EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001095/2024

Held in Aberdeen on 8, 9, 14, 15 & 16 July 2025

Employment Judge N M Hosie

Members K Pirie; J McCaig

Mr M Daryoush	**Claimant** **In Person**
Baker Hughes Limited	**Respondent** **Represented by:** **Ms C Low,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous Judgment of the Tribunal is that the claim is dismissed.

REASONS

1. The claimant, Mr Mahdi Daryoush, brought complaints of "ordinary" unfair dismissal and automatic unfair dismissal, by way of making a protected disclosure (whistleblowing). The respondent, Baker Hughes Limited, admitted that it had dismissed the claimant but claimed that the reason was "gross misconduct" and that it was fair.

2. The claimant maintained that he had made a protected disclosure to the respondent relating to a "tender proposal" which he had prepared and which he maintained he had been asked to redo but had refused, and that he had repeated his concern with regard to this request on four occasions. He claimed that was the reason why he was dismissed. However, this was denied by the respondent. They maintained that the claimant was guilty of gross misconduct in respect of two issues namely, the downloading of a significant number of confidential documents from his Baker Hughes' email address to his personal email address; and a failure to disclose to the

respondent a potential conflict of interest in that he was the owner and Director of "Naptavaus Limited". They maintained that both of these matters constituted gross misconduct on the claimant's part and that was the reason for his dismissal.

The evidence

3. On behalf of the respondent we heard evidence from:-
   - Christopher Alves, Project Manager and the claimant's line manager;
   - John Morrison, UK Country Director, who took the decision to dismiss the claimant;
   - James Richardson, Vice-President of the respondent at the relevant time who heard the claimant's appeal against his dismissal.

   We then heard evidence from the claimant.

4. A joint bundle of documentary productions was also submitted ("P"), along with an agreed Chronology of Events and a Cast List.

General observations on the evidence

5. The Tribunal was of the unanimous view that each of the respondent's witnesses gave their evidence in a measured, consistent and convincing manner. Each of them presented as credible and reliable.

6. In contrast, the claimant's evidence, in parts, was inconsistent, evasive and unconvincing. He admitted during the disciplinary procedures that he had downloaded confidential documents and apologised for doing so. He explained that he had downloaded the documents the day before a previous disciplinary hearing to protect his employment in the future should he be dismissed but he had been under stress at the time fearing that he would be dismissed. As it transpired, he was not dismissed. He was issued with a final written warning. It was also not disputed that he was the owner and Director of a Limited Company and that he had not disclosed this to the respondent. He explained that he did not think he had to as the Company was "dormant" and had never traded.

7. The respondent did not rely on the final written warning in the present case in support of their contention that the claimant's dismissal was fair. They relied solely on the two issues of alleged gross misconduct.

The facts

8. Helpfully, a "List of Agreed Facts" was also which produced. We were satisfied it was accurate and, on the basis of which, we make the following findings in fact.

The claimant

9. The claimant began employment with the respondent on 1 March 2019.

10. At the time of the claimant's dismissal, he was employed as a Sales Technician Manager.

11. The claimant worked from his home in London, undertaking office visits to Aberdeen when required.

12. The claimant's gross annual salary was £77,851.

13. The claimant was a member of the respondent's pension scheme.

14. The claimant's most recent contract of employment is at pages 214 to 222 of the bundle.

Disciplinary

Background

15. On 5 September 2023, the claimant sent a total of 14 emails to his personal email address. Those emails contained attachments totalling 486 documents.

16. On 6 September 2023 at 7:52pm, the respondent's Chris Alves was notified via email of this transfer by the respondent's data protection team. A copy of this email is set out at page 93 of the bundle.

17. On 7 September 2023, at 4:24am, the respondent's Chris Alves first requested to be provided with copies of the documents that had been transferred. A copy of this email is set out at page 92 of the bundle. Mr Alves followed up on this request on 2 October 2023, and again on 18 October 2023 and 24 October 2023. This is set out at pages 91 and 92 of the bundle.

Investigation

18. An investigation was thereafter undertaken by Paul Harding.

19. Mr Harding took statements from the claimant and Mr Alves. Those statements are at pages 87 to 90 of the bundle.

20. In addition to this, Mr Harding gathered a number of other documents, including:

- email correspondence as referenced at clauses 3.2 and 3.3;
- document catalogues of the documents transferred by the claimant (as set out at pages 94 to 122 of the bundle);
- the claimant's learning report showing his training record (as set out at page 123 of the bundle);
- documents relating to the incorporation of the claimant's Company (as set out at pages 124 to 209 of the bundle);
- the claimant's conflict of interest questionnaire (as set out at pages 210 to 213 of the bundle);
- the claimant's contract of employment (as set out at pages 214 to 222 of the bundle); and
- relevant policies and procedures (as set out at pages 224 to 297 of the bundle);
- Mr Harding prepared an investigation report setting out his findings. This report is set out at pages 78 to 86 of the bundle.

