Neutral Citation Number: [2025] EAT 194

Case No: EA-2023-001027-NK

EMPLOYMENT APPEAL TRIBUNAL

The Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 11 December 2025

Before :

HIS HONOUR JUDGE BARKLEM

- -

Between :

MS YOVKA KISHEVA

Appellant

- and –

SECURE FRONTLINE SERVICES LIMITED

Respondent

- -
- -

Mr L Lennard (Lay Representation) for the **Appellant**
Mr A Sandulescu for the **Respondent**

Hearing date: 11 December 2025

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JUDGMENT

SUMMARY

Unfair Dismissal

The claimant , a door supervisor with 3 years service was summarily dismissed without investigation or proper procedure after she left work part-way through a shift after an argument with a colleague.

Notwithstanding a finding of unfair dismissal, the ET characterised as gross misconduct the failure by the claimant to have telephoned the respondent immediately to explain that she was leaving the venue. However, such a requirement was nowhere be found in the respondent's code of conduct, neither was it the basis for the dismissal as set out in the ET3.

Having held that the finding that the claimant was perverse and not open to the ET on the evidence, the EAT remitted the matter to a differently constituted tribunal to deal with all matters of remedy on the basis that the finding of unfair dismissal stood, but that the Et was not entitled to consider the claimants conduct as gross misconduct.

HIS HONOUR JUDGE BARKLEM:

1. This is an appeal against a decision by an Employment Tribunal, Employment Judge P Smith, sitting alone at London Central in July 2023, the reasons having been sent to the parties on 9 August 2023. In this judgment I will refer to the parties as they were before the tribunal. Although the EAT was highly critical of the absence of any proper procedure in advance of the claimant having been summarily dismissed and held that the claimant had been unfairly dismissed, it reduced both the basic and compensatory award by 100%. It dismissed the claim of wrongful dismissal.

2. At the sift stage, this matter was sent forward to a preliminary hearing by HHJ Tayler, who considered that the grounds of appeal drafted by Mr Lennard, who appeared below, described as a "consultant" and the claimant's friend, were not clearly drafted enough so as to assert succinctly errors of law. He considered that one or more arguable errors of law may be asserted and therefore sent the matter to a preliminary hearing on that basis.

3. Following the preliminary hearing, which took place in October 2024, the matter was sent for a full hearing by HHJ Tucker, who considered it arguable that, notwithstanding the factual findings of the Tribunal, the Tribunal erred in respect of its approach to remedy. Although amended grounds of appeal were lodged in advance of the preliminary hearing, as had been suggested by HHJ Tayler, it appears that the two grounds which were permitted to go forward to this hearing were put into their final form by Judge Tucker and appended to the brief reasons which she gave for permitting the matter to proceed. I set out the grounds in full.

> "Ground 1: Error in concluding that the Claimant was guilty of misconduct, alternatively, that conclusion was perverse
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> > 1. The Tribunal erred in reaching its own conclusion that the Claimant was guilty of gross misconduct, alternatively, its conclusion was perverse given the evidence before the Tribunal about what had occurred. In respect of this claim the Tribunal was required to consider whether gross misconduct was proved on the evidence before it. In particular
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> > a. The Tribunal accepted that the Claimant left work because she had plainly been

upset having had an argument with her colleague. (Paragraphs 32, 38 and 57).

b. The only oral evidence which the Tribunal heard regarding the events of the evening, the argument, and its impact on the Claimant was the Claimant's and the hearsay account of Mr Sandulescu. Mr Sandulescu had not been present at the incident. He could only rely on accounts given to him after the event.

c. The two witnesses from the respondent who provided written accounts of the evening's events (Ms Zatrici and Mr Kamara) and who had been present, did not attend to give oral evidence. Their written accounts were, therefore, wholly untested. They had also not been tested during the internal process because no investigation had taken place and it was not known how their accounts had come to be obtained.

