



EMPLOYMENT TRIBUNALS (SCOTLAND)
Case No: 4100103/2025

Held in Edinburgh on 16, 17 and 18 June 2025

Employment Judge M Robison

Mr R Barr

**Claimant
In Person**

Easyjet Airline Company Limited

**Respondent
Represented by
Ms J Darling
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claims are not well-founded and are dismissed.

REASONS

1. The claimant lodged a claim with the Employment Tribunal on 23 January 2025 claiming unfair dismissal as well as failure to provide written reasons for dismissal and discrimination because of sex and sexual orientation. The respondent entered a defence resisting the claims, denying discrimination and asserting that dismissal, by reason of gross misconduct, intimated in writing, was fair.
2. Following a case management preliminary hearing which took place on 21 March 2025, the claim for sex discrimination was withdrawn and dismissed in a decision dated 26 March 2025. The note issued following that preliminary hearing set out a comprehensive list of issues to be determined at this final hearing.
3. At the outset of the final hearing, the claimant advised that he was seeking to rely on video and/or audio recordings. Ms Darling objected to those being considered at this hearing, primarily because she had not been aware of them until very recently, her witnesses were not aware of them and she had not had a chance to take statements or instructions on them. In the circumstances, I refused to allow the claimant to introduce them at this late stage, for those reasons but also because the respondent had not taken them into account at the hearing or appeal. I explained to the claimant that he could

give evidence about standard public announcement scripts, which is what I understood they related to.

4. At this final hearing, I heard evidence from the claimant first and then for the respondent from Ms Amanda Gallagher, disciplinary hearing chair and decision-maker; and Mr Jason Davis, who heard the appeal.
5. After the first day of hearing, a number of additional documents, primarily relating to remedy, were lodged and added to a joint file of productions which was referred to throughout the hearing.
6. Following evidence, I heard oral submissions from both parties, which I have taken account of in my deliberations and conclusions.

Findings in fact

7. On the basis of the evidence heard and the productions lodged, the Tribunal finds the following relevant facts admitted or proved.

Background

8. The claimant commenced employment with the respondent as cabin crew on a fixed term contract on 8 April 2014, which subsequently became permanent. He was promoted to cabin manager in 2016, becoming permanent with effect from 1 November 2017. The claimant was latterly based at Edinburgh.
9. Following a complaint about the claimant's conduct during a flight on 22 August 2022, a disciplinary hearing was held on 27 September 2022 after which the claimant was issued with a final writing warning. This related to allegations of sexual harassment and of breaching the respondent's bullying and harassment policy due to unwanted behaviour directed towards female colleagues. The sanction of a final written warning was "to allow you the opportunity to consider your behaviour and how it impacted your colleagues and going forward to behave in an appropriate manner to ensure that your conduct is aligned with Easyjet's expectations.... The improvement expected of you is no further acts of misconduct. I must stress that any further breaches of Easyjet's disciplinary rules will result in further disciplinary action being taken which may result in your dismissal. Easyjet cabin managers are role models and hold a position of authority, it is imperative that you demonstrate the very highest standards at all times, creating an environment in which your crew feel supported and safe. This warning will be placed on your people record but will be disregarded for disciplinary purposes after a period of 12 months from 6 October 2022".
10. Towards the end of 2023, a "speak up and speak out" (SUSO) complaint, which is an anonymous complaint by a crew member was made about the

claimant. That complaint alleged that he had repeatedly made inappropriate comments making the complainer feel uncomfortable as well as sexual or disrespectful comments to passengers, including homophobic and transphobic comments in her presence. After a fact finding meeting, a decision was made that the claimant should receive counselling and advice, given by Amanda Gallagher, Glasgow base manager, on 21 December 2023.

11. At that meeting the respondent's harassment policy was discussed, and the type of behaviour that is acceptable. In a subsequent written report, it was noted that the claimant said that he was aware not to cross the line and he "recognises his mistakes and has spent the last 12 months conscious of how things can be interpreted". He brought up a "mock" assessment of him which had been undertaken with cabin crew on a recent flight which he believed included positive feedback. Amanda Gallagher raised concerns with the claimant about references to cabin crew being pleased to be included in "adult conversations" and calling the claimant "Dad", which she believed were inappropriate and that the claimant should have been more aware of that.
12. In terms of outcome/actions, the claimant was advised that "as the CM, it is important for Ross to be always professional and a good role model for his crew". While appreciating that he receives valuable feedback, "it is important that he recognises how his behaviour/jokes can impact on his colleagues working alongside him. It is imperative for Ross to be mindful of feelings and how comments can be misconstrued. This is the second time a complaint of this nature has been raised, going forward if this presents again, there will be further investigations....Ross must be more aware of how his comments come across, and not to make jokes that could cause upset to others". This report was sent to the claimant, but he did not sign it or return in.
13. In or around 21 January 2024, the claimant approached the Edinburgh base manager Vicky McKenzie to intimate that he was intending to raise a grievance following that counselling session which he considered was not handled well. Following that discussion, the claimant decided not to pursue the grievance. Amanda Gallagher was not made aware that the claimant had been contemplating raising a grievance against her.

