EMPLOYMENT TRIBUNALS

Claimant: **Mr J P Wiggans**

Respondent: **Albert Farnell Limited**

Heard at: **Manchester (by CVP)** **On:** **8 and 9 October 2025**

Before: **Employment Judge Dennehy**

Representation:
Claimant: in person
Respondent: Ms Clayton (counsel)

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1.The respondent's name is amended from Vertu Motors PLC to Albert Farnell Limited

2. The claimants' claim of unfair dismissal is well founded and succeeds.

3. There should be a deduction of 75% to the basic award for the claimant's contributory conduct, and a reduction of 25% to the compensatory award for failure by the claimant to comply with the ACAS Code.

REASONS

Introduction

1. The parties had technical issues on both days of the hearing and I waited until I was confident that all parties could participate until starting. On the first day the Tribunal had not received the bundles of documents and witness statements which delayed the start of the hearing.

2. The claimant brings a claim of unfair dismissal following his summary dismissal by the respondent for gross misconduct on 30 April 2024. The gross misconduct was that claimant had signed an internal policy form forging another manager's signature.

3. At the start of the hearing the claimant confirmed his claim was for unfair dismissal only and that he was seeking financial compensation.

4. Whilst I was waiting for the bundle of documents and witness statements and before I started hearing any evidence, I clarified the issues to be determined with the parties.This was a conduct dismissal and therefore the issues to be determined include those set out in the case of **British Home Stores v Burchell [1980] ICR 303** Employment Appeal Tribunal. The issues were:

(1) Did the respondent have a potentially fair reason for dismissing the claimant? The respondent says the potentially fair reason is her conduct.

(2) Did the respondent act fairly in treating that reason as a reason for dismissal in this case? In deciding that issue, I need to ask the following questions:

(a) Did the respondent have a genuine belief that the claimant was guilty of the misconduct for which she was dismissed?

(b) At the time that belief was formed, did the respondent have reasonable grounds for it?

(c) Had the respondent carried out as much investigation as was reasonable in all the circumstances?

(d) Did the respondent follow a reasonably fair procedure;

(e) Dismissal was within the band of reasonable responses.

Documents and witnesses

5. There was an agreed bundle of documents amounting to 156 pages. The Tribunal heard from the claimant himself and for the respondent from, David Butler ("**DB**"), Divisional Sales Manager and dismissing officer and Alison Reede ("**AR**"),the claimant's line manager, who undertook the investigation. All witness were cross examined and answered the Tribunal's questions.

Relevant Law

Unfair Dismissal

6. Section 94 of the Employment Rights Act 1996 ("**ERA**") sets out the right of an employee not to be unfairly dismissed.

7. If there has been a dismissal (as it was accepted there had been in this case) the first issue is whether the respondent has shown that the reason or principal reason for dismissal was a potentially fair one within the meaning of section 98(2) of the ERA. In this case the respondent alleged the reason for dismissal was conduct.

8. The second question is was the decision to dismiss fair or unfair in

all the circumstances? When it comes to making that decision, there is a neutral burden of proof i.e. it is not for the employer to prove that it acted fairly. As this is a misconduct dismissal, the **Burchell** test set out in para 4 above applies. The question is whether the conduct of the respondent fell within what has been described as the "band of reasonable responses". The question is not whether I would have reached the same decision as the respondent did but whether it acted within the range of reasonable responses to the employee's conduct in deciding to dismiss.

9. The same approach applies to considering the respondent's conduct of the investigation into the claimant's alleged misconduct. The question is whether the investigation was within the range of reasonable responses which a reasonable employer might have adopted (**J Sainsbury PLC v Hitt [2003] ICR 111 Court of Appeal)**.

10. A fair investigation requires the employer to follow a reasonably fair procedure. By section 207(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 Tribunals must take into account any relevant parts of the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 ("**ACAS Code"**).

11. The appeal is to be treated as part and parcel of the dismissal process: **Taylor v OCS Group Ltd [2006] IRLR 613.**

12. If the three parts of the **Burchell** test (at (a), (b) and (c) of the list of issues above) are met, the Employment Tribunal must then go on to decide whether the decision to dismiss the employee (instead of imposing a lesser sanction) was within the band of reasonable responses, or whether that band fell short of encompassing termination of employment.

Unfair Dismissal-remedy

13. S.118(1) ERA says that: "Where a tribunal makes an award of compensation for unfair dismissal under section 112(4) or 117(3)(a) the award shall consist of-

(a) a basic award (calculated in accordance with sections 119 to 122 and 126, and

(b) a compensatory award (calculated in accordance with sections 123, 124, 124A and 126)."

14. The basic award is calculated based on a week's pay, length of service and the age of the claimant.

15. The compensatory award is "such amount as the tribunal considers just and equitable in all the circumstances, having regard to the loss sustained by the claimant in consequence of the dismissal" (s.123(1) ERA).