d. Mr Kamara may have had an axe to grind against the Claimant (see paragraph 21 of the Reasons) as he was the individual with whom she had the disagreement.

e. The Respondent carried out no investigation into the incident save that two written statements were 'procured', although no evidence was before the Tribunal as to how that had taken place (paragraph 61 of the Reasons).

f. Whilst the Claimant had left her place of work part way through her shift without authorisation, and did not call her employer on the central telephone number, she made arrangements for a text to be sent to that number (paragraph 34). Further, her team leader could have done so, but did not (paragraph 70) even though she knew that the Claimant had left when upset after an argument part way through a shift.

g. The evidence before the Tribunal was that disciplinary action would not follow if there was a genuine emergency situation which obliged an employee to leave work immediately. On the Tribunal's own findings, the Claimant left work whilst genuinely upset, in circumstances where the Respondent was aware of the event, and she took steps to inform the respondent through the central mobile number but the Respondent did not.

Ground 2: Error in reduction of basic award and compensatory award by 100%

2. The Tribunal erred in its approach to remedy and its decision to reduce both the basic and compensatory award by 100% .

a. The appellant repeats 1(a) to (g) above.

b. In addition the Tribunal found that:

i. The Claimant had worked for the Respondent for 13 years and had an unblemished record.

ii. The dismissal was unfair and no procedure at all was followed. See paragraphs 41,62 and 64.

iii. No reasonable employer would have gone about the dismissal the way this employer did or made the decision it did without taking essential procedural steps."

4. The following passages of the Tribunal's reasons are relevant.

"12.The Respondent has a code of conduct for employees, a copy of which I was shown (it starts at page 88). The provisions of that code that are material to this case include the following paragraphs:

4.2. When late or in impossibility to report for duty at a venue, SFS staff ARE REQUIRED to inform SFS Management on the Company Mobile Number as soon as possible to ensure that alternative arrangements can be made.

5.7. Unless authorised by SFS Ltd Management, SFS staff may not leave the premises/ venue after starting their shift, until they have completed the shift, or until they have been relieved by a suitable replacement. In all cases, we will act with consideration to the situation, and will not make unreasonable requests. Leaving a venue without SFS Ltd management authorisation could possibly incur a fine and or disciplinary action.

13.The Claimant was provided with training by the Respondent, including training provided by Mr Sandulescu himself. Mr Sandulescu stated that the provisions of the code of conduct, as mentioned above, are also given as instructions within the training provided. Mr Sandulescu contended that the Claimant knew that if she had to leave her shift part-way through, she was obliged to inform the company by telephoning its central mobile number as soon as possible. His reasoning was that a telephone call could be answered and a matter actioned much more quickly when the Respondent is informed by telephone; text messages and emails can only be reacted to once they are received, which may build in delay. I accepted that evidence and I further accepted Mr Sandulescu's contention that the Claimant knew of this obligation, given her training and experience of over ten years as a door supervisor.

14.The Claimant did not advance any evidence that she did not know of this requirement; instead, the submission was made by Mr Robert-Lennard that she was not in fact allowed to telephone the company as there was a ban on the use of mobile phones at work (she relied upon clause 6.1 of the code in that regard, which I have not reproduced). That submission appeared to me to lack common sense: if there was a genuine emergency situation meaning the Claimant (or any door supervisor) had to leave work urgently, the suggestion that they would be banned from letting the company know was absurd. I accepted Mr Sandulescu's evidence that the Claimant knew what her obligation was, and moreover, his evidence that if there was a genuine emergency situation obliging an employee to leave work immediately, this would not be treated as a disciplinary matter by the Respondent.

