



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Mark Hehir

**Respondent:** Metroline Limited

**Heard at:** Watford Employment Tribunal

**On:** 10 -11 November 2025

(In person)

**Before:** Employment Judge Harrison

## **Appearances:**

For the claimant: Miss King, Counsel

For the respondent: Miss Charalambous, Counsel

# RESERVED JUDGMENT

1. The complaint of unfair dismissal is not well-founded. The respondent did not unfairly dismiss the claimant and the claim is dismissed.

# REASONS

## Introduction

1. The claimant Mr Hehir was employed as a bus driver by the Respondent, Metroline, from 4 July 2022 to 15 July 2024, when he was dismissed by the respondent without notice.

## Claims and issues

2. This is a claim of unfair dismissal brought by the claimant within the meaning of Part X of the Employment Rights Act 1996 (**ERA**).
3. The respondent contests the claim. It says that the claimant was fairly dismissed for misconduct relating to events that occurred on 25 June 2024 when the claimant was at work. The respondent says that it was entitled to terminate the claimant's employment without notice because of his gross misconduct.
4. As the file I saw before the hearing did not show that the claimant was represented, I had prepared a short list of issues based on the pleadings. In fact the claimant was represented and at the start of the first day, I had a discussion with Counsel about issues in relation to the unfair dismissal claim and any remedy. In relation to liability the issues were as follows:
  - a. Was the claimant dismissed?
  - b. 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.
  - c. If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal 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; and
    - iv. dismissal was within the range of reasonable responses.
5. Counsel for the claimant stated that the dismissal was unfair and made submissions on this relating to each of the issues I had to decide. Counsel for the respondent on the other hand maintained that it had met all the of the tests and acted reasonably in dismissing the claimant.

6. On remedy, the parties asked that liability be taken first together with evidence on the adjustments dealt with in the pleadings, i.e. no difference (Polkey) and contribution. Counsel confirmed that no claim for an ACAS adjustment was being asserted. I agreed to adopt this approach and expressed my expectation that remedy could be dealt with on day 2 should I find for the claimant.

Procedure, documents and evidence

7. I heard the claim in person on 10 and 11 November 2025 at the Watford Employment Tribunal.
8. There were no preliminary applications.
9. The respondent had filed a 215-page bundle. References to page numbers in this decision are to page numbers in that bundle. There were two CCTV videos which I shall refer to as the **Short CCTV** and the **Long CCTV** or together the **CCTV**. This is from the onboard CCTV of the bus driven by the claimant on 25 June 2024. It has no sound.
10. The claimant gave evidence on his own behalf, and the respondent called 3 witnesses (together the **Disciplinary and Appeal Managers**) as follows:
  - a. Ms Alina Gioroc, Operations Manager who heard the disciplinary case and dismissed the claimant
  - b. Mrs Alison Dubarry, Garage Manager Brentford and Lampton Garages, one of the two managers on the panel that heard the claimant's appeal
  - c. Mr Stephen Harris, Chief Operating Officer, who undertook a Director's Review.The claimant and each witness provided a witness statement and gave evidence on oath.
11. Before starting to hear evidence, I took an adjournment to read the witness statements and to arrange for the CCTV to be played.
12. During the evidence, I was taken to many excerpts from the CCTV by both parties. I was reminded on several occasions by both Counsel that whilst they were showing me the CCTV my role was not to decide what had happened on the day, however the claimant asserted that the CCTV had been interpreted incorrectly by the respondent in reaching its conclusions whilst the respondent submitted the opposite. I was asked to watch CCTV extracts in order to consider these submissions.
13. After the evidence had been heard Counsel made closing submissions orally. Miss Charalambous also produced a written closing note.

