CASE NUMBER: 6006613/2024

EMPLOYMENT TRIBUNAL

Claimant: **Mr G Rohan**
Respondent: **Ansador Limited**

Before: **Employment Judge Corrigan**
(Sitting Alone)

Representation
Claimant: In person
Respondent: Mr Zaman, Counsel

HEARD at London South by video

On: 28-29 April,
& 27 June 2025

JUDGMENT

1. The claimant was unfairly dismissed by the respondent.
2. The claimant was wrongfully dismissed by the respondent.
3. The claim that the respondent made an unlawful deduction of wages is partially well-founded.
4. There are no expenses due to be paid to the claimant.

REASONS

Issues

1. The claims are unfair dismissal, breach of contract (unpaid notice), unpaid expenses, and unlawful deduction of wages in respect of February and March 2024 wages.

2. The issues were agreed between the parties on the first day of the hearing to be:

Unfair dismissal

3. What was the reason or principal reason for dismissal? The respondent says the reason was conduct, namely the bullet points at 559-560. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.

4. If the reason was misconduct, did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:

    4.1.1 there were reasonable grounds for that belief;

    4.1.2 at the time the belief was formed the respondent had carried out a reasonable investigation;

    4.1.3 the respondent otherwise acted in a procedurally fair manner;

    4.1.4 dismissal was within the range of reasonable responses.

Remedy for unfair dismissal

5. The claimant confirmed that he does not seek re-employment.

6. If there is a compensatory award, how much should it be? The Tribunal will decide what financial losses has the dismissal caused the claimant?

7. Has the respondent proven that the claimant failed to take reasonable steps to replace their lost earnings, such as by failing to take reasonable steps to find another job?

8. For what period of loss should the claimant be compensated?

9. Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

10. If so, should the claimant's compensation be reduced? By how much?

11. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

12. Did the respondent or the claimant unreasonably fail to comply with it?

13. If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

14. If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?

15. If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

16. Does the statutory cap apply?

17. What basic award is payable to the claimant, if any?

18. Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

Wrongful dismissal / Notice pay

19. Was the claimant guilty of gross misconduct, entitling the respondent to withhold 3 months wages?

Unlawful deduction of wages

20. Did the respondent make unauthorised deductions from the claimant's wages in February/ March 2024 and if so how much was deducted?

21. Was any deduction required or authorised by a written term of the contract?

22. Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?

23. Did the claimant agree in writing to the deduction before it was made?

24. How much is the claimant owed?

25. By the time of the submissions the respondent introduced the question of whether or not the claim for unlawful deduction of wages was in time.

26. The respondent did concede that two days pay is outstanding for February 2024 of £792.30 as the claimant was not paid full pay once he was fit to return to work after his sick leave but the respondent prevented him returning.

Breach of Contract

27. Did the respondent fail to pay the Claimant's expenses?

28. Was that a breach of contract?

29. How much should be paid to the claimant?

Hearing

30. I heard evidence from Mr Alexander Davey, the respondent's Chief Executive Officer, on the part of the respondent.
31. I heard evidence from the claimant on his own behalf. I allowed his witness statement to be used, notwithstanding that it was only shared on the first day of the hearing.
32. The parties had not sent in an agreed bundle. The respondent submitted an extensive 897 page bundle. The claimant had separately sent a number of documents in different files that were not in a usable format.
33. There was some discussion at the outset about how this had happened and whether a fair hearing was possible. The respondent had also sent in an application to strike out the claim due to the claimant's non-compliance with orders.
34. The claimant's account was that both sides had shared their documents on 3 and 4 December 2024. He had then heard from the respondent that they wanted more time to prepare statements which were due to be exchanged in January 2025. He said the respondent then wrote further on 6 February 2025. This email was not clear in respect of what was to happen with regards the file of documents or when it was proposed the witness statements be exchanged. The claimant also did not progress the matter. Then around 10 April 2025 the respondent's representative, having been instructed, began progressing the matter and sent the claimant their bundle and witness statement around 15 April 2025. He did not respond to them to provide documents for the bundle or his own witness statement (these were not provided until this morning). He did not tell them about his wife's skiing accident and that this was impacting his ability to prepare.
35. The claimant did explain in the hearing that his wife had a skiing accident and injured her back in February. He provided two sick certificates, though he said these continued to date. He described having to do a lot more domestic work due to her ill health.

36. My initial view was that it was better to focus on getting the case ready for a fair hearing than to take up time with a strike out application, in circumstances where the claimant was describing a difficult domestic situation and the respondent had also been silent in respect of progressing the case between 6 February 2025 and 15 April 2025. Two weeks' prior to the hearing was very late to serve a bundle of this size to a litigant in person.

37. Initially the claimant said he did not have a statement but it then became clear he had prepared a short statement. This was provided to the respondent and the tribunal. We agreed an hour's adjournment for the claimant to identify which of his documents he wished to apply to have added to the bundle, and for myself and the respondent to read his statement.

38. When the hearing resumed the claimant had not made much progress and said he had to apply for an adjournment of the hearing. He did provide the respondent's statement with his own annotations and two documents. During his application it became clear that he had only downloaded the respondent's final bundle and statement this morning and had not had time to go through them. He provided what he refers to as the tracker document.

39. I obtained the earliest available dates for re-listing the case (25-26 June 2026 or 21-23 October 2026 dependent on length). I listened to both sides and made the following decision. I accept the Claimant has had a difficult situation at home with some caring responsibilities for his wife and mother. He describes that he has had to take on more domestic duties than usual. However he did not raise these difficulties with the Respondent or tribunal and has spent time on some preparations, for example his own we transfer files/ the spread sheet and his statement/ACAS. He has ignored correspondence in the last 2 weeks. He had not downloaded the respondent's statement and bundle until this morning and has only now realised the task at hand and that not all his documents are in there. An adjournment is not in the interests of justice given the length of time before it can be re-listed. I decided we could proceed. The claimant's comments that he has noted on the respondent's statement and his tracker document can form the basis of his cross examination of the respondent's witness. I have given the opportunity for extra documents to be added and two have been provided. It is not even clear that others are not there as the claimant had not been using the latest bundle and made reference to one letter which was in fact in the final bundle.

40. The claimant has now downloaded the correct bundle. The respondent had no objection to the two additional documents being added. I said that if a particular crucial document is not there he can request to add them on a case by case basis as it arises. More documents were added through the hearing on this basis. At the end of the first day I told the claimant to check overnight whether he requested any further documents be added. He was given a lot of leeway to produce documents until after he had had that opportunity. Eventually during the second day I did draw a line and say he had had sufficient opportunity to add his documents. Each time he added a document it caused a short delay.

41. In the adjournment before the final hearing day the respondent put the additional documents submitted by the claimant into the supplementary bundle. The claimant also provided a document giving his comments on p 597 and the sums that had been deducted from his wages.