…

32.Going further, and for the same reasons I have expressed in relation to her lack of credibility as a witness, I rejected the Claimant's assertion that the reason she left work was because of matters relating to her health. I was reinforced in this finding by her doctor's comment of 1 February 2022 (where it was recorded that "she was already feeling slightly better") and by the complete absence from that record of what, if it had

occurred, would have amounted a very serious health-related incident for the Claimant a couple of days beforehand. I also noted that an ambulance was not called, nor the Claimant admitted to hospital, on 29 January. The reality is that the Claimant had plainly been upset having had an argument with a colleague, but that in my judgment was in fact the reason for her leaving, consistent as it was with Ms Zatrici's independent written account and the emphasis placed on the argument by the Claimant herself, in her email later that evening. The Claimant did not leave work that night for a health reason.

…

36. The Respondent also has a disciplinary procedure as part of the employee code of conduct, and I was shown a copy (pages 100-101). This provides for a fivestage process that is in fact six stages, as there is an additional provision for an appeal. Stage one of that process is called the investigation stage, where if a complaint is brought to the Respondent's attention it will be investigated "to obtain as much information as possible." The second stage involves consideration of informal action to resolve the problem. If that is not possible the matter moves to the third stage, the consideration of formal action. If formal action is appropriate a meeting will be called and the employee formally notified, including notification of the employee's right to be accompanied. The fourth stage involves a decision being made, for which there is a range of options available. Those range from no action being taken, through a first and a final written warning, to dismissal of some "other sanction". If the decision is dismissal the fifth stage stipulates that the reasons for dismissal will be communicated to the employee, that the decision will be confirmed by the director of the Respondent, and that the employee shall have a right of appeal. The additional sixth stage is the appeal itself, the right to which an employee must exercise within five working days.

37. In the Claimant's case there was an investigation of a kind, as the Claimant herself provided a written version of what happened on 29 January 2022 in her email that evening, and Mr Kamara and Ms Zatrici also did, presumably after being asked. However, that was as much investigation as was done. There was no investigatory meeting as such, nor were any of the individuals mentioned above interviewed or their respective versions put to one another for comment. Nor, at the investigatory stage was an allegation of misconduct ever put to the Claimant. Whilst the Claimant's email had been used as part of the investigation, it was sent independently of the investigation. The investigatory stage basically involved no participation from C at all, save for that matter.

38. By way of an email sent to her on 1 February 2022, the Respondent summarily dismissed the Claimant (page 139). The reason for dismissal, I find, related to the Claimant's conduct and was, in summary, because she had absented herself from the workplace on 29 January 2022 without informing the Respondent via its central telephone number, as she was required to do. The email also mentioned the potential for reputational damage to have been caused to the Respondent by the Claimant's actions, but Mr Sandulascu confirmed in evidence that this was a potential problem only and one that did not, in fact, arise. The potential for reputational damage was not the reason, or part of it, for dismissal.

…

> 41. I accepted that Mr Sandulescu made the decision to dismiss and that he did actually believe the Claimant was guilty of misconduct – and, given the written accounts of the Claimant, Ms Zatrici and Mr Kamara, which I find he had and read – he had reasonable grounds to believe in her guilt as a potentially valid reason for leaving was not advanced and it was agreed that the Claimant did not telephone in, as required. However, Mr Sandulescu's decision was reached because, in his evidence and in my judgment, he could not see any circumstances where her actions on the evening of 29 January 2022 could have been justified. The effect of that lack of thinking was to completely nullify any responsibility the Respondent had for investigating the matter, and it defeated the purpose of Respondent's own policy. It was, in short, a shockingly perfunctory way of dealing with an employee of otherwise good standing and of some 13 years' engagement with this employer.
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> 42. The email of dismissal made no mention of the Claimant's right to appeal Mr Sandulescu's decision to dismiss her, even though that right was enshrined in the Respondent's own disciplinary procedure within its employee code of conduct. The Claimant did not appeal the decision, but instead wrote to the Respondent on 12 February 2022 (page 140) setting out, in summary, the grounds upon which she considered the decision to dismiss her to be wrong. The email also invited the Respondent to settle any employment claims she might have by way of a "compromise agreement". The language used in that email suggested it was written for the Claimant by someone with experience of employment law, but despite that it did not mention the possibility of an appeal or suggest that it should be taken by the Respondent as an appeal letter. Whilst it was not dealing with an appeal against dismissal, that email was responded to and each of the Claimant's points addressed, in a letter dated 23 February 2022 (page 143). This letter was authored by Mr Emanuel Prenga, director of the Respondent, who confirmed within it that he disagreed with each of the Claimant's points.
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> …
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> 71. The Claimant's conduct was, in my judgment, an abandonment of the contract of employment and amounted to a fundamental breach of contract, entitling the Respondent to dismiss her summarily."