Passenger complaint

14. On 14 August 2024, the claimant was interviewed by Vicky McKenzie who was investigating a customer complaint about his conduct during a flight on 2 July 2024 alleging he had made inappropriate comments to a crew member in front of customers. An extract of the letter of complaint was considered, which related to an allegation that the claimant had said, when walking down the aisle closely behind a female member of the cabin crew that, "I'm not doing anything. I'm just staring at your ass". This it was alleged was said loudly in

front of passengers, including young children. During that meeting the claimant could not recall the incident. He stated that, “without knowing who this was I don’t know what context this would be. With some of the crew you get on better with and have banter with.....the only thing I can think of was from another flight, it was Sharon that was up front. I went to get something from the trolley and I brushed passed her boobs and I went too close and said I think I have touched your boobs”. Following an adjournment, the claimant said “I have been wracking my brain and cannot think of anything. I do remember someone bent over and I said ‘oh I am not looking at your bum’ but cannot remember when this was”. At the end of that meeting, the claimant was suspended.

15. Vicky McKenzie then interviewed the other crew members who had been on the flight when the incident complained of took place. One crew member said that she had no problems with the claimant’s behaviour on the flight. A second said that while it did not concern her, in her opinion the claimant’s style in general should be a matter of concern, especially his public announcements which she said were very different and not “by the book”. She said that she thought the claimant’s approach was “not neutral enough for all the passengers”.
16. The alleged incident complained of was an interaction with a third crew member. That crew member was asked whether the claimant had said “he was just looking at your ass” and she confirmed that he had said this to her. When asked, she said that it did not offend her, that “it was banter, it could have been anyone stood in front of him. It was an off the cuff comment I don’t feel it was directed at me”. When asked whether it was said in earshot of the customer she replied “it is possible that people may have heard it he didn’t whisper in my ear”. She said that there was nothing on the day that caused her concern and that the claimant “does things differently”. She suggested that “this could have been because a passenger has had their bag moved or something and they are not happy” and that “the passenger wasn’t happy from boarding”.
17. Vicky McKenzie reconvened the investigatory meeting with the claimant on 16 August 2024, when a full copy of the letter of complaint from the customer was available. Vicky McKenzie questioned the claimant about the additional allegations contained in the letter which alleged that the claimant “had behaved in a consistently misogynistic and inappropriate manner since I boarded the plane”.
18. This included an allegation that the claimant had referred to female cabin crew as “lovely ladies” over the tannoy. The claimant admitted that he did, but called male crew “lovely gentlemen” as well, so that was not sex specific. He admitted too that he did refer to his “more attractive colleagues”, explaining

this was self-deprecation. He accepted he may have called a passenger “darling”, but would tend to say “young man” or “young lady”.

19. In regard to other complaints about inappropriate behaviour, he denied telling passengers of a two hour delay; and denied making jokes about safety measures. He explained how he dealt with tea and coffee orders and accepted he used the phrase “cow juice”. With regard to the complaint about lengthy tannoy announcements and prioritising attempts at comedy routines over passenger comfort and safety, he said he talked too much but covered the information required.

Crew complaint

20. On 22 August 2022, Vicky Mckenzie received another complaint via e-mail about the claimant from a crew member following her first shift working with him. This included a complaint that “The entire shift pretty much he was talking about sex or making jokes about it. He explained that he had been suspended before due to a speak up speak out that someone previously put in against him because ‘all I said was that her tits would get bigger if she got pregnant, and guess what they did’. To me it felt like the fact he brought that up was kind of like a deterrent for any of us to then raise one against him, even though it was inappropriate to bring up at all”.
21. She also complained that the claimant had referred to her and to another a crew member as his “much more attractive colleague”, which she believed was unnecessary and awkward and drew attention to her in an unwelcome way.
22. She also complained that when she was putting an extension seatbelt back into the bag and there was no room for it, the claimant said to her “having a problem trying to stuff it in? Bet you’ve never had that problem” which made her feel uncomfortable.
23. On 27 August 2024, the claimant was interviewed by Jackie McDonald, crew performance manager, regarding these allegations. He admitted that he said “more attractive colleague”, said he had learned this from a mentor, and that it was self-deprecation and not considered offensive. In regard to the seatbelt comment, he said “I can hear me saying ‘just stuff it in’, I don’t know....I really don’t remember”. The claimant confirmed that he had previously brought up the SUSO with colleagues. He did not accept that his comments were sexual in nature.
24. He said in response to a question about whether his public announcements went beyond generic, he disagreed, saying generally he said exactly the same thing. He mentioned a “training flight” when he had been assessed and told only that he had missed a reference to charging vapes, which was mandatory.

Apart from that, he said that the assessor had approved his public announcements.

25. Other crew on that flight were also interviewed, including the complainer. The other crew member interviewed stated that she could not remember any crew making sexual comments or remarks on that flight and that the crew worked “fine” together.

