



EMPLOYMENT TRIBUNALS

Claimant: Mr. M Toulmin

Respondent: Chris Wright (Baildon) Limited

HELD AT: Leeds Employment Tribunal
(By CVP)

ON: 8 May 2025

BEFORE: Employment Judge Buckley

REPRESENTATION:

Claimant: In person (assisted by Mrs Toulmin)

Respondent: Miss Ajibade (Consultant)

JUDGMENT

1. The claim for unfair dismissal is well-founded and **SUCCEEDS**.
2. The respondent shall pay the claimant the following sums:
 - a. Compensatory award: **£2,606.78**
 - b. Basic award: **£240.80**
3. The recoupment regulations do not apply.

REASONS

Claims and Issues

1. The claimant brings a claim for unfair dismissal.

2. The issues that I have determined are as follows.

2.1. What was the reason or principal reason for dismissal? The respondent says the reason was conduct.

2.2. Did the respondent genuinely believe the claimant had committed misconduct?

2.3. If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:

2.3.1. there were reasonable grounds for that belief;

2.3.2. at the time the belief was formed the respondent had carried out a reasonable investigation;

2.3.3. the respondent otherwise acted in a procedurally fair manner;

2.3.4. dismissal was within the range of reasonable responses.

2.4. How much should the compensatory award be? The Tribunal will decide:

2.4.1. What financial losses has the dismissal caused the claimant?

2.4.2. Has the respondent proven that the claimant failed to take reasonable steps to replace their lost earnings, such as by failing to take reasonable steps to find another job?

2.4.3. For what period of loss should the claimant be compensated?

2.4.4. Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

2.4.5. If so, should the claimant's compensation be reduced? By how much?

2.4.6. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

2.4.7. Did the respondent unreasonably fail to comply with it?

2.4.8. If so is it just and equitable to increase any award payable to the claimant? By what proportion, up to 25%?

2.4.9. Did the claimant they cause or contribute to dismissal by blameworthy conduct?

2.4.10. If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

2.4.11. Does the statutory cap apply?

2.5. What basic award is payable to the claimant, if any?

2.6. Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

Evidence

3. The claimant and his father, Mr Michael Toulmin, gave evidence in support of his claim. For the respondent I heard from Harvey King, CEO, and Christopher Morton, who was acting as the claimant's line manager at the relevant time and is a director of the respondent. My view is that Mr Morton and the claimant gave

clear and consistent evidence overall and did their best to assist the tribunal. They made concessions when appropriate. Where I have not accepted their evidence on particular issues I have explained the reasons in my findings of fact.

4. In relation to some of the issues, I did not accept Mr King's evidence. I have set out the reasons for that in my findings of fact.
5. I accept that Mr Michael Toulmin was not deliberately attempting to mislead the tribunal, but I have placed limited weight on his evidence, because his evidence conflicted with his son's candid evidence on material issues.
6. I also read a bundle of documents and viewed three videos. The bundle was supplemented by the investigatory notes and health and safety documentation which were produced by the respondent during the hearing. The claimant noted the lateness of those documents, but was content that he could deal with them in today's hearing. Given the content of the documents I was satisfied that they were relevant and that the claimant was in a position to deal with them in today's hearing. I recalled any witnesses that the parties wished to question on the new documents.

Relevant Law

Unfair dismissal

7. It is for the employer to show the reason for the dismissal and that it was a potentially fair reason within Section 98(1) or (2) of the Employment Rights Act 1996.
8. If there is a potentially fair reason for dismissal the question is whether in the circumstances the employer acted reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the employee under section 98(4), taking account of the respondent's' size and administrative resources and with regard to equity and the substantial merits of the case.
9. In conduct dismissals the tribunal will consider the three questions set out in **British Home Stores v Burchell** (1980) ICR 303:
 - (a) The employer must show that he believed the employee was guilty of misconduct.
 - (b) The tribunal must be satisfied that he had in his mind reasonable grounds upon which to sustain that belief and,
 - (c) The tribunal must be satisfied that at the stage at which the employer formed that belief on those ground he had carried out as much investigation into the matter as was reasonable in the circumstances.
10. The tribunal does not substitute its own decision for the employer's decision. When considering the procedure adopted, the question for the tribunal is whether that was a procedure that a reasonable employer could have adopted (**Sainsburys Supermarkets v Hitt** [2003] IRLR 23). When considering whether dismissal was an appropriate sanction, the tribunal has to consider if dismissal

as a sanction fell within the band of reasonable responses. **Iceland Frozen Foods v Jones (1982) IRLR 430 and Post Office v Foley** [2000] IRLR 827.