5. Drawing the strands together at this stage, it follows that the ET accepted that the reason for the claimant leaving the venue midway through her shift was because she was upset following an argument with a colleague. She notified her team leader that she was leaving. The misconduct for which she was disciplined in such a peremptory manner was that she had absented herself without informing the respondent by telephone via its central telephone number.

6. I have been provided with a document described as "General Terms for Provision of Services as an SIA Registered Licence Holder" in the appeal bundle. I assume it to be the code of conduct

referred to by the ET at paragraphs 12 and 36 of the reasons and will refer to it as such. I note that the document contains, at section 6, a list of unacceptable activities and, at 6.2, a statement that:

> "The use of drugs and illegal substances and any illegal activities [each being contained with that list of unacceptable activities] shall be the cause for instant dismissal."

This was not referred to in the ET's reasons.

7. At page 13 of the document, there is no separate paragraph number, there is a section marked "Gross Misconduct: examples only, the list is not exhaustive". None of the 13 matters listed is remotely comparable, in my judgment, to leaving a workplace without making a telephone call. I remind myself that the provision cited in the reasons at paragraph 12 mentions that leaving a venue without permission (there is no reference to making a call) could *possibly* incur a fine and/or disciplinary action. [my emphasis] This was also not referred to in the ET's reasons.

8. In the course of today's hearing, when I asked Mr Sandulescu where in the code of conduct the gross misconduct alleged was to be found, he took me to a provision at page 11 of the document where under the heading "Absence" is provided:

> "If, for any reason, the service provider is unable to work, he should contact the company or have the company contacted as soon as possible on the first day of absence. Mobile phone messages, voicemail messages and any form of messages not directly given to a member of the Management Team of the company are not acceptable as a method of contact.
>
> The company reserves the right to deduct from the service provider's remuneration a fine of £50 for cancellation of a shift. The company accepts valid reasons to cancel a shift at short notice if a suitable proof is provided."

It seems to me from the second paragraph that this provision concerns only an employee who is unable to get to work on a particular day or days, not to somebody who decides to leave part way through a shift and, in particular, where their team leader is aware that they have both attended but then subsequently left.

9. It is trite that gross misconduct is conduct which fundamentally breaches the employment

contract justifying summary dismissal. It is most unusual, in my experience, that such conduct is not specified as such in a contract or code of conduct such that an employee can understand the consequence of their actions.

10. The ET specifically found that the misconduct here was not just leaving the venue, but failing to notify management by telephone. The former is said by the code of conduct to be conduct which could possibly incur disciplinary action and the latter is not mentioned at all, other than in the context of being unable to come to work. The evidence before the ET, as recorded, was that it was simply to be inferred from training given at an earlier stage at some time in the claimant's 13-year career. It was plainly considered not important enough to be put in writing. Indeed, what was found by the ET to be the relevant gross misconduct was not even referred to in the Form ET3, which says, at paragraph 4 that the claimant's employment was terminated "because she left her workplace without management authorisation" and, at paragraph 5(b) "that the gross misconduct consisted in leaving the workplace without having the authorisation of the respondent's management".