Disciplinary and dismissal

26. The claimant was advised by letter dated 10 September 2024 that he was to attend a disciplinary hearing on 12 September 2024 which was to be conducted by Amanda Gallagher. Amanda Gallagher had been asked by her counterpart in Edinburgh, Vicky McKenzie, to undertake the disciplinary hearing. It was common practice for them to cover the other’s disciplinary hearings.
27. The claimant was forwarded the investigation pack which included the investigation meeting notes from the interviews with the other crew as well as relevant policies, including the bullying and harassment policy. The claimant was advised that if there were any documents he wanted considered at the hearing he should forward copies prior to the hearing.
28. The date 12 September 2024 was selected following consultation with the claimant. The claimant was made aware prior to the hearing that Amanda Gallagher was about to go on annual leave after the hearing.
29. Notes were taken by Janice McKay, crew performance manager at Glasgow and the claimant was accompanied by his union representative. The hearing started at 10.30 and concluded at 13.36. Following an adjournment, the claimant was advised that he was dismissed for gross misconduct.
30. At the end of the meeting Amanda Gallagher stated, “your outcome letter will follow but as discussed I am on leave not due back until 25 September so it will be after this day”.
31. By letter dated 4 October 2024, sent to the claimant by e-mail, Amanda Gallagher confirmed the outcome of the disciplinary hearing. That letter included the following:

“During your disciplinary meeting, we discussed the allegations that had been made against you....and when advised about this you advised that you say what you think. I asked you what you meant by this and you could not give a reasonable explanation. Stating that it was just banter. The comment heard by the passenger was in relation to a crew member’s bottom. Where the customer said in the complaint that you said, “I’m not doing anything, I am just

staring at your ass". On a separate flight with the same crew member you admitted brushing passed her in the forward galley of the aircraft saying, "Oh I have just brushed passed your boobs". I asked why on two separate occasions with the same female crew member, you referred to a body part, you explained that as you have been in a similar situation with complaints around inappropriate comments that you have a fear of being seen to be doing something. When asked to explain this in more detail you stated that there is a nervousness and that how you perceive a situation is different from how someone else would.

Within your disciplinary hearing, we discussed referencing our female customers as "darling" which you advised that you had no recollection of doing.

During your disciplinary hearing another section of the customer complaint was around the terminology you used to describe milk when serving hot drinks to our customers, referring to it has cow juice, when asked why you use this terminology you advised that you were having a laugh with customers, and it was something that just popped into your head. In a professional environment this is not the type of comment that we should be making.

During your disciplinary hearing, another section of the customer complaint was around safety related duties, the way in which you briefed the overwing exits. There was reference in the customer complaint around opening the door and running. You recognised that this could make our passengers feel uneasy. It was also discussed around ensuring that you stick to the brief documented within the CSPM section 5.3.1.2.

During your disciplinary hearing in relation to the second allegation that was raised, it was noted around making a crew member feel uncomfortable onboard whilst completing the PA for the duty free, referring to them as your more attractive colleague, you said this was self-deprecation about yourself. We discussed how this can make someone feel and to be more mindful of this. There was also reference in the customer complaint around how you refer to our female crew as lovely ladies, it was also noted within the letter around taking over the Tannoy for repeatedly inappropriate lengths of time whilst trying to be funny which gives the wrong impression, that you are prioritising attempts at comedy routines over customer comfort and safety. You should always remain professional with your approach. You advised during your disciplinary hearing that with this information you need to tailor your PAs for the crew that you have on board. This should not be the case as you should always conduct yourself in the same manner, to ensure that this type of behaviour does not make anyone feel uncomfortable.

During your disciplinary hearing, when asked around the comment made to the crew member around stuffing it in when they were trying to re-stow safety equipment, you could not give me any mitigation or reasoning behind this comment.

Whilst you have asked for support, I do not believe you have shown full remorse for your actions and you have failed to acknowledge the seriousness of where your behaviour has fallen below standard.

You do not recognise the impact that this has on the individuals involved, or the impact this conduct may have on others and their perception of such behaviour. The impact it has had on our customers that they felt it warranted to write in to raise awareness around your behaviour and the potential damage to the company's reputation.

It also must be noted that this type of behaviour could have an influence on CRM and safety on board the aircraft, as the crew members involved could become distracted by your conduct. Whilst you referred to always making yourself approachable to your crew, it must be highlighted that this type of behaviour can have the opposite effect, where crew do not feel safe to raise issues with you.

As the cabin manager you are in a position of trust and I feel there has been a breakdown in trust in relation to these situations, you should conduct yourself in a manner that ensures your crew feel safe onboard the aircraft. This is not the first time you have been in this situation with regard to your conduct and comments made to female crew members.

You have had opportunities to ask for support and guidance, you have been in similar meetings to discuss your conduct prior to this meeting, and this has not had the desired effect to ensure that this does not happen again. This is repeat behaviour that cannot be ignored. I therefore deem this a risk to the business and gross misconduct. Please see extract from the disciplinary policy below:

'Gross misconduct: The following are examples of gross misconduct which may result in your dismissal without notice or payment in lieu of notice....bullying or harassment of or discrimination against any colleague, volunteer, or member of the public or customer....examples of unacceptable behaviour making unwelcome sexual advances or suggestive behaviour/comments; engaging in unnecessary, unwanted, or objectionable physical contact'.

During your disciplinary hearing on 12 September 2024 having considered all alternative sanctions, I have decided to terminate your employment".

Appeal

32. The claimant appealed. He was advised that an appeal hearing would be heard by Jason Davis, base manager Belfast. He was advised that if there were any documents which he wanted the appeal manager to consider then he should provide copies prior to the hearing.
33. The claimant sent Jason Davis copies of social media comments which were positive feedback relating to the claimant's performance on flights.
34. The appeal hearing took place on 12 November 2024, when notes were taken by Amy Blacker and the claimant was accompanied by his trade union representative.
35. Following the hearing, Jason Davis undertook certain further investigations. He spoke to Amanda Gallagher about allegations of bias. He also spoke to members of Edinburgh base team. That included a conversation with the cabin performance manager about a complaint of a breach of confidentiality by another member of staff who had allegedly discussed the claimant's disciplinary procedure. She advised him that the individual had been brought in and spoken to and reminded of the confidentiality statement which all are advised of at the start of investigation interviews, which is that they are not to speak to anyone outside the meeting. While the claimant said that others had been better treated, Jason Davis asked for names but he did not name any names so he could not investigate further.
36. The claimant was advised in an appeal outcome letter that:

"I have decided that the decision made by Amanda Gallagher to dismiss you stands. Below I have listed my rationale for not upholding the points of your appeal.

