EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr A Ntim	**v**	Boots Opticians Professional Services Limited

Heard at: Norwich

On: 31 July 2025
1 August 2025

Before: Employment Judge Postle

Appearances
For the Claimant: Mr R Downey, Counsel
For the Respondent: Mr M Smith, Counsel
Interpreter: Mrs N Whitfield, Twi speaking

RESERVED JUDGMENT

1. The Claimant was not unfairly dismissed.

2. The Claimant was not subjected to direct race discrimination.

3. The Claimant's claim for accrued holiday pay is not well founded.

REASONS

Background

1. The Claimant brings claims to the Tribunal that his summary dismissal, on 7 May 2024 was unfair, advanced both on procedural grounds and that the sanction of dismissal was outside the band of a reasonable response of a reasonable employer. The Claimant also brings claims under s.13 of the Equality Act 2010 for direct race discrimination, the Claimant's national origin being African and black. The Claimant relies entirely on the dismissal. There is also a claim for outstanding accrued holiday pay.

Evidence

2. In this Tribunal we heard evidence from the Respondents, particularly: Miss J Davies who carried out the investigation into the Claimant's alleged gross misconduct; Mr Lawes who conducted the disciplinary; and Mr Gilson who conducted the Appeal. All giving their evidence through prepared Witness Statements. The Claimant gave evidence also through a prepared Witness Statement.

3. The Tribunal also had the benefit of a Bundle of documents consisting of 214 pages.

Findings of Fact

4. The facts in this case are relatively straight forward, namely the Claimant was employment from 11 November 2016 to 7 May 2024 as an Optical Consultant in the Oxford Branch.

5. On 18 April 2024, the Claimant was assisting a customer who came into the store to arrange the purchase of safety glasses.

6. That customer gave the Claimant a telephone number for her to be contacted when the glasses were available. It is clear the customer was not providing her telephone number to the Claimant for any other reason than by use by Boots for the purposes of her visit to the store namely, to buy safety glasses. The store would then notify the customer via telephone or email when those glasses were in. It matters not how the number was given to the Claimant but clearly the purpose of the customer giving the telephone number was to record on Boots' data so they could contact the customer when the glasses were available. For that reason and no other reason.

7. Not surprisingly, because the Respondents obtained customer / patient data and record it on their records, the Respondents have a GDPR Policy (found at page 89 of the Bundle) which states particularly at paragraph 2:

> When a customer attends the store we must handle their personal information with care and respect.
>
> …
>
> The breach of the GDPR will be subject to investigation and potential disciplinary action."

8. There is then a detailed Standard Operating Policy. It also makes clear in the Policy that patient information must never be accessed for personal use and colleagues may only contact patients when acting on behalf of Boots Opticians. Each member of staff is aware of the Policy through E-Learning and apparently should update their learning each year. It is accepted the Claimant was aware of the Policy.

9. For reasons best known to the Claimant, he took it upon himself to place the customer / patient's personal telephone number into his personal device and then proceeded to contact her the following day after she attended the store.

10. His first message was,

> "Hey Ming is Stine the optician guy in case when I call and don't get hold of you can I send you an email? Please let me know, thanks."

11. The response from the customer was,

> "Hi Stine yes sure you can reach me via WhatsApp here thanks!"

12. The Claimant then responds,

> "Ok enjoy the rest of your day."

13. At that stage there was no reason why the Claimant should be contacting the customer as all the information the Respondents required, including email was available on the customer card.

14. The following day, the Claimant sends further messages which read as follows, the first one timed at 19:15,

> "Hey Ming
>
> What are you up to?"

15. The immediate response from the customer / patient was,

> "Hi, is there anything wrong with the glasses order?"

16. At 20:49 the Claimant responds,

> "All is sorted now. I will be expecting them next week.
>
> Did you pass by Cowley Road today?"

17. The customer / patient responds,

> "No."

