



# EMPLOYMENT TRIBUNALS

**Claimant:** Rupert Beale

**Respondent:** Ling Design Limited

**Heard at:** Southampton ET **On:** 14 & 15 May 2025

**Before:** Employment Judge Scott

**Representation**

Claimant: In person

Respondent: Mr Rozycki (Counsel)

## JUDGMENT

1. The claimant's claim for unfair dismissal is not well founded and does not succeed.
2. The Claimant's claim for wrongful dismissal is well founded and succeeds.

## REASONS

1. By a claim form presented on 3 July 2024, the claimant , Mr Beale, complained of unfair dismissal, and wrongful dismissal. He maintained that his conduct was not such that he should have been dismissed, and complains that the procedure followed by the respondent was unfair.
2. By a response dated 4 October 2024, the respondent, Ling Design Ltd, resisted the claim. The respondent's case was that the claimant's actions represented a serious breach of the respondent's health and safety policy and dignity at work policy, warranting immediate dismissal, and that the process followed was fair.
3. The claimant was dismissed by letter dated 10 May 2024, following which the Claimant lodged a claim for early conciliation with ACAS on 5 June 2024 and a certificate was issued on 2 July 2024. As this Tribunal claim was lodged on 3 July 2024, it was therefore brought within time.

### Issues

4. The issues to be determined by the Tribunal were agreed at the outset of the hearing as follows:
  - 1.1 Has the respondent shown the reason or principal reason for dismissal was the claimant's conduct?
  - 1.2 Was it a potentially fair reason under section 98 Employment Rights Act 1996?
  - 1.3 If the reason was misconduct, did the respondent act reasonably in all circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:
    - 1.3.1 The respondent genuinely believed the claimant had committed misconduct;
    - 1.3.2 there were reasonable grounds for that belief;
    - 1.3.3 at the time the belief was formed the respondent had carried out a reasonable investigation;
    - 1.3.4 the respondent followed a reasonably fair procedure;
    - 1.3.5 dismissal was within the band of reasonable responses.
2. In terms of wrongful dismissal,
  - 2.1 what was the claimant's notice period,
  - 2.2 Was the claimant guilty of gross misconduct, such that the respondent was entitled to dismiss him without notice?

## **Evidence**

5. I heard evidence from Mr Beale in person. For the respondent I heard evidence from Mr David Byk, (chief executive officer), Mr Graham Rogers (appeal manager), Ms Gillian Bush (claimant's line manager), Mrs Althea Younger (HR manager) and Mr Andy Kemmett (appeal manager).
6. I have also been provided with a bundle of 261 pages together with witness statements for each of the witnesses. I have considered all these documents when reaching my decision.
7. During the hearing, it became apparent that Mr Beale, a litigant in person, had not prepared witness statements for all the witnesses he wished to call. Mr Beale stated that he had the telephone numbers of his witnesses who he proposed to call to give evidence to the Tribunal. I explained to Mr Beale that the case directions (p39 of the bundle) required that all witness evidence should be provided in the form of a written witness statement, by 16 April 2025. Accordingly, Mr Beale would need to seek permission to provide further witness evidence. I explained my duty to ensure that cases are dealt with fairly and justly in accordance with rule 3 of the Employment Tribunal Procedure Rules 2024. Given the current listing of 2 days and that parties provided witness statements for 6 witnesses, if I permitted the Claimant to adduce further witness evidence, this would almost certainly result in the hearing being adjourned or part heard. Mr Beale decided that

he would proceed without seeking permission for his witnesses to give evidence.

8. Mr Beale also explained that the bundle before the Tribunal was the respondent's bundle and did not contain his evidence. He explained that he had no notice of being suspended from his role and therefore had no opportunity to obtain the evidence he wished to rely upon. Mr Beale had not made a request for any specific documents, and chose not to make an application for an adjournment for further disclosure. Mr Beale did not dispute the origin or veracity of the documents in the bundle, only that they did not form part of his evidence.

## **Relevant Legal Framework**

9. Section 94 of the Employment Rights Act 1996 (ERA) provides that an employee has the right not to be unfairly dismissed. The employer must show that the reason for dismissal is a potentially fair one. There are five potentially fair reasons for dismissal as set out in s98 (1) (b) and (2) of the ERA 1996. The respondent here relies on a reason related to the claimant's conduct.
10. At this stage the burden on the Respondent is not a heavy one. A 'reason for dismissal' has been described as a 'set of facts known to the employer or it may be of beliefs held by him which cause him to dismiss the employee' (*Abernathy v Mott Hay and Anderson* [10974] ICR 323).
11. In considering whether the Employer had reasonable grounds to conclude the Employee was guilty of misconduct, I note that it is sufficient that the Employer honestly believed that the employee was guilty of misconduct, and that the Employer is not required to prove the offence *Alidair Ltd v Taylor* 1978 ICR 445, CA.
12. In considering whether the dismissal was fair or unfair, the Tribunal must be satisfied that in all the circumstances, the employer has acted fairly in dismissing for that reason (section 98(4) of ERA). There is no burden of proof on either party.

### **S98**

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) 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

(b) shall be determined in accordance with equity and the substantial merits of the case.

13. I must not substitute my own decision for that of the employer in this respect. Rather it must be decided whether the Respondent's response fell within the range of reasonable responses open to a reasonable employer in the circumstances of the case (*Iceland Frozen Foods Limited v Jones* [1982] IRLR 439).
14. In a case concerned with conduct, regard should be had to the test set out by the EAT in *British Home Stores v Burchell* [1978] IRLR 379 in considering section 98 (4) of ERA. The essential enquiry for the Employment Tribunals in such cases is whether, in all the circumstances, the employer carried out a reasonable investigation and at the time of dismissal genuinely believed on reasonable grounds that the employee is guilty of misconduct. If satisfied in those respects, the Tribunal then must decide whether dismissal lay in the range of reasonable responses.
15. Both the ACAS Code of Practice on Disciplinary and Grievance procedures (the ACAS Code) as well as an employer's own internal policies and procedures should be considered in assessing the reasonableness of dismissal.
16. Turning to wrongful dismissal, a wrongful dismissal claim is a claim that a dismissal by an employer has breached the employee's contract of employment.
17. As the EAT set out in *Enable Care and Home Support Ltd v Pearson* EAT 0366/09 the Tribunal is concerned with the question of whether the employee was guilty of conduct so serious as to amount to a repudiatory breach of the contract of employment entitling the employer to summarily terminate the contract.