Breach of the ERA: You raised concerns regarding the timing of the written dismissal statement, citing a breach of the statutory requirement to provide this information within 14 days. Upon investigation, it has been confirmed that the written statement was indeed issued outside the statutory timeframe. However, Amanda Gallagher informed you during your disciplinary hearing on 12 September 2024 that, due to her scheduled leave, she would be unable to issue the letter until after 25 September 2024. She subsequently followed up with an email on 2 October 2024, advising that the outcome letter would be provided to you by 4 October 2024. Based on this I am satisfied that she kept you informed throughout the process and ensured you were updated on the timeline for issuing the letter.

Alleged conscious/unconscious bias in the investigation and disciplinary process: You stated that the disciplinary manager, Amanda Gallagher, had a

bias due to previous involvement in an investigation concerning related allegations. Upon review, there is no evidence to suggest that this influenced her findings in the present case. The investigation and disciplinary adhered to procedural fairness and I am confident she demonstrated impartiality throughout the process.

Failure to protect confidentiality of the investigation and disciplinary outcome: You raised concerns about breaches of confidentiality, referencing messages from colleagues regarding your dismissal. Following further investigation, it was confirmed that a crew member had discussed information about the disciplinary outcome. This matter was appropriately addressed by the Edinburgh base team. While this breach does not impact the outcome of the disciplinary decision, I acknowledge the distress it may have caused you. I am satisfied that the Edinburgh base team handled the situation promptly and effectively.

Incorrect information in the outcome letter: You contested specific points in the outcome letter, including allegations that you dismissed certain behaviours as banter and incidents of unwelcome physical contact. Upon review, the disciplinary records and witness statements substantiate the conclusions reached in the outcome letter. While there were minor inconsistencies in wording, the core findings remain supported.

Unreasonable time pressure on procedure: You indicated that the disciplinary manager prioritised their own annual leave, creating undue pressure on the process. Upon review, I found no procedural breaches, but I acknowledge your perception that the process felt rushed. This serves as a reminder for future cases to ensure clarity in scheduling to avoid similar concerns. I will ensure that this feedback is given accordingly.

Missing documents and information in the disciplinary pack: You highlighted the absence of specific documents, including flight observation records and verbatim feedback. Upon investigation, I cannot see where these have been discussed in either the investigation notes or the disciplinary notes. The documents you are alluding to do not materially change the conclusions reached.

Failure under section 13(1) of the Equality Act 2010: You raised that you were treated differently compared to others under similar circumstances due to your protected characteristics. My investigation did not uncover any evidence to substantiate this claim. It's my belief the process followed was consistent and fair and you were not treated any differently to your colleagues.

Training and support failures: You stated that necessary training was not provided prior to the incidents referenced in your disciplinary process. After

investigating this further I can see that on 19 March 2024 you successfully completed training that included a thorough focus on diversity, inclusion and equality in the workplace. Despite this, your continued behaviour demonstrated a failure to uphold the values and principles outline in this training.....

Disproportionate punishment: You raised that the disciplinary outcome of dismissal was disproportionate, particularly considering your performance record and recognition. While I appreciate your previous contributions to the company, the behaviours identified during the investigation breached company policies and values, justifying the outcome of dismissal.

Additional points raised in your hearing: You also sought clarification as to why your ipad was returned to IT and all data erased before the appeal process was concluded. You mentioned that you believed there were documents on the device, including an assessment, that might have been useful for your appeal. Once the decision was made to dismiss you from your role, the hearing manager followed the standard process for handling immediate leavers. As part of the process, various departments, including IT, were notified. Upon receiving this notification, IT promptly deactivated your email account and wiped all data from the device. I must note that the assessment in question would not have influenced my decision-making process”.

Relevant law

37. Section 98(1) the Employment Rights Act 1996 (ERA) provides that, in determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason for dismissal and, if more than one, the principal one, and that it is a reason falling within s.98(2) or some other substantial reason of a kind to justify the dismissal. Conduct is one of the potentially fair reasons for dismissal.
38. Section 98(4) provides that where the employer has shown that dismissal was for a potentially fair reason, the question whether the dismissal is fair or unfair 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, to be determined in accordance with equity and the substantial merits of the case.
39. In a dismissal for misconduct, in *British Homes Stores Ltd v Burchell* [1980] ICR 303 the EAT held that the employer must show that: i) he believed the employee was guilty of misconduct; ii) he had in his mind reasonable grounds upon which to sustain that belief, and iii) at the stage at which he formed that

belief on those grounds, he had carried out as much investigation into the matter as was reasonable in the circumstances.

