



EMPLOYMENT TRIBUNALS

Claimant: Mr J Mastromarino
Respondent: Capita Business Services Limited
Heard at: Nottingham by Cloud Video Platform
On: 25 and 26 June 2025
Before: Employment Judge M Butler (sitting alone)

Representation

Claimant: In person
Respondent: Mr O Mills, Counsel

JUDGMENT having been sent to the parties on 2 July 2025 and written reasons having been requested by Order of the Employment Appeal Tribunal, the following reasons are provided:

JUDGMENT

The claim of unfair dismissal is not well-founded and is dismissed.

REASONS

Background

1. These written reasons are provided pursuant to a request from the Employment Appeal Tribunal as oral reasons were given at the conclusion of the Hearing.
2. By a Claim Form presented on 3 May 2023, following a period of early conciliation between 24 and 26 April 2023, the Claimant brought claims of unfair dismissal and discrimination on the grounds of race and disability. The discrimination claims were struck out in December 2023 for failure to provide further and better particulars pursuant to an Unless Order made by the Tribunal.
3. The Claimant was dismissed for gross misconduct on 20 March 2023. The alleged misconduct involved wrongly coding the position of a vulnerable young

woman in relation to her TV licence, leaving his personal 'phone number on an official card he gave to her and describing her to his line manager as "*skinny with no boobs*".

4. The Respondent maintains the decision to dismiss without notice for gross misconduct fell within the range of responses of a reasonable employer.

The evidence

5. There was an agreed bundle of 590 pages. I heard oral evidence from the Claimant and, for the Respondent, from Mr McCready, the investigating officer, Miss Jeffers, the dismissing officer and Mr Latham, the appeal officer.

The issues

6. Put simply, the issue in this case is whether the Respondent believed in the Claimant's misconduct justifying summary dismissal as being the response of a reasonable employer.

The facts

7. In relation to the issue before, I find the following facts on the balance of probabilities:
 - 7.1 The Claimant commenced employment with the Respondent as a TV Licensing Visiting Officer on 20 April 2017. His job involved visiting customers' homes to investigate whether they required a TV licence.
 - 7.2 He completed training on dealing with vulnerable customers on 29 October 2022 and 5 March 2023.
 - 7.3 On 6 March 2023, he visited a customer's house where a young woman was in residence. When the Claimant enquired as to her age, she said she was 22 but a man purporting to be a father subsequently said she was 14 years old.
 - 7.4 The Claimant turned on the TV in the house and noted it had Freeview channels. There was a BT box connected. The Claimant made no further enquiries or inspection of the TV to determine whether it could show "live broadcasts" which is the trigger for requiring a licence. The young lady said she never watched TV. The Claimant reported this as a "code C" which means no licence is required.
 - 7.5 The Claimant noted the customer seemed to be vulnerable and asked her whether she thought about suicide and she said she had done so. He talked to her about Taco Bell, which was a favourite fast-food restaurant of his. He left his official card on which he wrote his personal 'phone number.
 - 7.6 On 7 March 2023, the Claimant reported to Mr McCready that a man

purporting to be the customer's father had called him and said the customer is only 14, the Claimant had asked her out on a date and gave her his personal 'phone number, called him a pervert and threatened to report him to the police. When reporting this to Mr McCready, the Claimant described the customer as "*skinny with no boobs*".