## Facts

14. On the basis of the evidence I heard and was taken to, I find the following facts
15. It is not in dispute that on Tuesday, 25 June 2024 the claimant was driving a bus, when he pulled into a bus stop. A man (who I shall refer to as **3P**) pushed past a female passenger (the **Female Passenger**) who was at the front of the bus by the driver's cab where the claimant was located, pulled a necklace from the Female Passenger's neck and ran off the bus and away up the road. The claimant ran after 3P.
16. Events unfolded over about another 30 minutes. The initial events where the claimant recovered the necklace took place off camera. It is not in dispute that the claimant, having recovered the necklace, returned towards the bus and that this is shown on the CCTV. He gave the necklace to the Female Passenger. 3P then returned towards the bus. The description of, and explanation for, the following events is in dispute, but it is not in dispute that the claimant hit the 3P such that 3P was knocked to the floor and was unconscious. The claimant moved 3P to the pavement where he kept the 3P until the arrival of the police.
17. Finally, it is not in dispute that the police were called, and the claimant was later arrested. The police subsequently notified the claimant that they would take no further action and sent the claimant a record of their review of the incident. Taken together I shall refer to the events I have summarised in paragraphs 15-17 as the **Incident**.
18. Until the events to which this hearing relates, the claimant had no disciplinary issues during his employment.
19. On 26 June 2024, the day after the Incident, the respondent took an incident report from the claimant (p81) and included this in an official report (p81-83) and suspended him from duty (p84) requesting him to attend an investigation into the Incident in relation to alleged misconduct. This was recorded in writing, in a letter signed by the claimant on the same date (pp84-86).
20. An investigation was carried out by Harbhajan Nagra, an Operations Manager with the respondent on 27 June 2024. The claimant attended the investigation meeting with a trade union representative (**TU Rep**). During the hearing the parties watched the CCTV. At the end of the investigation meeting Mr Nagra adjourned then reconvened to say he had decided to refer the case to a formal disciplinary hearing. A letter dated 27 June 2024 and addressed to the claimant shows this was signed by the claimant to confirm receipt (pp101-103). The letter attached the investigation hearing notes (pp87-100) which included stills from the CCTV. This letter set out the disciplinary allegations the claimant faced. The

letter also stated that if the hearing manager decided that the conduct amounted to gross misconduct, then dismissal with or without notice was possible.

21. The claimant attended the disciplinary hearing on Monday, 1 July 2024 with a TU Rep. The disciplinary was heard by Ms Gioroc the claimant's line manager, and took place over three days, 1 July, 5 July, 9 July and 15 July 2024. Notes were taken of the meeting (pp104-122).

22. At the start of the hearing Ms Gioroc restated the 3 allegations which were:

- a. Bringing the company into disrepute by physically assaulting a passenger on route 206, while driving bus no DE1631 on 25<sup>th</sup> June 1024 (the **Disrepute Allegation**);
- b. Physically assaulting and injuring a passenger on route 206 while driving bus no DE1631 on 25<sup>th</sup> June 2024 (the **Assault Allegation**); and
- c. Failed to protect his and his passengers safety by leaving the bus unattended with engine running and chasing an assailant on route 206, while driving a bus DE1631 on 25<sup>th</sup> June 2024 (the **Safety Allegation**).

23. The respondent has a written disciplinary policy (pp27-42) under which the disciplinary procedure was conducted. The policy outlines the procedure to be followed and it was followed. At paragraph 2.14 it lists matters it says will generally constitute misconduct or in severe cases gross misconduct, then at paragraph 2.15 those matters which the company views as gross misconduct. Both lists are non-exhaustive. Paragraph 2.17 explains the sorts of factors that determine the seriousness with which a breach of discipline is to be regarded.

24. 'Breach of health & safety regulations' appears in the misconduct list and 'Failure to comply with, or breach of health and safety policies, procedures or regulations affecting the safety of other staff, the public, customers or Company equipment' is in the gross misconduct list. I accept the evidence of Mr Harris given to me that breaches of safety procedures can be either misconduct or gross misconduct depending on their seriousness.

25. The claimant requested an adjournment at the start of the disciplinary hearing. He referred to two reasons for this request relating to (i) documents he was waiting for from the police and (ii) feeling stressed and 'not ready for this at the moment, I haven't slept or eaten'. Ms Gioroc took a short break to consider whether to adjourn the hearing, but she refused. She gave the claimant an hour and said that she would continue in the claimant's absence if he did not attend then.

26. Ms Gioroc said that there was a difference between the criminal investigation and a company disciplinary and that the latter did not have to wait for completion of the former. At paragraph 42 of her statement Ms Gioroc said she felt that stress was a normal emotion during a disciplinary and that concluding matters swiftly would help the claimant. Under cross examination, Ms Gioroc accepted that this was not recorded in the notes of the meeting and absent this reference in an otherwise detailed record, I find it unlikely that Ms Gioroc explained this at the time.

27. About half an hour into the reconvened hearing, the claimant again asked for an adjournment until the following Friday, 5 July, and referred to physical pain in his neck and hand. He had not mentioned this pain previously. Ms Gioroc agreed to adjourn the hearing. At the start of the reconvened hearing, the claimant confirmed that he was ready to continue with the meeting.