11. Minor procedural defects may not be material to an assessment of reasonableness (**D'Silva v MMU** EAT 0328/16); and it is important to consider 'substance and procedure' and look at 'the whole procedure, including the decision to dismiss, in the round' (Langstaff P, in **Sharkey v. Lloyds Bank Plc** EAT 0005/15).
12. In assessing whether the respondent followed a fair procedure, the ACAS Code of Practice on disciplinary and grievance procedures is relevant.
13. In considering the reasonableness of the dismissal, I can only take account of facts or beliefs that were known to the respondent at the time of the dismissal (**Devis v. Atkins** [1977] ICR 622, HL).
14. Where a dismissal is found to be unfair by reason of procedural defects, the question of whether the employer might have dismissed the employee in any event goes to the question of remedy and compensation ought to be reduced to reflect that chance as established in **Polkey v Dayton Services Ltd** (1988) ICR 142.
15. In **Ms M Whitehead v Robertson Partnership** UKEAT 0331/01 the following guidance was provided when considering any 'Polkey' deduction:
 - (a) What potentially fair reason for dismissal if any might emerge as a result of a proper investigation and disciplinary process?
 - (b) Depending on the principal reason for any hypothetical future dismissal, would dismissal for that reason be fair or unfair. If conduct is the reason might the respondent have reasonable grounds for their belief in such misconduct?
 - (c) Even if a potentially fair dismissal was available to the respondent would he in fact have dismissed the claimant as opposed to imposing some lesser penalty and if so would that have ensured the claimant's continued employment?
16. Where unfair dismissal is found Section 122(2) ERA provides that where the tribunal finds that any conduct by the claimant before the dismissal was such that it would be just and equitable to reduce the amount of the basic award, the tribunal shall reduce that amount accordingly. Further Section 123(6) ERA provides that where the tribunal finds that the claimant caused or contributed by any action to the dismissal it shall reduce the amount of the compensatory award by such proportion as it deems to be just and equitable.

Findings of fact

17. The claimant was initially employed by the respondent from 4 July 2022 as a labourer, working on Saturdays. On 13 September 2022 he started a three year apprenticeship as an HGV service and maintenance technician level 3. The apprenticeship involved the claimant, the respondent and Craven College. When

the apprenticeship started, he was 16 years old. At the time of the events in question in July 2024 he was 18.

18. The apprenticeship documentation makes clear that there is a contract of service between the employer and the apprentice. There is an apprenticeship agreement between the claimant and the respondent, signed by both parties, at page 47-48 of the bundle. It states that the purpose of the apprenticeship agreement is to act as a contract of employment. It includes the heading 'statement of employment' and includes the statutory particulars. It states at the bottom of p 48, just above the signatures of the claimant and the respondent:

'We intend the contents of this letter to be an Apprenticeship agreement within the meaning of the Apprenticeship Skills Children and Learning Act 2009, therefore this agreement will be a contract of employment and not a contract of apprenticeship and you will be treated for all intents and purpose as an employee of the company'.

19. The respondent has not disputed that the claimant was an employee nor that he has two year's service taking account of his previous employment with the respondent.
20. However, Mr King gave evidence that he did not understand at the time that there was a contract of employment between the claimant and the respondent and suggested that he had been 'poorly advised' by the college.
21. I find that the documentation provided by the college and signed by the respondent makes the position very clear. I do not accept that Mr King, as CEO of the company, having been provided with that documentation, would not have understood that there was a contract of employment between the claimant and the respondent. It is very clear from the documentation that the respondent had been made aware that the claimant was an employee and had signed an agreement signifying that that was its intention.
22. Further, Mr King's assertion that he was not aware that the claimant was an employee is surprising given the documentation in the bundle relating to previous incidents of lateness. For example at page 118 is a letter to the claimant, signed by Mr King, which states 'It is important that all our employees stick to the standards that we require..'. The letter also encloses a copy of the employee handbook and refers to the company's disciplinary rules and procedures. In addition, the claimant was invited to a disciplinary hearing on 17 May 2024 to discuss the claimant's lateness. It is clear from these documents that the respondent, and Mr King himself, considered that the claimant was an employee and covered by the company's disciplinary rules and procedures.
23. On that basis I do not accept Mr King's evidence that he was not aware that the claimant was an employee and that the usual disciplinary procedures would apply.
24. I find that the use of bad language/swear words was normal and accepted in the respondent's workplace. This is clear from the video provided by the claimant and the video with sound provided by the respondent. Mr King and Mr Morton

both accepted that swearing/bad language was common. There was no suggestion from the respondent that employees had been reprimanded for using swear words, or discouraged from using swear words or given any indication that this was unacceptable or might lead to disciplinary action.

25. The claimant travelled to and from work on a motorbike. Like other employees who travelled to work by motorbike, the claimant was permitted to drive his motorbike across the respondent's yard (approximately 350-400 yards) and park it next to the garage door. Employees were also generally permitted to work on their own vehicles on the site in their own time.
26. On 31 October 2023, one of the respondent's employees, a mechanic, had raised the condition of the claimant's then motorbike with his mother and father. He sent a message on that date, attaching a video, to Wendy Toulmin. The message read 'Can you show mick [the claimant's father] this video and see what he thinks of this'.
27. This was not the same motorbike as the one involved in the incident that led to the claimant's dismissal.
28. The commentary on that video is provided by the mechanic, who points out a number of issues with the bike, using frequent swear words.
29. There is no suggestion that the claimant had been asked not to ride his bike across the yard on that occasion, or on any other occasion.
30. On a previous occasion, Peter Goldsmith, the claimant's previous manager had stopped the claimant from leaving the respondent's premises because of the condition of his bike. There is no suggestion that Peter Goldsmith had asked the claimant not to ride the bike across the respondent's yard in that condition or had told him off for doing so.
31. The claimant had had a previous disciplinary issue in relation to an allegation of persistent lateness. He had been invited to a disciplinary hearing by his then supervisor, Glenn Tanner, by letter dated 15 May 2024. Instead of a formal disciplinary hearing Mr King spoke to the claimant with his mother on 24 May and issued a 'letter of concern', which warned the claimant that if there was any repeat of the lateness or any other misconduct, he might be subject to formal disciplinary action.
32. The conduct that the respondent says led to the claimant's dismissal occurred on 24 July 2024. On that day Mr Morton was acting as workshop manager and had been doing so for two weeks. On the morning of 24 July 2024, the claimant arrived at work on his motorbike. Mr Morton says in his witness statement that the claimant arrived at 8 o'clock 'with one hand pulling the front cable of his motorbike and with his other hand trying to accelerate'. Mr Morton says that there were other faults with the motorbike and said 'I walked to the front of the bike and could see his cable had completely fallen, the rest of the bike was completely wrecked, his back wheel had a little axle that had come out and he had reared the end down, so his wheel was completely unsafe. Both of his brakes were literally loose meaning you could rattle the whole brakes out.'