40. A lack of consistency may give rise to a finding of unfair dismissal (*Post Office v Fennell* 1981 IRLR 221 CA). *Hadjiannou v Coral Casinos Ltd* 1981 IRLR 352 EAT established that a complaint of inconsistency of treatment would only be relevant in limited circumstances and that is: i) where employees have been led by an employer to believe that certain conduct will not lead to dismissal; ii) where evidence of other cases being dealt with more leniently supports a complaint that the reason stated for dismissal by the employer was not the real reason, and iii) where decisions made by an employer in truly parallel circumstances indicate that it was not reasonable for the employer to dismiss.
41. The tribunal must be careful not to assume that merely because it would have acted in a different way that the employer therefore has acted unreasonably. One reasonable employer may react in one way whilst another reasonable employer may have a different response. The tribunal's task is to determine whether the respondent's decision to dismiss, including any procedure adopted leading up to dismissal, falls within that band of reasonable responses.
42. Section 92(1) and (2) ERA state that an employee is entitled to be provided with a written statement giving particulars of the reasons for dismissal, but only if requested, and if requested, a statement is to be provided within 14 days.
43. Section 93 ERA states that a complaint may be presented to an employment tribunal, where a complaint of unfair dismissal is presented, that the employer unreasonably failed to provide a written statement under section 92, and if well-founded, the tribunal shall make an award of two weeks' pay.
44. Section 13 of the Equality Act 2010 states that a person discriminates against another if they treat them less favourably than they treat or would treat others because of a protected characteristic. Sexual orientation is one such protected characteristic.

Deliberations and decision

Unfair dismissal

45. In a claim for unfair dismissal for misconduct, for dismissal to be fair, as noted above, the Burchell test requires the employer to show that they had a genuine belief that the employee was guilty of misconduct and that they formed that belief on reasonable grounds, having carried out as much investigation into the matter as was reasonable in the circumstances.

46. The claimant asserted that the respondent did not carry out sufficient investigation into the allegations, rendering dismissal unfair. I deal with each of his concerns in turn.
47. The claimant asserts that certain documents which he had requested were not made available or not considered by the dismissing manager, namely: training flights where public announcements were approved; other passenger feedback on the same flight; previous counselling session with dismissing manager; previous training records; previous customer feedback; and public announcements made by others. He complains too that the respondent did not consider the cabin flight reports for the flights in respect of which complaints were made, which he said would show that a reprimand had been given to the crew member who had complained.
48. During the hearing, the claimant gave evidence about a so-called “training flight”, which he raised during the investigation meeting on 27 August 2024, and lodged paperwork which confirmed that all SOPs were adhered to. There was reference to customer surveys and flight reports relating to the flights in question. He also referenced public announcements made by others including the request for the Tribunal to listen to videos or audios of such public announcements. There was reference to his previous training records and previous counselling session with the dismissing manager.
49. The letter dated 10 September 2024 which required him to attend the disciplinary hearing listed the documents which were to be discussed at the hearing. These focussed on the customer and crew complaint and the investigation which followed.
50. It is apparent that the claimant did not ask for the documents which he now complains were not considered prior to the dismissal hearing, although he was invited to provide the hearing manager with copies of any documents which he wanted her to consider. I note that the “training flight” and the previous counselling and advice session were mentioned during the disciplinary hearing, but neither the claimant, nor his union representative, asked for any documents relating to those events to be considered. Nor did the claimant mention or make any request for any of the other documents which he now complains were not considered.
51. The claimant also complained that although an allegation of inappropriate touching was included in the dismissal letter, this was not investigated and “has proven to be false in writing by the other party”.
52. This relates to the reference in the dismissal letter to a comment the claimant made to a colleague, “oh I have just brushed passed your boobs”. This is a comment which the claimant himself volunteered during the investigation

stage. There was therefore no requirement to investigate what was an admission by the claimant. The fact he volunteered it perhaps suggests that the claimant did not fully appreciate the concerns about his behaviour. As I understand it, the crew member involved has subsequently confirmed to the claimant that it was “false” or that she could not recall the incident or was not concerned about it. Whether that would have made any difference is a moot point, but that was not information which the respondent had at the time of dismissal in any event.

53. The claimant complained that “insufficient weight was given to the witness statements that contradict the findings, for example the party that is alleged to have been sexually harassed states that she was not and in no way was she upset or offended; another party refers to the exact opposite taking place to the crew member’s complaint”.
54. This relates to the fact that in the investigation interviews, the crew member in respect of whom the “ass” comment (or “bum” as he asserted) was made stated at the time that she was not offended by it. The respondent however made reference to the bullying and harassment policy, and in particular to the section “what is harassment”. That states, as might be expected given the relevant sections of the Equality Act 2010, that “the unwanted behaviour doesn’t need to be directed at the individual in order for them to be offended by it. If the comments create an intimidating or offensive environment for that person, that’s harassment”. The point here is that a customer was sufficiently concerned about the claimant’s behaviour to write in to complain, and indeed in the complaint made specific reference to the respondent’s harassment policy. Accordingly the fact that the crew member did not categorise the conduct as sexual harassment is nothing to the point.
55. With regard to the claimant’s assertion about the crew member’s complaint, that “another party refers to the exact opposite taking place”, this appears to refer to the other crew member saying that she could not remember any sexual comments that day and that everything was “fine”. The fact she does not remember or did not overhear does not of course mean that there was any contradiction and in particular this does not negate or disprove the fact of the customer complaint.
56. The claimant complains that not all witnesses were interviewed, in particular the captain and the first officer. The claimant did not however suggest at any stage, during the investigation, disciplinary (or even the appeal), that the respondent should have interviewed the captain and/or the first officer. In any event, I accepted Ms Darling’s submission that the claimant had agreed in evidence that they would not have heard the comments about body parts to the crew member, and he did not suggest that either were present to overhear the comment made to the crew member who complained.

