EMPLOYMENT TRIBUNALS
FINAL HEARING

Claimant: Mr J Proctor

Respondent: Serious Waste Management Limited

Heard at: Nottingham Tribunal Hearing Centre

On: 2, 3, 4,and 5 June 2025

Before: Employment Judge S Shore

Appearances

For the claimant: In person
For the respondent: Mr B Frew, Counsel

JUDGMENT AND REASONS ON LIABILITY, COSTS AND RECONSIDERATION

JUDGMENT

1. The claimant's claim of unfair dismissal fails.

2. Because the claimant's claim has not succeeded, there is no requirement for a remedy hearing.

3. The claimant (the paying party) will pay the respondent (the receiving party) the sum of £12,000 (including no VAT, because it is recoverable by the receiving party) in costs within 28 days of this Judgment and Reasons being sent to the parties.

REASONS

Introduction and History of Proceedings

1. The claimant was employed by the respondent, a waste management company, latterly as Managing Director, from 1 February 2017 to 29 February 2024.

2. The claimant began early conciliation with ACAS on 1 March 2024 and obtained an early conciliation certificate on 27 March 2024 [9]. The claimant presented his claim form (ET1) and Particulars of Claim on 16 May 2024 [10-32].

3. The claimant's claim is one of unfair dismissal only.

4. On 6 June 2024, the Tribunal acknowledged the claimant's claim. The Tribunal also sent both parties a Notice of Claim [33-36] that set a Final Hearing for 1 October 2024 at the Nottingham Tribunal Hearing Centre. The Notice of Claim also made the following Case Management Orders: -

    4.1. The respondent was to file a response (ET3) by 4 July 2024;

    4.2. The claimant was to produce a Schedule of Loss by 18 July 2024;

    4.3. The claimant and respondent were to send each other lists of documents by 1 August 2024;

    4.4. By 15 August 2024, the respondent was to prepare a file of documents for the Final Hearing (also known as a bundle); and

    4.5. The claimant and respondent were to exchange witness statements on 29 August 2024.

5. The respondent presented its Response Form (ET3) and Grounds of Resistance [38-51] on 16 May 2024. The claimant submitted a Schedule of Loss [52-55].

6. The only preliminary hearing was before Employment Judge Adkinson on 1 October 2024. The claimant appeared in person and the respondent was represented by Mr Frew as in this hearing. EJ Adkinson produced a case management order on the same date as the hearing [58-64]. EJ Adkinson agreed a List of Issues with the parties [56-57] that excluded reference to a claim of whistleblowing on the claimant's clarification of his case. The dates of the Final Hearing were confirmed as 2, 3, 4, and 5 June 2025.

7. In preparation for the Final Hearing the parties agreed a bundle of 713 pages. If I refer to any of the documents in the bundle, I will note the relevant page numbers of the document in the bundle in square brackets.

8. The claimant produced three versions of his witness statement, the last of which was produced on the first morning of the hearing. With the consent of the respondent, he relied on the last statement only. He also produced witness statements in the bundle

for Victoria Wale [680-681], a former colleague at the respondent, and Christine Pratt [709-713], who had advised the claimant.

9. The respondent produced witness statements from:

    9.1. Robert Menzies, a shareholder in the respondent;

    9.2. Victoria Bamber, who conducted the disciplinary hearing with the claimant and dismissed him;

    9.3. Jeff Dipple, who dealt with the claimant's grievance; and

    9.4. Tina Smith, who heard the claimant's appeal against dismissal.

10. The parties also provided a cast list and chronology, which were extremely useful.

Issues

11. The List of Issues was as agreed with EJ Adkinson is as follows:

Unfair Dismissal – substantive issues

1. What was the reason or principal reason for the Claimant's dismissal? Was it a potentially fair reason? (Employment Rights Act 1996 (ERA), s98(1), (2))

1.1. The Respondent relies on the potentially fair reason of conduct (ERA, s98(2)(b))

2. Did the Respondent act reasonably in the circumstances, including its size and administrative resources, in treating the alleged misconduct as a sufficient reason for the Claimant's dismissal (ERA, s98(4))

3. In particular, did the Respondent form:

3.1. a genuine belief that the Claimant was guilty of the misconduct alleged

3.2. on reasonable grounds

3.3. after such investigation as was reasonable?

4. Was dismissal a sanction within the range of reasonable responses open to the Respondent? (ERA, s98(4))

5. Did the Respondent follow a fair procedure? (ERA, s98(4))

Remedy

6. What basic award, if any, should be made to the Claimant? (ERA, s119)

7. Are there any grounds (e.g., contributory fault) on which the basic award should be reduced? If so, by how much? (ERA, s122)

8. What compensatory award, if any, should be made to the Claimant, taking into account what is just and equitable in all the circumstances having regard to any loss sustained by the Claimant in consequence of the dismissal in so far as any such loss is attributable to action taken by the Respondent? (ERA, s123) In particular:

8.1. What past losses has the Claimant sustained as a result of his dismissal?

8.2. What future losses is the Claimant likely to sustain as a result of his dismissal?

8.3. What amount should be awarded, if any, for the Claimant's loss of statutory rights?

8.4. To what extent did the Claimant contribute to his dismissal? (ERA, s123(6))

8.5. If the dismissal is found to be procedurally unfair, what is the percentage likelihood that the Claimant would have been dismissed fairly in any event, and when would such fair dismissal have taken place?

8.6. Can the Respondent show that the Claimant has not made reasonable attempts to mitigate his losses? If so, by what date and at what rate of pay and relevant benefits could the Claimant have been expected to have obtained alternative employment if such reasonable attempts had been made?

