EMPLOYMENT TRIBUNALS

Claimant:	**Miss A Lanuszka**
Respondent:	**Accountancy MK Services Limited**
Heard at:	**Bury St Edmunds (CVP)**
On:	**12,13 and 19 June 2025**
Before:	**Employment Judge M Magee**
Representation:	
Claimant:	**Miss Mayenin (Solicitor)**
Respondent:	**Miss Inkin (Legal Executive)**

RESERVED JUDGMENT

1. The Claim of wrongful dismissal is dismissed upon withdrawal.
2. The Claim for holiday pay is dismissed upon withdrawal.
3. The claim for unfair dismissal is well founded and succeeds.
4. The Respondent shall pay to the Claimant the sum of £14,120.41, consisting of:
    a. Unfair dismissal basic award £2064.20
    b. Unfair dismissal compensatory award £12,056.21

REASONS

Introduction

5. Miss Lanuska brought Claims of Unfair dismissal, wrongful dismissal and holiday pay against her former employer, Accountancy MK Services Limited ("the Respondent").
6. The original claim was for wrongful dismissal and holiday pay. The Respondent's case was at that time expressly that Ms Lanuszka did not have two years continuity of employment. The case had been previously listed for final hearing on 28 May 2024 before EJ Boyes. An application was made at the commencement of the first day to add a claim for unfair dismissal, to add Ms Krauze personally as a Respondent and to add a claim for victimisation, breach of privacy and a claim for breach of human rights. The final hearing was converted into a preliminary hearing, and a further preliminary hearing was listed to determine whether the claim should be amended to alter the start date of employment and to add a claim of unfair dismissal. Applications to add Ms Krauze as a Respondent and to add a claim of victimisation under s27 Equality Act 2010, a claim for breach of privacy and a human rights claim were rejected.
7. At a preliminary hearing on 1 August 2024 before EJ Wood, it was determined that Miss Lanuszka's employment commenced on the 30 October 2017 and the claim was amended to add a claim for unfair dismissal. At that hearing, the Respondent's case remained that Ms Lanuszka did not have sufficient continuity of employment to be entitled to bring a claim for unfair dismissal.

Hearing

8. The Tribunal was provided with an agreed bundle of 395 pages. References to bundle pages are to the pdf pages in [square brackets]. Witness statements were provided for the Claimant by Miss Lanuszka, Ms Nakielska, Ms Kubicka and Ms Roszczenko. The Respondent provided witness statements for Ms Krauze, Ms Warchol, Mr Olszanski and Mr Barglowski.

9. Miss Lanuszka gave evidence as did her mother Ms Nakielska on behalf of the Claimant. Ms Krauze the director, her sister Ms Warchol and Mr Olszalaski, a client, gave evidence on behalf of the Respondent.
10. All witnesses had the assistance of a Polish interpreter Mr Rozycki.
11. At the commencement of the hearing, Ms Mayenin made an application on behalf of the Claimant to amend the claim to add s27 victimisation, and post-employment harassment. That application was refused by the Tribunal. The Tribunal had regard to the principles in Selkent Bus v Moore 1996 ICR 836 requiring the Tribunal to look at the nature of the proposed amendment, time limits, timing and manner of the application and the balance of hardship and injustice and also Vaughan v Modality Partnership [2021] ICR 535, which stated that the core test in an amendment application is the balance of injustice. It also had regard to the overriding objective.
12. This was a new claim of discrimination alleging new factual matters. The email complained of was in December 2023 and time limits for the claim would have expired in April of 2024. EJ Boyes had already rejected a previous amendment application to add a claim of discrimination in June 2024. The application was made the day before the hearing was due to commence. If granted, it would be necessary to allow the Respondent to prepare a defence. It would have entailed an adjournment and consequent significant delay and cost It would add new matters legally and factually. The Respondent witness statements did not deal with an allegation of discrimination as was suggested by Miss Mayenin. The balance of prejudice would fall on the Respondent if the amendment were to be allowed. It would not be in keeping with the overriding objective of avoiding delay and unnecessary expense. The application was refused.
13. At the commencement of the hearing, Miss Mayenin confirmed only the claim for Unfair dismissal was being pursued, and that she did not intend to proceed with the claim for holiday or notice pay.
14. At the commencement of day three of the hearing, just prior to the commencement of submissions, Ms Mayenin made an application to add Ms Krauze as a Respondent on the basis that a new company had been set up of a similar name with Ms Krauze's husband listed as a director. That application was refused by the Tribunal. The Tribunal reminded itself of rule 35 of the 2024 Tribunal Rules of Procedure as well as the Presidential Guidance (General Case Management) paragraphs 16-21 and the

authorities above which are applicable to the issue of joinder to which the same principles apply as to amendments generally.

