



EMPLOYMENT TRIBUNALS

Claimant: Mr L Cherry

Respondent: Automobile Associations Developments Ltd

REASONS Requested by the Claimant

1. The Claimant commenced his employment with the Respondent on **1 September 1989** working as a Trainee Garage Mechanic. He was employed as a Patrolman in Roadside Services from **1993** until his dismissal by the Respondent on **19 June 2023**. He pursues a claim of unfair dismissal in which he claims he was singled out and subjected to bullying and harassment and poor management resulting in stress at work. The Respondent denies this claim of unfair dismissal and submits that the Claimant was fairly dismissed by reason of capability after a substantial period of absence when there was no reasonable prospect of his return to work in the reasonably foreseeable future.
2. There was an agreed Bundle of Documents (Exhibit R1). The Tribunal received oral evidence on behalf of the Respondent from Mr T Tucker, Customer Performance Manager, Mr D Rice, Performance Leader and Mr L Simpson, Head of Roadside Services who gave their evidence in chief by written statements: (Exhibits R2, R3 and R4 respectively). The Claimant gave his evidence in chief by written statement: (Exhibit C1).
3. The relevant meetings were minuted and agreed having been approved by the Claimant and Mr Bickerstaff, his union representative. There are no substantial disputes of the relevant facts between the parties which the Tribunal has summarised in the findings of fact which follow below.

Findings of fact

4. Mr Tucker has worked for the Respondent since **2001**. At the relevant time, and currently, he manages the Respondents Recovery Operation and Roadside Services across seven counties and in this job has responsibility for 206 employees. He is responsible for the management and effective operation and performance of 25 Recovery Patrols and 172 Roadside Service Patrols (RSS) together with extensive responsibilities for transport management of the depots and vehicles in his area and recruitment to the area. There are eight

RSS Performance Leaders who manage his area's Patrolmen on a day-to-day basis and report to him.

5. The Respondent has developed Key Performance Indicators (KPIs) to measure performance for its Patrolmen who include the Claimant. These are Repair Rate, Single Task Completion and Under Bonnet Time. Each KPI is measured within a banding from 1 to 6 of which Band 1 is excellent, Band 5 meets a minimum standard and Band 6 is unacceptable. Mr Tucker explained that Band 3 is the average performance in every KPI which the business calculates by looking at all job outcomes throughout its business over the previous three years. The number of jobs per shift (which lasts 7.75 hours) a Patrolman completes is also looked at as an indication of efficiency.
6. Mr Tucker's experience is that any areas of poor performance can be managed by constructive 1-2-1's involving coaching and mentoring. If that is not successful then an Improvement Notice can be issued to a Patrolman which is an informal request for improvement in a particular area notified to him / her. Mr Tucker explained that this is not a formal management process. It has been designed to highlight areas where an employee may be underperforming to allow them the chance to improve before a formal approach is taken. If there is no satisfactory response to the Improvement Notice, then matters can move on to a formal procedure. This is usually a three-step procedure.
7. The Claimant was transferred to Mr Tucker's management in **2014** (when Mr Tucker was working as an Area Manager the job title for which changed to Performance Leader in **2018**). The reason for the transfer was that the Claimant was at that time pursuing a grievance against his current Area Manager which was under investigation. Mr Tucker continued to manage the Claimant until **2018**. The Claimant's grievance was not upheld.
8. The Claimant and Mr Tucker agree that they had a good working relationship. The Claimant had not raised any further concerns in respect of the outcome of the grievance after the conclusion of the grievance procedure until those matters which are described below. Mr Tucker was by then the Line Manager of Performance Leaders who managed the Claimant.
9. On **1 September 2022** Mr Beddow, the Claimant's Performance Manager issued an Improvement Notice to him. Mr Tucker had, and still has, a high regard for the Claimant's abilities. However, he explained that during his management of the Claimant it had been necessary for him to discuss high job times and low jobs per shift with the Claimant in which it became clear that the Claimant was sensitive to any perceived criticism to his work.
10. It was for this reason that Mr Tucker arranged an informal meeting with the Claimant when he learned of the Improvement Notice. During this meeting, which took place in Bedford, the Claimant made it clear that he considered the Improvement Notice was unjustified. Mr Tucker offered to have the circumstances in which the Improvement Notice had been issued independently investigated. He explained to the Claimant that if this established that his Performance Leader had been in error in issuing the Improvement Notice then it would be withdrawn. The

Claimant refused this offer. It is agreed that at the end of the meeting Mr Tucker gave the Claimant the assurance that he could contact him at any time if he needed any assistance or support.