8.7. Does the compensatory award need to be grossed up to take into account the impact of taxation?

8.8. What is the statutory cap on the maximum compensatory award in this case? (ERA, s124).

8. As I have dismissed the claimant's claim of unfair dismissal, there was no need for a remedy hearing. I did not have to determine any of the issues relating to remedy.

Law

9. The relevant section of the Employment Rights Act 1996 is section 98:

"Section 98 Employment Rights Act 1996

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it-

(a) Relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) Relates to the conduct of the employee,

(c) Is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)—

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical, or professional qualification relevant to the position which he held.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal was 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."

The Hearing

Day One

10. The first morning of the hearing was set aside until 12:00pm for the me to read the documents and witness statements. On the morning of the hearing, I received a second version of the claimant's witness statement that he had submitted by email on Sunday 1 June. He described the amendment as "a formatting amendment" that "has not varied in its content." In fact, there were variations in content.

11. Just before the start of the hearing, the Tribunal Clerk handed me a third version of the claimant's witness statement that contained handwritten amendments and comments.

12. The hearing started at 12:00pm. I reminded the partis that the hearing was recorded and that they could obtain a transcript on payment of a fee to HMCTS. The claimant

said he did not require any adjustments to the hearing because of disability.

13. The claimant is unrepresented, although he received advice early in the proceedings. I reminded him that the Tribunal operates on a set of Rules. Rule 3 sets out the overriding objective of the Tribunal Rules (their main purpose), which is to deal with cases justly and fairly. It is reproduced here:

> ***Overriding objective***
>
> *3.— (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.*
>
> *(2) Dealing with a case fairly and justly includes, so far as practicable—*
>
> *(a) ensuring that the parties are on an equal footing,*
>
> *(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,*
>
> *(c) avoiding unnecessary formality and seeking flexibility in the proceedings,*
>
> *(d) avoiding delay, so far as compatible with proper consideration of the issues, and*
>
> *(e) saving expense.*
>
> *(3) The Tribunal must seek to give effect to the overriding objective when it—*
>
> *(a) exercises any power under these Rules, or*
>
> *(b) interprets any rule or practice direction.*
>
> *(4) The parties and their representatives must—*
>
> *(a) assist the Tribunal to further the overriding objective, and*
>
> *(b) co-operate generally with each other and with the Tribunal.*

14. In explaining the overriding objective to the claimant, I encouraged him to ask any questions that he had about the process, or the law involved in his case. He took that opportunity at appropriate times.

15. The parties confirmed that there were no documents to add to the 713-page bundle, but Mr Frew indicated that there were three documents that the respondent says it sent to the claimant with the invitation to a disciplinary hearing letter dated 7 February 2024 [287-290]:

    15.1. Notes of the investigation meeting with Rob Menzies.

15.2. Notes of the investigation meeting with Vicki Oldknow; and

15.3. Notes of the investigation meeting with Erin Benton.

16. Mr Frew said he would supply copies of the documents on the second morning. I discussed the documents with the parties, as it was intended to hear from the dismissing officer on the first day of the hearing and the claimant may have questions about the documents. Mr Proctor said he had not received the documents. I found that it would be sufficient for him to challenge Ms Bamber about whether the documents had been sent, and he could pick up the contents of the document with Ms Smith who heard the appeal as a re-hearing of the disciplinary.

17. Mr Frew raised a question about the claimant's witness statements. I said he could have time to read the third statement and make representations after he had considered all three statements. I explained to Mr Proctor that I may not allow the second and third statements if I thought it would be unfair to do the respondent to allow them.

18. We then discussed the timetabling of the hearing. Mr Proctor confirmed that he would not be calling Victoria Wale, a former colleague at the respondent, or Christine Pratt, who had advised him during the early part of the history of the case to give evidence. Statements from both were in the bundle [680-681 and 709-713].

19. Mr Frew said he was considering not calling Robert Menzies, whose statement had been tendered. I asked Mr Frew to advise me of his intentions after the break. It is for the party that has called a witness to decide if they will be asked to give evidence. I advised both parties that I can give little weight to witness statements of people who do not attend and offer to be cross-examined.

20. Mr Proctor and Mr Frew had been discussing the timetable. Mr Proctor felt he needed half a day to cross-examine each of the respondent's four (including Mr Menzies) witnesses. I had read the statements and could not see how he would have 3 hours of questions for Mr Menzies, who took no active part in the disciplinary or grievance proceedings or Mr Dipple, who heard the claimant's grievance.

21. The case had been given 4 days to deal with liability and remedy (if required). We did not have time to spend 2 days just on the respondent's witnesses. Mr Frew indicated that he would be about three hours cross-examining the claimant. I advised the parties that I had a medical appointment on the afternoon of the fourth day and could not sit beyond 2pm.

22. We agreed the following timetable (based on the probability that Mr Menzies would not give evidence):

22.1. The first two hours of the first day had been taken up by reading;

22.2. I would hear from Ms Bamber and Mr Dipple on the first afternoon;

22.3. I would hear from Ms Smith on the second morning, although she could not attend before 10:30am;

22.4. The claimant would give evidence after Ms Smith on the second

day;

22.5. Closing submissions would be given by the parties on the morning of the third day for 30 minutes each;

22.6. I would make my decision on liability on the third day and deliver a judgment and reasons on the fourth morning;

22.7. If the claimant were successful, I would deal with remedy on the fourth morning.

23. I had several questions for the parties that arose from my reading of the papers that were answered as follows:

23.1. There was no ongoing litigation regarding the claimant's shareholding in the respondent;

23.2. The documents relating to the shareholders' loans to the respondent were at pages 603 (SME Alternative Financing DAC) and 604 (Close Brothers Invoice Finance); and

23.3. The minutes of the shareholders' meeting that voted to remove the claimant as a statutory director were at page 185.