42. The parties each had the opportunity to make oral submissions and the respondent prepared a written submission.

43. Based on the evidence before me I found the following facts.

Facts

44. The respondent designs, installs and maintains fire alarm systems and security systems to corporate clients.

45. The claimant initially worked as a contractor from March 2019 then from 1 September 2020 he was employed as a Projects Director to focus on running large projects.

46. Whilst a contractor he had had a personal service company. When he became an employee it was agreed he would close this down, and he did confirm to the respondent's leadership orally more than once that he had done so. His Director's Service Agreement with the respondent (p62) specified that he would not directly or indirectly be involved with any other business in competition with the respondent or a supplier or customer of the company without the prior written consent of the company. It later states at page 68 that prior written consent is required to be involved in another business in any capacity or provide paid services of any kind to any other company.

47. The same document provides that the company will reimburse expenses but that it reserves the right not to reimburse expenses that are not supported by evidence or it deems have not been reasonably incurred (p64). It also specifies the rules in respect of company credit card use. It states they are to be used for business purposes and that receipts need to be provided within 30 working days of the Account Statement. It states the Director will be required to repay any unauthorised personal transactions. It also covers sick pay and provides at page 65 that the Director is entitled to 5 days' sick pay per 12 months. It also states the payment of sick pay is discretionary, including any extension to the 5 days' sick pay.

48. Page 69 covers deductions that can be made from pay and includes fines or other losses as a result of negligence and any other sums owed to the Company by the Director.

49. The contract specified that the claimant was entitled to 30 days' notice of termination. At pages 70-71 is a list of conduct said to entitle the company to terminate the contract without notice.

50. The claimant had a company car. The agreement provided that running costs like brakes and tyres would be paid for by the company but then deducted from the claimant's pay. It also specified that if the claimant left the company before the end of the lease he would be responsible for any early lease termination charges, to be deducted from final salary in the first instance (p96).

51. Accounts were posted on Companies House for the claimant's personal service company for the period 1 May 2020 to 30 April 2021. They were said to be signed by the claimant. It said it employed 13 people (pp 80-87). Further accounts were submitted for the next accounting period up to 30 September April 2022 (a period during which the claimant was employed as a Director throughout) (p88-95). These showed a significant increase in cash and assets.

These stated they were signed off by the claimant's wife and that there had been 16 employees. The company therefore appeared to have remained active despite the claimant's assurances it had closed.

52. There were also concerns about the claimant's performance, specifically what he was doing with his time. By summer 2023 Mr Davey began examining what the claimant was doing with his time.

53. In March 2023 the claimant had used his company credit card with permission to book tickets for a trip to surprise his wife. The tickets were bought in his friend's name. There is correspondence in June 2023 about deducting these from his salary but this was not processed (p101).

54. In October 2023 there were emails about another use of the card in Benidorm and the claimant responded "Apologies please deduct from salary". A deduction was made end of October for 3 personal payments on the card in September 2023 including the Benidorm payment. There was still no deduction for the tickets bought in March.

55. On 20 October 2023 the claimant sent, to be forwarded to a client, an email purporting to forward an email dated 28 April 2023 saying "please find attached delay notice", with the notice attached in the name of the respondent's commercial Director.

56. On 30 October 2023 the client raised issues with the authenticity stating the Metadata for the notice showed it had been created on 20 October 2023 and not 28 April 2023 (p127). They had no record of receipt of the email dated 28 April 2023. The claimant initially gave assurances there was nothing to worry about. The respondent lost prolongation costs. The claimant had repeatedly represented to the Board that he had sent the letter. Mr Davey said the claimant admitted falsifying the document in a meeting on 7 November. The claimant disputes this and that he did not send the letter in April 2023. However I accept Mr Davey's account on this, both that the document had been created on 20 October 2023 and not April 2023 and that the claimant had admitted to this in November.

57. There were also serious issues about the respondent's largest project they had had up to that time. Mr Davey attended a meeting with the claimant and the client in October 2023 and Mr Davey was not impressed with how the claimant had approached the project and that meeting. His view was the project had been poorly managed and he had had to step in multiple times and the client was not happy and they almost lost the contract. Mr Davey says this was the last straw for him.

58. Around early November the activity on Companies House referred to above (paragraph 54) was discussed with the claimant. On 8 November 2023 the claimant emailed a contact at the Serious Fraud Office saying that he and his wife were not responsible for the above accounts that had been submitted or two changes of the registered office address. He also contacted Companies House (pp 148-151). He said the fraudulent activity on Companies House appeared to commence in 2022. At the Employment Tribunal hearing in April the claimant said he had been told the accounts had been taken down. This had not happened at that time but by the time I came to make this decision the

Companies House page is showing a number of entries dating back to 10 January 2022 have been removed and replaced with the following statement:

"Information not on the register The material was formerly considered to form part of the register but is no longer considered by the registrar to do so."

There don't appear to be any accounts for the period when the claimant was a contractor for the respondent and paid through that business. The registered address is now the address it was back in 2021 which the claimant said was accurate. There is now an active proposal to strike off.

59. Around 9 November there was a meeting with the claimant about why his personal service company was still active and why there were accounts for the period 2021-2022. The respondent considered the accounts showed the claimant was using the company to receive additional income and potentially diverting work from the respondent. The figures significantly exceeded what the respondent had paid the claimant through the company. The belief was that the claimant had been trading using his personal service company after becoming a Director. The claimant said the activity was fraudulent. The respondent continued to have concerns but felt they could not be proven and so instead focused (at least when talking to the claimant) on whether if it was fraud it would expose the respondent to risk and the fact this was as a result of the claimant's failure to shut the company down promptly despite his assurances that he had.

60. On 10 November 2023 Mr Alex Davey emailed the claimant about a number of client complaints including the allegation he had falsified the email at paragraph 56 (and therefore attempted to defraud them). He said the complaints were swallowing his time, causing reputational damage. He said the claimant was to get on top of the jobs that day and they needed to meet as the company could not continue in this fashion (pp157-158).

61. On 14 November 2023 the respondent's finance director sent the claimant his Barclay card statements since the beginning of the year stating £945.52 had already been deducted from his salary, as referred to above (p165). There followed an exchange of WhatsApp messages between the two around the same date in which the claimant confirmed that "holiday and dry cleaner are absolutely his mistake" (p191). The claimant confirmed here that the person named on the statement booked the ticket. It was confirmed to him that he has to cover the cost of tyres. Still no further deduction was made at the end of November for the holiday or any other costs the respondent considered outstanding at that time.

62. Mr Davey scheduled a one to one catch up with the claimant on about 28 November 2023 which he described as a serious one. He did not call it a disciplinary meeting. At the meeting he gave the claimant the letter of 27 November 2023. This said he was concerned about the claimant's conduct and risks to the business due to his falsifying emails; not dissolving his business promptly; and poor management of the large project above leading to Mr Davey having to take responsibility for specific actions. He said he was giving a first and final warning for lying and misrepresenting the truth; not meeting deadlines and insufficient written communication. He emphasized the claimant remained

of value to the company and he wanted to move on from this. There was no expiry date on the warning but the respondent's disciplinary process states these will normally be for 12 months. The warning did not mention the use of the credit card even though Mr Davey was aware of the claimant's use of the card and had concerns about it.

