EMPLOYMENT TRIBUNALS

Claimant: Mr John Buckley

Respondent: University of East Anglia

Heard at: Norwich Employment Tribunal

Before: Employment Judge Michell

REASONS

1. At a hearing on 19 and 20 June 2025, I dismissed the claimant's unfair dismissal claim. I gave oral reasons on 20 June 2025. My judgment was sent to the parties on 21 July 2025. Pursuant to the claimant's request of 27 July 2025, these are my written reasons.

Background and hearing

2. The claimant worked for the respondent as an apprentice carpenter from 18 March 2019 until 19 March 2024, when he was dismissed for alleged gross misconduct. Following completion of the early conciliation process, by a claim presented to the tribunal on 24 June 2024 he asserted that his dismissal was unfair.

3. The hearing was conducted by CVP, which medium was not objected to by the parties and appeared to be the most appropriate way of dealing with the matter. The claimant appeared in person. Mr Lawrence appeared for the respondent. I was given a 494 page bundle. For R, I heard from Mr Stephen wells, director of estates and facilities, who took the decision to dismiss, and Doctor Vivian Easton, director of admissions recruitment and marketing, who chaired the appeal. I then heard from the claimant. All 3 individuals did their best to give truthful evidence and assist the ET. I was grateful for that.

4. At the beginning of the hearing, the issues were clarified. The claimant confirmed the only claim he brought was for unfair dismissal. He also sensibly accepted that the reason or principal reason for his dismissal was alleged misconduct, and that

the respondent genuinely thought he had misconducted himself. The issues for me to determine were therefore whether (a) that belief was reasonable, (b) a reasonable investigatory process had been followed, and (c) dismissal was within the range of reasonable responses.

5. Following conclusion of the evidence, and after an overnight break to enable the parties to prepare, I heard submissions. Mr. Lawrence helpfully provided written submissions at my request, which the claimant was given in advance for his consideration. I then heard oral submissions from both parties.

The facts

6. The claimant was one of about 40 carpenters, electricians and plumbers who worked for the respondent. His contract provides [read 62].

> *All Maintenance Staff may be required to contribute to a duty roster for cover during semesters between the hours of 07:00 to 19:00 Monday to Friday and 08:00 to 16:15 hours at weekends… additional hours will be compensated for by payment of an allowance, which will be based on the average additional hours worked per year….. It is to be understood that the work of the University will normally continue at weekends as on any other weekday and that the principal University activities may, at these times, make the presence of Maintenance Staff essential.*

7. In his evidence, the claimant accepted that the above contractual provision entitled the respondent to require him to work duty rosters between those times and on those days, subject of course to the respondent not unreasonably overloading the staff at issue with weekend work. I think that concession (which was consistent with the respondent's position) was sensible. However, it was not consistent with much of his position prior to dismissal.

8. From about December 2019 until about March 2024 and the onset of COVID, the claimant worked a duty roster which comprised about an average of about three weekend shifts per year (2 x Saturday and 1 x Sunday).

9. Proposals were made by the respondent to change when roster hours were to be worked, moving to a total of about 6 Saturdays per year. This change was not unduly onerous.

10. About half the relevant workforce was unionised, with Unite. The claimant himself was a union member. In the first half of June 2022, the union opposed various attempts to vary the roster hours. It appears to have been suggested to staff at that time that they were at liberty not to work the proposed new roster shifts.

11. However, on 12 July 2022 the union members voted by a majority to accept a trial roster, including the 6 Saturdays per year. Prior to that date, the respondent had notified staff that the new roster would go ahead as a trial from the 1 July 2022. Union approval came after that date, but in between the 1 July and 12 July 2022 the claimant only failed to turn up for one of the allotted rosters, on 7 July 2022, and that was because of sickness. Nothing later turned on that non-attendance.

12. The claimant accepted in cross examination that an agreement by the union would bind him and others to comply with the agreed terms. In the circumstances, I think that must be right (and, in any event, that the respondent was entitled to and did think that must be right). But he said in cross examination there was no such agreement, because the 12 July 2022 vote was obtained by duress.

13. On the evidence I have seen, I find that the respondent had no viable basis to consider that duress was involved (and that it did not do so). This is not least because -as I shall explain- the union repeatedly agreed extensions to the trial period without any of its members asserting to the respondent that, somehow, the agreements were flawed because they too were based on duress.