33. I find that Mr Morton did not inform the claimant that he should not have ridden the bike across the yard in the morning, nor did he initiate any kind of disciplinary process as a result of the claimant arriving on the bike. Instead he allowed the claimant to work on his bike over the morning and in his breaks.
34. The incident in question occurred in the afternoon. The evidence before the respondent at the time as to what happened is set out in the notes of the investigation below.
35. After the incident, Mr Morton spoke to Mr King. Mr King informed the claimant's mother by telephone that the claimant was suspended for being verbally aggressive to Mr Morton. There is no evidence that Mr King mentioned any health and safety issue or any issue about the claimant having driven the bike across the yard in the morning.
36. Mr King conducted an investigation on 25 July 2024. The grounds of resistance says that he was informed about the incident by 5 named members of staff, but there are only notes of discussions with Mr Morton and two other members of staff. Mr King stated that he did also speak to David Chester but that he did not make any notes. He was not asked about whether he spoke to the remaining employee.
37. Mr King conducted the investigation on 25 July 2024 and made the decision to dismiss. Mr King's handwritten notes of the investigation meeting with Mr Morton on 25 July record what happened as follows:

"Can you advise what happened

Matthew was clearly having issues with his m/cycle on the afternoon of the question. That lead me to question what was the issue and I became aware of a number of issues. On inspection I saw a detached brake cable, issues with lights and brakes. At that point (late afternoon) I did ask Matthew his intentions.

He said he was going to ride it back home or to a garage.

At that point I explained that's not acceptable and he needs to contact its parents to get it collected. He stated it was non- of my business and he should sort himself out.

He then became abusive and went to call his father.

What happened next

His father arrived and at that point Matthew became more aggressive + vocal. He did say "you fucking prick". His father was a witness and loaded his motorcycle into the van. I did show his dad the issues and that the bike wasn't roadworthy.

Who was present

Dave Chesters
Tony Savino
Jake Bairstow

Did they witness the behaviour

Yes

Did they agree on the state of the bike

Yes, all saw the issues. I believe they video the bike too.

How did you feel:

Disappointed and upset with the way I was spoken to.'

38. Mr Morton did not refer to the fact that the claimant had ridden across the yard in the morning in the investigatory interview.
39. The investigation notes of the interview with Tony Savino on 25 July 2024 record as a follows:

'Can you advise what was happening?

I was working in the main workshop when I overheard an issue with Matthew. I was aware things had become very heated and strong language was being used.

I moved to see what was happening. Chris Morton and him could be seen and heard stood near his m/bike.

It was clear the bike has an issue as I remember Matthew working on it through the day.

What was the atmosphere/discussions

Clearly Chris has made Matthew aware that he had concerns about his bike and that it wasn't fit to leave the site. He ask Matthew to call his parents, which he did. There was an atmosphere and could see Matthew getting aggravated.

What happened when his Dad arrived

Chris showed his Dad and explained that he had a duty of care and that his m/bike had a number of issues. At the point Matthew swore at Chirs which was witnessed by the garage and his Dad. They then left the site and the atmosphere settle. Chris was clearly upset.'

40. The notes of the interview with Jake Bairstow on 25 July 2024 record as follows:

'Can you advise what happened

It was clear to me Matthew had an issue with his bike as he spent every minute of the day, in his spare time, trying to fix it.
I did look over it and could see numerous issues.
I did say it wasn't fit for the road and Chris did agree.

When did this happen

Late afternoon as Matthew was getting ready to leave the site.

Chris had then made him aware that it wasn't safe for him to leave and that the bike needed to be picked up. At that point Matthew became upset and started with some colourful language. Chris asked him to call his father and get picked up. Mathew continued to be upset until his father arrived.

Chris did explain to his Dad the issues and the bike was loaded. Matthew did continue to hurl abuse at Chris.

What was wrong with it

- Detached throttle cable
- Head light loose
- Brake calipers loss
- Panels loose

We had video'd it for reference.

Was it road legal

No, absolutely not at all. All these aspects had been shown to his father.'

41. There is no mention in any of the notes of the investigation of the claimant having driven his motorbike across the yard in the morning on the way to work.
42. At some point 'during the investigation' Mr King had a discussion with Stacie Johnson at Craven College, who suggested that the respondent could withdraw themselves as a placement and this would allow the college to place the claimant at another location.
43. On 26 July 2024 at 4.06pm the claimant's mother sent an email to Harvey King attaching a grievance letter complaining about bullying and other treatment of the claimant.
44. Mr King did not write directly to the claimant to inform him of the dismissal, but sent an email to the college and the claimant's mother on 26 July at 16.41 which says:

I write to advise that I withdraw my company from providing apprenticeship placement training for Matthew with immediate effect. I would kindly ask that his tools and any personal effects are collected from our premises no later than 4pm on Friday 2nd August. If you could make contact with Scott Ashdown to make suitable arrangements. There may be some outstanding

tool allowance monies to be repaid, which I will review on Monday and make any adjustment to his final pay then before issuing any final documentation.