24. I made it clear to Mr Proctor that this hearing was solely about whether he had been unfairly dismissed. He had frequently used the term "whistleblowing" in the papers but had specifically told EJ Adkinson that he was not alleging that he had been dismissed because he had made a protected disclosure under section 103A of the Employment Rights Act 1996 (i.e., "whistleblowing"). Before we started the evidence, Mr Proctor asked to be able to read a statement about whistleblowing that appeared to me to be an allegation of detriment short of dismissal because he had made a protected disclosure under section 47B of the Employment Rights Act 1996. Mr Proctor said he was not making such a claim.

25. I explained that the matters I must determine were the matters set out in the List of Issues. I would decide what the reason for dismissal was. If I found the reason was not one of the reasons permitted by statute, then the dismissal would be unfair. If I found that the reason was misconduct, that is a potentially fair reason, and I would then go on to apply the tests in the List of Issues:

25.1. Did the respondent form a genuine belief that the claimant was guilty of the misconduct alleged;

25.2. Was that belief based on reasonable grounds:

25.3. Was the decision made after reasonable investigation; and

25.4. Was the decision to dismiss within a range of reasonable responses?

26. I noted that the case contained a plethora of allegations and counter allegations. I was not going to make any findings about:

26.1. Any complaints about the claimant's DSARs;

26.2. Any complaints about the claimant's position as a statutory director;

26.3. Any complaints about the claimant's shareholding;

26.4. Any personal injury claim, as the Tribunal has no jurisdiction to deal with that in these proceedings; and

26.5. Any claim of whistleblowing under sections 47B or 103A of the Employment Rights Act 1996.

27. I adjourned the hearing at 12:35pm to give Mr Frew opportunity to consider the claimant's witness statements. We recommenced at 1:30pm, which included a lunch break. Mr Frew confirmed that he had no objection to the claimant using the third iteration of his witness statement. Neither of the claimant's other witness statements would be used. Mr Menzies would not be called, although his statement was submitted.

28. Victoria Bamber gave evidence on affirmation for the respondent and produced a witness statement dated 16 May 2025 that consisted of 17 paragraphs. Mr Frew had no supplementary questions. At the time of the matters I had to consider, Ms Bamber was an HR Operations Director employed by Limelite HR, the company that the respondent sourced through its solicitor to deal with the disciplinary process against the claimant. Ms Bamber had joined Limelite HR in February 2024.

29. Mr Proctor began his cross-examination at 1:43pm and continued until 2:20pm, when Mr Frew asked for a break to facilitate without prejudice discussions. I adjourned the hearing and gave Ms Bamber the warning given to all witnesses when the hearing is halted whilst they are in the middle of giving their evidence: they may not speak to anyone about the case in the break.

30. The hearing recommenced at 3:00pm. No agreement had been reached between the parties.

31. Ms Bamber was cross-examined until 3:55pm. I asked her one question and Mr Frew asked two re-examination questions. The witness was released with the agreement of the claimant at 3:58pm.

32. At 4:00pm, Jeffrey Dipple gave evidence on oath for the respondent and produced a witness statement dated 21 May 2025 that consisted of 17 paragraphs. Mr Dipple is an HR Consultant who was subcontracted to Limelite HR to conduct the investigation and determine the claimant's grievance.

33. Mr Dipple was cross-examined by the claimant until 4.16pm. There were no questions from me or any re-examination from Mr Frew. The hearing ended for the day at that point.

Day 2

34. The second day began at 10:50am. The late start was because the respondent's last witness, Tina Smith, had a delayed train journey. Mr Frew asked if I had

received the missing interview notes. I confirmed that I had at lunchtime. The notes of Mr Menzies were given page numbers 714 to 720. The notes of Ms Oldknow were given page numbers 721 to 728. The notes of Erin Benton were given page numbers 729 to 739.

35. I heard evidence from Tina Smith, who gave evidence on oath for the respondent and produced a witness statement dated 12 May 2025 that consisted of 19 paragraphs. Ms Smith is an HR Consultant with her own company who was engaged by Limelite HR through Hill HR Consultancy to conduct the claimant's appeal against dismissal. Ms Smith was cross-examined by Mr Proctor from 10:56am until 12:20pm. Mr Frew asked two re-examination questions. The witness was released at 12:29pm.

36. The claimant, Jeremy Proctor, gave evidence on oath in support of his claim. He produced the third version of his witness statement dated 16 May 2025 that consisted of 66 paragraphs. He was cross-examined until 1:20pm when we took lunch. On the resumption at 2:20pm, Mr Frew continued cross-examination until 3:05pm. I asked the claimant some questions until 3:10pm and then we discussed closing submissions.

37. It was agreed that both parties would produce written submissions and would exchange them (copying in the Tribunal) by 9:30am on the third morning with a view to starting at 10:00am. The hearing ended for the day at 3:20pm.

Day 3

38. I received both parties' closing submissions on the third morning. The hearing stated at 10:05am, by which time, I had read the submissions of both parties. Mr Proctor had not read Mr Frew's submissions, so I gave him some time to do that. We started at 10:36am, when Mr Proctor went first and spoke from 10.36am to 11:01am. Mr Frew then spoke from 11:01am to 11:30am.