28. When the parties reconvened, the claimant told Ms Gioroc that the police case against him was closed. He provided Ms Gioroc with documents sent from the police to his solicitor (pp. 135-144). These included an email from PC Robert Morgan (p135) which incorporated a case review note from DS Waddington (p136). DS Waddington's case review summarised his interpretation of the events shown by the CCTV including a finding that the 3P 'throws the first punch and misses, in immediate response Mr Hehir hits him once...the male appears to be unconscious before he hits the floor'. The police review did not consider the CCTV after this point. DS Waddington went on to conclude that the claimant had used force which was proportionate and necessary in the circumstances in the defence of himself and the Female Passenger. In his covering email PC Morgan was positive in his comments towards the claimant in respect of his actions during the Incident.

29. The hearing continued by reviewing the CCTV and with Ms Gioroc asking further questions. In answering the disciplinary allegations, the claimant said that he had acted instinctively in running after 3P; he had left the handbrake on and bus doors open; he did not know if the engine was running and when asked if the bus would be accessible he said he did not know if he had closed the cab door, however he said that the engine would automatically cut out after 3 minutes; that after recovering the necklace and returning to the bus the Female Passenger was scared when 3P also returned; that 3P was not trying to shake hands with the 3P or the claimant on his return but was a threat; that (as determined by the police) 3P threw the first punch and was the aggressor. The claimant explained that he had defended himself and the Female Passenger and that during the period after he had moved the 3P to the pavement he held him on the ground as he was frightened that 3P would do something if he got to his feet. The claimant said he had held the 3P in a forward leaning position to stop him from choking on his blood; he said he didn't use force and that 3P

had kicked him in the head. The claimant said that the public view of his actions was that he was a hero. In front of the Tribunal, when rewatching the CCTV, it was put to Ms Gioroc and Mrs Dubarry that the driver's cab door shut behind the claimant automatically. They did not accept this. Before me, the claimant did say this was what the CCTV showed.

30. The claimant relied on his own recollections, the police review, and his interpretation of the CCTV in support of his explanation of the Incident. Considerable time was spent during this Tribunal hearing looking at whether, when he returned to the bus the 3P sought to shake hands and apologise to the Female Passenger and the claimant, and who threw the first punch. The claimant's position on the apology at the disciplinary hearing and in his evidence to the Tribunal was that the 3P did not try to apologise, however this contradicts the version of events he described on the day after the Incident (p81). As to who threw the first punch, the claimant was consistent in saying that this was the 3P and that he acted in self-defence.
31. Ms Gioroc adjourned for just under 2 hours at the end of the hearing then told the claimant that she would be adjourning further considering the amount of evidence to go through. Ms Gioroc said she would reconvene the hearing on Tuesday 9 July. The claimant was not present on the 9<sup>th</sup> though his TU Rep attended and said that the claimant was in hospital. Ms Gioroc called the claimant who explained that he was waiting for a procedure on his hand which had been injured during the Incident. The claimant suffered a serious injury to his hand during the Incident, which resulted in his arm being in a sling for 6 weeks. When the sling was removed, the claimant had regular physiotherapy and several hospital visits until November 2024.
32. Ms Gioroc adjourned again and wrote to the claimant on 11 July inviting him to a further meeting on 15 July when she said she would deliver her summary and conclusion. The claimant did not reply to this letter, nor did he attend the meeting on 15 July.
33. Ms Gioroc gave her decision by letter (p129-131) attaching her meeting notes (pp 104-122) and a 4-page summary of her findings (pp123-126) which took the 3 allegations in turn. She found the allegations of gross misconduct were each made out and she told the claimant that he would be summarily dismissed.
34. Ms Gioroc summarised the evidence and her findings by reference to each of the allegations separately, not in the round. In doing so, she dealt with the CCTV, police evidence, documents she had considered relevant to the allegations (e.g. training records and records of previous safety incidents involving the claimant), and the case put by the claimant and his TU Rep.

35. In her summary Ms Gioroc explained (p123) her interpretation of the CCTV and why she did not agree with the police's interpretation of events, (paragraph 3 'I have taken into consideration....' onwards p124).

36. In respect of the Assault Allegation Ms Gioroc summarised the events chronologically, referring to what she had seen on the contemporaneous CCTV evidence. Within her summary she made the following findings:

- a. That the Claimant left his bus after the theft of a necklace;
- b. That the CCTV did not capture the recovery of the necklace however the claimant accepted that there had been dragging and pulling and that he retained the man by his shoulder;
- c. That 3P returned towards the bus with the clear intention to apologise and shake hands with the Female Passenger, but that it was understandable that the Female Passenger did not want to shake his hand;
- d. That when the 3P intended to shake hands with the claimant, the claimant pushed the 3P away rather than stepping away himself and that the 3P had not been aggressive until this point;
- e. That the 3P came towards the claimant after this with a closed fist but did not punch the claimant;
- f. That the claimant pushed the 3P away again then punched him such that the 3P fell to the ground unconscious and that this punch was intentional and unnecessary;
- g. That the claimant then dragged and restrained the 3P for almost half an hour which she said she found to be an excessive use of force and disproportionate;
- h. That she appreciated the claimant's good intentions to retrieve the stolen necklace and act in defence of the Female Passenger, and that some of the passengers also appreciated this; and
- i. That the claimant could have avoided the confrontation if he had not taken matters into his own hands and had instead used the emergency procedure to call the police.