14. Even if (which I think is not the case) the July vote was somehow vitiated by duress, the same surely cannot be said for each and every extension agreed by the union. As will be seen, there were several. Again, the respondent had no viable basis to consider that duress was involved (and did not do so).

15. In cross examination, the claimant raised a further issue with the supposed agreement with the union. He said there was no signed agreement. He did not explain why a signed agreement was a prerequisite. (I do not think it was -nor in evidence did the respondent). Furthermore, neither he nor anyone else suggested to the respondent that there was a need for any such signed agreement at the time. So, this was not something which the respondent was asked to address.

16. I have in any event dealt above with the respondent's right to impose reasonable roster requirements on the relevant workforce, regardless on the union's consent.

17. On 22 July 2022 the claimant said he would not be taking part in the trial roster, and he asked for the respondent to arrange for his outstanding roster hours under the current terms and conditions to be allocated to him. He said much the same thing on 15 August 2022. On 11 August 2022, he was told to attend roster on 3 September and 5 November 2022. He did not do so on either of those dates. As a result, on 22 November 2022 he was given an informal warning. He was also

reminded of the fact that Unite had agreed to proceed with the variation of the roster.

18. On that occasion, he said he would do the Saturday rota in January 2023. In his evidence, the claimant asserted that his agreement to attend roster work was to do the old roster, rather than the trial roster, and that he had been told the trial period was ending. But on 23 November 2022, the union voted unanimously (with the exception of the claimant, he said) to extend the roster trial period until the end of February 2022.

19. The respondent's 13 December 202 email spelt out the bases on which it was said the claimant was contractually obliged to participate in the roster trial. (It also recorded the fact that the claimant had not asserted there was any particular reason relating to his personal circumstances which prevented or impended him from working the allotted days). He was warned that continued refusal might make it necessary to invoke the disciplinary procedure.

20. I accept that earlier on in the process, the claimant may well genuinely have thought that he was entitled to insist on sticking to the old roster, and that he may have had at least some basis for doing so. Some of the communications from the union in or before July 2022 may have supported that impression. However, the 13 December 2022 email ought to have (and in fact) left him in no doubt as to what he was and was not entitled to do. I find that the respondent was reasonably entitled to find that the claimant ended up being intransigent, in the face of the numerous explanations he was given.

21. By a letter dated 6 January 2023, the claimant was told he would be rostered to cover 3 Saturdays in January and February 2023, and would be paid for that work. On 24 February, the union again agreed to extend the trial period for Saturday rosters until the end of May.

22. Despite this extension, and despite the 6 January letter, the claimant failed to attend the Saturday rosters in either January or March 2023. He nevertheless was paid for each of the four Saturdays he had not worked. In his evidence, he said that he was totting up the money he owed to the respondent - but he did not choose to repay it.

23. Because of this non-attendance, the respondent carried out a disciplinary investigation, led by Mr Pickett. He produced a report on 5 May 2023. The report is not as clear as it might have been in its conclusions or recommendations. But it does suggest that the matter be moved to formal disciplinary action.

24. The respondent did not provide an update in respect of the investigation until its letter of 18 August 2023, which I will deal with in a moment. The delay between

the report and the letter was excessive and regrettable. However, I think the respondent was entitled to find, as it later did, that it caused the claimant no material prejudice.

25. On 19 May 2023, the claimant asserted by email that because there was an investigation ongoing into the trial duty roster and his non-participation, “the status quo will prevail”- in other words, he would not attend the roster he had been allocated to cover the following Saturday. In that email, he said that “the job tickets allotted to me would be done during the course of my normal hours of work”. But of course, this does not answer the point that he had been asked to attend specific days and had declined to do so. The respondent was entitled to and did think it was not up to the claimant to dictate which days he did, and did not, come to work- thereby causing others inconvenience in the process.

26. By a letter dated 20 July 2023, the claimant was told that Unite had agreed a further extension to the end of October 2023. He was also told that he would be rostered to cover 2 Saturdays between July and October 2023.