### **Findings of fact.**

18. The claimant was employed by Ling Design on 1 September 2000.
19. By 2015, immediately prior to the company being sold, Mr Beale was the production manager and explained that at this time, he took the decisions about the products produced by the Respondent business.
20. In 2015, Ling Design was sold to Swantex, a company owned by Mr David Byk. It is the claimant's case that his role was diminished from the outset of that change in ownership and that within 2 years of that sale all the existing directors of Ling Design had left.
21. The respondent does not dispute that the claimant had a significant steering role in the business prior to the change in ownership and I accept that he did. The claimant says that he was the only person strong enough and with the knowledge to make informed business decisions and I accept that the claimant did have a significant steering role in the business prior to the transfer.

22. It is not disputed that Mr Beale and Mr David Byk had a good working relationship until 2020 and the companies response to the Covid 19 pandemic. Mr Beale alleges that Mr Byk failed to follow government guidelines in relation to working from home and put staff at risk, as well as falsifying documents in relation to furlough. Mr Byk, in cross examination, refuted that his response to the Covid 19 pandemic was anything other than appropriate and stated that an individual from the Health and Safety Executive inspected the premises and found the response to be appropriate. The claimant did not raise a grievance regarding these issues at the time, nor do they form part of the complaints in this case. Despite this, Mr Beale's witness statement, and closing submissions put focus on these issues, and he sought to address this in cross examination.
23. On the evidence before me, I cannot form a view as to whether Mr Byk did, in fact, fail to follow the relevant guidelines nor is it necessary that I do so given the list of issues I have to determine. What is clear, and I do accept, is that these incidents were viewed as significant by Mr Beale and marked a turning point in the relationship between Mr Beale and Mr Byk. I also accept that Mr Beale's concerns regarding the response were honestly held, and that given his personal circumstances as a carer for his elderly father, this has not been something he has been able to move on from.
24. The claimant in his witness statement (paragraph 7) details an incident with Mr Byk which he claims was bullying, threatening and abusive. The claimant's own account of this incident was that the claimant '*confronted*' Mr Byk having previously made recommendations regarding the appropriate steps to take for the covid protocol, which the claimant says Mr Byk ignored. The claimant says other people were too scared to speak out about the response to covid, and that he tried to make them speak up. However, again, Mr Beale's own evidence was that other staff members did not wish to share their views, and Mr Beale was seeking to '*coral*' them. Mr Beale then states that Mr Byk '*chased him out of the meeting room like a spoilt child*' but also that he tried to get the claimant to stop and come back. Those statements appear to be inconsistent.
25. Mr Byk confirmed the incident at paragraph 6 of his witness statement where the claimant was asked to leave the building and take time off as his behaviour was '*shocking and inappropriate*' is the same incident.
26. Overall, on the claimant's own account of this meeting, it was Mr Beale who was confrontational, and appeared to be trying to rally unwilling staff against Mr Byk. Mr Beale's account of threatening and abusive behaviour from Mr Byk is conflicting. On the balance of probabilities, I do not find that Mr Byk was bullying, abusive or threatening at that meeting.
27. It is not disputed that by letter dated 10 December 2020, (p54 bundle) Mr Byk wrote to the claimant warning him that he needed to improve his conduct throughout the business, but that this was not part of the Company's formal disciplinary procedure. The letter concerns email messages on 27 November 2020, but also references concerns being

raised about the claimant's professionalism on several earlier occasions. The claimant was notified that similar misconduct would lead to formal disciplinary action. That letter also sets out that Mr Byk is *'happy to debate a point but only where courtesy and professionalism are shown and I will then make decisions on behalf of the company.'*

28. On 11 June 2021 it is not disputed that Mr Beale was involved in an email exchange with Mr Drury, the Group IT Manager (p53-57). This initiated with Mr Beale requesting an iPad for a new starter, and Mr Drury responding stating that the request needs to come from an employees line manager or director, and clarifying whether that person was the claimant.
29. Following that email it is not disputed that Mr Beale responded stating *'this is not for debate'* and *'words fail me'* and asking Mr Byk to authorise. When questioned about his response, Mr Beale acknowledged that Mr Drury's email was entirely appropriate. In relation to his own response to Mr Drury, Mr Beale says in the circumstances of having to send lots of emails, he did not have the time to sit back and think about the tone of his response. He says that emails can be interpreted in different way, and that he didn't think his response was aggressive, but a little close to the mark, and that the email was a little bit short.
30. Following this email exchange, Mr Byk responds on 14 June 2021, highlighting that his tone was incorrect, and that he should apologise to Mr Drury. In response, Mr Beale simply states *'pathetic'*. Mr Byk then responds stating that Mr Beale should respond before 10am apologising to Mr Drury.
31. It is the respondent's case that the claimant had been repeatedly notified that his tone was inappropriate when dealing with other staff, and that attempts had been made to check his behaviour. I find this email exchange between Mr Beale and Mr Drury strongly consistent with that claim from the respondent, and Mr Byk's response to Mr Beale was both appropriate, measured and consistent with his own account through his witness evidence. For the avoidance of doubt, I find that Mr Beale's tone and wording in these emails to be both unnecessary and rude, however I also keep in mind that these emails are a very small snapshot of work completed by Mr Beale when forming my overall view. Significantly, I found Mr Beale reluctant to accept that there was anything wrong in his conduct through this exchange and therefore find that this affects his credibility, particularly in light of his allegations of his own *'faultless service'* and allegations that Mr Byk created a hostile work environment that resulted in his later inappropriate behaviour.
32. It is common ground between the parties that Mr Beale and Mr Byk attend a fortnightly sales and operations meeting. It is Mr Beale's case that the management meetings are unprofessional, with criticism from Mr Byk and staff constantly leaving the meeting because they can't cope with Mr Byk's challenging management style. Mr Byk refuted that staff constantly left the meetings and burst into tears. His characterisation was that the meetings are conducted in good humour and in a challenging manner. Mr Byk did

acknowledge that on one occasion he had sworn in a meeting and he had subsequently apologised, but that the claimant would, in these meetings, continue shouting until his point was heard.

