EMPLOYMENT TRIBUNALS

Claimant: **Mr M Jallow**

Respondent: **Marks and Spencer PLC**

Heard at: **Reading** **On: 22, 23, and 24 July 2025**

Before: **Employment Judge Gumbiti-Zimuto**

Representation
Claimant: Miss K Pilgrim, lay representative
Respondent: Mr H Dhorajiwala, counsel

RESERVED JUDGMENT

The claimant's complaint of unfair dismissal is not well founded and is dismissed.

REASONS

Preliminary matters

1. In a claim form presented on 17 April 2024 the claimant made a complaint of unfair dismissal. At the start of proceedings the claimant indicated an intention to make an application to amend the claim and include complaints of unpaid wages, sex discrimination, race discrimination and disability discrimination. There was no draft of the proposed amendment but the claimant's representative stated That she had only recently (since Sunday 20 July 2025) been assisting the claimant. The claimant's representative also pointed out that she had only been provided with copies of the respondent's witness statements on her arrival at the tribunal that morning.

2. At the start of proceedings she had not been able to read the respondent's witnesses statements. I adjourned the proceedings to allow the claimant and his representative to be able to prepare for the hearing. I directed that any application to amend the claim should be made at the start of proceedings on the following day and that the parties were to be in a position to explain how it came about that the claimant only received the respondent's witness statements on his arrival at the tribunal when there had been directions made to assist the parties in preparation for this case on 16 September 2024.

3. At the commencement of proceedings on Wednesday 25 July 2025 the claimant and his representative explained that they had unwittingly misstated the position about service of the witness statements. The correct situation was that the claimant had been sent, together with the Trial Bundle, the respondent's witness statements on 16 April 2025. However, the claimant had not appreciated that included in the cache of documents provided to him by the respondent on that day was included not only the Trial Bundle but also the respondent's witness statements. The problems with the witness statement appears to have been arising from the claimant's error.

4. I note that while the CMO originally made requiring an agreement of a Trial Bundle by 11 November 2024 and exchange of witness statements by 9 December 2024 these dates had not been adhered to by the parties.

5. As to the application to amend the claim form I was not provided with a draft of the proposed amendment. The claimant stated that he was a disabled person, he did not mention a specific Physical or mental impairment, the claimant, as I understand the position, was contending that is disability arose out of difficulties in his ability to read in English. This was not being alleged to arise out of any physical or mental impairment but rather from the fact that the claimant is from The Gambia and English is not his primary language. The claimant appeared to further want to allege that on returning from holiday on 1 November 2023, after allegations had been made against him by two colleagues, He was given a series of duties which were undesirable and that it was made apparent to him that he was no longer welcome and was being given a cold shoulder treatment until his dismissal on 24 November 2023. The detriments that the claimant appeared to potentially be seeking to rely on appeared to be explained by reasons which did not relate to the protected characteristics of sex, disability, or race.

6. I refused the application to amend the claim because it did not set out a basis for potentially concluding that the claimant suffered any detriment (of less attractive duties) arising from any protected characteristic. In such circumstances it is not in the interests of justice to allow this entirely hopeless amendment application.

<u>The issues</u>

7. The respondent denies the claimant's complaint of unfair dismissal and asserts that the claimant was dismissed because of his gross misconduct. It is not disputed that the claimant was dismissed for alleged gross misconduct. The contentious issues appear to be whether the respondent followed a fair procedure in dismissing the claimant; whether the respondent could properly conclude that the claimant was guilty of gross misconduct; and finally whether dismissal was within the range of responses of a reasonable employer.

<u>The evidence</u>

8. The claimant gave evidence in support of his own case. He produced a witness statement setting out his evidence attached to which with statements in support of his case purporting to be made by his colleagues, Jake white, Isabel white, and Lucy Exton. These three individuals did not attend to give evidence and defend their statements. The purported statements did not contain a statement of truth, but did include the declarations that "this statement was written in complete and honest truth" or "written in complete honesty". The statements were unsigned and were presented annexed to the claimant's statement. The respondent objected to these statements stating that in the circumstances they should be treated as inadmissible.

