



EMPLOYMENT TRIBUNALS

Claimant: Mr J Rogers

Respondent: Venture Security Management Ltd t/a Venture Security

Heard at: Southampton **On:** 10 – 11 February 2025

Before: Employment Judge Scott

Representation

Claimant: In person

Respondent: Mr Lomas

JUDGMENT having been sent to the parties on 04 March 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

1. By a claim form presented on 1 December 2023, the Claimant, Mr Rogers, complained of unfair dismissal, and wrongful dismissal. He maintained that his conduct was not such that he should have been dismissed, and complains that the procedure followed by the Respondent was unfair.
2. By a response dated 22 January 2024, the Respondent, Venture Security Management Ltd t/a Venture Security resisted the claim. The respondent's case was that the claimant's actions represented a serious breach of the respondent's health and safety policy warranting immediate dismissal, and that the process followed was unfair.
3. The Claimant was dismissed by letter dated 25 August 2023, following which the Claimant lodged a claim for early conciliation with ACAS on 21 September 2023 and a certificate was issued on 2 November 2023. As this Tribunal claim was lodged on 1 December 2023, it was therefore brought within time.

Issues

4. The issues to be determined by the Tribunal were agreed at the outset of the hearing as follows:

- i. Was the reason or principal reason for the Claimant's dismissal his conduct on 8 August 2023?
- ii. If it was, did the Respondent act reasonably in treating his actions on the 8th August 2023 as a sufficient reason to dismiss the Claimant, including
 1. Were there reasonable grounds for believing that the Claimant had breached the Respondent's health and safety procedure
 2. Had the Respondent, in reaching that belief, carried out a reasonable investigation.
 3. Did the Respondent act otherwise in a procedurally fair manner.
 4. Was dismissal within the range of reasonable responses.
- iii. In terms of wrongful dismissal, what was the claimant's notice period,
- iv. Was the claimant guilty of gross misconduct, such that the Respondent was entitled to dismiss him without notice?

Evidence

5. I heard evidence from Mr Joshua Rogers in person and from his witness, Mr Kevin Marsh. For the Respondent I heard evidence from Ms Jodie Stevens, (investigation manager), Mrs Sara Howe, (disciplinary manager) and Mr Paul Howe (appeal manager). I have also been provided with a bundle of 224 pages together with witness statements for each of the witnesses. I have considered all these documents when reaching my decision.
6. During the hearing, it became apparent that Mr Rogers, a litigant in person, had not detailed his case within his witness statement, and sought to rely on his grounds of claim as his evidence in chief. I heard Mr Lomas' objection to this, that the Claimant had had sufficient time to understand the nature of a witness statement having seen the Respondent's own statements. I have considered rule 3 of the Employment Tribunal Procedure Rules 2024, to deal with cases fairly and justly, according to the overriding objective.
7. I have decided that the prejudice to the Claimant in being unable to rely on his case, which has been consistently stated in his disciplinary hearing, appeal hearing and statement of case, against the prejudice to the Respondent, who has been aware of the Claimant's case since before his dismissal, that it is in the interests of justice for the Claimant to be allowed to rely on his statement of case as his evidence in chief, together with his witness statement.

Relevant Legal Framework

8. Section 94 of the Employment Rights Act 1996 (ERA) provides that an employee has the right not to be unfairly dismissed. The employer must

show that the reason for dismissal is a potentially fair one. There are five potentially fair reasons for dismissal as set out in s98 (1) (b) and (2) of the ERA 1996. The Respondent here relies on a reason related to the Claimant's conduct.

9. At this stage the burden on the Respondent is not a heavy one. A 'reason for dismissal' has been described as a 'set of facts known to the employer or it may be of beliefs held by him which cause him to dismiss the employee" (*Abernathy v Mott Hay and Anderson [10974] ICR 323*).
10. In considering whether the Employer had reasonable grounds to conclude the Employee was guilty of misconduct, I note that it is sufficient that the Employer honestly believed that the employee was guilty of misconduct, and that the Employer is not required to prove the offence *Alidair Ltd v Taylor 1978 ICR 445, CA*.
11. In considering whether the dismissal was fair or unfair, the Tribunal must be satisfied that in all the circumstances, the employer has acted fairly in dismissing for that reason (section 98(4) of ERA). There is no burden of proof on either party.

