



EMPLOYMENT TRIBUNALS

Claimant: Mr M Skiepkó

Respondent: JBP Foods Limited

Heard at: Reading **On:** 15, 16 and 17 October 2025

Before: Employment Judge Gumbiti-Zimuto

Representation

Claimant: In person

Respondent: Ms S Mackintosh, Litigation Consultant

Polish Interpreter: Mr M Juszcak,

JUDGMENT

1. The claimant was unfairly dismissed.
2. A hearing to determine what remedy the claimant is entitled to recover shall take place on **29 January 2026** by video hearing.

REASONS

1. In a claim form presented on 23 July 2024 the claimant made a complaint that he was unfairly dismissed, owed holiday pay and claimed a redundancy payment. In a response sent to the employment tribunal on 29 August 2024 the respondent denied the claimant's complaints contending that the claimant was not an employee of the respondent. On 12 February 2025, at preliminary hearing Employment Judge McCooey made a determination that the claimant was an employee of the respondent at the relevant time. The relevant time is between 8 July 2020 and 15 February 2025. On 22 April 2025 EJ Findlay made an order that unless the claimant confirms to the tribunal and respondent by the 6 May 2025 that he intends to pursue his claim for a redundancy payment, that claim will be dismissed without further order. The claim for redundancy payment has therefore been dismissed. The complaints that I have had to consider are whether the claimant was unfairly dismissed and whether the claimant is owed holiday pay. The respondent denies both complaints.
2. The claimant gave evidence in support of his own case and the respondent relied on the evidence of Daniel Rogowski, Tomasz Brzostowicz, Patryk Zajac, Pawal Krupa, and Bogumila Gruda. The

parties also provided a bundle of documents containing 177 pages of documents. The issues to be decided in this case were set out by EJ Findlay in a record of a preliminary on 22 April 2025.

3. The claimant commenced employment with the respondent on 8 July 2020. The claimant's employment ended on 15 February 2024. The claimant was employed by the respondent, a wholesale food business, as a salesman, his role involved visiting Polish style shops to secure orders for the respondent. Ms Gruda was a manager and Mr Zajac was a director of the respondent. Ms Gruda describing her relationship with Mr Zajac said that they were "*a couple*".
4. The claimant was cross examined about the respondent's terms of business with customers, in particular the payment terms agreed with customers. The parties agreed that the claimant was aware of the respondent's terms of business. It was put to the claimant that he had at times agreed different payment terms without first securing the authority of the respondent. The claimant denied this, the claimant stated that when he did enter into agreements which differed from the respondent's standard terms this was where the customers concerned had a pre-existing relationship with the respondent and any terms agreed by the claimant would have conformed with payment terms previously agreed with that customer. Where they were new customers, the claimant said that he would first obtain the specific authority of the respondent (i.e. Ms Gruda or Mr Zajac) before agreeing payment terms that departed from the respondent's standard terms of business.
5. The claimant was also questioned about sending in weekly reports of his movements, i.e. the areas/shops the claimant was going to visit to try to secure sales. The claimant agreed that sometimes he did not file reports but he denied that it was a significant matter as the respondent had a tracker device fitted on his company car so was always aware of the claimant's whereabouts.
6. The claimant agreed that he was spoken to about low sales performance, the claimant was losing customers and not bringing in new customers. The claimant insisted that such a discussion took place in January 2023, after which the claimant became clear that he was an employee of the respondent as opposed to a self-employed person. The respondent contends that the conversation about the claimant's performance took place in June 2023. There was no suggestion that the discussion resulted in any disciplinary sanction or warning. I understood the respondent's position to be that the claimant's movements needed to be known so as to assist in planning the routes of the delivery vans
7. In about November 2023 the respondent became aware that the claimant had not been to see a customer in Southampton for about a month. Mr Zajac in a conversation with the claimant asked the claimant when the claimant had last been to Southampton. The claimant said it was two weeks ago. The respondent now contends that the claimant was dishonest in giving this answer. The claimant on the other states that he was asked the question cold and had not had an opportunity to ascertain with certainty when he had been to Southampton and the response of two

weeks ago was he believed true when he said it even though it turned out to be wrong. The claimant criticises the respondent for asking him this question in a way that was deliberately intended to catch him out by asking him a question to which the respondent already knew the answer.