9. The respondent relied on the evidence of Mr. John Chapman (investigation manager), Mr. Martyn Chapman (dismissal manager), and Mr Oliver Toms (appeal manager). They provided witness statements which were taken as their evidence in the case.

10. I was also provided with a Trial Bundle containing 148 pages of documents.

11. I made the following findings of fact.

12. The claimant commenced employment as a customer assistant in the respondents Camberley store on 1 September 2019.

13. The respondent has a bullying and harassment policy that states that "*any form of bullying and harassment is unacceptable, and we do not tolerate the racist discriminatory or abusive behaviour*". The policy includes a definition of harassment which states that "*harassment maybe persistent behaviour, or just a 'one off Isolated incident'. It is unwanted conduct which has the effect of violating the dignity of someone or creating an intimidating, hostile, degrading, humiliating or offensive environment for someone. It is still harassment even if the harasser didn't mean for their conduct to have this effect."* The policy explains the consequences of harassment by saying "*if you are found to have behaved in a bullying or offensive way, or to have breached this policy, following a reasonable internal investigation, you will face disciplinary action which may result in your dismissal from the company."*

14. On 7 September 2023 a complaint of sexual harassment was made by CW against the claimant. Mr Chapman interviewed CW who gave details of an incident on 22 August 2023. Mr Chapman also interviewed DS who told Mr Chapman about a number of incidents relating to the claimant. Mr Chapman also interviewed CS, CR and AL. Notes were made of all the interviews which took place on 7 and 8 September 2023 save that the interview With CS took place on 27 September 2023.

15. 29 September 2023 Mr Chapman interviewed the claimant. Mr Chapman explained the nature of the allegations to the claimant and put the details

of various matters which were to form the disciplinary charges against the claimant and allowed the claimant the opportunity to respond to each of them in turn.

16. At the end of the interview with the claimant, Mr Chapman offered the claimant the opportunity to review the notes of the meeting. The claimant read the notes and did not raise with Mr Chapman any concerns regarding the accuracy of the notes. At this stage the claimant did not ask for any adjustments to be made or to be assisted in respect of any alleged deficiencies arising from his language skills in English.

17. There was a delay between 7 September 2023 when the complaints were made and 29 September 2023 when the claimant was interviewed. The delay was because for a part of this time Mr Chapman was away from the business for personal reasons.

18. Having completed his investigations Mr Chapman prepared an investigation report and concluded that there was a case to answer. In his investigation report Mr Chapman recorded 9 charges relating to various incidents on various days covering a period from about April 2022 to the 22 August 2023. The various allegations were instances of gross misconduct if proven.

19. The claimant was handed a letter dated 14 November 2023 inviting him to a disciplinary hearing on 16 November 2023. There is a dispute between the claimant and the respondent as to whether the invitation letter was given to the claimant on 14 November 2023 at around 5:00 PM and therefore less than 24 hours before the scheduled disciplinary hearing or whether the claimant was given the invitation letter more than 24 hours before the disciplinary hearing.

20. Mr Chapman was unclear as to the date on which the letter was given to the claimant, he had no record of when it was provided and relied on his recollection, in questioning, while he was unable to discount the suggestion that the letter was given to the claimant on 15 November as opposed to 14 November, he did insist that the letter was delivered more than 24 hours before the disciplinary hearing, (and therefore on 14 November). On this point I am not satisfied that it has been shown that the claimant was given 24 hours notice to attend the disciplinary hearing. The claimant was clear that he received the letter the at the end of the day before the disciplinary hearing.

21. The disciplinary hearing letter set out the time and date of the disciplinary meeting 4 allegations relating to CW and five allegations relating to DS. The claimant was informed that the allegations were defined as sexual harassment; that he could be accompanied by a colleague or a trade union representative; attached to the letter were copies of the disciplinary policy, the investigation report, witness statements from the investigation.

The claimant was informed that the outcome of the meeting could be dismissal as the allegations constitute gross misconduct.

22. On 16 November 2025, claimant attended the disciplinary meeting which was conducted by Mr. Martyn Clarke. The food team manager HL attended as a note taker. The claimant was accompanied by NS a BIG representative.

