



# EMPLOYMENT TRIBUNALS

**Claimant:** Steve Jones

**Respondent:** pladis (UK) Ltd

**Heard at:** London Central (CVP)

**On:** 13-14 March 2025

**Before:** Tribunal Judge Peer acting as an Employment Judge

**Representation:**

Claimant: In person

Respondent: Mr D. McCrum of David McCrum Ltd

## JUDGMENT

1. The complaint of unfair dismissal is not well-founded. The claimant was fairly dismissed.
2. The complaint in respect of holiday pay is not well-founded.
3. The claimant's claims are dismissed in their entirety.

**JUDGMENT** and reasons having been given orally on 14 March 2025 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

## REASONS

### INTRODUCTION AND CLAIM

1. The claimant worked for the respondent from 4 October 2021 until 18 July 2024 as the Head of Health, Safety, Environment and Security at the respondent's head office. The respondent is a food manufacturing company with UK wide operations. After a period of early conciliation between 23 August 2024 and 23 September 2024, the claimant presented his claim form on 6 October 2024. By way of his claim form, the claimant claims unfair dismissal, holiday pay and other payments.

2. In particular, the claimant contends that the respondent did not conduct a reasonable investigation including that the respondent did not interview a person he was alleged to have sexually harassed and moved the goalposts during the disciplinary process such that the reason for his dismissal changed.
3. The respondent's defence to the claims is that the claimant was fairly dismissed for reason of misconduct and dismissal was procedurally fair and within the range of reasonable responses.

## **HEARING**

4. The hearing was a fully remote hearing by cloud video platform. Neither party objected to the hearing proceeding in this format. There were no material connection difficulties experienced during the hearing and the hearing proceeded effectively as a remote hearing.
5. As the claimant was a litigant in person, I was mindful to explain points of law and procedure so as to enable him to fully participate in the hearing.
6. I had available to me an indexed and paginated hearing bundle of 352 pages (HB) containing the claim form, response form, amended grounds of response and documents related to the claimant's employment. I also had available to me a video recording of an incident on 7 June 2024 and an audio recording of the disciplinary hearing.
7. I had a written statement from the claimant dated 27 February 2025. I also had written statements from Chris Dockree (Director Logistics UK & Ireland) dated 5 March 2025, Trevor Callander (Vice President Grocery, UK & Ireland) dated 5 March 2025, Andrew Baldwin (Safety, Quality, Security and Environment Director) dated 4 March 2025 and Nina Sparks (Vice President Supply Chain, UK & Ireland) dated 5 March 2025 of the respondent.
8. The respondent also provided a bundle of case law.
9. I heard evidence from the claimant and the respondent's witnesses.
10. I heard submissions from the claimant and from Mr D. McCrum on behalf of the respondent. The respondent provided written submissions. The claimant provided written submissions in the form of a closing statement, final response to respondent's submissions together with a case law rebuttal document and case law submission document.

## **ISSUES FOR DETERMINATION**

### **Preliminary issue – amended grounds of resistance**

11. The respondent presented amended grounds of resistance on 4 March 2025. The claimant objected. The respondent amended solely to include particulars in relation to the claimant's holiday pay claim and expenses claim. At the hearing, the claimant told the tribunal that he did not maintain his objection to the amended grounds of resistance and also acknowledged that his claim for expenses had been met as stated in the amended grounds.

12. Accordingly, I gave permission for the amended grounds and consider that in any event to be in line with the overriding objective and relevant case law notwithstanding the timing of submission of the amended grounds. I note that the claimant provided no particulars of his holiday pay claim in his claim form although I acknowledge that he stated he had not at that point received any final payslip and had not provided any particulars subsequently. I explained that in order to determine that claim, I would need to understand what was claimed and be able to assess evidence available. The claimant told me that he did not disagree with the respondent's calculations but considered he was due 5 days leave in addition to that stated as due at the date employment ended by the respondent.

13. The claimant's schedule of loss has a heading of automatic unfair dismissal due section 103A. I explained that this was different from a claim of 'ordinary' unfair dismissal which was the claim the claimant was understood to be making and section 103A pertained to claims that dismissal was due the making of protected disclosures or 'whistleblowing'. The claimant confirmed to me that this was something he had picked up from the template and that his claim was one of ordinary unfair dismissal.

