disregarded it as the Respondent's policy did not permit representation by external third parties in disciplinary proceedings. He explained that the content of the letter did not alter his decision, as it did not provide any legitimate explanation for the Claimant's failure to maintain contact with the Respondent after his release from custody on 26 March 2024 or for his failure to inform the SIA about his criminal charges.

70. Mr Beddoes confirmed that on 17 June 2024, he received an email from Mr Lennard purporting to present the Claimant's appeal against dismissal, which he forwarded to Patrick Wurie, the Employee Relations Advisor. Mr Beddoes stated that the Claimant was advised by both himself and Mr Wurie that the Respondent would allow him to be accompanied by a work colleague or an affiliated trade union representative, but not by Mr Lennard, who did not fall within these categories. Mr Beddoes testified that following the email of appeal received from Mr Lennard on 17 June 2024, Mr Wurie emailed the Claimant on the same day, advising that the appeal must come from him directly and reminding him of the deadline. No such appeal was received from the Claimant.

71. Mr Beddoes emphasized the serious nature of the failure to report charges to the SIA, explaining that this could potentially expose the Respondent to significant risks, including regulatory breaches, reputational damage, and liability to clients. He stated that the Claimant's role as a Response Security Officer required the highest standards of integrity and compliance with regulatory requirements.

72. Mr Beddoes also explained that the Respondent had been willing to continue the employment relationship with the Claimant if he had engaged properly with the disciplinary process and

met his regulatory obligations. He testified that the Respondent had made efforts to offer the Claimant alternative work, but these had been rejected by the Claimant.

Findings of fact and application of the law

73. The Tribunal makes the following findings of fact based on the evidence presented.

74. The Claimant was employed by the Respondent as a Response Security Officer from 25 August 2015 until his dismissal on 10 June 2024, a period of almost nine years. Throughout his employment, the Claimant was required to hold a valid SIA licence, which permitted him to work as a security officer in the private security industry.

75. On 2 February 2024, the Claimant was arrested and taken into police custody regarding allegations of assault against his child. The Claimant telephoned his line manager, Mr Wayne Nye-Jones, from the police station on both 2 and 3 February 2024 to inform him of his situation. Following this initial contact, there was no further communication from the Claimant to the Respondent until 26 March 2024, a period of approximately six weeks, when he left a 30-second voicemail for Mr Nye-Jones informing him that he had been remanded in custody.

76. The Claimant was released from custody on 26 March 2024. After leaving the brief voicemail for Mr Nye-Jones, the Claimant made no further attempt to communicate with the Respondent directly. He did not return to work, nor did he provide any explanation for his continued absence.

77. During the Claimant's absence, the Respondent made several attempts to contact him. Mr Nye-Jones tried to contact the Claimant via mobile and WhatsApp multiple times. The Respondent also asked its Control room to contact the Claimant's next of kin, but without success. A duty manager was sent to the Claimant's home address but was unable to get any answer. After exhausting all avenues to locate or contact the Claimant, the Respondent reported him as a missing person to the police. The Tribunal finds that the Respondent took reasonable and proportionate steps to try to contact the Claimant during his absence.

78. In early May 2024, the Claimant received correspondence from the Respondent which had been sent during his absence. This included letters inviting him to investigatory meetings on 14 May, 23 May, and 28 May 2024, and to disciplinary hearings on 31 May and 6 June 2024. The Claimant did not attend any of these meetings or hearings, nor did he make any attempt to directly engage with the Respondent's disciplinary process. The Tribunal finds that the Claimant's failure to engage with the disciplinary process was unreasonable.

79. On 13 May 2024, Mr Leonard Lennard, acting on behalf of the Claimant, sent a letter to the Respondent. This letter addressed the allegations against the Claimant and requested copies of the Respondent's Leave Absence Guide and Special Leave Policy. The letter argued that the Claimant's absence was not unauthorised and contested the allegation regarding the SIA notification, claiming incorrectly that the Claimant was not required to inform the SIA of charges until conviction. The Tribunal finds that this assertion was plainly wrong and demonstrated a lack of understanding of the SIA licensing requirements, which clearly state that licence holders must inform the SIA within 21 calendar days of any charges for relevant offences.