16. A just and equitable reduction can be made to the compensatory award where the unfairly dismissed employee could have been dismissed at a later date or if a proper procedure had been followed (the so-called **Polkey** reduction named after the House of Lords decision in **Polkey v A E Dayton Services Limited [1987] IRLR 503**).

17. Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the claimant it shall reduce the compensatory award by such proportion as it considers just and equitable having regard to that finding (s.123(6) ERA).

18. Where the tribunal considers that any conduct of the claimant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly (s122(2) ERA).

Findings of fact

19. The claimant was employed by the respondent from 01 January 2013 and was in the role of service manager from 01 May 2022 until 30 April 2024 when he was dismissed for gross misconduct.

20. The respondent is part of a wider group of companies within Vertu Motors PLC and operates a number of franchise car dealerships across the UK, providing new and used cars and vans from a variety of different manufacturers. The claimant worked at the Land Rover Nelson dealership in Lancashire.

Respondent policies and procedures

21. The respondent has a colleague handbook which contains the following: Mission Statement & Values, Disciplinary Process, Disciplinary Hearing; Misconduct & Gross Misconduct, and Disciplinary Appeal Procedure. One of the respondent's values is Integrity: "*We are trustworthy and honest in all that we say and do and take responsibility for our own actions*" Examples of gross misconduct are clearly set out and include misrepresentation of fact – lying, serious breach of the Vertu policies fraud- including deliberate falsification of records and states that summary dismissal may be considered the appropriate penalty for gross misconduct.

22. The Disciplinary Process states " *the aim of the procedure is to allow the most appropriate disciplinary action to be taken which*, *where the colleague is to remain within the Group, will have the greatest likelihood of modifying the Colleague's behaviour and which is based on conclusions reached following a thorough investigation of the Colleagues' actions*,"

23. "*When considering disciplinary action, a full investigation will be conducted and all facts that are reasonable will be considered, and a fair and consistent process will be applied. There is no legal requirement to be formally invited to an investigation meeting, nor is there an entitlement to be represented at such meetings*."

24. The Disciplinary Hearing section states "*You will be formally invited in writing and given a minimum of 48 hours notice of a disciplinary hearing*" It explains that "*you will be interviewed by a manager and given an opportunity to explain your case. If the facts are in dispute, you or your companion are entitled to ask questions and to examine any witnesses called by the Group or to ask for additional*

witnesses to be called. If you or your companion raise issues which need further investigation or new evidence arises, the hearing will be adjourned until further investigations has been concluded. You shall be given the opportunity to draw attention to any mitigating circumstances before any decision as to the appropriate disciplinary (if any) is taken".

25. Finally, in the Disciplinary Hearing section it states *" The person responsible for making the decision as to which penalty should be imposed, if any, shall adjourn to consider the evidence presented at the hearing, prior to making that decision."*

26. In the section titled Penalties Imposed "*The disciplinary hearing has several possible outcomes….These reflect the distinction between relatively minor disciplinary offences and more serious ones such as "gross misconduct." The penalty shall, wherever possible, give scope for Colleagues to improve their conduct to the Group's satisfaction within a reasonable time period."*

27. The stages in the penalties imposed are, Stage 1 – first written warning, Stage 2 – final written warning, Stage 3 dismissal with notice, Stage 3 dismissal without notice for gross misconduct. For Stage 3 dismissal without notice it states "*There are certain offences that, if confirmed after investigation and the disciplinary hearing, will be regarded by the Group as being so serious that immediate dismissal without notice will result."*

28. The respondent has an appeal procedure within the Colleague Handbook, *"If you believe that the penalty that has been imposed at any of the stages of the disciplinary procedure, including dismissal, is appropriate, you may appeal against that decision and ask for it to be reheard and the decision to be reconsidered."*

29. The respondent process is that "*Any appeal must be made in writing, within 5 working days of the written decision to dismiss and may be for one or more of the following reasons: "a failure on the Group's part to follow the process and/or mitigating circumstances that were not fully taken into account and/or your belief that the level of penalty is inappropriate and why and/or any other substantial reason." Re who will hear the appeal it states "In the event you believe that, for whatever reason, this individual is inappropriate you should submit your appeal to a level of management, who is either senior to the person who carried out the original decision or who is of an equal level but has not been previously involved in the procedure and has responsibility for a part of the business that is not connected to that of the original decision maker. In the latter instance you should state why you believe it is inappropriate for the original appeal officer to conduct the appeal process."*

Claimant's resignation

30. On 25 October 2023 the claimant resigned but later retracted his resignation. The claimants case it that he had been worried that he "*has had a target on his back*" since retracing his resignation.

December 2023

31. A customer had bought a used car from the respondent and it was returned to the respondent dealership to repair a faulty battery on 6 December 2023 ("**car**"). The receptionist was Karley Rayner ("**KR**"). Neither the warranty nor extended

warranty provided with the car covered batteries.KR had initially dealt with the customer, but was then absent for three weeks, from 11 December until 3 January.

Policy form process

32. When a car is returned to the dealership a policy form is completed that gives details of the fault and whether the cost of the repair is to be allocated to the sales department or the service department. This is known within the respondent dealership as “sales policy” or “service policy”.