11. On **17 October 2022** Mr Tucker was informed that a complaint had been made against the Claimant by his Performance Leader. In brief, the complaint was that the Claimant had refused a job which had been assigned to him which resulted in service to a lone female driver being delayed and a disruption of other deployment plans for other Patrolmen. Mr Tucker assigned Mr Rudge, a Performance Leader who managed a different team to investigate the complaint. Mr Rudge met with the Claimant on **25 October 2022** to discuss the complaint and obtain his explanation of what had happened.
12. The Claimant telephoned Mr Tucker after this meeting to inform him that he was going off sick with work-related stress. During this call he alleged that under Mr Tucker's leadership all his Performance Leaders were bullies and did not treat those they managed with respect. After this call Mr Tucker instructed Mr Rudge to put his investigation into the complaint on hold and to make no further contact with the Claimant until further notice from him.
13. Mr Tucker sent an email to the Claimant. This confirmed that his absence had been recorded and encouraged him to contact the Respondent's wellbeing support services. The Claimant submitted the necessary fit note on the following day.
14. Mr Tucker then contacted the Claimant again to seek his consent to enable him to make a referral to Occupational Health for the purpose of finding out whether the Claimant would be fit to attend meetings to consider the complaint. Mr Tucker and the Claimant agreed that he should refer the matter to Occupational Health on the basis that if the matter could be resolved then that would hopefully deal with the Claimant's anxiety which had led to his sickness absence.
15. The Occupational Health Report (OHR) was not released to Mr Tucker until **25 November 2022**. It confirmed that the Claimant was fit to attend meetings and provided Mr Tucker with potential adjustments to support the Claimant at such meetings. The Report referred to the Claimant having a history of depression and stress which he said had reoccurred due to changes in his job which he said resulted in miscommunication with, and reduced performance from, him. There was a recommendation relating to the Claimant's return to work that it might be best to complete a stress risk assessment to identify any specific concerns that might need to be addressed.
16. Mr Rice, who had been working as a Performance Director since **June 2018** was transferred to manage the Claimant's RSS Team on **1 November 2022**. He had not met the Claimant and so had never worked with, or managed, him. After receiving the OHR Mr Tucker concluded that it was best for him to continue his informal discussions with the Claimant. He instructed Mr Rice not to introduce himself to the Claimant until those discussions had been concluded.

17. On **16 November 2022** Mr Rudge updated Mr Tucker on his investigations into the complaints made against the Claimant. Mr Rudge informed him that he would be recommending that certain matters should be referred to a disciplinary hearing. Mr Tucker instructed Mr Rudge to take no further action until he notified him to do so.
18. Mr Tucker arranged to meet with the Claimant and Mr Bickerstaff, his trade union representative, at a neutral venue (as recommended by the OHR). This was an informal meeting. Mr Tucker's aim was to understand what issues were causing the Claimant concern and to clear up any misunderstandings. In his oral evidence to the Tribunal the Claimant said that he was entirely satisfied that Mr Tucker had convened this meeting with the best of intentions. The oral and documentary evidence before the Tribunal establishes that Mr Tucker's observation that this was a difficult meeting is correct. Mr Tucker found the Claimant to be argumentative and obstructive which prevented the constructive dialogue which Mr Tucker had hoped could resolve matters.
19. Mr Tucker sent an extensive and comprehensive letter to the Claimant on **8 December** which summarises the discussions at this meeting and refers to points which Mr Tucker had intended should be discussed but which he had been unable to raise with the Claimant and Mr Bickerstaff. He had given the Claimant a further opportunity to request an independent investigation of the Improvement Notice he had received from Mr Beddow which as before he refused. Mr Tucker confirmed that he had instructed Mr Rudge to take no further action in respect of his investigation of the complaint.
20. The period of the Claimant's sickness absence brought him within the terms of the Respondent's Long-Term Absence (LTA) procedure. This is a three-stage procedure during which the Respondent and the employee who is absent due to sickness can consider the reasons for the absence, the prognosis for the relevant illness or other problem and any other relevant factors. The procedure makes clear that at the third review meeting it may be necessary to consider whether an employee's employment can continue and the availability of alternative employment.
21. On **8 December** Mr Tucker asked Mr Rice to take over the discussions with the Claimant and to commence the LTA procedure. This is always a particularly busy month for the RSS. Mr Rice introduced himself to the Claimant in a telephone call which he made to him on **8 December**. He explained that there would be a delay before he could arrange the LTA Review meeting but emphasised that the Claimant could contact him if he needed to do so in the intervening period. He also expressed the hope that this additional period would aid the Claimant's recovery.
22. The first LTA Review meeting was held remotely on **23 January 2023** with Mr Bickerstaff in attendance with the Claimant. Mr Rice's notes of the meeting, as amended by the Claimant shortly after the meeting provide an accurate record of what was discussed. In summary, the Claimant felt that he was improving slowly but explained to Mr Rice that work issues still made him feel anxious. He complained of the high turnover of his managers in recent years. He could not say

