



EMPLOYMENT TRIBUNALS

Claimant: Mr C Baker

Respondent: SIM Switchgear Ltd

Heard at: Liverpool (by CVP)

On: 2 January 2025;
19 and 20 June 2025

Before: Employment Judge Ainscough
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Ms Kight - Counsel

JUDGMENT

JUDGMENT having been sent to the parties on 28 July 2025 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunals Procedure Rules 2024, the following reasons are provided:

REASONS

Introduction

1. The claimant started ACAS early conciliation, received the conciliation certificate and submitted his ET1 claim on 10 April 2024.
2. The claimant brought complaints of unfair dismissal, breach of contract, underpayment of holiday pay and unlawful deduction from wages.
3. The final hearing began on 2 January 2025 but was adjourned after the first day as a result of the unavailability of this Tribunal.

The issues

4. By the time of the final hearing, the complaints before the Tribunal were that of unfair dismissal and wrongful dismissal. The complaints of holiday pay and the unlawful deduction from wages claim had been resolved and were no longer pursued.

5. Unfair dismissal

- a. What was the reason or principal reason for dismissal? The respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.
- b. If the reason was misconduct, did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:
 - i. there were reasonable grounds for that belief;
 - ii. at the time the belief was formed the respondent had carried out a reasonable investigation;
 - iii. the respondent otherwise acted in a procedurally fair manner;
 - iv. dismissal was within the range of reasonable responses.

6. Wrongful dismissal / Notice pay

- a. What was the claimant's notice period?
- b. Was the claimant paid for that notice period?
- c. If not, was the claimant guilty of gross misconduct? / did the claimant do something so serious that the respondent was entitled to dismiss without notice?

The evidence

7. Before the hearing was adjourned the Tribunal heard evidence from Ms Pantazi, the respondent's Head of Operations. Mr McWilliam the respondent's Commercial Director and the manager responsible for dismissing the claimant also began his evidence.
8. Following the adjournment Mr McWilliam completed his evidence and the Tribunal also heard evidence from Mr Rowland the respondent's Managing Director and the manager responsible for dealing with the claimant's appeal against dismissal.

9. Finally, the Tribunal heard evidence from the claimant and heard submissions from both parties.

Relevant findings of fact

Claimant's employment

10. The claimant was employed by the respondent as an Electrical Technician (Field Service Engineer) from 2013 until his summary dismissal on 11 January 2024.
11. The respondent is an engineering business. At the time of the claimant's dismissal the respondent had approximately ten to fifteen employees, of which approximately five were qualified engineers.
12. The claimant's role was to attend sites which required the respondent's particular services. The claimant was classed as a senior employee by the respondent, he was a First Aider and he was qualified in dealing with any issues of Asbestos at the site. There was a requirement for the claimant to be flexible in his role.
13. The claimant had a contract of employment. The holiday year ran from April to March. At the time of the claimant's dismissal his holiday entitlement for the leave year 2023 to 2024 was 31 days inclusive of public holidays. Annual leave could be taken if approved in advance by the respondent.
14. The contract of employment was supplemented by an employee handbook which provided that annual leave must be approved in advance by a line manager. It also stated that the respondent may require employees to take annual leave or not take annual leave on particular dates depending on the needs of the business.
15. The respondent operated a practice of pre-allocating annual leave over the Christmas period at the start of each leave year. The days were deducted from an employee's entitlement. Despite this allocation, the employee still had to obtain authority to take leave during that period. There was no entitlement to take unpaid leave in the contract or the employee handbook.
16. Until November 2023, annual leave was recorded and approved on a NatWest Mentor System. All employees were notified on the 2 November 2023 that annual leave would be recorded and approved on Quick Books.
17. The employee handbook also set out the disciplinary policy and procedure. The procedure operated by the respondent consists of an investigation stage, a disciplinary hearing, and a right of appeal. Sanctions can include first written warnings, final written warnings or dismissal. Gross misconduct is defined as including serious insubordination and serious breach of confidence. If there is a finding of gross misconduct the policy provides for termination without notice.
18. The handbook also provides for parental leave. An employee must give notice of at least 21 days for such leave and the respondent has a right to

postpone such leave if it would disrupt the business. There is also a dependants policy to deal with unexpected events which includes the unexpected breakdown of care arrangements.

