



EMPLOYMENT TRIBUNALS

Claimant: Miss J Sperry

Respondent: J D Wetherspoon Plc

Heard at: Cardiff

On: 28th-30th April 2025

Before: Employment Judge A Williams

REPRESENTATION:

Claimant: In person

Respondent: Mr Bidnell-Edwards, Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

1. The complaint of unfair dismissal was not presented within the applicable time limit. It was reasonably practicable to do so. The complaint of unfair dismissal is therefore dismissed for lack of jurisdiction.
2. The complaint of unfair dismissal is not well-founded and is dismissed.

REASONS

INTRODUCTION

1. The Claimant, Miss Julia Sperry, was employed by the Respondent as a cleaner from 17th May 2021 to the date of her dismissal without notice on 12th March 2024.
2. By an ET1 claim form presented on 3rd September 2024, after an ACAS early conciliation period between 3rd May 2024 and 3rd June 2024, the Claimant brought complaints of unfair dismissal and whistleblowing. At a Case Management Hearing on 7th January 2024 the Claimant withdrew the complaint of whistleblowing and a Judgment dismissing the complaint was issued on the same date.
3. The Claimant claims that her dismissal was unfair as it was based on false allegations and supported by witness evidence which was false and could not be confirmed by CCTV. She also raises a number of points of procedural unfairness arising out of the investigation, disciplinary hearing and subsequent appeal hearing.
4. The Respondent owns and operates approximately 800 pubs across the UK. It employs in excess of 42,000 employees. In its ET3 response form the Respondent states that it was entitled to dismiss the Claimant without notice because she committed acts of gross misconduct in the course of her employment. The Respondent maintains that the decision to dismiss was within

the range of reasonable responses available to it in light of the Claimant's conduct and that the decision was fair, both substantively and procedurally.

THE HEARING

5. I heard the Claimant's claim between 28th and 30th April 2025. The Claimant represented herself and gave oral evidence. The Respondent was represented by Mr Bidnell-Edwards of Counsel and called evidence from five witnesses:

- 5.1. Lianne Mays, Deputy Manager The Prince of Wales pub;
- 5.2. Andy Greenhill, Pub Manager The Prince of Wales pub
- 5.3. Dominic Cummings, Pub Manager
- 5.4. Jonathan Phillips, Pub Manager
- 5.5. Matthew Gough, Area Manager.

6. I had witness statements from each of the witnesses. I also had the benefit of an indexed and paginated hearing bundle of 217 pages.

7. I heard evidence from the Respondent's witnesses on Day 1 and the Claimant's evidence on Day 2. Both parties made oral closing arguments on Day 3.

8. As the Claimant was a litigant in person, I was mindful to explain points of law and procedure so as to enable her to fully participate in the hearing. She was given time to consider the Respondent's closing submissions before providing

her response and confirmed she had had an adequate opportunity to say everything she wanted to say to the Tribunal.

9. At the end of the hearing, I reserved judgment.

THE ISSUES

Preliminary issue – Time Limits

10. At the beginning of the hearing I discussed with the parties the issue of time limits, which did not appear to have been raised previously. The Claimant accepts that the date of dismissal was 12th March 2024. She contacted ACAS on 3rd May 2024 and exited early conciliation on 3rd June 2024. The last date for presentation of the claim in time was therefore 12th July 2024. The claim was presented on 3rd September 2024 and was therefore presented late.
11. The Claimant told me that she had been aware that there may be an issue with whether or not her claim had been presented in time, but she thought the issue had already been dealt with and 'waived' by the Tribunal. I explained to the Claimant that it had not and also explained that I could only hear the claim if I was satisfied that it was not reasonably practicable to bring the claim in time and the claim was brought within such further time that I consider reasonable.
12. As the Claimant was not previously aware that this was in issue, I considered whether it was fair and just in line with the overriding objective to consider the issue of time limits as a preliminary issue. In order to allow the Claimant additional time to consider this test and her evidence in relation to it I decided

to proceed to hear the Respondent's evidence on Day 1 and hear the Claimant's evidence on Day 2, and to give judgment on both the issue of time limits and the substantive claim for unfair dismissal together. Both parties invited me to take this approach in the circumstances.

List of Issues

13. The issues for determination had been discussed at a Case Management Hearing on 7th January 2025 with Employment Judge Harfield. At the beginning of the hearing the Respondent confirmed that it was content with the list of issues. The Claimant said that she had read the list of issues and didn't come across anything that she took issue with. I therefore took the list of issues as agreed.

14. The issues that I need to decide are as follows:

- 1.1. The parties agreed that the Claimant was dismissed.
- 1.2. What was the reason or principal reason for dismissal? The Respondent says the reason was conduct. Did the Respondent genuinely believe the Claimant had committed misconduct?
- 1.3. 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? The Tribunal's determination whether the dismissal was fair or unfair must be in

accordance with equity and the substantial merits of the case. It will usually decide in particular whether:

- 1.3.1. There were reasonable grounds for that belief;
- 1.3.2. At the time the belief was formed the Respondent had carried out a reasonable investigation;
- 1.3.3. The Respondent otherwise acted in a procedurally fair manner
- 1.3.4. Dismissal was within the range of reasonable responses.