Disciplinary Hearing

21. John Morrison was appointed to chair the disciplinary hearing.

22. The claimant was invited by Mr Morrison to attend a disciplinary hearing scheduled for 17 January 2024. The invitation set out the purpose of the hearing was to consider the two allegations of gross misconduct that were set out in the investigation report, namely:

(i) that on 22 August 2023 and 5 September 2023, the claimant emailed 486 documents including company confidential and third-party confidential information from his Baker Hughes email address to his personal email address; and

(ii) that the claimant was a Company Director of Naptavaus and failed to disclose this as a potential conflict of interest.

The letter also confirmed his right to be accompanied, that dismissal was a possible outcome; and enclosed a copy of the investigation report. The letter is set out at pages 298 and 299 of the bundle.

23. The disciplinary hearing took place on 17 January 2024. In attendance were the claimant, John Morrison and Ashley Anderson (HR Business Partner).

24. The claimant was given a full opportunity to state his case at the hearing. Minutes of the hearing are at pages 304 to 349 of the bundle.

25. The claimant was invited to a further disciplinary hearing on 15 February 2024. Again, in attendance were the claimant, John Morrison and Ashley Anderson (HR Business Partner). The claimant was given a further opportunity to state his case. Minutes of the hearing are at pages 396 to 415 of the bundle.

26. The claimant was dismissed by reason of gross misconduct and without notice on 22 February 2024. This letter is at pages 416 to 432 of the bundle. It was concluded that both allegations as set out at paragraph 23(i) and (ii) above, were separate instances of gross misconduct.

Appeal

27. The claimant appealed the decision by letter dated 26 February 2024. This letter is at pages 433 to 435 of the bundle.

28. James Richardson was appointed to chair the claimant's appeal.

29. James Richardson invited the claimant to attend an appeal hearing on 3 June 2024. The invitation outlined the claimant's entitlement to bring a companion. This letter is at pages 447 to 448 of the bundle.

30. The appeal hearing took place on 5 July 2024. In attendance were the claimant, James Richardson and Ellie Reidford (HR Business Partner).

31. The claimant was given an opportunity to fully state his grounds of appeal. Minutes of the appeal hearing are at pages 449 to 465 of the bundle. These are an accurate record of the hearing.

32. The appeal was refused by the respondent by way of letter dated 29 July 2024. This letter is at pages 466 to 475 of the bundle. Mr Richardson upheld both instances of gross misconduct and ultimately the decision to dismiss the claimant.

Additional findings in fact

Alleged protected disclosure

33. The claimant relied upon an alleged disclosure, on 1 March 2023 during a "Teams Call", that he had refused to amend a "cementing proposal technical presentation" which he had prepared, at the request of Havard Serigstad, a Senior Manager. Ms Anne-Marie Ekwue, the Delivery Manager for the UK Cementing Team joined the call and the claimant repeated the alleged disclosure (P.517).

34. On 17 October 2023 the claimant was issued with a final written warning (P.58-70). Although the final written warning was not part of the respondent's

case, the claimant maintained that it was relevant to his automatic unfair dismissal complaint as he repeated the alleged disclosure during the disciplinary procedure which led to him being issued with the final written warning. He referred to the matter in the Statement he gave on 9 June 2023 to Stewart McWilliam, Onshore Service Manager, who carried out the investigation (P.525).

35. He told Gregor McDonald, Product Line Director, about the matter at the disciplinary hearing on 6 September 2023, which led to him being issued with the final written warning (P.568).

36. He told John Morrison about the matter on 15 February 2024, during the disciplinary hearing which led to his dismissal, which was the subject matter of the present case (P.400-401).

Respondent's submissions

37. The respondent's solicitor made oral submissions. The following is a brief summary.

38. In support of her submissions, she referred to the following cases:-

Kuzel v. Roche Products Ltd [2008] ICR 799;
British Home Stores Ltd v. Burchell [1978] IRLR 379;
Iceland Frozen Foods Ltd v. Jones [1982] IRLR 439;
Sainsbury's Supermarkets Ltd v. Hitt [2003] IRLR 23;
RSPB v. Croucher [1984] ICR 604

39. So far as the complaint of automatic unfair dismissal by reason of making a protected disclosure was concerned, the respondent's solicitor submitted that the claimant had failed to establish that he had made a disclosure which qualified for protection, in terms of s.43B of the Employment Rights Act 1996, despite being afforded the opportunity in the course of the Tribunal hearing, following an adjournment, to specify the disclosures which he had made.