33. The exact process to be followed for the policy forms was a disputed fact between the parties. The respondent’s case is that although the process is not formally documented, a policy form must always be signed by the manager accepting the costs, which is then counter signed by AR before it can be invoiced to the relevant department. This was a well know process and frequently discussed in meetings and AR processed about 15-20 policy forms each month.

34. The claimant did not challenge the process with AR in his cross examination, but he did give examples in his oral evidence of policy forms that had not been signed. I accept the claimant’s evidence on this point as it was supported by specific examples. I find that if the respondent does not always follow the requirement to have all policy forms signed.

35. The respondent operates a bonus scheme and the cost of all sales and service policy forms reduces the amount of the bonus pot to be distributed to employees. The costs of repair for the car were £1,343.93.

36. The respondent Operations Director has a monthly review of its costs with each site and all sales and service policy costs have to be explained the amount of the costs, and managers are asked to reflect on what could be done better. The respondent’s case is that not having to explain such service policy costs at a meeting would be a benefit to the claimant.

37. On 8 January 2024 the respondent sent a letter of concern to the claimant over the unauthorised use of a company car over the Christmas period. No disciplinary action was taken. The claimant had an unblemished disciplinary record during his eleven years of employment.

38. On 27/28 March 2024 the claimant presented AR with the policy form for the car and the policy form was dated 8 December 2023. The date the policy form was presented to AR is a disputed fact between the parties. The claimant’s case is that the date he gave the policy form to AR was 28 March 2024. He told me that he can be 90% sure of this, although he also admitted that he was suffering depression at the time and had difficulty remembering details. The claimant’s witness statement states, “ *approximately on the 27th March 2024*”.

39. The respondent’s case is that the date is 27 March, although some of the respondent’s documents also state 28 March. The WhatsApp screenshot taken when AR contacted PM clearly shows 27 March. I find the date to be 27 March as it is supported by contemporaneous evidence.

40. The policy form had been signed and dated. AR was concerned that the form was three months old and asked the claimant who had signed it.

41. The claimant's case is that he told AR that he "*assumed*" it was Paul Maloney ("**PM**") a sales manager's signature. The respondent's case is that AR was told by the claimant that it was PM's signature. As there are no other witnesses to the conversation between the claimant and AR I must make a finding as to who's evidence I prefer on this specific disputed fact. On the claimant's own admission that he was only 90% sure of his recollections of events I prefer the respondent's evidence.

42. AR queried PM signing the policy form as she thought that PM had left the business before December 2023. AR contacted PM and asked him whether he had signed the form and obtained a copy of his signature. AR checked the records, and PM was working on site at the respondents Bolton site in December 2023, so could not have signed the policy form. PM confirmed that it was not his signature and evidence of PM signature is on page 77 of the bundle. I find that PM did not sign the policy form as this is supported by a copy of his signature on page 77 of the bundle and this does not match the signature on the policy form at page 72 of the bundle.

43. AR showed the signature of the policy form to Adam Coleman (**"AC**") general sales manager and David Pedder ("**DP**") used car sales manager both of whom could have signed the form. Both confirmed that the signature on the policy form was not theirs to AR. The claimant had the opportunity to cross exam AR on this and did not. I therefore accept the respondent's evidence that neither AC or DP signed the policy form.

44. AR then asked the accounts department to go through previous policy forms to see if they could find a similar signature to the one on the policy form. Several forms were found that bore a resemblance to Ryan Usher's ("**RU**") signature. RU had been a used car sales manager with the respondent from 27 November 2017 until 8 September 2023 and could not have signed the policy form. I accept the respondent's evidence that the policy form cannot have been signed by RU.

45. On the basis of AR's findings she concluded that the policy form had been fraudulently signed and warranted an investigation.

Investigation

46. AR interviewed Jennifer Hartley ("**JH**"), senior service advisor on 4 April 2024. In her statement JH says she remembers KR asking the claimant why this job (the car battery policy form) was still on her wip as the customer had collected the car. JH claims that she saw the claimant arguing with AC about the reallocation of costs. Later on, JH says she saw the claimant writing something and that it looked like the claimant was copying a signature and she believed that the claimant had completed the policy form. JH also says that the claimant asked KR to complete a policy document a couple of days before she witnessed the argument.

47. The claimant disputes JH's statement and the reason for this is, he says, because he was investigating her husband, she had an unhealthy relationship with AR, her career wasn't progressing and it was JH that had in fact forged the policy form. The respondent has not provided any evidence that it investigated any of the claimant's allegations and the claimant has not provided any evidence to substantiate his claims.

48. AR interviewed KR on 4 April 2024. KR states in her investigation statement that when she returned to work in January a policy form had not been completed and the claimant asked her to give him a blank form and that "*he was going to sort it*". KR gave the claimant the form and believes that the claimant completed the form in mid February. The claimant disputes KR's statement, and his explanation as to why she would fabricate allegations against him was that KR's frame of mind was unknown since coming back to work in January.