S98

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

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

12. I must not substitute my own decision for that of the employer in this respect. Rather it must be decided whether the Respondent's response fell within the range of reasonable responses open to a reasonable employer in the circumstances of the case (*Iceland Frozen Foods Limited v Jones [1982] IRLR 439*).
13. In a case concerned with conduct, regard should be had to the test set out by the EAT in *British Home Stores v Burchell [1978] IRLR 379* in considering section 98 (4) of ERA. The essential enquiry for the Employment Tribunals in such cases is whether, in all the circumstances, the employer carried out a reasonable investigation and at the time of dismissal genuinely believed on reasonable grounds that the employee is guilty of misconduct. If satisfied in those respects, the Tribunal then must decide whether dismissal lay in the range of reasonable responses.

14. Both the ACAS Code of Practice on Disciplinary and Grievance procedures (the ACAS Code) as well as an employer's own internal policies and procedures should be considered in assessing the reasonableness of dismissal.
15. Turning to wrongful dismissal, A wrongful dismissal claim is a claim that a dismissal by an employer has breached the employee's contract of employment.
16. As the EAT set out in *Enable Care and Home Support Ltd v Pearson EAT 0366/09* the Tribunal is concerned with the question of whether the employee was guilty of conduct so serious as to amount to a repudiatory breach of contract of employment entitling the employer to summarily terminate the contract.

Findings of fact.

17. The Claimant was employed by Venture Security Management Ltd on 13 March 2020 as a security officer within Salisbury City Centre. The parties agree that the Claimant's contract provides that at the date of dismissal he was entitled to 3 weeks' notice pay.
18. The Respondent is a smaller employer with 68 staff members.
19. The Claimant had a generally good record of employment with the Respondent previously, although he had been spoken to regarding conduct towards police operatives in the past, no formal disciplinary action was deemed necessary.
20. On 8 August 2023 the parties agree that Mr Rogers was involved in an incident whilst on duty. The facts of the incident are broadly agreed, a known violent offender (referred to as a Nominal) who targets those in authority began filming Mr Rogers, Mr Marsh, and three PCSO's involved in a debrief about the issues in the area, a routine catch up. All parties ignored the Nominal.
21. The PCSOs walked away from the scene. At that point Mr Rogers partner passed him, and although his partner did not acknowledge him, the Nominal stated 'that's your wife, that's good to know'. The Nominal made further comments about his wife, insinuating he had followed her, and made a comment about the Claimant's children as follows 'don't quit you have three children to feed'.
22. It is the Claimant's case that the Claimant interpreted the Nominal's words as a threat from the Nominal against his partner and children. I found the Claimant to be a credible witness who gave his evidence in a straight forward manner. I accept that he interpreted these words in this way. The Claimant says he was aware that his wife had to walk home alone from the city centre and was concerned for her safety. The Claimant states that

he then addressed the Nominal warning him not to make matters personal and not to threaten the Claimant's family. It is agreed that he also said to the nominal that he 'speaks more breeze than the west indies'.