September 2023 – November 2023

19. In September 2023 the claimant booked a two week holiday. The claimant then submitted his holiday request to his line manager Dave Baker. On checking the system Mr Baker noticed that the claimant only had five days annual leave left to take in that financial year. Mr Baker challenged the claimant about booking the holiday before it had been approved. He also told the claimant that two other staff members were off at the same time, and it would be difficult to accommodate the holiday. The respondent eventually agreed to accommodate the holiday as a one off if the claimant agreed to take the second week as unpaid leave.
20. On 2 November 2023 Ms Pantazi sent all employees the same email informing them of the change to the holiday booking system. The email provided each employee with their individual leave record and the employees were asked to confirm if it was accurate.
21. The claimant's email recorded that for the leave year 2023/2024 he had been entitled to 31 days leave but that the leave days remaining were recorded as minus 8.
22. In the body of the email Ms Pantazi said that the figure of days remaining included approved holidays listed on the right hand side of the email and therefore no rebooking was required. The outstanding leave booked for the claimant on the right hand side of the email was:

1 day in November 2023,

5 days in December 2023 which I have determined on the balance of probabilities must be the 25 December and 26 December as the bank holidays and then the 27 December, 28 December and 29 December as annual leave days.

2 days in January 2024 (inclusive of the bank holiday) and

2 days in March 2024

This was a total of 10 days leave. This left the claimant with a minus 8 balance. The claimant confirmed he would have taken one day's leave in November for the birthday of one of his children.

December 2023

23. On 8 December 2023 the claimant met with Ms Pantazi and Mr Houson, the Service Director to discuss his terms and conditions including his pay. The claimant had been struggling because that month his wages had been lower than usual due to the taking of unpaid leave. Mr Houson and Ms Pantazi recalled that the claimant was specifically told about a job that had been planned between Christmas and New Year and that this would help him

financially. Both recall that the claimant had no problem with attending that job.

24. On 12 December 2023 Mr McWilliam submitted a quote for the job between Christmas and the New Year which stated that four engineers were required to complete the job. On 13 December 2023 Mr McWilliam revised this quote for three engineers and on the same day Mr McWilliam raised a Purchase Order and informed the customer that the claimant, Dylan Baker and Liam Fraser would be in attendance. On the same date Mr David Baker told the claimant and his colleagues of the job and told them that they would be required to attend. Mr Baker said if they had any problem with attendance they were to let him know.
25. On 19 December 2023 following a site visit Mr McWilliam produced a second quote in which he assigned four engineers to complete the job. On 20 December 2023 the claimant was informed that he was the lead engineer on the job. The claimant informed Ms Pantazi that he was unable to attend the job on the basis that he would receive authority to take unpaid leave over Christmas. As a result, Mr Baker and Mr Houson tried to find cover for the claimant.
26. On 21 December 2023 the claimant informed Ms Pantazi that he had made other arrangements over Christmas and New Year because the job had not been confirmed. Ms Pantazi informed the claimant that he had no holidays to take between Christmas and the New Year and that the 27, 28 and 29 December were normal working days. The claimant was informed that as he had not requested unpaid leave the refusal to attend work would be treated as a disciplinary matter. On the same date Ms Pantazi informed Mr Rowland of the issue.
27. On 22 December 2023 Ms Pantazi informed the claimant that because the leave over Christmas was part of the "minus 8" balance any request for leave over the Christmas period was always going to be subject to rejection by management and not authorised in the way the claimant had anticipated. Ms Pantazi maintained that the Christmas holidays were not pre-authorised only pre-allocated and would be subject to management authority because those days would be unpaid.
28. Mr Rowland then emailed the claimant on the same day and reiterated that the claimant had no remaining holidays to take and had not been granted the unpaid leave for those dates and he told the claimant that he was expected to work.
29. The claimant maintained that because the dates were on the system they must have been approved and accepted. Mr Rowland asked for evidence of this. The claimant said that because they were on the old system and were put on the new system by management they must have been approved and accepted. Mr Rowland maintained that they had not been approved.
30. Mr Rowland confirmed the practice of pre-allocation at the start of the leave year but, that those pre-allocated days were subject to reallocation depending on the demands of the business.

31. The claimant was told by Mr Rowland he had no more annual leave entitlement for that leave year as he had already received five unpaid days in November 2023. Mr Rowland gave the claimant a clear instruction to attend work. Mr Rowland was unable to authorise any parental leave due to the needs of the business.
32. The claimant did not attend work on 27, 28 and 29 December. As a result, the respondent had to send one less engineer to the job which resulted in a financial loss to the business.