49. On 5 April AR spoke to the claimant, who confirmed that he had spoken to PM about the extended warranty in December. AR told the claimant that PM had already left the business at this time. AR states that the claimant told her that the policy form was with the paperwork and KR normally organises the signing of the form. The claimant admitted that he dated the policy form. AR's case is that the claimant told her he had found the policy form in the workshop pre filled in and signed, all he had done was date it with the date that he thought that he had the conversion with PM about it which was in December. AR did not consider the claimant's explanation reasonable.

50. Dave Johnson (**"DJ**"), senior service advisor, was interviewed on 11 April and confirmed that he did not complete the policy form.

51. AR then mentioned her findings at the next general managers meeting completed a confidential investigation report dated 11 April 2024 recommending that it should proceed to disciplinary action.

Misconduct Allegation

52. The allegation of misconduct in AR's report is that in mid February 2024 the claimant had falsified another manager's signature on a used car policy form dated 8 December 2023.

Disciplinary Meeting

53. On the 16 April 2024, AR wrote to the claimant inviting him to a disciplinary meeting, to be held on the same day, although both parties agree this was an error and the meeting was to happen the next day. It was delivered by hand to the claimant.

54. The invite letter states the misconduct allegation, the statements from the interviews that AR conducted are included, along with the report, AR's statement, job card and sample signatures. The claimant is warned that dismissal is a potential outcome and that he can bring someone to accompany him to the meeting.

55. Initially the disciplinary hearing was scheduled for the day after the invitation was sent, however it was later postponed due to the claimant's illness.

56. The claimant was absent from work due to stress from the 16 – 30 April 2024 and the meeting eventually took place on 30 April 2024. The claimant

attended with DJ, the notetaker was Sam Green and the chair was DB. The meeting lasted for one hour and nineteen minutes.

At the disciplinary meeting the claimant states his case to be:

No benefit

57. There was marginal benefit to him for signing the form. The amount involved would only make the bonus pot marginally better. The claimant tells DB that he wouldn't risk everything over £1,300 he says "*it makes no sense*".." *my life is invested in Vertu to risk it over £1,300".*

Pre determined decision/conspiracy

58. The claimant suggested to DB that the decision was pre-determined and all part of a conspiracy to remove him because:

59. (i) he had been taken off the group chat. DB explained that this was because DB had closed the whole group to everyone. I prefer the respondent's evidence on this point;

60. (ii) he had heard a comment that DB had said the claimant "*was too big for his boots, he needs taking down a peg or two"* . The claimant tells DB that AR had told him about this. DB told the claimant that it was AR who had said too big for boots and she said this because AR thought the claimant's performance and how he conducted himself had changed after October 2023 when the claimant had resigned but was then persuaded to stay with the respondent. AR admits in her witness statement that she said the claimant "*was too big for his boots*" but denies she ever said "*he needs taking down a peg or two"* .DB denies saying "*he needs taking down a peg or two"* in his witness statement. The claimant presented no evidence to support his believe that this was said. I find that the comment "*he needs taking down a peg or two* "was not made as the claimant provided no evidence to substantiate it.

61. (iii) the decision to dismiss had been made before the disciplinary meeting took place. The evidence that the claimant offered in support of this was a screen shot of a statement from DJ. DJ no longer works for the respondent. The statement is neither dated or signed and DJ was not called as a witness by the claimant and could not be cross examined by the respondent. The claimant told me that the reason for this was because DJ is unwell, the claimant could not reimburse him for attending to be a witness and DJ's son still works for the respondent.

62. DB confirmed that there was no pre-determined decision, the point of the disciplinary meeting was for the claimant to give his version of events, the letter of concern was not relevant to this meeting, the meeting was about the policy document. DB states that the claimant initially confirmed that he had only dated the policy form.

63. (iv) The decision had been made on presumed belief rather than reasonable belief. In his oral evidence to the Tribunal DB told me that he had never used the word presumed. The claimant did not call DJ as a witness to support this allegation. On that basis I accept the respondent's evidence on this point.

64. (v)The claimant suggested to DB that JH may have signed the policy form. As to why JH do this the claimant's case is that he thinks that JH is upset because she was denied progression at work and that her relationship with AR is unprofessional.

65. The claimant told DB that he had previously challenged JH and thinks she has objected to this and he gives two examples: (i) JH husband taking a car; and (ii) JH's husband leaving a vehicle in a dangerous state and the claimant had to investigate it.

66. The claimant challenged JH's statement in the following ways: (i)there was a partition so JH could not have seen him tracing anything as she claims; (ii) he was on holiday when JH claims to have had a conversion with him about the customer collecting the car; (iii) JH was not scared and had greeted him "*alright dickhead";* (iv) He would never had said *"guess what I have done"* or smirked, as this was not his normal behaviour; (v) the two heated arguments referenced in the statement were not about the car in the policy form but other costs. A discussion about old policy forms and paperwork were misinterpreted.