18. The Claimant then further responds at 21:09,

> "Ok then this lady just looks like your twin sister. What are you studying?"

19. Perhaps not surprisingly at that stage there is no response from the customer / patient.

20. The following day, 20 April 2024, the customer telephoned Boots Optician Customer Services, (the transcript of that call is at pages 118 – 121). It is accepted that was not seen by the Claimant, nor used for the investigation or disciplinary.

21. However, what is important is the customer raises concerns about the Claimant sending messages with reference to "what are you studying" and the fact that these are personal and private questions and they were not related to her order.

22. The customer then goes on to describe the Claimant and stated,

> "I'm now kind of worried because my home address is also on that order so I think he knows my phone number so he might also know my home address. I'm kind of worried about this."

23. As a result of the customer's complaint, it transpired that the member of staff involved was the Claimant.

24. As a result Ms Jennifer Davies, the Store Manager at the Northampton Store, was tasked with carrying out an investigation. Ms Davies had not previously worked or met the Claimant and she was provided with a brief summary from Ms Holland-Berry (at page 127 of the Bundle).

25. Prior to undertaking the investigation Ms Davies viewed the email exchange from Customer Liaison specialist summarising the complaint had been received (pages 122 – 124). The email that had been sent by Ms Holland-Berry communicating the complaint, requesting her to investigate (page 125), the WhatsApp screen shots displaying the Claimant's messages with the customer (page 126), the standard investigating meeting template script used by Boots and the GDPR Policy (pages 88 – 89).

26. Ms Davies attended the Oxford Store on 1 May 2025 in accordance with Boots' Guidance managing the disciplinary process. Investigations are seen as informal meetings and therefore there was no requirement for the Claimant to be provided notice of the meeting or to be accompanied (page 83).

27. The meeting with the Claimant duly took place on 1 May 2025. The Minutes of that meeting are at page 138. There was a note taker present and the notes of that meeting were signed by all parties. Those notes were never questioned by the Claimant as being in any way inaccurate.

28. The Claimant was advised of the customer's complaint and shown the WhatsApp messages on 18 May 2025. The Claimant recalled that those messages were from him. The Claimant was shown the GDPR Policy and the Standard Operating Policy with the relevant sections highlighted; in particular that telephone numbers of customers should not be accessed for personal use.

29. The Claimant was asked why he had messaged the customer. His response was that he felt there was mutual feeling and friendship. The Claimant denied contacting the customers previously on a personal basis. The Claimant understood the GDPR Policy when asked. The Claimant was told that the customer was concerned about her safety and felt that the messages were not appropriate.

30. The meeting was adjourned so Ms Davies could take further advice and when re-convened following that advice she took the decision to suspend the Claimant, given that the nature of the allegation.

31. The letter of suspension is dated 1 May 2024 (page 142). It confirms the Claimant is to be: suspended on full pay pending further investigations into GDPR breach:

    - "Accessing a customer's telephone number.

    - Using the number to communicate with her via WhatsApp on 18 and 19 April. Please find enclosed the WhatsApp conversation along with the investigation notes.

    - We have decided to suspend you because of the seriousness of the incident following a customer complaint. As a Boots employees we are trusted with our customers' details and to follow the GDPR Policy which you have completed your E-Learning modules."

32. The letter goes on to say that the suspension is not a disciplinary action and the mechanism under the disciplinary process is to allow for a further investigation to be carried out.

33. On 2 May 2024 the Claimant was invited to a disciplinary meeting (page 144). The invitation letter confirmed the allegations being:

    - "GDPR breach, accessing customer phone number from a clinical record, sending WhatsApp messages on 18 and 19 April from your personal device.

    - Potential gross misconduct by using patient information for personal use.

      I have included the following documents for you to read before the meeting: a copy of the GDPR Policy which includes GDPR Standard Operating Procedure."

