EMPLOYMENT TRIBUNALS

Claimant: **Mr Z. Fabian**

Respondent: **SKF UK Ltd**

Heard at: **Bristol ET** **On:** **8 and 9 April 2025**

Before: **Employment Judge:** **Mr G. King**
Members: **Mrs S. Maidment**
Mr H. Adams

Representation
For the Claimant: Ms Millin – counsel
For the Respondent: Mr Collier – solicitor

JUDGMENT having been sent to the parties on 14 May 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

The Claim

1. By his ET1 dated 15 February 2024, the Claimant brought claims of unfair dismissal and discrimination on the grounds of religion or belief.

2. The Tribunal was referred to a 186-page bundle prepared in advance of the hearing as the main bundle. Pages from this bundle are noted in square brackets, e.g. [1];

3. The Tribunal heard witness evidence from the Claimant and from Claire Vincent, Gary White, Shaun Bobbin, Simon England and Alton Greenwood on behalf of the Respondent. References to witness statements are designated as witness initial followed by paragraph number, e.g. [ZF 1] for the Claimant's witness statement, paragraph one.

Findings of Fact

4. On Friday 18 August 2023, the Claimant contacted Chris Baker to ask for a week's extension to his holiday. This request was refused. The Claimant then spoke to Shaun Bobbin. Mr Bobbin also refused the request.

5. Gary White spoke to the Claimant later on Friday, 18 August 2023. He again refused the Claimant's request for extended holiday and required him to attend work, as had been previously agreed, on Monday, 21 August 2023.

6. During this telephone call, Mr White put his telephone on loudspeaker so that Andrew Clarke, who was also present, could hear the call. Mr White made a note of the call [151]. Mr White warned the Claimant that if he was not at work as required, then he could face disciplinary action.

7. During the call, Mr White asked the Claimant why he could not return to work as planned. The Claimant said he was on a *"health programme"* which required him to run or cycle for 30 minutes per day, and then go into a sauna for four and a half hours, and he also had to take vitamins and minerals. Mr White asked for details regarding the health practitioner running the course. At this point, the Claimant explained that it was his Church. He had not mentioned that previously and so the decisions to refuse his extra annual leave cannot have been based on his Church, as none of the decision-makers were aware of this when they refused the requests.

8. There was no further contact between the Claimant and Respondent on Friday, 18 August 2022 nor the subsequent Saturday and Sunday. The Respondent was expecting the Claimant to be in work on Monday, 21 August 2023. The Claimant did not attend work on this day, as he was still in Hungary.

9. An email was sent by Sonia Pink to the Claimant on 22 August, but the Claimant did not reply to this until 24 August. It was at that point that he explained that he was still in Hungary and still on his religious course.

10. Until that point, therefore, it was not clear to the Respondent why the Claimant had been absent on Monday 21, Tuesday 22, Wednesday 23 and Thursday 24 August. The Respondent was reasonably expecting the Claimant to be in work

11. An email was sent by Sonia Pink to the Claimant on 22 August, but the Claimant did not reply to this until 24 August. It was at that point that he explained that he was still in Hungary and still on his religious course. He explained again that he was taking part in a programme related to his Church and this programme usually takes four weeks, however it can take longer and would finish when his Church advised him that the programme was finished. He stated that he would return to work when the programme was finished [79].

12. On 24 August 2023, Sonya Pink had hand delivered a letter to the Claimant's home address. The letter set out that the Claimant's absence between 21 to 25 August 2023 was unauthorised; that the Respondent had tried various ways to contact him without success; that his unauthorised

absence amounted to a breach of his employment contract, and that he should contact the Respondent immediately [82].

13. The Claimant returned to work on Monday 20 August.

14. Shaun Bobbin was appointed by Sonia Pink to investigate two disciplinary allegations relating to the Claimant's conduct, namely failure to adhere to the absence reporting procedure in the Sickness Absence Policy, and failure to attend work / unauthorised absence from work between 21 and 25 August 2023.