8. The circumstances in which the claimant's employment came to an end are set out by the claimant in the following way.
9. On 15 February 2024 the claimant had a conversation with Ms Gruda about a customer whom Ms Gruda thought should pay cash (i.e. have a payment arrangement conforming with the standard terms of payment), the claimant was told that he was to ask Ms Gruda or Mr Zajac before reaching any other agreement. The claimant says that he considered that Ms Gruda was "*making a big deal out of nothing*" the customer was an old customer and the claimant thought that the old agreement with the customer about payment terms should remain the same. The claimant described this conversation as "*spirited, heated spirited, we argued*". The conversation ended with the claimant hanging up on Ms Gruda. The claimant denied shouting at Ms Gruda or calling her a lunatic or saying that "*you can't fucking tell me what to do*".
10. It was put to the claimant that it was because of the way that the claimant had spoken to Ms Gruda that he received a telephone call from Mr Zajac about 20 minutes later. The claimant agreed that he received a phone call from Mr Zajac and during the conversation the claimant was informed that the respondent had decided "*to end working with me*", he was asked to return his company car, fuel card and the android device that he used when taking orders on behalf of the respondent. The claimant said that he asked if Mr Zajac wanted him to finish straight away or if he should finish the route he was working that day, it was agreed that the claimant should finish his route.
11. Ms Gruda gives an account of the events on 15 February 2024. Ms Gruda states that on 15 February 2024, a driver reported that a customer had refused to pay, claiming that the claimant had approved delayed payment. Ms Gruda states that this was against company policy. Ms Gruda states that when she confronted the claimant about this during a telephone call the claimant shouted at her and acted aggressively. Ms Gruda reported this encounter to Mr Zajac.
12. Mr Zajac states that on 15 February 2024, after speaking with Ms Gruda he called the claimant to ask why he had agreed to the payment arrangement. Mr Zajac states that the call was brief, but during the conversation, the claimant became verbally aggressive and was shouting at him. Mr Zajac states that due to this behaviour and conduct during the call, Mr Zajac informed the claimant that he "*would be ending our working relationship*". When the claimant "*asked whether he could still visit a few clients that day,...* [Mr Zajac] *had no objections to this and agreed*". Mr Zajac states that "*we did not explicitly discuss the exact date on which our collaboration would end, but based on the conversation, I understood that it would be that day.*" Mr Zajac states that "*the claimant did not raise any concerns or objections and even confirmed that this was acceptable to him.*"

13. The claimant's employment ended on 15 February 2024, the claimant returned his company car, fuel card and android device to the respondent on 18 February 2024.
14. The issues that the I have to decide on the question of unfair dismissal are as follows:
 1. Was the claimant dismissed?
 2. If the claimant was dismissed, what was the reason or principal reason for dismissal?
 3. If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?
 4. If the reason was capability, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?
15. Section 98 of the Employment Rights Act 1996 provides that in determining whether the dismissal of an employee was fair or unfair, it shall be for the employer to show (a) the reason (or, if there was more than one, the principal reason) for the dismissal, and (b) that it is a reason falling within subsection (2). The conduct or capability of an employee are reasons falling within the subsection.
16. Where an employer has shown a potentially fair reason the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) (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.
17. In a conduct case the respondent must show that: (a) it believed the claimant was guilty of misconduct; (b) it had reasonable grounds upon which to sustain the belief; (c) at the stage which it formed that belief on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances of the case.
18. It is not necessary that the tribunal itself would have shared the same view of those circumstances.
19. After considering the investigatory and disciplinary process, the tribunal has to consider the reasonableness of the employer's decision to dismiss and (not substituting our own decision as to what was the right course to adopt for that of the employer) must decide whether the Claimant's dismissal "fell within a band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair". The burden is neutral at this stage: the Tribunal has to make its decision based upon the evidence of the claimant and respondent with neither having the burden of proving reasonableness.