40. She submitted that it was clear that the claimant had committed misconduct, "*and he sought to direct the Tribunal from that*".

41. Further, and in any event, the claimant had failed to establish a causal connection between the alleged disclosure and his dismissal. In this regard, she submitted that the respondent's evidence was unequivocal: the claimant was not dismissed for making a disclosure, but because he had committed gross misconduct, in two respects: he had e-mailed some 486 documents to his personal e-mail address, some of which were confidential; he failed to disclose he was a Director of a limited Company (P.146-143).

42. The respondent's solicitor also submitted that no inference could be drawn from the fact that there was a delay of some two months from the time that Mr Alves was alerted to the fact that the claimant had downloaded a substantial amount of documentation as Mr Alves had to establish the content of the documentation first. As soon as he did, the claimant was suspended.

43. Nor was there any evidence of collusion on the part of Anne-Marie Ekwue, Christopher Alves, John Morrison and James Richardson because the claimant had made a disclosure, as he alleged. The claimant had only made *"unsubstantiated allegations"*

44. Indeed, the claimant did not allege and complain at the time he was being disciplined because he had "whistleblown" and his contention that he was *"naive"* because he did not do so was "*not credible"*.

45. Further, if the respondent had wanted to dismiss the claimant because he had made a protected disclosure they could have done so at the first disciplinary, rather than only issuing him with a final written warning.

46. So far as the complaint of "ordinary" unfair dismissal was concerned, the respondent's solicitor submitted that the reason was conduct, an admissible reason, and that it was fair in terms of s.98(4) of the 1996 Act. She further submitted that the "***Burchell*** test" had been satisfied and that, in addition, a fair procedure had been followed by the respondent.

47. The claimant had admitted transferring confidential documents and that he had not disclosed a potential conflict of interest.

48. The respondent's solicitor also submitted that the claimant had made a conscious decision to select the documents he required when preparing the "Zip files" and he admitted he took the documents "*to help him for a future career*" (P.368 and P.377).

49. Indeed, during the course of the Tribunal hearing he produced a confidential document "*which he has no reason to have".*

Conflict of interest

50. So far as this issue was concerned, the respondent's solicitor submitted that the respondent had reasonable grounds to conclude that the claimant had committed gross misconduct.

51. She submitted that it was sufficient, based on the respondent's Conflict of Interest Policy that the claimant's Company, Naptavaus Ltd, existed. Further, he advised the respondent that when he started to work for them that he was not a Director of another Company (P.212) and at the appeal he had apologised and admitted wrong doing.

52. It was further submitted, with reference to the ***Burchell*** test, that the respondent had carried out "*an extremely thorough investigation and that it had a reasonable belief in the claimant's guilt.*"

53. In conclusion, the respondent's solicitor summarised *"the procedural fairness":-*

"

- *The claimant was well aware of the allegations;*
- *He was afforded two disciplinary hearings although there was no requirement to do so;*
- *He was given an opportunity to be heard;*
- *The outcome letter was comprehensive running to some 17 pages;*
- *He was afforded the right of appeal.*"

54. His dismissal was fair. His claim should be dismissed.

Claimant's submissions

55. The claimant also made oral submissions at the Hearing. He also submitted a written "Closing Statement" which is referred to for its terms. The following is a brief summary.

56. He emphasised that he was a *"professional"* with over 20 years' international experience in the oil and gas industry, that he *"upheld the highest standards"* and that his employment with the respondent was *"exemplary".*

57. He maintained that he had made a protected disclosure which he repeated on 3 subsequent occasions and that following his disclosure "*the respondent's attitude changed considerably*" and "*despite a strong performance the hostility grew.*"

58. He further submitted that the timing of events was significant. He accepted that he had downloaded the documentation to his personal email account on 5 September 2023, the day before his first disciplinary hearing which led to him being issued with a final written warning. He explained that he had done so because the disciplinary proceedings had "*put him in a stressful situation*".

59. His first disclosure was during the Teams Call on 1 March 2023.

60. So far as the second disciplinary proceedings were concerned, which led to his dismissal, he claimed that John Morrison had a conflict because of his *"close working relationship with his line manager Chris Alves."* He was not aware that he had a right to object and this wasn't included in the letter inviting him to attend a disciplinary hearing.