15. The application was a fundamental one, adding a new party. The only claim before the Tribunal was one of unfair dismissal, which must be brought against the employer. It would require a thorough exploration as to whether the corporate veil had been pierced. The application could have been made six months ago when information was available at Companies' House. The application was made at the close of the evidence. Were it to be granted it would require the case to be adjourned and a defence and witness statements served dealing with the matter. It would require further evidence to be heard. The balance of injustice and hardship fell clearly on the Respondent were such an application to be granted. It would not be in keeping with the overriding objective to avoid delay and unnecessary expense. The application was refused.

Issues

16. Was there a potentially fair reason for dismissal?
17. Did the Respondent hold a genuine belief that the Claimant had committed misconduct?
18. Were there reasonable grounds for that belief?
19. Was there a reasonable investigation?
20. Was dismissal within the range of reasonable responses open to a reasonable employer?
21. Should there be an ACAS uplift?
22. Did the Claimant contribute to her own dismissal?
23. Would the Claimant have been dismissed anyway given fair process?
24. Can the Respondent show that the Claimant did not act reasonably to mitigate her losses?

Facts

25. The Respondent is a small company providing accountancy services.
26. Ms Krauze was the founder and sole director of Accountancy MK Ltd, the predecessor company to the Respondent.
27. Ms Lanuszka was the only full-time employee. Her employment commenced on 30 October 2017 [65]. Ms Krauze occasionally employed her sister and her husband.

28. A set of policies were purported to have been produced by the Respondent on 21 April 2021 [77-79]. These were denied to have ever been seen by Ms Lanuszka. Likewise, Ms Lanuszka denied ever seeing the "Code of Conduct" [80].
29. Ms Krauze set up the Respondent company Accountancy MK Services Ltd in 2021. Accountancy MK Ltd ceased trading. Ms Lanuszka continued performing the same role as she had at Accountancy MK Ltd and transferred to the Respondent from 1 September 2021. She signed a new contract dated 1 September 2021. It stated (89) that the commencement date of Ms Lanuszka's employment was 1 September 2021.
30. Ms Lanuszka's contract of employment is at [89-95].
31. The Respondent alleges that Miss Lanuszka was given a formal warning on 17 March 2023. Miss Lanuszka denies that any such warning was given.
32. The Respondent alleged that Ms Lanuszka was given a "Notice of disciplinary hearing" letter on 17 July 2023 [100]. Ms Lanuszka denies ever being given such a letter and states that she was informed of concerns for the first time on the date of her dismissal.
33. On 31 July 2023 Ms Lanuszka was dismissed summarily. She accepts that she was given the letter of dismissal [101]. The letter states "*In July 2023 it came to our attention that you were engaged in private business activities during your working hours, which is a direct violation of our company's code of conduct…*". The letter makes no mention of any previous conduct issues or warnings.
34. A particular difficulty in this case is that there is very little documentation, and of that which there is, much of it is in dispute. In particular, it was contended by Miss Lanuszka that the warning letter [100], the diary entries [125-137] and the policy document [77-80] were not genuine and had been created for the purposes of the employment tribunal proceedings. It is necessary to look at the entirety of the evidence in order to conclude as to the genuineness of the documentation and the alleged history in relation to performance.
35. Ms Krauze alleges that there were a series of performance issues with Ms Lanuszka, particularly over the period December 2022 to July 2023. Whilst in her witness statement (paragraph 43) she stated that the diary entries were "prepared after the events", she stated in evidence that she prepared the record of the conversations on the same day as each conversation.