15. The Claimant was invited by letter dated 30 August 2023 [83 – 84] to attend a disciplinary investigation meeting. The meeting took place on 4 September 2023 [85 – 89]. The meeting was a face-to-face meeting, except for Hina Khalid,, HR at a different company site, who dialled in remotely.

16. The Claimant explained at the meeting that the programme he had enrolled on could not be stopped half-way through. He accepted that he had not reported his absence on 21 August as the company policy required him to. His reason was that he had previous conversations with his managers. He accepted that his managers had refused his request for extra leave.

17. Mr Bobbin concluded that there was a case to answer and matters under the Disciplinary Policy [46 – 55] proceeded to a disciplinary hearing. Mr Bobbin met with Claire Vincent, who was to chair the disciplinary hearing, on 29 September 2023, and explained the outcome of the meeting Mr Bobbin had held with the Claimant on 18 August [101 – 102].

18. Ms Vincent invited the Claimant to a disciplinary meeting by way of a letter dated 18 September 23 [92 – 93]. The letter specified what the disciplinary allegations were and warned that if gross misconduct was found proven then dismissal was a possible outcome. The Claimant was advised of his right to bring a companion to the meeting. The investigation meeting notes, relevant letters and emails, and the Disciplinary Policy were enclosed with the letter.

19. The disciplinary hearing took place on 26 September 2023 [94 – 98]. The Claimant chose not to bring a companion with him. The Claimant admitted that he had taken unauthorised leave and said he understood that it may lead to disciplinary consequences. He stated that he required to stay longer on his programme to finish the course.

20. The disciplinary hearing was adjourned to interview the other witnesses involved. Ms Vincent also requested that the Claimant provide her with evidence of the course dates that had initially been provided to him. The Claimant did not provide this information subsequently.

21. Ms Vincent interviewed Mr Baker, Mr White and Mr Bobbin on 26 September 2023 [99 – 102]. The Claimant was then invited to attend a reconvened disciplinary hearing by letter dated 27 September 2023 [103 – 104]. The Claimant was provided with the notes from Ms Vincent's meetings with Mr Baker, Mr White and Mr Bobbin.

22. The reconvened disciplinary hearing took place on 29 September 2023 [105 – 106]. At the meeting, Ms Vincent found that the Claimant's conduct satisfied the criteria for gross misconduct as set out in the disciplinary policy, in that the Claimant had failed to attend for work on his rostered shifts between 21 and 25 August 2023. Ms Vincent consider the impact this had on the business, and took into consideration the Claimant length of service. She concluded that the appropriate sanction was dismissal with immediate effect, which she communicated the Claimant at the end of the meeting.

23. Ms Vincent wrote to the Claimant to provide a disciplinary hearing outcome letter dated 29 September 2023 [107 – 108]. This confirmed that the Claimant's employment had been terminated with immediate effect on 29 September 2023.

24. The Claimant was informed of his right to appeal the decision, and he chose to exercise that right. An appeal hearing was held on 18 October 2023 [109 – 111] by Alton Greenwood, with Lorraine Stevenson as HR representative and Yasmin Salim as notetaker. The Claimant brought a colleague, Fran Coakley, as a companion.

25. The Claimant's appeal of his dismissal was based on various grounds, namely: he had not been aware that unauthorised absence could result in dismissal; he had not felt comfortable to notify the Respondent of his absence between 21- 25 August 2023 as he did not have a definite return date; the decision to dismiss was too harsh; he had worked overtime on his return to work; he had apologised; his dismissal was unfair and was discriminatory based on his religious belief.

26. At the appeal hearing, Mr Greenwood asked the Claimant why he had ignored three separate managers direction to return to work on Monday 21 August 2023. In reply, the Claimant stated that he could not leave the course he was attending until it was completed and if he left early, he would have to redo the course, which was expensive.

27. Mr Greenwood also considered the Claimant's leave request history. The Claimant had requested additional unpaid time off in August 2022, which had been approved. Mr Greenwood also noted he had taken an extended period of unpaid leave in August 2020, which the Claimant stated was so his son could visit his grandparents in Hungary [138].