20. In a capability case the question for the Tribunal is whether the respondent acted reasonably or unreasonably in all the circumstances in treating this as a sufficient reason for dismissing the claimant, having regard to equity and the substantial merits of the case. The test for capability dismissals set down in Alidair Ltd v Taylor 1978 ICR 445, is whether the employer honestly believes the employee is incompetent or unsuitable for the job, and whether the grounds for that belief are reasonable. This means there has to be some evidence of poor performance. The burden is on the respondent to show that it was the real reason for dismissal.
21. It is for respondent to set the standards asked of employees - tribunals should not substitute their own view of an employee's competence. Furthermore, standards of performance are 'not static and are liable to change as the business or role evolves'.
22. The Tribunal must then ask itself whether dismissal was in the range of reasonable responses of a reasonable employer. Again, it is not for the Tribunal to substitute its own view.

The claimant's submissions

23. The claimant's submits that his case is established by the evidence. In respect of the holiday pay claim the claimant simply asserts that he did not receive any holiday pay.
24. The claimant states that he was dismissed and points to the position that the respondent at one stage appeared to be taking suggesting that Mr Zajac was saying that there was no dismissal and compares this with the live evidence he gave and asserts that he was dismissed. This was not disputed in closing submissions from the respondent.
25. The claimant points out that no explanation was given for his dismissal and he was not given the opportunity to appeal the dismissal.
26. The claimant refers to the response which states that the claimant was dismissed on the grounds of conduct or alternatively capability and goes not to say that he does not believe that conduct or capability were the reason for his dismissal. The claimant states that "*it is my belief that the principle reason for my dismissal was personal animosity from Patryk Zajac.*" The claimant contends that the sequence of events supports his belief that personal animosity was the reason for his dismissal, including the fact that Ms Gruda and Mr Zajac were a couple. The claimant points out that he was not given any warning about the fact that he will be dismissed or the opportunity to improve. The claimant contends that his dismissal was unfair and unreasonable.

The respondent's submissions

27. In summary the respondent's case was that the relationship of the claimant and respondent had irretrievably broken down. Then further that after the conversation between claimant and Ms Gruda on 15 February 2024 there was a complete breakdown in trust and confidence so that a meeting after the call would have been futile.

28. The respondent submits that the claimant was dismissed for a fair reason, namely conduct over a period of time that culminated in his employment being terminated on 15 February 2024.
29. In the beginning the claimant believed he was self employed and conducted himself in such a manner to benefit himself. The claimant confirmed that he understood the payment rules yet he frequently made arrangements with customers he sourced different to the standard terms. The claimant was asked to provide a weekly plan to allow the respondent to know where he was and plan orders for the following week. The claimant did not so. This was an example of conduct that was dismissive of and showed a disregard for managerial instructions. There was an also an example of the claimant being dishonest about his whereabouts in November 2023 claiming to have gone to Southampton in the last two weeks when in fact he had not been there for more than a month.
30. The respondent contends that these were examples of the claimant's conduct that showed that the conduct of the claimant was not acceptable and in fact contributed to his dismissal on 15 February 2024.
31. The respondent contends that the claimant was dismissed and that the conduct of the claimant was principal reason for dismissal. The respondent had a genuine belief that the claimant had committed misconduct.
32. The respondent acted reasonably in all the circumstances in treating the claimant's conduct as sufficient reason to dismiss the claimant and that there were reasonable grounds for that belief. The respondent met with the claimant in June 2023 as part of investigation meeting with the claimant.
33. The respondent acted reasonably and the dismissal was within the range of reasonable responses.
34. In respect of question, *"Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?"* The respondent says, yes the claimant would have been dismissed.
35. The claimant did not raise a grievance on ACAS code of practice following dismissal.
36. The respondent acted reasonably in dismissing the claimant on 15 February 2024 for conduct which culminated in the conduct of the claimant in the telephone conversation with Ms Gruda, the claimant admitted that it was heated. The respondent relies on the evidence from Ms Gruda as to the content of that conversation, the words, the manner and the way that the claimant conducted himself. This all culminated in Mr Zajac having no other option other than to dismiss the claimant on 15 February 2024 because it was clear by that time that the working relationship had irrevocably broken down between the claimant and respondent.