14. The issues for determination were discussed and agreed as follows:

### **Unfair dismissal**

15. There is no dispute that the claimant was dismissed on 18 July 2024 which is the effective date of termination.

16. The tribunal must decide:

- what was the reason or principal reason for the dismissal? The respondent says the reason was conduct. The tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.
- if the reason was misconduct, did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant?
- whether the dismissal was fair or unfair in accordance with equity and the substantial merits of the case and should have regard to:
  - i. Whether there were reasonable grounds for that belief;
  - ii. at the time the belief was formed the respondent had carried out a reasonable investigation;
  - iii. the respondent otherwise acted in a procedurally fair manner;
  - iv. dismissal was within the range of reasonable responses.

### **Remedy for unfair dismissal**

17. The claimant claims compensation only although before considering any award of compensation the tribunal must consider whether to make any order for reinstatement or reengagement. The tribunal will have to decide how much compensation to award taking account of what financial losses have been suffered by the claimant and whether reasonable steps have been taken to mitigate any loss including looking for other employment. If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct and if so, whether it would be just and equitable to reduce any compensatory award. What basic award is payable to the claimant, if any, and whether it would be just and equitable to reduce any basic award due any conduct of the claimant before dismissal.

### **Holiday pay (Working Time Regulations 1998)**

18. The employment ended on 18 July 2024. The tribunal needs to decide:
- What was the claimant's leave year? The parties agree that in practice the leave year ran from 1 January.
  - How much leave had accrued for the year by 18 July 2024?
  - How much paid leave had the claimant taken in the year?
  - Were any days carried over from previous years? The respondent accepts that 4 days were carried over from the previous leave year.
  - How many days remain unpaid?
  - What is the relevant daily rate of pay?

## **FINDINGS**

19. I considered all of the evidence before me and I found the following facts on a balance of probabilities. I have recorded the findings of fact that are relevant to the legal issues and so not everything that was referred to by the parties before me is recorded.
20. On 4 October 2021, the claimant commenced employment with the respondent.
21. I turn to deal with my findings in relation to the holiday pay claim as it is convenient to separate those findings from my findings related to the unfair dismissal claim.

### **Holiday pay**

22. Under the claimant's contract of employment, the claimant was entitled to 25 days annual leave accruing at a rate of 0.48 days for each completed week of service. The contract also provides that the leave year runs from 1 April and that any holiday remaining at the end of a holiday year will lapse.
23. Andrew Baldwin's (AB) written statement sets out that notwithstanding the contractual provision, in practice the leave year ran from 1 January. The

claimant did not dispute or challenge this. I therefore accept and find that the contract had been varied by practice and the leave year ran from 1 January.

24. The claimant also told the tribunal that he did not dispute the respondent's calculations regarding annual leave as set out in Andrew Baldwin's statement but he did dispute the number of days accrued and untaken on termination of employment on 18 July 2024. The claimant said he believed he was owed 5 days more than the respondent had calculated.
25. Andrew Baldwin's written statement applies an accrual rate of 0.56. In evidence Andrew Baldwin said that he had based the accrual rate on 29 days being the 25 day allowance and the 4 days carried over and calculated that the claimant had accrued 16.24 days at termination and rounded this up to 17 days. Although the contract does not provide for carry over, the respondent's position is that the claimant had these 4 days carried over. I therefore accept and find that the claimant had 4 days carried over. Andrew Baldwin explained that he had based his calculations on a leave spreadsheet (HB 227) and HR advice but he readily acknowledged that the accrual rate would be 0.48 if based on 25 days. I find that the accrual rate was 0.48 and that as of 18 July 2024, the claimant had accrued entitlement to 13.92 days plus 4 days thus rounded up 18 days in total.
26. The respondent relies on the leave spreadsheet as showing that the claimant had taken 11 days leave in 2024. When questioned by the claimant, Andrew Baldwin accepted that during the claimant's leave in February 2024, the claimant had attended a factory in Carlisle as he had opted to go in and support and was in that area. AB gave evidence that if the claimant had requested the day back that would have been a reasonable request. The claimant also put it to AB that on the 7 June 2024 he was on leave but had travelled and attended a work event that evening. AB said that if the claimant had requested recompense that would have been considered.
27. I note that there was no real detail of the time spent at the factory in February and the claimant did not give any evidence that he was required to attend the factory. The claimant relied on the time spent at the evening event on 7 June 2024; he arrived at 8pm. The claimant's written statement sets out that the spreadsheet was a planner but there was no other evidence put before the tribunal to suggest that otherwise the spreadsheet did not accurately reflect leave taken by the claimant during 2024. I was not directed to any evidence to support the contention that the claimant was owed 5 days in addition to that calculated by the respondent. When it was put to the claimant during cross-examination that he did not ask for these dates back, he said that was not the normal thing to do. When it was put to the claimant that as he had not asked for those days back, they still formed part of the holiday that he had taken, he said, 'rubbish'. I find that the claimant had taken 11 days' worth of leave during 2024 and as at the date of termination.
28. I find that the claimant was therefore due pay in lieu of 7 days accrued but untaken leave on termination rather than the 6 days calculated by Andrew Baldwin given my finding as to the rate of accrual. The payslip (HB 239) records a credit for 7 days accrued but untaken leave. As set out above, the