27. On 18 August 2023, the respondent wrote to the claimant following his refusal to attend on 21 January and 18 March 2023, and Mr Puckett’s investigations. The letter spells out the reasons why the respondent considered it was contractually entitled to require the claimant to perform the duty rosters in question. In a further letter dated 6 October 2023, the respondent again took care to spell out the contractual position to the claimant in terms which could have not been much clearer.

28. At a meeting on 24 October 2023, the claimant was given a final written warning. As the claimant acknowledged in cross examination, he was aware that would remain on his record for 12 months, and of the possible consequences of non-compliance.

29. At that meeting, the claimant indicated that he would not be working the trial roster. (I should say that the claimant confirmed in his evidence before me that he did not work a single day of the trial roster, in either 2023 or 2024.)

30. In a follow-up letter dated 26 October 2023, the outcome was confirmed, and it was also observed that during the meeting the claimant had repeatedly refused to answer questions and had not conducted himself in a helpful or cooperative manner. The letter once again spells out why the claimant was contractually obliged to participate in the duty roster. It makes the point that the trial roster only required 6 Saturdays in the year. The letter also pointed out that the claimant had been paid for almost a year's worth of monthly roster payments for days he had not performed. (That was an issue which later formed part of a grievance by the claimant for unpaid wages. Unsurprisingly, that complaint was not successful.)

31. The letter concludes by saying that if the claimant failed to attend his next roster, he would be subject to disciplinary action which could result in his dismissal.

32. The claimant appealed the final written warning. The appeal was not successful. During the appeal process, the respondent once again explained in clear terms to the claimant why the trial roster amounted to a binding contractual commitment. He could not have been under any real illusions as regards what he was told.

33. In November 2023, the union agreed to a further extension of the trial period to end in April 2024. That agreement was confirmed to the claimant under cover of a letter from the respondent dated 6 November 2023. The letter also pointed out that even though this was a "trial of a potentially new working pattern", he was in any event contractually required to participate in a duty roster arrangement. He was asked to speak with his manager to arrange swapping with other colleagues if he was unable to attend rostered days.

34. At about the same time, the claimant signed himself off for a week with sickness. His time off encompassed the next allotted roster on 11 November,

35. During later meetings, the claimant confirmed that had he not been off sick, he would not in any event have attended the 11 November date.

36. A disciplinary report was prepared by Ms Ashman on 18 December 2023. Shortly thereafter, the claimant did not attend an allotted roster time on 24 January 2024, having signed himself off sick.

37. On 13 February 2024, the claimant was invited to attend a disciplinary hearing on 27 February 2024 because of his non-attendance on 11 November 2023. (If this had been the only day on which the claimant had failed to attend, the respondent may very well have found itself in difficulties- given the reasons for non-attendance were alleged to have been sickness related. But this was not to be.)

38. By an email dated 22 February 2024, and in advance of the 27 February meeting, the claimant's union representative explained that the claimant would now like to agree doing the trial roster, and he asked that the final written warning be lifted. (It later became clear that the lifting of the warning was a precondition for claimant in working the roster.) In cross examination, the claimant explained that this was to bring the management "to the table" so he could "negotiate a deal", because (he said) it was obvious they were going to sack him.

39. The 27 February hearing was adjourned on the day, because the claimant asserted for the first time that one of the individuals involved was conflicted. As a result, the matter was postponed, and a new invite was sent on 4 March 2024 for a reconvened hearing on 19 March.

40. On 6 March 2024 - and notwithstanding what had been said in the 22 February email- the claimant wrote to say that because his "situation with the trial roster" had not been resolved, he would not be attending his next allotted day of Saturday 9 March 2024. The claimant was told on 8 March that if he did not attend the next day it would be seen as a failure to respond to a reasonable management request, that his presence was essential for operational continuity, and that his absence would disrupt the team's functioning (which I find the respondent reasonably considered was a likely consequence of non-attendance on short notice). He was told that failure to attend would be taken into account during the reconvened disciplinary hearing, which had been scheduled for 19 March 2024.

41. Still, the claimant did not turn up on 9 March 2024. Following the claimant's non-attendance, under cover of letters dated 11 and 12 March he was told that his non-compliance with the roster requirement for 9 March constituted a further instance of violation, and that it and the claimant's non-attendance in January 2024 would also be considered at the hearing.

42. Mr Wells dealt with the 19 March 2023 hearing. He made due allowance for the fact that the claimant's absence on 11 November 2022 had apparently been due to sickness (even though he noted the claimant had indicated he would not have attended in any event). Of course, he also had 9 March 2023 to address.