1.4. The Claimant makes a number of specific allegations of unfairness:

- 1.4.1. Erskine Devonish, Derek Nicholls and Simon Hall gave false, lying, incomplete and contradictory statements that could not be confirmed by CCTV (in particular Erskine and Derek were not in the vicinity of the incident to have witnessed it as shown by the incompleteness/inaccuracies in their statements) and Simon Hall's statement was contradictory.
- 1.4.2. The Respondent made false alterations to witness statements including inserting red text at the top of Erskine's statement and adding red and green lines to statements before the appeal hearing and also adding further red annotations.
- 1.4.3. Lianne Mays told the Claimant she could not write her own statement, it had to be witnessed by Ashley

Tonna and all statements had to be typed on the computer. Yet two other individuals were permitted to give handwritten statements.

1.4.4. On 24 February 2024 Lianne sat the Claimant where the Claimant could not see the screen and typed the first version of the Claimant's statement. When the Claimant tried to change what Lianne was writing, saying it was inaccurate, Lianne said the Claimant could check it and make changes at the end. Lianne then said she had lost that version of the statement on the computer so that the Claimant was not able to make the changes. A second statement was prepared. The Claimant believes Lianne saying she had lost the first version may have been false and that Lianne was intending to (or in fact did) use the first incorrect version of the statement against the Claimant.

1.4.5. The Claimant emailed HR saying she wished to withdraw all her statements as she did not know which version was going to be used. Neither Lianne or Andy Greenhill should have continued to be involved in the investigation//disciplinary process (Andy is Lianne's partner).

1.4.6. Lianne and Andy called the Claimant to an investigation meeting on 27th Feb 2024 when they

should not have been conducting the investigation meeting as the Company policy says that the statement gatherer should have no further part to play in the investigation.

1.4.7. Lianne knew Erskine was not present/in the vicinity of the incident because she told the Claimant this.

1.4.8. Andy knew the CCTV did not support the case against the Claimant but lied about it saying the CCTV verified the evidence when it did not, and the Respondent unfairly continued with the disciplinary case against the Claimant about 17th February 2024 when it should have stopped at the initial stage and without the Claimant being called to the further meeting on 27th February 2024 (or the processes thereafter) and without further unnecessary investigations.

1.4.9. The Claimant's suspension on 27th Feb 2024 was not justified. The Claimant had continued to work in the meantime without issue and without discussing events with anyone. The Claimant denies that she swore at the meeting and that her ripping up the statement Lianne put before her did not justify suspension, particularly when put in the context of what had happened with the Claimant's statements including that she had asked to withdraw it.

1.4.10. The Claimant was called to a further unnecessary investigation meeting on 5 March 2024 held by Dominic Cummings.

1.4.11. Further allegations were added to the investigation and disciplinary process. This included an allegation that the Claimant had accused Lianne of falsifying and manipulating her witness statement when the Claimant had not said this or that her statement was untrue. It also included an allegation that the Claimant had displayed aggressive behaviour at the meeting on 27 February 2024 when she had not sworn, swore at or threatened Andy or Lianne. The language used in the allegations was embellished when the Claimant had only been at most uncooperative, not aggressive or threatening whether with Sheena on 17 February or thereafter.

1.4.12. Dominic added an allegation that the Claimant had breached the Respondent's diversity policy when she made a comment that witnesses in the gay community were likely to back each other up. The Claimant had apologized and explained she was not intending to cause offence, and that it was simply a comment about friendship groups. Dominic should have included the full picture and in any

event it was unfair to add the allegation to the procedure, it should have had its own separate process.

1.4.13. All fresh allegations should not have been tacked on to the existing process about 17 February 2024 (which itself should have ended given the CCTV evidence Dominic should have viewed) but should instead have been subject to fresh new processes

1.4.14. The Claimant should not have been called to the disciplinary hearing on 12 March 2024 conducted by Jon Phillips with Jordan Harries or found guilty of the allegations.

1.4.15. The Claimant did not see witness statements until 10 March 2024.

1.4.16. The Claimant was stressed by being put through the processes by the Respondent and by the Respondent trying to get her to admit guilt and that she had sworn at Sheena when she did not. The Claimant eventually broke at the hearing on 12 March 2024 and said 'I was not like this on 17 Feb, I wasn't angry at Sheena because if I was I would have ripped the cow's head off'. In the minutes they excluded the context that the Claimant was saying she was not angry on the 17th and also that the

Claimant had used the word 'fuck' when she had not. The event was embellished and then used as the reason to unfairly dismiss the Claimant because the Claimant was then told she was being dismissed with immediate effect.

1.4.17. The minutes of 12 March 2024 were inaccurate.

1.4.18. An unknown person or persons from the Respondent or on their behalf broke into the Claimant's home and took her documents away that she had hidden under the sofa and replaced them with other copies.

1.4.19. The appeal hearing was unreasonably delayed by a month and did not take place until 10 May 2024 and was only picked up when ACAS intervened.

1.4.20. The appeal hearing records were inaccurate (including an allegation that the Claimant had said that 'the black girls are lazy' when she had not said that and other language the Claimant did not use such as 'tidy' and 'shit stirring' to make the Claimant look bad).

1.4.21. The decision to take the Claimant through an investigation and disciplinary process and to dismiss was disproportionate and was inconsistent

when compared to other staff members (including management) who regularly swore in the workplace and compared to Sheena who had no action taken against her and who had threatened the Claimant.

FINDINGS OF FACT

15. The relevant facts are as follows. Where I have had to resolve any conflict in the evidence or accounts given, I have resolved that conflict by making findings based on the relevant standard of proof, the balance of probabilities, as explained below.