67. (vi) AR's approach to the claimant has changed in recent months for the worse. The claimant's case is that this is because he was critical of the respondent in the reasons for his resignation and he believes that AR passed this on and made him a target.

68. The claimant also mentioned the taking the car at Christmas and the reasons why he did it. DB confirmed that this was not being considered at this meeting because the disciplinary was about the signature on the policy form. The claimant felt that the taking of the car incident was relevant because it shows how the relationship between him and AR had changed.

69. (vii) The claimant wholeheartedly believed that there was a conspiracy to get rid of him. He also felt aggrieved about what he perceived to be slights against him, by way of example ,the claimant mentioned that he won a holiday to Dubai as a prize for colleague of the year but wasn't able to go on the date the trip was booked for and only received one thousand pounds as a replacement prize after resigning.

70. The claimant's case of predetermined decision and conspiracy to dismiss was not supported by any credible evidence and the claimant admitted this under cross examination. I do not find that there was any such premeditated decision or conspiracy.

Policy Form

71. The claimants' case during the meeting is that he has not signed the policy form, he assumed it was PM, he does not know what anyone else's signature looks like and he has not signed the form on anyone's else's behalf. He thought he had had a conversation with PM about it in December but had recently spoken to PM but PM could not remember anything about it.

72. The claimant relied on the writing on the bottom of the job card that states sales are paying and says KR wrote this. Dan Harrison who had worked on the car told him that sales were going to pay for it. He had chased KR via email on 18 March on what was happening re the policy costs.

73. He was the person who discovered that the work on the car was not cover by either the warranty or extended warranty and that the costs should have been allocated to service not sales, rather than AR.

74. Initially the claimant admits to DB that that he found the policy form completed, signed and undated and he only inserted the date, but later in the meeting the claimant admits to DB that he had completed the details of the work done in the policy form as well. He tells DB that he had never denied previously completing the form which he says he had done for KR and he had asked her to get the signature. He tells DB that he completed the form in December shortly after the car had arrived at the workshop and he had discussed this with KR in December before she went off sick.

75. The claimant admits that he did not mention previously to AR that he had completed the job details when asked by her to confirm that he had found the form completed and just added the date. The claimant tells DB that he did not remember filling in the details. He tells DB that it is KR's job to get the forms signed, not his.

76. The claimant told DB about the following personal circumstances in mitigation :he felt his whole career was with the respondent, unblemished disciplinary record, one sick day in eleven years, previously won Colleague of the Year, was off with stress, recently lost his grandparent's and attended funeral the previous day.

77. DB adjourned the meeting for nine minutes to make a decision. DB told the claimant that he was being dismissed without notice for fraud.

78. The notes of the meeting were sent to the claimant via email on 6 May 2024.

79. The dismissal letter was dated 3 May 2024 and stated that the reason for dismissal was (i) breach of Vertu values or policies; (ii) fraud- including deliberate falsification of records; and (iii) misrepresentation of fact – lying. Specifically, that the claimant in mid-February 2024 he falsified another manager's signature on a used car policy form dated 8 December 2023.

Appeal

80. The respondent wrote to the claimant advising him of his right of appeal on 17 May 2024. The claimant chose not to bring an appeal about his dismissal.

81. The claimant contacted ACAS on 30 April 2024 and the early conciliation certificate is dated 7 May 2024. He filed an ET1 on 23 May 2024.

82. The respondent filed their ET3 on 12 July 2024 denying all allegations.

Conclusions

83. Both the claimant and respondent made final submissions which I carefully considered. In deciding the issues, the I have not set out all the evidence heard at the hearing but have selected those details which are most important to the decisions. Just because something is not mentioned does not mean that the I did not consider it.

84. The claimant was dismissed by the respondent without notice on 30 April 2024.The respondent says the potentially fair reason is conduct.

85. The claimant was adamant when giving his evidence that the reason for his dismissal was that there was a conspiracy to get rid of him and the decision was pre determined. He believed that he had a target on his back after he raised his concerns about the culture of the Divisional Team, when he resigned in October 2023. He says that he mentioned these to AR and believes that she shared these within the business. The claimant provided no convincing evidence to support this allegation and accepted that it was speculation under cross examination from the respondent.

86. The respondent's case is that the respondent could have accepted the claimant's resignation in October 2023 but they persuaded the claimant to stay on, so there was no need for there to be any conspiracy. As I have seen no evidence to support any conspiracy theory by the claimant, I did not accept the claimant's case on this point.

87. The respondent's Colleague Handbook clearly includes examples of misconduct and gross misconduct. The gross misconduct was breach of Vertu value or policies, Fraud – including deliberate falsification of records and Misrepresentation of fact – lying and fraud- including deliberate falsification of records. I find that the matters which led to the claimant's dismissal for gross misconduct were centred around his conduct relating to the completion of a used car policy form dated 8 December 2024.

88. I conclude that the reason for dismissal was conduct. The dismissal of an employee for a reason which "*relates to the conduct of the employee*" is potentially fair, section 98(2)(b), ERA.