39. I retired to consider my decision and asked the parties to return at 2:00pm.

40. I returned at 2:00pm to deliver my oral Judgment and Reasons, which took until 2:49pm. I dismissed the claimant's claim of unfair dismissal. Neither side asked for written reasons at the hearing. I suggested to the claimant that he think carefully about asking for written reasons in view of the adverse findings I had made against him and the possibility of the reasons being published. Because I dismissed the claimant's claim, I did not have to consider any of the issues relating to remedy.

41. Mr Frew then made an application for costs on behalf of the respondent. I heard the application and then heard from Mr Proctor, who gave details of his financial status.

42. I made a costs order in favour of the respondent in the sum of £12,000. Neither side asked for written reasons for the costs decision, and I closed the hearing at 3:30pm.

43. The Judgment only was sent to the parties on 10 June 2025.

44. The respondent asked for written reasons on 10 June 2025. I was mindful of the overriding objective and asked the respondent why reasons were requested in a case that it won and was awarded costs. Mr Frew had taken a full note of my reasons on liability and costs. I was told during the hearing that the questions of the claimant's shares in the respondent were resolved and there was no other litigation ongoing.

45. The respondent's solicitors replied on 17 June 2025 to advise that the share issue was not resolved and there was a dispute over a director's loan of £75,000.00. The question of whether the claimant was a "good leaver", or "bad leaver" would be relevant to the dispute. I was advised that there may be further litigation, so that the written reasons "would be invaluable in assisting the respondent in its endeavours in this respect." I have provided these written reasons.

46. On 17 June 2025, the claimant requested a reconsideration of the costs order. I have dealt with that in these reasons.

47. I offer my sincere apologies to the parties for the delay in producing these reasons and the reconsideration. I am only allocated to the Midlands East region of the Employment Tribunal for 30% of my time. After this hearing, I had a long block of sittings for my other region that has limited the time available to me to complete the work. I have also had time off work due to ill health, annual leave and I work part-time.

Findings of Fact

Preliminary Comments

48. All findings of fact were made on the balance of probabilities. If a matter was in dispute, I will set out the reasons why I decided to prefer one party's evidence over the other. If there was no dispute over a matter, I will either record that with the finding or make no comment as to the reason that a particular finding was made. I have not dealt with every single matter that was raised in evidence or the documents. I have only dealt with matters that I found relevant to the Issues I have had to determine. No application was made by either side to adjourn this hearing in order to complete disclosure, or obtain more documents, or call additional evidence, so I have dealt with the case on the basis of the documents produced to me, the witness evidence produced, and the claim as set out in the List of Issues as agreed by the parties.

49. I found the claimant's written evidence to be vague, unstructured, and discursive. He made sweeping statements that were not supported by references to evidence that supported them. I considered the evidence of Victoria Wale [680-681], a former colleague at the respondent, and Christine Pratt [709-713], who had advised the claimant, but could give it little weight. The evidence of Ms Pratt was mostly irrelevant to the matters I had to consider. I found the respondent's evidence more credible.

50. I also find that the claimant had a limited understanding of some of the important legal principles involved in the case, which is not a criticism of him, but is a finding of fact. The areas in which the claimant demonstrated limited understanding were:

50.1. He did not demonstrate an understanding of the difference between misconduct by an employee of a company (such as himself) and misconduct by shareholders and/or statutory directors of a company (such as Messrs Menzies and Iandolo). He suggested that Messrs Menzies and Iandolo should have been subjected to the company's disciplinary process because of the allegations he made about them. That would have been legally impossible. Their status also removes the possibility of comparing how he was treated in the disciplinary process to how he alleges they were not subjected to any investigation (see **Hadjiannou v Coral Casinos Limited**).

50.2. The claimant wore three "hats" in this case:

50.2.1. Employee;

50.2.2. Statutory director; and

50.2.3. Shareholder.

Messrs Menzies and Iandolo did not wear an employee hat.

50.3. Despite me explaining the difference between employees and shareholders on the second day, Mr Proctor's first point in his closing submissions was that "I was treated differently and unfairly in comparison to Robert Menzies and Giovanni Iandolo."

50.4. He did not demonstrate much of an understanding of how the Employment Rights Act 1996 operates regarding protected disclosures (whistleblowing). For example, paragraph 47 of his witness statement makes the following assertion:

> "An employer cannot dismiss an employee for making a protected disclosure, even if the employee has not yet become a "whistleblower" in the legal sense."

50.5. The requirement of section 103A (and 47B) is that the dismissal (or detriment) happened because the employee *had made* the protected disclosure. The protected disclosure must come before the dismissal or detriment.

50.6. The paragraph then goes on to give a description of what a protected disclosure is and asserts that he made protected disclosures to various employees and non-executive directors of the respondent. What the claimant failed to reconcile was that he had specifically said he was not making a claim of automatic unfair dismissal under section 103A of the Employment Rights Act 1996 and confirmed to me that he did not wish to amend his claim or add a claim that he had been subjected to detriment.

50.7. I reminded the claimant that I was dealing with this case based on the List of Issues that had been agreed, not on the principles involved in a section 103A case.

51. I find that the claimant (and his erstwhile advisor, Ms Pratt) consistently focussed on the procedural minutiae of the disciplinary process rather than the factual allegations made against him. The claimant and his advisor wrote long emails and letters complaining about his suspension, who had instructed the HR consultants, the conduct of the HR consultants, the length of the investigatory hearing, his DSAR, his shareholding, his status as statutory director of the respondent etc., but produced very little in the way of cogent evidence rebutting the allegations made against him.