CREDIBILITY

16. Central to the Claimant's claim is her belief that the Respondent's witnesses have been untruthful or deceitful in their account. In particular, she has alleged that Lianne Mays, Deputy Manager, and Andrew Greenhill, Pub Manager at the Prince of Wales pub where she worked have both been wholly dishonest in their accounts both in the course of the investigation in question and before the Tribunal and has, in essence, claimed that they are co-conspirators in a plot to have her dismissed. The other Pub Managers who gave evidence before me she has alleged were biased towards Ms Mays and Mr Greenhill.

17. She has also alleged that the minutes of various meetings held with her, namely an investigation meeting on 27th February 2024, a further investigation meeting on 5th March 2024, Disciplinary Hearing on 12th March 2024 and Appeal Hearing on 22nd May 2024 are inaccurate or, in some instances, fabricated.

18. I therefore make these overarching findings at the outset about the credibility of the oral and written evidence before me which apply to a number of the factual disputes I must resolve.

19. I find that the Respondent's witnesses generally gave straightforward evidence to the best of their ability. They were measured and calm in the face of often very serious allegations of their dishonesty in the course of their employment in senior roles within the Respondent company. Their evidence was consistent with the contents of their witness statements and, where relevant, with contemporaneous statements they had made, as well as the minutes of the various meetings and/or hearings they were involved in.

20. Unfortunately I am not able to make the same finding in relation to the Claimant's evidence. She has made and maintained a number of very serious allegations about the conduct of some of the Respondent's witnesses throughout the proceedings without any evidence to support that belief. As submitted by the Respondent, I accept that the Claimant does genuinely believe these allegations she has made to be true and so on that basis I cannot necessarily find that she has been dishonest in her evidence. However much of her evidence is based, I find, on her own theories as to what she thinks has happened that has no evidential basis and is, more often than not, inherently improbable or even incredible.

21. When faced with documents that contradicted her evidence the Claimant's response was often to simply state that the author of the document is lying. When faced with documents authored by herself that were not consistent with

her case she would try to explain what she meant that was not apparent on the face of the words she had written.

22. The Claimant has raised issues with the accuracy of meeting minutes across two investigation meetings, the disciplinary hearing and the appeal hearing. The basis of her contention is that some statements are taken out of context, or because her recall is different to that which is recorded. I find that the minutes as recorded are accurate. The way in which the Claimant is noted to have spoken in those meetings accord, I find, with the way in which she presented her case and gave evidence before me, responding to simple questions with rhetorical questions rather than answering them, and often raising her voice.

23. Whilst I accept that mistakes can and will be made in the recording of minutes I find that it is inherently unlikely that the recorded minutes across 4 meetings with the Claimant are inaccurate to the extent alleged by the Claimant. There is no evidence to substantiate the Claimant's contention that some of the minutes were intentionally altered or falsified. There is no evidence to support the Claimant's belief that the entire disciplinary process was falsified or manipulated by all the managers involved to secure her dismissal.

24. For the reasons given above, where I have been faced with two contradicting accounts from the Claimant or Respondent witnesses, in general I prefer the account given by the Respondent's witnesses. I make specific findings below about the key factual disputes.

UNFAIR DISMISSAL

The incident on 17th February 2024

25. On 17th February 2024 the Claimant was involved in an argument with a colleague, Sheena Danter-Jones.

26. Mr Greenhill, the pub's manager, and Ms Mays, the deputy manager, were made aware of the incident on the same date when the duty manager Liam Weeks informed them that there had been a confrontation between the two employees. No action appears to have been taken at that stage. However, on 23rd February 2024, the Claimant emailed Mr Greenhill referring to the incident and alleging that she was "repeatedly threatened with violence by Sheena Danter-Jones", and requesting that Mr Greenhill "implement the appropriate procedures" and "do not delete any of the surveillance data". The Claimant told Mr Greenhill that she did not feel particularly safe at work.

The CCTV footage and initial investigation

27. Mr Greenhill responded to the email on 23rd February indicating that he would commence an investigation into the incident.

28. Mr Greenhill says that he viewed the CCTV footage of the incident as he describes in paragraph 11 of his statement. He also viewed CCTV footage from another camera in the area to determine whether any other members of staff were present in the area. From viewing both sets of CCTV he interviewed Amy Coombes, Simon Hall, Erskine Devonish and Kieran Shoyinka about the incident. He also interviewed Ms Danter-Jones on 24th February 2024.

29. The CCTV footage has formed a significant part of the Claimant's complaint about the Respondent's behaviour. She maintains that Mr Greenhill's description of the CCTV footage is fabricated.

30. Mr Greenhill says that he viewed the CCTV footage as part of his investigation. He says that the Claimant is seen approaching a table where Ms Danter-Jones was sitting and that from her body language it is clear that she was irate and directing what she was saying at where Ms Danter-Jones was sitting with a colleague, Simon Hall. He says that after a few minutes the Claimant walks off towards the staircase and main customer area but returns a moment later, her body language more animated than previously, waving one hand gesturing towards Ms Danter-Jones and Mr Hall. He says it is clear from both parties' body language that the conversation had become heated and both parties were shouting. He says that when he later tried to copy the CCTV footage to an external flash drive an error message appeared. This was an unknown error with the CCTV system which was resolved once noted, however it was not possible to recover historically retained footage.