23. At this stage the PCSO's returned to the scene to check on the situation. The Respondent has suggested the police were called, but the statement from the police officer Alex Heath, confirms that they returned only as a precaution. In the absence of any other evidence to suggest that the police were called, I accept the statement of Alex Heath as accurate and that the police were not called to the scene.
24. It is common ground that Mr Rogers and the Nominal were involved in an altercation. The Nominal said he had been the victim of racism. The PCSO therefore switched on his body worn camera.
25. Mr Rogers explained to the PCSO's that the Nominal had pointed out his partner and Mr Rogers continued to approach the nominal warning him not to make comments about his partner. It is common ground that Mr Rogers said that 'if I want to be aggressive I'll be aggressive'. A PCSO then spoke to Mr Rogers.
26. The difference in the parties account of the situation then arises. The Respondent relies on the statement of Alex Heath that John Taylor (PCSO) stood between the Claimant and the Nominal. This is disputed by the Claimant, who states that the PCSO stood to his side, to talk with him, as there was no physical separation. It is the Claimant's view that this is because the incident was less aggressive than has been portrayed. I have not had the benefit of oral evidence from Mr Heath, who may well agree to Mr Rogers interpretation, given that they closely align in. Mr Kevin Marsh, the Claimant's witness, agreed in oral evidence with the PCSO's account. It is clear that Officer Taylor was seeking to diffuse the situation and stop Mr Rogers from engaging with the Nominal. I accept that there was no physical separation of the Claimant and the Nominal, it is not my reading of the statement of Alex Heath that suggests that there was, in which case the difference is whether the PCSO was stood in front of the Claimant or to the side, which I do not find determinative in any event. It appears to me less likely that Officer Taylor would have fully turned his back to the nominal, and therefore, to the extent there is a difference, which I am not persuaded there actually is, I prefer the Claimant's evidence.
27. It is common ground that the Claimant proceeded to remove his personal protective equipment, PPE. However, the Claimant says he dropped this on the floor whereas the Respondent has referred to it being thrown on the floor. The first written record of the incident from the Claimant on 9 August 2023, states, that 'I was not happy and threw my armour on the floor and then left the scene'. It appears that it is from this report that the language of 'threw' arose, but it is also reflected in the statement of PCSO Heath.
28. It is the Claimant's case that the language of 'threw' suggests a level of aggression which was not there, but that does not explain why he used the

language himself. He differentiated this in evidence between throwing something on the floor and throwing something at a person. I accept that Mr Rogers did not throw his PPE at a person, but he clearly took it off in anger, and I accept his earliest account, and that of the PCSO, that it is not inaccurate to refer to this as being thrown on the floor. This more readily accords with his own account that he was frustrated and had lost his temper following the threats to his family. It also accords with Mr Marsh's evidence that it was thrown or dropped on the floor as being broadly the same.

29. It is common ground between the parties that the Claimant then reapproached the nominal and told him not to mention his wife and children again, and not to get personal, whilst pointing at him. The dispute between the parties here is that Mr Rogers says he was approximately 2.5 metres away from the Nominal, who was on a bike and filming, whereas Ms Stevens in evidence says that on the video it appears to be a distance of about 1 m.
30. I note that the video has not been viewed since 15 August 2023 by Ms Stevens. Mr Rogers had the benefit of a later viewing, (although pixelated) after 19 September 2023. On that basis, and that it may be difficult to get an accurate idea of distance from a video, I prefer Mr Rogers evidence that he was 2.5 metres away.
31. The claimant telephoned his supervisor after the incident, Darren Winters, who told the claimant to go home and to make a report in the morning. Mrs Howe explained that she was notified the same day of the incident, and she asked for further investigation on the basis that SCC were seeking to build a picture against the nominal concerned. It is common ground that the claimant made that report on 9 August 2023, and the respondent's evidence is that both Mrs Howe and Ms Stevens saw the report that day.
32. The Claimant continued to work on 10 August 2024 before taking a period of annual leave from 11th – 18th August 2023.
33. On Monday 14th August 2023, Mrs S Howe was contacted by Salisbury City Council, and requested to attend a meeting with them and the police. At that meeting, Mr Howe, Ms Stevens and Mr Winters also attended. It does not appear that it was necessary for all these staff members to be present, but Mrs Howe explained that the request for the meeting was unprecedented in their work with SCC, and I accept Mr Howe's explanation that he was curious and that he wished to attend as he had security experience, whereas Mrs Howe managed the contract. At the meeting the parties were shown footage from a PCSO's body camera.
34. The Respondent accepts that discussions at that meeting included the possible actions that would be taken as a result of the footage, and it was agreed that action needed to be taken. The Respondent's witnesses were all consistent that there were no assurances given at the meeting to the effect that Mr Rogers would be suspended or would be dismissed.