57. The claimant also argues that other aspects of the disciplinary procedure were conducted unfairly. He had raised a number of these concerns, for the first time, during his appeal.
58. In particular, the claimant alleged that there was conscious or unconscious bias in the investigation and disciplinary process. This relates to the claim that the dismissal manager had previously been involved in counselling the claimant and had displayed bias. He was of the view that the counselling and advice session which Ms Gallagher had undertaken with the claimant was poorly handled. He expressed concern in particular about the comments in a mock assessment which the claimant himself raised. Again, the claimant's lack of judgment is perhaps evident in him having volunteered that and his belief that this showed him in a positive light. The claimant could not however otherwise point to any concrete way in which Ms Gallagher had displayed bias. I accepted that it was common practice for the base manager at Edinburgh to undertake such hearings for the base manager at Glasgow and vice versa. I accepted the evidence of Mr Davis that the undertaking of counselling and advice sessions was part of the day to day role of such managers. Most relevantly, neither the claimant nor his union rep raised any such concern before, during or immediately after the disciplinary hearing. Nor indeed was Ms Gallagher aware that the claimant had considered raising a grievance against her. While this was raised at the appeal hearing, Mr Davis found no evidence that the previous interaction had influenced Ms Gallagher and was confident she demonstrated impartiality.
59. The claimant also complained that there was a failure to protect the confidentiality of the investigation and disciplinary outcome. This related to the claimant's complaint that the crew member who had complained had discussed the disciplinary process with colleagues. Mr Davis ascertained through further investigation following the appeal hearing that this matter had come to the attention of the Edinburgh base manager and had been dealt with by them. I agreed however with Mr Davis that whatever the circumstances, any breach did not impact on the outcome of the disciplinary decision.
60. The claimant raised a number of concerns about incorrect information in the outcome letter. At the appeal, Mr Davis reviewed this and concluded that the disciplinary records and witness statements substantiate the conclusions reached, and that "while there were minor inconsistencies in wording, the core findings remain supported".
61. In particular, the claimant complained that the letter stated that he referenced comments as "banter". The claimant's position is that he did not use the word "banter" but that this was used by others including witnesses. Ms Gallagher in evidence said that it would have made no difference to the outcome, and I

accepted that assertion. This is a semantic point and any “label” for the conduct is beside the point since the focus is the conduct itself.

62. The claimant also raises concerns that the dismissal letter states that the claimant’s public announcement system were inappropriately long, but this was not investigated. The claimant’s position was that his public announcements were shorter than the pre-recorded versions and otherwise in accordance with guidance. In evidence, Ms Gallagher essentially confirmed that she had not investigated the claimant’s public announcements. However, she also confirmed that the matter of the claimant’s behaviour on public announcements had formed very little justification for her decision to dismiss. This is self-evident from the dismissal letter itself.
63. The claimant takes issue with the assertion in the dismissal letter that the claimant’s actions would compromise safety on board. The claimant relies on the fact that he has an exemplary safety record. The claimant did not raise this after the disciplinary hearing or apparently in the appeal hearing. In any event the letter, as was pointed out during the hearing, states that this type of behaviour could (not would) have an influence on safety on board. I accepted Ms Gallagher’s evidence about her rationale for that conclusion, namely that if a member of crew felt uneasy around the claimant when completing safety related duties then that might result in them not undertaking their safety duties appropriately.
64. The claimant also took issue with the reference in the dismissal letter to the company’s reputation. He sought to rely on the fact that there was only one customer complaint and that there was much positive feedback about him on social media. I accepted Ms Gallagher’s evidence that the concern was the claimant’s lack of awareness about his behaviour and that his behaviour was such that a customer had felt compelled to write in to complain; so despite the positive comments, which she considered, they could not ignore this complaint. Further, and this was something which Ms Gallagher stressed in evidence, this was repeat conduct on the part of the claimant.
65. One of the claimant’s grounds of appeal was that there was “unreasonable time pressure”. In particular, the claimant asserts that the disciplinary hearing was rushed. This was related to the fact that the dismissing manager held the disciplinary hearing on the day that she was due to go on annual leave. The claimant suggested that she had “repeatedly stated” this. However, Ms Gallagher’s evidence was that she had mentioned it when scheduling the disciplinary hearing, and that she “may have said it at the start”. The claimant’s position is that it was mentioned at the start, before notes were taken. That would appear to be the case because the next time the topic is referenced in the notes of the hearing is at the end that “your outcome letter will follow but as discussed I am on leave until 25th September so it will be

after this day". I did not therefore accept that Ms Gallagher had "repeatedly" made reference to going on annual leave.