80. The Tribunal finds that Mr Lennard's intervention into the disciplinary process was inappropriate and unhelpful. During the hearing, Mr Lennard acknowledged that he had no real understanding of the SIA licensing requirements, yet he had advised the Claimant that he did not need to report his charges to the SIA until conviction. This advice was patently wrong and potentially exposed the Claimant to criminal liability under the Private Security Industry Act 2001. The Tribunal is particularly troubled by Mr Lennard's involvement in a matter where he lacked the necessary expertise, especially given the serious potential

consequences for the Claimant.

81. The Tribunal also finds that Mr Lennard's assertion that he could represent the Claimant in the internal disciplinary process was unfounded. The Respondent's disciplinary policy allowed employees to be accompanied at disciplinary hearings by a trade union representative or a work colleague, but not by external third parties. This is consistent with standard practice and the ACAS Code of Practice. Mr Lennard had no standing to insert himself into the internal disciplinary process, and his doing so served only to complicate matters and delay potential resolution.

82. The Tribunal finds that the Respondent was not obliged to accept representations from Mr Lennard in the disciplinary process. The Respondent's refusal to engage with Mr Lennard as the Claimant's representative in the disciplinary process was reasonable and in accordance with its policies.

83. The disciplinary hearing proceeded in the Claimant's absence on 6 June 2024. Following this hearing, the Respondent dismissed the Claimant by letter dated 10 June 2024. The letter cited four allegations that had been upheld: being absent from work since 17 February 2024 without prior authorisation; failing to obey a reasonable instruction to inform the SIA about criminal charges; failing to attend investigation meetings; and failing to attend a previous disciplinary hearing. The Tribunal finds that each of these allegations was supported by evidence and that, taken together, they constituted a pattern of behaviour demonstrating a complete disregard for the Claimant's employment obligations and the regulatory requirements of his role.

84. The Tribunal finds that the Claimant's failure to inform the SIA about his criminal charges was particularly serious. The SIA licensing criteria clearly state that licence holders must inform the SIA within 21 calendar days of any charges for relevant offences, which include assault. This requirement has statutory effect through the Private Security Industry Act 2001, and failure to comply constitutes a criminal offence that can result in imprisonment for a term not exceeding six months and/or a fine. The Claimant admitted during cross-examination that he had not informed the SIA about his charges, despite being aware of the requirement to do so. The Tribunal finds that this failure could have exposed the Respondent to significant risks, including regulatory breaches, reputational damage, and liability to clients.

85. On 17 June 2024, Mr Lennard submitted an appeal on behalf of the Claimant. The Respondent informed the Claimant that they would not correspond with his chosen representative and required confirmation of an appeal directly from the Claimant. No direct appeal was received from the Claimant, and the Respondent advised him on 18 June 2024 that as no appeal had been received from him personally, the matter was closed and his termination stood. The Tribunal finds that the Respondent's approach to the appeal was reasonable and in accordance with its policies.

86. The Tribunal finds that, based on the evidence presented, the employment relationship was potentially salvageable had the Claimant engaged constructively with the disciplinary process and fulfilled his regulatory obligations. The Respondent was still offering the Claimant work, albeit at a different site, which the Claimant refused for reasons related to pay that he struggled to articulate clearly. Had the Claimant reported his charges to the SIA as required and directed, and had he complied with the investigation in an open and reasonable manner, it appeared that the employment relationship might have continued. The fact that it did not continue is a matter for which the Claimant bears responsibility.

87. The Tribunal finds that Mr Lennard's untimely and unhelpful interventions materially contributed to the breakdown in the employment relationship. By encouraging the Claimant to rely on his incorrect understanding of the SIA licensing requirements and by asserting an

unfounded right to represent the Claimant in the internal disciplinary process, Mr Lennard complicated what could have been a more straightforward resolution. The Tribunal is concerned that the Claimant appears to have relied heavily on Mr Lennard's advice, which was demonstrably flawed, rather than engaging directly with the Respondent in a constructive manner.