Disciplinary process

33. In early January 2024 Mr Rowland instructed Ms Pantazi to investigate the claimant's non-attendance at work. Ms Pantazi took statements from Mr Houson, she produced her own statement and took two statements from Mr Baker.
34. On 5 January 2024 Mr McWilliam invited the claimant to a disciplinary hearing on 9 January 2024. The invite stated that Mr McWilliam would be in attendance and Ms Pantazi would also be in attendance as a note taker.
35. The claimant was informed that he was required to attend the hearing on the basis of alleged insubordination and a failure to follow a reasonable management instruction. The claimant was provided with the documents from the investigation.
36. The disciplinary hearing took place on 9 January 2024. Prior to the start of the hearing the claimant did not take issue with the attendees and chose to attend alone.
37. The claimant maintained that the leave from 27 December 2023 – 29 December 2023 was approved and accepted. The claimant said he didn't say anything about this until the job had been confirmed and by then it was too late to amend the arrangements he had made for his childcare.
38. The claimant agreed the notes of the hearing. The claimant asked Mr McWilliam to interrogate the NatWest Mentor system prior to making a decision, but Mr McWilliam was unable to access it.

Claimant's dismissal

39. On 11 January 2024 Mr McWilliam sent a letter to the claimant dismissing him for gross misconduct without notice. Mr McWilliam said that he preferred the evidence of Mr Houson and Ms Pantazi about what had been discussed on 8 December 2023 – that the claimant welcomed the opportunity to work over the Christmas period to improve his financial situation. Mr McWilliam also concluded that the claimant didn't say anything to Mr Baker on 13 December 2023 about not being able to work.
40. Mr McWilliam based his decision on the fact that the claimant had accepted during the hearing that he didn't book unpaid leave between Christmas and New Year and he was not told he could take that leave. The claimant also

accepted that he had no holiday left to take and that a failure to work would amount to misconduct and could lead to the position he found himself in.

41. Mr McWilliam was of the view that the claimant had at least three weeks to sort out the childcare arrangements from 8 December 2023 when the claimant was first told about the job.
42. Mr McWilliam said that the claimant had caused financial loss to the respondent and potential reputational loss to the respondent. Mr McWilliam informed the claimant that he had exposed the respondent to negligence issues because there was no first aider on site when the job took place.
43. Mr McWilliam concluded that the non-attendance of the claimant was so serious that it amounted to gross misconduct. Mr McWilliam was of the view that the claimant had agreed on 8 December 2023 to attend work and his non-attendance led to a serious loss of confidence.
44. The claimant was given the right of appeal in accordance with the policy and procedure.

Appeal against dismissal

45. The claimant appealed on 15 January 2024 on the basis that Mr McWilliam and Ms Pantazi were biased, that the outcome was harsh, that he disagreed with the evidence and the findings and said he had not been treated fairly. Mr Rowland acknowledged the appeal and said it would be heard by him on 23 January 2024 with Ms Pantazi also in attendance as a note taker. The claimant did not object to the attendees.
46. During the appeal hearing the claimant said that Mr Houson confirmed on 8 December 2023 that he could not guarantee time off over Christmas but that he would try to accommodate the claimant. The claimant asked Mr Rowland to access the NatWest Mentor system but he was also unable to do so.
47. On 25 January 2024 Mr Rowland sent a letter to the claimant dismissing the appeal. Mr Rowland said Ms Pantazi was not biased and there was no evidence that Mr McWilliam had been previously involved in any of the issues other than submitting the quote for the job. Mr Rowland said he didn't disagree with Mr McWilliam preferring the view of Mr Baker and Ms Pantazi about the meetings on the 8 December 2023 and 13 December 2023. Mr Rowland formed the view that the claimant knew that his leave over the Christmas period had not been approved and therefore the dismissal was a proportionate response to the claimant's non-attendance at work.
48. Mr Rowland told the claimant that there was no other outcome available to the respondent in the circumstances because the claimant's actions had placed the client relationship in serious jeopardy. Mr Rowland was concerned that the claimant showed no remorse and that accessing the system would not negate the need for the claimant to show that he had received prior approval for this unpaid leave.