52. I find that the claimant continued to go down dead ends in the way he presented his case and cross-examined the respondent's witnesses. I find that Ms Pratt did not give much useful assistance to the claimant.

53. The claimant's decision to not engage with the disciplinary process did him no favours at all. The only medical evidence put before this Tribunal was a MED3 dated 31 January 2024 from the claimant's GP diagnosing anxiety and depression, and a note of an intervention by a CRISIS management team. Nether expressly said that the claimant was unable to participate in the disciplinary process. The claimant admitted that he could have answered the written questions put to him by the HR consultants.

54. The claimant made multiple complaints about the respondent's failings in its response to his DSAR. I do not profess to be an expert in proceedings before the Information Commissioner's Office (ICO), but I would make the following points:

54.1. Someone who makes a DSAR has the right to ask the ICO to adjudicate and make orders;

54.2. It appears to me that some of the things the claimant was asking to be disclosed were not disclosable;

54.3. The Employment Tribunal has a process by which parties send each other copies of the documents that they intend to rely on. Neither party can " cherry pick" only the documents that support its case. If a party fails to produce documents that are relevant to the Issues, the other party can ask the Tribunal for an order that the other side specifically discloses those documents. The claimant made no such application.

55. I therefore dealt with this case on the Issues and claims in the List of Issues and on the documents in the bundle.

Agreed facts

56. Some of the facts in this case were either agreed between the parties, not challenged by one of the parties or conceded in cross-examination. I have classified these as agreed facts and make the following findings:

56.1. The claimant was employed by the respondent, a wastewater management services company, specialising in sewage and grease control for domestic and commercial customers, from 1 February 2017 to 29 February 2024. The claimant was appointed to the position of Managing Director of the respondent on 1 February 2018. He was also made a statutory director of the respondent on 5 February 2018.

56.2. Ownership of the respondent changed on 18 May 2021 when its shares were acquired by the claimant, Robert Menzies, and Giovani Iandolo. The claimant acquired 20% of the shares with the balance going to Mr Menzies and Mr Iandolo, who effectively owned the company.

56.3. The claimant began early conciliation with ACAS on 1 March 2024 and obtained an early conciliation certificate on 27 March 2024 [9]. The claimant presented his claim form (ET1) and Particulars of Claim on 16 May 2024 [10-32].

56.4. The claimant's single claim is one of unfair dismissal.

56.5. The claimant's employment was subject to a contract of employment dated 1 February 2018 [68-73].

56.6. The respondent had three polices that are applicable in this case:

56.6.1. A Bullying and Harassment Policy [65-67];

56.6.2. A Disciplinary and Grievance Policy [75-83]; and

56.6.3. A Whistleblowing Policy [84-86].

56.7. The claimant was provided with a company car, bonus. He was paid a salary of £75,000.00 per annum but changed the method of payment to £5,000.00 per month in dividends and £12,570.00 in taxable pay on 24 January 2022 [74].

56.8. The claimant's wife, Theresa Proctor, was employed by the respondent in a part-time role. On 4 September 2022, the claimant authorised the lease of a company vehicle for his wife.

56.9. The claimant was alleged to have made various unauthorised purchases for himself on company credit and debit cards between 1 January 2023 and 28 November 2023.

56.10. The claimant was suspended by the respondent on 11 December 2023 [164] for alleged "unauthorised use of company funds.

56.11. The claimant admitted accessing the respondent's website and changing the password, thereby locking the other directors out of the account on 11 December 2023 [168].

56.12. On 12 December 2023, the claimant wrote to the respondent with allegations about misconduct by Messrs Menzies and Iandolo [170-171] and suggested that the suspension had been a reaction to Mr Menzies finding out that the claimant and another member of the respondent's management team had sought advice from a lawyer on a request by Messrs Menzies and Iandolo for "more access to the bank account."

56.13. Files were deleted on the respondent's website on 12 December 2023.

56.14. The claimant wrote to Messrs Menzies and Iandolo on 13 December 2023 making further allegations [172-174].

56.15. On 13 December 2023, the claimant submitted a DSAR to the respondent.

56.16. On 13 December 2023, the claimant was notified of a company EGM on 12 January 2024 to remove him as a statutory director. The claimant was removed as a statutory director of the respondent on 12 February 2024.

56.17. On 1 January 2024, the claimant made a complaint to the respondent about the conduct of Mr Menzies, which he described as bullying, harassment, and intimidation [444-446]. On 9 January 2024, the claimant submitted a formal grievance [462-471].

56.18. The respondent appointed an independent company, Limelite HR to conduct a grievance investigation and a disciplinary investigation. The grievance was investigated by Jeff Dipple, who gave evidence at this hearing. The disciplinary matter was investigated by Sarah Cooper.

56.19. On 12 January 2024, the respondent replied to the claimant's first DSAR.

56.20. On 17 January 2024, the claimant was invited to a grievance investigation meeting with Mr Dipple on 19 January 2024 [472].

56.21. On 19 January 2024, Mr Dipple met the claimant and produced a report dated 25 January 2024 [478-483]. The report made findings about all the claimant's complaints, other than a complaint that the allegations made against the claimant were unfounded and fabricated to cover up the misconduct of Messrs Menzies and Iandolo. I do not find it proportionate or necessary to deal with any of the findings in the report as they have no direct impact on the subject matter of this case; the dismissal of the claimant.