63. Mr Davey also produced a framework to explain his expectations to the claimant. He says that despite the dishonesty and suspicions above he still felt the claimant had potential to add value to the company.

64. The claimant was asked for an update on his personal service business on 3 January 2024. The claimant said he was waiting to be told he can remove the company. The Finance Director replied that it made no sense that it was not being closed immediately. The claimant said he was consulting a solicitor. In fact I consider it is unlikely that a business can be dissolved on Companies House if there are outstanding matters being investigated. Certainly, it would be inappropriate to assume it can be without investigating this.

65. On around 17 January 2024 the respondent believes the claimant did not ensure signature of a subcontract promptly as needed, and was chased by the client due to lack of communication on 25 and 30 January 2024. The contract was issued by docusign and emails chasing signature sent by the other party though not addressed to the claimant but Mr Davey's father, the respondent's Chairman. The claimant was just copied in on 25 January and 30 January. There is a WhatsApp thread between the claimant and the Sales Director on 25 January where he was asked if he was happy for Mr Davey to sign and the claimant confirmed yes. He also emailed the Chairman on 30 January saying he had spoken about this the week before and it needed to be signed by 2 directors on Companies House. This was then duly done. Mr Davey responded about 10 minutes later to say "despite [the Sales Director] hounding you for weeks; [we] haven't heard back from you. Not cool-please take this as a polite and courteous reminder to answer your emails and respond accordingly." He had the word Communication in red and capitals three times. In the meeting on 7 March below the claimant produced his emails with the company concerned on 17 January and explained the docusign document had not been sent to him but direct to Mr Davey and the Chairman. The claimant therefore did respond promptly on each occasion, though he may not have been proactive in informing the Directors to expect the document to sign and why they needed to.

66. On 27 January 2024 the Finance Director emailed the claimant about reviewing a few months Barclaycards for personal expenses. He sent a further prompt on 30 January 2024 and he had had created the spreadsheet of money owed by 1 February 2024 (p216). This shows he was still referring to bills for 2023 and indeed back to September 2022. He had not taken off the matters that had been repaid at the end of October. These messages don't explicitly say so but refer to the fact the claimant had put his vehicle charging on the credit card whereas he was supposed to cover that himself and then claim mileage. On the spreadsheet it is noted that the claimant still needed to claim mileage and it likely would cancel out much of the vehicle charging. There is a note to check parking fines. The sum due at this time was calculated to be about £5180.

67. From 5 February 2024 the claimant was unwell. The claimant did not initially follow the correct sickness reporting procedure (to personally tell Mr Davey no later than 10.00am) but he did tell the Sales Director at 10.50 on 5 February and around a similar time on 6 February 2024.

68. Mr Davey says that as other Directors picked up the claimant's work while he was absent they began noticing other problems with his projects.

69. On 7 February 2024 the Finance Director contacted the claimant's daughter to ask how he was. She replied to say he had been very unwell and suggested he had spoken to the Sales Director on Monday. She said to let her know if there was anything urgent and she would tell him to check emails. He said "just some invoices which need signing as contractors and suppliers jumping up and down for payment". The Finance Director confirmed by reply that the Sales Director had been off sick also. In fact the claimant had also messaged Mr Davey at 8.03 that morning to say he was heading to hospital, that he had not left the bed and no sign of it abating. He messaged again on 8 February at 06.54 saying "away again today and that he would call around midday". He did not expressly say so but the implication is that he was still sick. The messages confirm he had tried to call Mr Davey that afternoon. On 9 February Mr Davey messaged him and the claimant replied at 12.43 to state he had been really unwell and giving an explanation of the possible reasons. He spoke to HR on 9 February 2024 who confirmed that Mr Davey had said to take a further week off if he needed to.

70. On 14 February 2024 the Finance Director informed the claimant that he owed £1000 approximately in parking fines and penalties.

71. Then on 16 February Mr Davey sent the letter of 16 February 2024 to the claimant to the wrong address.

72. He said "we have attempted to contact you by telephone, email, WhatsApp and even telephoned the majority of London hospitals to find you" until HR got through to him on Friday. It said they had allowed 10 days for him to contact or submit medical certificates and that he was being considered absent without authorisation and would not be paid. He was invited to a meeting at 11 on Monday 19 February 2024 and that if he did not have a satisfactory explanation it could lead to disciplinary action. He also suggested that the claimant's conduct might be a resignation and he should confirm this in writing.

73. The claimant contacted Mr Davey at 9.36 on 19 February to say he was still very unwell and had an appointment that day. He then obtained a medical certificate dated 19 February back dated to 5 February for 19 days up to 23 February 2024. He replied to Mr Davey and said he did not intend to resign and that he had been in touch with a Director every day and that HR had said take a further week off.

74. On 20 February 2024 the claimant said following his GP visit he had further tests and investigations that day and the next. The surgery was to send the certificate the next day.

75. Mr Davey instructed an external HR Consultant to deal with what he described as "starting the rabbit running" with the claimant. She made contact with the

claimant and requested the Fit note on 22 February 2024. The claimant responded as requested. He was told he would be paid SSP and asked to confirm if he was returning to work on Monday so she could inform Mr Davey.

76. Mr Davey said in his witness statement that he was in disbelief at the backdated sick note. He considered it a "recurring example" of the claimant's poor behaviour. He also believed the claimant had only made the GP appointment that day and it was not pre-arranged as the claimant said. In oral evidence he said that although the claimant had made contact, he had told different accounts to different people about the nature of what was wrong.

77. The claimant came back to the HR Consultant and explained about having been told to take a week off and there was some to and fro about taking the week of 12-16 February as annual leave. The claimant did not actually confirm he was ready to return on 26th February but at 4pm on 23rd the HR Consultant said they should have a call on Monday prior to his returning to work. The claimant agreed to a call on Monday 26th and after speaking with the HR Consultant there is an email from her to Mr Davey saying she was awaiting feedback as to whether he was fit to return as he had further tests that day and from the claimant to HR late on 26 February saying he would wait further instructions before attending the office.

78. In the meantime as referred to above Mr Davey says that as other Directors picked up the claimant's work while he was absent they began to be noticing other problems with his projects. He gives the examples in the Finance Director's email on page 242 dated 25 February 2025 entitled "George" including a project running at a loss and the client refusing to pay a debt due to outstanding issues; someone else conducting a final account meeting that the claimant had said he had done, with the resulting account showing a significant loss rather than the budgeted profit; discovering that jobs the claimant said had stalled had in fact finalised and had significant underperformance on profits; the claimant still had not paid parking fines despite being repeatedly asked to do so; incurring admin fees with the lease company who paid the fines and billed the respondent. These were 12 in total amounting to £1,012.80. He also raised the claimant had not responded in respect of the personal expenses on the credit card, with an estimate that £2,641.22 remained outstanding. There was an apparently needless reference to the other woman's name being on the credit card statement (whilst confirming that it had been agreed he could use the company card for that purchase and reimburse); and failure to provide receipts and back up for expenses.