34. The letter went on to advise the Claimant of his right to be accompanied and included guidance of the disciplinary procedure attached to the letter. The fact that a potential outcome of the meeting was that the Claimant could receive a disciplinary sanction up to and including dismissal.

35. The disciplinary meeting went ahead on 7 May 2024, to be conducted by Andrew Lawes as Store Manager and a note taker, the Claimant choosing to be unaccompanied.

36. The purpose of the meeting was explained again to the Claimant and the Claimant was given an opportunity to explain and respond to the allegations. He said that the customer was nervous and when she was about to leave he asked her if it was okay to contact her when the glasses arrived, therefore wrote her telephone number on the record card. The Claimant went on to say he sent her a message to ask if it was okay to either call or email when they arrived and she confirmed it was. He then went on to explain why there were personal messages to the customer. He was subsequently asked whether it was right to obtain a customer number and message them about non-related work, his reasoning was because he thought he had some form of rapport with her and felt he could contact her.

37. Subsequently, in the disciplinary meeting the Claimant changed his position in that he did not take her number from the record card, he took it from a 'bollie form' which might be said to be unusual in the fact it was believed Boots stopped using these in around 2020 / 2021 (page 154). The Claimant saying the customer had read the number out to him and he copied it down. Apparently a bollie form would not normally have a customer's number on it as it was sent to an external supplier and they would have no need to contact the customer direct.

38. Mr Lawes then adjourned the meeting to consider the Claimant's explanation. When the meeting was reconvened the Claimant was given a further opportunity to explain his position in contacting a customer outside business hours on his personal telephone about matters not related to the customer's glasses.

39. Mr Lawes concluded that the Claimant had referenced both the customer record card and the bollie form despite the fact that the bollie form would not have had the telephone number on it. Mr Lawes found it strange that the Claimant was being inconsistent with his responses as to how he had obtained the customer's telephone number and in reaching his decision to summary dismiss, Mr Lawes considered the following:

    39.1. Breaching safety and security rules or other written instruction, the Claimant breached the GDPR Policy, had accessed the customer's data for his own personal use and breached security rules stating that unauthorised use or disclosure of customer information, including but not limited to personal details, medical information and photographic work is forbidden.

    39.2. Serious misbehaviour towards fellow team members, customers, suppliers or visitors. The customer's details have been misused by the Claimant which had then led to her feeling unsafe so much so that she had submitted a complaint.

40. Mr Lawes considered the Claimant's actions constituted gross misconduct and the most appropriate sanction was summary dismissal.

41. Before finalising and communicating his decision he did give the Claimant the final opportunity to rationalise his actions and provide any mitigation. The meeting was reconvened approximately and hour and a half later; the Claimant confirming that he had made a mistake, that his intention was of good customer service, he accepted that the second messages on WhatsApp were not work related and were wrong and should not have been made.

42. It is accepted that Mr Lawes in reaching his decision did consider a final written warning but felt this was not appropriate given the nature of the Claimant's actions and loss of trust and the lack of reasonable explanation of the Claimant's actions in taking a customer's number and messaging her on his person device about matters totally unrelated to her glasses.

43. Mr Lawes having finalised his decision reconvened the meeting on 5 May 2024 and confirmed it was not normal expected process for a staff member to message a customer in the manner that the Claimant had done so. That it was a serious matter that fell under gross misconduct in which the Claimant had breached the Boots' GDPR Policy by accessing the customer's telephone number which had been given to Boots solely for the purposes of the glasses order and that contacting a customer on a personal basis on his personal device was not acceptable. The Claimant was therefore advised that a decision had been reached to summarily dismiss the Claimant (page 158). That outcome was communicated to the Claimant by letter of 7 May 2024 (page 163).

44. The Claimant exercised his Right of Appeal (page 203) by letter of 7 May 2024. In effect the Claimant's Appeal letter was an apology and accepting his actions were not acceptable and were a breach of the Respondent's Policies. He concluded by asking to be given a second chance.