Mrs Toulmin/Matthew please contact Stacie at Craven College to discuss Matthew's further steps completing his course.

45. The claimant himself first found out about his dismissal when a message was placed on the work group whatsapp chat.
46. The reasons for dismissal were not given in the email of 26 July. The reasons given by Mr King/the respondent for dismissal have not been entirely consistent.
47. In an email to Stacie Johnson dated 31 July 2024, Mr King states that the gross misconduct consists of 'verbal and physical abuse to his manager and colleagues':

'...another very difficult situation with Matthew where his Mother and Father had been involved. Matthew's through any discussion on his conduct have been 'are you going to try and give me a written warning again'! His language and physical behaviour towards other staff is totally unacceptable. I will not accept his presence within my business again. Sadly his Father witnessed an outburst of totally offensive language to one of my managers and thought it was completely acceptable, unfortunately it isn't. I have witnessed all concerned and am happy Matthew's behaviour constitutes gross misconduct through verbal and physical abuse to his manager and colleagues.'

48. There is no mention in this email of any breach of health and safety, or any reference to the claimant's motorbike.
49. When I asked Mr King what he meant on this email by 'physical abuse' he said that 'from memory' he believed that there was 'a bit of pushing and pulling at the time... I believe you know that Matthew had a bit an outburst and they were just trying to get the motorbike moved down... I think it was perhaps a little bit of shoving from Matthew.' There is no mention of any physical abuse in any of the notes of the investigation.
50. In the grounds of resistance the respondent gives the reason for dismissal as follows:

'The Claimant was dismissed summarily for gross misconduct on the grounds that he had refused to fix his motorbike (breaching health and safety) and abused a member of senior member of staff in the process...The Respondent submits that the condition of the Claimants motorbike had deteriorated to the extent where Chris Morton felt it necessary to prevent him from driving home due to health and safety concerns. When confronted the Claimant reacted by abusing Mr Morton. The breach of health and safety followed by abusing a senior member of staff represents clear gross misconduct from the Claimant.'

51. In Mr King's witness statement he says:

‘There were two issues with the Claimant as a result of his behaviour that day; firstly his conduct against Christopher Morton and other colleagues and the fact that he was abusive directly to Christopher and tried to undermine his position. Secondly, the Claimant’s entry and exit to the premises in a vehicle that was not suitable and illegal. Chris was entirely within his rights to refuse the Claimant ability to leave the business in that vehicle as we have a duty of care for his safety. Furthermore, had he been allowed to leave, he would be travelling across our private land in an area of high risk. This could have snowballed into a much more significant issues given the state of the Claimant’s motorcycle, as he could have been killed or injured at our site as he was unable to control his motorcycle and could have been subject to a serious accident.

...

After I learnt the details of the incident as explained above, I took the decision to dismiss the Claimant because of gross misconduct on 26 July 2024, this was as a result of two actions; the Claimant’s refusal to fix his motorbike and the fact that he verbally abused a senior member of staff in the process of trying to leave the premises in a dangerous vehicle.’

52. In oral evidence Mr King, when giving evidence of a conversation with Craven College that took place during the investigation, said there were two serious parts of the case that were a problem for the respondent as a business, one was a health and safety matter and the other one was the claimant’s conduct toward his line manager.
53. When I asked Mr King to expand on what he meant by a ‘health and safety matter’ he said that it was that the claimant was on their business premises with a vehicle that was not suitable for the road and he put himself and the respondent’s employees at risk travelling across the property into the garage and further tried to put himself and the respondent’s employees at risk trying to leave in the afternoon.
54. When asked by the claimant’s mother if the respondent had written standards for vehicles that should be on the site, he replied ‘we do, we have a health and safety policy’. That policy was not in the bundle, but respondent was asked to and did produce its health and safety documentation during the hearing. There is nothing in the documentation which sets out any written standards for vehicles on the site.
55. When I asked him about the claimant’s conduct towards his line manager, Mr King replied that after the investigation it was clear to him that the claimant’s approach to Mr Morton and his wider colleagues was very aggressive and used ‘probably as bad language as you could imagine’ and that he believed in the context that language was meant in an aggressive and inflammatory manner.
56. Mr King was referred to the part of the respondent’s disciplinary procedures which provides an illustrative list of gross misconduct, and he said that the relevant sections were harassment which fell within (d) ‘deliberate acts of unlawful discrimination or harassment’ and (f) ‘breach of health and safety rules

that endangers the lives of, or may cause serious injury to, employees or any other person.'

57. In her closing submissions, Miss Ajibade submitted that the reason for dismissal was (1) the claimant's verbal abuse to his line manager, Mr Morton, which used an aggressive tone and (2) the claimant's motorbike because it was in disrepair and was not suitable because it breached health and safety regulations and he placed himself and others at risk. When I asked which health safety regulations had been breached, she relied on the section in the respondent's safety policy which states 'you must not take any action that could threaten the health and safety or yourself, other employees, clients or members of the public.'
58. The disciplinary procedures also contain a list of actions that are likely to lead to disciplinary action. This includes 'failure to abide by the general health and safety rules and procedures' and 'rudeness towards clients, members of the public or other employees, objectionable or insulting behaviour, harassment, bullying of bad language'.

Factual findings for the purposes of conduct/contributory fault.