Holiday pay

49. Following the outcome of the appeal, the respondent paid the claimant additional holiday pay for leave taken in the 2023/2024 holiday year.
50. This payment was not because the claimant had accrued leave on termination of employment but rather because of a decision made by the Supreme Court about the calculation of holiday pay for those who work variable hours. The Supreme Court determined that holiday pay should be calculated in accordance with average earnings so that an employee does not suffer a loss in wages for taking annual leave.
51. As a result, on termination of employment the respondent concluded that the claimant had been underpaid for the annual leave he had taken whilst in employment and made a payment to compensate the claimant for the underpayment.
52. At the outset of the final hearing, the claimant agreed he no longer pursued the complaints of failure to pay holiday pay or unlawful deduction from wages.

Relevant legal principles

Unfair dismissal

53. The unfair dismissal claim was brought under Part X of the Employment Rights Act 1996.
54. The primary provision is section 98 which, so far as relevant, provides as follows:

- “(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 sub-section (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 sub-section if it ... relates to the conduct of the employee ...
- (3) ...
- (4) Where the employer has fulfilled the requirements of sub-section (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
 - (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonable 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”.

55. If the employer fails to show a potentially fair reason for dismissal (in this case, conduct), dismissal is unfair. If a potentially fair reason is shown, the general test of fairness in section 98(4) must be applied. By this stage there is a mutual burden of proof on both parties to satisfy the Tribunal of their position on the balance of probabilities.

56. In a misconduct case the correct approach under section 98(4) was helpfully summarised by Elias LJ in **Turner v East Midlands Trains Limited [2013] ICR 525** in paragraphs 16-22. The most important point is that the test to be applied is of the range or band of reasonable responses, a test which originated in **British Home Stores v Burchell [1980] ICR 303**, but which was subsequently approved in a number of decisions of the Court of Appeal.

57. The “**Burchell** test” involves a consideration of three aspects of the employer’s conduct. Firstly, did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case? Secondly, did the employer believe that the employee was guilty of the misconduct complained of? Thirdly, did the employer have reasonable grounds for that belief? If the answer to each of those questions is “yes”, the Employment Tribunal must then go on to decide whether the decision to dismiss the employee was within the band of reasonable responses, or whether that band falls short of encompassing termination of employment.

58. It is important that in carrying out this exercise the Tribunal must not substitute its own decision for that of the employer. The focus must be on the fairness of the investigation, dismissal and appeal, and not on whether the employee has suffered an injustice. Where there is more than one conduct related reason for dismissal the question is whether the conduct in its totality amounted to a sufficient reason for dismissal.

59. The band of reasonable responses test applies to all aspects of the dismissal process including the procedure adopted and whether the investigation was fair and appropriate. The appeal is to be treated as part and parcel of the dismissal process: **Taylor v OCS Group Ltd [2006] IRLR 613**.

Wrongful dismissal

60. The claimant also pursues wrongful dismissal. In such circumstances, a claimant alleges that the employer has breached the employment contract by not giving the employee the requisite notice and not paying the employee for the notice period.

61. There will not be a breach of contract if the employer can prove it was entitled to terminate the employment contract without giving the employee the requisite notice because the employee had committed misconduct sufficiently serious to justify dismissal.

62. In **Mbubaegbu v Homerton University Hospital NHS Foundation Trust UKEAT/0218/17** the Employment Appeal Tribunal determined that misconduct sufficiently serious to justify dismissal must be misconduct which undermines the relationship of trust and confidence.

63. In **Palmeri v Charles Stanley and Co Ltd (2020) EWHC 2934 (QB), (2021) IRLR 563**, the High Court determined that the conduct justifying summary dismissal requires an objective assessment of whether a claimant has “clearly shown an intention to abandon and altogether refuse to perform the contract.”

In **Laws v London Chronicle (Indicator Newspapers) Ltd (1959) 2 All ER 285, (1959) 1 WLR 698, CA**, the Court of Appeal determined that conduct must be repudiatory - sufficiently serious and injurious to the relationship - to justify dismissal.

Submissions

Claimant's submissions

64. The claimant submitted that the respondent had a custom and practice of allowing unpaid leave. The claimant contended that because the unpaid leave had been recorded on the system it had been approved and he was entitled to the time off.
65. The claimant alleged he was not given sufficient time in accordance with the policy and procedure to gather evidence and submit the appeal. The claimant also alleged that Ms Pantazi's role at each hearing went beyond that of notetaker.
66. The claimant maintained that as soon as he was told of the possibility of the job over the Christmas period he informed the respondent he would not be able to work because of childcare. In any event, it is the claimant's position that the job was not authorised until at least 19 December 2023.