33. Mr Byk was consistent through his evidence that he welcomed challenging debate, and that this was consistent with his letter of 10 December 2020. Ms Bush's oral evidence was that she left one management meeting because it had got too much for her, but that this was due to a personal issue. Ms Bush also recollected one other female staff member left a meeting in tears. She agrees that Mr Byk would raise his voice to other members of staff, and confirmed that Mr Byk had sworn in a meeting on one occasion in response to Mr Beale, and that Mr Byk had apologised. She confirmed his management style was not 'negative'. Overall I formed the view that Ms Bush gave her evidence in a measured and honest way and was a credible witness. The evidence provided from Mr Kemmet was similarly supportive of Mr Byk's management style, and indicated that whilst he had heard swearing in the office, this was used in a non aggressive way, and a non offensive way.
34. In contrast Mr Beale does not provide any detail of the incidents he refers to where a staff member left in tears, or where there was shouting or swearing, indicating that it is a general and everyday occurrence. Whilst he referred in oral evidence to an incident of Ms Bush leaving a meeting, she has clarified this was because of a personal issue.
35. Having heard all the evidence, I find that there was a degree of swearing and shouting within the meetings, and that the nature of the meeting could be viewed as confrontational. In part, this is because of the behaviour of the claimant who confirmed in evidence that he would continue to shout until he got his point across and had been reprimanded for his behaviour in meetings but I formed the view that he is not responsible for this alone, and that the respondent has allowed a meeting style to become established that is overly confrontational. Considering this in the round, I was not persuaded that this created overall a toxic working environment, given that this meeting was held every two weeks.
36. On 15 July 2021 it is not disputed that the claimant received an informal warning regarding his behaviour at a meeting on 13 July 2021, including him raising his voice and directing insulting language at others in the room.
37. Between 3 November and 26 November 2021 there were a number of incidents where Mr Beale is alleged to have acted inappropriately. On 3 November 2021 (p63) Mr Beale apologises for expressing himself too strongly. Following that on 9 November 2021, 26 November 2021, and 8 December 2021 the claimant is said to have behaved inappropriately including that Mr Byk was concerned he needed to ask Ms Bush to *'stop him going into his department and ranting and unsettling the team but she was too late even then and he has already unsettled them by his unprofessional behaviour and we are having to try and repair that.'* Furthermore, that the claimant had called the product team *'fucking*

*muppets*'. In closing submissions Mr Beale has provided further context for this phrase, however given this evidence was provided after cross examination had completed, I give it little weight.

38. Following an investigation, as a result of these actions a disciplinary hearing was held on 13 January 2022 with HR Manager Peter Fevyer.
39. On 17 January 2022 the claimant was issued with a first written warning (p79) as it was found that the claimant had committed misconduct at a number of internal meetings including "*shouting at or over colleagues*". That letter records that the letter will stay on his personnel file for 12 months, after which it will be disregarded for disciplinary purposes, but can be considered for disciplinary purposes within that time period.
40. Subsequent to this first written warning, the bundle contains a number of further email chains where Mr Beale is said to have used inappropriate language. On each of these occasions I find that his tone is indeed unacceptable. On 25 March 2022 in response to Mr Byk attempting to ease Mr Beale's workflow, he states '*like a sticking plaster over a gaping wound I'm afraid – utterly pointless*'. On 1 August 2022 (p84) he refers to '*dynamics is why the rollwrap has fallen over – how can you not see that?*' and on 11 August 2022 (p86) he states '*sounds a bit like clutching at straws to me*'. On the 20 December 2022, he refers to something being 'just complete b\*\*\*\*\*ks'. It is not disputed that the claimant sent these emails and I find that he did. However, it is also clear and accepted that no further disciplinary action was taken.
41. On 3 July 2023, it is not disputed there was a meeting with the claimant to discuss the ongoing issues with his behaviour and that he was informed Ms Gillian Bush would take over as a line manager for the claimant in order to give distance between the claimant and Mr Byk. In particular, Mr Byk highlights the claimant's unacceptable behaviour and the need to reset behaviours.
42. It is also common ground that Mr Beale was unhappy with this change and that the claimant sent two emails regarding his views on his line manager at p105 and 106. In those emails Mr Beale takes issue with Ms Bush's working pattern, though he does not raise a grievance, and her knowledge of the role Mr Beale undertakes. Mr Beale has repeated his criticisms of Ms Bush throughout this case, including calling her '*weak*' and referring to her needing to '*man up*'. It is difficult to reconcile these emails and his subsequent comments regarding Ms Bush with the dignity at work procedure at p235 of the bundle, in particular, the need to treat everyone with respect and I formed the view that in his treatment of Ms Bush, Mr Beale fell short of that policy.
43. The parties agree that on or before 24 January 2024, Mr Byk swore at the claimant during a sales and operations meeting, using the term '*fuck*'. It is also agreed that Mr Byk subsequently apologised.