59. I make the following findings on the basis of the evidence I heard today, and on the balance of probabilities. I find that on 25 July 2025 the claimant arrived on his motorbike. The throttle cable on his motorbike had snapped, and so when he entered the yard, the claimant was holding the end of the throttle cable. Usually it is controlled by twisting but the claimant was pulling it with his thumb to control it. The claimant had hold of both handlebars and had access to his brakes and clutch as usual. Mr Morton, the claimant's line manager saw the claimant arrive. He did not tell the claimant that he should not have driven the bike across the yard.
60. The claimant had previously driven his bike on to the respondent's site in a poor state of repair. Employees were regularly permitted to work on vehicles that needed repair on site in their own time. Although on a previous occasion, Peter Goldsmith, the claimant's previous manager had stopped the claimant from leaving the respondent's premises because of the state of his bike, there is no evidence that anything had been said to him about driving across the respondent's premises.
61. On 25 July the claimant spent time working, with permission, on his motorbike, with the intention of making it driveable so he could drive it to a garage to be repaired. The claimant accepts that the bike needed to be repaired before he drove it to the garage. He was working on a temporary repair to the throttle cable so he could drive the bike.
62. About 3pm Mr Morton said to the claimant something along the lines of 'You can't go home on that, if your parents are happy then that's their responsibility but I can't let you go home in that.' The claimant's response was 'I fucking can', to which Mr Morton replied 'We'll see'. The use of this language by the claimant was normal for employees in the respondent's workplace, and Mr Morton did not raise an issue with the claimant at the time about his use of language.

63. At about 4 o'clock the claimant was still working on the bike. He had not yet managed to make a temporary repair to the bike. I accept his evidence that he was not intending to leave until he had made a temporary repair. Mr Morton said to the claimant something along the lines of 'I'm not letting you leave this yard, I have a responsibility for you and that bike is a deathtrap'.
64. A number of employees were involved in the discussion and it became heated on all sides. Swear words were used by the claimant and other employees. For example, Stuart Harrison shouted at the claimant 'Stop being a dickhead he is thinking about your safety'. The claimant became upset during the discussion. This is clear from his evidence but also from the notes of the investigation. I accept that the claimant was crying.
65. At some stage the claimant called his father, and said 'Chris is being an asshole not letting me get on my motorbike'. This is normal language in the respondent's workplace.
66. When the claimant's father arrived to pick him up, he put the motorbike in his van. Mr Morton told that claimant that he had a good job and that he should use his head regarding his behaviour. He told him that it was not personal and that he was thinking about the claimant's safety. As the claimant was leaving he shouted in reply 'No you're not you're being a fucking prick'. This is not out of line with the type of language normally acceptable in the respondent's workplace.
67. Although the claimant was angry and upset, he was walking away when he said this. Although it was shouted, I accept that it was not said in aggressive manner.

Findings of fact relevant to mitigation and loss of earnings

68. The claimant's payslips show the amounts paid to the claimant every week between 14 July 2022 and his dismissal. Having considered the payslips, I find that the net amount that the claimant was normally paid for his basic weekly pay at the date of his dismissal was £306.44 for 40 hours. The claimant occasionally worked overtime. Over the 12 weeks prior to dismissal the claimant worked, on average, 0.8 hours overtime per week at 1.5 x his normal rate. That amounts to an amount of £6.13 net each week.
69. The first time that the claimant obtained paid employment following his dismissal was on 1 November 2024. I accept that before that date he rang a lot of wagon companies asking for apprenticeships
70. The bundle contains a journal of notes made by Stacie Johnson, at Craven College. The notes after the claimant's dismissal state as follows:

01/08/2024	Had a chat with Matthew about a new job, discussed continuing HGV or transferring to LV. Discussed a local company that would be a good place and Matthew seemed on board so I said I would set up a point of contact for him
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20/08/2024	Suggested employer was really keen to hear from Matthew and get him on a trial there, I called Matthew, and he was up for it so I confirmed with employer and they asked if Matthew could get in touch with a CV and they can move forward from there. Sent a text to Matthew so he could sort a CV.
21/08/2024	Chased Matthew again and he eventually got back to me to say he would do that, that night and get it sent.
28/08/2024	The employer had emailed me asking if I had the CV for Matthew so they could get the ball rolling to which I tried to make contact with Matthew and was unsuccessful on several occasions.
03/09/2024	Checked in with employer as to whether they had received a CV as I had been unable to get in touch with Matthew and they confirmed they had not and that Matthew had not been in touch at all.

71. The claimant was asked about this in evidence. His evidence was that the employer in question was a company called McDowells. I find on the basis of his evidence that he had called them once prior to his dismissal and once afterwards (but before speaking to Stacie Johnson on 1 August 2024) and had been told that they had no available apprenticeship spaces.
72. The claimant said that the was unsure why McDowells had said to Stacie that they were very keen to get him on a trial, but he thought it might be because it was through the college.
73. He said that after he had previously been declined by McDowells he did not see any point in trying again, because it was not that long ago that he had spoken to them. He said that Stacie Johnson had only called him once or twice about McDowells.
74. There is no evidence before me about the potential salary at McDowells but given the nature of the work and the effect of the minimum wage, I find that the salary would have been no less than the salary that he received from the respondent.

Discussions and conclusions

What was the reason for dismissal?

75. The reason for dismissal is a set of facts known to the employer, or beliefs held by him, that cause him to dismiss the employee.
76. In the claim form it is asserted that the reason for dismissal was the grievance letter submitted by the claimant shortly before the Mr King informed the claimant's mother and Craven College that it was withdrawing from the

apprenticeship. Whilst there is clearly a coincidence in timing, the claimant was already suspended as a result of his conduct the day before, and I accept that it was the events of the 25 July rather than the grievance letter which was the reason for dismissal.