35. However, at p203 of the bundle in the extract of the telephone minutes, Ms Stevens refers to Andy Small not being in the conversations about suspension, however, she states 'those who have haven't just been venture employees either. So then that brings into question Is it Wiltshire Police or is it Salisbury city council'. It is difficult to reconcile this telephone evidence with the evidence provided by all three witnesses that although suspension was given as a possible outcome, it wasn't confirmed in the meeting that Mr Rogers was suspended.
36. On balance, it is possible that Ms Stevens was referring to the possibility of suspension. I found both Mr Howe and Mrs Howe credible regarding their oral evidence and their explanation that no assurances were given and I accept their evidence.
37. After the meeting, Ms Stevens took advice from HR regarding the action to take including suspension, and at some point late on 15 August 2023 or early on 16 August 2023 took the decision to suspend the Claimant.
38. It is the Claimant's claim that the Respondent had decided to dismiss him, and that Mr Howe 'wanted him gone'. The reason for this claim is that on 16 August 2023, Mr Andy Small, an employee of the Respondent told Mr Kevin Marsh that 'Josh is getting suspended. They aren't happy with him in the office and Paul wants him gone'. The Respondent argues that the reference to dismissal and Mr Howe wanting him gone never happened. However, Ms Stevens says in her witness statement that Mr Rogers told her Kevin Marsh had told him 'he was being investigated, suspended and fired.' Mr Rogers and Mr Marsh were both consistent on this point and I accept their evidence that Mr Small told Mr Marsh that 'Josh is getting suspended. They aren't happy with him in the office and Paul wants him gone'.
39. In part, this is because by the Respondent's own timeline, the information was disseminated just after the decision had been taken and it is not possible for the information to have come from SCC or the police as they had not been told. Furthermore, there is contemporaneous evidence of Mr Rogers finding out about the suspension on the same day or the day after the decision to suspend was taken. I do not accept that this is simply gossip arising from the event. There would be no reason to assume that Mr Rogers would be suspended given that he continued to work after the incident on the 9th and 10th August 2023.
40. Furthermore, it is evidence that the information was passed to Mr Small after the meeting where the Respondent had viewed the footage. It is unarguably the case that the Respondent was unhappy with Mr Rogers as claimed. As a result of his admitted actions, a complaint had been received from the Respondent's client, involving senior police. Further, it showed a breach of the Respondent's code of conduct, that the Claimant has admitted. Furthermore, in evidence Mr Howe confirmed that following

viewing the footage he believed the Claimant should be dismissed and that 'it was quite obviously quite serious at the time'.

41. As indicated above, Mr Small has said that 'they aren't happy with him in the office and Paul wants him gone'. Having heard evidence from all witnesses, it appears that this is a broadly accurate reflection of the sentiments in the management team regarding Mr Rogers at this time, though no formal decision had been taken. On the balance of probabilities I accept that Mr Small obtained the information from Venture Security Management Ltd. It is not necessary to consider who gave Mr Small that information because nothing turns on it, and it may simply be that he overheard the information.
42. On 16 August 2023, it is common ground that Mr Rogers spoke with Lynne Davies from Salisbury City Council
43. It is agreed that Mr Rogers and Ms Stevens spoke by telephone and that the telephone call was covertly recorded by the Claimant, and it is agreed that Mr Rogers was invited to an Investigation Meeting.
44. The investigation meeting took place on 21 August 2023 and the parties agree on the meeting notes (p75 – 78). Mr Rogers does not take issue with the way the investigation was conducted, save that he believes the decision had already been taken.
45. On the same day, Ms Stevens finalised her investigation report (p79 – 82). This investigation report indicates that the investigation started on 9 August 2024, in response to 3 allegations. From the evidence I heard, the investigation began not in response to the Claimant's actions, but as a result of the general possible risk from the Nominal. It was only after the meeting on 15th August 2023, that the Respondent considered the investigation in relation to the Claimant's actions.
46. At paragraph 8 of Ms Stevens statement, she refers to being unaware of a PCSO's involvement until the meeting on 15 August 2023, but in fact, Mr Rogers refers to the PCSO in his report of 9 August 2023. All of the information regarding the investigation and complaint was contained in the report of the 9th August, meaning it would have been possible for Ms Stevens to have taken the decision to suspend that day, had the investigation started then. Instead she only did so after the meeting on 15 August 2023, where I find the investigation into the Claimant's behaviour started.
47. Furthermore, the investigation report states that Ms Stevens took the decision as a result of the investigation that the matter should become a disciplinary matter. However, in oral evidence Ms Howe confirmed that she took the decision to escalate it to a disciplinary. I therefore find that there were some blurring of lines regarding the decision making in this case. This was supported by the evidence of Mrs Howe where she

confirmed there had been internal discussions between herself, Mr Howe and Ms Stevens regarding the incident.