61. He submitted that Mr Morrison had prior knowledge of the first disciplinary and the fact that he had been issued with a final written warning. However, he submitted that Mr Morrison "*was only appointed because of his experience*" and that he "*wasn't sure of the process.*"

62. So far as the documents he downloaded were concerned, he submitted that Mr Morrison had "*exaggerated his evidence"* as 80% of the documents were personal and not confidential. He claimed that he did not know the content of all the documents he downloaded and that he didn't consider that these documents might have been confidential.

63. He also complained that he was not allowed to examine all the documents, and that as his laptop was seized and he was denied access, his "*hands were tied to provide evidence*". Also, his "*highlighted comments*" in the disciplinary minutes were ignored.

64. He claimed that the disciplinary procedure "*was shaped by his protected disclosure*". He submitted that it was significant that Mr Alves only took action immediately after he became aware of the final written warning (P.91).

65. So far as the alleged breach of confidentiality was concerned, he reminded the Tribunal that he was allowed to continue working "*for 76 days from 5 September to 20 November 2023*".

66. His Company was "*dormant*" and had never traded. The fact that he had not disclosed this when he was hired was due to a *"linguistic misunderstanding*". Further, and in any event, he could have started up a new Company at any time. The fact that he had this Company only came to light when the respondent read the emails which he had downloaded. He disputed that he received an annual reminder to disclose any potential conflict.

67. He submitted, once again, that he only downloaded the documents shortly before the first disciplinary hearing on 6 September 2023 because he was "*under pressure*", "*forced and pushed*" and it *"happened during a moment of high emotional stress*", caused by the first disciplinary which was "*not a fair process"*.

68. He also submitted that, *"if confidential material was accidentally included it was a mistake – not misconduct".*

Discussion and Conclusions

69. The Tribunal remained mindful throughout this case, and made allowances for the fact, that although the claimant had the benefit of legal advice until shortly before the hearing, he had no experience of Employment Tribunals and of conducting hearings.

"Ordinary" unfair dismissal

70. We decided to consider and determine this complaint first of all.

The reason for the dismissal

71. This was a pivotal issue in the case as the respondent maintained that the reason for the claimant's dismissal was conduct, whereas the claimant maintained that it was because he had made a protected disclosure which he had repeated on a number of occasions.

72. In every unfair dismissal case, where dismissal is admitted, s.98(1) of the Employment Rights Act 1996 ("the 1996 Act") requires the employer to show the reason for the dismissal and that it is an admissible reason in terms of s.98(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. An admissible reason is a reason for which an employee may be fairly dismissed and among them is conduct. That was the reason which the respondent claimed was the reason for the claimant's dismissal.

73. As we recorded above, each of the respondent's witnesses presented as credible and reliable. By his own admission, the claimant had downloaded confidential documents to his personal email account. These documents had been entrusted to him, exclusively for his work as an employee of the respondent. They were not only confidential to the respondent but also to an important third party client. Further, he was the owner and a Director of a limited Company, Naptavaus, the existence of which he was required to disclose to the respondent in terms of the respondent's Conflict of Interest Policy (P.282-297). He was required to disclose this using the respondent's "Conflict of Interest reporting tool" but he failed to do so. He had intimated, in writing, that he had no such interest (P.212).

74. The claimant asserted, of course, that conduct was not the reason for his dismissal, but rather because he had made a protected disclosure. However, in the Tribunal's unanimous view, there was no evidence to suggest that any of the respondent's witnesses was not favourably disposed to the claimant, that they resented him raising the alleged disclosure, and that this was a factor in the decision to dismiss him.

75. The claimant maintained that the timing of events was significant, in particular, that his line manager, Mr Alves, only actively pursued the investigation of the downloading of the confidential documents immediately after he was advised that he had been issued with a final written warning and not dismissed. The relevant email exchanges between Mr Alves and the respondent's Data Protection Team can be found in the bundle at pages 91 to 93. Mr Alves was first notified of the download to the claimant's personal email address, on 6 September 2023 (P.93). This was considered to be an irregular activity, due, at least in the first instance, to the volume of the documents downloaded.

76. However, understandably Mr Alves wanted to see the files which had been downloaded first, so that he could examine their content and decide whether any action was required. He advised the Data Protection Team of this the following day (P.92) and sent a reminder on 2 October 2023 (P.92).

77. On 18 October, he sent another reminder (P.91) which was the day after the claimant was issued with a final written warning (P.58-70).