when he would be able to return to work or whether he would be able to return to his current job. Mr Rice sought to persuade the Claimant to meet him at an informal meeting at a location of his choice, which Mr Bickerstaff could attend if the Claimant wanted him to do so, to discuss the triggers for his anxiety and how they might be dealt with. He extended this invitation because he thought it was the best way of providing an opportunity for building a sound relationship between them.

23. The Claimant agreed to meet Mr Rice informally on **10 February 2023** and chose a coffee shop in Baldock to do so. This was their first face-to-face meeting. The Claimant explained his dissatisfaction with the outcome of the grievance he had pursued in **2014**, his previous managers and the Respondent's expectations of him in his job. Mr Rice explained his approach to team performance and the necessary measurement of performance for those employed as Patrolmen.
24. Mr Rice suggested that the Claimant should draw a line as to previous managers explaining that he could not influence past decisions and could not change them. Mr Rice stressed that he and the Claimant needed to try to move forward and create an environment in which the Claimant could meet performance expectations. He suggested that they should continue to hold these informal meetings to take these matters forward. It was agreed that they would meet again after the second LTA Review to specifically discuss how performance was now measured and managed in the Respondent's business to assist the Claimant to decide if this was something that he could accept which would enable him to return to his job.
25. The second LTA Review was convened on **24 February** but adjourned by Mr Tucker when the Claimant correctly pointed out that the previous OHR had been obtained to consider whether he was fit to discuss matters with Mr Tucker rather than his overall medical condition. Mr Rice confirmed he would refer the Claimant back to Occupational Health for them to provide advice and guidance as to his current medical condition. Mr Rice encouraged the Respondent to continue to stay in touch with the Respondent's well-being hub and confirmed that the Respondent could extend the counselling he was receiving if that was recommended by the Counsellor. The Claimant emphasised that he was still feeling anxious about returning to work and having to deal with the KPIs.
26. The Claimant was referred to Occupational Health. The Occupational Health Report (OHR) (as amended by the Claimant) was received by Mr Rice on **24 March 2023**. The second LTA Review was then reconvened by Mr Rice on **7 April 2023**. The OHR stated, inter alia, as follows:

"Mr Cherry remains unfit for work. He continues to report mood-related symptoms due to perceived workplace problems, and he is also troubled by physical symptoms that would benefit from further medical attention via his GP. ...

If the underlying perceived workplace concerns can be resolved, I am confident that Mr Cherry's symptoms will improve, and he will then be able to resume work activity...

It is difficult to provide a timescale for his return to work as it will depend on non-medical factors, as previously noted, I envisage that he will be able to engage with a phased return when work related matters are resolved and Mr Cherry feels more comfortable to resume his normal duties. ...

He will be able to undertake his normal role as RSS Patrol in the longer-term...

He currently reports a worsening of back pain that is likely to have occurred due to reduced activity during his absence. It is hoped that his symptoms will improve before he attempts to return to work, but some level of adjustment may be required so that he can take frequent breaks and temporarily avoid heavier activities that could worsen his symptoms...

The most helpful organisational action at this time would be to liaise with Mr Cherry to resolve the perceived workplace concerns...

The barrier for Mr Cherry's return to work is predominantly work-related and further internal discussions will be required to explore and address the underlying concerns..."

When Mr Cherry's physical and mental symptoms have improved sufficiently to enable him to return to work, I am hopeful that he will be able to undertake the full scope of his job. ...

He is in contact with his GP, and he is engaging with counselling via AA wellbeing. He is maintained on medication, and he is awaiting an appointment with a respiratory specialist to investigate his chronic cough".