Respondent's submissions

67. The respondent submitted that the respondent's witnesses had given credible evidence supported by the documentation, but the same could not be said of the claimant.
68. The respondent submitted that the claimant's evidence was inconsistent as to what was said in meetings and the claimant had not produced any documentary evidence to prove he had obtained approval for the unpaid leave or discussed his inability to work over the Christmas period with the respondent.
69. The respondent refuted that the claimant had not been given sufficient time to appeal and maintained that it followed a fair procedure. The respondent submitted that the claimant did not object to the individuals involved in the disciplinary procedure.
70. The respondent contended that it was a flexible employer and had the claimant raised the issue of childcare at the outset, the respondent would have looked for an alternative solution.
71. The respondent maintained that it had issued a reasonable instruction for the claimant to work over the Christmas period to ensure a safe working environment and to maintain an important client relationship. As a result, the

respondent submitted that the claimant's dismissal was within the range of reasonable responses.

Discussion and conclusions

Unfair dismissal

What was the reason for the claimant's dismissal?

72. The respondent said the reason for the claimant's dismissal was conduct as a result of serious insubordination and serious breach of confidence.
73. The claimant has said that Mr McWilliam did not like him and was keen to remove the claimant. The claimant also alleged that the respondent wanted to avoid paying good leaver payments.
74. It is clear, however, from the contemporaneous emails that the respondent had a real concern about the claimant's stance over the Christmas leave. This was not a manufactured reason. It was a consequence of the claimant not seeking approval for the pre-allocated leave. When the respondent pointed this out to the claimant he refused to attend work.

Did the respondent have a genuine belief as to the claimant's conduct?

75. The contemporaneous emails revealed that a number of managers were involved in the management of the claimant. The fact that Mr McWilliam was responsible for submitting the quote did not mean he could not deal with the disciplinary hearing and make the decision to dismiss. The respondent is a small business and Mr McWilliam had not had any direct contact with the claimant about this issue until the disciplinary hearing.
76. Mr McWilliam formed the view that the claimant had known about the job from 8 December 2023 or 13 December 2023 and did nothing to resolve the matter with the respondent or make alternative arrangements.
77. During the disciplinary process the claimant had admitted that Mr Houson had said that the leave could not be guaranteed. The claimant also admitted that he did not attend work between the 27-29 December 2023 despite an instruction to do so. As a result, the respondent had a genuine belief as to the claimant's actions.

Did the respondent have reasonable grounds for the genuine belief?

78. Ms Pantazi had forwarded all the contemporaneous emails to Mr McWilliam prior to the disciplinary hearing. She had also provided him with the witness statements from the investigation.
79. During the disciplinary hearing the claimant maintained his position, that on 8 December and 13 December the job was only a possibility, and the claimant was of the understanding that the leave had been approved at the start of the leave year. The claimant said he also knew that any outstanding leave would be unpaid.

80. Mr McWilliam formed the view that the claimant knew he had no entitlement to unpaid leave, this was something at the manager's discretion and it had not been guaranteed by Mr Houson.
81. The claimant could not provide evidence of any authority for this unpaid leave. Mr McWilliam had tried to access the system but had been unable to do so but that was not needed to form the view that he did about the claimant's conduct. Mr McWilliam preferred the evidence provided by Mr Baker, Mr Houson and Ms Pantazi that the claimant knew about the job from early December.
82. Mr McWilliam knew that the claimant did not try to get authority for the leave until 20 December 2023 by which time it was too late for the respondent to make alternative arrangements. The respondent was locked into the contract with the customer and the names of those attending the site had already been given to the customer for security reasons.
83. Mr McWilliam also knew that the claimant had been told by four different managers that he had to attend work on those dates and refused to do so. This caused a financial loss to the business and loss of trust in the claimant to meet his contractual requirements.

Was there a reasonable investigation?