88. Applying the law to these facts, the Tribunal makes the following findings:

89. On the issue of unfair dismissal, the Tribunal finds that the reason for the Claimant's dismissal was conduct, which is a potentially fair reason under section 98(2)(b) of the Employment Rights Act 1996. The Tribunal accepts that the Respondent had a genuine belief that the Claimant was guilty of misconduct, specifically being absent without authorisation, failing to inform the SIA about criminal charges, failing to attend investigation meetings, and failing to attend disciplinary hearings.

90. The Tribunal finds that the Respondent had reasonable grounds for that belief. While the Claimant did make initial contact from the police station on 2 and 3 February 2024, he made no further attempt to communicate with the Respondent for approximately six weeks, until his brief voicemail on 26 March 2024. After his release from custody on 26 March 2024, he again failed to engage directly with the Respondent, choosing instead to communicate through Mr Lennard, who had no standing in the internal disciplinary procedure.

91. In Burns v Santander UK plc [2011] UKEAT/0500/10, the Employment Appeal Tribunal made clear that being in custody is not an automatic defence against dismissal for unauthorised absence. The EAT stated: "The fact that an employee is in custody and cannot attend work is a consequence of his own actions and not a circumstance beyond his control. While an employer may choose to be sympathetic, they are not required to keep a job open indefinitely for an employee who is unable to work due to being in custody." This principle is directly applicable to the present case. While the Claimant's absence was due to being remanded in custody, this was a consequence of his own actions and did not absolve him of his responsibility to maintain appropriate communication with his employer during his absence, and particularly after his release.

92. Similarly, in Carr v Alexander Russell Ltd [2006] UKEAT/0698/05, the EAT held that dismissal for absence due to imprisonment can be fair, even if the employee is later acquitted. The Tribunal finds that these authorities clearly support the Respondent's position that the Claimant's absence due to being in custody does not automatically render his dismissal unfair.

93. The Tribunal also finds that the Respondent carried out as much investigation as was reasonable in the circumstances. The Respondent attempted to contact the Claimant multiple times, even reporting him as a missing person to the police. They scheduled several investigation meetings, which the Claimant did not attend. Given the Claimant's non-cooperation, the Respondent could not reasonably have been expected to conduct a more thorough investigation.

94. The Tribunal finds that the Claimant's failure to inform the SIA about his criminal charges was a serious matter. The SIA licensing criteria clearly state that licence holders must inform the SIA within 21 calendar days of any charges for relevant offences, which include assault. This requirement has statutory effect through the Private Security Industry Act 2001, and failure to comply constitutes a criminal offence that can result in imprisonment for a term not exceeding six months and/or a fine. The Claimant's admitted failure to comply with this requirement could have exposed the Respondent to significant risks, including regulatory breaches, reputational damage, and liability to clients.

95. The Claimant cited Crawford v Suffolk Mental Health Partnership NHS Trust [2012] EWCA

Civ 138 to argue that the responsibility for ensuring a fair procedure lies with the employer. However, the Tribunal distinguishes this case on its facts. In Crawford, the procedural defect was the employer's failure to provide the employee with relevant evidence. In the present case, the Respondent made repeated attempts to engage with the Claimant, but it was the Claimant who refused to participate in the process. The principle that "it cannot be enough for an employer to say that although a fair procedure was not adopted, the responsibility for failing to remedy it lies at the door of the employee for failing to alert him to the error" does not apply where the employee deliberately chooses not to engage with the process at all.

96. The Claimant also relied on Britto-babapulle v Ealing Hospital NHS Trust [2014] EWCA Civ 1626 to argue that finding gross misconduct does not automatically justify dismissal and that mitigating factors must be considered. However, the Tribunal notes that the Claimant did not put forward any mitigating circumstances during the disciplinary process, as he refused to engage with it. The Respondent cannot be criticised for failing to consider mitigating factors that were not presented to them.