36. The diary is of universal format whereby the date can be inserted for any seven-day period. It only contains references to Miss Lanuszka.
37. The first entry is 1 June 2022 referring to a conversation about lateness. The second entry was 27 July 2022, referring to a customer complaint. The third entry was dated 12 Aug 2022, in relation to an HMRC letter. The fourth entry related to 11 October 2022, in relation to the disclosure of confidential information. The fifth entry is dated 13 December 2022, which is titled "informal meeting about workplace procedures". The sixth entry relates to 9 March 2023 titled "disciplinary hearing" where the diary records a formal warning. The seventh entry is dated 17 July 2023, relating to a late filing of a VAT return and the handing over of the disciplinary invite letter. The final entry is dated 31 July 2023 [137] which purports to be a note of the dismissal hearing.
38. Ms Krauze gave evidence that she spoke to Miss Lanuszka approximately once per week over the period December 2022 to July 2023 about performance issues. There are no records of any such conversations within the diary. Had Ms Krauze held such concerns as she expressed and spoken to Miss Lanuszka as regularly as she did, it would be expected that some of these conversations would have been recorded.
39. It was agreed between the parties that the diary entries were not in the bundle for the 2024 final hearing. Further it was agreed that Miss Krauze's witness statement for that hearing made no mention of the diary. Given the limited documentation in existence, had the diary existed at the time of the 2024 hearing, then it would be expected that it would have been produced and included in the bundle. The only explanation for its omission is that it was created subsequently to the adjourned hearing.
40. The diary entries themselves are very general in nature. No specific details of allegations and conversations are recorded. Miss Krauze stated that the diary was for her own reference at the time and no one else. The records were in English rather than in Polish, her native language. Further the entries are written out in full paragraphs, using terminology indicative of it not being written for the benefit of Ms Krauze herself.
41. On occasion Miss Lanuszka is referred to as "the employee". This is inconsistent with how contemporaneous events would be recorded and would not be how an employer would refer to their employee in notes in the context of a one employee organisation. The notes themselves give the

clear impression of creating a record to support the Respondent's case for the tribunal.

42. The dismissal letter [101] makes no reference to any disciplinary warning at all. There is no letter recording the issuing of a warning. The purported disciplinary hearing [132-134] was allegedly for similar matters, including phone use and use of the company computer. Had the warning been given on 9 March 2023, the dismissal letter would have been expected to have mentioned previous conduct.
43. The entry on 11 October 2022 [129] is a purported discussion about confidentiality, said to have taken place in the presence of Miss Warchol, Miss Krauze's sister. The evidence of Miss Warchol was that she was only working at the Respondents for one month in the summer of 2022 as she was otherwise living in Poland until she moved to the UK in late summer 2023. This is directly contradictory to the diary entry as Miss Warchol was not in the country at the time of the alleged incident and could not have observed it as stated.
44. Ms Krauze gave evasive and contradictory evidence as to her belief at the time of dismissal whether Ms Lanuszka had two years' continuity of employment. In contrast to the contradictory nature of the Respondent's evidence and Ms Krauze's evasive answers to a number of questions, Ms Lanuszka gave clear answers in evidence as to the allegations of performance issues.
45. For those reasons the Tribunal concludes that the diary entries were not contemporaneous documents created on the days of the alleged incidents as claimed by Ms Krauze but were created at some date after the adjourned hearing in 2024. This conclusion is such that the credibility of Ms Krauze is seriously undermined and supports Ms Lanuszka's account that the other disputed documents were never shown to her.
46. For the reasons set out above, the Tribunal concludes that Ms Lanuszka was not warned about performance issues through 2022 and 2023. She was not given a warning on 9 March 2023. Neither was she shown the policies at any stage.
47. On 9 Mar 2023 there was an amendment to Ms Lanuszka's contract [99] where her recorded contractual hours were reduced, her pay was increased and her right to a paid lunch break was removed. Ms Lanuszka agreed to these variations.