claimant does not dispute the calculations per se rather the number of days due. I therefore find that the claimant was paid in lieu of 7 days accrued but untaken leave on termination.

### **Unfair dismissal**

29. The claimant was employed in a senior role as the Head of Health, Safety, Environment and Security.
30. The respondent has a Dignity at Work policy, Code of Conduct and Disciplinary and Grievance Procedure.
31. The respondent's Dignity at Work policy (HB 43) states the purpose as *'to ensure an inclusive and diverse culture in which all colleagues are entitled to a working environment that is free from unwanted and offensive behaviours, bullying, harassment, or discrimination'* and that *'any of the conduct listed above will not be tolerated and appropriate disciplinary action, including dismissal for serious offences, will be taken against any employee who violates the policy.'* The policy contains a definition of bullying and harassment as *'any unwanted physical or verbal conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading humiliating environment.'* There is also reference that *'bullying or harassment may be by an individual against an individual or involve groups of people.'* There is reference to sexual harassment as *'unwanted behaviour of a sexual nature'* and that *'even if the person did not intend to cause harm, the effect of the behaviour is what matters ...it's classed as sexual harassment even though they were not involved in the conversation directly.'*
32. The policy also sets out expectations including that managers have a further responsibility under the policy including to *'be aware of your own behaviours and the shadow of your leadership on your own team and other colleagues'*.
33. The Code of Conduct sets out a requirement for anyone acting for the respondent *'to behave in a way consistent with the Code'* and *'to proactively promote and be an ambassador of ethical behaviour in the workplace and the community by always demonstrating honesty and integrity'*. The Code also includes a section on bullying and harassment and that there is a *'zero-tolerance approach to any kind of bullying or harassment.'*
34. On 27 August 2021, the claimant signed to indicate that he had read the respondent's Dignity at Work Policy and Code of Conduct (HB 77). The claimant received Code of Conduct training on 8 October 2021 (HB 79) and reconfirmed his reading of the Code of Conduct on 19 May 2023 (HB 81).
35. The claimant was asked in evidence if he was aware of the Dignity at Work and Code of Conduct and he said that in so much as he had clicked through the e-learning modules and that there were lots of policies and you just clicked online and accepted them.
36. I find that the claimant is taken to be aware of the Dignity at Work and Code of Conduct including the expectations on managers.

37. During cross-examination, the claimant maintained that he did not believe someone could be harassed on behalf of someone and did not accept the definition in the respondent's policies that there could be harassment where there was unwanted conduct that had the effect of creating a degrading or humiliating environment. The claimant said his understanding was that harassment had to be against a person and he couldn't be guilty if someone was offended because of something said to someone else. In evidence the claimant said he didn't agree with the respondent and the respondent was manipulating wording to fit the evidence.
38. On 7 June 2024, the claimant attended an evening work event – the International Safety Awards. There are varying estimates given as to how many people attended the ceremony but there is no dispute that it was at least several hundred people from the industry sector. Attendees included a table of the claimant's colleagues. At the ceremony, the claimant volunteered to go on stage with others and collect an award won by the respondent. The award was presented by an actress. The claimant was stood next to the actress and slapped her bottom. The claimant accepts he did this. A short video clip was made available to me in evidence taken by a colleague who was attending. Given the claimant accepts he slapped the woman's bottom, I was initially unsure whether I really needed to watch the clip but was encouraged to do so by both parties. I find the claimant did visibly slap the woman's bottom on stage.
39. The claimant says that this was not 'unwanted conduct'. The claimant says that he told the woman that he had done this before. I was encouraged by both parties to listen to a covert recording the claimant made of his disciplinary hearing and during the recording it is clarified by the claimant and his trade union representative that the claimant did not so much as ask for consent but told the presenter he had slapped another well-known woman's bottom on stage and the actress said, 'go for it'. The claimant gave evidence that he was subject to a single allegation of sexual harassment but it was accepted he had not sexually harassed the presenter and thereafter the goalposts were shifted to refer to policies. The respondent's dismissal decision letter dated 18 July 2024 (HB 175-179) does set out that it was the decision-maker's *'reasonable belief that there was a prior discussion or "agreement" with the presenter' and 'therefore I do not believe your actions amount to unwanted sexual conduct.'*
40. A colleague called Grace Fairey was at the table. She did not see the slap directly but did see the video. The claimant's written evidence is that Grace Fairey was drunk. In oral evidence, the claimant said she was a person who champions women's rights and LGBT relationships and had been told by someone else that she was not going to like this before being shown the video. Grace Fairey was upset. The claimant says that Grace Fairey referred to the #metoo movement. The claimant says that he apologised to Grace Fairey and he didn't mean to upset or offend anyone. The claimant gave evidence that he had nothing to apologise for in relation to slapping the actress' bottom as she had said 'go for it' and even she felt it was appropriate in the context of the evening.
41. Nina Sparks who attended the awards ceremony was taking photographs on her phone and as it was in 'live mode' the result was a video clip. The