97. In assessing whether the dismissal was fair in all the circumstances under section 98(4) of the Employment Rights Act 1996, the Tribunal applies the "range of reasonable responses" test established in Iceland Frozen Foods Ltd v Jones. The Tribunal finds that the Respondent's decision to dismiss the Claimant, taking into account all the circumstances, including his failure to maintain appropriate communication and his refusal to engage directly with the disciplinary process, fell within the range of reasonable responses available to a reasonable employer.

98. The Tribunal is particularly persuaded by the evidence that the Claimant's conduct, when viewed as a whole, amounted to gross misconduct. The combination of being absent without authorisation, failing to inform the SIA about criminal charges as required by law, failing to attend investigation meetings, and failing to attend disciplinary hearings demonstrated a complete disregard for the Claimant's employment obligations and the regulatory requirements of his role. Each of these failings individually might not have justified summary dismissal, but taken together they demonstrated a pattern of behaviour that a reasonable employer could consider to be gross misconduct.

99. The Claimant's reliance on Kulkarni v Milton Keynes Hospital NHS Foundation Trust [2009] IRLR 829 to support his argument for external representation is misplaced. Kulkarni established a narrow exception for cases where an employee is facing charges which, if proved, could effectively bar him from his profession. This exception does not apply to standard disciplinary proceedings such as those in the present case.

100. Regarding the claim for notice pay, the Tribunal finds that the Claimant's conduct did amount to gross misconduct entitling the Respondent to dismiss him without notice. The failure to maintain appropriate communication during a prolonged absence, the failure to inform the SIA about criminal charges as required by the licensing criteria (a requirement with statutory effect that carries criminal penalties for non-compliance), and the refusal to engage with the disciplinary process collectively constituted a serious breach of the employment contract.

101. On the issue of holiday pay, the Tribunal notes that according to the contract of employment, holiday years run from 1 April to 31 March, and holiday must be taken within the annual leave year or be forfeited. Furthermore, the contract states that holiday pay is forfeit in the event of dismissal for gross misconduct. Given the Tribunal's finding that the Claimant's conduct did amount to gross misconduct, the contractual provision regarding forfeiture of holiday pay applies. Additionally, as noted by Mr Morvan, the Claimant was paid on an hourly basis and having failed to work any hours after 28 January 2024, did not accrue any annual leave for pay. The Tribunal therefore finds that the Claimant is not entitled to holiday pay.

Conclusion

102. The Tribunal has carefully considered all the evidence and submissions in this case. The key question for determination has been whether the Claimant was unfairly dismissed by the Respondent, and related to this, whether he is entitled to notice pay and holiday pay.

103. The Tribunal finds that the Claimant was fairly dismissed. The Respondent had a potentially fair reason for dismissal, namely conduct, and the dismissal was both procedurally and substantively fair. The Tribunal finds that the claims brought by the Claimant are totally without merit.

104. The Claimant's behaviour throughout this matter was unreasonable. After initial contact on 2 and 3 February 2024, he made no attempt to communicate with the Respondent for approximately six weeks. Following his release from custody on 26 March 2024, he made only a brief 30-second call to his line manager and then failed to engage directly with the Respondent, choosing instead to communicate through Mr Lennard, who had no standing in the internal disciplinary procedure.

105. As established in Burns v Santander UK plc [2011] UKEAT/0500/10, being in custody is not an automatic defence against dismissal for unauthorised absence. The fact that the Claimant was in custody did not absolve him of his responsibility to maintain appropriate communication with his employer. The Tribunal finds that the Claimant's failure to maintain contact for six weeks, and his subsequent failure to engage directly with the disciplinary process, constituted misconduct justifying dismissal.

106. The Tribunal finds that the Respondent acted reasonably throughout the disciplinary process. They made several attempts to contact the Claimant, even reporting him as a missing person to the police. They scheduled multiple investigation meetings and disciplinary hearings, giving the Claimant ample opportunity to engage with the process. The Respondent's refusal to accept representations from Mr Lennard was reasonable given that there was no provision in their disciplinary policy for representation by individuals other than trade union representatives or colleagues.