48. The disciplinary hearing was to address two allegations:

- a. That he failed to turn on his BWV (body worn video) and
- b. That he had breached company health and safety procedures, namely by removing body worn armour which is essential PPE.

49. The disciplinary hearing took place on 25 August 2023 chaired by Mrs Howe. The parties agree the notes are an accurate reflection of the meeting.

50. At p113, Mrs Howe gave the claimant the opportunity to address her concerns that Mr Rogers would endanger himself again, and that the Nominal know knows how to get to him.

51. The Respondent says that Mrs Howe made her decision that day, to dismiss the Claimant. In relation to the failure to turn on the BWV, no sanction was imposed as she was satisfied with his explanation. In relation to removal of the essential PPE, the explanation given was that Mr Rogers felt unsupported and frustrated and removed his body armour as a symbolic gesture. Mrs Howe found that he was inconsistent in saying he was unsupported but finding that he was not in danger to remove his PPE, and therefore found that he had not considered the serious possible consequences.

52. I found Mrs Howe to be a credible witness and accept that she made her decision to dismiss the claimant having failed to hear satisfactory mitigation for his actions on 8 August 2023. In particular I found her explanation that she found the decision to be difficult but she did not want the Claimant to be harmed to be believable. However, I also accept that whilst this was the primary reason for the decision, the companies reputation and the fact of the complaint was also in her mind when reaching the decision to dismiss.

53. It is common ground that Mr Rogers appealed on 4 September 2023 and that the appeal hearing was delayed until the Claimant could view the police footage.

54. On 18 September 2023, Ms Stevens completed her investigation into the potential leak of information around Mr Rogers suspension.

55. The appeal hearing took place on 6 November 2023 after Mr Rogers had viewed the footage. The parties agree that the minutes are an accurate account of the hearing. The appeal hearing was conducted by a third party from Citation HR, however Mr Howe took the decision to uphold the disciplinary decision.

56. Having heard Mr Howe's evidence, I find he is a credible witness. Mr Howe gave honest and frank answers to questions albeit without great recall of the relevant events, stating on several occasions that he could not remember in detail what had happened. I am satisfied that Mr Howe considered the information at appeal but was not persuaded there was any mitigation for removing his PPE and therefore that the decision to dismiss Mr Rogers for his conduct should be upheld.
57. The Claimant appealed the outcome of the grievance but it is accepted by the Respondent that this was not actioned, in breach of the ACAS guidelines and the grievance policy.
58. The Respondent alleges that the Claimant covertly recorded the investigatory meeting, the disciplinary meeting and the appeal meeting, however the claimant cannot recall whether he recorded these or not. There is no evidence either way, On balance it is likely he did record these meetings, given his previous covert recording, however, no part of the decision turns on this fact.
59. The claimant contacted ACAS on 21 September 2023 and on 02/11/2021 the ACAS certificate was issued.
60. On 1 December 2023 this claim was filed at the Employment Tribunal, within time.

Submissions

61. At the conclusion of the evidence, each party made an oral submission.
62. The Respondent's submission was that the dismissal was fair. There was an appropriate investigation both into the incident, and the alleged leak. There is no evidence to suggest pre-judgment or that Mr Howe 'wanted the Claimant out'. The Respondent acted reasonably throughout and the decision to dismiss the Claimant for gross misconduct was in the band of reasonable responses.
63. If, in the alternative, the dismissal is unfair, I should reduce any award to the Claimant due to his conduct in undertaking covert recordings of meetings.
64. In relation to wrongful dismissal, the actions of the Claimant was gross misconduct and Mr Rogers was summarily dismissed. He would not be entitled to notice pay.
65. The Claimant argued that dismissal was not a decision that a reasonable employer would take. The Claimant accepts that he made a mistake, but that the risk has been exaggerated and the disciplinary procedure was unfair.