11. The respondent's skeleton argument essentially restated the Tribunal's acceptance that, without investigation, Mr Sandulescu decided the only fact which he needed to assess was whether, it having been accepted that she left the venue, there was any reason that she could not call the respondent as soon as possible. Of course, as she was never asked, it is impossible to answer that question. The skeleton argument repeats on numerous occasions that it was the claimant's conduct of not informing her employer when leaving her shift which amounted to misconduct, adopting the ET' formulation, which seems to have surfaced for the first time at the hearing. The argument goes on that the fact that the team leader did not call the respondent was irrelevant and did not absolve the claimant of her own important obligation. I ask rhetorically why, when the team leader was aware that the claimant was leaving and the claimant knew that the team leader was so aware, there would have been any point in her making any further phone call. Had the team leader taken the view that a

replacement was required as a matter of urgency, presumably she would have made the call herself. Mr Sandulescu submits that this is an industry-specific provision, as a team leader would be very busy and not have time to make a telephone call herself. But this begs the very question why, if so important, this is not provided for in a lengthy and otherwise comprehensive code of conduct.

12. It is only in exceptional cases that the EAT will interfere with an Employment Tribunal's findings of fact. I have borne that principle very much in mind but, after careful reflection, I have formed the view that it was not open to, and therefore was perverse for the ET to have concluded that the respondent was entitled to treat the combination of leaving early and not making a phone call as gross misconduct. At worst, the failure to make a call was an administrative requirement delivered orally in training, which was not documented in a code of conduct which set out many matters justifying instant dismissal and multiple instances of gross misconduct.

13. Gross misconduct is to be viewed objectively and not simply through the eyes of the employer. A proper investigation could have looked into the reasons why the team leader had not thought it important enough to justify a call. Perhaps the level of risk which was the subject of conjecture by the ET was not the view "on the ground " and the team leader believed that there was no need to call for a replacement. It would have looked at whether the level of upset which the claimant experienced sufficient to cause someone of her very long experience to leave midway through a shift was such as to invoke the assurance given in evidence on the respondent's behalf that if there was a genuine emergency situation obliging an employee to leave work immediately this would not be treated as a disciplinary matter by the respondent.

14. In my judgment, on the evidence set out by the ET there is only one conclusion which it could legitimately have reached. Pursuant to **Jafri v Lincoln College** [2014] EWCA Civ 499, I therefore substitute such a finding, namely that the claimant was not guilty of gross misconduct.

15. Having concluded as I have, it is not necessary to go into detail as to issues in the appeal regarding remedy. Suffice it to say that the Tribunal gave no reasons for its conclusion that a 100% reduction should be applied to both the basic and compensatory awards. It failed to explain why, merely upon a finding of gross misconduct, dismissal was the only possible sanction, having regard to all the circumstances. No cases, including those cited in ground 2 of the appeal set out above applicable to remedy was cited or explored.

16. If I am wrong in my conclusion that the ET erred in law in concluding on the evidence before it, as set out in the reasons, that the claimant was guilty of gross misconduct, then its reasons for applying a 100% reduction to both awards are not **Meek** compliant (see **Meek v City of Birmingham District Council** [1987] IRLR 250) and I would have ordered that they be remitted to a fresh tribunal for reconsideration of the question whether dismissal was within the range of reasonable responses, and as to any applicable deductions.

17. The appropriate disposal of this case is that the matter is remitted to a differently constituted employment tribunal for the consideration of remedy. This will be on the footing that the existing finding of unfair dismissal remains but that the respondent was not entitled to have found that the claimant's behaviour as characterised by it amounted to gross misconduct. Logically, the finding of wrongful dismissal cannot stand, resting, as it does, on a conclusion which I have held to be perverse. To the extent necessary, I would grant permission to add a ground of appeal to permit that finding.

18. The reason I have said that a fresh tribunal is needed is simply because of the trenchant views expressed by the ET in the reasons and the need for the claimant, in particular, to believe that any revisiting of the issues will be done on a neutral basis.