66. Nor more importantly do I accept that the hearing was rushed. I did not agree with the claimant's assertion that "this limited the response time available during the meeting". There is no suggestion that the claimant, who was accompanied by a trade union representative, was in any way limited in his response or what he could refer to during the meeting. Neither he nor his trade union rep made any such suggestion during or after the meeting. There were no requests to present, or refer to, or take account of, additional information during, or after, the hearing. The hearing lasted over three hours, and although Mr Davis quite rightly could not confirm whether this was a reasonable amount of time for this hearing, given the evidence heard, I could not say that this was an unreasonable amount of time to conduct such a hearing. This is not least because there was no suggestion at the time that there was more that the claimant wanted to add but was prevented from doing so.
67. There was one issue which may well have been a cause for concern and that related to the length of the adjournment during which Ms Gallagher considered her decision. According to the notes that took 11 minutes. However, Ms Gallagher said in evidence that was a mistake. She said that she had not noticed the error in the notes, but that neither the claimant nor his union rep had asked for an amendment to those notes. I accept Ms Gallagher's evidence that the adjournment lasted longer, and that is supported by what she is noted to have said after the meeting re-convened.
68. While the claimant did mention in his appeal documents which he considered were missing from the disciplinary pack, again he was asked when he was invited to attend the appeal hearing whether there were any additional documents which the appeal manager would like to consider.
69. During the appeal he made reference to the observation flight, customer feedback, flight records for both flights and for the other occasion when he worked with the crew member who complained. The claimant complained that certain documents had been deleted after he left and that disadvantaged him. Witnesses however confirmed that it was standard practice to delete staff files and e-mail accounts very shortly after they had left.
70. With regard to missing documents, the claimant did provide social media posts with feedback from passengers, and made reference to the "observation flight" during the appeal. This matter was considered by Mr Davis, who noted that no reference had been made to these in the investigation notes or the disciplinary notes.

71. The claimant complained that the appeal letter was incorrect to the extent that it stated that the observation flight was not mentioned in the investigation process. During evidence the claimant pointed out that there was a reference in the investigation to “doing a flight with Pam”. It seems this was a reference to an observation flight and there is different terminology used for such observation or “training” flights.
72. Although during the hearing the claimant pointed out where he had referenced the training flight during the investigation, it was a passing reference and he did not make any request for any documents then. The claimant said that no negative comments had been made about his public announcements at that time. In evidence, I noted that Ms Gallagher said that the decision to dismiss was only in small part due to the claimant’s public announcements. Mr Davis said that sight of such documents would not have made any difference to the outcome.
73. The claimant raised concerns about training and support failures. On further investigation, Mr Davis ascertained that the claimant had undergone training on 19 March 2024 on diversity inclusion and equality but despite that he had continued to behave in a way which demonstrated a failure to uphold the values and principles outlined in that training. He found that he had totally disregarded that training.
74. I noted that Mr Davis’s impression of the points raised at the appeal stage was that the claimant was “clutching at straws”, and I agreed. I find that nothing that transpired at the appeal stage could be said to render dismissal in the circumstances unfair.
75. I have therefore formed the view that there is no substance to the claimant’s concerns about the reasonableness of the investigation. It follows from the above that the respondent has met the requirements of the Burchell test. In particular, the respondent conducted a reasonable investigation, following complaints from a customer, interviewing those who were relevant, with further interviews, including of the claimant, following the subsequent complaint by the crew member. I conclude that the decision to dismiss was based on a genuine belief that the claimant had committed misconduct of the type alleged, and that belief was formed after a reasonable investigation.
76. It follows that there is no foundation to the claimant’s assertion that there was a failure to comply with the ACAS code of practice in regard to the necessary investigations.
77. I turned to consider whether the sanction of dismissal/decision to dismiss was reasonable in all the circumstances, that is whether dismissal was within the

range of reasonable responses. The claimant argued as a ground of appeal that the punishment had been disproportionate.

78. In support of his contention that dismissal was unfair, the claimant asserted that the public announcements used were copied from a former colleague with a different protected characteristic who had not been sanctioned; and he also relied on the fact that he was told he was not to use the same phrases and/or comments and/or public announcements used by colleagues due to differences in protected characteristics. The claimant alleged that he had been told this by Vicky McKenzie. There was no note of that and Ms McKenzie did not give evidence. The claimant complained that no video evidence showing same or similar public announcements being used by colleagues of different protected characteristics was viewed or used in case.
79. The claimant accepted that Vicky McKenzie had no involvement in this disciplinary process. Consequently this could not have had an influence on the outcome. The claimant did not produce any video evidence or make any request for the dismissal manager to consider video evidence showing the same or similar public announcements. In any event, as noted above, the claimant's style of public announcements formed only a very limited part of the justification advanced by Ms Gallagher for her decision to dismiss.
80. The claimant also relies on the fact that he was treated differently to other employees guilty of the same or similar conduct. This appears to be a "lack of consistency" type argument. While the claimant did mention some other instances of colleagues accused of sexual harassment, he presented no evidence to support that. He mentioned a former colleague, who had left in 2019, whom he said was his mentor, focussing on his style undertaking public announcements, but he presented no evidence to support his contention that he was in parallel circumstances, that is where there had been both a passenger and crew complaint about him.
81. The claimant did mention during the course of the hearing the fact that he had complained that the crew member who had complained about him had discussed his disciplinary action with others, which I now understand may be relied on to support this assertion. He made reference to the bullying and harassment policy which includes "spreading rumours" as an example of unacceptable behaviour. He complained in particular about a breach of confidence. Mr Davis confirmed that the crew member had been spoken to but that there had been no investigation or disciplinary hearing. It cannot be said however that the crew member was in similar circumstances as the claimant, given the background and the reasons for his dismissal.
82. Although the claimant referenced the fact that that crew member, who was not subject to disciplinary, had a different protected characteristic, thus

alluding to a claim under the Equality Act, the claimant accepted that he had withdrawn his claim for sex discrimination. To the extent that he argues that dismissal was unfair because he was treated inconsistently, as discussed above, the circumstances between what was alleged about his conduct and the other crew member were of course quite different.

