Case number: 6010488/2024

EMPLOYMENT TRIBUNALS

Claimant: Miss E Mordue-Tarr

Respondent: GM-Design Ltd

Heard at: Southampton (by CVP) **On:** 12 and 13 June 2025

Before: Employment Judge Yallop

REPRESENTATION:

Claimant: In person
Respondent: Ms C Goodman (Counsel)

JUDGMENT

The judgment of the Tribunal is as follows:

Unfair Dismissal

1. The complaint of unfair dismissal is not well-founded.

2. The complaint is dismissed.

JUDGMENT having been sent to the parties on 24 June 2025 and written reasons having then been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided.

REASONS

Introduction

1. The Claimant worked for GM Design Limited from 21 May 2012 to 24 April 2024, when she was dismissed without notice for gross misconduct. At the time of her dismissal, she was an Associate Director.

2. The Claimant claimed that she was unfairly dismissed. The Respondent contested her claim.

The hearing

3. I heard the claim on 12 and 13 June 2025. The Claimant represented herself. The Respondent was represented by Ms Goodman (counsel).

4. The Claimant gave sworn evidence on her own account. Lucy Robarts-Arnold (Managing Director of the Respondent) and Susanne Samuel (external HR adviser) gave sworn evidence for the Respondent. There were no other witnesses.

Preliminary matters

5. Before I heard any evidence, I dealt with a preliminary issue relating to the list of issues that had been agreed between the parties. The list included a complaint of wrongful dismissal, which was not mentioned in the Claimant's claim. The Respondent explained that this complaint had been included in error when a precedent document had been copied over and not properly amended. The Claimant confirmed that she had not understood the legal terms, but that she considered she had been treated wrongly, and she would have made the complaint had she realised that she could. She then made an application to amend her claim to include a complaint of wrongful dismissal.

6. I considered the Presidential Guidance on General Case Management dated 22 January 2018 and the factors set out in **Selkent Bus Co Ltd v Moore 1996 ICR 836, EAT**. I took into account the following matters and decided not to allow the amendment:

    a) The Claimant was dismissed with effect from 24 April 2024, so the primary time limit for a wrongful dismissal claim was 23 July 2024 (without an early conciliation extension).

    b) The Claimant's application was made on the morning of the substantive hearing, almost a year later. The only reason that the Claimant provided for not having

brought the wrongful dismissal complaint when she lodged her claim for unfair dismissal on 3 September 2024 was that she did not know that she could. Although the Claimant is representing herself, she could have found information online about the types of claim a person can bring if they are challenging a gross misconduct dismissal. All of the facts upon which her wrongful dismissal claim would have been based were known to the Claimant at the time of her dismissal.

c) The Claimant could be disadvantaged by being unable to proceed with a wrongful dismissal complaint. However, there would be no financial prejudice to her if she was successful in her claim for unfair dismissal, as she could recover her notice pay through a compensatory award.

d) Although the same facts were relevant to the wrongful dismissal claim as were described in relation to the Claimant's claim for unfair dismissal, I considered the proposed amendment to be significant at this stage in the proceedings, as the legal test is different. In deciding a wrongful dismissal claim, I would not have been considering the reasonableness of the employer's decision to dismiss, but whether the Claimant was actually guilty of conduct so serious as to amount to a repudiatory breach of the contract entitling the Respondent to summarily terminate the contract. I accepted that the Respondent had made a genuine error on the list of issues, and had not come to the hearing prepared to defend a complaint of wrongful dismissal.

e) Having balanced the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it, I decided that the balance fell in favour of the Respondent, and that it was in accordance with the overriding objective to refuse the application.