23. At the start of the disciplinary meeting the claimant was asked if he was happy to proceed with the hearing and the claimant confirmed that he was. The claimant confirmed in his evidence to the Tribunal during questioning by the respondents representative about this response and he said that he was "*being respectful*" to his manager. The claimant did not say that he needed more time or that he had not had enough notice of the meeting. During the hearing before me the claimant has sought to rely on his "*problem with reading and writing*", Mr. Clark was asked if the claimant was asked about that, he confirmed that there was "*No specific discussion"* about the claimants ability to read and write in English. The claimant did say to Mr Clarke, referring to the investigation meeting with Mr Chapman, that he "*did not read through the notes"* and that he did say that he" *cannot read very well*". The claimant explained that he was "*happy with the notes taken and trusted John [i.e. Mr Chapman] that the notes would be correct.*" At the resumed disciplinary meeting (after an adjournment for Mr. Clark to make further enquiries) the claimant said, in relation to a question about the claimant's understanding of sexual harassment, training on inclusion and diversity, and what he was "*agreeing to in terms of important documents and notes,"* that "*I can read but I might not understand exactly. I can read all the notes myself."*

24. Throughout his dealings with Mr Clark and prior to that with Mr Chapman in the investigation there was no indication from the claimant that he was hampered by his reading skills in understanding the process he was going through or his ability to defend himself against the serious allegations that he faced there was no indication that claimant did not fully understand the allegations. In these proceedings the claimant applied to amend the claim form to allege a disability claim under the Equality Act 2010, however during the disciplinary investigation and disciplinary hearing the claimant did not say or give any indication that his reading ability constituted a disability or might constitute a disability.

25. On 16 November 2023 the claimant was questioned about the allegations by Mr Clarke the claimant responded to the various allegations either by giving an innocent or benign interpretation to events he conceded occurred or denying the alleged conduct.

26. Mr Clarke adjourned for meeting with the claimant saying "*you have given me a lot to consider and asked some questions of me. I will look to clarify any points you have raised and will feedback to you when we reconvene.*"

27. The disciplinary hearing resumed on 20 for November 2023 when Mr Clarke reported back to the claimant the result of his enquiries. The claimant was given a further opportunity to discuss the new information provided and to respond to matters raised by Mr Clarke. After an adjournment of 36 minutes Mr. Clark informed the claimant that he was dismissed with immediate effect on the grounds of gross misconduct. The claimant was informed that he had the right to appeal.

28. The claimant appealed the decision to dismiss him setting out eight points or headlines that he based his appeal upon. An appeal meeting was conducted by Mr Oliver Toms on 24 January 2024. The claimant attended the meeting accompanied once more by NS. At the appeal meeting Mr Toms went through all the claimants appeal points and discussed each one with the claimant.

29. As a result of the points raised by the claimant Mr Toms spoke to and made inquiries of a number of people including Mr Chapman and Mr Clarke who conducted the disciplinary process, also CS, JW and CB who were potential witnesses to incidents under consideration. Mr Toms concluded that the claimant's appeal should not be upheld and wrote to the claimant explaining his decision.

Law

30. An employee has the right not to be unfairly dismissed. Section 98 of the Employment Rights Act 1996 ("ERA") provides that in determining whether the dismissal of an employee was fair or unfair, it shall be for the employer to show (a) the reason (or, if there was more than one, the principal reason) for the dismissal, and (b) that it is a reason falling within subsection (2). The conduct of an employee is a reason falling within the subsection.

31. Where an employer has shown a potentially fair reason the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case.

32. The Respondent must show that: (a) it believed the claimant was guilty of misconduct; (b) it had reasonable grounds upon which to sustain the belief; (c) at the stage which it formed that belief on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances of the case.

33. It is not necessary that the tribunal itself would have shared the same view of those circumstances.[1]

34. After considering the investigatory and disciplinary process, the tribunal has to consider the reasonableness of the employer's decision to dismiss and (not substituting its own decision as to what was the right course to adopt for that of the employer) must decide whether the claimant's dismissal "fell within a band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair".[2] The burden is neutral at this stage: the Tribunal has to make its decision based upon the evidence of the claimant and respondent with neither having the burden of proving reasonableness.