Did the respondent genuinely believe that the claimant was guilty of the misconduct

89. AR when she had concluded her investigation states in her witness statement that she "..*had reasonable belief that John had forged a signature on the policy form in order to disingenuously allocate costs to the sales department, to the benefit of his department, the service department, from which he would personally benefit*".

90. DB , as dismissing officer told me, when I asked him whether he had a genuine belief that the claimant was guilty of the alleged misconduct, he believed he had. DB became concerned at the inconsistency of the claimant's evidence re who had completed the form, who had dated the form and who had signed the form.

91. DB in his witness statement cited the lack of consistency in the claimant's story as causing him to conclude that the claimant had been dishonest, and he reasonably believed that the claimant had signed the form. Dishonesty was sufficient grounds for dismissal in DB's mind. The signature was not the claimant's, and the only conclusion states DB was that the claimant had forged another manager's signature. "*The amount of money in discussion is irrelevant : the underlying issue is the fundamental dishonesty which John demonstrated in the*

meeting" and "*If you lie and are deceitful then dismissal is appropriate and reasonable."* DB also believed the two witnesses " *I also considered two witnesses also believed that they had seen John sign the policy form*" DB acknowledges that he had found the claimant to be disrespectful to AR and that he discussed this with AR, but it did not influence his decision to dismiss the claimant.

92. The claimant when giving his evidence to me and under cross examination did not seem to understand how the manner in which he answered his questions eg not explaining as soon as he could that he had completed the form himself was not helpful to his case.

93. For the purposes of establishing the reason for dismissal, the employer only needs to have a genuine belief in the employee's misconduct; the belief does not have to be correct or justified (*Trust Houses Forte Leisure Ltd v Aquilar [1976] IRLR 251 and Maintenance Co Ltd v Dormer [1982] IRLR 491*).

94. In considering all of the the above I find that the respondent did have a genuine belief that the claimant was guilty of the alleged misconduct at the time of dismissal.

Was that belief based on reasonable grounds ?

95. I must consider what information was available to the respondent at the time of dismissal. The respondent had the investigation report completed by the claimant's line manager AR. The report included statements from AR, KR, JH and the claimant together with the evidence she looked at, sample signatures, the job paperwork and policy form.

96. AR had sample signatures from all the managers and concluded that that the signature on the policy form "*strongly resembles RU, our former Used Car Sales Manager who left the business in September 2023*" and concluded that someone must have fraudulently signed the policy form.

97. The respondent's case is that the claimant had told them that PM had signed the policy form. The respondent had checked its records and PM had left the business at the end of October 2023,so could not have signed the document.

98. The respondent had two witnesses: KR in her statement says that she believed that the policy form was completed in mid February by the claimant; and JH in her statement says that she saw the claimant trace something and smirk when she asked what he was doing. JH believed that the claimant was signing somebody's signature.

99. The respondent found no other manager that owned up to signing the policy form, the claimant's version of events as told to the respondent was not confirmed by the two witnesses accounts of KR and JH and believed that the claimant has forged RU's signature on the policy form.

100. I find taking all of the above into consideration that the respondent's belief was based on reasonable grounds.

Had the respondent carried out such an investigation into the matter as was

reasonable in all the circumstances ?

101. I considered the respondent's size and administrative resources. I took into account the fact that this is a large organisation albeit that it operates a number of franchisee car dealerships across the UK. It had a dedicated HR department and HR support was provided by the parent company HR business partner who visited the Nelson site approximately once a month. AR told me that she has access to HR advice, via the phone and that the respondent has a colleague handbook which included a disciplinary procedure. The HR team had provided a note taker for the disciplinary meeting.

102. Concerns had initially been raised by AR re the signature on the policy form and timing of the submission of the form, "*a delay in processing a sales policy form of over three months was not normal*." AR says "*This was strange and something just didn't feel right*"

103. AR then commenced her own investigation, she looked up the date that PM, (the person who the claimant says had told her had signed the policy form) and discovered that he was not at the Nelson site on 8 December. AR contacted PM and asked for a copy of his signature on 27 March. She collected sample signatures and discovered that the signature that most strongly resembled the one on the policy form is that of RU. RU had left the respondents employment in September 2023.

104. AR interviewed and took statements from DJ, KR and JH. AR says JH told her that the claimant had not actioned the policy form for some months, she saw the claimant filling in a used car policy form and appeared to copy a signature which "*she called him out on*".

105. AR states in her witness statement that she took into account that the claimant would benefit from the costs being allocated to sales rather than services via the bonus. AR did not find that the claimant offered a reasonable explanation as to who had signed the policy form or how it came to be filled in prior to it being presented to AR in March for authorisation.

106. The first time the claimant told me that he knew of the investigation into the policy form was on the 5 April 2024 when AR spoke to him. He did not see the statements of KR and JH until he received the disciplinary letter on 16 April 2024.

107. The respondent's Colleague Handbook states that "*There is no legal requirement to be formally invited to an investigation meeting, nor is there an entitlement to be represented at such meetings*."