31. I accept Mr Greenhill's description of the CCTV footage he watched of the incident. It is not wholly different to the description the Claimant herself gives of the exchange, in which she says Ms Danter-Jones was aggressive towards her and that she might have gone back to pass the table where she was sitting afterwards. It is also consistent with the witness evidence collated by Mr Greenhill after the incident, in which colleagues variably describe a heated exchange. Although there are some inconsistencies, in that some colleagues

describe the Claimant swearing during the exchange yet Mr Hall says she wasn't swearing, the witness accounts broadly accord with Mr Greenhill's account of what he saw on the CCTV footage of a heated exchange between two colleagues.

32. I accept Mr Greenhill's account of why he was unable to copy the CCTV footage and find that it is more likely than the Claimant's contention that Mr Greenhill intentionally hid or destroyed the CCTV footage. I have seen no evidence to suggest that Mr Greenhill had any agenda or pre-judgment of the incident that would motivate him to act in such a dishonest way.

The Claimant's statement

33. Mr Greenhill asked Ms Mays to gather a statement from the Claimant. She met with the Claimant on 24th February 2024, accompanied by Sam Tonna, for the purposes of taking the statement. Ms Mays and the Claimant disagree about what happened at that meeting and the resulting Witness Statement forms a substantial part of the Claimant's complaint. I have not heard evidence from Sam Tonna as he no longer works for the Respondent.

34. The Claimant says that Ms Mays told her that Sam Tonna had to be present to witness the statement being given. She says that Ms Mays refused to let her write her own statement, and sat with her back to the Claimant blocking the computer screen so that she could not see what was being typed. She says that Ms Mays didn't ask her many questions.

35. Both parties agree that after Ms Mays finished typing the statement, there was a problem with the computer and the statement had disappeared. It was then necessary to write another statement. The Claimant says that Ms Mays was more cooperative at this stage, and she was content with the statement that was drafted. About 10 minutes after finalising the statement, she wanted to make a change and they went back to the office to do so. At this stage, Sam was not present and the Claimant thinks this is suspicious. She says she was worried that Ms Mays was going to file a statement she had not authorised and use it against her.

36. Ms Mays says that she typed up the Claimant's responses to her questions on a computer. She did not tell the Claimant that she could not write her own statement nor that it had to be witnessed. She does not recall the Claimant taking issue with her typing up the statement or with Sam's presence at the meeting. She asked the Claimant to tell her what happened during the incident on 17th February, whether she had gone back to Ms Danter-Jones after their initial argument, and what conversation she had had with the Shift Manager Liam Weeks after the incident.

37. Ms Mays says that the Claimant was very particular about the contents of her statement and wanted to make a number of amendments. Each time the Claimant wanted to make an amendment, Ms Mays would print the statement and dispose of the previous version. She recalls printing the statement around 10 times. At 11am the Claimant was happy with the statement and signed it. At

11.17am the Claimant came to her and asked to make a further change. Ms Mays says they went into the office again and made a further change. When she opened the statement the last sentence had been omitted but Ms Mays added it back in. She says that the Claimant read the statement and signed to confirm its contents, and she appeared happy with the statement.

38. Later that day, the Claimant emailed Mr Greenhill asking to 'retract all of [her] statements'. She said that Ms Mays interpreted what she said and typed it into a statement. She felt the statement was ambiguous because it referred to 'we' and was not clear who it was referring to. In her oral evidence she clarified that she was concerned it made her look like a bad cleaner. She thought a previous draft was filed on the computer. She thought the second statement was not valid because no one had witnessed her signing it.

39. The Claimant's main concern about the way in which her statement was taken was that Ms Mays had kept an earlier version of her statement and that the Claimant could not be sure which version would be relied upon. In the course of her evidence she alleged that Ms Mays was not an appropriate person to have been taking her statement because she had pretended to know nothing about the incident, she would only do what made her popular, and she didn't want to proceed with any disciplinary action against Ms Danter-Jones.

40. I find that the statement taking process was a fair one and resulted in a statement which the Claimant was content with. I reject the Claimant's contention that Ms Mays was inherently biased as there is no evidence before

me to suggest that that was the case. Similarly to Mr Greenhill, there is no evidence that Ms Mays had any preconceptions about the incident or any agenda to purposefully punish the Claimant.

41. I reject the Claimant's contention that Ms Mays wanted to file a statement that was detrimental to the Claimant to cover up the Claimant's complaint about Ms Danter-Jones. There is no evidence before me that that was the case. To the contrary, the resulting statement and the only one that was before me was one that the Claimant was happy with and she confirmed the same in her evidence before me.

42. I find that Ms Mays was an appropriate person to take the Claimant's statement and have seen no evidence that the Claimant raised any such objections at the time. Her email of 24th February 2024 to Mr Greenhill makes no specific allegations of inappropriate behaviour on Ms Mays' part, but simply expresses her concern about the first statement that was taken.

43. I prefer Ms Mays' version of events and find that the Claimant was given ample opportunity to make amendments to her statement. Ms Mays' account is consistent with the handwritten statement she produced on 27th February 2024 after the Claimant had asked to retract her statement [75-77]. In contrast in the Claimant's email of 24th February 2024 she raises concerns about the contents of the first statement (that was ultimately lost) but the only complaint she raises in respect of the second statement (that was ultimately signed and used) was that her signing it was not witnessed.