28. The disciplinary appeal outcome letter is dated 30 October 2023 [125 – 130]. In explaining his outcome, Mr Greenwood had determined that the Respondent had attempted to contact the Claimant, between 18 and 21 August 2023, to confirm his attendance at work on 21 August 2023, and that he had been warned numerous times that unauthorised absence could lead to disciplinary action. Mr Greenwood found that the Claimant was aware that his request to extend his paid leave had been refused, and that he had been warned that if he did not attend for work on 21 August 2023, he would face disciplinary action. Mr Greenwood decided that the line managers had given reasonable and appropriate reasons why he was required to attend for work; i.e. the request was received at very short notice and there was an influx of orders that required production and the Claimant's absence at that busy time led to a near miss Health and Safety incident [90 – 91].

29. Mr Greenwood decided to uphold the Claimant's dismissal.

The Law

30. Section 98(1) and 98(2) of the Employment Rights At 1996 (ERA) establishes that there must be a fair reason for a dismissal.

31. Section 98 ERA
(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
(a) the reason (or, if more than one, the principal reason) for the dismissal,
and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
(2) A reason falls within this subsection if it—
(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
(b) relates to the conduct of the employee,
(c) is that the employee was redundant, or
(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

32. If an employer shows a fair reason for dismissal, the question of fairness is then determined by section 98(4) of the ERA.

33. Section 98 ERA
(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.

34. In Abernethy v Mott, Hay & Anderson [1974] ICR 323 it was confirmed that

> *"the reason for the dismissal is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee"*.

35. In Kelly v Royal Mail Group Ltd EAT 0262/18 Mr Justice Choudhury (President of the EAT) observed

> *"Whilst absence-related dismissals can fall under the rubric of capability within the meaning of S.98… there is no hard and fast distinction such that all absence-related dismissals must be so categorised. In the present case, the issue is not so much whether or not the Claimant was capable or unable to do his work as a result of ill health, but that his attendance was unreliable and unsatisfactory. That, it seems to me, is perfectly capable of falling into the residual category of some other substantial reason"*.

36. In Iceland Frozen Foods v Jones [1982] IRLR 439. The correct approach to reasonableness was given by Browne-Wilkinson J, the then President of the EAT:

> *"We consider that the authorities establish that in law the correct approach for the Industrial Tribunal to adopt in answering the question posed by s.57(3) of the 1978 Act [now s.98(4) of the 1996 Act] is as follows. (1) the starting point should always be the words of [s.98(4)] themselves; (2) in applying the section an Industrial Tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the Industrial Tribunal) consider the dismissal to be fair; (3) in judging the reasonableness of the employer's conduct an Industrial Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer; (4) in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another; (5) the function of the Industrial Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair."*

37. In Taylor v OCS Group Ltd [2006] ICR 602 CA, it was confirmed that the appeal is part of the overall process of a dismissal and is always relevant to the Tribunal's determination of fairness.

Deliberation

38. In respect of the claim of religious discrimination, the question for the Tribunal is *"was the less favourable treatment because of the Claimant's religion"*. In terms of the unfair dismissal claim under the Employment Rights Act, the Claimant's religion is not relevant.

39. A lot was made of paragraph 11 of the Respondent's holiday policy [62]. This is the paragraph relating to reporting when an employee cannot get back from holiday. The Claimant's argument is that he complied with this duty and therefore should not have faced disciplinary proceedings. The Tribunal rejects this argument. The Tribunal accepts the evidence of Mr Greenwood that the purpose of the policy is not to provide employees with *"uncontrolled unpaid leave"*. The Tribunal is satisfied that any reasonable reading of this paragraph of the policy relates to situations where employees

are unable to return through no choice of their own. The paragraph refers to the Unexpected Events and Adverse Weather Policy, which is sadly not been provided. Nonetheless, the Tribunal accept the corroborative evidence of Mr Bobbin and Mr Greenwood, who explained that this policy contains a list of examples of situations where paragraph 11 of the policy would apply.