108. The ACAS Code on carrying out an investigations at work states: "*before an investigation with someone you should let them know in writing for example in an email or letter, explain the reason for the meeting, confirm the date, time and location, tell them if they have the right to be accompanied and how to do this and give them reasonable notice*" …." *In an investigation meeting there is no legal right to be accompanied but it is good practice for employers to allow it*"

109. I saw no evidence that the claimant had been invited to an investigation meeting by AR. I find that for such a serious allegation the claimant was ambushed by AR.

110. The ACAS Code goes on to state that the person investigating should do their best to "*not try to prove guilt, but get evidence from both sides*"

111. The claimant has consistently denied the allegations, yet there was little evidence on what further enquiries the respondent made where there were disputed facts between what KR and JH said in their statements versus the claimant's statement. The only evidence of further investigations after interviewing the claimant was DJ statement confirming he didn't complete the policy form.

112. One element of the claimant's case is that his relationship with AR started to deteriorate after he had resigned in October 2023. AR states that she thought the claimant's performance and conduct had deteriorated in the same time frame. In the claimant's witness statement, the claimant refers to a time when he was called to the board room without notice where DB, MD and AR were in attendance. He felt that AR and others were looking for fault. The claimant raises his concerns with AR about her absence from the workshop. DB in his witness statement refers to this meeting and says that he thought the claimant was disrespectful towards AR.

113. I did not find any merit in the claimant's submission that the witness statements had been altered to his detriment. I do not accept that there was any collusion. The respondent's case is this is because there were draft versions and signed, dated versions. I accept the respondent's explanation because, this is a standard practice, to draft a witness statement which is then finalised before signing and dating. The versions submitted to the Tribunal are the signed and dated versions.

114. In conclusion, I do find that elements of the investigation fell outside the band of reasonableness and in such circumstances a reasonable employer would have conducted further enquires for evidence to collaborate facts where there was a dispute of fact between the KR, JH and the claimant, issued a formal invitation and arranged for such investigation to be carried out by an independent manager, rather than the claimant's line manager.

Did the respondent carry out a fair procedure?

Timing

115. The respondent's policy states that a minimum of 48 hours notice will be given of a disciplinary meeting.I would comment that the initial invitation to disciplinary hearing did schedule the hearing for the following day, which I conclude is insufficient time to prepare for a hearing and find a representative, however given that the hearing was then delayed. I conclude that any flaw in this regard was remedied.

Disciplinary meeting

116. The invite letter to the disciplinary meeting clearly sets out the misconduct allegation, encloses the evidence gathered during the investigation, the right to be accompanied and warns that dismissal may be the outcome from the meeting.

117. DB says in his witness statement that he had experience in dealing with disciplinary meetings. He had wanted the meeting to be in person, was comfortable

with how the investigation had been conducted, and was of the view that the case against the claimant was not concrete because no one had witnessed the claimant actually signing the form. However, this is contradicted at paragraph 21 when he states" *I also considered that two witnesses also believed that they had seen John sign the policy form*". JH's statement states that "*it looked like he was trying to trace something*" KR's statement states that she believed the claimant had signed it because the claimant told her that he had signed it. Neither JH or KR stated that they did actually see the claimant sign the policy form.

118. The Colleague Handbook states "*if you or your companion raises issues which need further investigation or new evidence arises, the hearing will be adjourned until that further investigation has been concluded*"

119. The claimant had consistently denied the misconduct allegation and disputed much of the witness evidence. By way of example, the claimant raised the issue of motive with DB, in that he was investigating JH's husband, the missing email of 18 March, he had discovered that it should go to service not AR, he could not have had a conversation with JH on 4 January when the customer collected the car as he was on holiday until 8 January, mentions another colleague DH, and mentions the close friendship between AR and JH. The claimant told DB that he thought JH had signed the policy form, but this is not investigated or explored by DB.

120. The respondent provided no evidence of any further investigation of any of these issues raised by the claimant. I find that a reasonable employer would have adjourned the disciplinary meeting to investigate all disputed matters raised by the claimant. There was no further investigation or interviews with other colleagues to ascertain if there was any credibility in the motive allegation, such as the fact that the claimant could not have had the conversation with JH on the day she suggested as he was on holiday.

121. DB was directly aware of how the claimant had behaved towards AR and considered the claimant had been disrespectful to AR and aware that AR had made the comment "*too big for his boots*". I find that a reasonable employer would have done more to ensure that the investigation and disciplinary meeting were conducted by independent persons, considering the seriousness of the misconduct., The disciplinary hearing did not rectify any of the defects from the investigation.

Appeal Meeting

122. Normally a Tribunal would consider whether the defects in the procedure were cured by the appeal. The respondent had a formal appeal procedure that was set out in the Colleague Handbook. The claimant was offered an appeal but declined to attend an appeal hearing thus denying the respondent the opportunity to remedy any defects in the procedure or carry out any further enquires. The claimant told me that he had been told by ACAS that if he attended the appeal then there was a possibility that the claimant may be reinstated. The claimant did not want this. The claimant did not seek any legal advice or do any research on the internet about appeals. The claimant put the respondent in an impossible position in that it wasn't given the opportunity to rectify any mistakes, which was unfair on the respondent.