43. At the 19 March hearing, Mr Wells found the claimant to be adversarial and stubborn. He did not appear to have reflected on the issues, notwithstanding the many people who had explained the position to him, including his own union.

44. The claimant asserted he was entitled to stick to the old rotor as a matter of 'custom and practise'. But in fact, the claimant had only worked under that old rotor for about three months. Mr Wells found this assertion did not assist the claimant. On the facts, I think that finding was reasonable.

45. Once again, Mr Wells explained to the claimant that asking him to attend the trial roster was a reasonable management instruction. The claimant said that management instructions could be refused where there were "health and safety" grounds for so doing. But he gave no basis for suggesting that any such grounds were present in his case.

46. Mr Wells also found it relevant that the claimant had said he would attend the trial roster if his final written warning could be waived. He found this conflicted with the claimant's stance, which was said to have been based on principle.

47. The claimant made clear at the meeting that he would not attend the trial roster days, and he explained that the respondent would "have to get over this query". He also said when asked how matters could be resolved: "I will not accept a final written warning, so I think you're in a position where you'll have to dismiss me and then we'll go down the tribunal route and let them judge". The claimant explained to Mr Wells what a compromise would look like to him, which essentially was him doing the old roster. Mr Wells considered that this was really no compromise at all. (Of course, all the claimant's colleagues were on the new roster. No other staff members refused to do the new roster.)

48. Mr Wells deliberated. He considered this was not a case of minor breach of management instructions. Rather, the claimant had repeatedly failed to follow the instructions of management to attend the trial roster shifts, and had admitted to failing to do so. So, he decided that dismissal was the appropriate sanction.

49. The claimant appealed his dismissal. Doctor Easson dealt with it, along with other panel members.

50. At the appeal hearing, the claimant told the panel he believed he was working to the terms of his employment "that are clearly stated prior to the event". Dr Easson considered he had "sincerely believed this". She felt, however, that the position had clearly been spelt out to the claimant on multiple occasions, and that the wording did not give the claimant an option not to comply. She also noted from the documentation that the claimant had been told his failure to comply, and work the trial roster, was considered an issue. As she put it in her evidence, at this point "any ambiguity in the wording of his contract should have ceased to be relevant". Thus, the refusal to comply was "wilful and persistent", and that this had been the case before the April 2023 investigation.

51. The claimant asserted that if he was reinstated there would be no problems working "the new roster" because he was "not averse to change". Dr Easson duly noted this.

52. She and the panel went with care through the grounds of appeal. She considered that the matter had been adequately investigated. She acknowledged that there had been undue delay between about May and August 2023 in progressing matters (during which time, of course, the claimant had been paid). She did not consider this made any material difference to appropriate sanction. She considered that the allegations against the claimant had been adequately notified to him sufficiently in advance for him to be able to deal with them. She found that

he had been given sufficient opportunity to comply with the trial roster. She found that what had started off as a difference in understanding had ended up in a situation where the claimant "had simply refused to change his behaviour". The appeal was therefore rejected.

The law

53. The relevant core legal principals were helpfully set out in Mr. Lawrence in his written submissions. I do not repeat them in depth here. Amongst other things, the test for unfair dismissal purposes is whether the dismissal falls within the range of reasonable responses. It is not for me to substitute my own view on what I would have done. Rather, the question is whether it was reasonably open to the respondent to choose to do what it did, based on reasonable belief following a reasonable investigation.

54. In addition to Mr. Lawrence's submissions, I referred the parties to the EAT's decision in **The Ministry of Justice v. Parry** UKEAT/0068/12/ZT, which makes clear that except in exceptional circumstances, an employer will usually be justified in dismissing an employee who commits a further act of misconduct within the period of effect of a final written warning. This is so, even if the final act "on its own would certainly not merit dismissal".

55. The claimant also referred me to the EAT's decision in **Butler v. The Synergy Group**, which amongst other things flags up the potential relevance of an employee's genuine but mistaken belief in the lawfulness of instructions given by his employer (in that case, concerning clocking out and use of PPE). I note that principle. However, the relevant timeline in **Butler** was considerably shorter, -a few weeks, rather than many months. The explanations as to the contractual position given by the employer were considerably less clear and far fewer than in the instant case. The final written warning was also rushed through in **Butler**. Hence there are important factual differences.