83. The claimant also contends that “hearsay and opinions were taken as fact”. This would appear to relate to concerns which the claimant had about the witness statements which were relied on. I accepted Ms Darling’s submission that Ms Gallagher was entitled to reach the decision she did on the basis of the information available to her. This included a customer complaint and the complaint of a crew member. The other witnesses who were interviewed expressed views but the information which Ms Gallagher based her decision on was sufficient to support the conclusion she reached.
84. The claimant also complained that he had been blocked from raising a grievance, but accepted in cross examination that he had not been “blocked” but that he had decided for himself not to lodge a formal grievance after raising the issue about the counselling session with Vicky McKenzie because he did not think it would be worthwhile. In any event, this apparently has little or no relevance to the question whether the sanction of dismissal was unfair in the circumstances.
85. Ms Gallagher noted in the dismissal letter and stressed during the hearing that she had taken account of the fact that the claimant was dismissed for repeat conduct of a similar nature. There had been complaints against the claimant made before, one which had resulted in a final written warning in regard to a breach of the respondent’s bullying and harassment policy due to unwanted behaviour directed at female colleagues, and sexual harassment. That final written warning expired in October 2023. In December 2023, the respondent received an anonymous complaint about alleged inappropriate sexual and/or disrespectful comments, which resulted in a counselling and advice session when the claimant was again reminded of the respondent’s bullying and harassment policy. The next incident which was relied on to support the decision to dismiss took place on 2 July 2024.
86. Ms Darling relied on the case of *Airbus UK Ltd v Webb* 2008 EWCA Civ 49, that while it is usual for expired warnings to be disregarded, misconduct in respect of which the final written warning was issued may be relevant when considering whether a subsequent dismissal for similar misconduct was reasonable.
87. Here the claimant was not dismissed because of the expired final written warning. He was dismissed because of misconduct which took the form of a breach of the respondent’s bullying and harassment policy, which was very

similar to misconduct which had led to the written warning and in respect of which counselling and advice had been given.

88. The claimant could not say that he was not aware of the respondent's bullying and harassment policy, not just because he had undertaken a training module which had made reference to it, but also because it had been clearly brought to his attention in the very recent past. Given the claimant's stated reaction to losing a job that he said that he loved, it was difficult to understand why he had failed to take on board the counselling and advice that he was given.
89. I conclude therefore that the sanction of dismissal in these circumstances fell within the range of reasonable responses, and was dismissal was not unfair.

Equality Act claim

90. The claimant submits that he was directly discriminated against in terms of section 13(1) of the Equality Act 2010. He argues that he has been less favourably treated than those in the same or similar circumstances who did not share his protected characteristic.
91. As noted above, to the extent that the claimant was relying on treatment of the crew member who was reported for breaching confidentiality and spreading rumours but not officially investigated or sanctioned, as I understood it that related to a claim for sex discrimination, which the claimant had withdrawn.
92. In regard to the claim that he was less favourably treated because of his sexual orientation, it is understood that the claimant relied on a former colleague whom he described as his mentor as a comparator. He claimed that he replicated his style of public announcements, but that his comparator had not been reprimanded.
93. However, this misses the point entirely. I accepted the evidence that the claimant was dismissed primarily because of the allegations of sexual harassment. As noted above, the claimant did not produce any evidence which could suggest that this comparator, or indeed a hypothetical comparator, was in the same or similar circumstances, that is had been accused of sexual harassment following a complaint from a customer and/or colleague.
94. I concluded that the claimant had not established less favourable treatment, or indeed in any event that the reason why he was dismissed was because of his sexual orientation, there being another clear reason for dismissal.

Claim relating to the failure to supply written reasons for dismissal

95. The claimant also relies on a claim that the respondent failed to comply with the requirements of section 92(2) ERA. While I have found that the matter of the issuing of written reasons for dismissal was discussed at the dismissal hearing, I have found that the claimant did not in terms make a request for written reasons for dismissal. Even if he did, and accepting that the written reasons were provided outwith the 14 day period, I could not say that the respondent unreasonably failed to provide written reasons within the 14 day period for the following reasons.
96. Ms Gallagher in evidence said that she had discussed with the claimant when scheduling the disciplinary meeting that she was going on annual leave on that day. The claimant was thus aware of that before the hearing and was reminded/reinformed about that at the hearing and therefore was on notice that there would be a delay in issuing the reasons.
97. Written reasons were of course subsequently issued, and they were issued some eight days outwith the time frame stipulated. In all the circumstances, any failure could not be said to be an unreasonable failure, there being a clear reason, communicated before the event to the claimant, for the delay.

Conclusion

98. I therefore conclude, in all the circumstances, that dismissal for gross misconduct was within range of reasonable responses open to the respondent, and therefore that the dismissal was not unfair. The claim is therefore dismissed. The Equality Act claim also fails as there is no evidence that the claimant was less favourably treated because of a protected characteristic, and is also dismissed. The claim under section 92 ERA also falls to be dismissed.

**Entered in register: 17 July 2025
and copied to parties**