Issues

7. I explained that I was intending to deal with liability first and would then consider remedy if the Claimant was successful in her claim. I agreed with the parties that the issues I needed to determine in respect of liability were as follows:

a) What was the reason or principal reason for dismissal? The Respondent says the reason was conduct. The Tribunal will need to decide whether the Respondent genuinely believed the Claimant had committed misconduct.

b) If the reason was misconduct, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant? The Tribunal will decide, in particular, whether:

   i) there were reasonable grounds for that belief;
   ii) at the time the belief was formed, the Respondent had carried out a reasonable investigation;

iii) the Respondent otherwise acted in a procedurally fair manner.
iv) dismissal was within the range of reasonable responses open to a reasonable employer when faced with these facts.

c) I discussed with the Claimant her challenges to the fairness of the dismissal, which she identified as follows:

i) It was not reasonable to view the incident as constituting gross misconduct.
ii) Dismissal without notice was too extreme a sanction.

d) In respect of the fairness of the procedure, the Claimant confirmed that her challenges were as follows:

i) the dismissing officer was biased and assumed guilt.
ii) It was unfair to take into account the supplementary interviews, as the Claimant did not have an opportunity to comment on them.
iii) No mediation was provided.
iv) There was disparity in the support offered to the Claimant and Christina Layzell.

Findings of fact

8. My findings of fact are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point.

9. The Respondent is a design and content marketing agency, working with clients across a range of sectors including beauty, charity, construction, health, food, furnishing, training and tourism. It is a small organization, which at the time of the hearing comprised of 17 employees and two directors: Lucy Robarts-Arnold (Managing Director) and Mark Mirko (Creative Director).

10. The Claimant began working for the Respondent as a Client Executive and worked for the company for a number of years before being promoted, most recently to the role of Associate Director in 2022. As an Associate Director, she was one of four members of the senior leadership team. Her role sat across Account Management and copy writing and she was primarily responsible for managing the social media, blog content creation and press releases. When Ms Robarts-Arnold was away from work in January 2024, the Claimant took on the majority of Ms Robarts-Arnold's client work and some additional line management responsibilities.

11. In August 2023, one of the Respondent's junior team members, a graphic designer called Christina Layzell, complained to Ms Robarts-Arnold and Mr Mirko that she was finding the Claimant and another colleague's discussions in the office distracting. Similar complaints were also made by other members of the team. Ms Robarts-Arnold and Mr Mirko therefore spoke to the Claimant informally about the

complaints and asked that she changed her behaviour. They did not tell the Claimant who had made the complaints.

12. On 14 March 2024, the Claimant and Ms Layzell had a discussion in the office at the end of the day. Only the two of them were present. During that conversation, it is agreed that the Claimant told Ms Layzell that she was aware Ms Layzell had made a complaint about the Claimant chatting in the office, and that she had heard about this from the directors. There is a dispute, though, about the exact wording and the tone of the conversation. The Claimant said she considered the conversation to have been light-hearted. Ms Layzell's account was that it was not. In Ms Layzell version of events, the Claimant had said that any complaints Ms Layzell had should be brought to the Claimant first, and: 'I don't want you driving home thinking 'fuck she knows'. Whereas the Claimant asserts she had actually said that if Ms Layzell was finding the Clamant distracting, Ms Layzell should 'feel free to come directly to me to say so – no need to always go to Mark or LC…'. In relation to the driving comment, the Claimant said she had simply told Ms Layzell not to overthink things on the drive home.

13. Having left the office, Ms Layzell sent voice messages to another junior colleague, Frankie Bonfield, recounting what had happened. In those messages, Ms Layzell said that she was scared and anxious, and had had panic attacks because of the discussion with the Claimant. She said that she loved her job and didn't want to jeopardise it, and that the discussion 'just felt like a bit of a threat'.

14. On 15 March 2024, Ms Layzell spoke to Abigail Jenkins (a Senior Account Manager at the Respondent) about her conversation with the Claimant on 14 March 2024.

15. On 17 March 2024, Ms Bonfield told Ms Robarts-Arnold about the incident on 14 March. On 18 March 2024, Ms Robarts-Arnold and Mr Mirko had a Teams meeting with Ms Layzell about the incident and listened to the messages Ms Layzell had sent Ms Bonfield. Ms Layzell told them that she was worried about making a complaint, and that she had been looking at other job opportunities over the weekend as she did not want to work in that environment.