78. Mr Alves was an impressive witness. His evidence was measured and consistent. As a Project Manager he had many duties and responsibilities. He had, "*a lot of plates spinning"*, as he put it. He explained that when he was advised, verbally, that the claimant had been issued with a final written warning, "*this triggered in my mind that I needed to chase this up*." We believed him. Mr Alves was not motivated by the claimant's disclosure. What motivated him to investigate the matter and institute disciplinary procedures, was the fact that the Data Protection Team had brought the excessive download to his attention and when the documentation was examined some were found to be confidential and should not have been downloaded by the claimant. It had also came to light, at that time, that the claimant had a limited Company as there was reference to this Company, Naptavaus, in the headers to some emails .

79. In all these circumstances, therefore, the fact that the download and the existence of the claimant's limited Company were not disputed; the absence of any evidence to suggest that the claimant's alleged disclosure was a factor in the decision to initiate disciplinary action which led ultimately to the claimant's dismissal; the credibility and reliability of the evidence of the respondent's witnesses; and the absence of any evidence to suggest collusion, we arrived at the unanimous view that conduct was the reason for the claimant's dismissal.

80. The remaining question which we had to determine, under s.98(4) of the 1996 Act, therefore, as far as the "ordinary" unfair dismissal complaint was concerned, was whether the respondent had acted reasonably in treating that reason for dismissing the claimant as a sufficient reason and that question

had to be determined in accordance with equity and the substantial merits of the case.

81. When considering this issue, we were mindful that the respondent had categorised the allegations against the claimant as "gross misconduct". However, in terms of s.98(4) the real focus of an unfair dismissal complaint is a substantive one of whether the claimant's conduct in itself can reasonably have been considered by a reasonable employer to be "sufficient" for dismissal. Where conduct is put forward by a respondent as the reason for the dismissal, the primary focus as to whether that is reasonable has to be on the character of that conduct.

82. The point we make is that the question of whether a dismissal is fair or unfair under s.98(4), is not answered by deciding whether or not the employee has been guilty of gross misconduct. This was confirmed by the EAT in ***Western Recovery Services v. Fisher*** EAT0062/10: when considering the fairness or otherwise of a dismissal the only relevant question is whether the conduct was *"sufficient for dismissal",* according to the standards of a reasonable employer and whether dismissal accorded with, *"equity and the substantial merits of the case".*

83. Accordingly, we were required to consider in the present case, the nature, character and the effect of the claimant's conduct.

84. To determine whether a dismissal for conduct is fair, valuable guidance was provided in the well known case of ***Burchell*** to which we were referred by the respondent's solicitor. Mr Justice Arnold gave the following guidelines in that case at page 380:-

"*What the tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the conduct in question (usually, but not necessarily dishonest conduct), entertained a reasonable suspicion amounting to a belief in the guilt of that employee of that misconduct of that time. That is really stating shortly and compendiously what in fact is more than one element. First of all, there must be established by the employer the fact of that belief: that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief and thirdly, we think that the employer, at the stage at which he formed that belief, on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case.*"

85. We also remained mindful, with reference to ***Sainsbury's Supermarkets***, to which we were also referred, that the objective standards of the reasonable employer must be applied to all aspects of the question of whether an employee was fairly and reasonably dismissed.

86. This means that the employer need not have conclusive direct proof of the employee's misconduct – only a genuine and reasonable belief reasonably tested. This is an objective test to be judged according to what would be expected of a reasonable employer. It is not a matter in which the Tribunal is entitled to substitute its personal view of what it might have done had it been the employer, but rather to consider the matter objectively and only in terms of what a reasonable employer might have done, recognising that in many cases there is a range of reasonable responses which one employer might reasonably take one view, and another quite reasonably take another (***Iceland Frozen Foods***).

87. In regard to the matter of substitution, the employer of course cannot be the final arbiter of it own conduct in dismissing an employee. It is for the Employment Tribunal to make its judgment always bearing in mind the test is whether the dismissal in the whole circumstances is something that a reasonable employer could have done (***Bowater v. North West London Hospitals NHS Trust*** [2011] EWCA Civ 63).

ACAS Code of Practice

88. We also remained mindful that an Employment Tribunal is obliged (by s.207(2)) of the Trade Union & Labour Relations (Consolidation) Act 1992) to take into account the provisions of the ACAS Code of Practice on disciplinary and grievance procedures (2015). We also had regard to the accompanying Code (a non-statutory guide "Discipline & Grievances at Work") ("the ACAS Guide") which was most recently updated in July 2020.