79. In that letter the Finance Director broke down the cost for breaking the lease on the salary sacrificed vehicle. He also said the Finance Department wanted to start making deductions for the sums owed.

80. Mr Davey forwarded this to the external HR consultant.

81. The next letter to the claimant was on 27 February 2024 (p269). It explained he had exhausted his contractual sick pay. He was due full pay 1-2 February 2024. He was told the rest of the month would be paid at statutory sick pay. He was also told there was a substantial sum outstanding on his personal credit card and that deductions would begin to be made to cover this but that he would still receive the Minimum Wage.

82. The letter ended informing him that further issues had come to light regarding expenses; mileage and projects and he was asked to a meeting on 29 February 2024.

83. On 27th February the claimant responded to say he had told HR the day before he was fit for work and HR had said she wanted to speak to Mr Davey first. He queried why he would therefore be paid SSP from 26th. HR replied on 28th saying the claimant had not updated her as to his fitness. She suggested this would be discussed in a meeting the next day.

84. On 28 February the claimant asked if the meeting was a return to work meeting. He asked for notice of the issues to be discussed.

85. On 29 February he was told the meeting was to discuss his health and his return to work and would move on to discuss other matters with the Finance Director present.

86. On 29 February the claimant requested specific detail of the projects; expenses and unauthorised use to allow him to get legal advice. He requested the information by 4th March. He confirmed had been available to work since 26th February when he was asked not to attend.

87. There is a note from HR with a plan of the meeting sent to Mr Davey which states part of the meeting was to discuss his status this week, noting the claimant had been asked to get GP to confirm he was fit to return as he was "struggling" when she spoke to him.

88. The claimant then did not attend the meeting on 29 February 2024.

89. There was then internal communication between Mr Davey and the Finance Director about how best to limit their losses when the car lease ended.

90. The claimant was then invited to an investigatory meeting by letter dated 1 March 2024. The meeting was to take place on 5 March 2024. The matters of concern to be investigated were: use of the company card for personal use in express contravention of the contract and failure to reimburse when this has been pointed out, up to £4840; failure to pay parking fines; failure to pay repair costs on his lease vehicle; overclaim of mileage; and examples of ongoing failure to communicate. The disciplinary procedure and the documents the respondent intended to refer to were attached (pp302-306, 311-317). On 4 March 2024 some further Amex expenses – Uber journeys on a Sunday- were added to be discussed. Mr Davey says he sent the documents listed on page 825-827. These include the paperwork relating to expenses and the credit card use and the parking fines. In respect of the issues with communication with clients and contractors and similar there were just two emails about the claimant not committing to spend time with the service desk and the contract signature delay referred to at paragraph 65 above.

91. The claimant attended the meeting on 5 March 2024 and the minutes are at pp 325-328. It was led by the Finance Director.

92. It was agreed between them that the Finance Director had been chasing information from the claimant about expenses and personal expenditure. It was clarified that the car wash; the tracker and the tyres were personal expenses relating to the car. He accepted the Deliveroo payments were personal. It was agreed the BA expense would be reimbursed by the claimant. He said the

Majestic Wine was business expense but the Eagle Pub was his wife's birthday. He had used his card in Benidorm because he had added to Applepay and had chosen the wrong card. He had said they should take payment immediately on his return. I note that the tyres and the Benidorm payment and the dry cleaning had all already been paid for through the December deduction but were still on the list to be discussed.

93. There was discussion about his card use and his expenses. The vehicle repair had been agreed separately. The claimant said some of the parking fines had been challenged. The Finance Director said he was happy to confirm that some of the payments were authorised and some were accidental such as Benidorm. He said main issue was the personal items that were not authorised for example Deliveroo (the claimant had not realised which card was connected to the account and once brought to his attention he deleted it) and a golf day out that had not been backed up with receipts. The Finance Director mentioned there were other staff who were also bad at providing receipts. He says the claimant has never submitted a receipt.

94. The claimant at one point said the Finance Director was talking as if the employment was ended. The Finance Director said he had been asked to get the money collected and his own work had come under scrutiny.

95. A number of Director's statements were then collected. The Chairman's statements at page 342-343 went through two projects on which the claimant's performance had not been as expected and he had failed to communicate with and/or made untrue statements to the client and to the respondent's Directors. He also listed concerns made by staff and issues with the claimant's timekeeping. He said he had no confidence in the claimant. On the other hand the statement from the Head Of Operations & Deliver at page 344 was positive overall.

96. The ongoing suspicion about the claimant's company's listing on Companies House is demonstrated in an email from the Finance Director to the HR Consultant at page 345 including his view that it is bizarre that the accounts are all fraudulent as they would have expected some legitimate accounts from the claimant for the period he was using the company to receive payments for work with the respondent.

97. A list of the issues and concerns with respect to client accounts is at pages 349-352.

98. The claimant was invited to another meeting to discuss "examples of ongoing failure to communicate resulting in some irregularities to projects. He was asked to follow up on the parking fines, Deliveroo, and provision of expense receipts (p505).

99. The claimant requested information of the "project irregularities" to be discussed and a new meeting time once he had the information. He was told the meeting would go ahead and he could ask questions at the meeting.

100. Further Colleagues' statements were collected. The Commercial Manager's statement went back over the situation with the inauthentic letter at paragraphs 58-59 above but also mentioned communications and losses or risks of losses on other accounts P495-496). The statement from the Sales Director (p509) refers to the action being taken in November and then that he

could confirm that "since January this year, [the claimant] seems to have 'checked out' with various complaints coming in to him and Mr Davey. He does also refer to information from the claimant not stacking up with information from others. There are no specific examples. These statements were not shared with the claimant prior to the investigation meeting.

101. The claimant did attend and there was discussion on 7th March about how client accounts had been handled and about communication. The issue about the closure of his business was re-opened and he was asked why he had not done this promptly when he had been asked. He was asked if he had submitted accounts. The claimant responded querying whether this issue was on the list for discussion but repeated his previous explanation and provided the email in January when he updated the Finance Director. At the end of the meeting the claimant said he would not attend the next meeting unless he had reasonable time to prepare. After the meeting at 6.05pm the claimant was told he could take annual leave the next day (Friday) and requested that he provide the responses requested in the meeting by 10.30 am on the following Monday. There was a clear expectation the claimant was to do this over the weekend.