35. The range of reasonable responses test (the need to apply the objective standards of the reasonable employer) applies as much to the question whether the investigation into the suspected misconduct was reasonable in all the circumstances as it does to the reasonableness of the decision to dismiss for the conduct reason.[3]

The parties submissions

36. The respondent provided a written note on the law which was of assistance. The respondent submitted that the claimant's case had been thoroughly considered at the investigation stage and the disciplinary hearing stage and appeal stage. The claimant's account was taken into account but there was sufficient evidence to justify the conclusion that the claimant had been responsible for sexual harassment and that the respondent formed the genuine belief that the claimant had been guilty of sexual harassment. The respondent contended that the dismissal of the claimant in such circumstances was within the bounds of a reasonable response by the respondent.

37. The claimant submitted that the Tribunal must consider the substance of the respondent's reason and the procedure followed. The respondent did not investigate alternative accounts of the situation by interviewing witnesses as asked for by either the claimant or the complainants. There was not a full investigation and no reasonable belief was formed. The claimant says there was no adequate notice for the disciplinary hearing and that there were no reasonable adjustments offered and therefore this was a procedural unfairness. The claimant said that the dismissal was unfair because it was based on unsubstantiated allegations and a flawed investigation.

[1] British Home Stores Limited v Burchell [1978] IRLR 379
[2] Iceland Frozen foods v Jones [1982] IRLR 439
[3] Sainsbury's Supermarket v Hitt [2003] IRLR 23

38. The claimant said that cultural misunderstandings and intent are relevant when considering his conduct; it must be judged based on the cultural understanding and background of the claimant.

39. The claimant submitted that employers must make adjustments for disabled employees and this included reading and writing. The claimant has a poor understanding of English including reading and writing and there were no reasonable adjustments to help him with this.

40. The claimant further submitted that the respondent's disciplinary policy requires that a confidential note taker should be used in carrying out the recording of disciplinary proceedings so there was a breach in the claimant's case because the note taker was another manager within the store.

41. The claimant submitted that once disability is clear or made known there should be reasonable adjustments the claimant should have been offered a translator or sent for an occupational health assessment. It is said this was necessary to provide a fair process to allow the claimant to be able to answer the charges against him.

42. The decision to dismiss was made in 36 minutes and therefore there could have been no fair deliberation of the claimant's case.

43. The claimant said that the witnesses requested by the claimant and the complainants were not interviewed because the investigation manager and disciplinary hearing manager considered that they would not have added any weight; the claimant says that he faced serious allegations and therefore all evidence should have been obtained whether or not the managers conducting the process considered it irrelevant it was not for them to make that decision.

44. The claimant contended that when CB and JW were spoken to they were not asked about any specific incidents that they could have specifically referred to. It was submitted on behalf of the claimant that any hugging was consensual and that JW was not specifically asked about this to substantiate that the behaviour did not seem inappropriate. The claimant complained that the evidence of JW, which he said was important, was not investigated until the appeal stage.

45. The claimant contended that there was a prejudgment of the his case because in the investigation letter Mr Chapman said that the complainant CW in his interview of her gave him "the impression that she was telling the truth" which suggested that Mr Chapman had pre determined that the claimant case would go towards a disciplinary hearing. The claimant also complained that DS and CW had been spoken to together before the disciplinary Hearing and therefore there was a potential collusion but this was not a matter that was investigated.

46. The claimant made reference to section 15 Equality Act 2010 and stated that the respondent should have checked whether the claimant understood the allegations in order to be able to treat him fairly.

47. In answer to the criticism that the claimant had not asked for any specific individuals to be interviewed during the during the appeal process the claimant stated that he had no faith in anything that would be done at the appeal stage because whatever explanation he offered was not accepted by the respondent.