89. The employer's compliance with the Code is a factor to be taken into account when determining the reasonableness of the dismissal, in accordance with the statutory test of reasonableness under s.98(4).

90. What then of the three-fold test in ***Burchell*** ?.

91. So far as the first branch of the test was concerned, the Tribunal was of the unanimous view that the respondent, and in particular the "decision makers", John Morrison and James Richardson, believed that the claimant was guilty of misconduct.

92. So far as the second branch of the test was concerned, the Tribunal was also of the unanimous view that the respondent's decision-makers had in their minds reasonable grounds upon which to sustain that belief.

93. The claimant accepted that some of the documents which he downloaded to his personal email address were confidential to the respondent and a third party. The respondent did not just rely on the number of documents which had been downloaded *"rather than their nature"*, as the claimant submitted.

The volume was what alerted the respondent's Data Protection Team first of all and why they escalated the matter to Mr Alves, the claimant's line manager. When examined, it was discovered that some of the documents were marked "confidential" and that was why the claimant was suspended, then disciplined. The claimant made great play of the fact that a very high percentage, some 80% he maintained, were "personal". But that was nothing to the point. The fact remained that he had downloaded a number of confidential documents and Mr Morrison's evidence was that downloading even one of these documents would have constituted misconduct.

94. Extracts of the documents were produced (P.103-122). They were attached to the Disciplinary Investigation Report which was prepared by the "Investigating Manager", Paul Harding, and copied to the claimant. These documents contained information confidential to the respondent and a third party client and were marked as such; they were not the claimant's property; the claimant was aware, or could reasonably be expected to have been aware, that he was *"prohibited"* from sending them to his personal email address and that by doing so he would be in breach of the respondent's procedures and Policies.

Respondent's Policies

95. The claimant was provided with these Policies, by way of appendices attached to his Contract of Employment (P.222). These included the respondent's Code of Conduct ("the Code")(P. 238-262). The Code included provisions with regard to safeguarding the respondent's Intellectual Property (P.256). The Intellectual Property created by its employees as part of their employment is owned by the respondent and can only be used or distributed, *"for the benefit of Baker Hughes"*, not for personal gain. The Code also contained provisions with regard to "Cyber Security & Privacy" (P.257).

96. Another Policy related to the "Acceptable use of Digital Technology Resources" (P.263-268) which included the following provision: " *Information about our Company, our customers, our employees, contractors, consultants and our suppliers is one of the Company's most valuable assets and must be used and protected in an appropriate manner"* (P. 263). It also contained the following provision (P.266): -

"***The following are examples of activities that are <u>prohibited</u>***

4.6 *Conducting Company business using non-approved systems and applications including external email accounts or unapproved instant messaging services is prohibited. This includes sending Company Information to your personal email account……*

8. Consequences of Violation of Policy

Any employee who engages in conduct which violates this policy may be subject to disciplinary action up to, and including, termination" (P.267).

97. In arriving at his decision to dismiss the claimant, Mr Morrison had regard to these Policies and also the "Information Classification Policy" (P.269-273); and the "Baker Hughes Data Privacy Policy" (P.274-281).

98. Further, and significantly, during the disciplinary hearing on 17 January 2024, the claimant admitted he had downloaded the documents the day before his first disciplinary hearing. He admitted that he did this because he feared that he would be dismissed and he would then be denied access to his Company laptop where the documents were saved (as it transpired he was not dismissed, but issued with a final written warning). He apologised at the disciplinary hearing and said this:

"*I thought, I'm going to go to a hearing and I'm going to get sacked immediately so my laptop would go. By the 5 September, I decided to transfer some of the information at……majority would belong to me, personally, and some of them were……I collected throughout the years.*" (P.313);

Well, let's put it this way, I did not have any ill-intention, you know what I mean. I didn't have any wrong thinking of abusing these documents. They were all collected to help me for a future career if one proceeded. That's the difference." (P.319)

99. The comment that he had downloaded the documents to help him in any future career was at odds with his submission that *"confidential material was accidentally included".* He had also gone to the trouble of selecting the documents and arranging them in zip files for easier and quicker transmission. The respondent's conclusion that he knew exactly what he was doing and this was not a "mistake" was one which a reasonable employer, acting reasonably, could have reached.

100. Further, at the disciplinary hearing on 15 February 2024 he apologised and said this: "*The act wasn't done purposely. It was wrong and I'm shameful.*" (P.414).