107. The Tribunal finds that Mr Lennard's intervention was unhelpful and materially caused the situation to deteriorate. Mr Lennard acknowledged to the Tribunal during oral submissions that he did not really understand the SIA licensing requirements, yet he advised the Claimant on this matter. The Claimant was poorly advised by Mr Lennard on this point and others, which contributed to his failure to engage appropriately with the disciplinary process. It appears that the Claimant relied on Mr Lennard's assertion that he could engage with the Respondent in processes where he had no business becoming involved.

108. The Tribunal finds that, absent Mr Lennard's untimely and unhelpful interventions, the relationship between the Claimant and the Respondent was potentially salvageable. The Respondent was still offering the Claimant work, which he refused for reasons related to pay that he struggled to articulate clearly. Had the Claimant reported to the SIA as required and directed, and had he complied with the investigation in an open and reasonable manner, it appeared that the employment relationship may have continued. That it did not is a matter for which the Claimant bears responsibility.

109. The Tribunal is particularly concerned about the Claimant's failure to inform the SIA about his criminal charges, as required by the SIA licensing criteria. This requirement has statutory effect through the Private Security Industry Act 2001, and failure to comply constitutes a criminal offence that can result in imprisonment for a term not exceeding six months and/or a fine. The Claimant admitted during cross-examination that he had not informed the SIA about

his charges, despite being aware of the requirement to do so. This failure was a serious matter that could have exposed the Respondent to significant risks, including regulatory breaches, reputational damage, and liability to clients.

110. The Tribunal notes that one charge against the Claimant, relating to allegations of assault against his child, remains pending for trial. The Tribunal has been careful not to impinge on the rights and dignity of the criminal courts in this matter.

111. The Tribunal also finds that the Claimant's conduct, when viewed as a whole, amounted to gross misconduct entitling the Respondent to dismiss him without notice. The combination of being absent without authorisation, failing to inform the SIA about criminal charges as required by law, failing to attend investigation meetings, and failing to attend disciplinary hearings demonstrated a complete disregard for the Claimant's employment obligations and the regulatory requirements of his role.

112. The Tribunal wishes to emphasize that it is the cumulative effect of the Claimant's multiple failures that renders his conduct so serious as to amount to gross misconduct. The Claimant not only failed to maintain appropriate communication during his absence and after his release but also failed to comply with the statutory obligation to inform the SIA about criminal charges and then refused to engage with the investigation and disciplinary process. Each of these failings demonstrated a disregard for basic employment obligations, but together they reveal a pattern of conduct that fundamentally undermined the employment relationship.

113. Consequently, the Claimant is not entitled to notice pay. Furthermore, as the dismissal was for gross misconduct, the contractual provision regarding forfeiture of holiday pay applies, and the Claimant is not entitled to holiday pay. Additionally, as noted by Mr Morvan, the Claimant was paid on an hourly basis and having failed to work any hours after 28 January 2024, did not accrue any annual leave for pay during the relevant annual leave year of 1 April 2023 to 31 March 2024.

114. The Tribunal has considered all the case law cited by both parties. The cases cited by the Respondent, particularly Burns v Santander UK plc and Carr v Alexander Russell Ltd, directly support their position. The cases cited by the Claimant are all distinguishable on their facts and do not assist his case.

115. In summary, the Tribunal finds that the claims for unfair dismissal, notice pay, and holiday pay are totally without merit, likely because the Claimant received bad advice from Mr Lennard. However, it was the Claimant's decision to bring these claims and to rely on Mr Lennard's advice, and he must bear responsibility for that decision. His claims were misconceived and wrong.

116. For these reasons, the Tribunal concludes that the claims for unfair dismissal, notice pay, and holiday pay are not well-founded and are dismissed.

APPROVED
Judge M Aspinall
(sitting as an Employment Judge)

12th April 2025

Judgment sent to the parties on
16th April 2025