66. The Claimant says he has been reasonable throughout, and had been a good employee. The Respondent, on the other hand has been unprofessional in its conduct, both in the manner the Claimant's dismissal was discussed in the office and the way the Claimant found out about his suspension. The Claimant submitted that his dismissal was outside the range of reasonable responses and he should not have been dismissed. Alternatively, that he should have been given notice pay.

Discussion and Conclusions

67. The first issue I have to decide is whether the reason or principal reason for the claimant's dismissal was conduct and for the reasons I have set out above, I have found I am satisfied that the principal reason was the Claimant's conduct in the circumstances of the incident on 8 August 2023.

68. It is worth noting that this conduct is not simply that the Claimant removed his PPE. This was information available to the Respondent on 9th August 2023 when they viewed his report. It is the context which is key. Mr Howe was clear in evidence that had the Claimant removed his PPE when on a break, this would not be considered misconduct. However, it is common ground that the Claimant removed his PPE and then re-engaged a dangerous individual, with whom the guidance had been given not to engage. This is the conduct which was the reason for the Claimant's dismissal and, although I have accepted that the concern from the Respondent's clients would have been on their mind, I am persuaded that it was the conduct itself that formed the principal reason for dismissal.

69. The second question I must answer is whether the Respondent acted reasonably in all the circumstances in dismissing the Claimant.

70. I have considered whether there were reasonable grounds for the Respondent to consider that the Claimant removed his PPE, and it is admitted by the Claimant that he did.

71. However, the Claimant's overall contention is that there was no physical risk in the altercation. I find I cannot accept this statement. It is clear that Mr Rogers had lost control in response to the threats to his family and he acknowledges his judgment was impaired when he decided to remove his PPE, an action he regrets in removing his PPE, but then re-engaging and using antagonistic language 'don't you threaten my wife again' and 'you've got problems, you've really got problems'.

72. In circumstances where the Claimant acknowledges his judgment is impaired, I do not accept there was no risk of a physical altercation. The Claimant makes much of the Nominal being on a bike with a phone in his hand. It is not inconceivable that he would get off his bike and put his phone away, that this situation would escalate. The evidence I heard and which was unchallenged is that instructions were to not engage with the nominal because of his past behaviour. The Claimant manifestly failed to

follow those instructions, worse, removed his protection, and I find this to result in serious risk to both him and others around him.

73. I find that the situation was sufficiently dangerous, and the Claimant's judgment was sufficiently impaired by his concern for his family, that he was unable to accurately assess the risk. This is a situation which was sufficiently serious for the client and the police to take time to bring footage to his employers attention, due to the police's concern that Mr Rogers put those involved in the incident at risk.
74. I have also considered whether at the time the decision maker decided to dismiss the claimant, that a reasonable investigation had been undertaken and I am satisfied that it had. The footage of the incident was available to the Respondent who had viewed that footage. Mrs Howe considered the mitigation put forward by the Claimant, who said that the incident was less serious than she believed, and she considered that information properly before reaching her decision. Mr Rogers asserts that evidence should have been taken from Mr Marsh, however, it is unclear what additional information could have been provided by Mr Marsh, that would not have been shown within the footage.
75. I turn now to the contention that the decision was pre-decided. I have found that Mr Small told Mr Marsh both that the Claimant was to be suspended, that the office were unhappy with him and that Mr Howe wanted him gone. I accept that this is what Mr Small had said. However, it is not clear that this statement confirms that the Claimant was dismissed. It is accurate to say that the Claimant was suspended. It is also accurate to say that the office was unhappy, they had received a complaint from a client and commenced an investigation which ultimately led to a disciplinary and dismissal. It is also accurate to reflect that Mr Howe felt that having viewed the footage, it was sufficiently serious that he should be dismissed.
76. However, Mr Small does not say that he was dismissed, or that he would be. It was Mrs Howe who took that decision and I have seen no evidence to indicate to me that had Mrs Howe been persuaded that Mr Rogers would not again be provoked to react unsafely by the nominal, that the sanction would be different. Unfortunately, Mr Rogers was not able to convince the Respondent of the same.
77. It is clearly regrettable that Mr Rogers found out about his suspension in the way that he did, and was left feeling that the decision to dismiss him had already been taken, such that he could not feel he had a fair hearing. I have sympathy and understanding for why he felt the way he did. However, ultimately, I do not find that the leaking of this information satisfies me that the decision had in fact been taken before the disciplinary hearing, nor that the outcome was prejudged.
78. Finally, in regards to unfair dismissal I must consider whether the decision was within the range of reasonable responses, and I find that it was. The