45. The Claimant was invited to an Appeal by letter of 8 May 2024 to be heard on 15 May 2024 and to be conducted by Chris Gilson the Regional Manager. Mr Gilson had previously worked with the Claimant as his Line Manager in 2018 – 2020 and confirmed he had a positive working relationship and he thought the Claimant was a good worker.

46. Prior to the Appeal meeting, Mr Gilson reviewed the customer complaint, WhatsApp exchange, the investigation and disciplinary meeting notes, the disciplinary outcome letter and the Claimant's Appeal letter. Mr Gilson also considered the Disciplinary Policy, Guidance on Managing the Appeal Process and the GDPR Policy.

47. The Appeal meeting notes (pages 168 – 174) were confirmed by the Claimant as being accurate.

48. At the outset of the meeting it was explained the purpose of the Appeal was to give the Claimant an opportunity to fully explain his appeal and the

fact that the appeal process would not act as a complete re-hearing of the case and would focus on the Claimant's points of appeal.

49. It was discussed in the meeting the reason why the Claimant messaged the customer; he said his sole motivation was trying to help the customer, he understood the serious nature of what he had done and the fact that he had not been given permission by the Claimant to contact her personally.

50. Whilst Mr Gilson appreciated the Claimant was apologetic about the incident, he was nevertheless concerned about the Claimant's intent behind the messages to the customer. He had concern that the Claimant had failed to appreciate the consequences of his action in messaging a customer. The fact that the customer had complained and shared that she was certainly worried by the Claimant's actions in knowing her personal data. The fact that he was messaging a customer late in the evening, about matters not pertaining to the glasses order and that was inappropriate. The Claimant was given a full opportunity to explain his position, it is fair to say.

51. The meeting was then concluded and Mr Gilson took the rest of the day to consider the Claimant's responses and Appeal points.

52. Mr Gilson then considered the process that had been undertaken alongside the sanction that had been imposed and whether that sanction was reasonable and a fair decision. Importantly, whether a lesser sanction be imposed. Whether he considered that the Claimant's conduct in taking the customer's number and proceeding to message a customer on their personal phone was a serious issue. So serious that it warranted summary dismissal and therefore was upholding the decision to dismiss. That outcome was communicated to the Claimant by letter of 15 May 2025 9page 175).

Credibility

53. It is fair to conclude the Claimant moved the goal post by changing his evidence on a number of occasions; particularly how the number came to him from the customer. He said the customer gave it to the Claimant. Then he told Mr Lawes the Claimant told him during the course of the disciplinary process it had been taken from the record card and then the Claimant's own suggestion that he took it from the bollie form. The fact that Mr Lawes actually checked the bollie form during the course of an adjournment and there was no number on that and it would be surprising if there was as that document would not normally hold such information as it was for external supply. Finally, that the Claimant indicated in cross examination that he wrote down the customer's telephone number on a separate piece of paper and then put it on the record card.

54. Whereas I found the Respondent's Witnesses clear, cogent and prepared to concede matters on occasion.

The Law

55. Section 98 of the Employment Rights Act 1996 provides that conduct is a potentially fair reason to dismiss but that is not the end of the matter. The Tribunal then has to go on under s.98(4) in determining the question of whether the dismissal is fair or unfair in regard to the reason shown by the employer,

> 98 General
>
> (4) … 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.

56. The reason advanced in this case is conduct and that leads to a classic Burchell case in which the Tribunal have to decide:

a. If it believes the employee guilty of misconduct;

b. It had in mind reasonable grounds from which to sustain that belief; and

c. The stage which that belief was formed on those grounds it carried out as much investigation into the matter as was reasonable in the circumstances, such investigations do not have to be a counsel of perfection.

57. This means that the employer need not have conclusive direct proof of the employee's misconduct, only a genuine reasonable belief reasonably tested.