The OHR concludes by stating that routine review is not necessary.

27. Mr Rice considered that the OHR made it clear that the Claimant's absence was due to his concern about performance management and management more generally within the Respondent. He noted that the OHR concluded that the Claimant would be able to return to work activity and his full duties in the long-term if his workplace concerns were resolved. Mr Rice was attempting to resolve those concerns but needed the Claimant's cooperation to do so.
28. Mr Rice was advised by the Respondent's Employment Relations Team to request the Claimant to prepare a Wellness Action Plan (WAP). It was considered that this would assist Mr Rice in ascertaining the Claimant's perceived stressors within his job which would enable them to be discussed at the second LTA Review. The Claimant had completed the WAP which enabled Mr Rice to discuss the answers the Claimant had given to the questions raised with him in this document.
29. The Claimant referred to a lack of respect in the workplace. He said that he did not want to be challenged about his time management, sent tasks which he could not deal with or be required to work through any break or his finish time. A continuing issue referred to Mr Rice was the Claimant's grievance in 2014 and his dissatisfaction with the outcome of that procedure. Obviously, Mr Rice had no knowledge of this. He emphasised how Management had been restructured in

2018 and that the individuals to which the Claimant continually referred were no longer working for the Respondent. The Claimant's response was to make it clear that he wanted to be praised and did not want to be micromanaged.

30. The Claimant maintained that his sickness absence was due to the way he had been managed. Mr Rice explained that the Claimant had never worked under his management and explained that new systems had been introduced in recent months to assist Patrolmen. He stressed to the Claimant that there would always be a need for the Respondent to meet extra demands and to prioritise some jobs, and deal with more demanding emergencies and the impact of such demands could not be avoided in a Patrolman's job. He urged the Claimant to meet with him again in an informal meeting the purpose of which would be to explain to the Claimant how the Patrol Team were managed by him and how he approached management tasks with his Patrolmen.
31. The Tribunal has found that Mr Rice made a huge effort to engage with the Claimant, understand his stressors and encourage his return to work by sound, relevant and constructive dialogue in formal meetings and the continuing offer of informal discussions to enable the Claimant to build a relationship with him. The Claimant in his oral evidence to the Tribunal accepted that Mr Rice had always dealt with him in a fair and constructive way and that he understood that Mr Rice had wanted him to return to work under his management.
32. Mr Rice concluded that unless the Claimant was prepared to engage with him, he would not be able to address the Claimant's perceived stressors within the job. It was for this reason that he suggested that he should hold an informal meeting with the Claimant outside the Respondent's formal procedures. Mr Rice sent a comprehensive letter to the Claimant on **17 April**. This summarises what had been discussed at the second LTA Review meeting. He provided a further invitation for the Claimant to attend an informal meeting with him to discuss performance management and the expectations which Performance Leaders had of the Patrol Team. He explained that the next LTA Review meeting, within the Respondent's established procedures would in all probability have to consider whether there was a realistic possibility of the Claimant's return to work within a reasonable period and if not, potential alternative employment if it was available and his dismissal.
33. Mr Rice in his management position of Performance Leader could not authorise an employee's dismissal. The LTA Review procedure had to be handed back to Mr Tucker. Mr Rice confirmed to the Tribunal that apart from the meeting held on **10 February** the Claimant did not follow-up on Mr Rice's three or more attempts to arrange a further informal meeting with him to try and resolve the Claimant's concerns which he believed could have facilitated his return to work.
34. Mr Rice had kept Mr Tucker updated with progress and sent him a written update on **29 March 2023** as well as conducting a comprehensive handover with him before Mr Tucker conducted the third LTA Review meeting. The Claimant told the Tribunal that he respected Mr Rice and recognised the help and support which he had given to him. Mr Rice had continually encouraged the Claimant to continue a dialogue with him to resolve the Claimant's perceived stressors in a constructive, fair and pragmatic way.