claimant was subjected to the disciplinary process because Nina Sparks reported the incident on 11 June 2024. I heard evidence from Nina Sparks that after the award ceremony on the Friday she flew to Turkey for business and thus it was on her return that the incident was reported.

42. The claimant did not dispute that Nina Sparks had gone to Turkey. The claimant put it to Nina Sparks in cross-examination that Grace Fairey was her PA and that they had spent the Sunday in the spa together. Nina Sparks refuted this. She said Grace Fairey was a project manager in her team of 11 reports. They had been sight-seeing on the Sunday. I accept this evidence; Nina Sparks was concise and direct in evidence and there is no reason not to accept what she said. Nina Sparks' evidence is that Grace Fairey was not drunk at the event. The relevance of whether or not Grace Fairey was drunk is not apparent to me in any event. I make no finding about this as not material to the issues I have to decide. Nina Sparks accepted the event was generally jovial. It is not clear, if Grace Fairey was drunk, how that in any way detracts from the fact that she was upset and/or offended that a senior colleague slapped a woman's bottom on stage at a public event or how that would affect the reasonableness of her reference to the #metoo movement in that context.
43. The #metoo movement is a movement to empower women and to expose the extent of sexual harassment, assault and unwanted and demeaning behaviour experienced by women which goes unpunished in the workplace and elsewhere.
44. The respondent's Disciplinary and Grievance policy sets out the procedure for disciplinary investigations, applicable sanctions including summary dismissal for gross misconduct and examples of behaviour considered to constitute gross misconduct including bullying and/or harassment and conduct that violates decency or morality.
45. The claimant said in evidence that he was aware of the Code at the time of the investigation. He didn't recall whether he had needed to sign that he was aware of the Disciplinary and Grievance Policy.
46. Andrew Baldwin was appointed as investigation officer and the investigation started on 17 June 2024. Andrew Baldwin conducted interviews with nine witnesses and interviewed the claimant. The investigation report is dated 26 June 2024.
47. I find that Andrew Baldwin was an appropriate person to act as investigation manager as a line manager and he had not attended the event on 7 June 2024. There is no evidence that he was influenced by Nina Sparks during the investigation. I find that the timeframe from the incident to the investigation report was entirely reasonable being a period of just over a fortnight.
48. When the claimant was interviewed during the investigation, Andrew Baldwin said *'a serious breach of our code of conduct and dignity at work policy is what it concerns and that's ensuring everyone is free from unwanted behaviours'* and also that *'the allegation of concern is around you acting as a pladis representative whilst at the event'*.