Conclusions

48. Mr Chapman explained that the reason he did not speak to JW was because he was not mentioned by the claimant or the complainants as being present during any of the incidents related to the allegations. At the appeal stage Mr Toms did interview JW and CB the accounts that they gave confirmed that they had witnessed the claimant laughing and smiling with DS but they did not witness any specific incidents raised by the complainants against the claimant. I do not accept that the claimant's criticism of the interviewing or not interviewing of witness suggest a failure to carry out a reasonable investigation. When the potential witnesses were known about the respondent spoke to them about the allegations during the appeal stage.

49. The respondent's disciplinary policy provides that: "*You'll receive a letter inviting you to the disciplinary meeting with at least 24 hours' notice, along with any documents or information the Disciplinary Manager will refer to, to give you time to prepare. As this is a formal meeting, you can be accompanied by a BIG representative, your Trade Union Representative, or a colleague. You can ask your parent/guardian to accompany you if you're either under 18 or need this as a reasonable adjustment.*" I have found that the claimant was not given 24 hours notice. There was therefore a breach of the disciplinary policy in this regard only.

50. I have attempted to assess whether this failing was so serious as to amount to unfairness and thus cause the subsequent decision to dismiss the claimant to be unreasonable. I am satisfied that notwithstanding this breach the claimant's dismissal was not unreasonable. The claimant was asked at the start of the disciplinary hearing if he was ready to proceed and he said that he was. The claimant was accompanied by a BIG representative during the disciplinary hearing and they asked a number of questions on his behalf. The disciplinary hearing was adjourned for further investigations by Mr Clarke and resumed 8 days later. In all the circumstances the breach of the policy did not result in unfairness in the process followed by the respondent.

51. The disciplinary policy states that at the investigation, "*Notes will be taken by a confidential notetaker to make sure there's an accurate account and you'll have an opportunity to review these afterwards.*" The disciplinary policy provides that at the disciplinary hearing "*Notes of the meeting will*

be taken confidentially by a notetaker to make sure there's an accurate account. You'll have an opportunity to review these notes after the meeting." There was a note taker at the investigation meeting with Mr Chapman, an accurate note was taken (as confirmed by the claimant, save for one alleged omission)[4] there was no breach of confidentiality. There was a note taker at the disciplinary hearing. The disciplinary procedure does not mention who the note taker is, in both instances the note taker was a manager. There was no breach of the disciplinary policy, or any unfairness, in the use of the note taker.

52. The claimant contends that the allegations were unsubstantiated. I think what he means by this is that there was no independent confirmation of the allegations. The role of the manager in the disciplinary is to assess the material before him and come to a conclusion, there was the claimant's narrative and the complainants' narrative, both in part supported by others. Mr Clarke was entitled to conclude on the material before him, and did conclude, that the allegations had been proven. In coming to his conclusions Mr Clarke did consider the claimant's account which included the suggestion of cultural misunderstanding. To be clear the claimant well understood the concept of sexual harassment and in his own evidence to the Tribunal stated that in this respect the same applied in The Gambia as in the UK. The claimant's explanation that he was merely seeking to suggest socialising with work colleagues, or making an innocent invitation to attend his home for a social occasion were explanations that were rejected by Mr Clarke without any cultural misunderstanding playing any part.

53. The claimant at various times referred to the Equality Act 2010 and the need to make adjustments. This case was not about the Equality Act 2010 or disability. However, I have considered whether the claimant's ability to understand English played a part in the process so that the respondent should have made some adjustments to accommodate this. I am satisfied that the claimant's ability to understand and communicate in English did not hamper him in the disciplinary process. The claimant did not ask for an interpreter (or need an interpreter), or request any other adjustment or assistance in the disciplinary process there was no indication that the claimant was significantly hampered by his ability to communicate in English that should have triggered action by the respondent. The disciplinary process in this context was carried out reasonably.

54. At the disciplinary hearing the claimant was given the opportunity to put his case which did not change from that which he stated in the investigation meeting.

55. While there was a failure to give the claimant the letter of invitation to the disciplinary hearing within 24 hours notice, the notice given identified the

[4] The one alleged omission was the claimant being asked whether he had followed DS home. This was subsequently denied by Mr Chapman.

allegation to be put to the claimant, furnished him with key evidence for the disciplinary hearing, warned the claimant that the disciplinary hearing could lead to his dismissal, informed the claimant that he could be accompanied at the hearing and he was accompanied.