48. At some point in July 2023, Ms Krauze placed spyware software on Ms Lanuszka's computer, which enabled her to record what activities Ms Lanuszka had undertaken on her computer. There are records of the activities undertaken on the computer at pages [138-311].
49. Analysis was produced of Ms Lanuszka's computer usage on 13 and 14 July 2023. On those days Ms Lanuszka spent 2 hours 33 minutes on the computer, of which 1 hour 24 was on "personal matters" as described by the Respondent and 1 hour 09 on work matters. Ms Lanuszka's evidence was that she was allowed to use the computer for personal matters if she had no other work to do. She stated that Ms Krauze used her computer, likewise for personal matters in the office. The Tribunal found Ms Lanuszka's evidence credible and believable, in contrast to that of the Respondent for the reasons set out above. The Tribunal accepts Ms Lanuszka's evidence that use of the computer was permitted by Ms Krauze.
50. Ms Lanuszka accepted using Rightmove as she was looking for a new property. She accepted using Amazon and Very and said that it may have been during her lunch-time. A number of the tasks which the Respondent ascribed to "personal" Ms Lanuszka stated were work tasks. Page 154 was a website for work planning. [156] was Excel training to improve her skills. She used Groupmania to improve her use of spreadsheets and presentations [224-268].
51. She checked information for a planned trip to Brussels [159-63]. The National Lottery she stated may have been a pop-up advert.
52. The dismissal letter [101] states "In July 2023, it came to our attention that you engaged in private business activities during your working hours…" and "we conducted a thorough investigation into the matter, considering the gravity of the situation and the potential impact it could have on the company's reputation and productivity." No mention is made of any disciplinary hearing or any exploration of the matter with Ms Lanuszka. This in inconsistent with a disciplinary hearing having taken place. The Tribunal accepts Ms Lanuszka's account and concludes that she was simply informed of her dismissal on 31 July 2023 and that there was no disciplinary hearing.
53. Given the Tribunal's conclusion as to the diary entries and the fact that there was no disciplinary hearing, the Tribunal concludes that the letter of 17 July purporting to invite Ms Lanuszka to the disciplinary meeting on 31 July was

not a document that was produced at the time and was not given to Ms Lanuszka.

54. Ms Lanuszka was summarily dismissed on 31 July 2023 by dismissal letter [101].
55. On 7 August 20 23 Ms Lanuszka contacted ACAS on 11 September 2023 an ACAS Certificate was issued.
56. Ms Lanuszka had been working part time at Waitrose prior to her dismissal. Following her dismissal she increased her hours form 16 to 24 whilst she was looking for new employment. She received £585 before tax and £480 after deductions. Her hourly rate was £13.20 at Waitrose.
57. She stated that she sent 10 CV's per day to potential employers.

58. On 10 April 2024 Ms Lanuszka commenced new employment at Smith's Recycling, at which point her loss of earnings finished.

Law

59. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

60. The Respondent's case is that it dismissed the Claimant because it believed she was guilty of misconduct, namely using the computer for personal matters during time she was employed to work for the Respondent. Conduct is a potentially fair reason for dismissal under section 98(2).

61. Section 98(4) then deals with fairness generally and provides that the determination of the question 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 shall be determined in accordance with equity and the substantial merits of the case.

62. In misconduct dismissals, there is well-established guidance on fairness within section 98(4) in the decisions in **Burchell 1978 IRLR 379** and **Post Office v Foley 2000 IRLR 827**. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer (**Iceland Frozen Foods Limited v Jones 1982 IRLR 439**, **Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23**, and **London Ambulance Service NHS Trust v Small 2009 IRLR 563**).

Conclusions

63. The Tribunal has to conclude whether the reason for dismissal was a potentially fair one under the provisions of section 98(2)? Using a work computer for personal purposes is potentially a conduct issue, which is a potentially fair reason. That is the reason set out in the dismissal letter. However, there was no prohibition on Ms Lanuszka using her computer for personal use.
64. Ms Krauze believed that Miss Lanuszka's service had commenced on September 2021, her date of commencement with the Respondent, rather than her date of commencement with the predecessor company Accountancy MK Limited in 2017. Ms Krauze was aware of the two-year qualifying period for an unfair dismissal claim and had concluded that Ms Lanuszka did not have the right to bring a claim. The Tribunal concludes that Ms Krauze had determined to dismiss Ms Lanuszka prior to her accruing sufficient continuity of service to bring an unfair dismissal claim.
65. The reasons why Ms Krauze determined to dismiss Ms Lanuszka are unclear, given that there were no underlying performance concerns or warning. The date of dismissal coincides with Ms Krauze's sister's arrival

on a permanent basis in the UK after the Summer holidays in 2023. By installing the spyware on Ms Lanuszka's computer, Ms Krauze intended to gather evidence to support a dismissal of Ms Lanuszka. The Tribunal concludes that it was Ms Krauze's desire to dismiss Ms Lanuszka before Ms Krauze believed that she would accrue two years' service that was the real reason for Ms Lanuszka's dismissal and not conduct.