40. It is clear to the Tribunal that paragraph 11 of the holiday policy is for use when an employee is unable to return to work due to events beyond their control.

41. The Tribunal rejects the Claimant's assertion that he was *"stuck"* on his course. The Claimant had booked three weeks annual leave to undertake a purification course which he knew could last longer than three weeks. This was a conscious choice made by him. There was nothing preventing him from returning to work, other than the fact that he would not complete the course. We understand that this is something the Claimant wanted to do, and not completing it would have a financial impact on him insomuch that he had paid for it, but it is not the case that he was unable to leave. He was not being held against his will, nor were there any travel issues that would affect his ability to return to the UK. The Claimant was not *"stuck"*.

42. The Tribunal's view is that the Claimant has made far too much of paragraph 11 of the holiday policy. Paragraph 11 was not applicable to his circumstances.

43. In submissions, the Claimant's representative also referred to the Claimant's contract, and that there was no mention of him being able to take *"a few extra days"* within the contract. The Claimant's argument on this point is confusing, as the argument appears to be that he was somehow contractually entitled take extra unpaid leave as long as he informed his employer that that's what he was doing. The Tribunal rejects this argument. The employment contract is clear that the Claimant is required to be at work during his shifts, for the hours and at the time specified in his contract. The only exceptions to this are his authorised holiday allowance, or authorised sickness. The Claimant therefore had no contractual right to have further unpaid leave in excess of his holiday entitlement.

44. As per the Findings of Fact, on 18 August 2023 the Claimant requested one extra week holiday, but he did not have sufficient holiday entitlement to allow this. As said above, there was no requirement on the Respondent to grant unpaid leave. Paragraph 3 of the holiday policy [59] makes it very clear what the requirements are for requesting holiday. For periods of one week or more requests should be made one month in advance. The policy specifically states:

> *"Employees who, having had a request for floating holiday rejected, and who subsequently take the time off for some other reason, will be investigated. In the event that the employee cannot provide a satisfactory reason for their absence then appropriate disciplinary action may be taken"*.

45. Three managers refused the Claimant's request due to business need. The Tribunal has taken into account the nature of the Respondent's business, which makes precision parts for the aerospace industry. The Tribunal accept there was a business need for the Claimant to be at work on 21 August due to an influx of orders which were time sensitive. The Respondent therefore acted reasonably when it made a reasonable management request for the Claimant to attend work as agreed.

46. The Tribunal has accepted that there was no further contact between the Claimant and Respondent over the weekend of 19 and 20 August 2023. The Respondent was expecting the Claimant to be in work on Monday, 21 August 2023. This, in the Tribunal's view, is an entirely reasonable expectation. The Claimant did not attend work on this day, as he was still in Hungary.

47. Until that point, therefore, it was not clear to the Respondent why the Claimant had been absent on Monday 21, Tuesday 22, Wednesday 23 and Thursday 24 August. The Respondent was reasonably expecting the Claimant to be in work, could reasonably have expected him to comply with the sickness absence reporting requirement if he was unwell.

48. The Tribunal accepts the evidence of Shaun Bobbin that he did not have a discussion with Sonia Pink prior to him sending his invitation letter to the investigation meeting [83] on 30 August.

49. It was, therefore, at that point, not clear to the Respondent which policy, if any, the Claimant was in breach of. The Respondent did know that the Claimant had been absent without authorisation for five days. This needed to be investigated, and this was the point of the investigation meeting.

50. The Respondent did not act unreasonably in assuming that this absence could potentially breach the holiday policy, the disciplinary policy, and the sickness reporting policy. Respondent at this point was not aware whether the Claimant was back in the UK or not. The Respondent therefore did not act unreasonably when it cited the sickness absence reporting policy in the invitation to the investigation meeting which was held on 4 September.

51. The Tribunal is, however, satisfied that matters under the sickness absence reporting policy should not have progressed to a disciplinary hearing. It should have been apparent to the Respondent at the investigation stage that this was not a matter where the sickness absence reporting policy applied.