- 7.7 On 9 March 2023, the Claimant attended an investigation meeting with Mr McCready accompanied by his union representative. He was then suspended on full pay.
- 7.8 He was then invited to a disciplinary hearing chaired by Miss Jeffers on 16 March 2023, again accompanied by his union representative. He was notified in advance of the following allegations:
- (i) inappropriate communications with a customer,
 - (ii) deliberate falsification of a visit outcome result,
 - (iii) failure to follow the Respondent's instructions in dealing with vulnerable customers, and
 - (iv) a serious act or omission that led to a loss of trust and confidence in him.
- 7.9 During the disciplinary hearing, the Claimant made a series of admissions wherein he admitted giving his personal 'phone number to a young female customer, accepted it was inappropriate, and he knew this was so, and admitted referring to the customer as "*skinny with no boobs*", which he also accepted was inappropriate. The Claimant also admitted to inputting the wrong code following his visit. Following the disciplinary hearing, the Claimant was sent a copy of the notes of that hearing.
- 7.10 Miss Jeffers decided the Claimant was guilty of gross misconduct and telephoned the Claimant to advise him of this decision on 20 March 2023. She confirmed this in writing by letter dated 22 March 2023.
- 7.11 The Claimant appealed and Mr Latham chaired the appeal hearing on 5 April 2023. On 17 April 2023, Mr Latham sent an outcome letter to the Claimant confirming his appeal was not upheld.

Submissions

8. The Claimant gave oral submissions and Mr Mills supplemented his skeleton argument by making further oral submissions. I do not rehearse the submissions of the parties here but confirm I took full account of those submissions in reaching my conclusions.

The law

9. Section 98 of the Employment Rights Act 1996 provides that it is for an employer

to show the principal reason for the dismissal and that, as in this case, it relates to the employee's conduct. It further provides that determining whether the dismissal was fair or unfair depends on whether in the circumstances the employer acted reasonably in treating the conduct as a sufficient reason for dismissal and this must be determined in accordance with equity and the substantial merits of the case.

Conclusions

10. The leading case of ***British Home Stores Ltd v Burchell [1980] ICR 303*** determined that in order to be fair, the Respondent must establish that they have a genuine belief in the misconduct alleged, sustain that belief after a reasonable investigation and that dismissal fell within the range of responses of a reasonable employer. Following the decision in ***Sainsburys Supermarkets Ltd v Hitt [2002] EWCA Civ 1588***, the investigation into the alleged misconduct need only be reasonable.
11. In many respects, in this case the Claimant has been the author of his own misfortune. In this hearing, he has attempted to dispute some of the notes of the various meetings he attended. I counted 16 times when challenged on his admissions recorded in those notes he said, in effect, he could not recall saying them. Further, he could not recall on one occasion whether his union representative accompanied him, but he was clearly accompanied by that representative at every meeting.
12. He said in his oral evidence and his submissions that he acted on the advice of his union representative, that the representative did not seem interested in helping him and he felt coerced by that representative.
13. In his submissions, Mr Mills records the clear admissions made by the Claimant in the disciplinary hearing. They include:

"I just feel I made a mistake in getting my first aid training involved with a customer which I shouldn't have done. I probably shouldn't have gotten involved in her private or personal life. I shouldn't have left my number on a calling card. I just shouldn't have left it. I screwed up, I admit that. I should not have left my number, I should have coded it as a 9 and done additional notes."
14. It is now too late for the Claimant to try to change his evidence. This is because, although his subsequent explanations may possibly have had some merit if he had made them on receipt of the notes, trying to change evidence two years later does not work. Put very simply, the admissions made at the time would have given Miss Jeffers the mindset of accepting that the genuine belief in the misconduct continued after the investigation and into the disciplinary hearing itself, thus satisfying the first two limbs of the ***Birchell*** case.
15. Was summary dismissal within the range of responses of a reasonable employer? I remind myself that the standard is that of the reasonable employer and not my own personal thoughts on the alleged misconduct. I consider that a reasonable employer would have dismissed the Claimant without notice. His job

involved visiting customers in their homes. Involving himself, actually or potentially, in the private life of a vulnerable customer is in itself a very serious act which could have had implications for both the Claimant and in turn the Respondent's reputation. In acting as he did, it was reasonable for the Respondent to conclude he had crossed a line in a way which destroyed the trust and confidence the Respondent was entitled to have in him.

16. Accordingly, for the above reasons, I find the claim to be not well-founded and it is dismissed.

Approved by:

Employment Judge M Butler

Dated: 16 December 2025

Sent to the parties on

...17 December 2025.....

For the Employment Tribunal

.....