44. I have seen no evidence that there was a different version of the statement at [65] of the bundle in existence or that any other version of the statement was taken into account by the Respondent in the course of the investigation. I am satisfied that the statement used for the purposes of the investigation was the statement the Claimant had signed and which she confirmed to me in evidence she was happy with.

The investigation meeting on 27th February 2024

45. Mr Greenhill held an investigation meeting with the Claimant on 27th February 2024. Ms Mays was present as a note taker. As Pub Manager I find that Mr Greenhill was an appropriate person to conduct the meeting. The Claimant says that Ms Mays should not have been present as the person who took her statement and because she had raised a complaint about Ms Mays. I reject this. There is nothing in the Respondent's policies which suggest that a statement taker cannot also be the investigating officer. In any event in this case Ms Mays was not the investigating officer and was present only as a note taker.

46. As I have already found, the Claimant's email of 24th February 2024 did not make specific allegations or complaints regarding Ms Mays' conduct in taking the statement and so at this stage it was appropriate that she was present as a note taker.

47. I also do not accept that the fact that Mr Greenhill and Ms Mays are married would render it inherently unfair for them to be present at the investigation meeting together. As Pub Manager and Deputy Manager, they are likely to be

required to conduct such investigations in tandem with each other. There is no evidence that their relationship caused the Claimant any unfairness.

48. For those reasons I find that it was appropriate for Ms Mays to be present at the meeting. I also do not accept the Claimant's contention that Mr Greenhill and Ms Mays had an 'agenda' at the meeting in which they wanted to take no action in relation to Ms Danter-Jones' conduct or punish the Claimant. The fact that an investigation meeting was being held at all is inconsistent with their wanting to take no action.

49. The fact that Mr Greenhill, after this meeting, requested that a different Pub Manager unknown to the Claimant took over the investigation is inconsistent with his having an agenda to punish the Claimant.

50. I accept that the events of the 27th February are as described by Mr Greenhill and Mr Mays and as reflected in the minutes of the meeting. I find that the meeting was brought to an early end by Mr Greenhill because of the Claimant's demeanour and because she made serious allegations that Ms Mays had made changes to her statement and that Mr Greenhill and Ms Mays were both liars. She then walked out of the meeting.

51. The Claimant accepts that she ripped up her statement in the course of the meeting. She says this was not done in an aggressive manner, and even ripped a sheet of paper in front of me to demonstrate. I find that it was reasonable for Mr Greenhill and Ms Mays to perceive this as an aggressive act, particularly in

the context of a bad tempered exchange as reflected in the meeting minutes. I find it is an inherently inappropriate action in a formal work meeting.

52. Mr Greenhill suspended the Claimant as a result of her actions at the meeting.

I find that the decision to suspend the Claimant was a reasonable one in all the circumstances. I find that the Claimant's continuing to work was inappropriate given her actions at the investigation meeting and the allegations she had made against both her manager and deputy manager. The Respondent's suspension policy states that it may be appropriate to suspend to protect individuals, colleagues, or if there is a perceived risk to the business, as well as to facilitate a speedy investigation or reduce disturbance in the workplace. I find that all of these reasons were engaged given the Claimant's conduct.

The second investigation meeting on 5th March 2024

53. Mr Dominic Cummings took over the investigation at Mr Greenhill's request.

The Claimant was informed of the same by email on 27th February 2024. She responded with four emails [87] at 10.55pm, 11.42pm 12.37am and 1.02am respectively. Amongst other matters, she asked if her statement would be sellotaped back together, said that she is a conservative voter 'unlike some people', apparently in reference the Mr Cummings' name, threatened to file for unfair dismissal and denied that ripping a piece of paper is threatening.

54. Mr Cumings is a Pub Manager at a different pub. The Claimant accepts that he was an appropriate person to proceed with the investigation. I do not accept her contention in oral evidence that Mr Cummings was inherently biased because he felt he could not contradict Mr Greenhill as the Claimant alleges.

Mr Greenhill and Mr Cummings are of the same seniority within the Respondent company and there is no evidence that Mr Greenhill had any control or influence over the subsequent progress of the investigation.

55. In the course of the meeting with Mr Cummings the Claimant denied swearing at Ms Danter-Jones but accepted that she had sworn in the course of their conversation. She also stated that one of the witnesses to the original incident is likely to take sides because they are part of the gay community. She called Mr Greenhill a 'wimp' and told Mr Cummings that if she is dismissed 'what goes around comes around, Karma will catch up'.

56. For the reasons given above I find that the minutes of the investigation meeting are accurate and I accept Mr Cummings' account that the Claimants' demeanour was aggressive during the investigation meeting. The meeting minutes show that her responses to Mr Cummings' questions were often defensive. I find that it was reasonable to deem the comments she made about some of her colleagues and Mr Greenhill inappropriate.

The disciplinary hearing on 12th March 2024

57. On 7th March 2024 the Claimant was invited to a disciplinary hearing to respond to allegations of gross misconduct relating to her conduct on 17th February (the original incident), at the investigation meeting of 27th February, and the contents of the emails sent on 27th February. The letter stated that the allegations were considered to amount to gross misconduct which may result in a formal disciplinary sanction being imposed, up to and including summary dismissal from the company. The letter informed the Claimant that she could be

accompanied by a work colleague or a trade union representative at the hearing.