37. The claimant caused and contribute to his dismissal and his conduct was such that the dismissal was because of his blameworthy conduct.

38. The respondent's submissions do not address the question of holiday pay.

Conclusions

Unfair dismissal

39. The claimant was dismissed. The evidence given by the respondent's witness Mr Zajac, in his witness statement, appeared to suggest that the claimant was not dismissed but there was mutual agreement to terminate employment when he states: *"The claimant did not raise any concerns or objections and even confirmed that this was acceptable to him."* The submissions of the respondent are clear, it is now the respondent's case that it is accepted that the claimant was dismissed. The evidence given by Mr Zajac during his questioning really left no doubt that the claimant was dismissed. Mr Zajac was asked whether reason for the claimant's dismissal was a desire to reduce the number of staff Mr Zajac's response was: *"No it was nothing to do with that. Things had not been going as they should for the past year. There was friction. Mr Skiepmo lies to us and in November 2023 we lost trust in him, on 15 February 2024 we came to a tipping point and could not continue any long."* I am satisfied that the claimant was dismissed there was no mutual agreement to terminate the claimant's employment.

What was the reason, or principal reason, for the dismissal of the claimant?

40. The respondent contended in the response and restated at the preliminary hearing that the reason for the claimant's dismissal was conduct or alternatively capability. In the evidence adduced by the respondent there is no reference to capability as a reason for dismissal. In their closing submissions the respondent makes no mention of capability and relies only on conduct as a reason for dismissal.

41. The claimant contends that the principal reason for the claimant's dismissal was personal animosity from Mr Zajac towards the claimant. The claimant submits that what ever performance or conduct issues were before the 15 February 2024 there was no plan or intention to dismiss the claimant. The position changed on 15 February 2024 because of the reaction of Ms Gruda to the conversation with the claimant. The claimant says *"PZ and BG in addition to being work colleagues are couple as established in BG oral testimony. I believe that his reaction to her crying complaint was emotional and not a business one an in that instance acted not as employer but as BG's boyfriend defending his girlfriend."*

42. I am satisfied that the claimant's analysis of the position is correct, whatever issues had arisen with the claimant over a period of time they were not sufficiently serious for the claimant's continued employment to be questioned whether it was as a result of the June (or January 2023) low sales performance conversation or the November 2023 incorrect statement about being in Southampton. There was no indication that the claimant's continuing employment was at risk until 15 February 2024.

43. I do not accept that the claimant's behaviour and conduct during the call that took place between the claimant and Mr Zajac was the reason, or principal reason, for the claimant's dismissal. In submissions the respondent did not rely on the way that the conversation between Mr Zajac and the claimant on 15 February 2024 as the principal or main reason for dismissal.

44. A reason for the dismissal of an employee is a set of facts known to the employer, or it may be beliefs held by them which cause them to dismiss the employee. In this case the reason for the claimant dismissal was the claimant's conversation with Ms Gruda, and the way that Mr Zajac believed that the claimant conducted himself during that conversation. I am satisfied that the conduct was the reason for the claimant's dismissal.

Did the respondent act reasonably in all the circumstances in treating that conduct as a sufficient reason to dismiss the claimant?

45. There is a dispute between the claimant and the respondent about the correct description of the claimant's conduct in the telephone call on the 15 February 2024. The claimant's account refers to a "*spirited, heated spirited, we argued*" conversation. Where the claimant ended abruptly by hanging up on Ms Gruda but where he did not shout at Ms Gruda or call her a lunatic or say to her that "*you can't fucking tell me what to do*". On Ms Gruda's version of the conversation the claimant shouted at her and acted aggressively. Mr Zajac was aware of the conversation from Ms Gruda but did not enquire of the claimant what his version or perception of the nature of the conversation was he simply dismissed the claimant based on what he believed to be the case from what Ms Gruda told him.