16. Ms Robarts-Arnold explained in her oral evidence that no action was taken at that stage, as Ms Layzell had said that she wanted to get back to work and continue as normal, and the Directors wanted to respect her wishes. However, Ms Robarts-Arnold subsequently reviewed the matter with Ms Layzell and found her to be struggling with working in the office with the Claimant. She and Mr Mirko therefore decided that there should be a formal investigation and that the Claimant should be suspended whilst it took place.

17. On 26 March 2024, the Claimant was interviewed by Mr Mirko at the Exeter Golf and Country Club, and she was suspended during that meeting. It was made clear that this was a neutral act and not a pre-determination of guilt. Mr Mirko told the Claimant

that she should contact either him or Ms Robarts-Arnold if she needed to talk or needed support.

18. The Claimant says that this was an empty offer, as Mr Mirko then went on holiday. The Claimant also noted that there was a disparity between the support offered to her and to Ms Layzell. I find that the Respondent did offer Ms Layzell greater support than it offered to the Claimant, including an offer of talking therapy made at the end of the meeting on 22 April 2024. Ms Robarts-Arnold explained in her oral evidence that the talking therapy was offered because Ms Layzell had become very upset during the meeting, and that it was easier to check-in with Ms Layzell because she was in the office. Ms Roberts-Arnold also explained that she had been advised not to approach the Claimant directly, to maintain the credibility of the disciplinary process. Ms Roberts-Arnold apologised to the Claimant for the lack of support the Claimant had received whilst suspended, and said that the Respondent has taken learning from that and has put additional support in place for this kind of situation. I accept Ms Robarts-Arnold's evidence and find that the disparity in the well-being support offered to the Claimant and Ms Layzell does not indicate that the Respondent was biased against the Claimant.

19. The Claimant contends that the way in which she was questioned during the investigatory meeting suggests that her guilt had been predetermined. Looking at the transcript from the hearing, I do not agree that the questions give that impression. Ms Roberts-Arnold later confirmed to the Claimant that the questions had been scripted by an external HR adviser, and I accept that assertion and find that Mr Mirko was following an advised format when questioning the Claimant. I also note that Mr Mirko challenged Ms Layzell thoroughly on her account of the incident. I therefore find that the questioning did not suggest the investigatory meeting was biased and pre-determined. Further, I find that the fact that Mr Mirko was Ms Layzell's line manager did not make it inappropriate for him to be the investigating officer in this case.

20. During the investigatory meeting, the Claimant expressed shock about the allegations and said: 'I feel awful Christina is feeling like that' and 'it is horrible Christina feels like this.' This is relevant, as the Respondent was concerned about the Claimant's reaction to the allegations against her. I find that the Claimant expressed clear concern about Ms Layzell's reaction to their conversation on 14 March 2024.

21. The Claimant's suspension was confirmed in writing by a letter dated 26 March 2024.

22. Mr Mirko subsequently carried out interviews with Ms Bonfield and Ms Layzell. In the interview with Ms Bonfield, Ms Bonfield confirmed that on 15 March 2024, she had had a Teams call with Ms Layzell to discuss the conversation with the Claimant. Ms Bonfield said that Ms Layzell had been really upset and panicking, so that was why Ms Bonfield had informed Ms Robarts-Arnold about the incident. In the interview with Ms Layzell, Ms Layzell provided views on the Claimant's comments in her

investigatory interview, and explicitly stated that she had felt intimidated by a senior member of staff.

23. Mr Mirko was on annual leave until 8 April 2024. He produced an investigation report dated 10 April 2024 confirming that he believed there was a disciplinary case to answer. I do not consider that the time it took from the first discussion with the Claimant on 26 March 2024 to the production of the investigation report on 10 April 2024 constituted an unreasonable delay.