56.22. Whilst Mr Dipple's report discusses matters related to the disciplinary process, it is not evidence of how that process was conducted. I had first hand evidence of how the process was conducted from the claimant, Ms Bamber, and Ms Smith together with the many contemporaneous documents produced. Mr Proctor did not assert that

any of Mr Dipple's initial findings were evidence that supported his claim.

56.23. The claimant attended an investigation meeting with Sarah Cooper on 19 January 2024. I will return to that meeting in the disputed facts section.

56.24. On 1 February 2024, Ms Cooper produced her investigation report [261-284].It is agreed that a copy was not sent to the claimant.

56.25. On 6 February 2024, the claimant submitted a MED3 from his GP [285] following a consultation on 31 January 2024, stating that the claimant was unfit for work for one month because of anxiety and depression.

56.26. On 6 February 2024, the respondent replied to the claimant's second DSAR.

56.27. On 7 February 2024, Ms Bamber invited the claimant to a disciplinary hearing to be held on 12 February 2024 by Teams. The letter enclosed 14 disciplinary matters that the claimant had allegedly committed and enclosed 20 documents, including the interview notes with Mr Menzies, Ms Oldknow, and Ms Benton [714-739]. I find that these documents were included because the claimant did not point out their absence at the time and said in evidence that he could not remember whether he had received them.

56.28. On 8 February 2024, the claimant declined to attend the disciplinary hearing because:

56.28.1. His grievance had not been concluded;

56.28.2. His grievance included a complaint about how the investigation had been handled;

56.28.3. He was not given five days' notice of the hearing; and

56.28.4. He was not fit to attend. He had a certificate from his GP saying he was unfit to work.

56.29. The claimant agreed with Mr Frew's suggestion in cross-examination that the reason he did not attend was because the DSAR had not produced the documents he wanted to see.

56.30. On 19 February 2024, Ms Bamber wrote to the claimant with a list of questions for the disciplinary hearing [296-305]. The claimant did not answer the questions.

56.31. On 28 February 2024, the claimant wrote to Ms Bamber [332] indicating that he would not attend the disciplinary hearing because of ill health and that he would not be attending until he was declared "fit"

by his GP and whilst the information he had requested in his DSARs was outstanding.

56.32. The disciplinary hearing went ahead in the claimant's absence on 29 February 2024 [336-337]. Ms Bamber found that the claimant had committed the 14 disciplinary matters alleged and imposed the penalty of summary dismissal. The claimant was notified of his dismissal by a letter attached to a WhatsApp message on 29 February 2024 [338-343]. It was agreed that this was the date of effective termination of employment (EDT).

56.33. The claimant indicated an intention to appeal his dismissal on 7 March 2024 [349-350]. He submitted further information about his appeal on 8 April 2024 [374-383]. The initial appeal date was moved to allow consideration of the method by which the appeal would be heard. It was decided to hold the appeal by consideration of the documents that Mr Proctor had submitted. The appeal was a re-hearing, not a reconsideration of the dismissal decision.

56.34. The appeal was considered by Tina Smith of Hill HR Consultancy, who produced an appeal report on 25 April 2024 [389-435] that dismissed the claimant's appeal, although she accepted that there had been procedural missteps in the disciplinary process and initial decision to dismiss.

Disputed facts

57. The claimant's evidence, cross examination, and closing submissions made it clear that he regarded his dismissal to have been manufactured by Mr Menzies as a reaction to a belief that the claimant was about to blow the whistle on Messrs Menzies and Iandolo for misconduct. For the reasons set out above, which were explained to the claimant more than once, he cannot compare how he was treated as an employee with how Messrs Menzies and Iandolo were treated as shareholders and statutory directors.

58. In his closing submissions, the claimant suggested he had been directly discriminated against under the Equality Act 2010. This was not a claim that he had ever made before, and he had made no application to amend his claim or to identify what protected characteristic he was relying upon and who he was comparing himself with. As a matter of law, he cannot compare himself the Messrs Iandolo or Menzies.

59. I make the following findings of fact.

60. I find that the respondent has shown on the balance of probabilities that the reason for dismissal was the claimant's conduct. I make that finding because:

60.1. I heard and saw no evidence that Messrs Menzies and/or Iandolo that the claimant had met with a corporate lawyer in the week commencing 5 December 2023. The claimant's allegation that the other shareholders were concerned that he would blow the whistle

on them for alleged financial irregularities was mere supposition on his part.

60.2. In contrast to the finding above, there was plethora of evidence that the claimant may have committed 14 acts of misconduct, all of which were serious enough, if proven, to warrant summary dismissal.

61. I find that the respondent had a genuine belief in the claimant's guilt for the following reasons:

61.1. The respondent subcontracted out the investigation process and the disciplinary hearing to HR Consultants. I find that if there was a desire to "fit up" the claimant, the respondent was more likely to have kept the process in house.

61.2. Mr Proctor made no claim of bias or unfairness against Ms Bamber of Ms Smith. Indeed, he complimented Ms Smith.

61.3. The claimant complained about Ms Cooper's investigation, but I find his complaint to have no real substance. The claimant was invited to attend an investigatory meeting which took 3 hours and 17 minutes. I have no doubt that it was a stressful experience, and that the claimant would have preferred to be somewhere else. However, it was essential to put the allegations to the claimant and see what he had to say about them. I do not find that the meeting was oppressive. I do find that that the claimant tended to obfuscate.

61.4. I also find that the full recording of the meeting shows that the claimant was able to engage in a discussion about the matters he was faced with. He also spent a disproportionate time challenging Ms Cooper's qualification to conduct the investigation, which is indicative of his tendency to concentrate on the minutiae of process rather than the substantive issues that he faced.