123. I acknowledge the respondent's case that the claimant did not explicitly

state that the investigation was unfair, but that does not mean that the investigation was fair.

124. Taking all of the above into consideration I find that the procedure was unfair.

Was it within the reasonable band of responses to dismiss the claimant rather than impose some other disciplinary sanction ?

125. In considering whether dismissal fell within the range of reasonable responses, I must not place myself into the employer's shoes and substitute my view. This is a question of what fell within the range of reasonable responses.

126. The respondent's Colleague Handbook lists many examples of gross misconduct and states that summary dismissal may be considered the appropriate penalty for gross misconduct. The allegation of misconduct against the claimant fell within the respondent's examples of gross misconduct.

127. I looked at what the respondent had considered by way of mitigation and alternatives to summary dismissal. When I asked DB whether he had given consideration to the claimant's long service he told me that he did not consider it. The reason for this was because the finding of fraud was so serious as to justify summary dismissal. As mentioned in the respondent's written submissions I acknowledge that long service does not save an employee from dismissal (*Harrow London Borough v Cunningham [1996] IRLR 256*), however I find that a reasonable employer would have taken into account some or all of the following: this was a one off incident, likelihood of repeating the misconduct negligible gain to the claimant, the claimant was suffering with stress from work, was grieving the loss of his grandparent, his clean disciplinary record and long service.

128. The respondent presented no evidence that it considered a lesser penalty, such as dismissal with notice or final written warning. I find that a reasonable employer would have considered alternatives to summary dismissal for a one-off incident, with negligible gain to a long serving employee. For the reasons given above I find that the summary dismissal of the claimant was not within the band of reasonableness.

Finally, did the respondent act reasonably or unreasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant ?

129. I conclude that the respondent genuinely believed the employee to be guilty of gross misconduct, and that it had reasonable grounds for that belief, but I find it had not carried out as thorough an investigation as was reasonable in the circumstances for the reasons set out above, the procedure was unfair and alternatives to dismissal were not considered . Taking all of this into consideration I find that the claimant was unfairly dismissed and the claimant's claim succeeds.

Remedy

130. The respondent made submissions in relation to Polkey, contributory conduct and a reduction for failure by the claimant to follow the ACAS Code of practice.

Polkey

131. I find that had the respondent carried out a fair procedure and a fair investigation had been conducted it is not possible to say whether the claimant would have been fairly dismissed, because the defects were so substantial as to make Polkey irrelevant.

Claimant's contributory conduct

132. The legislation at Section 122(2) ERA says that I need to take into account conduct on the part of the claimant and decide whether it would be just and equitable to reduce the basic award to any extent. I find that there was conduct on the part of the claimant which means a reduction is appropriate.

133. I find that there is substantial contributory conduct in that there was culpable and blameworthy conduct. The claimant did not behave in a way that assisted his case. He was not as transparent as he could have been in explaining how the policy form had come to be completed. He only answered the specific question he was asked and then later relies on that for not giving a fuller explanation earlier. This resulted in both AR and DB forming the view that there was an inconsistency in the claimant's answers and that he was therefore lying. This is what led to DB making the decision to dismiss.

134. The claimant was instead preoccupied with a conspiracy theory and a premediated decision that his bosses wanted to get rid of him. However, the claimant chose not to call any witnesses or obtain signed and dated witness statement to support either of these theories.

135. When faced with evidence that was difficult to dispute the claimant refused to believe that he might be wrong, by way of example the date that AR had been presented with the policy form. This conduct makes his evidence less credible.

136. The claimant did not seem to appreciate the serious position he was in. He did not do any research or seek legal advice, even though he had been made aware that summary dismissal was a potential outcome following the disciplinary. He says that he did not know he could call witness, because he had never been in this situation before, but he did not do anything to find out what he could do.

137. Taking all of the above in account I consider there should be a reduction for contributory conduct of 75% and that it is just and equitable to make this reduction.

Failure by the claimant to comply with the ACAS Code

138. The claimant reused to attend an appeal. I find that his refusal to engage with the respondent's appeal process denied the respondent the opportunity to put right any of the defects in the disciplinary process. I also find that this was an unreasonable failure to comply with ACAS Code. The claimant's case is that he would have been reinstated at an appeal, and he did not want that. As to what reduction is appropriate to apply, the maximum I can award is 25%.Taking

everything into account I think it is just and equitable to reduce any compensatory award by 25%.

Remedy Hearing

139. The parties should be able to calculate the amount of compensation due on the basis of my findings on remedy. If the parties are content that the case can be resolved they are required to apply to the Tribunal within 14 days of this decision being sent to them to confirm whether the matter is settled or if a remedies hearing is required.

Approved by:

Employment Judge Dennehy

26 October 2025

JUDGMENT SENT TO THE PARTIES ON 5 December 2025

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

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/