24. The Claimant was invited to attend a disciplinary meeting with Ms Robarts-Arnold to consider an allegation described as: 'Bullying, arising from your alleged intimidatory and threatening behaviour and remarks to a colleague in the Office on 14 March 2024, related to the fact the colleague had previously raised concerns with senior management regarding your distracting behaviour at work'. The letter confirmed that the Respondent considered this allegation to be one of gross misconduct, and that if the Claimant was found guilty of the conduct, she might be dismissed without notice or pay in lieu of notice. It enclosed copies of interview notes and documentary evidence, and noted that the Claimant could provide her own evidence for consideration. It confirmed that the Claimant could be accompanied at the meeting.

25. The Respondent's anti-harassment and bullying policy states: 'Bullying is offensive, intimidating, malicious or insulting behaviour involving the misuse of power that can make a person feel vulnerable, upset, humiliated, undermined or threatened.' It goes on to say: 'if we consider you have been harassed or bullied by an employee the matter will be dealt with under the Disciplinary procedure as a case of possible misconduct or gross misconduct.' The Respondent's Disciplinary and capability procedure confirms that gross misconduct will usually result in dismissal without a warning, with no notice or pay in lieu of notice. Bullying is included in the list of matters that are normally regarded as gross misconduct.

26. The disciplinary hearing took place on 16 April 2024. During the meeting, the Claimant said that she was feeling incredibly vulnerable and unwell, and raised concern about not receiving support for her well-being. The Claimant explained that she did not agree with Ms Layzell's account of the conversation, that she had not demonstrated threatening behaviour towards Ms Layzell and that the conversation had been misconstrued. She also questioned the nature of Ms Layzell's reaction to the conversation. When asked whether she could see that drawing out the fact that Ms Layzell had raised a complaint about the Claimant would be intimidating, the Claimant said 'if I had said it in a threatening tone I would agree with that statement. But it was just an off the cuff comment as part of the conversation, there was no ill intent. I wasn't aware it was sensitive information.' The Claimant also asked why mediation had not been considered. Ms Robarts-Arnold replied that this was because of the seriousness of the complaint.

27. After the disciplinary hearing, Ms Robarts-Arnold interviewed Ms Jenkins, Ms Bonfield and Ms Layzell, conducting her own investigation into the allegations and gathering further evidence on matters raised by the Claimant in the disciplinary

hearing. She then wrote to the Claimant on 24 April 2024 informing the Claimant that she was being dismissed summarily. Ms Robarts-Arnold based her decision on what she found happened during the conversation on 14 March 2024, which preferred the account from Ms Layzell. Ms Robarts-Arnold found that the conversation had not been light-hearted, but that the Claimant, as a senior member of staff, had threatened Ms Layzell, and caused her significant distress and anxiety, and that this constituted gross misconduct. In relation to the sanction, Ms Robarts-Arnold wrote that she had considered mitigation and lesser sanctions, including with conditions regarding coaching and mediation, and the fact that it was a one-off offence. However, she considered they were not appropriate because of the seriousness of the incident and the fact that the Claimant had been disingenuous about the conversation and not shown any meaningful contrition. I found Ms Robarts-Arnold to be a truthful witness and to have been earnest in her desire to ensure the process was fair.

28. The Claimant appealed against her dismissal and was invited to attend an appeal hearing with Suzanne Samuel, an external HR consultant. The appeal hearing took place on 9 May 2024. Following a long discussion, Ms Samuel adjourned the hearing and then separately interviewed Ms Layzell and Mr Mirko. She then re-convened the hearing and discussed those interviews with the Claimant. On 29 May 2024, Ms Samuel wrote to the Claimant dismissing her appeal and upholding the dismissal.

Relevant law

29. Section 94 Employment Rights Act 1996 (ERA) confers on employees the right not to be unfairly dismissed, and under section 98 ERA, the employer must show that it had a potentially fair reason for a dismissal. In this case, the Respondent is relying on conduct as the potentially fair reason.

30. Section 98(4) ERA provides that the determination of whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend 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 this shall be determined in accordance with the equity and the substantial merits of the case.

31. The approach to misconduct dismissals is based on the decision in **British Home Stores Ltd v Burchell [1978] IRLR 379** and the following questions must be addressed:

    1) Did the Respondent genuinely believe that the claimant was guilty of misconduct?
    2) If so, was that belief based on reasonable grounds?
    3) Had the employer carried out such investigation into the matter as was reasonable?