Respondent had a genuine believe in the seriousness of the Claimant removing his PPE during a confrontation with a known violent nominal. They were unpersuaded that he would not do this again, and that decision is reasonable given that the Claimant down played the seriousness of the interaction and the possibility of it escalating beyond a non physical or verbal altercation. Had he fully appreciated the gravity of the situation, the outcome may have been different, had he not believed that the decision was already made, he may have felt more able to acknowledge his mistake. Either way, I am satisfied that ultimately, the decision was within the range of reasonable responses and therefore the Claimant's claim of unfair dismissal cannot succeed.

79. Turning then to wrongful decision, I must consider the contractual rights of the Claimant and whether it was right to dismiss him for gross misconduct given the facts that I have already found, as opposed to whether the dismissal was unfair according to the statutory test.
80. The test for determining if there is a repudiatory breach of contract is not whether an employer reasonably believes there has been such a breach but proof that there has actually been such a breach: *Shaw v B and W Group Ltd. UKEAT/0583/11*. I therefore now consider whether the Claimant's actions constitute gross misconduct.
81. Mr Lomas took me to the Claimant's employment contract which references the disciplinary procedure at p48 of the bundle. This outlines that the procedure for misconduct includes a formal verbal warning, where performance does not reach the required standard, a written warning, where the misconduct or poor performance is serious enough to warrant the organisation bypassing the formal verbal warning stage.
82. A final written warning is issued, where the misconduct is sufficiently serious to warrant only one warning, but is not sufficiently serious to justify dismissal. Finally, dismissal is given as a result of a failure to achieve the standard of conduct or performance required by the organisation.
83. It is worth reiterating that gross misconduct is separately detailed on p50 of the policy. This results in summary dismissal, such that you lose your right to notice or pay in lieu of notice.
84. The Respondent highlighted that gross misconduct includes the 'deliberate failure to comply with the published rules of the organisation includinghealth and safety'.
85. I have considered whether Mr Roger's behaviour constituted a deliberate failure to comply with the organisations health and safety policy and I find that it is not. In my view, Mr Rogers actions did not constitute a deliberate failure to comply with the health and safety policy.
86. All involved recognise that Mr Rogers undertook a difficult role which included working with difficult members of the public. Mr Rogers has a

good record and previously had a relatively effective working method with the nominal in this case, who it is common ground, deliberately seeks to antagonise those in authority.

87. On 8 August 2023, the nominal initially sought to film the Claimant, and those around him, to which the Claimant ignored him. The nominal then intimated that he recognised the Claimant's wife and had followed her, and that he knew details of his family. The Claimant saw this as a threat to his family, from a violent individual and he lost his temper, and reacted outside of his character. In the course of that, he took several ill-advised actions, which in my view cannot be said to be a deliberate action to breach a policy, but a reaction to new and previously unprecedented stressor, for which he was ill-equipped to respond.
88. I accept that without confirmation that the Claimant would not react in the same way, and where this known nominal will likely continue to antagonise the Claimant, the Respondent was acting within the disciplinary policy and the contractual right to dismiss him. This is because of the Claimant's failure to achieve the standard of conduct or performance required by the organisation, to protect both the safety of the Claimant and others. However, I find I cannot and do not accept that this is Gross misconduct, where a deliberate breach is required.
89. Accordingly, the Claimant would be entitled to his notice pay, agreed at 3 weeks' pay. The Claimant accepts that this monthly salary before tax is £2166.66, which makes his weekly pre tax income £499.99. Therefore the total of this claim is £1499.995 rounded to £1500 and his claim for wrongful dismissal succeeds.

Approved by:

Employment Judge Scott
06 June 2025

JUDGMENT SENT TO THE PARTIES
ON 23 June 2025 By Mr J McCormick

FOR THE TRIBUNAL OFFICE