35. Mr Tucker invited the Claimant to a third LTA Review meeting. He had delayed the meeting as long as he could to give the Claimant as much time as possible to arrange to meet Mr Rice informally to discuss the perceived workplace issues and stressors. The Claimant's contractual sick pay had expired on **16 May 2023**. Mr Tucker had concluded that the length of absence and the stage that had been reached in the Respondent's LTA procedure meant that the Claimant's potential dismissal would have to be considered by him at this meeting. The meeting took place on **19 June**. The Claimant had been absent for 30 weeks. Mr Tucker, the Claimant and Mr Bickerstaff met in person.
36. The evidence before the Tribunal establishes that Mr Tucker found this to be a difficult and challenging meeting. The Tribunal does not need to provide full details of what was discussed. There is an agreed and comprehensive note of the meeting prepared by a notetaker who was in attendance. A summary of the discussions relevant to the Claimant's claim follows below.
37. The Claimant informed Mr Tucker that he was improving slowly but that work issues continued to make him feel anxious. He maintained that there had been a lack of support from his recent managers and referred to the high turnover of managers between **June 2021** and **November 2022**. He referred to his dissatisfaction with the outcome of the grievance which he had pursued against his Area Manager in **2014**. He held that Area Manager's conduct and the outcome of the grievance responsible for his anxiety and workplace stress.
38. Mr Tucker was satisfied that Mr Rice had followed the advice of Dr Iyer who had prepared the second OHR in the efforts which he had made to engage with the Claimant to understand and attempt to resolve the perceived workplace issues / practices which had been identified by the OHR as the stressors which had resulted in the Claimant's workplace stress and to develop a constructive working relationship with him. He considered that this was demonstrated by the WPA prepared by Mr Rice with the Claimant and the efforts he had made to try and arrange further informal discussions about the stressors and was disappointed that the Claimant had not been prepared to engage further with Mr Rice by attending those meetings.
39. The minutes of the meeting confirm that Mr Tucker tried to discuss these issues, but the Claimant was not prepared to discuss them with him. He told Mr Tucker that one of the main triggers for his stress was the complaint which had been made against him. Mr Tucker confirmed again that this complaint had been closed by him. He was assured that no adverse findings had been made against him for that reason. The complaint would not be pursued any further.
40. Mr Tucker concluded that the Claimant had decided that he would not be able to manage KPIs if they were applied to his work. He did attempt to explain to the Claimant and Mr Bickerstaff why such performance measures were required which was to enable the Respondent and its managers to manage a large remote workforce in a uniform, consistent and effective way for the necessary benefit of the business.

41. The Claimant was given the opportunity to explain what else the Respondent could do to assist him. The Claimant's did not think there was anything else that could be done to get him back to work and that he would not be able to cope with the performance measurements with which the Patrolmen had to work.
42. Mr Tucker reserved his decision and subsequently reconvened the meeting to explain his decision to the Claimant and Mr Bickerstaff. He sent a comprehensive letter to the Claimant summarising the extensive discussions that had taken place during the meeting and the conclusion which he had reached. This was that the Claimant should be dismissed with notice by reason of his sickness absence. His letter concluded, inter alia, as follows:

"I asked you several times today whether you felt ready to return to work either now or in the near future, and you advised that you didn't as your symptoms were improving and that you felt that returning to work would set you back and trigger the mental ill health again. You advised that the thought of getting back into a van was overwhelming.

I asked you several times if there was anything I, or anyone else could do to help you return to work, and you said that there was not anything due to the fact that there are performance figures.

I asked you at the meeting whether you would be interested in redeployment and you said that you wouldn't.

You have advised that you have received support from the company's wellbeing services by the way of counselling.

You have now been absent for just under eight months and are out of company sick pay. You are unwilling to engage with your line manager to try to resolve the perceived workplace issues and stressors which is a key recommendation from OH.

You have told me that you do not feel ready yet to return to work and do not know when you will be ready.

I have concluded that, because you are unwilling to engage with us and have not made sufficient progress with your work-related stress in order that you are to return to work, I have no option other than to terminate your employment with the AA on the grounds of capability".

43. The Claimant was advised of his right to appeal against this decision. He did so. The Claimant's evidence to the Tribunal was that he had not been in a state to say when he could return to work, or even if he would be able to return to work when he attended the third LTA Review meeting with Mr Tucker. He conceded that Mr Rice was trying to help him return to work but explained that at that time Mr Rice had to earn his trust. He maintains that the Respondent did not consider that he had been mentally scarred for life by the outcome of the grievance that he had pursued in respect of the conduct of his Area Manager in **2014**.