32. The burden of proof rests with the employer for the first ground but it is neutral for grounds 2) and 3). The employer need not have conclusive proof of the employee's misconduct, only a genuine and reasonable belief. Reasonableness is neutral test.

33. When assessing whether the **Burchell** test has been met, the tribunal must ask itself whether what occurred fell within the 'range of reasonable responses' of a reasonable employer. The Court of Appeal has held that the 'range of reasonable responses' test applies in a conduct case both to the decision to dismiss and to the procedure by which that decision was reached. In *J Sainsbury plc v Hitt 2003 ICR 111, CA*, the Court found that a tribunal had substituted its own decision as to whether an investigation into alleged misconduct was reasonable. This was an error of law. The relevant question was whether it was an investigation that fell within the range of reasonable responses that a reasonable employer might have adopted.

34. In **Hussain v Elonex plc [1999] IRLR 420**, the Court of Appeal held that failure to disclose witness statements to an employee will not be fatal, so long as the employee knows the substance of the case against them. The Court of Appeal said:

> "There is no universal requirement of natural justice or general principle of law that an employee must be shown in all cases copies of witness statements obtained by an employer about the employee's conduct. It is a matter of what is fair and reasonable in each case."

35. It is also useful to note that the ACAS Code states, at paragraph 23:

> "Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. But a fair disciplinary process should always be followed, before dismissing for gross misconduct."

Conclusions

<u>What was the reason for dismissal?</u>

36. I conclude that the reason for the Claimant's dismissal was her conduct, namely the Respondent's belief that the Claimant behaved in an unacceptable manner towards Ms Layzell. The evidence I heard from Ms Robarts-Arnold regarding the reasons for dismissal was consistent with the disciplinary outcome letter, and no other reason has been put forward by the Claimant. It is clear from the fact that the Claimant was asked to deputise for Ms Robarts-Arnold in 2024 that she was held in high regard by the Respondent and there is no evidence to suggest that conduct was not the real reason for the dismissal.

Did the Respondent genuinely believe that the Claimant was guilty of misconduct? If so, were there reasonable grounds for such a belief?

37. I conclude that the Respondent had a genuine belief in the Claimants' misconduct and that this belief was based on reasonable grounds.

38. The Claimant asserts that the Respondent was biased against her and assumed she was guilty of bullying Ms Layzell, but I have found no evidence of this. It is clear from the evidence relating to the disciplinary procedure that the Respondent took the investigation very seriously, as they engaged external HR support to assist with the disciplinary process and an HR professional to conduct the appeal. The disciplinary process was thorough, and carefully considered evidence from Ms Layzell and the Claimant, as well as the voice notes Ms Layzell recorded straight after the incident and the conversations she had with other colleagues about it. That evidence gave the Respondent reasonable grounds to prefer Ms Layzell's account of the incident.

39. The Claimant points to places in Ms Layzell's accounts where Ms Layzell questioned how serious an incident it was. The Claimant argues that these extracts demonstrate inconsistency. However, the Respondent was entitled on the evidence to conclude that the fact Ms Layzell questioned whether she had misconstrued the discussion and what the Claimant's intention had been, made Ms Layzell's account more believable, not less, because it showed Ms Layzell had not just given an emotional response, but had engaged in self-reflection.

Did the Respondent carry out a reasonable investigation and otherwise act in a procedurally fair manner?

40. I am satisfied that a reasonable investigation was carried out by the Respondent. There was an initial investigation, a disciplinary hearing and an appeal hearing. All meetings were lengthy and thorough. Throughout the process, the Claimant was provided with an opportunity to put her case, ask questions and review the relevant evidence. Although the Claimant was not given the opportunity to review evidence from the supplementary interviews Ms Robarts-Arnold conducted following the disciplinary hearing, those interviews did not reveal any new allegations, and it was clear that the Claimant knew the case against her. Even if the Claimant had been disadvantaged by not seeing those interviews at the disciplinary stage - which I do not consider she was - she saw the material before the appeal hearing and had the opportunity to comment on it, so any disadvantage was removed at that stage.