Application to facts

56. I find that the respondent was entitled (and right) to consider that relevant terms of the claimant's contract of employment enabled the respondent to change the claimant's roster days and their frequency in the manner they changed them in this case. (As I have said, the claimant admitted as much in cross examination.)

57. In any event, as the claimant accepted, an agreement to vary the roster by the union would be binding on him. I think the respondent was fully entitled to reject the claimant's assertion that any such agreement was void by reason of duress.

There was no evidence of duress. And the agreement was repeated and reaffirmed by the union on several occasions.

58. It follows that the respondent was entitled to find (and it was the case) that the claimant's repeated non-attendance amounted to a breach of the requirement to comply with reasonable management instructions. It also cumulatively amounted to a breach of the implied term of trust and confidence, which breach was completed by the final straw of non-attendance on 9 March 2024.

59. Of course, my own analysis as to the contractual position is not the essential issue for the purposes of determining whether the claimant was unfairly dismissed. For that purpose, the issue is whether the respondent reasonably believed (belief itself not being in issue here), following a reasonable investigation, that the claimant had wilfully and repeatedly disobeyed reasonable management instructions.

60. I find that such belief was entirely reasonable. The claimant repeatedly declined to attend, notwithstanding repeated explanations as to why he had to do so.

61. I consider that the investigation was more than adequate. The only really significant delay in the process, back in 2023, did not make any material difference. The respondent ascertained which days the claimant had and had not worked. It questioned the claimant as to his reasons. It clearly explained the position to the claimant, who declined to change his ways.

62. In all the circumstances, I consider it was comfortably within the range of reasonable responses for the respondent to dismiss the claimant. His non-compliance stretched back for many months. And he was on a final written warning for precisely the same misconduct. He chose not to attend on 9 March 2023, which in the circumstances was a strikingly self-defeating act. If the respondent had relied only on an 'after the event' declaration by the claimant that the few shifts he had missed through sickness would not have been attended by him in any event, that may have been more problematic. But as the witnesses made clear, and as I accept, that was by no means the entire picture.

63. Mr Wells does not appear to have considered that the claimant maintained a genuine belief as to the legality of his position throughout. But as Dr Easson explained in her evidence, even if the claimant somehow (wholly unreasonably) continued to believe he was entitled not to attend, it was in the face of many explanations to the contrary which simply could not be ignored or disregarded. There had to come a point where, applying the range of reasonable responses test, the respondent was entitled to say, 'enough is enough'. By March 2023, it had reached that point.

64. Although it was not an argument which the claimant addressed in his questions to the respondent's witnesses or in his own evidence, I have considered whether the decision to reject the appeal notwithstanding the claimant's offer to do the new shift rotor if reinstated somehow rendered the dismissal unfair. I do not think it did. The offer was only made at the appeal stage, in circumstances where the appeal process was only a review of the decision to dismiss (rather than a rehearing). And given the claimant's record of retraction of previous offers to do the new roster shift, and most importantly his long track record of non-compliance, amounting to breach of trust and confidence, I think the decision to dismiss remained within the band of reasonable responses.

65. Those are my findings in relation to unfair dismissal.

66. Have I been asked to consider a wrongful dismissal claim, in the light of my findings as to the claimant's contractual position I would have found that (objectively construed) the claimant was in breach of the implied term of trust and confidence implicit in his contract by his continued non-attendance for Saturday rosters, and that the 9 March 2024 occasion was the 'last straw' justifying summary dismissal- particularly bearing in mind the final written warning he was already under.

67. Those findings would also mean that, even if the dismissal was unfair, I would have decided the claimant was entirely to blame for the dismissal by reason of his own blameworthy conduct in remaining entrenched in the face of clear instruction, and thus that a 100% deduction ought to be made under s.123(6) ERA and/or that a 100% Polkey deduction should be made, even if that dismissal had been unfair. But those points are academic. The unfair dismissal claim is not well founded. It is dismissed.

APPROVED BY:
Employment Judge Michell

Date: 12 August 2025

SENT TO THE PARTIES ON

15 August 2025

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FOR THE TRIBUNAL OFFICE