Conflict of Interest

101. So far as the other allegation of misconduct relating to the conflict of interest was concerned, it came to light when the downloaded documents were examined that the claimant was the owner and Director of a limited Company, namely Naptavaus Ltd details of which were appended to Paul Harding's investigation report (P.124-208). It was also not disputed that the claimant

had not disclosed this to the respondent, as he was required to do in terms of the respondent's Conflict of Interest Policy (P.282-297).

102. For all these reasons, therefore, the Tribunal was of the unanimous view that the respondent had reasonable grounds upon which to sustain its belief in the claimant's misconduct.

103. Finally, so far as the three-fold test in ***Burchell*** was concerned, the Tribunal had no difficulty in arriving at the unanimous view that at the stage at which the respondent formed that belief on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances.

104. Under sub-section 98(4)(a) the question of whether the employer acted reasonably, particularly where the reason for dismissal is related to the conduct of the employee, frequently involves consideration of the adequacy of the employer's investigation into some alleged wrongdoing and thus whether a reasonable employer could have concluded that he was guilty.

105. In light of the claimant's admissions, the position in the present case was clear as to what had happened. However, Mr Harding's investigation report and the subsequently disciplinary procedures were comprehensive. The claimant was made well aware of the allegations and afforded a reasonable opportunity of responding to them.

106. The Tribunal was of the unanimous view, therefore, that the three-fold test in ***Burchell*** had been satisfied: we had no difficulty deciding that the respondent had a genuine and reasonable belief in the claimant's guilt, reasonably tested.

The disciplinary procedure

107. Another frequent issue for an Employment Tribunal in an unfair dismissal case, is whether the employer had adopted a fair procedure throughout the disciplinary process. Again, in this case the manner in which the respondent went about things could not be faulted; the ACAS Code was observed; in the Tribunal's view the process which the respondent followed was comprehensive, detailed and accurately recorded. It was well-nigh exemplary. It was in accordance with the respondent's Discipline Policy (P. 224-237).

108. The claimant complained that he had not been allowed to consider each of the documents which he had downloaded. He did not make such a request during the disciplinary process. In any event, the claimant was provided with a copy of Mr Harding's investigation report along with an *"email and document catalogue with extracts from the various documents*" (P.103-122). Having regard to the guidance in ***Sainsbury's Supermarkets***, in all the circumstances this was within the band of reasonable responses which a reasonable employer could have adopted.

109. He also complained that Mr Morrison was conflicted due to his close working relationship with Mr Alves and that he was only selected to conduct the disciplinary hearing because of his length of service with the respondent. We had no difficulty rejecting these allegations. Mr Morrison was an excellent witness, credible and reliable; there was no evidence of any bias or anything to suggest that he was conflicted; he had considerable experience of conducting disciplinary procedures and the manner in which he conducted the disciplinary hearing in the present case was testament to that; he even afforded the claimant the opportunity of a second disciplinary hearing which, as a reasonable employer, he had no requirement to do, to make certain the claimant had been afforded every opportunity to respond to the allegations; further, and in any event, the claimant did not raise these matters at any time during the disciplinary process. He did not object.

Was dismissal a reasonable sanction?

110. We then went on to consider whether, in all the circumstances, dismissal was a reasonable sanction.

111. In this regard, we were mindful of the guidance given in such well-known cases as ***Iceland Frozen Foods Ltd***, to which we were referred, that there is a band of reasonableness within which one employer might reasonably dismiss the employee, whereas another would quite reasonably keep him on. It depends entirely on the circumstances of the case whether dismissal is one of the penalties which a reasonable employer would impose. If no reasonable employer would have dismissed, then dismissal is unfair, but if a reasonable employer might reasonably have dismissed, then dismissal is fair.

Downloading documents

112. The claimant, of course, had almost five years' unblemished service. However, the downloading of these confidential documents was patently a very serious matter indeed. The claimant knew that it was wrong. He apologised and admitted his wrongdoing.

113. Having regard to the gravity of the misconduct in this regard and the potential harm which could have been caused to the respondent's business, the Tribunal was of the unanimous view that the decision to dismiss for this reason alone was within the band of reasonable responses which a reasonable employer might have adopted.

Gross misconduct

114. Further, the Tribunal was of the unanimous view that a reasonable employer could have concluded that the claimant was guilty of gross misconduct in this

regard and that summary dismissal was justifiable. The respondent's Discipline Policy gives examples of Gross Misconduct (P.235-236). These include: -

"

- *Breach of the Company's or its customers and/or client's policies or procedures.*
- *Conduct which undermines the Company's relationship with its clients and customers or is otherwise prejudicial to the Company's interests.*
- *Breach of confidentiality.*
- *Violation of computer or electronic communication policies".*

Conflict of Interest

115. So far as the other issue of a conflict of interest was concerned, the Tribunal was of the unanimous view that while the respondent's finding that the claimant was guilty of misconduct in this regard, fell within the band of reasonable responses which a reasonable employer might have adopted, the decision that this constituted gross misconduct and would have justified the claimant's summary dismissal, on its own, did not.