44. It is common ground that on 24 January 2024 Mr Beale sent a series of emails regarding strategic decision making without the sales team to Mr Byk, including stating '*you can only blame yourself when sales continue to decline*'. As a result, Mr Byk reprimanded the claimant for his tone. In an email in response, Mr Beale states '*please don't bully me*' and continues to raise an issue with the lack of engagement with the sales team. As a result, Mr Byk referred Mr Beale's accusations of bullying to HR.
45. At a meeting on 30 January 2024 with Ms Younger, it is not disputed that the claimant declined to make a formal or informal grievance in relation to his allegation of bullying. Furthermore, he was told about the expectations for email communication in the future. Following that meeting it is common ground that Mr Beale's behaviour in meetings showed a marked improvement and I accept that he took onboard the advice provided to him by Mrs Younger.
46. On 18 March 2024 the bundle contains an email from Mr Beale to Clare Twigger where he criticises sketches stating '*these sketches are awful*' and '*the best sellers have a more subtle, clever humour than these.*' for products in the humour category. In an email on p131 of the bundle Mr Byk again raises the issue with Mr Beale about his tone. However, in this email Mr Byk uses language such as '*Oh god where do I start*' and '*here commenceth the lesson*'. When asked about the tone of this email of his own, Mr Byk stated that he was attempting to draw humour in the situation, but also to show that he was standing up for Clare Twigger who had been upset about the emails from Mr Beale. He explained he was trying to bring the team together to work on important issues, but recognised his wording may not have worked to do that. He also highlighted that the claimant then sent the email on to a more junior member of staff with a monkey face. I find that the tone of this email is also inappropriate and high handed.
47. On 26 April 2024, it is common ground that the claimant moved work away from a preferred supplier to make a saving, and it has not been disputed that the claimant in doing so was working within instructions that he was provided and in line with his role. The Claimant then received an email from Mr Byk saying that the work was to be given to a different preferred supplier.
48. It is not disputed that the Claimant then had an outburst as a result of receiving an email from Mr Byk (p134). The claimant says in his witness statement that he 'just snapped and went into expletive ridden rant to myself'. However, he acknowledges in his witness statement that he went to Gillian Bush's office whilst swearing and shouting. The claimant accepted that he 'slammed his hands on the desk and said fuck or fucking'.
49. Having heard the claimant's oral evidence, the Tribunal accepts that the claimant shouted and swore in the open plan office, including using the word 'fuck' on more than one occasions and swearing about Mr Byk. The Tribunal also accepts that the claimant made threats against Mr Byk, albeit that he was not in the vicinity, and that he raised his fists and banged on the table.

50. It is not disputed that the Claimant was told to go home by his colleagues.
51. The severity of the issue is disputed; it is the Claimant's case that his behaviour was a result of the toxic work environment he had been working in at Ling design. He says that his behaviour was the release of a 'pressure valve' and that it was the sort of behaviour that would routinely be seen within offices. In support, he refers to the statement of Snow Ren-Pickering who states that she was deeply focused on her work and therefore did not know what the Claimant had said. The Claimant's case is that therefore, the issue could not have been as significant as made out by the Respondent.
52. The claimant in his witness statement significantly down plays his actions on 26 April 2024, saying both that he went on an expletive ridden rant to myself, that he couldn't fathom why Ms Bush would think it was aimed at anyone particularly herself, but also that he *'ventured as far as the entrance to her office.'* In oral evidence he confirmed that he was angrily shouting to Ms Bush, not at her, which is directly inconsistent with his evidence that he was on a rant to himself. Mr Beale also accepted that he said he would punch Mr Byk, and gestured with a fist, which is again inconsistent with his own version of events in his witness statement. In explanation, Mr Beale says that he made a boxing motion, but that this was not an aggressive motion.
53. find that explanation impossible to reconcile and overall, prefer the broadly consistent accounts of a very significant incident with aggression, swearing and physical threats to Mr Byk, from the witness statements provided in the bundle and Ms Bush's account, to the claimant's inconsistent account of events on that day.
54. It is common ground that the Claimant was suspended on full pay on 29 April 2024.
55. An investigation into the incident was undertaken by Gillian Bush and Alethea Younger and the conclusion stated at p175 of the bundle is that the behaviour fell short of expected behaviours and is likely to have created an intimidating and / or hostile environment for colleagues. As a result, the recommendation was that this incident should be referred to a disciplinary hearing.
56. Mr Beale was invited to a disciplinary hearing which took place on 7 May 2024. In advance of that hearing the Claimant prepared a statement [p152]. In that statement the Claimant refers to needing to 'apologise to any of my colleagues who found my outburst offensive.' However, he goes on to state that the behaviour was a symptom of the actions and behaviour of the CEO. The Claimant goes on to state *'he won't accept alternative views to his own. Even worse, he won't even attempt to listen. All the resultant conflicts I have with him or where I lose it, are an effect of that and not the cause. He's the problem not me.'*

57. The notes of the disciplinary hearing are agreed [bundle p158 – 173]. In that hearing the Claimant was asked about having an outburst and he confirms he did swear, but he denies it was intimidating to Ms Bush. When asked whether the Claimant understood it could have been intimidating he responded that *'she is weak she can think what she likes'*.
58. In evidence before me, Ms Bush confirmed that she did find the claimant's behaviour to be intimidating, though she understood that he was not directing the swearing or aggression towards her.
59. The disciplinary notes continue to refer to the fact that the claimant threatened to punch Mr Byk if he was there, and that he raised clenched fists. In response to these questions Mr Beale responds saying that he stopped himself short of threatening to kill Mr Byk.
60. Whilst the Claimant accepts that this outburst was worse than normal, he maintains he did not consider it to be Gross Misconduct. In relation to his behaviour towards his line manager, he states that he cannot remember if it is the first time he has shouted at her. Further, that he goes into the office shouting and angry *'only because she's a weak manager. I made my views very clear she needs to be strong to deal with David, and I am a very strong character.'*
61. Finally, the Claimant referred to the pressure in the business and that at the end of the week, he is *'knackered and it won't take much for me to lose it'*. Mr Beale was asked what steps he was taking to stop this happening again, and he did not provide anything that he would personally do to stop his behaviour. Instead he says that the culture in the business is wrong. He goes on to state that people need to listen when you are stressed and at breaking point.
62. On 10 May 2024 the claimant's employment was terminated for gross misconduct. The claimant was summarily dismissed and therefore did not receive any notice pay.
63. It is the claimant's case that he has had 20 years of faultless service, and that the respondent wished to get rid of him because he challenged Mr Byk. The claimant does not accept that there was anything untoward in his behaviour towards his colleagues, but maintains there was a toxic environment at the respondent's workplace as a result of Mr Byk.
64. However, I was provided with a number of emails written by Mr Beale which demonstrate use of what the respondent has referred to as inappropriate tone, including the messages to Mr Drury above, and messages at paragraph 40 and 44 above, and including on p132 *'the sketches below are awful'* and on p99 *but this is an idiotic decision'*. Mr Beale explains his tone in the emails is due to the fact that he was busy, and that at the time he did not notice how they came across. I have had in mind that these messages form only a small part of what would have been a large number of messages. However, I find that there is a pattern of disrespectful tone in the

emails Mr Beale sends, and an inability to show insight into how his tone will affect others.