44. He said that he had no problem with the job. He accepted that the Respondent had to measure the performance of its Patrolmen. However, he did not want to be judged by the KPIs. He did not consider that he should be subject to those performance measurements because of the anxiety which he believes was caused by the outcome of his grievance in **2014**.
45. He did accept now that the discussions with Mr Rice should have been a two-way process. However, he had not been prepared to take part in further informal discussions with Mr Rice because he knew those discussions would have involved talking about figures and performance measures and that would have caused anxiety and stress for him.
46. Mr Simpson rearranged the Appeal Meeting to be held on **10 August** to enable Mr Bickerstaff to attend. Mr Simpson had read all relevant documents ahead of the meeting. These included the Claimant's written representations and supporting documents which extended to 35 pages and a helpful timeline prepared by the Employee Relations Team.
47. A notetaker was present. There is an agreed and comprehensive record of this meeting. During the meeting the Claimant again raised several historical issues which referred to matters that had occurred several years before he went sick and his dissatisfaction with the investigation and outcome of the grievance he pursued in **2014**. Mr Simpson reserved his decision at the end of the meeting. He attended on the Claimant and Mr Bickerstaff on **15 August** when he informed them that he had decided to refuse the appeal and explained his reasons for doing so. Mr Simpson subsequently wrote to the Claimant setting out those reasons. The Tribunal briefly summarises the matters which Mr Simpson considered in making his decision.
48. Mr Simpson accepted the potential difficulties caused in a turnover of five Performance Leaders in a period of 19 months. However, he considered the steps, and substantial efforts, taken by Mr Rice to understand the Claimant's concerns and build a relationship with him had offered the Claimant a stable period of management which could have addressed his concerns if he had been prepared to engage with Mr Rice.
49. Mr Simpson contrasted this with the fact that the Claimant had turned down the opportunity of attending three further informal meetings offered by Mr Rice. The Claimant had not put forward to the Respondent any steps / actions which it could have taken to facilitate his return to work. He remained focused on a previous grievance and made clear that he did not want to receive feedback unless it was positive. He told Mr Simpson that he was not interested in examining an alternative role and that he did not feel that he could return to work under current arrangements either now or in the future.
50. Mr Simpson asked the Claimant what he was seeking from the appeal. The Claimant informed him that he wanted to receive an apology from the Respondent for the way he had been treated and a lump sum payment equal to the salary he would have earned from his current age to the age of 60.

51. Mr Simpson concluded that having examined all the circumstances with the Claimant and his union representative there was no alternative but to uphold the decision that he should be dismissed.

Conclusions

52. In determining whether a dismissal is fair or unfair, it is for the employer to show the reason for dismissal, or if there is more than one reason the principal reason. The reason for dismissal shown by the employer must be one of the potentially valid reasons specified in section 98(1) and (2) Employment Rights Act 1996.
53. The Tribunal has found that the Claimant was dismissed by reason of capability due to his ongoing absence from work and the uncertainty of when, and if, he would be able to return to his job. This is a potentially fair reason for dismissal within the terms of s98 Employment Rights Act 1996.
54. The Tribunal then has to determine whether the employer acted reasonably in dismissing for that reason. This question is to be determined in accordance with equity and the substantial merits of the case, and the circumstances to be taken into account include the size and administrative resources of the employers undertaking.
55. The Tribunal must assess the reasonableness of the employer's decision and the Tribunal must not substitute its view of the right course of action for that of the employer. The Tribunal recognises and applies the test that there is a band of reasonable responses to an employee's circumstances within which one employer might reasonably take one view and be acting fairly, and another quite reasonably another view and still be acting fairly. Each case has to be determined on its own facts.
56. The Tribunal was referred to two cases. These are **S v Dundee City Council 2014 IRLR 131** and **Monmouthshire County Council v Harris EAT 0332/14**. These cases establish that the test of reasonableness in cases involving absence can, and will usually, extend to a number of areas depending on the particular facts of each case. An employer will be expected to follow its own published procedures when dealing with periods of absence and consideration of termination of employment for that reason. The extent of medical investigation undertaken by the Respondent needs to be considered as does whether there was adequate ongoing consultation with the absent employee about his / her ongoing circumstances. A potentially crucial consideration is how much longer an employer may reasonably be expected to wait taking into account the needs of its business and whether it has been possible to be confident about a potential date of return for the employee.
57. The Claimant was a well-regarded employee with many years of good service. The OHR reports had concluded that it was the impact of perceived workplace stressors on his mental health which had caused the Claimant's depression and anxiety about his return to work. These were the Improvement Notice and the complaints that had been made by his Line Manager and his objections to established KPIs being applied to his work. Occupational Health had advised that if underlying workplace concerns could be resolved then the Claimant's symptoms

would improve and he would be able to resume his work activities. The Claimant's return to work depended on intangible non-medical factors. The approach recommended by the OHR was for the Respondent to liaise with the Claimant to resolve these workplace stressors. It has been established by the unchallenged evidence of the Respondent's managers who have given evidence to the Tribunal that they made substantial efforts to do so and followed the Respondent's procedures in dealing with the Claimant's circumstances.