102. There is a message between the Finance Director and the external HR consultant on 8 March in which he continued to raise the claimant's business. He noted the change of address to the claimant's former employer's address. He said "in yesterday's meeting he essentially admitted to lying previously in that [the respondent] was paying for his company accounts to be finalised so the company could be closed down….Despite Finance asking in person and email numerous times to give the accountants his receipts so this could be actioned…he completely misled/lied to [the respondent], as he stated he chose not to use [the respondent]s accountant]. The lying and deception is the issue here, he only needed to ask and tell [the respondent] what he was doing and seek permission. Therefore one needs to ask what motivated him to do this additionally as the accounts are far higher than he was paid from [the respondent] and subsequent years even higher still. The accounts suggest [the claimant] was running a company at the same time as working for [the respondent] in which case did he divert work from [the A respondent]. For this reason it may be sensible to leave the door open to litigation against [him]. Hopefully this suspicion from the accounting evidence is incorrect". I do not see a reference to what is referred to here in the minutes on pages 337-338. The claimant says, and I accept, that in fact the change of address was to that of his former employer's Administrator. This does appear from Companies House to be the address of insolvency practitioners. He says that he did not make this change.

103. The response back from the external HR Consultant was "fundamentally he is in [breach] of his contract and lied/misled the company. That's sufficient evidence. This should be added to the list."

104. The claimant did write on Monday to say that the request to respond by 10.30 was unreasonable and that he would respond in due course. The HR response to the respondent was that this was likely a delaying tactic.

105. The claimant was suspended and invited to a disciplinary hearing on 13 March 2024 to deal with the following allegations:

105.1 use of the company card for personal use and failure to reimburse or provide receipts;

105.2 failure to pay parking fines;

105.3 failure to pay repair costs under the vehicle lease agreement as required;

105.4 your ongoing failure to communicate resulting in numerous client complaints;

105.5 misleading the company regarding the closure of his company having been requested to do so.

106. The letter said if the allegations are substantiated "I will regard them as gross misconduct, noting that you have a current final written warning on file". It said if he was unable to provide a satisfactory explanation his employment could be terminated.

107. The letter said he was given a summary of allegations, the colleague statements (statements described above) and examples of customer complaints (p540).

108. The claimant requested 7 days to be supplied with information he had requested. He also explained he wanted to be accompanied by a relative (543-544).

109. He was told he had the information needed and that he could not be represented by a relative. The claimant replied that he had not had all the information the respondent intended to rely on. He raised issues in respect of the requirement that a representative be a colleague (542).

110. The claimant submitted a grievance across a number of emails which the respondent decided could be at the same meeting but he did offer to put the start time back to 11.45 and hold the meeting by Teams to enable the claimant to attend.

111. He was told the meeting was not going to be rescheduled and it would be considered a further act of misconduct if he did not attend.

112. The claimant responded continuing to challenge he had had all the information. He said he wanted to defend himself against the allegations to a truthful conclusion, and that in order to do so he has "requested the full detail and then allow me fair time and I will attend a hearing."

113. The meeting was held in his absence and there are minutes of his decision pp556-557. There is a table of the 6 allegations and decisions. The decision was to summarily dismiss the claimant. The decision letter was sent to the claimant on 13 March 2024. It said the previous warning had been taken into account. There is no note of the grievance having been considered.

114. Mr Davey in his witness statement referred to key documentary evidence against the claimant of the communication issues with clients including p353-494 of the bundle. Looking through these, some of these issues date back to before the warning and some relate to the period he was off sick in addition to the period between the warning and the commencement of his sick leave. These were not supplied to the claimant with the invitation to the disciplinary meeting.

115. At 12.46 on 13 March 2024 the Finance Director sent Mr Davey the costs of the claimant's vehicle agreement being terminated early (590).

116. On 14 March 2024 the vehicle company confirmed the early termination cost to be £9,170.33 plus VAT.

117. The Claimant wrote to request an appeal based on the letter being factually incorrect, Mr Davey's refusal to respond to emails and two points in relation to his having been accused of being AWOL. He also appealed the grievance based on the fact that Mr Davey had not investigated or responded to it.

118. P597 shows the breakdown of use of the Barclaycard to justify the deduction of £3098.69 from the claimant's final salary and why the respondent claimed the claimant owed £16,765.32. The respondent initially claimed the claimant owed £19,661.86 and there is correspondence between the parties about their sending a security firm (in particular three security personnel) to collect the company's belongings and that he would be required to make the payment in their presence.

119. The claimant replied confirming he challenged the sums owed (p601).

120. On 27 March 2024 HR referred to the Barclaycard costs as being sums the claimant had agreed to repay. The vehicle damage sum was then removed pending assessment. This left the figure of £16,765.32 as per the respondent's spreadsheet. The respondent continued to say the security company was to witness the transfer of money.

121. There was further to and fro between the claimant and the respondent's HR about the sums deducted and claimed, and about the appeal. As part of these the claimant pointed out that he was due to return to work on 23 February but the respondent had paid SSP for the rest of the month. The vehicle cost reduced to £10,099.01 including VAT. There was a sum of £320 charged for wheel damage. The revised breakdown of what the respondent said was owed is at page 672.

122. There was no hearing in respect of the grievance appeal and it was determined (by an external HR Consultant and communicated by letter sent to the claimant on 21 May 2025) to be unsuccessful as the claimant had been given an opportunity to attend a meeting and had not done so, and the reason for dismissal was his conduct. The claimant says he did not receive this.

123. Parking fines and similar continued to be received for the claimant (676).

Relevant law

Relevant law

124. The test in relation to ordinary unfair dismissal is contained in section 98 of the Employment Rights Act 1996. Section 98 provides:

(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.

(3). . .

(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.

125. In considering reasonableness in cases of dismissal for suspected misconduct the relevant test is that set out in *British Home Stores Ltd v Burchell* 1978 IRLR 379, namely whether the employer had a genuine belief in the employee's guilt, held on reasonable grounds after carrying out as much investigation into the matter as was reasonable in all the circumstances of the case.

126. In applying section 98(4) the Tribunal are not to substitute their own view for that of the employer. The question is whether the employer's decision to dismiss fell within the range of reasonable responses open to the employer, or whether it was a decision that no reasonable employer could have made in the circumstances. The range of reasonable responses test applies as much to the investigation as to the substantive decision to dismiss *Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23.

127. The ACAS Code of Practice on Disciplinary and Grievance Procedures states that it is normally appropriate to enclose copies of written evidence with the notification of a disciplinary meeting. Although the meeting should be held without unreasonable delay, the employee should be given reasonable time to prepare their case. Employees should make every effort to attend the meeting. An employee who does not agree with a decision should appeal and set out their grounds of appeal in writing. Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended to deal with the grievance. Where the grievance or disciplinary cases are related it may be appropriate to deal with both issues concurrently.

Conclusions

Unfair dismissal

What was the reason or principal reason for dismissal? The respondent says the reason was conduct, namely the bullet points at 559-560.

128. I find the reason for dismissal was the claimant's absence and manner of communication during his sick leave along with the issues that were discovered in relation to projects during that time; coupled with the fact he had already been given a warning in November 2023 and the respondent's lingering suspicions in respect of his Limited Company and the fact it had not yet been closed. I find that Mr Davey essentially lost confidence in the claimant over the sick leave period.