61.5. I find that in his answers to matters that were put to him, the claimant chose which ones he was going to answer and answered them in great length. I find other matters, where the claimant did not appear to have any reasonable explanation, he became pedantic and picked at minor details or deflected by referring to the alleged misconduct of the other shareholders and his perception of preferential treatment.

61.6. I find that the claimant clung on to the alleged failure of the respondent to provide documents he requested in his DSAR as another example of his fixation on process rather than substantive evidence. The respondent produced an email from the claimant to Ms Oldknow dated 24 January 2024 [74] that gave her instructions to reduce his salary to £12,570 per annum and to start paying him £60,000 per annum in dividends, of which £850 was to be placed in a nominal account (2216). His instructions were *"Once a year we*

can then pay the tax man and code/post the payment to 2216." There was no mention of the money in the account to be used to set off the claimant's spending on goods and services that were for his own benefit. I find that the claimant has not shown on the balance of probabilities that he gave an instruction to Ms Oldknow or anyone else at the respondent to put money from dividends into an account that would then be used to pay monies he had spent on himself with the company's credit and debit cards.

61.7. I find the claimant's evidence about the leased BMW 7 Series and the lease of the Maserati to be entirely incredible. His evidence was vague, internally inconsistent, and inconsistent with the documents. For example, the clamant said he was provided with a replacement vehicle when the BMW was damaged in an accident and then said that he was not provided with a replacement vehicle in his next answer.

61.8. I find that when Mr Menzies found out that the company was paying the lease charges on two premium vehicles for the claimant at the same time, he had a right and duty to investigate the circumstances.

61.9. I find the claimant's explanation for how his wife, who he says was paid "minimum wage" for a part-time job needed a car that retailed at between £45-50,000 without seeking authorisation from or without even notifying his fellow directors was risible.

61.10. The claimant accepted in closing submissions, and if he hadn't, I would have made a finding that he had, spent £12,280.76 of the respondent's money on personal items for himself. I find that the claimant gave no reasonable excuse for the spending or his failure to repay it or his failure to ask Ms Oldknow or Ms Benton to make an adjustment to the nominal account he says he asked then to set up. I find that the claimant used the company cards and seemingly had no intention of repaying the money. Neither had he given any instructions for a nominal account to be set up to repay to the company monies he had spent on himself.

61.11. The clamant admitted accessing the respondent's website and changing the password to it after his suspension. He claims that the respondent suffered no detriment. I would ask the claimant to consider what he would have done as MD if an employee had done the same thing. The claimant denied that he had wiped the respondent's vehicle records on the site but admitted that this had been done. He was still an employee of the respondent at this time and must bear responsibility for the loss of data.

61.12. I could go on but will just summarise by saying that I find that the decisions of Ms Bamber and Ms Smith were entirely reasonable and fair.

62. I find that the respondent caried out a reasonable investigation of the matters alleged against the claimant. It appointed independent HR contractors to conduct the investigation and disciplinary hearing. It appointed a different HR contractor to conduct the appeal.

63. I find that Ms Bamber should have considered obtaining a medical report or OH report into the claimant's health before proceeding with the disciplinary hearing, but balance that against the claimant's oral evidence that he would not have attended because of the alleged failures to comply with his DSARs. I find the failure to obtain a medical report does not render the first instance decision to dismiss unfair.

64. I find that Ms Smith carried out an exemplary appeal. She treated it as a re-hearing and re-interviewed witnesses carefully. The claimant provided written submissions to support his appeal, which was the option that he chose.

65. I cannot fault Ms Smith's appeal outcome report.

66. I reject the claimant's suggestion that the investigations of Ms Cooper, Mr Bamber or Ms Smith were inadequate of only looked for evidence that showed his guilt. Mr Proctor's problem was that he was guilty, which is why he was so pedantic about process.

67. I find that the decision to dismiss was within the band of reasonable responses, mainly because the claimant accepted that if proven, the matters he faced were gross misconduct. I have found that it was reasonable for the respondent to make the conclusions it did about Mr Proctor's conduct.

68. I find that the respondent followed a fair procedure for the reasons I have set out above.

69. I find that the claimant's claim of unfair dismissal fails.

70. There is no need to proceed to a remedy hearing.

71. I would add two comments:

    71.1. If I had found that the dismissal was procedurally unfair, I would have found that the chance of the respondent fairly dismissing the claimant if a fair procedure had been used was 100%.

    71.2. If I had found that the claimant was unfairly dismissed, I would have reduced his compensation by 100% as I find that he is entirely the architect of his own misfortune by his conduct.

Costs

72. Unlike the civil courts, in Employment Tribunals, the loser in a case does not automatically pay the winner's legal costs. Costs awards are the exception, rather than the rule.

73. An Employment Tribunal may make a costs order against a party under Rules 72-76 of the Employment Tribunal Procedure Rules 2024. I was mindful of the

Presidential Guidance on General Case Management that orders for costs are not the norm. I was mindful of the overriding objective. Rule 74 states:

> *"**When a costs order or a preparation time order may or must be made***
>
> ***74.**—(1) The Tribunal may make a costs order or a preparation time order (as appropriate) on its own initiative or on the application of a party or, in respect of a costs order under rule 73(1)(b), a witness who has attended or has been ordered to attend to give oral evidence at a hearing.*
>
> *(2) The Tribunal must consider making a costs order or a preparation time order where it considers that—*
>
> > *(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings, or part of it, or the way that the proceedings, or part of it, have been conducted,*
> >
> > *(b) any claim, response or reply had no reasonable prospect of success, or*
> >
> > *(c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which that hearing begins.*
>
> *(3) The Tribunal may also make a costs order or a preparation time order (as appropriate) on the application of a party where a party has been in breach of any order, rule or practice direction or where a hearing has been postponed or adjourned…*

74. Mr Frew applied for a costs order in favour of the respondent after I dismissed the claimant's claims. In support of the application, he referred me to an email dated 27 March 2025 from the respondent's solicitor to the claimant marked "Without Prejudice Save as to Costs". The letter made the claimant an offer of £10,000.00 in full and final settlement of his claim.