56. During the hearing each of the allegations was put to the claimant and he was able to address each of the allegations, there were no new allegations. The claimant accepted key elements of most of the allegations.

57. In reaching his conclusions Mr Clarke found that while the claimant refuted harassment or sexual harassment the claimant acknowledged that he had multiple verbal and physical interactions that were always mutual and were not inappropriate with the colleagues that raised these allegations. The claimant denied that there was ever a sexual element or intention to any of the behaviours demonstrated in the allegations from DS and CW.

58. In relation to CW the claimant admitted an interaction with her including hugging her on 22/08/2023, but denied trying to pick her up. The claimant admitted to sending a message to CW but queried the date and alleged that it may have been manipulated. The claimant admitted offering CW petrol money to go to his house, but denied mentioning her boyfriend. The claimant recalled an interaction with CW discussing her tattoo but denied trying to touch it.

59. In respect of DS the claimant denied making sexual breathing/moaning noise in her ear during an interaction. The claimant denied taking a pole from DS and comparing it to his genitalia. Whilst the claimant admitted giving flowers and chocolates to DS on 27/04/2022, he denied writing her a note on the back of the receipt. During the hearing before me the claimant denied that he had given her flowers, he insisted that he only gave her chocolates. The claimant denied hugging DS from behind and making contact with her from her waist to her breasts in July 2023. The claimant admitted repeatedly asking DS if she would like to go for drinks, which the claimant stated he should not be construed as being asked if she wanted to go on a date.

60. Mr Clarke found that while the claimant had said in the disciplinary hearing that *"if you say to stop doing something I will stop"* the evidence showed that the claimant was repeatedly asked to stop by AL and also by CS who would at times pull DS away from him. Mr Clarke noted that while the claimant said that the hugs were mutual the witnesses, AL and CS, stated that CW and DS looked very uncomfortable but the claimant did not pick up on their discomfort when others did. Mr Clarke concluded that the claimant was aware of their discomfort but continued with his behaviour. The claimant was able to give a basic answer and understanding of what sexual harassment in the workplace could look like. Mr Clarke concluded that as the claimant denied the allegations, he had shown no

accountability for his actions and failed to demonstrate remorse for or understanding of the impact he had on DS and CW.

61. As regards the claimant having raised cultural differences between his culture and the culture in the UK as a mitigating factor for his behaviours, Mr Clarke explored this with the claimant during the disciplinary meeting when the claimant discussed how he felt that hugging and physical contact was more the 'norm' in the claimant's culture. The clamant had been living and working in the UK since 2011 and therefore Mr Clarke did not accept cultural differences as a satisfactory explanation for the claimant's actions: Mr Clarke believed that the claimant would have gained considerable understanding of what is deemed appropriate workplace behaviour and what is not.

62. Mr Clarke also took into account the impact of the claimant's behaviour and actions on DS, CW and the colleagues that have witnessed the behaviour.

63. Mr Clarke concluded that, on balance, there is weight to the allegations presented given the evidence and the statements provided by multiple colleagues. Mr Clarke did not believe the claimant's version of events and was concerned that the claimant had tailored his responses and had denied examples of behaviour where there are no witnesses or where the example is more sexual.

64. Mr Clarke concluded that the appropriate sanction was dismissal for gross misconduct for sexual harassment of DS and CW. In coming to this conclusion the took into consideration the claimant's length of service and his conduct record. Mr Clarke stated that the claimant had failed to convince him that the claimant's sexual harassment of female colleagues would not continue, and so a lesser sanction was not appropriate.

65. The claimant was informed that he could appeal the dismissal, withing five days, by setting out in writing the grounds for his appeal.

66. Mr Clarke also addressed a number of further issues which had been raised during the disciplinary hearing on behalf of the claimant.

67. Mr Clarke clearly considered the claimant's denials and explanations but rejected them. There was a proper evidence basis for him to do so in light of the information that was presented before him. Mr Clarke formed a genuine belief that the claimant was guilty of sexual harassment.