129. Although the sick leave is not listed as one of the reasons in the dismissal letter, it had initially been the reason for embarking on disciplinary proceedings with the claimant ("setting the rabbit running") and the evidence suggests the respondent had suspicions about the claimant's sick leave not being genuine. Mr Davey expressed disbelief at the backdated sick note in his witness statement and said in oral evidence that the claimant was giving differing accounts to different Directors. The fact that the respondent instructed HR to call 24 hospitals looking for the claimant when he had been in touch, and invited the claimant to send his resignation if that was his intention, reflects the strength of feeling around that sick leave and that the respondent considered it was more of the claimant's untrustworthy behaviour.

130. Although I acknowledge that the use of the credit card; failure to pay the parking fines and repair costs; and the overclaim on vehicle charging costs were listed in the dismissal letter, I do not accept that these were really the reason for dismissal. The use and costs had become high and the respondent was concerned to recuperate these costs as the claimant left the business (going as far as to propose the security personnel witness the transfer of funds when they collected the respondent's belongings and the car) but I do not accept these were really the reason for dismissal.

131. The respondent had allowed the personal use on the statements to build up over the year. The Finance Director and the Claimant had liaised about them in June 2023 (when the deduction from wages was not actioned by the respondent), in October 2023 when a deduction was made and again on 14 November 2023 discussing offsets against expenses/deductions from salary. They were still then discussing transactions that the claimant had either repaid in October or it was agreed would be deducted from salary in June 2023. The claimant agreed he was responsible for dry cleaning, the holiday for his wife, booked in his friend's name, and the tyres. The dry cleaning and the tyres had in fact already been recovered at the end of October.

132. The Finance Director was in November seeking to have the personal use reimbursed but used language like "have a browse through and then agreed just offset in due course". He noted that there had been a deduction from pay in the past. It is not clear why the sums agreed by the claimant in those messages were not then deducted at that time as had happened previously. He was proposing to set the tyres against expenses which appears to be agreed (though in fact these had already been paid for). There was no suggestion that this was a disciplinary matter and it was not included in the final warning issued 2 weeks later.

133. On 27 January 2024 (a Saturday) the Finance Director raised this again and asked the claimant to go through a few months statements for personal expenses. He raised the issue of recharge costs and that the claimant needed to do a mileage claim. On 30 January 2024 (a Tuesday) he asked the claimant do it over the weekend (3-4 February 2024). He had prepared the spreadsheet at 216-217 on 1 February 2024 according to the bundle index. This showed expenses of £2,641.22 and a note that his mileage claim was likely to cancel the vehicle charging out. There was a note that other expenses were owed and to check parking fines. There was still no suggestion it was a disciplinary matter.

134. The claimant was then off sick from 5 February 2024 so did not provide his response following that weekend as had been requested.

135. This issue then escalated to become part of the process once the claimant was off sick but it still appeared the emphasis was on making deductions to recuperate the money rather than making it a disciplinary matter (p243). The meetings were held in two parts with the expenses meeting first and the Finance Director said that this was to ensure that the money was repaid. He said in the meeting "shock at the level of claims you were unwell its escalated we discovered parking. My work has come into question. I have said I have asked multiple times…and you said you will do and haven't. it's a crazy level and asked that I ensure they are collected". The Finance Director also made comments in the meeting that others were also bad at providing receipts and that he was happy to confirm that some payments on the credit card were personal and authorised; some were by mistake; others were business expenses but the claimant needed to provide receipts.

136. I agree that the reasons for the dismissal at paragraph 128 are potential misconduct. Although the issues on projects could be capability rather than conduct, what made it a conduct issue for the respondent was the belief that the claimant deliberately provided misinformation. The respondent suspected the same in respect of the sick leave. The lingering suspicions in respect of the personal company are suspicions that the claimant was continuing to use that business in breach of his obligations to the respondent, which would be misconduct.

If the reason was misconduct, did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether: *there were reasonable grounds for that belief; at the time the belief was formed the respondent had carried out a reasonable investigation; the respondent otherwise acted in a procedurally fair manner; dismissal was within the range of reasonable responses.*

137. The respondent may well have had reasonable grounds to dismiss the claimant after the discovery that the claimant had sent a forged letter to the client, at least if they had followed a fair process – which they did not. Mr Davey just issued the final warning without any formal disciplinary process. That said, Mr Davey decided not to dismiss, and decided to deal with the concerns as a final written warning instead.

138. It is possible that the concerns about the communication on projects are also reasonable grounds to dismiss though if they were, I question why the respondent has flung so many other issues into the process.

139. I do not accept that the communication during sick leave and the backdated sick note are reasonable grounds (as I consider the respondent understands as they ceased to be formally on the list of allegations). The claimant's contact was not exactly as required under the policy but he did message a Director on most days; his daughter did respond when contacted to say he had been very unwell; and he did have direct contact with the Managing Director. HR did tell him to take the further 5 days off if he needed to. He did not need a sick certificate for the initial absence period and it was initially unclear the basis of the next 5 days, but once it was made clear he needed a sick certificate he obtained one. It is not uncommon for sick certificates to be backdated to the start of an absence. The respondent's reaction to the sick leave was extreme, in particular the action of calling around hospitals and informing the claimant he was AWOL for the whole period, and inviting his resignation.

140. I do not accept that the suspicions about the claimant's business remaining active was reasonable grounds for dismissal. The respondent had already elected to deal with this in the written warning on the basis of the

failure to close the company prior to the discovery of the alleged fraud. All that had happened since that is that it remained active. Once the claimant had raised the allegation of fraud with Companies House then in my view it is common sense the company could not be dissolved until that was resolved. Again the respondent appears to realise it did not have sufficient grounds to dismiss for those reasons as instead the allegation in the notice of the hearing reverted back to the charge he had already received a warning for. Then in the decision letter itself the reason was expressed as a decision that the claimant had refused to update the respondent in the meeting. This is not correct. The one thing the claimant did not fully address was whether he had submitted accounts. However the claimant pointed out correctly that it had not been an allegation on the list of issues to be discussed at the meeting. He went back over what had been said before and also showed the emails dated 3 January 2024 (pp204-206). These said the investigation was ongoing; he was consulting a solicitor; and that as soon as he could the company would be removed. He said he could only do this on "their say so" which appears to be a reference to those investigating. This was likely an accurate update of what had happened since the warning. He also referred to an email of 21 January 2024 which I have not seen.

141. Turning next to the process followed. I find this fell outside the range of reasonable processes. Firstly the process needed to clearly outline the matters being considered to give the claimant an opportunity to respond. Here the claimant's conduct during his absence and the allegation that he was using his own company in contravention of his obligations and potentially in competition with the respondent were not charges in the invitation to the meeting though I find they were reasons he was dismissed. Indeed even the issue in respect of projects is very vague.

142. I am not satisfied that the claimant was given all the relevant evidence in advance of the disciplinary meeting. I find it likely that he was not provided with pages 353-494. It was not reasonable not to provide all written evidence in advance of the meeting, as was the claimant's point in his emails and the grievance/appeals.