116. The reasons for this were that the Company was "dormant"; it had never traded; and while the claimant had intimated, in writing, that he had no such interest (P.212) this was when he first started to work for the respondent in 2019 and on the evidence, the claimant was not reminded of this requirement thereafter. Also, when he started to work for the respondent he had asked if he could be engaged as a "contractor" using the vehicle of his limited Company. The respondent insisted on him being engaged as an employee. However, the respondent was aware at that time of the existence of his Company.

117. We were of the unanimous view that, strictly speaking, the claimant was in breach of the respondent's Conflict of Interest Policy (P.282-289) and, in particular, "**Employment and Involvement in a Company Outside of Baker Hughes"** (P.284-285). While this amounted to misconduct, his dismissal for the conflict of interest issue alone would not have been within the band of reasonable responses open to a reasonable employer. As we recorded above, this did not constitute gross misconduct.

118. Hower, his dismissal for downloading the confidential documents was within the band of reasonable responses which a reasonable employer might have adopted; and it was reasonable for the respondent to conclude that this was gross misconduct. The dismissal was fair, therefore, for that reason alone.

119. Of course, when the other, albeit less serious, misconduct in respect of the conflict of interest issue, is also taken into account, that only serves to reinforce the reasonableness of the respondent's decision to dismiss the claimant.

120. The unanimous decision of the Tribunal, therefore, is that the "ordinary" unfair dismissal complaint is dismissed.

Automatic unfair dismissal
Relevant law

121. The relevant statutory provisions in the 1996 Act are as follows:-

"***43A Meaning of 'protected disclosure'***

In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

43B Disclosures qualifying for protection

(1) In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –

(a) that a criminal offence has been committed, is being committed or it likely to be committed;
(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
(c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
(d) that the health or safety of any individual has been, is being or is likely to be in danger;
(e) that the environment has been, is being or is likely to be damaged, or
(f) that information tending to show any matter following within any of the proceeding paragraphs has been or is likely to be deliberately concealed."

122. S.103A of the 1996 Act is in the following terms:-

"***103A Protected Disclosure***

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."

123. The claimant raised the issue of Mr Serigstad asking him to change his tender proposal on four occasions. However, in ***Kilraine v Wandsworth London Borough Council*** [2018] ICR 1850 the Court of Appeal held that, in order for a disclosure to be a "qualifying disclosure", within the meaning of s. 43B(1), the disclosure had to have sufficient factual content and specificity. It must have sufficient factual content to be capable of tending to show one of the matters listed in s. 43B(1) (a)-(f).

124. The claimant relied upon s. 43(1) (b) and (d). We had reservations, as to whether what the claimant said to `the respondent actually satisfied the statutory test. One of the alleged disclosures was to Mr Morrison on 15 February 2024 at the disciplinary hearing (P.400-401). As we recorded above, he was not aware that the claimant had made a protected disclosure.

125. However, we decided, albeit with some hesitation that it did and that the claimant had made a disclosure qualified for protection.

126. In any event, ultimately that was of no consequence as we decided, unanimously that conduct was the reason for the claimant's dismissal; Mr Morrison, a credible and reliable witness, who took the decision to dismiss the claimant was not aware that the claimant had made a protected disclosure and said it was irrelevant to his decision; there was no causal connection between the claimant's dismissal and the alleged protected disclosure; there was no evidence of "collusion" by a number of the respondent's employees, as the claimant alleged. Also, as the respondent's solicitor submitted, had the respondent been minded to dismiss the claimant because he had made a protected disclosure they could have done so following the first disciplinary and not issued him with a final written warning.

127. Further, the claimant didn't allege at any time throughout what was a lengthy, detailed, disciplinary procedure, or at the Appeal that he was being disciplined and that he had been dismissed because he had made a protected disclosure/ "whistleblown". Also, he made no reference, at all, to the alleged disclosure at the Appeal, which was an ideal opportunity to do so. It appeared to us that this complaint was something of an afterthought.

128. This complaint was not well-founded, therefore, and it is also dismissed.

Dismissal of the claim

129. For all these reasons, therefore, the Tribunal arrived at the unanimous view that the claimant's dismissal was fair and that his claim should be dismissed.

Date sent to Parties: 31 July 2025