65. I accept Mr Byk's evidence, that the claimant was sanctioned on numerous occasions for using an inappropriate tone, and that the claimant persisted in doing so. Furthermore, and relevant to Mr Beale's overall credibility, before me, Mr Beale sought to blame others and minimise his behaviour. The evidence from both Ms Bush and Mr Byk was that this tone of communication was not unusual from Mr Beale, and his downplaying of these email exchanges lends weight to their view. I therefore find that his manner in engaging with others was often rude and belittling.
66. The Claimant raises further issues with the management styles. He references the change in computer systems and being under-staffed as reasons for his growing frustration with his role. It is clear that the claimant genuinely believes that decisions made by Mr Byk have been detrimental to the company, including changing the computer system. It is also clear that he disagreed with those decisions at the time. However, Mr Beale repeatedly through the bundle references his knowledge and long tenure at the company. In his witness statement he says '*I was the only one strong enough and with the knowledge to make some informed business decisions.*' Mr Beale records that his frustration is that '*my opinion is not listened to anymore.*'
67. However, in oral evidence Mr Beale explained that he expected not just to have the opportunity to state his opinion, which he confirms he has done robustly on a number of occasions on the invitation of Mr Byk. However, what he complains about is that after listening to Mr Beale's opinion, Mr Byk does not then do as Mr Beale has advised. Mr Beale was clear in his evidence that his length of time and knowledge of the business made his opinions correct, and the views of others were simply wrong. I have considered whether Mr Byk caused a toxic working environment for failing to listen to the claimant, but the claimant's own evidence is of forcefully putting forward his opinions to Mr Byk, and in the emails at p105 and 106 he very clearly sets out his disagreement with a change in line manager. I therefore find that I cannot accept that Mr Byk did not allow the claimant to put forward his opinion, indeed the weight of evidence supports that Mr Byk encouraged opinion sharing.
68. In terms of Mr Beale's credibility, I accept that the evidence he gave to the Tribunal was truthful, in that he gave his honest account of his experience. However, I have also formed the view that he has limited insight into his own behaviours and the way his behaviour impact other people, and as such, have found that his evidence is unreliable. I accept that Mr Beale was dedicated to his job at Ling Design and invested in the company's success, and that at least some of his behaviour is explained by a desire to protect the companies reputation, and success. However, overall his credibility is damaged by his repeated downplaying of his own actions.

69. I have accepted that prior to Mr Byk's tenure, Mr Beale had a significant degree of control and his advice was followed. I therefore conclude that the toxic workplace that Mr Beale is referring to, is one where his advice is not followed. As a result, Mr Beale's frustrations have increased. Overall, I formed the view that Mr Beale had become unable to accept change within the organisation, because of his view of the importance of his role in the organisation, and therefore that he was unable to accept that Mr Byk was entitled to reach a different view on management decisions to those put forward by Mr Beale. Notwithstanding my findings on the fortnightly management meetings, I accept that there was not a toxic working environment.
70. On 15 May 2024 the claimant appealed his dismissal, and by letter dated 16 May 2024, the respondent invited the claimant to an appeal hearing on 30 May 2024 with Graham Rogers, Finance Director. The agreed transcript is at p182 of the bundle.
71. In that meeting, Mr Beale is asked whether he has said he is sorry and it will not happen again. He says 'I haven't in so many words. Unless something changes I can't say it won't happen again.' The claimant says that the business needs to change. He further states that he is protecting his mental health and states '*I will protect my mental health and have an outburst.*'
72. The claimant has not raised any issue with the conduct of the disciplinary hearing or the appeal, save that he says Mr Byk was involved in the process and it was therefore bias. Mr Beale put to Mr Byk in cross examination that the HR department is run by him, and that they have independence to make decisions on their own. Mr Byk strongly refuted this suggestion, highlighting that he was out of the country when the investigation was initiated and that he had no influence over the investigation. Furthermore, he highlighted that he had referred Mr Beale's own accusation of bullying against him to HR for investigation. He explained that his 'guys' were well equipped to stand on their own.
73. In response to my questions, Mr Byk clarified that he had been notified by Ms Younger of the incident by text message and had responded, but that these messages were not in the bundle. In that message he acknowledged that he had been told the Mr Beale had been threatening but confirmed that he had no role in appointing the disciplinary manager of the appeal manager.
74. The claimant provided no evidence to indicate that Mr Byk had been involved in the investigation, disciplinary process or the appeal. I found Mr Byk's evidence in this regard to be delivered in a clear and straightforward manner and to be truthful. I accept that Mr Byk was not involved in the investigation or in the disciplinary hearing or in the appeal and that the hearing was not bias on this basis.

75. On the 4 June 2024 the respondent sent a letter confirming that his appeal was dismissed.

76. The claimant contacted ACAS on 5 June 2024 and on 2 July 2024 the ACAS certificate was issued.

77. On 3 July 2024 this claim was filed at the Employment Tribunal, within time.

## **Submissions**

78. At the conclusion of the evidence, there was insufficient time for the parties to make oral closing submissions and therefore directions were given for parties to provide written closing submissions.

79. The Claimant's written submission, running to 3 pages, explained that the reason for his behaviour was not his character, but instead his treatment by his line manager, clarified as Mr Byk. The claimant referenced a psychometric test he had received that demonstrated his strengths as being supportive, balanced, sociable and analytical.