49. The investigation report sets out that the allegation investigated was *'whilst attending the ISA on 7 June 2024, an incident occurred involving the female presenter, which may be considered a serious breach of both the code of conduct and dignity at work policy, potentially bringing the company into disrepute'* and *'engaged in physical conduct pertaining to sexual harassment'* and that the *'misconduct is covered under the term 'violates decency or morality' as quoted in the pladis Disciplinary and Grievance policy. Decency is defined as the quality or state of being decent, which includes propriety, good taste, and modesty; polite, moral, and honest behaviour that shows respect for other people and conforming to prevailing standards of propriety or modesty. Morality is defined as principles concerning the distinction between right and wrong or good and bad behaviour'*. The report summarised the actions believed to have contravened policy including that the action contravened established codes of decency and morality and that it took place on stage at an international business awards ceremony *'with the high potential to bring the company into disrepute'*. The conclusion of the investigating officer was that there was a case to answer *'concerning the allegations of gross misconduct having violated decency or morality'*.
50. On the basis of the investigation report, I find that it was clear the allegation concerned the incident on 7 June 2024 but was not confined to whether or not the claimant had engaged in sexual harassment of the actress and was clearly related to whether the behaviour had the potential to bring the company into disrepute and violated decency and morality.
51. The claimant's written statement alleges that leading questions were asked of the witnesses during the investigation. The claimant was asked about this in evidence and he referred to a question asked of Grace Fairey when she was interviewed by Andrew Baldwin (HB 123). Andrew Baldwin is recorded as asking *'Its' been alleged SJ displayed behaviour ...which is a serious breach of our code of conduct and dignity at work policy in particular. What did you witness'*. The claimant maintained this demonstrated that Andrew Baldwin had already reached a conclusion in front of all the witnesses. I did not find that Andrew Baldwin's question was leading the witness. The question referred to an allegation and asked an open question to Grace Fairey about what she saw. I was not taken to evidence that demonstrated Andrew Baldwin was asking leading questions.
52. I find the investigation was reasonable and sufficiently thorough and relevant witnesses were interviewed. I do not find that not interviewing the actress renders the investigation flawed in light of its scope and purpose.
53. By way of letter dated 4 July 2024, the claimant was invited to attend a disciplinary hearing (HB 143-144). The letter set out that the purpose of the hearing was to consider disciplinary action:
- 'in relation to a recent incident, in which it is alleged that you engaged in physical conduct pertaining to sexual harassment whilst attending the ISA on 7 June 2024. The above allegation may be deemed as potential gross misconduct on the grounds of 1. A gross breach of the pladis Code of*

*Conduct. 2. A gross breach of the pladis Dignity at Work policy. 3. Conduct that violates decency or morality.'*

54. The letter warned the claimant that an outcome might be dismissal. The claimant was also informed of his right to be accompanied at the disciplinary hearing.
55. I find that the allegation the claimant faced was sufficiently clearly set out in the letter inviting him to the disciplinary hearing such that he had an opportunity to respond to the case against him. The framing of the allegation was consistent with the investigation report. The claimant was provided with copies of all relevant policies, all the witness statements from the investigation and the investigation report.
56. The disciplinary hearing took place on 12 July 2024 before Chris Dockree. I find Chris Dockree to be an appropriate person to conduct the disciplinary as outside the claimant and Andrew Baldwin's function within the respondent and he did not attend the event. The claimant had a trade union representative accompanying him at the disciplinary hearing.
57. The claimant covertly recorded part of the disciplinary hearing. The claimant initially said in evidence that his recording was not covert because his phone was on the table. When it was put to him that he had not asked for consent, he said that *'at this point he had a belief that things may take a turn'*. I asked the claimant to clarify what he meant by this statement. The claimant said that things would be 'twisted' and he 'didn't believe everything would come out and be factual'. I therefore find that at the outset of the disciplinary hearing, the claimant did not have trust and confidence in the respondent.
58. The covert recording was in evidence and I have listened to it because both parties asked me to. The claimant's written statement sets out that the note taker at the disciplinary hearing, Sarah Caterall, was not to be trusted and that there was a *'deliberate act to omit relevant information to achieve a desired result'* and that Sarah Caterall was *'redirecting the conversation'*. The claimant asked Chris Dockree whether he made the allegation clear at the disciplinary hearing and put it to Chris Dockree that there was a recording and asked why a section when the claimant had asked for clarification of the allegation was missed out of the notes which were otherwise verbatim. Chris Dockree gave evidence that if there was a part missed out of the notes, he did not know why this was but he recalled saying six times that the allegation was linked to the three policies and that the physical act was not the only reason.
59. At the disciplinary hearing, Chris Dockree stated the purpose of the meeting and restated the allegation as set out in the invite letter. He confirmed the allegation was exactly as stated in the invite letter when asked by the claimant's trade union representative if the investigation was into whether the claimant sexually harassed the presenter. Chris Dockree did say 'of an individual'. The notes record Chris Dockree asking the claimant if he considered it was acceptable given he was there to represent pladis. The claimant is recorded as saying that yes in hindsight he could see it was unacceptable but at the time he didn't think he was doing anything wrong.