68. The procedure followed by Mr Clarke was reasonable. Mr Clarke could have interviewed more people, that he did not was because he formed the view that to do so would have been pointless because they were not relevant to what he had to decide (i.e. that they had not been present when events occurred and thus could throw no light on matters). While giving his evidence Mr Clarke admitted that there were people referred to

as being present, but not named, who would have been potential witnesses to the incident referred to about the tattoo, they would have been able to potentially confirm or refute that allegation. This failure in my view is not fatal to the fairness of the decision to dismiss. A conclusion in the claimant's favour would not have impacted on the totality of the case and even if it might have had some impact on the credibility of CW it would not have had the effect of bringing into question the other allegations found proven in some cases with evidence of support from witnesses.

69. I am also satisfied that dismissal is within the range of reasonable responses of a reasonable employer in the circumstances found by Mr Clarke. In the "Guidance" on Sexual harassment and harassment at work: technical guidance Published: 30 January 2020, Last updated: 26 September 2024, the EHRC states: *"4.1 Harassment at work can have a profound, long-lasting and damaging impact on both workers and employers. It damages the mental and physical health of individuals, affecting both their personal and working life, and has a negative impact on the work environment and productivity."*

Appeal

70. The purpose of the appeal was described by Mr Toms as being to oversee the fairness of the disciplinary process and consider the claimant's appeal points. Mr Toms considered the claimant's 8 grounds of appeal at an appeal meeting with the claimant. Mr Toms then made some further investigations which included interviewing JW and CB (potential witnesses relied on by the claimant), making enquires of Mr Chapman and Mr Clarke and contacting CS, a witness, about her statement.

71. In respect of the appeal point relating to the time taken for the investigation Mr Toms found having considered the reasons, that informing the claimant about the allegations against him on 29 September 2023 was not unreasonable.

72. In respect of the claimant's appeal point regarding the time given to prepare for the hearing Mr Toms did not uphold this appeal point. In rejecting the appeal point Mr Toms noted that the claimant had stated that he was happy to proceed with the hearing on 16 September 2025.

73. As regards documents related to the investigation and hearings not being provided to the claimant this appeal point was not upheld because there was an adjournment to allow the documents to be obtained and Mr Toms considered that the claimant had sufficient time to prepare.

74. Appeal point four concerned the "*Lack of evidence provided before meeting*". Mr Toms found that photos of messages between DS and CR were not handed to the claimant with the invite letter, the meeting was adjourned to provide the documents and the claimant had sufficient time to prepare and therefore he did not uphold this point of your appeal.

75. The claimant raised an appeal point about missing evidence, namely a receipt. This document was not available as it had not been kept.

76. At appeal point six the claimant argued that there was a *"Lack of evidence to substantiate allegations"*. The claimant's point was that the allegations are not true and there was no the evidence to substantiate them. Mr Toms considered that the outcome of your hearing was based on all of the evidence provided including witness statements from the complainants and claimant and therefore there was enough evidence to warrant the outcome and so he did not uphold the appeal on this point.

77. Appeal point seven was "*Witnesses interviewed and not interviewed*."

78. The claimant asked why JW and CB had not been spoken to during the investigation. Mr Toms proceeded to interview them both , having done so he concluded that they were not credible witnesses to the incidents raised by the complainants. Mr Toms did not uphold this point of appeal.

79. The final point of appeal was about "*Actions taken by staff and management during the investigation and hearing.*" The claimant complained that he was allowed to continue work after the complaints were first raised following which there was a period of 10 weeks to the hearing. Mr Toms concluded that there was some unavoidable delay but the investigation and disciplinary process was conducted and concluded within a reasonable period of time and this ground of appeal was also not upheld.

80. Taking account of all the matters set out my conclusion is that the claimant's dismissal was not unfair. I am satisfied that in all the circumstances having regard to the provisions of section 98(4) the dismissal was fair.

Approved by:

Employment Judge Gumbiti-Zimuto

5 September 2025

JUDGMENT SENT TO THE PARTIES ON

11/09/2025

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

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

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