58. I find that it was reasonable for the Claimant's conduct at the investigatory meetings of 17th February and 27th February to be considered at the disciplinary hearing. The Claimant's behaviour towards managers and comments about colleagues in these meetings had somewhat overtaken the original incident of 17th February by that stage and it was reasonable for the Respondent to consider the totality of the Claimant's conduct.

59. I find that it was reasonable for the Claimant to receive the statements of the witnesses to the incident on 17th February on 10th March, two days prior to the hearing and that she had ample opportunity to prepare for the hearing.

60. The disciplinary hearing was chaired by Jonathan Phillips, Pub Manager on 12th March 2024. I find that Mr Phillips was an appropriate person to chair the hearing as an independent Pub Manager with no previous knowledge of the Claimant.

61. I do not accept that the Claimant did not have an opportunity to say what she wanted to say in the hearing as she alleged in her evidence before me. As recorded in the minutes Mr Phillips began by asking her to tell him what happened on the 17th February (which he mistakenly referred to as 16th February), an entirely open question.

62. I accept Mr Phillips evidence that the Claimant was agitated from the outset and her demeanour became aggressive in the course of the hearing. The

minutes show that she was immediately disruptive and un-cooperative. The Claimant responded to Mr Phillips' open question by alleging that all witnesses were lying in their witness statements and that 'David is slow in the head'. When asked if she swore at Ms Danter-Jones during the original incident, she said she didn't think that she had. Later she said that she is 'not putting up with this shite' and that she hadn't sworn at Sheena. She said 'I would have ripped the cow's head off'. Although I accept that the Claimant was stressed by having to attend a disciplinary hearing, I do not accept that this justifies this comment nor do I find that it was taken out of context as she has alleged.

63. The Claimant was dismissed on 12th March 2024. Mr Phillips was satisfied that she had committed the following acts of gross misconduct:

- You have admitted to behaviour which I consider to be threatening and/or aggressive
- You used inappropriate or insulting language, including but not limited to swearing, expletives, blasphemies and profanities during the alleged incident and during investigation and disciplinary process.
- You displayed a failure to comply with the 'equality, diversity and inclusion policy, anti sexual harassment policy or 'disabled persons' policy through bringing up a colleague's sexual orientation
- You displayed repeated and unreasonable insubordination or refusal to carry out a legitimate instruction during the investigation and disciplinary process.

- You intentionally acted inappropriately during the investigation and disciplinary which I believe adversely affects Wetherspoon's business interests.

64. I find that Mr Phillips' decision that this conduct amounted to gross misconduct is a reasonable one in line with the Respondent's disciplinary policy.

The appeal hearing on 22nd May 2024

65. The Claimant appealed the decision on 28th March 2024. The appeal was received by the Respondent on 28th March 2024. The Claimant was invited to an appeal hearing with Mr Matt Gough, Area Manager, on 10th May 2024.

66. The Respondent's Appeals Procedure provides that an appeal must be received within 7 days of receiving the outcome of the disciplinary hearing. The Respondent agreed to the Claimant's request for an extension and the appeal was received on 28th March 2024. The Respondent's Appeals Procedure provides that the appeal will be dealt with within a reasonable timeframe. In light of the fact that Mr Gough was on annual leave prior to this date I find that there was no unreasonable delay in holding the appeal hearing and that the appeal was dealt with within a reasonable timeframe in the circumstances.

67. Mr Gough was an appropriate person without prior involvement in the decision to dismiss and of suitable seniority to conduct the appeal hearing. He had had

no prior dealings with the Claimant. On 10th May, the Claimant was unable to connect to the hearing and the hearing was delayed to 22nd May 2024.

68. The Claimant alleges that on some unknown date during this time an unknown person or persons from the Respondent broke into her home and took documents relating to the disciplinary process from under the sofa where she had hid them and replaced them with other copies. There is no evidence before me to support this allegation other than the Claimant's statement. Given my findings above as to how I approach the Claimant's evidence generally I find it is more likely than not that this did not happen.

69. In the minutes of the appeal hearing the Claimant is recorded as saying 'I mean the black girls are lazy'. The Claimant denies saying this and says that what she actually said are 'the black girls are ladies'. I find that she said 'lazy' because the remainder of the sentence in which the Claimant says 'they don't do anything, they don't do hoovering or mopping, they used to be really good but since the refurb they have been lazy...' is entirely in keeping with the word said being 'lazy' rather than ladies. I also find it is more likely that the Claimant used the word 'lazy' than that she was misheard by the minute taker on two occasions. I have already rejected the Claimant's contention that the minute taker purposefully falsified the minutes.

70. On 24th May 2024 the Claimant was notified that her appeal was unsuccessful.

TIME LIMITS

71. As this was a new issue not in the List of Issues I asked the Claimant questions relevant to the issue of time limits and the test for extending time and offered Mr Bidnell-Edwards time to consider the responses given which he did not need.
72. The Claimant accepted that she was dismissed on 12th March 2024. She accepted that she contacted ACAS on 3rd May 2024 and exited the early conciliation process on 3rd June 2024. The deadline for submission of a claim was therefore 12th July 2024. The date of submission on the ET1 was 3rd September 2024 which, if correct, renders the claim 53 days late.
73. The Claimant accepted she has always been aware that she could bring a claim for unfair dismissal in the Employment Tribunal.
74. She contacted a solicitor shortly after she was dismissed. She could not recall when, but said it would have been after her dismissal but before she submitted her appeal, so after 12th March 2024 but before 28th March 2024.
75. She accepted in her evidence that the solicitor she spoke to probably did mention the issue of time limits, but she couldn't remember exactly. She thinks she was referred to some relevant literature and that the issue of time limits would have been covered there. She also accepted that she knew the time limit was placed on hold but she did not know for sure when that was.
76. At one point in her evidence she appeared to dispute that the ET1 had been submitted on 3rd September 2024 and said she thought that was the date the Employment Tribunal came to consider it. She started the process of

completing the Claim Form on 3rd July 2024, got as far as the employer's address, was unsure of the correct address and so contacted ACAS for advice. She eventually came back to complete the Claim Form but couldn't recall how long had passed between 3rd July 2024 and completing the Claim Form.