80. The Claimant states his case consistently with that during his evidence, that over the past four years he was under significant stress and as a result he would have to react, as he says 'release the safety valve', which he has done periodically over the past 4 years. The Claimant further states that the email evidence in the bundle is over-stated as examples were not presented with the full context to allow accurate interpretation and go beyond subjectivity.

81. The Respondent's submission was that the dismissal was fair and the Claimant's conduct constituted gross misconduct. The Respondent's witnesses were credible and consistent in comparison to the Claimant who repeatedly blamed the Respondent for his actions.

82. If, in the alternative, the dismissal is unfair, I should reduce any award to the Claimant due to his conduct.

83. In relation to wrongful dismissal, the actions of the Claimant were gross misconduct and Mr Beale was summarily dismissed. He should not be entitled to notice pay.

## **Discussion and Conclusions**

84. The first issue I have to decide is whether the reason or principal reason for the claimant's dismissal was conduct. The claimant accepts that the reason for dismissal was conduct, and I find that Mr Kemmel was a credible witness and am satisfied that the principal reason was the claimant's conduct due to the circumstances of the incident on 26 April 2024.

85. The conduct in question is not simply the incident on 26 April 2024, but that during the disciplinary hearing he had failed to take responsibility for his actions. The respondent phrased this as failing to apologise, however, the

claimant has, in fact, stated he needed to apologise to his colleagues. However, he fell short of accepting that he must address his behaviour and not behave in this way again, and that it was he who must modify his behaviour.

86. I have considered whether the respondent genuinely believed the claimant had committed misconduct, and had genuine grounds for that belief. Mr Beale has alluded to the Respondent wanting to get rid of him because he was an outspoken and challenging member of staff, but the claimant appears to have accepted that the respondent genuinely believed he had committed misconduct and that there were reasonable grounds for that belief.

87. The second question I must answer is whether the reason was a sufficient reason for dismissing the claimant.

88. As indicated above, the parties broadly agree on the facts of the incident, with the key difference between the parties being the perceived gravity of the incident and behaviour. Despite the claimant submitting at the outset of the hearing that his outburst should have received no sanction at all, he appeared, both through the disciplinary process and during the course of the hearing to accept both that he did commit the relevant behaviour and that it was inappropriate behaviour and required some sanction. Furthermore, I have found Mr Byk, Mr Rogers, Mr Kemmet and Ms Bush to be broadly credible witnesses and accept that each held a genuine belief that the claimant had committed misconduct. I therefore have no difficulty in concluding that the respondent held a genuine belief that the claimant had committed misconduct, and that there were reasonable grounds for that belief.

89. Turning to the investigation, Mr Beale does not reference any short comings in the investigation in his closing submissions or in his witness statement. Mrs Younger, a HR professional interviewed all staff members involved, with the exception of Snow Ren-Pickering who was not available on the day of the investigation. Given that Mr Beale admits to the conduct on 26 April 2024, I am satisfied that the respondent conducted a reasonable investigation.

90. Mr Beale complains that Ms Bush had a grudge against him because of the email he had sent on p105 - 106 regarding her work ethic and ability in her role, and that the reason she raised the complaint was because she saw an opportunity and enhanced the chain of events as she saw them, in the knowledge that he would probably lose his job (para 13 witness statement).

91. The claimant was not able articulate what he says has been enhanced in Ms Bush's statement. Her statement in relation to the incident at p148 of the bundle is consistent with her statement before these proceedings, and her oral evidence. The claimant has not provided any evidence to demonstrate that Ms Bush enhanced any aspect of the chain of events, and accordingly, I do not accept that she did so.

92. It is Mr Beale's case that Ms Bush had a grudge against him because of the email he had sent on 6 July 2023. Having had sight of the email at p105 – 106 of the bundle, I find they are critical and disrespectful to Ms Bush. In his email on 6 July 2023, Mr Beale refers to Ms Bush needing to 'seriously man up on her hours' and 'waltzing in at 9.30 every day' and an implication that her working from home on Fridays was nefarious, shows a lack of understanding of appropriate communication within the office. If Mr Beale had real concerns regarding Ms Bush's attendance, then he could have raised this appropriately, including through a grievance. The tone and manner of this email was wholly inappropriate. In his email on p106 Mr Beale states that *'I have pretty much dedicated my whole career to this business and so am duly qualified to make a sound judgement on this'*. Mr Beale then goes on to list how his knowledge is greater than Ms Bush's, whilst failing to understand that Ms Bush was being appointed as his manager to address Mr Beale's unacceptable behaviours. It is understandable that Mr Beale may feel like Ms Bush would have a grudge against him had she read his emails, it would indeed be surprising if someone was not offended in reading such an email sent about themselves. Mr Beale appears to have failed to grasp that the error was his in sending such an email in the tone that it has been sent. Particularly when the appointment is due to his failure to use 'respectful language'.
93. In any event, Ms Bush in evidence stated that she had not seen the email, but had been told by Mr Byk that Mr Beale had sent an email that was not very nice. Ms Bush stated that she had said she did not want to see it. I found her evidence to be credible in this regard. Ms Bush's evidence had been that prior to taking over his line management, she had had a good working relationship with Mr Beale. However, she had also stated that she did not want to take over his line management. Furthermore, she went on to say that she did not take the email into account when conducting her line management duties, and over the following 9 months of working together, Ms Bush felt that she had been supportive of Mr Beale. Overall, I found Ms Bush to be a credible witness and accepted her evidence in this regard. As a result I accept that she did not hold a grudge against Mr Beale.
94. Ms Bush accepts in her evidence both that she reported the incident to HR and that she took some part in the conduct of the investigation. However, it was her evidence that she reported it to HR because, as Mr Beale's line manager, she felt his behaviour was unacceptable.
95. This is consistent with the oral evidence of Ms Younger, who confirmed that there was no grievance raised by Ms Bush. Instead, that the incident was investigated due to the number of people involved and the nature of the incident and its seriousness.
96. However, in oral evidence, Ms Bush confirmed that she did feel intimidated and felt that the behaviour was abusive to herself. Mr Kemmet also concluded at paragraph 15 of his witness statement that the claimant's outburst was initially towards Ms Bush and at the time she was alone.