77. While it is clear that the dismissal was as a result of the events of 25 July 2024, it is difficult to make findings on the reason for dismissal, because Mr King has given a number of different reasons for dismissal. This difficulty is compounded by the fact that there is no letter informing the claimant of the allegations against him, there was no disciplinary hearing when those allegations were put to the claimant and there is no outcome letter setting out the reasons for dismissal.
78. Having considered all the evidence before me, I find that part of the reason for dismissal was the claimant's conduct towards Mr Morton, including the offensive language used to Mr Morton.
79. The only contemporaneous record of Mr King's reasons for dismissal is the letter to Craven College dated 31 July 2024, which was written by him 5 days after the decision to dismiss. In that letter he states that the claimant's behaviour constituted gross misconduct 'through verbal and physical abuse to his manager and colleagues'. On the basis that an email written to Craven College only 5 days after the incident is likely to be a good reflection of what was in Mr King's mind at the time, I find that that is part of the reason for dismissal.
80. In addition, the investigatory notes set out what Mr King was told at the time and on the basis of those notes, taken with what Mr King now says was the reason for dismissal, I find that in relation to the verbal abuse towards the claimant's manager, this is specifically that the claimant used bad language towards Mr Morton, including the phrase 'you fucking prick'.
81. In relation to the motorbike, I do not accept that part of the reason for dismissal was the fact that the claimant had driven the bike across the respondent's site that morning when it was in a state of disrepair.
82. The notes of the investigation do not deal with what happened in the morning of the incident at all.
83. The grounds of resistance state that 'the Claimant was dismissed summarily for gross misconduct on the grounds that he had *refused to fix his motorbike (breaching health and safety)* and abused a member of senior member of staff in the process' (my italics). It states that 'the condition of the Claimant's motorbike had deteriorated to the extent where Chris Morton felt it necessary to prevent him from driving home due to health and safety concerns. When confronted the Claimant reacted by abusing Mr Morton. The breach of health and safety followed by abusing a senior member of staff represents clear gross misconduct from the Claimant.'
84. The only reference to the claimant driving across the respondent's site is in the section entitled 'background' and is a reference to prior conduct of the claimant rather than the incident in question: 'the Claimant would ride across 300 metres

of the Respondents property with HGV's driving around constantly increasing the risk of an accident on the Respondents property'.

85. There is no mention of the claimant's conduct in the morning in any of the contemporaneous documentation or in the grounds of resistance.
86. Mr King's witness statement does state that one of the issues with the claimant on that day was 'the claimant's *entry* and exit to the premises in a vehicle that was not suitable and illegal' (my italics). However the statement immediately goes on to deal only with the claimant's intention to leave the premises: 'Chris was entirely within his rights to refuse the Claimant ability to leave the business in that vehicle as we have a duty of care for his safety. Furthermore, had he been allowed to leave, he would be travelling across our private land in an area of high risk. This could have snowballed into a much more significant issue given the state of the Claimant's motorcycle, as he could have been killed or injured at our site as he was unable to control his motorcycle and could have been subject to a serious accident'.
87. When specifically dealing with the reason for dismissal Mr King's witness statement states that the decision to dismiss was 'because of gross misconduct as a result of two actions; the Claimant's refusal to fix his motorbike and the fact that he verbally abused a senior member of staff in the process of trying to leaving the premises in a dangerous vehicle.'
88. Although in oral evidence Mr King said that the claimant had put himself and others at risk by travelling across the respondent's property to the garage, I do not accept, in the light of all the other evidence set out above, that the claimant's conduct on arrival in the morning formed part of the reason for dismissal at the time.
89. In my view it is clear that the reason for dismissal was the claimant's conduct in the afternoon. Precisely what conduct was said to amount to misconduct in relation to the claimant's motorbike/any breach of health and safety is, again, not entirely clear.
90. The respondent has put forward the reason 'the claimant refused to fix the motorbike' both in Mr King's witness statement and in the grounds of resistance. On that basis I accept that was part of the reason for dismissal.
91. Doing my best on the evidence before me, it appears that Mr King also took into account that the claimant tried to leave the premises on the motorbike when it was in a dangerous state and I accept that that formed part of the reason for dismissal.
92. In summary, I find that the reason for dismissal was:
 - 92.1. Verbal and physical abuse to Mr Morton and others, including saying 'you fucking prick' to Mr Morton.
 - 92.2. That the claimant refused to fix the motorbike.
 - 92.3. That the claimant tried to leave the premises on the motorbike when it was in a dangerous state.

93. Despite the lack of clarity, given that the grounds of resistance was drafted on Mr King's instructions and he confirmed that his witness statement was true, I am prepared to accept that Mr King had an honest belief in that conduct. All those reasons fall within 'conduct' and are a potentially fair reason for dismissal.

Did the respondent have reasonable grounds for that belief based on a reasonable investigation?