58. The Claimant refused to engage in discussions with Mr Rice, Mr Tucker or Mr Simpson as to his work arrangements when he returned to work. He wanted the Respondent to revisit the outcome of his grievance in **2014** in which he had complained about his then Area Manager's conduct towards him and his dissatisfaction with other more recent Line Managers. All those concerned were no longer employed by the Respondent and could have had no contact with him on his return to work. The responsibility for his management on a return to work would have been with Mr Rice as his Line Manager who was reporting to Mr Tucker with whom the Claimant had worked successfully and formed a good working relationship in the past.
59. The Respondent accepted the impact of the improvement notice and the recent complaints about the Appellant's performance as a result of which he went off sick. They did not challenge his difficulties and took steps to address the stressors. Mr Rice's appointment provided a new line manager for him. Unfortunately he was not prepared to fully engage with Mr Rice who was seeking to establish a sustainable working relationship with him which could have addressed these stressors. Mr Tucker had taken immediate action to deal with the Claimant's problem by offering independent investigation of the Improvement Notice and subsequently he ceased investigation of the complaints which were withdrawn. These were pragmatic and supportive exercises of management discretion undertaken by Mr Tucker to support the Claimant and deal with his concerns.
60. The Claimant did not challenge the purpose and necessity of the Respondent's KPIs in managing its patrolmen, of which he was one. He did not and has not challenged the integrity of Mr Tucker, Mr Rice and Mr Simpson and has accepted that they were seeking to address the concerns he had raised and wanted him to return to work with the Respondent.
61. The Respondent had followed its published LTA procedure and had continued to consult and keep the Claimant informed throughout this procedure in which he was represented by his trade union representative. The record of these meetings which incorporated amendments submitted by the Claimant when sent copies of them are agreed and comprehensive. These records together with the correspondence with the Claimant provide a complete narrative of events for the Tribunal.
62. It was the Claimant's decision that the stressors could not be overcome and it was the Claimant who refused to fully investigate how they could be addressed. He apparently relies on his view, not supported by any medical evidence before the Tribunal that the outcome of the grievance in **2014** had caused his depression and anxiety and should have resulted in the Respondent excluding him from assessment of KPIs in the Respondent's management of his work. However, the

Claimant accepted that the KPIs are needed by the Respondent to manage its patrolmen effectively and in doing so support them in their demanding work.

63. The Claimant's final position at the appeal hearing when asked was that he was not interested in considering alternative employment, could not give an indication of when he would be able to return or if he would be able to return and when asked what he sought at that time explained to Mr Simpson that he wanted to receive a substantial financial settlement on departure from his employment with the Respondent.
64. The Respondent operates a substantial and well-resourced business. The Claimant had over 32 years of service and has worked as a patrolman for 30 years and was well aware of the demands of that job. The Tribunal has no doubt on the evidence before it that Messrs Tucker, Rice and Simpson were acutely aware of that service and were committed to assisting the Claimant to return to work and wanted him to remain in the Respondent's employment. They made every effort by consultation with him to achieve that aim.
65. The managers' efforts were directed to dealing with the issue that had been identified by the OHR and they made every effort by consultation with the Claimant to do so. There was in the circumstances of this case no requirement for a further medical report. The Claimant accepted in his evidence to the Tribunal that he was not prepared to pursue the ongoing consultation offered to him which gave him the opportunity to return to work. He made it clear that he could give no indication of when he could return to work or if he could do so and sought an unsustainable financial settlement.
66. In summary, the Tribunal has concluded that the Claimant's dismissal was a balanced and informed decision which was within the range of reasonable responses available to the Respondent in the circumstances of this case. The Claimant's claim for unfair dismissal is dismissed.

Employment Judge Craft

Dated: 11 June 2025

Sent to the parties on
24 June 2025

Jade Lobb
For the Tribunal Office