58. The Tribunal then has to go on to decide whether the conduct complained of warrants a summary dismissal; in other words whether the conduct fell within the range of a reasonable response for the employer to dismiss for that gross misconduct. In determining that the Tribunal reminds itself it must not substitute its own view as to what the Respondent should or should not have done in the circumstances.

Conclusions

Unfair Dismissal

59. The Claimant's Counsel has gone to great lengths to try and advance a case that in some way the matter was procedurally flawed and that ultimately the sanction was outside the band of a reasonable response. In some ways he suggests that the reason for the dismissal was changed for the reason given at the time. The fact that there is no breach of the GDPR Policy, there is an absence of evidence that the Claimant accessed the number from the customer / patient records. The fact that the Respondents never investigated how the number was obtained by the Claimant, there was no evidence of what the customer said and therefore that questions whether the Respondents had a genuine belief.

60. What is clear is that the Claimant accessed a customer / patient's number, obtained it for purposes of ultimately unrelated business of Boots, commenced a WhatsApp message and commenced messaging a customer about matters entirely unrelated, of concern and inappropriate, about the reason why she attended Boots; namely to purchase some glasses. The fact that the Claimant was doing it on his personal mobile and had input the customer / patient telephone number on his person telephone. It matters not how it got there, how he obtained it, the fact speaks for itself that he obtained the number for entirely inappropriate and incorrect reasons. That was a breach also of the Policy which is clearly set out as referred to earlier in this Judgment.

61. The Claimant was aware of the allegations, they were properly put to him at not only the investigation but during the course of the disciplinary. He had every opportunity to explain his action. The Respondents quite rightly came to a conclusion which they genuinely believed on the information before them, which was largely admitted in any event, the Claimant was guilty of serious misconduct. His length of service was considered and a lesser sanction we have no doubt was also considered. The conclusion was that it was a serious breach, it was inappropriate behaviour and at the stage they formed that belief the Respondents had carried out such investigations as required and was reasonable in all the circumstances. Given the nature of the misconduct it clearly is in the band of reasonable response for a reasonable employer to dismiss where an employee takes the personal data of a customer and puts it into his personal telephone without permission from the customer, he then contacts them about matters unrelated to that customer's business with Boots.

Race Discrimination

62. In dealing with the race discrimination claim, on a direct discrimination basis the Claimant whose origin is African and he is black, it would not be difficult to conclude there was no specific comparator having been advanced, that a hypothetical white male in circumstances the same as the Claimant who conducted themselves in the same manner as the Claimant, would have been treated in exactly the same way as the

Claimant; namely they would have been dismissed. There is absolutely no evidence whatsoever that the Respondents were influenced in their decision by any racial factor, by the Claimant's colour or the fact that a month before he had been arrested in an entirely unrelated matter. In any event, Witnesses were not aware of and indeed it was not put to them in cross examination.

63. Therefore the claim for race discrimination is simply not well founded.

Holiday Pay

Working Time Regulations

64. The Claimant relies on Regulation 14 in his claim for outstanding holiday pay that had accrued at the termination of his employment but had not been taken.

65. The Respondents rely upon Regulation 14(2) and (3) which reads,

> Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him payment in lieu of leave in accordance with paragraph 3.

66. Paragraph 3 states:

> The sum of the payment due under paragraph 2 shall be:
>
> a. such sum as may be provided for the purposes of this regulation in a relevant agreement, or
>
> b. …

67. The Claimant's contract of employment makes it clear, under notice of termination,

> "The above provisions are without prejudice to the company's right to summary dismiss any employee for gross misconduct. In instances of summary dismissal there will be no entitlement to bonuses, payment of the outstanding holiday will be limited to a maximum payment of £10 gross."

68. That was paid to the Claimant and appears to fall under Regulation 14(3)(a), therefore the Claimant's claim for holiday pay is not well founded.

Approved by:

Employment Judge Postle
Date: 6 August 2025…….

Sent to the parties on:..11 August 2025

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For the Tribunal Office.

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/