94. I find that Mr King did not have reasonable grounds for his belief in any of the conduct.
95. Mr King had not made any attempt to hear the claimant's version of events before reaching his conclusion. He had not put the allegations to the claimant. In those circumstances he had no idea if the claimant would give an entirely different version of events. In those circumstances it was not reasonable to form those beliefs.
96. I would not, in any event, have been satisfied that Mr King had reasonable grounds for his belief in the second and the third reasons in paragraph 92 above. The notes of the investigatory interviews do not record that any of the witnesses said that the claimant refused to repair his bike. Nor do they record that the claimant tried to leave the premises on his motorbike. Although the notes record that the claimant had told Mr Morton that he intended to leave, they show that when Mr Morton objected, the claimant had called his father who had picked him up.
97. Further, I would not have been satisfied in any event that there were reasonable grounds to conclude that the claimant had been physically violent. There is no suggestion of that in any of the notes of the investigatory meetings.
98. Although it is not necessary in all cases to hold a separate investigatory interview with the claimant before conducting a disciplinary hearing, in this case Mr King took the final decision without hearing the claimant's version of events at all. On that basis I conclude that the investigation was not one that a reasonable employer could have adopted.
99. Given the lack of clarity in relation to the reasons for dismissal above, it is important to make clear that I would have concluded that the respondent did not have reasonable grounds for its belief whatever the precise conduct relied on, because the employer formed its belief before hearing from the claimant and before giving the claimant any opportunity to explain what had happened.
100. I find that no reasonable employer would have adopted such a fundamentally flawed procedure which failed to comply with even the basic requirements of fairness.

Did the respondent adopt a fair procedure

101. The respondent is a haulage company. It has a disciplinary procedure and uses Peninsula to provide support. It has the size and administrative resources to conduct a disciplinary process.

102. I find that the respondent did not adopt a fair procedure. Although the claimant was suspended, the respondent did not then explain what was alleged to have happened, nor did it give the claimant an opportunity to answer the allegations and to put forward his version of events, nor did it give the claimant the opportunity to put forward any mitigating circumstances.
103. In breach of the ACAS code of practice, the respondent did not inform the claimant of the basis of the problem and give him an opportunity to put his case in response before any decisions were made (paragraph 4). The claimant was not notified that there was a disciplinary case to answer in writing (paragraph 9). The claimant was not given sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting (paragraph 9). The respondent did not hold a meeting with the claimant to discuss the problem (paragraph 10). The respondent did not inform the claimant of the reasons for dismissal, or of the right of appeal (paragraph 22).

Conclusion on fairness

104. For the above reasons, I conclude that the dismissal was unfair. Taking all the above into account I find that the respondent did not act reasonably in treating the conduct relied on as sufficient reason for dismissal.

REMEDY

Net weekly earnings

105. The claimant's payslips show that the amounts paid to the claimant every week between 14 July 2022 and his dismissal. Having considered the payslips, I find that the net amount that the claimant was normally paid for his basic weekly pay at the date of his dismissal was £306.44 for 40 hours. The claimant occasionally worked overtime. Over the 12 weeks prior to dismissal the claimant worked, on average, 0.8 hours overtime per week at 1.5 x his normal rate. That is an amount of £6.13 net each week. On that basis I find that the claimant was earning £312.57 per week net.

Mitigation

106. I find that the claimant failed to take reasonable steps to mitigate his losses by failing to submit a CV to McDowells or to otherwise follow up the opportunity to gain an alternative apprenticeship. Although the claimant had spoken to them recently and they had told him that they had no apprenticeship places, they had clearly taken a different view when approached directly by the College. They were 'very keen' to have a trial and when the claimant did not get in touch, McDowells took the initiative to contact the College on 28 August to inform them that the claimant had not got in touch so that they could 'get the ball rolling'. In those circumstances it was not reasonable of the claimant not to send McDowells a CV and to take part in a trial. Given the enthusiasm of McDowells, I find on the balance probabilities that the claimant would have been able to secure an apprenticeship with them if he had engaged with the process.

107. It is difficult to predict when the claimant would have been able to start work with McDowells, but in my view, taking into account the time for the application process and for a trial to be carried out, I find on the balance of probabilities that the claimant would have been able to start an apprenticeship with McDowells at the same wage by 6 October 2024 i.e. 10 weeks after his dismissal.
108. Before deductions and the application of an uplift, the claimant's losses are therefore $10 \times £312.57$ per week = £3,125.70

Loss of apprenticeship

109. Because I have found that the claimant would have secured an alternative apprenticeship if he had taken reasonable steps to mitigate his losses, there is no ongoing loss attributable to the dismissal as a result of the claimant's loss of his apprenticeship.

Polkey deduction

110. I accept that there is a chance that the respondent would have been dismissed fairly in any event.
111. The claimant accepts that used bad language during the conversation and that he swore at his manager as he was leaving. I find that there is a low percentage chance that this would have caused the respondent to dismiss the claimant for the following reasons:
- 111.1. The use of similar language is normal and tolerated within the respondent's workplace.
 - 111.2. The claimant is young. The claimant and other witnesses say that he was upset. He says he was crying at the time.
 - 111.3. Although Mr Morton was acting as the claimant's manager at the time, he had only been doing so for two weeks. The video provided by the claimant shows that previously Mr Morton had been happy to engage in swearing, banter and behaviour that would be regarded as unacceptable in many workplaces.
 - 111.4. The claimant shouted 'No, you were being a fucking prick' as he was leaving. Given the context, i.e. that this language of this nature was normal and not objected to by Mr Morton and that the claimant was upset and was walking away at the time, this may not have been viewed by the respondent as 'aggressive' if the respondent had held a disciplinary hearing and considered the matter properly.
112. In relation to the issue with the claimant's motorbike, I find that there is a low percentage chance that this would have led the respondent to dismiss the claimant. After a proper disciplinary process, it seems likely that the respondent would have accepted that the claimant was still attempting to fix his motorbike when the heated discussions took place, that he had not yet attempted to leave and that he was intending to complete a temporary repair to drive the motorbike to a garage. They may have accepted his evidence that he would have called his dad to collect him if he had not managed to successfully complete the repair.