46. There was no investigation at all made by Mr Zajac.

47. The claimant was not taken through any process at all. The respondent completely failed to follow the ACAS Code of Practice. At the point that the respondent acted to dismiss the claimant dismissal was not within the range of reasonable responses.

48. There is a conflict between the evidence of the claimant and that of Ms Gruda about the way that the conversation was conducted on 15 February 2024. On balance I prefer the account given by the claimant. There is a credibility about the description which the claimant gives to the way that the conversation transpired. I am impressed by the fact that the claimant is willing to accept that his behaviour was not acceptable and that it warranted an apology. While there is clearly blameworthy conduct on the part of the claimant I am not satisfied that it is so serious as to result in a reduction in the level of any award of compensation. In coming to this conclusion I reflect on the fact that taking the claimant through an ACAS Code of Practice compliant process would have allowed the whole incident to be considered and it is my view that with cooler heads it could be seen that this was not necessarily the sort of incident that on its own justified a dismissal.

49. To the extent that there really were issues of concern about the claimant's conduct outside the events on 15 February 2024 they could have been set out to the claimant and given proper weight and consideration had a

process been followed. I cannot conclude that they would have necessarily resulted in the claimant's dismissal because the evidence does not support a conclusion that the respondent considered that the claimant was failing in his role before 15 February notwithstanding that there had been issues raised with him as referred to. This is not a case where a Polkey type reduction is appropriate.

Holiday pay

50. Ms Gruda give evidence about the claimant's holiday pay claim. What she says is that although the Tribunal has determined that the claimant was an employee, in practice the claimant managed his own schedule and regularly took days off during the week without prior notice. He decided himself when he would or would not work, and the respondent would only become aware of his absence from customer feedback or lack of orders. In effect, he took more time off than would have been due to him under a standard employment arrangement. The claimant never requested, nor was he ever refused, any period of annual leave. The claimant's work pattern was entirely self-managed.
51. The claimant was paid on a commission basis, set his own working hours, and organised his routes independently. The claimant was not subject to fixed working hours. Typically the claimant worked 3 days per week, averaging about 15-20 hours weekly.
52. The claimant says that he had no paid leave since his employment started. There is no evidence that the claimant ever asked to take annual leave or was refused annual leave. The respondent's evidence does not state that the claimant was ever paid in respect of any leave.
53. The parties agree that the claimant's leave year was the anniversary of the claimant's start date, that is 8 July each year.
54. The list of issues identifies the following questions:
 - How much of the leave year had passed when the claimant's employment ended?
 - How much leave had accrued for the year by that date?
 - How much paid leave had the claimant taken in the year?
 - Were any days carried over from previous holiday years?
 - How many days remain unpaid?
 - What is the relevant daily rate of pay?The parties do not in their evidence address these factual issues. At the remedy hearing the parties are to make submissions as to what if any award should be made to the claimant in respect of holiday pay.

Case Management orders for remedy hearing

55. The claimant is to send to the respondent a Schedule of loss to arrive with the respondent within 14 days of the date on which this judgment and reasons is sent to the parties
56. The respondent is to produce a counter schedule to the claimant's schedule of loss within 28 days of the date on which this decision is sent to the parties.

57. The parties are to disclose all documents relevant to the remedy including mitigation documents within 28 days of the date on which this decision is sent to the parties.
58. Parties are to agree a remedy bundle by **19 December 2025**. The respondent is to prepare the remedy bundle and provide an electronic copy to the claimant by **8 January 2026**.
59. The parties are to exchange witness statements on remedy **15 January 2026**.
60. The respondent must send an electronic copy of the remedy bundle and the witness statements to the Tribunal at latest by **22 January 2026**.

Approved by:
Employment Judge Gumbiti-Zimuto

29 October 2025

JUDGMENT SENT TO THE PARTIES ON

11 November 2025

FOR THE TRIBUNAL OFFICE

Notes

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

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

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