84. The respondent's disciplinary policy and procedure is in accordance with the ACAS code of practice on disciplinary procedures 2015. The investigation stage is a fact find. Mr Rowland asked Ms Pantazi to do this. The respondent is a small business and Ms Pantazi had the skillset to carry out this task.
85. There was no requirement to take a statement from the claimant at the investigation stage. The ACAS code of practice confirms at paragraph 5 that in some cases at the investigation stage, there will be a requirement to hold an investigation meeting with the employee but in other cases the investigation stage can be a collation of evidence.
86. In this case Ms Pantazi collated the evidence. She didn't produce a report, but reported back to Mr McWilliam and it was Mr McWilliam who decided that the matter should progress to a disciplinary hearing.
87. It was clear from the contemporaneous emails that the claimant had been warned by numerous people about the potential misconduct if he didn't turn up for work but he maintained his view as to the entitlement to unpaid leave. Therefore, Ms Pantazi knew that the claimant had actively thought about his non-attendance and she was able to obtain evidence from the others that had been involved and present that to Mr McWilliam.
88. The claimant maintains that the respondent can still access the NatWest Mentor system and the evidence he submitted suggests that it could. However, the evidence of Mr McWilliam and Mr Rowland is that they were told by Ms Pantazi that it was not possible. The Tribunal did not doubt the credibility of the respondent's witnesses that they could not access a third party system that they no longer subscribed to.

89. Even if the respondent could access the old system, it would only show what was contained in the email of 2 November 2023. It would show that the respondent had been pre-allocated annual leave over the Christmas period at the start of the leave year but, by 2 November 2023 the claimant had to obtain authority to take that leave as unpaid leave which he did not do.

Did the respondent follow a fair procedure?

90. There is no evidence from the claimant that Mr McWilliam was biased. The respondent is a small business and those not involved in the day to day management of the claimant had to deal with it.
91. It is common practice for an investigating manager to attend a disciplinary hearing and they often give evidence. In this case Ms Pantazi was a note taker. The claimant didn't object at the outset of the disciplinary hearing. He knew who was going to be in attendance. The claimant didn't exercise the right to be accompanied and he didn't ask the respondent to find somebody else, whether internally or externally, to deal with the hearing.
92. Mr Rowland had previously been involved in the matter as it was his final management instruction that the claimant ignored. In order to conduct a fair procedure, the appeal manager had to be somebody different to that of the dismissing manager and arguably senior to the dismissing manager and that was Mr Rowland.
93. The ACAS code of practice states any appeal should be dealt with impartially and "wherever possible" by a manager not previously involved. That just wasn't possible here as a result of the size of the respondent. There is no evidence that Mr Rowland was not impartial. It was not his decision to decide if the claimant was guilty of gross misconduct but rather whether Mr McWilliam had dealt with the disciplinary hearing and made the decision that he did in accordance with evidence and the respondent's policy and procedure.

Was the claimant's dismissal within the range of reasonable responses?

94. There were various sanctions available to the respondent in accordance with the policy and procedure, but the procedure is also clear that gross misconduct could lead to summary dismissal without notice.
95. Mr McWilliam and Mr Rowland concluded that at the very least the claimant knew by 20 December 2023 that he was allocated to work on the job. There was no evidence that the claimant tried to obtain alternative childcare.
96. However, the Tribunal also accepts that, on the balance of probabilities, it is more likely than not that the claimant knew on 8 December 2023 about the job but did not raise the issue of the pre-allocated leave.
97. The claimant also knew on 13 December 2023 that the job was going ahead from the comments made by Mr Baker. This coincides with Mr McWilliam raising the purchase order on the same date and then allocating the job to the claimant on the system. The Tribunal accepts the respondent's witness

evidence that the claimant failed, disingenuously, to raise the issue with the respondent on either of these occasions and left it until the last possible minute to raise the issue knowing there was very little possibility of obtaining alternative care.

98. The claimant knew from the email on 2 November 2023 that his leave over Christmas would have to be taken unpaid because whilst it had been pre-allocated whilst he still had paid leave available, his entitlement had changed and he had not obtained the necessary authority to take the unpaid leave.
99. Given such findings I have determined that the respondent had no other choice but to dismiss the claimant. The claimant failed to follow a reasonable management instruction. The respondent, as a small business, couldn't risk this happening again, because it had suffered a financial loss and there was a risk of reputational loss to the business. As Ms Pantazi said in one of her emails it was clear that the claimant focused on his own objective and not those of the business and therefore the respondent had lost trust and confidence in the claimant.
100. The respondent had done all it could to accommodate the claimant, but this was not reciprocated and led the respondent to suffer reputational and financial loss. Therefore, the unfair dismissal claim is unsuccessful and is dismissed.

Wrongful dismissal

101. I have determined on the balance of probabilities that the claimant intentionally didn't raise the matter with the respondent and failed to follow the reasonable management instruction. This amounted to gross misconduct such that the respondent was entitled to dismiss without notice.

Approved by:

Employment Judge Ainscough
27 October 2025

REASONS SENT TO THE PARTIES ON
5 December 2025

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. 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:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>