37. Most of these points remained in dispute between the parties throughout, however point (a) was agreed and, in cross examination, the claimant accepted that he had touched 3P first when he put a hand on his shoulder and stopped him when he chased after him to recover the necklace. Ms Gioroc concluded that the Assault Allegation was found. She explained why she disagreed with the police review and why she found that the claimant was guilty of physical assault as opposed to acting in self-defence.

38. In respect of the Safety Allegation Ms Gioroc drew attention to the fact that the claimant failed to act in line with various company procedures to deal with a

safety incident on which he had been trained when he joined the respondent for example staying in his cab and calling code red (pp77-78) a procedure which he knew about as he had used it previously (pp79-80).

39. In respect of the Disrepute Allegation Ms Gioroc referred to the claimant having been in uniform, by a Metroline bus involved in a physical confrontation, punching a man, and forcing down an injured man to the pavement where he restrained him over a considerable period. She said that this was seen by the passengers on the claimant's bus, and by pedestrians and vehicles passing by. She said that the claimant had been taken away and arrested by the police and that the incident would have been avoided had the claimant followed company procedures on incidents of this sort.
40. Ms Gioroc concluded that each allegation was found, then decided that the claimant should be dismissed without notice for gross misconduct. Based on the evidence available I find the claimant's explanation of his actions during the Incident was properly considered by Ms Gioroc before she reached her decisions on whether there was misconduct and what sanction to apply. In her letter, she explained the appeal process.
41. The claimant appealed against his dismissal under the respondent's disciplinary procedure (p132). In this appeal notice the claimant described his appeal as being on the grounds that the action taken was too severe as the evidence was that he was the person who was attacked. The claimant was invited to an appeal hearing on 30 July 2024. This was heard by an appeal panel comprising two Garage Managers, Alison Dubarry and Fola Olawo-Jerome (**the Appeal Panel**). The Appeal Panel read the disciplinary case file before the hearing. Notes were kept of the meeting (pp 145-152).
42. At the start of the appeal hearing, the claimant's TU Rep said on the claimant's behalf that the decision to dismiss was too harsh and that the disciplinary failed to address the evidence from the police. The claimant accepted the Safety Allegation as he acknowledged that he left the driver's cab, but he disputed the Disrepute and Assault Allegations as he said that, as the police found, the 3P had attacked him and his conduct was in self-defence. The Appeal Panel did not reach its conclusion on 30 July. During an adjournment they reviewed the CCTV and the evidence in order to consider their decision.
43. The appeal decision was given to the claimant on 1 August 2024 on a Teams Meeting. It is recorded in the meeting notes (pp50-152) and in a letter (pp153-154). The appeal upheld the original decision both as to culpability and as to the decision to dismiss summarily. In reaching their decision, the Appeal Panel specifically declined to accept the claimant's case that he acted in self-defence. Further, they explained where their interpretation of the CCTV differed from that

of the police (bottom p150/top of p151). I find that the Appeal Panel took into consideration the claimant's version of events, his motivations for what happened during the Incident and his view that he acted in self-defence and was not the instigator of aggression. Each of these was considered before the Appeal Panel reached its conclusions on culpability and sanction.