143. Given the number of allegations and, if they were all provided in advance as they should have been, the number of documents, it was unreasonable to turn down the claimant's request for time to prepare before the disciplinary. He raised a grievance about this which the respondent said could be considered at the dismissal meeting, though there is no record of him doing so. The meeting was then held in the claimant's absence. Whether you call it a grievance appeal or an appeal of the dismissal the claimant challenged the decision not to provide him with all the information and time to prepare. The appeal did not rectify these procedural flaws.

144. In terms of the investigation this also fell outside the range of reasonable investigations. A reasonable investigation would have clearly identified the difference between matters that were dealt with and addressed in the final written warning at the end of November 2023 and matters that had occurred or come to the respondent's attention since that warning. The latter

would be reasonable to include in the investigation but not the former. This investigation appears to have reopened the matters that were considered in the issuing of that warning.

145. Secondly the investigation would be an open-minded investigation into the specific incidents of concern. Here the statements gathered are not about what happened in a particular incident (although some of that information is offered) but about the claimant's character and why he is no longer trusted. It appears to have been an exercise in gathering anything and everything that could be thrown at the claimant once the "rabbit had been set running". This is why the process shifted and the allegations changed.

146. The shifting nature of the allegations coming unexpectedly while he was off sick led the claimant to believe the decision had been made to dismiss and the respondent was rushing through the motions of a process with its foregone conclusion. I agree. I note Mr Davey made the decision to issue the final written warning without a process and handed it to the claimant in a meeting having already written the letter. I find it likely that he had made the decision to dismiss the claimant when or before he "set the rabbit running". I note the the costs associated with early termination of the claimant's car contract were added into the Finance Director's email on 25 February 2024.

147. This decision to dismiss prior to the process was based on the claimant's absence and the issues arising or discovered on projects during the absence. There was clearly still a mistrust of what the claimant was doing with his time and with the company that he had not shut down at Companies House. Having made that decision he threw everything at it. So the expenses questions were escalated and thrown in. The sick leave issues were dropped once it was realised they could not be relied on. The claimant's reasonable requests for information and time were refused and dismissed as "delaying tactics". Valid points raised on appeal were dismissed without even an appeal meeting even though he had not attended the disciplinary. That was the respondent's opportunity to make sure the claimant was given a hearing and it was not taken.

148. Finally, the respondent never actually investigated the allegation that the claimant was conducting a competing business through his limited company, instead the allegation became first that he misled the Directors about closing it down (for which he had already received a penalty) and then that he had refused to answer questions about the company (which was not true). The only question he did not fully address (having correctly pointed out he had not been told this was to be discussed), and which remains open, is why there are no accounts for his period working for the respondent. However this is relevant to the accusation, which was not put to him in the invitation to the meetings, that he was using the company whilst working for the respondent.

149. Taking into account all of the above circumstances the decision to dismiss the claimant was not reasonable.

Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason? If so, should the claimant's compensation be reduced? By how much?

150. I accept there were a number of issues with projects exposing the respondent to losses or risk of losses. The claimant had also only recently received a final written warning, in circumstances where the claimant could have been fairly dismissed after a fair process. One of the issues then was in respect of providing untrue information and inadequate communication on projects.

151. The issues with the projects is one of the reasons the claimant was dismissed, albeit there was little clarity in respect of the actual charge against him in respect of each project. I note that the respondent has not considered this to necessarily be sufficient to dismiss on its own as so many other issues were thrown into the mix as well.

152. He was not provided with all the information in the bundle about the projects. The claimant did not have a fair opportunity to respond. In 7 March meeting the claimant explained debt collection was not his role though he was happy to assist with it. It also was not his responsibility to formally close projects down after he had confirmed they were finished. He was working on some of the issues just prior to his absence. Some of the older matters he said he needed time to check what had happened. Some of the projects had issues not of his making that he had been seeking to resolve.

153. Given these allegations were not properly specified and investigated, and the claimant had some response to some of them and inadequate information as to the accusations, there is insufficient evidence before me to say that more likely than not that the result of a fair process the claimant would have been dismissed at that time any way for the issues on the project because of either misconduct or capability.

154. The claimant was also using the credit card for extensive personal use at the least somewhat carelessly (given he says multiple times he had not even realised he had used that card eg through Deliveroo) and was not himself proactive in making or ensuring repayment. He also accrued a number of parking charges and was not proactive to ensure he paid those where necessary. However, the respondent was also not processing agreed deductions and continuing to discuss items that had already been paid for by the claimant. As referred to above, these issues were not being treated as disciplinary issues until the respondent took issue with the claimant's absence and the issues on projects. A fair process in respect of these would have led to the appropriate deductions for the transactions that were the claimant's responsibility. It may well also have led to the respondent re-emphasizing that the policy was to be more stringently followed in future.

155. However, given he was on a final written warning I do find there is a not insignificant chance that the claimant would have been dismissed fairly at

some stage during the duration of the warning, either because of persistent personal use on credit cards following attempts by the respondent to tighten this up or because of ongoing issues on projects/around communication generally meaning the claimant was not performing the role in the manner the respondent required.

156. How this should be reflected in the award shall be addressed at the remedy hearing when the parties shall have an opportunity to make submissions on this point.

Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

Did the respondent or the claimant unreasonably fail to comply with it by [specify alleged breach]? If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

157. The procedures did apply. I will hear submissions at the remedy hearing on whether or not on the facts found above either side unreasonably failed to comply with it such that there should be an adjustment to the award.

If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct? If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

158. I do consider the claimant committed blameworthy conduct that contributed to his dismissal.

159. The claimant had done the conduct, in particular the inauthentic correspondence to a client, which could have justified dismissal at that point and led to his final written warning, and the serious reduction in trust in him by the respondent.

160. He also had failed to shut down his personal company between his appointment as Director in September 2020 and the fraudulent activity in January 2022 despite telling the respondent's Directors that he had. I note that Companies House has now removed all that activity which does support the claimant's account that the activity on Companies House was not genuine activity by the company. The one question remaining for me is why there are no accounts submitted for the period the claimant was paid by the respondent through that company on Companies House at all. This was a question in the respondent's mind at the time of the dismissal. Whilst I accept that the activity which caused the respondent to be suspicious of the claimant's activities was fraudulent, I will keep open for the remedy hearing whether the claimant's blameworthy behaviour extends beyond misrepresenting the situation to the Directors and includes failing to post the accounts due for his time with the respondent.

161. He had breached the absence reporting policy in not personally contacting Mr Davey before 10 am each day which contributed to the

respondent's reaction to his absence, albeit the respondent's response was unreasonably excessive and based on a more general loss of trust.

162. The claimant did make excessive personal use of the company credit cards which is technically in breach of the respondent's procedures, including a number of Deliveroo orders. Although he did respond to some requests about these and had repaid some transactions, he was not taking any personal responsibility for checking the statements and repaying personal use or checking that deductions had been processed through his salary. Similarly a large amount of parking fines had accrued. Whilst I do not accept these were the reasons the claimant was dismissed, they did contribute to the respondent's general mistrust and exasperation with the claimant leading up to the dismissal.