The 'it' refers to Steve Jones' actions at the event in slapping the actress' bottom on stage. I find that the written notes reflect the covert recording.

60. The claimant gave evidence that the covert recording was stopped at a point when Chris Dockree said there would be an adjournment. The claimant accepted that after the recording had been stopped, the notes accurately reflected the continuation of the meeting. The claimant said, *'so we're here to see whether this is sexual assault'*. The concept of sexual assault had not been referred to previously in the disciplinary proceedings. The claimant was told that *the 'allegation is very clear in the invite letter. Covering three policies'* and then by Sarah Caterall that *'It's whether Steve's actions or conduct was acceptable and in line with pladis policies. It's not hinged on whether Steve gained permission but it's whether that physical act and his conduct relating to that event breached the policies that are listed on the invite letter.'* The claimant accepts this was said not least as he alleges this was Sarah Caterall redirecting matters. Chris Dockree then says, *'it's how that act could reflect on your colleagues and the business as you're representing the business.'*
61. I find that the notes reflect the meeting; the claimant accepts the notes reflect the meeting after the adjournment. The notes record several occasions on which Chris Dockree set out the allegation.
62. I find the allegation against the claimant was clear. To the extent that the claimant did not recognise this is related to the extent to which the claimant was held by the respondent to show a lack of insight and judgement around the incident.
63. Chris Dockree reached the decision to dismiss the claimant. Chris Dockree gave the decision orally to the claimant (HB 169-174) and by way of letter dated 18 July 2024 (175-179). The decision was to summarily dismiss. The letter records that the claimant had been told at the hearing that whether his actions amounted to sexual harassment was only one consideration. The letter records that reflection was given to the claimant's length of service and previous good record and the claimant's view that the behaviour was not challenged or unwanted by the recipient. The decision letter also set out that entering into a conversation with the presenter in a 30 second discussion before receiving the award was *'ill-judged and had the potential to put any female presenter in a very uncomfortable position'*.
64. The decision letter also sets out *'I find it hard to accept that you didn't at any point consider that you were there to represent the business given that you had volunteered to go up on to a stage in front of approximately 300 people to collect an award on behalf of pladis as your employer.'* That the claimant was aware a professional photographer and colleagues were present. The decision notes that the claimant showed little remorse or regret for his actions and considered his actions were acceptable. *'I have concerns that you have been unable to view the situation from the audience's point of view and the potential resultant effect that it could have had on the reputation and good name of pladis, as a business'*. Chris Dockree concluded the claimant's actions were *'wholly inappropriate'* and in breach of policies.

65. The letter includes that *'my reasonable belief that your actions...neither decent nor moral. Your actions were ill-judged, insensitive and in bad taste, which resulted in one of your colleagues being very offended.'*
66. The claimant asked Chris Dockree if he thought it was okay that the presenter had not been interviewed. Chris Dockree gave evidence that he thought that interviewing the actress could actually have made the situation worse for the claimant. He explained that whilst he had reached the view the conduct was not unwanted, if the actress had been spoken to after the event, she may have said something different. I concluded that there was no flaw in the investigation due not interviewing the presenter. As Chris Dockree said, he had in any event accepted the claimant's version and formed the view the behaviour was not unwanted by the actress but this was not the full scope of the investigation.
67. The claimant asked Chris Dockree if there was any evidence that the respondent's reputation had been damaged. Chris Dockree said he was not aware of any complaints but that did not mean the conduct was not damaging as there was no way of knowing people's reactions.
68. The claimant was allowed an appeal and did appeal the decision to dismiss. The claimant's email (HB 187) sets out *'I wish to appeal due to a bias investigation – the investigation manager was a direct employee of the complainant – the investigating manager used prior knowledge of the incident which compromised the investigation – the disciplinary manager was a direct employee of the complainant.'*
69. The appeal officer was Trevor Callander. I find Trevor Callander to be an appropriate person to conduct the appeal as at a senior level and working in a different part of the business from Nina Sparks' line management chain and the claimant. On 6 August 2024, the claimant was invited to an appeal hearing. The appeal hearing took place on 13 August 2024. On 20 August 2024, Trevor Callander sent an appeal outcome letter dismissing the claimant's appeal (HB 217-222).
70. The appeal outcome letter considers all the points raised by the claimant. Trevor Callander gave evidence that his approach was in effect to review all the evidence and the case as a whole. Trevor Callander also conducted further investigations before upholding the dismissal. I find that the appeal presented the claimant with a further opportunity to put his case and have all the circumstances fully considered by a person independent of Nina Sparks and Chris Dockree.
71. Trevor Callander gave direct and forthright evidence in answer to the questions put to him by the claimant. I accept the evidence Trevor Callander gave. Trevor Callander said that given it was clear the act had taken place there was no need to interview the presenter. Trevor Callander acknowledged that on reflection the allegation could have been clearer that the sexual harassment of the presenter was only one of the facets being considered but a number of other aspects were clearly discussed during the disciplinary hearing and the appeal hearing. Trevor Callander set out his clear view that the incident was disruptive and offensive to colleagues and that in his opinion conduct beyond morality and decency expect of their