97. Ms Althea Younger explained that Ms Bush conducted one interview with a witness, Snow Ren-Pickering as she had not been available on the day when Ms Younger interviewed all other witness. It is unclear why this could not have been done by someone independent of the incident or by Ms Younger remotely. Overall, I accept that, at the very least, Ms Bush interviewing Ms Ren-Pickering was not ideal.
98. Furthermore, in oral evidence Ms Bush confirmed that she, together with Ms Younger, made the decision to suspend the claimant, and the decision that the disciplinary procedure should be invoked. Given Ms Bush's involvement as a 'victim' in the situation means that, notwithstanding her being the claimant's line manager, it would be ideal for someone different to take those decisions and undertake the investigation. There appears to be no reason why Ms Younger could not have taken those decisions herself.
99. However, I also take into account that it is the statement of Ms Ren-Pickering that is most in favour of the claimant, and that he had the option of bringing Ms Ren Pickering to the hearing as a witness to explain anything further she may have stated. Overall, the claimant's complaint in relation to the statement of Ms Ren-Pickering, is that it wasn't given more weight, rather than that it prejudiced his case.
100. In relation to both the suspension and investigation, I accept Ms Bush's evidence that she was reporting the incident because of the aggressive behaviour and inappropriate language used in the office and because of the number of people who witnessed it.
101. I have considered whether Ms Bush's involvement in the decision making and investigation renders the investigation conducted by the respondent as unreasonable or unfair, and I conclude it does not. Ms Bush took decisions in relation to this investigation under the guidance of Mrs Younger, a HR professional, independent of the incident. Given that the broad facts of the incident are not in dispute, and that Mrs Younger undertook the majority of the investigation, for which Mr Beale did not raise a complaint, I conclude that the defect in this procedure is not so significant that it renders the dismissal unfair. Having heard Mrs Younger's oral evidence, I find that had she taken the decision herself without Ms Bush, she would have recommended a disciplinary hearing and suspended the claimant.
102. The claimant asserts that the internal hearing and appeal hearing were a sham and 'basically a tick-box exercise to finally get rid of me "on the cheap"'. In his witness statement at paragraph 15, he refers to the internal hearing being under the influence of the CEO so biased.
103. I have set out in paragraph 74 in the findings of fact that I have found Mr Byk was not involved in the investigation, disciplinary hearing or appeal hearing. In addition, Mr Byk gave evidence that in fact, he very much valued Mr Beale as an employee, and it seems clear that Mr Byk put effort into

making the relationship with Mr Beale work. Mr Byk readily admitted that Mr Beale was very good at many aspects of the role, but the issue was with the way he conducted himself to others, and particularly himself. Mr Byk was credible in this regard and I accept that it was overall, Mr Byk's desire to keep Mr Beale in the business as a valued staff member, despite his short comings.

104. Overall, I do not find that the investigation or disciplinary procedure was unfair for this reason.

105. Mr Beale cross-examined Ms Younger on the appointment of Mr Kemmet and Mr Rogers as being outside of Ling Design. Ms Younger explained that both Mr Rogers and Mr Kemmet have roles within Ling Design despite being formally listed as employed by a different company under Mr Byk's leadership. The claimant's complaint in relation to this was unclear, and overall I was not persuaded that the procedure would be unfair if either Mr Rogers or Mr Kemmet were not employed by Ling Design.

106. Mr Beale says that he should not have been dismissed for his conduct. I have found that the conduct in question was more severe than Mr Beale accepts, and that it is not common place either within Ling Design or the work force generally for such outbursts to take place.

107. The claimant claims to have had '*24 years of faultless service*'. (witness statement paragraph 1). However, he does not dispute that he was given an informal warning on 10 December 2020. Further, that on 17 January 2022 he was issued with a first written warning (p75). Mr Beale received a further informal warning on 3 July 2023 where his line management chain was changed to reset behaviours. I do not therefore accept that Mr Beale's service has been faultless as claimed.

108. It was also clear from the statement of Mr Kemmett, at paragraph 15, that it was not simply Mr Beale's behaviour on 26 April 2024 that influenced his decision to dismiss the claimant, but also his failure to address his culpability, instead blaming Ms Bush for being 'weak' and the problems with Mr Byk.

109. I have examined the claimants claim of a toxic work environment where the CEO uses swearing and an inappropriate management style as mitigation. As set out in *Crewe v Dominion Garage Ltd COET 1164/158* the Tribunal must judge the offence complained of in the light of commonly accepted standards of the particular work environment.

110. However, I did not find that swearing and aggressive outbursts were pervasive within Ling Design Ltd. Whilst Mr Kemmet confirmed that swearing did happen in a non-aggressive way, this is fundamentally different to the nature of the outburst by Mr Beale. Mr Byk acknowledged swearing in a meeting on another occasion, however, he apologised swiftly afterwards which indicates that this is not pervasive within the workplace and I find it was not. .