163. I will hear from the parties as to the extent of reduction for contribution which is appropriate.

Does the statutory cap apply?

164. It does not appear that the claim is over the statutory cap but this can be confirmed at the remedy hearing.

What basic award is payable to the claimant, if any?

Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

165. The above considerations all apply here also, but it is not necessary for the behaviour to have caused the dismissal. I am minded to potentially consider a higher reduction here to reflect the fact that the claimant could have been fairly dismissed in November for causing the sending of an inauthentic letter to a client. Again the parties can address me on this at the remedy hearing.

Wrongful dismissal / Notice pay

Was the claimant guilty of gross misconduct, entitling the respondent to withhold 3 months wages?

166. The sending of the inauthentic letter to the client could have been considered gross misconduct, but the respondent decided to allow the contract to continue and only issued a final written warning.

167. I do not find on the balance of probability that there were actions of the claimant following that warning and leading to the decision to dismiss that amount to gross misconduct.

168. The claimant's actions during his sick leave do not amount to gross misconduct. I accept he was genuinely very unwell but made contact with

Directors throughout, albeit not strictly in line with the policy every time. He was told to take the further 5 days leave after the first week off.

169. I accept that there was fraudulent activity on his company account on Companies House. The failure to close down promptly despite his assurances were covered in the final written warning. I do not accept it was misconduct that the company was not closed down while it was being investigated. There is now a proposal to strike off now that the information has been rectified.

170. With respect to the issues on projects that post-dated, or came to the respondent's attention, after the final written warning, I do not find it more likely than not that this was gross misconduct. I have not had enough evidence in respect of each allegation to make a determination as to whether they were misconduct or a capability issue (which would not be gross misconduct) or the claimant did have a valid explanation. With respect to the signing of the contract in January the claimant responded on both the 25th and the 30th, though it may be that he should have been more proactive in alerting the directors they needed to sign it when they received it. I do not consider this to be gross misconduct.

171. With respect to the personal use of the credit card and the fines. There is no suggestion these were being treated as misconduct until the other matters were escalated and I do not accept that they are the reason he was dismissed. He had already repaid some of the personal use and agreed to repay more. It is not clear why that deduction was not processed in a timely way. Whilst they may technically be against the policy, the respondent was treating these as payments that needed to be repaid via the payroll not a disciplinary matter.

172. I note the claimant was therefore entitled to notice, though the contract itself gives his entitlement as 30 days. The parties will have an opportunity to comment on the correct notice period at the remedy hearing.

Unlawful deduction of wages

Did the respondent make unauthorised deductions from the claimant's wages in February/ March 2024 and if so how much was deducted? Was any deduction required or authorised by a written term of the contract?

173. The respondent accepts they failed to pay 2 days in February of £792.30 when the claimant confirmed he was fit to return to work. In fact I find the claimant was, on balance of probability, fit to return from 26th February 2024 as he stated and from then it was the respondent who requested he stay off until they had met. This gives £1584.60 pay that was not paid for those 4 days in February.

174. The respondent has a spreadsheet of the matters outstanding that it claims need repaying from the claimant at p672 and which was in part deducted from the claimant's final pay (£3,098).

175. The claimant challenges the payment to the Eagle pub. He acknowledges this was for his wife's party but says it was an agreed bonus. He refers to WhatsApp messages confirming this. However I have not seen these. I am not persuaded on the balance of probability that this was a bonus that it was lawful to pay this way rather than through the payroll. This should not be taken as a finding that he should not have made this payment with the credit card, but that I accept the respondent was entitled to then recuperate it via the payroll.

176. It does appear that the claimant has already been charged for the installation of a tracker on 31 October 2022 (p722) and I note that the respondent does not remove items from the list when they are paid for as the items paid at the end of October 2023 also remain on the list. I also note that the tracker was also included in the salary sacrifice calculation for the car on page 97. I therefore accept that the respondent has not established their entitlement to deduct the tracker cost from the claimant's pay as I am not persuaded it has not already been paid for by the claimant.

177. The agreement in respect of tyres was they were to be paid for by the company and then deducted from salary (p96). They were covered by the deduction in October 2023.

178. The claimant says the £500 for West Middlesex Golf fund was to be offset against a bonus or paid through salary sacrifice for sports. This does appear to be what was discussed in the meeting on 5 March 2024, but there is no evidence this was ever set up. In the circumstances it is still a personal payment rather than a business expense.

179. The claimant challenges £75.80 Deliveroo charges in March 2023 with reference back to the meeting minutes on 5 & 7March 2024. There he challenged 2 Deliveroo orders in February 2023 which the respondent has moved to the client column on page 672. I cannot see evidence to support the claimant's challenge to the March Deliveroo costs.

180. Discounting the tracker the total expenses on the Barclaycard outstanding at the end of March were £3,091.14. The respondent's contract does allow the deductions to be made but £6.86 too much was deducted for the Barclaycard expenses.

181. The respondent takes issue with whether the claim for unlawful deduction of wages is in time for the pay due at end of February. However I note that the claimant was told by HR that decisions in respect of February's pay had been made due to the deadline that month and the claimant's queries about whether he should have been paid for those days would be addressed at the meeting on 29 February 2024. Meaning they should have been paid by end of March 2024 and the claim for the deduction is in time.

182. Therefore the claimant is owed £1591.46. The respondent also was owed £275.32 for personal use on the Amex card and the outstanding parking fines of £1012.80. On page 672 the respondent sought to add the entire sum

for electric car charging whereas on page 216 there was an acknowledgement that the claimant would likely be able to offset a lot of this against mileage. In the claimant's schedule of loss the unpaid mileage is listed as £2340 and other unpaid and unspecified expenses of £500. Therefore I accept that the respondent was still owed, and could therefore have deducted from the salary outstanding the sum of £3,466.51.

183. However, I have considered s25 of Employment Rights Act 1996 and I do not consider I can simply offset the additional sums owed to the respondent from the sums deducted for specific reasons from the claimant. The parties can however address me on this at the remedy hearing. I therefore make no order here as to sums to be paid to the claimant.

184. For the avoidance of doubt the early termination costs of the car is a matter to address as part of the unfair dismissal remedy at the remedy hearing.

Breach of Contract

Did the respondent fail to pay the Claimant's expenses? Was that a breach of contract?

185. As I understand it this relates to the mileage claim and the £500 unspecified expenses. I did not see evidence of these or any mileage claim to be considered. My understanding is that both parties were treating this as sums to be offset against the vehicle charging costs rather than a sum outstanding to be paid to the claimant. If I am wrong about this, this can be addressed at the remedy hearing.

Approved by
Employment Judge Corrigan

24th July 2025

Date sent to the parties on:
25th July 2025
For the Tribunal Office

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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