77. The next date she could recall was notification on 11th November 2024 that the Tribunal had received her claim form. She later accepted under cross-examination that she could not deny that the date on the ET1 form is digitally inserted on the date the form is submitted by a Claimant, but maintained that she was surprised that it took her so long to come back to it from 3rd July 2024 because she is usually very determined and she would expect that she would have completed the form within 1 to 2 days.

78. It took her a month from 3rd June 2024 to start completing the Claim Form because she had started a new job, was learning new things, and was busy. In her submissions she also said that she had been stressed and traumatized by events leading up to her dismissal.

79. On the basis of the date digitally inserted on the ET1 form I find that the ET1 was submitted on 3rd September 2024. The claim was submitted 53 days late.

RELEVANT LAW

UNFAIR DISMISSAL

80. Section 94 Employment Rights Act 1996 gives employees the right not to be unfairly dismissed. enforcement of the right is by way of complaint to an Employment Tribunal under section 111. The Claimant must show that she was

dismissed by the Respondent under section 95, and in this case all parties are agreed that the Claimant was dismissed on 12th March 2024.

81. Section 98 Employment Rights Act 1996 deals with the fairness of dismissals.

There are two stages. First, the employer must show that it had a potentially fair reason for the dismissal within s.98(2). Second, if the Respondent shows it had a potentially fair reason, the Tribunal must consider, without there being any burden of proof on either party, whether the Respondent acted fairly or unfairly in dismissing for that reason.

82. In this case the Respondent argues that the Claimant was dismissed due to committing acts of gross misconduct. Conduct is a potentially fair reason for dismissal under section 98(2).

83. Section 98(4) then deals with fairness generally and provides that the determination of the question whether dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.

84. There is well-established guidance on fairness within s.98(4) in *British Home Stores Ltd v Burchell* 1978 IRLR 379 and *Post Office v Foley* 2000 IRLR 827.

The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then, whether employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects, investigation, grounds, penalty and procedure, the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances.

85. It is immaterial how Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer.

TIME LIMITS

86. Section 111 of the Employment Rights Act 1996 provides that the Tribunal shall not consider a complaint of unfair dismissal unless it is presented to the Tribunal before the end of the period of three months beginning with the effective date of termination.

87. Where a Claimant has failed to present their claim in time, the Tribunal has the power under section 111(2)(b) to extend the time by which a claim has been presented.

88. The test has two stages. Firstly, the Tribunal must be satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of three months. Secondly, the Tribunal must decide whether the claim

has been brought within such further period as it considers reasonable after the expiry of the three month period.

89. The burden of establishing that it was not reasonably practicable to present the claim in time is on the Claimant. What is not reasonably practicable is a question of fact for the Tribunal to decide, however case law has established some common factors that ought to be taken into account including:

21.1. What, if anything, the employee knew about the right to complain to a tribunal and of the time limit for doing so;

21.2. What knowledge the employee should have had, had they acted reasonably in the circumstances (*Lowri Beck Services Limited v Brophy* [2019] EWCA Civ 2490 CA)

90. Reasonably practicable has been said to mean something like 'reasonably feasible' (*Palmer and anor v Southend-on-Sea Borough Council* 1984 ICR 372). The focus should be not just on considering what was possible, but to ask whether it was reasonable to expect that which was possible to have been done (*Asda Stores Ltd v Kauser* EAT 0165/07).

CONCLUSIONS

UNFAIR DISMISSAL

Reason for dismissal

91. I refer to all my findings above. The Claimant says that she was dismissed because false allegations were made against her. As these were allegations of

misconduct, regardless of whether they were false or not, I am satisfied that the reason for the dismissal was the potentially fair reason of misconduct. The Respondent has discharged the burden on it to establish a potentially fair reason for dismissal.

Did the Respondent have a genuine belief in the misconduct?

92. I refer to all my findings above. The Claimant was involved in a bad-tempered exchange with a colleague. Some witnesses to the event said that she swore. Some could not recall her swearing, but described her demeanour as aggressive. Mr Greenhill reviewed CCTV and described her body image as irate.

93. The Claimant's conduct thereafter in the course of the two investigation meetings, disciplinary hearing and appeal hearing continued to escalate and demonstrated persistent insubordination and aggressive behaviour towards colleagues and managers, inappropriate comments about colleagues' sexuality or race, and making very serious unsubstantiated allegations about Ms Mays' dishonesty in the course of her employment. These actions and statements occurred before the said managers in the course of investigation meetings and the disciplinary hearing itself.

94. The decision maker Mr Phillips witnessed some elements of this behaviour first hand in the course of the disciplinary hearing. I am satisfied that the respondent had a genuine belief in the misconduct.