111. Furthermore, there was no evidence that aggressive outbursts were either commonplace or tolerated, with Mr Beale's behaviour having been subject to informal and formal warnings in the past. Overall, I have found that I am not persuaded on the balance of probabilities that there was a toxic workplace culture.
112. Mr Beale alleges that the email sent by Mr Byk was micromanaging and I have therefore considered whether there was provocation for the incident. In particular, I remind myself that heat of the moment outbursts should be treated with a particular caution as set out in *Charles Letts and Co Ltd v Howard* 1976 IRLR 248 EAT. I have also considered whether the claimant had an opportunity to apologise, and find that he did, having had time for reflection following the incident and prior to the disciplinary hearing. However, during that hearing, whilst he confirmed he owed his subordinates an apology, he did not extend this to Ms Bush, or Mr Byk, and sought to blame others for his behaviour.
113. I also have accepted that the claimant has limited insight into his own behaviours and sought to minimise his conduct before me. He remains unable to see that his criticisms of Ms Bush as 'weak' and needing to 'man up' are in breach of the dignity at work policy and are unprofessional.
114. As detailed in paragraph 64 above, I have found that the claimant repeatedly sent emails in an inappropriate and belittling tone. However, these emails provided to me demonstrate that the respondent had a number of opportunities to invoke the disciplinary procedure against Mr Beale. Despite a long history of inappropriate behaviour, the disciplinary procedure had only been invoked once, with the issue of a first written warning on 17 January 2022, which had expired on 17 January 2023.
115. I have accepted that the incident on 26 April 2024 was serious and was unprofessional and inappropriate. I must now consider whether it was within the range of reasonable responses for the respondent to have dismissed the claimant for gross misconduct as a result.
116. I remind myself that I must not substitute my own decision for that of the employer, but only consider whether this falls within the band of reasonable responses and I conclude that it does.
117. The respondent's disciplinary policy at p231 sets out a number of circumstances which could lead to disciplinary action and which may be serious enough to justify summary dismissal. Pertinent to this case they include:
- a. Any.....abusive behaviour towards people...
  - b. Indecent, insulting behaviour towards or harassment, bullying or victimisation of fellow employees...
  - c. A serious act of insubordination.

118. The dignity at work policy sets out the following expected behaviours:
- a. All employees should adopt professional standards of behaviour and take appropriate action with regards to other employees who display improper behaviour.
  - b. Harassment can be any unwanted attention or behaviour that a person finds objectionable or offensive and which makes them feel threatened or uncomfortable, leading to a loss of dignity or self-respect. This can be verbal, non verbal actions and in written form.
119. In cross examination the claimant admitted that his behaviour could be in breach of the disciplinary policy and dignity at work policy. The claimant acted unprofessionally, in response to a reasonable email from his employer, and it is accepted that he swore, and banged his hands on the table and moved around the office swearing. He entered the office of his line manager swearing and raising his fists and threatening that he would hit the CEO if he were present. The incident was sufficiently loud that other members of staff came to see what had happened and sought to calm him down, before telling him to go home. I do not accept that this is a minor incident that did not warrant investigation, as claimed by the claimant. I do not accept that this is an incident that did not warrant any disciplinary action as claimed by the claimant. This falls squarely into behaviour which may result in disciplinary action and is in breach of the dignity at work policy.
120. Given the claimant's length of service, and the failure of the organisation to invoke the disciplinary procedure earlier to control his behaviour, had the claimant taken responsibility for the incident and addressed his behaviour then I would not have found that the decision to dismiss was within the range of reasonable responses. However, he did not do so.
121. Whilst the claimant did say he owed his colleagues an apology, I accept that he sought to deflect from his own culpability in seeking to blame Ms Bush for being 'weak' and Mr Byk for creating a toxic work environment. I have found that Mr Byk did not create toxic work environment.
122. The respondent undoubtedly needs to address the senior management meetings, and address casual swearing and insults in the work environment as also being in breach of the dignity at work policy.
123. However, when considering whether a reasonable employer could dismiss the claimant for his actions on 26 April 2024, and his contention that the behaviour could be repeated, I find that it is. Mr Beale had an outburst loud enough that other staff members attended, and sent him home. He swore at his line manager and threatened the CEO as well as speaking inappropriately about the CEO to other staff members. Further, he did not take responsibility for his actions.
124. Mr Beale's own evidence is that he needed to let of steam on 26 April 2024, due to a build up of frustration and his mental health. His evidence is that he has done this before and needs to do so regularly. It was therefore

within the range of reasonable responses for the respondent to conclude that it could not be certain that such an incident would not happen again, creating a health and safety risk to its employees and to dismiss the claimant for gross misconduct.

### **Wrongful dismissal.**

125. The claimant was summarily dismissed for gross misconduct. In considering whether his behaviour constituted gross misconduct, I must consider whether his behaviour *'wholly undermine the relationship of trust and confidence between employer and employee that it justifies the employer in treating the contract as repudiated.'*

126. I have accepted that within the culture of Ling Design, the senior management meetings breach the dignity at work policy.

127. I have further accepted that Mr Byk has sent emails, for example, at p131 – 132, that have a condescending tone.

128. However, Ms Bush in her statement at the time and the statement to this hearing does not refer to being affected personally by the incident on 26 April 2024, and Ms Younger referred to the fact that no grievance was ever filed, in her reasoning for Ms Bush taking the decision to suspend the claimant and for a disciplinary process to be initiated. In oral evidence she explained that she had felt intimidated, however this does not form part of her statements.

129. It is common ground that the claimant's anger was clearly communicated as being in relation to an email from Mr Byk and that this was his reaction to it. I accept that Mr Beale did not directly threaten anyone in his vicinity, nor was he verbally abusive directly to any member of staff.

130. A degree of swearing behaviour appeared to have been tolerated in the past, and both Ms Bush and Mr Byk referred to previous outbursts by the claimant which resulted in no formal action.

131. Although I accept that there was an escalation within his behaviour at the incident on 26<sup>th</sup> April 2024, given his length of service and his relatively consistent behaviour, I do not conclude that the behaviour was so significantly different to behaviours he had displayed previously that it could be said to have wholly undermined the trust and confidence with the employer in question, such that the employer could treat the contract at an end.

132. In particular on 8 December 2021, p68, Mr Byk refers to *'dispatching Gillian Bush behind him to stop him going into his department and ranting and unsettling the team, but she was too late even then and he has already unsettled them'* It is evident that the incident on 26 April 2024 is not the first time that Mr Beale has demonstrated these behaviours, but this earlier

behaviour warranted only a first written warning, which had subsequently expired.

133. I therefore conclude that the claimant's conduct did not constitute gross misconduct. However, I do accept that the claimant's behaviour was significant and serious and that his dismissal, with notice, was appropriate.

134. The parties agreed that the claimant's notice period is three months.

Approved by:

**Employment Judge Scott**

**13 August 2025**

JUDGMENT SENT TO THE PARTIES  
ON

19 September 2025

Phoebe Hancock  
FOR THE TRIBUNAL OFFICE