52. Nonetheless, the Tribunal is satisfied that this is not the only policy under which the disciplinary proceeded. Paragraph 3 of Claire Vincent's witness statement reads

> *"Further to a disciplinary investigation done by Shaun Bobbin, the matter was referred to me to consider disciplinary allegations of Zoltan's unauthorised absence from work between 21 – 25 August 2023, and his failure to comply with the absence reporting procedures of the Sickness Absence Management Policy"*.

53. The logical reading of this is that there were both disciplinary matters to be dealt with under the disciplinary policy, and absence reporting matters to be dealt with under the sickness and absence reporting policy. It was not just the Sickness Absence policy that was being used.

54. It is therefore clear to the Tribunal that Ms Vincent was also considering the disciplinary policy, and it was reasonable to do so. As we have seen, paragraph 3 of the holiday policy states

> *"Employees who, having had a request for floating holiday rejected, and who subsequently take the time off for some other reason, will be investigated. In the event that the employee cannot provide a satisfactory reason for their absence then appropriate disciplinary action may be taken"*.

55. The disciplinary policy states, under the heading 'gross misconduct' the following examples of offences which are regarded as gross misconduct. It is not an exhaustive list. The list includes

> *"failure to attend work, absence from the normal workplace without permission, serious insubordination"*.

56. The Tribunal does not accept the wrong policy was used to dismiss the Claimant. The Tribunal is satisfied that the Respondent had a genuine belief that the Claimant had failed to attend work, had been absent from the normal workplace without permission, and had committed serious insubordination, and this genuine belief was based on reasonable grounds.

57. The Claimant further argues that his dismissal was outside the range of reasonable responses. The Tribunal must therefore look at whether it was reasonable for the Respondent categorised the Claimant's conduct as gross misconduct, and - if it was right to do so - whether the option to dismiss would have been one available to a reasonable employer acting reasonably.

58. It is a matter of fact that the Claimant was absent from work between 21 August and 25 August 2023, and that he did not have permission to be absent. A lot was made during the about the fact that the Claimant was honest and polite and requested this additional time off. It was said that he could have just called in sick, and the effect would be the same. The Tribunal rejects this argument. While it is true that the effect on the Respondent's workflow would be the same, it would also be the case that the Claimant was not sick. He would have been lying. He would have opened himself up for disciplinary proceedings under a different route.

59. The Tribunal, of course, acknowledges that the Claimant did not lie. He did not say that he was sick; he was open and honest and told the truth. The Respondent's witnesses commended him for that, but the fact remains that he did not have any further holiday entitlement, he had not had any further holiday approved, and his request for unpaid holiday was refused. He still decided to take the unauthorised leave anyway, and therefore was not at work when the Respondent could reasonably have expected him to be so.

60. Put simply, the Claimant had no entitlement or right to expect that he would be allowed to take unpaid time off in addition to his contractual holiday arrangement.

61. It was argued in submissions on behalf the Claimant that the wording in the gross misconduct part of the disciplinary policy in relation to *"absence from the normal workplace without permission"* was a *"general catch all"* for people who *"don't come back"*. The Tribunal rejects this argument. There is nothing to say that this is only to be applied to people who leave and never return. The wording of the policy is such that absence from the normal workplace without permission for any length of time, regardless of any intention to return or not, would be sufficient to be categorised as gross misconduct. It was therefore reasonable of the Respondent to categorise the Claimant's failure to attend work, and his absence from the normal workplace without permission, to be gross misconduct.

62. Further, the Claimant had his request for additional leave denied by three managers. There was a valid business reason for this to be denied. The Claimant nonetheless chose to ignore this instruction from management and not attend work. The Tribunal considers that the Respondent was reasonable in considering this to be serious insubordination and was therefore reasonable in categorising this as gross misconduct.