113. Even on Mr Morton's version of events, as set out in his witness statement, it is clear that the claimant did not 'refuse to fix his motorbike'. Further although the claimant had stated his intention to leave the premises, in fact what he did was call his father who took his bike home in the van. He did not attempt to leave. On that basis I find that the respondent could have concluded that although there was a potential health and safety risk, in the afternoon the claimant did not in fact 'take action that could threaten the health or safety of [himself], other employees, clients of members of the public' in breach of the health and safety policy.
114. I accept that there is a risk that the respondent could have taken the view that it was unsafe for the claimant to ride across the respondent's yard that morning with his bike in a state of repair. However, I find that there is a low risk that this would have led to the claimant's dismissal. The respondent had previously prevented the claimant from leaving the site, for his own safety, when his bike had been in an unsafe state. Nothing had been said to the claimant about riding across the respondent's site on that occasion. Mr Morton's focus was clearly on the safety of the claimant when he left the site and he had taken no action when the claimant arrived that morning, or even told the claimant that he should not have ridden the bike across the site.
115. Further, the respondent could easily have taken the view that the claimant's conduct, both in relation to the swearing and the state of his bike/riding across the claimant's site, did not amount to gross misconduct, particularly in the light of the claimant's age, and issued a final warning instead. The disciplinary procedure says that examples of offences that will normally be deemed as gross misconduct include serious instances of:
- a) theft or fraud;
 - b) physical violence or bullying;
 - c) deliberate damage to property;
 - d) deliberate acts of unlawful discrimination or harassment;
 - e) possession, or being under the influence, of drugs* at work and/or testing positive for drug use in a test carried out in line with our policy; and
- *For this purpose, the term 'drugs' is used to describe both illegal drugs and other psychoactive (mind-altering) substances which may or may not be illegal.
- f) breach of health and safety rules that endangers the lives of, or may cause serious injury to, employees or any other person.
116. The respondent may have taken the view that this was not a 'serious instance' of 'bullying' or a deliberate act of harassment. The respondent may have taken the view that even if there was a breach of health safety rules, realistically there was no more danger of serious injury or danger to people's lives than there had

been on the many other occasions that the claimant had been allowed to drive his motorbike across the yard in that condition.

117. If the respondent had imposed a penalty, it is in my view, very likely to have decided to issue a sanction less than dismissal.
118. Taking all the above into account, I find that there was a 20% chance that the claimant would have been dismissed in any event.

Contributory fault

119. In relation to contributory fault, I have found that the claimant's action in driving across the yard in the morning did not contribute to his dismissal and therefore I cannot take that into account under section 123(6).
120. In relation to the claimant's other conduct as set out in my findings of fact, I accept, as set out in my findings of fact, that the claimant did not intend to drive the bike if he had not been able to execute a temporary repair. However I find that the claimant's reaction when his manager told him that his bike was not safe to drive home, by being obstructive and in swearing at his manager was foolish and blameworthy. In assessing the degree of blameworthiness I take account of the claimant's age; the fact that Mr Morton had only been his manager for a very short period of time; the fact that there was swearing at the claimant from other colleagues; the fact that claimant became upset and was crying; and the fact that his colleagues, Mr Morton and the respondent's business in general were tolerant of bad language. Taking all the circumstances into account I find that a reduction of 25% is appropriate for contributory fault.

ACAS uplift

121. I have detailed the breaches of the ACAS code of practice in my findings above. I have rejected Mr King's evidence that he was not aware that the claimant was an employee. This is an employer who has access to advice from Peninsula. In the circumstances I conclude that the failure to comply was unreasonable.
122. In my view this is a serious breach of the code. Its requirements were almost entirely ignored. Although Mr King said in evidence that he had never been shown the ACAS Code of Practice before, as an employer he should have been aware of its provisions. This was not an inadvertent failure. I was not told how many employees the respondent has, but this is not a small company that lacked the experience or resources to carry out a basic disciplinary process. The entry on Companies House shows that it has 4 directors.
123. In my view, it is just and equitable to apply an uplift of 25%.

Statement of terms and conditions of employment

124. There was no failure to provide a statement of terms and conditions. That was the Apprenticeship agreement.

Loss of statutory rights

125. I award £350 for loss of statutory rights.

Amount of compensatory award

126. The claimant's losses are £3,125.70.

127. Add £350 for loss of statutory rights = £3475.70

128. Reduced by 20% (Polkey deduction) = £2,780.56

129. Increased by 25% (Breach of ACAS code) = £3,475.70

130. Reduced by 25% (Contributory fault) = £2,606.78

131. The compensatory award is assessed at **£2,606.78**

Basic award

132. The claimant's gross weekly pay for the purposes of the basic award does not include the occasional overtime that he worked. His basic gross weekly pay was £344 at the relevant date.

133. He was employed for two full years and aged under 22. He is entitled to ½ a weeks pay for each full year of employment. The basic award before deductions is therefore £344.

134. There is no requirement for a causative link between the conduct and the dismissal under section 122(2). I take account of my findings above on contributory fault and I add to this the claimant's blameworthy conduct of driving across the respondent's yard on the morning of the hearing with his throttle cable snapped, which the claimant ought to have known was potentially unsafe. I find that the claimant's conduct before dismissal was such that it is just and equitable to make a deduction of 30% from the basic award.

135. The basic award is assessed at **£240.80**.

Approved by Employment Judge Buckley

Date 22 May 2025

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