people in terms of the code of conduct and that this view was reached due to the culmination of all the evidence and the meeting with the claimant. Trevor Callander emphasised his view that the claimant's actions including discussing matters at a team meeting afterwards '*did not display great judgement*'. Trevor Callander was clear that his view was that the actions could have materially damaged the respondent's reputation. There was clearly no way of checking but it had certainly not enhanced their reputation. There was no need for someone to have explicitly complained; people at the start of their careers may not lean towards working for pladis having seen a senior employee slapping a woman's bottom on stage.

72. On 23 August 2024, the claimant approached ACAS and early conciliation ended on 23 September 2024. On 26 October 2024, the claimant presented his claim to the tribunal.

## **LAW**

### **Holiday pay**

73. Regulation 14 of the Working Time Regulations 1998 provides that where a worker's employment is terminated part way through a leave year and the proportion of leave he has taken of that which he is entitled differs from the proportion of the leave year which has expired, the employer shall make him a payment in lieu.

### **Unfair dismissal**

74. The test for unfair dismissal is set out in section 98 of the Employment Rights Act 1996 (ERA).
75. Under section 98(1), it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal and that it is "either a reason falling within subsection (2) or "some other substantial reason of such a kind as to justify the dismissal of an employee holding the position which the employee held."
76. Once an employer has shown a potentially fair reason for a dismissal, the determination of the question whether the dismissal is fair or unfair, having regard to that reason "...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 that question shall be determined in accordance with equity and the substantial merits of the case." (Section 98(4) of the ERA).
77. In **British Home Stores Ltd v Burchell [1980] ICR 303**, the EAT explained the test in conduct dismissals. Where a dismissal is based on belief in an employee's misconduct, the employer must establish that they believed there was misconduct, had reasonable grounds for that belief and that as much investigation as reasonable in the circumstances had been carried out.

78. When considering reasonableness, the tribunal cannot substitute its own view. Instead, I am required to consider the decisions and actions of the employer through the lens of the range of reasonable responses test. The test applies to the procedure followed and to the question of dismissal. The ultimate question for the tribunal is whether dismissal was within the band of reasonable responses open to a reasonable employer.
79. When considering the question of the employer's reasonableness, the tribunal must take into account the process as a whole, including any appeal stage (*Taylor v OCS Group Limited* [2006] EWCA Civ 702; *West Midlands Cooperative Society Ltd v Tipton* [1986] ICR 192, HL. Each case will turn on its own facts.

### **Polkey Principles**

80. In accordance with the principle established in **Polkey v AE Dayton Services Ltd [1988] ICR 142** if I find the dismissal to be unfair, I am required to consider the possibility (in terms of a percentage chance) that the respondent would have been in a position to fairly dismiss the claimant. This also includes considering when a fair dismissal would have been able to take place (*Mining Supplies (Longwall) Ltd v Baker* [1988] ICR 676 and *Robertson v Magnet Ltd (Retail Division)* [1993] IRLR 512).

## **ANALYSIS AND CONCLUSIONS**

81. I turn now to the application of the law to the facts I have found in this case.

### **Unfair dismissal – reason for dismissal**

82. The claimant's submissions set out that the dismissal was unfair as there was a mischaracterisation of the reason for dismissal, misapplication of the dignity at work policy and that harassment requires 'more than discomfort felt second-hand' and that the presenter's view was highly relevant and she did not feel harassed, was not distressed, and made no complaint; the investigation was inadequate; the framing of the disciplinary case shifted; the context of the event matters and that harassment requires intent.
83. Whether or not what occurred amounts to harassment being unwanted conduct related to a protected characteristic or unwanted conduct of a sexual nature under section 26 of the Equality Act 2010 is not what is really in issue. I acknowledge that unlawful discrimination or harassment is likely to be gross misconduct and the respondent's policies listed harassment under gross misconduct. The claim is one of unfair dismissal and that requires me to decide the issues set out above by applying the law to the facts that I have found.
84. If the tribunal was directly deciding a claim of harassment, it would have to consider whether the impugned conduct had either the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. In determining whether there was the required 'effect', the tribunal would have to consider the perception of the person and the other circumstances of the case and whether it is reasonable for the conduct to have that effect. I note this does not require 'intent' to be

established. Conduct may be unwanted by a person even when it is directed at another and such conduct may have the effect of creating an offensive environment in the workplace.