66. A large proportion of the time identified as "personal use" was in fact for work purposes, professional development, work planning, Excel and presentation skill training. The Tribunal concludes that the Respondent did not dismiss for misconduct but rather had determined to dismiss Ms Lanuszka prior to her accruing two years' service. The Respondent has not satisfied the requirements of section 98(2)
67. The Tribunal goes on to consider, had the reason for dismissal been conduct, if the Respondent held a genuine belief based on reasonable grounds that Ms Lanuszka was guilty of misconduct, including holding a reasonable investigation. The Tribunal takes into account the extremely small size of the Respondent and its limited administrative resources. Although the Tribunal also takes into account the fact that the Respondent offered professional accountancy services and would thereby have a greater understanding of some of the legal issues relating to employment. The Tribunal is careful not to substitute its own opinion on the matter of dismissal and seeks to determine whether the Respondent's actions were within the band of reasonable responses open to a reasonable employer in the circumstances.
68. There was no prohibition on Ms Lanuszka using her computer for personal purposes. Ms Krauze did so herself and no policies were shown to Ms Lanuszka indicating that she should not do so. She was free to use the computer personally when work commitments permitted and during breaks.
69. There was no history of conduct issues and Ms Lanuszka had not had any warnings.
70. There were details available through the spyware of Ms Lanuszka's computer use over the two days in question. However, there was no investigation to establish how much time Ms Lanuszka had used the computer for personal use, by analysing the nature of the programmes accessed. There was no exploration of the Ms Lanuszka's explanation as to her purpose for using a number of sites that were related to Ms

Lanuszka's role such as Excel, presentations and training. Ms Lanuszka was not given any opportunity to explain herself. The letter of dismissal was pre-prepared and handed over to Ms Lanuszka on 31 July 2023.

71. The Tribunal concludes that there were not reasonable grounds to support a conclusion that Ms Lanuszka was guilty of misconduct. Nor was there a reasonable investigation carried out.
72. Dismissal was outside the band of reasonable responses available to a reasonable employer in the circumstances.
73. Given the fact that there was no prohibition on personal computer use and the amount of time Ms Lanuszka devoted to personal matters during the two days has not been shown to be excessive, there is no deduction for contributory fault. Nor is it appropriate to make a Polkey reduction as there is no evidence to support the conclusion that Ms Lanuszka would have been dismissed in any event had a fair process been followed.
74. This is a case where no procedure was followed and Ms Lanuszka was dismissed without an opportunity to explain herself. It is just and equitable to award an uplift for failing to follow the ACAS Code. An appropriate uplift is 20%.
75. In the circumstances, the Respondent has failed to show on the balance of probabilities that Ms Lanuszka has acted unreasonably in failing to mitigate her loss. She took increased hours at Waitrose whilst applying for other jobs. She applied for 10 jobs per week. She obtained new employment within a reasonable period of time.
76. Ms Mayenin invited the Tribunal to consider an award of a stigma loss. There was no evidence of a stigma loss. Further she invited the Tribunal to award interest. It is not appropriate in the circumstances to award interest on an Unfair Dismissal claim.

77. The Claimant's date of birth is 29 August 1991. Her age at dismissal was 31. At dismissal she had 5 years' continuity of service. Weekly pay £1788.96 x 12/52 = £412.83

Basic Award

5 x £412.84 **£2064.20**

Compensatory Award

Past loss of earnings

1 Aug 2023 to 9 April 2024

Net weekly pay £1553.05x12/52 [356]

£358.40

252 days = 36 weeks

Loss earnings 36 x £358.4	£12,902.40
Less 8hrs at Waitrose @ £13.20	
36 x £105.60	-£3,801.60
Loss Earnings	**£9,100.80**

Loss of pension contributions

Employer's contribution £53.67 x 12/52 [356]

36 x £12.39	**£446.04**

Loss statutory rights	**£500**
Total compensatory (pre uplift)	**£10,046.84**
ACAS uplift @20%	**£2009.37**
TOTAL COMPENSATORY	**£12,056.21**
TOTAL AWARD	**£14,120.41**

Approved:
Employment Judge **M Magee**

Date. 28 July 2025

JUDGMENT SENT TO THE
PARTIES ON 29 August 2025

FOR THE TRIBUNAL OFFICE

Notes

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