75. Mr Frew added that in the without prejudice discussion he had with Mr Proctor on the afternoon of the first day, the respondent had offered to write off the claimant's £75,000.00 director's loan in exchange for his 20% shareholding in the respondent.

76. Mr Proctor stated that he had rejected the offer on the first day of the hearing as he valued his shares at £600,000.00. He gave me details of his financial circumstances that do not need to be set out in these reasons, save to say that the claimant had substantial equity in his home and had property abroad. He was in employment.

77. I made the following findings:

    77.1. The claimant's claim of unfair dismissal was weak and had little reasonable prospect of success from the start;

77.2. The value of the claimant's claim was nowhere near the sum set out in the claimant's Schedule of Loss. £10,000.00 was a reasonable offer;

77.3. The claimant had income and capital that would enable him to pay a cots order;

77.4. I did not find that the claimant had pursued the case vexatiously, but that he had been unreasonable in pursuing it after the offer of £10,000.00 was made.

78. In all the circumstances, including the nature, gravity and effect of the claimant's conduct I found that he was unreasonable in continuing his claim after the respondent's email of 27 March 2025. I therefore found that a costs order was appropriate as the respondent had met the threshold in Rule 74(2)(a).

79. I decided to make a costs order in favour of the respondent in the sum of £12,000.00. Mr Frew had submitted that an award of £20,000.00 was appropriate, but I decided that an award that covered counsel's fees was appropriate, reasonable and fair.

Reconsideration

80. On 17 June 2025, Mr Proctor applied for a reconsideration of the costs award. He submitted a PDF document that set out his grounds. I repeat them here:

80.1. He was poorly advised by Ms Pratt's organisation in that:

80.1.1. He was firmly led to believe that he was on an equal footing with the other directors of the respondent;

80.1.2. The advice he received did not refer to any logical testing such as the Birchall test; and

80.1.3. She had very positive reviews online.

80.2. He was owed £17,850.00 by the respondent in monies deducted from his salary.

80.3. His shares were undervalued by the respondent in the negotiations at court.

80.4. He had provided two written statements from witnesses, whose evidence was overlooked.

80.5. Mr Frew had withdrawn Mr Menzies from giving evidence. Mr Menzies;' statement was vexatious.

80.6. He was a litigant in person and there is an "implicit judicial bias." The Equal Treatment Bench Book was not followed.

80.7. Costs orders are the exception not the rule.

80.8. He had not been told why the costs order had been made against him. He was encouraged not to apply for written reasons.

81. Reconsiderations are governed by Rule 70 of the Employment Tribunal Rules of Procedure 2024:

Process for reconsideration

70.— (1) *The Tribunal must consider any application made under rule 69 (application for reconsideration).*

(2) If the Tribunal considers that there is no reasonable prospect of the judgment being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application must be refused and the Tribunal must inform the parties of the refusal.

(3) If the application has not been refused under paragraph (2), the Tribunal must send a notice to the parties specifying the period by which any written representations in respect of the application must be received by the Tribunal, and seeking the views of the parties on whether the application can be determined without a hearing. The notice may also set out the Tribunal's provisional views on the application.

(4) If the application has not been refused under paragraph (2), the judgment must be reconsidered at a hearing unless the Tribunal considers, having regard to any written representations provided under paragraph (3), that a hearing is not necessary in the interests of justice.

(5) If the Tribunal determines the application without a hearing the parties must be given a reasonable opportunity to make further written representations in respect of the application.

82. Having considered the claimant's application carefully and in line with the Rules and, particularly Rules 3 and 70, I find that the application has no reasonable prospect of success and reject it. I make that decision because:

82.1. If the claimant was badly advised, that is a matter between him and his advisor.

82.2. There was no claim before me for £17,85000 in withheld salary. I made no findings about any such amount.

82.3. I made a finding that the claimant's unreasonable conduct was continuing after the offer of £10,000.00 was refused, nit the offer made at court.

82.4. I have dealt with the statements of the two witnesses who did not attend in my substantive reasons above.

82.5. The respondent has the right to withdraw a witness. It was done without objection from the claimant.

82.6. I gave the claimant substantial assistance during the hearing and di everything that was reasonably practicable to enable him to take part in the hearing effectively. I completely refute any suggestion that I exhibited any bias against the claimant as a litigant in person.

82.7. Costs orders are the exception, not the rule. I considered that when making my decision.

82.8. I gave oral reasons for making the costs order. I suggested to the claimant that he think carefully about asking from written reasons in respect of the decision about liability, as I made findings that he was dishonest in his dealings as an employee with the respondent. Tribunal reasons are published and are documents of public record.

82.9. I made no comment about the claimant asking for written reasons for the cots order.

Approved by:

Employment Judge Shore

Dated: 13 October 2025

Sent to the parties on:

…11 November 2025…..

For the Tribunal Office:

……..……..