85. I refer to all my findings above. I am satisfied that the reason for the dismissal was the potentially fair reason of misconduct. The claimant does not really dispute that this was the reason for the dismissal. The thrust of the claimant's challenge is that the allegation against him during the disciplinary proceedings was insufficiently clear such that he could not reasonably respond to it and/or the respondent moved the goalposts or re-framed the allegation. I refer to my findings above and conclude that this was not the case. The allegation was about the claimant engaging in physical conduct pertaining to sexual harassment and whether that was gross misconduct in breach of the respondent's policies. The claimant maintains that this was confined to whether or not his conduct amounted to sexual harassment of the actress with the inference that if it was not then he would not be subject to any sanction but I have found that he was made aware that it was not so confined and the evidence gathered, discussions at hearings and other documents demonstrate this.

86. Having considered all of the evidence and in light of my findings above, I am satisfied that the claimant was made aware of the scope of the investigation and the purpose of the disciplinary hearing. I do not accept that he did not know what was at stake. I note that during the disciplinary hearing he did acknowledge that in hindsight the behaviour was not acceptable.

**Did the respondent have a genuine belief in the misconduct?**

87. I refer to all my findings above. I am satisfied that the respondent had a genuine belief in the misconduct. The claimant slapped a woman on the bottom before colleagues when attending a public event as a representative of the respondent and visibly so in that he was collecting an award on behalf of the respondent on stage at the time. The claimant's conduct upset colleagues. The respondent believed that this behaviour breached its policies and in particular referred to violating morality and decency and bringing the respondent into disrepute.

**Were there reasonable grounds for that belief? Did the respondent carry out a reasonable investigation?**

88. The respondent formed this view further to an investigation that I have found was reasonable. I am also satisfied that the respondent had reasonable grounds for their view including that the claimant did not fully acknowledge matters and did not display insight or judgement regarding his conduct.

**Was dismissal within the range of reasonable responses?**

89. I am required to consider whether the respondent's decision was within the range of reasonable responses of a reasonable employer and was otherwise fair and reasonable. I am satisfied that the respondent's decision to dismiss the claimant in light of the conduct found is within the range of reasonable responses.

90. Accordingly, I have concluded that the dismissal was fair.

**Holiday pay - Is the claimant owed holiday pay?**

91. I turn to consider the claimant's holiday pay claim. The claimant's final response sets out that he has received no clear breakdown of sums owed, the holiday planner relied on was inaccurate, holiday pay is a statutory entitlement and should not be withheld to settle unrelated unsubstantiated debts and the respondent relies on matters only raised after he submitted his claim. The claimant does not set out any specifics as to what he says he is owed and why.
92. I refer to my findings above including that a credit for 7 days pay in lieu of accrued but untaken leave is recorded on the payslip. I acknowledge that the payslip shows other deductions and adjustments such that the payment actually made to the claimant was zero but that does not of itself mean that the respondent did not allocate pay in lieu to the claimant for accrued but untaken leave.
93. The claimant raises doubts about the authenticity of the payslip in his written evidence noting that it appears to be dated 18 September 2024 but records tax month 4 which is July and refers to disputed debts. For completeness, in so far as an employer has overpaid an employee this is an excepted deduction for the purposes of the right not to suffer unauthorised deductions from wages and moreover no such claim has been put before me for determination.
94. I have taken account of the submissions of the parties. Given my findings on the evidence available to me, I have therefore concluded that the claimant is not due any pay in lieu of any accrued but untaken leave.

**Accordingly, my judgment is that:**

95. The complaint of unfair dismissal is not well-founded. The claimant was fairly dismissed.
96. The complaint in respect of holiday pay is not well-founded.
97. The claimant's claims are dismissed in their entirety.

**Tribunal Judge Peer acting as an Employment Judge**

Date 18 April 2025

JUDGMENT SENT TO THE PARTIES ON

.....24 April 2025.....

.....  
FOR THE TRIBUNAL OFFICE