63. In respect of dismissal being within the range of reason responses, the Tribunal is satisfied that Ms Vincent considered other options, but she concluded that the conduct was so serious that summary dismissal was warranted in the circumstances. This matter was also considered by Mr Greenwood on appeal. The Tribunal is also satisfied that he considered a range of options but concluded that dismissal was the correct outcome. The Tribunal is not permitted to substitute its own view on this. The Tribunal does, however, find that dismissal for failure to attend work for one week and serious insubordination would have been an option open to any reasonable employer acting reasonably. The decision to dismiss was therefore not outside the range of reasonable responses.

64. In terms of procedure, the Tribunal is satisfied that the Respondent's procedure was reasonable. There was an investigation meeting; then a disciplinary meeting held in two parts in order to be able to collect further evidence. The Claimant was given the opportunity to tell his side of the story at both meetings. The Respondent should not have referred to the Sickness Absence Management Policy at the disciplinary meeting but this failure is not so serious as to undermine the whole process and render the dismissal unfair. Any failures in the process were corrected on appeal.

65. The Claimant's claim of unfair dismissal therefore fails.

66. The Tribunal then considered the claim of religious discrimination.

67. Section 136 prescribes two stages to the burden of proof: Stage 1 (primary facts) and Stage 2 (employer's explanation).

68. At Stage 1, there must be primary facts from which the Tribunal could decide – in the absence of any other explanation – that discrimination took place.

69. The Tribunal notes the word, *"could"*. All that is needed at this stage are facts from which an inference of discrimination is possible. As it was put in Madarassy v Nomura International Plc [2007] EWCA Civ 33 , primary facts are sufficient to shift the burden if *"a reasonable Tribunal could properly conclude"* on the balance of probabilities that there was discrimination.

70. At Stage 1, the burden of proof is on the Claimant (see Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913; and Royal Mail Group Ltd v Efobi [2021] UKSC 22

71. The Tribunal accepts the evidence of Gary White that did not know that the Claimant was on a religious course when he refused the Claimant's request for further holiday. That decision therefore could not have been based on the Claimant's religion. It is a decision to refuse the unpaid holiday that begins the process of the Claimant choosing to take unauthorised leave anyway and thus making himself liable to disciplinary proceedings.

72. The Tribunal does not accept the Claimant's argument that the comments made by Ms Vincent during the reconvened disciplinary hearing [105 – 106] can be read as saying that the company would not support him *"taking any course or other actions in Scientology in the future"* [ZF18]. Ms Vincent's comments are in relation to the Claimant choosing to take time off in excess of his authorised holiday allowance. The Tribunal does not accept that these comments are made in relation to religion.

73. There are therefore no primary facts to suggest the Claimant's religion played a part in the decision to dismiss him. A suspicion on the Claimant's part that it might have been for this reason is simply not enough. There has to be *"something more"* (Madarassy v Nomura International Plc [2007] EWCA Civ 33). The Tribunal is satisfied that the Claimant has not made a prima facie case for discrimination and therefore the discrimination claim fails at this point.

74. If the Tribunal is wrong on this point however, the Tribunal has gone on to consider whether the Respondent can demonstrate a non-discriminatory reason for the dismissal. The Tribunal has considered the *"mental processes"* of the alleged discriminator: Nagarajan v London Regional Transport [1999] IRLR 572.

75. The Respondent's case is that the Claimant was dismissed for breaches of the holiday and disciplinary policy. This is a perfectly reasonable course of action to the Respondent to take. The Tribunal is satisfied that this was what was in the mind of the decision maker, Ms Vincent, when she chose to dismiss the Claimant.

76. The Tribunal is satisfied that if any other employee, of any religion, had taken five days unauthorised leave when they had been requested to be at work during that time, then they would have been subject to the same disciplinary process that the Claimant was, and that the outcome would

have been the same. The Tribunal is therefore satisfied that the Claimant was not treated differently because of his religious beliefs.

77. The Claimant's claim of religious discrimination therefore fails.

Approved by:

Employment Judge G. King
Date: 10 June 2025

REASONS SENT TO THE PARTIES ON
26 June 2025

Jade Lobb
FOR THE TRIBUNAL OFFICE