41. Despite the Respondent being a relatively small employer, it clearly took the disciplinary process very seriously and engaged external HR advice and support to make sure that the procedure was fair. I do not find any procedural defects in the process followed by the Respondent.

Did the Respondent act reasonably in treating the reason for dismissal as sufficient to dismiss the Claimant in the circumstances?

42. The key issue to be determined in this case, was whether the decision to dismiss the Claimant fell within the range of reasonable responses available to the Respondent.

43. The Respondent's position is that the Claimant's actions constituted gross misconduct. Referring to their disciplinary procedure, the Respondent asserts that dismissal fell within the range of reasonable responses available in cases of gross misconduct.

44. The Claimant on the other hand argues that the decision to dismiss was not one that any reasonable employer would have taken. She referred to her unblemished record of 12 years and argued that the decision to dismiss her was disproportionately severe and attempts should have been made to resolve the matter informally or she should have been given a lesser sanction.
45. When determining whether it was reasonable for the Respondent to treat the Claimant's conduct as gross misconduct or to dismiss the Claimant, it is important to remember that the Tribunal must not substitute its own judgment for that of a reasonable employer. The Tribunal's role is not to decide how it would have acted in the same situation but to assess whether the Respondent's actions fell within the range of reasonable responses available to an employer.

46. On balance, I conclude that the Respondent's decision to dismiss the Claimant fell within the range of reasonable responses, for the following reasons:

    a) The Respondent's disciplinary procedure in the Team handbook states that bullying constitutes gross misconduct.
    b) The Respondent is a small business where members of staff work together in an open-plan space and have to collaborate closely in a creative way. It was therefore reasonable for the Respondent to treat incidents of bullying with the utmost seriousness.
    c) I accept the Claimant's argument that it was difficult for her to show remorse whilst arguing that the incident did not occur in the way that had been alleged by Ms Layzell. I also accept that in her investigatory interview, the Claimant showed concern about Ms Layzell's feelings following the incident. However, having found that the conversation happened in the way put forward by Ms Layzell, I consider that it was reasonable for the Respondent to conclude that the Claimant had intentionally misrepresented the discussion, and that there was a real risk of the misconduct being repeated.
    d) Having reasonably concluded that the conversation between the Claimant and Ms Layzell was threatening and constituted bullying, the Respondent was justified in determining that dismissal was a proportionate and appropriate response.

e) The Claimant has argued that weight should have been given to the fact that she had requested management training. However, I do not consider this to be a valid argument. Management training would not have taught the Claimant not to threaten a junior member of staff, which is what the Respondent found had occurred.
f) The Claimant also argued that mediation should have been undertaken early in the process, and that this would have been practicable because she and Ms Layzell managed to work together for three days in the office after the incident occurred. However, I consider that it was reasonable for the Respondent to decide that mediation was not appropriate early on in the process, because at that stage it did not know whether the Claimant had intentionally threatened Ms Layzell. If the incident had turned out to have been a simple miscommunication between colleagues, mediation may then have been appropriate. However, once the Respondent had found that the Claimant had bullied Ms Layzell, it was open to the Respondent to decide that dismissal was appropriate.
g) I do not agree with the Claimant that dismissal was too extreme a sanction to fall within the range of reasonable responses open to a reasonable employer when faced with the facts as determined by the Respondent through its disciplinary process. Looking at what the Respondent reasonably found to have occurred, the incident was a serious one.
h) While dismissal may not have been the only reasonable outcome, I do not find that the Claimant's previously unblemished record, good performance, and length of service are sufficient to render the dismissal unreasonable in the circumstances.

47. For these reasons, I find that the dismissal was fair. The claim for unfair dismissal is dismissed.

Approved by:
Employment Judge Yallop
20 July 2025

Sent to the parties on
16 August 2025

Jade Lobb
For the Tribunal

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