Were there reasonable grounds for that belief?

95. The Respondent formed this view based on an investigation I find was reasonable having regard to the Respondent's size and administrative resources. I refer to my findings above. I am satisfied that it was appropriate for Ms Mays and Mr Greenhill to conduct the initial investigation and reasonably passed the investigation on to a neutral third party after the Claimant accused them of lying.

96. I am satisfied that the managers who conducted the subsequent investigation meeting, disciplinary hearing and appeal hearing were of appropriate seniority and suitably impartial, having no previous knowledge of the Claimant. I reject the contention that they were inherently biased towards Ms Mays and Mr Greenhill.

97. In relation to the initial incident on 17th February, I acknowledge that there are some internal inconsistencies about whether or not the Claimant in fact swore at Ms Danter-Jones, or simply in the course of conversation, or whether she swore at all. However, all witnesses describe a bad-tempered exchange between two colleagues which Mr Greenhill observed in watching the CCTV footage, something the Claimant has never sought to dispute. In the circumstances I find that the investigation into the initial incident was a reasonable one. There were no further lines of investigation that Mr Greenhill could have taken.

98. Given the Claimant's behaviour in the course of the subsequent investigation, I accept Mr Bidnell-Edwards' submission that this initial incident is somewhat surpassed by this later course of conduct. The Claimant accepts ripping her

statement up in front of Mr Greenhill and Ms Mays. I have already found that the minutes of the investigation meetings and disciplinary hearings were accurate and that the Claimant's comments about various colleagues therein were made. I find that it was reasonable for the Respondent to deem the Claimant's conduct and comments amounted to gross misconduct and to treat it as sufficient reason to dismiss the Claimant.

Did the Respondent otherwise act in a procedurally fair manner?

99. I refer to my findings above. I find that the Respondent otherwise acted in a procedurally fair manner.

100. The Respondent conducted an adequate investigation. The Claimant was notified of the allegations against her and invited to a disciplinary hearing. The invitation specified that her conduct might amount to gross misconduct and that one of the sanctions might be dismissal. She was informed of her right to be accompanied at the hearing and was given an opportunity to put her case. She was entitled to appeal and she exercised that right, where again she was given an opportunity to put her case. I am not persuaded that any of the Claimant's allegations of procedural unfairness are made out.

Was dismissal within the range of reasonable responses?

101. I have the band of reasonable responses clearly in mind in reaching my decision. It is immaterial what decision I would have made. I find that the Respondent's decision to dismiss the Claimant in light of the conduct alleged is

within the range of reasonable responses. I accept the submission made by Mr Bidnell-Edwards that the Claimant's course of conduct was not in keeping with the Respondent's aims of maintaining a welcoming and safe environment for both staff and customers.

102. I therefore conclude that the dismissal was fair. Accordingly my judgment is that the complaint of unfair dismissal is not well-founded. The Claimant was fairly dismissed.

TIME LIMITS

103. Having found that the claim was brought out of time above I am bound to consider whether it was reasonably practicable for the claim to have been brought in time. I find that it was.

104. The Claimant was aware that she has a right to pursue a claim for unfair dismissal in the Employment Tribunal. She candidly accepted so in her evidence and indeed she made reference to the prospect during her appeal hearing.

105. The Claimant was also aware that there was a time limit for doing so, although she could not recall precisely what that time limit was. I find that, having been made aware of the issue of time limits, it was unreasonable of her not to explore this further and determine for herself what the deadline was.

106. The reasons given by the Claimant are not sufficient to persuade me that she could not feasibly have brought her claim in time. The fact that she started a new job is not a reason, I find, that it was not feasible for her to bring her claim in time.

As she demonstrated in the way she presented her claim before me the Claimant is a bright and well-informed person who was entirely capable of completing and submitting the Claim Form in time.

107. The fact that the Claimant was unsure which address should be used for the Respondent on the Claim Form does not, I find, render her failure to bring the claim in time reasonable. The Respondent's address is clearly stated on a number of the documents sent to her in the course of the disciplinary proceedings.

108. Similarly, whilst I accept the events leading to and surrounding her dismissal and her subsequent dismissal will have caused her some stress, there is no evidence before me on which to find this was to such a degree that she was prevented from bringing her claim in time.

109. Having found that it was reasonably practicable for the Claimant to bring her claim in time, it is not necessary for me to go on to consider whether she subsequently brought her claim within a reasonable period. Accordingly the Tribunal lacks jurisdiction to hear the claim.

CONCLUSION

110. Despite finding the Claimant's claim to be out of time and therefore outside of the Tribunal's jurisdiction to determine, as can be seen I have considered and determined the Claimant's unfair dismissal claim in any event. I did that for the following reasons:

110.1. I heard from all of the witnesses and was provided with all of the relevant documentary evidence. Both parties had invested time and energy in preparing and presenting their case.

110.2. The allegations against the Respondent generally, and members of its staff specifically, were serious. Those against whom these various allegations were made were entitled to know that the allegations had not been proven.

110.3. To be clear that the Claimant did not lose her case on a technicality (that the claim was presented out of time) and that had she brought the claim in time, it was still without merit.

Employment Judge Williams

Authorised for issue on:

26th May 2025

Judgment sent to the parties on:

11 June 2025

For the Tribunal:

Katie Dickson

Note

Public access to employment tribunal decisions

Judgments (apart from judgments under rule 52) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.