44. Paragraph 3.17 (p33) of the respondent's disciplinary procedure allows a full-time recognised TU Rep to request that a Director or the CEO of the respondent conduct a further, paper-based review of the case if it is believed by the union that there has been a serious breach in the process. On 14 August 2024, Laura Johnson of Unite the Union asked for a review of the decisions made and a reduction in the sanctions applied (p156).
45. The review was undertaken by Nick Harris, Chief Operating Officer, who wrote to Ms Johnson with his decision on 30 August (pp158-159). Mr Harris reviewed the disciplinary file and the CCTV. He declined to change the decision of the disciplinary and appeal managers. Mr Harris did not meet with the claimant in conducting his review, but he was not required to. His obligation was to consider the matter and provide a written response. Mr Harris in cross examination said that his view was that most citizens, without seeing the CCTV or having the full information would have sympathy with the claimant as a good citizen, but that, on reviewing the CCTV and full information this view changed. I find that this was Mr Harris's genuinely held view and that although Mr Harris could have sent the case for a rehearing, and he has previously reinstated employees after disciplinary cases, here he did not decide to reengage (p159).
46. In relation to evidence given before me, each of the respondent's witnesses accepted in cross examination that they did not know of any evidence that there was negative coverage in the press or social media about the Incident. Ms Gioroc accepted that she did not know if the Incident had been recorded but said this didn't mean it hadn't been. She told me that the CCTV showed actions viewed by passersby that were not appropriate whilst at work. Mrs Dubarry and Mr Harris both said that people could be seen on CCTV walking past and viewing the Incident.
47. This is a large employer with significant resources. It has a formal disciplinary procedure. It trains its managers in how to use that policy and these managers were appropriately trained. It also has a training programme for new joiners in which the claimant participated and during which he was trained in the classroom and on the road. He was provided with the respondent's handbook (p43) and the TfL Big Red Book which provide guidance to drivers. He signed to confirm that he had undertaken relevant safety training (pp77-78).

48. Section 94 ERA gives employees the right not to be unfairly dismissed. The claimant must show that he was dismissed by the respondent under section 95. In this case, the respondent admits that it dismissed the claimant.
49. Section 98 of ERA deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider whether the respondent acted fairly or unfairly in dismissing for that reason.
50. Section 98(4) then deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.
51. In misconduct dismissals, there is well-established guidance on fairness within section 98(4) in the decision in ***Burchell 1978 IRLR 379***. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. The guidance is summarised in the issues listed at paragraph 4 above. In all aspects of the case, including the investigation, the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer ***Sainsburys Supermarkets v Hitt [2003] IRLR 23***.
52. Miss King referred me to ***Pennine Care NHS Foundation Trust v Mr M Mundangepfupfu, UKEAT/0109/15***. I deal with the points she raised in my conclusions.

### Conclusions

53. In this case, it is not in dispute that the respondent dismissed the claimant because it believed he was guilty of misconduct. Conduct is a potentially fair reason for dismissal under section 98(2). The respondent has satisfied the requirements of section 98(2).
54. Miss Charalambous provided me with written and oral submissions, and Miss King with oral submissions on fairness within section 98(4) which I have considered and refer to where necessary in reaching my conclusions.

Reason for dismissal

55. I find the reason for dismissal was misconduct i.e. the respondent's belief that the claimant brought the respondent into disrepute, committed a physical assault on the 3P and breached company safety policies.

Reasonable belief

56. As to the Disrepute Allegation, Miss King says there can be no genuine belief that this allegation is found as there is no evidence of actual as opposed to potential disrepute. She points to the concessions I have recorded in paragraph 46 above as determinative. Miss Charalambous on the other hand draws to my attention evidence of disrepute upon which, she says, the Disciplinary and Appeal Managers were reasonably entitled to form a genuine belief that there was disrepute. Miss Giordic in her summary reasons (p125 first two paragraphs) and dismissal letter (p130 paragraph starting 'Having a fight...') describes what she relies on in forming a belief as to disrepute being caused to the respondent. She maintained this position in cross examination. Mrs Dubarry (penultimate paragraph p153) and in cross examination was similarly clear about her belief as was Mr Hill in cross examination. Based on all the evidence, I conclude that a reasonable manager could form a genuine belief that disrepute had been suffered, and that these managers did form a genuine and reasonable belief that the claimant brought the respondent into disrepute.

57. As to the Assault Allegation Miss King submitted that if the respondent's managers believed that the claimant was guilty of this allegation, that belief would be based on a faulty interpretation of the CCTV. deal with that at paragraph 61 and 62 below. For the reasons I give I also conclude that the Disciplinary and Appeal Managers did hold a genuine belief that the Assault Allegation was found.

58. Taking account of all the evidence available to me, I find that the Disciplinary and Appeal Managers held a genuine belief that the claimant was guilty of each of the 3 misconduct allegations he faced. Their evidence was clear about why they reached these conclusions.

Reasonable grounds

59. Miss King submitted that the respondent's managers did not have reasonable grounds on which to form a genuine belief that the claimant was guilty of misconduct.

60. In relation to the Disrepute Allegation the claimant submitted that as there was no evidence of damage to the respondent, there could be no reasonable

grounds to form a genuine belief in that there was disrepute. As set out at paragraph 56 I have found that the respondent did have a genuine belief that the claimant's actions caused disrepute, and I have referred there to the grounds on which the Disciplinary and Appeal Managers reached that belief. Consequently, I find that there were reasonable grounds on which to form a genuine belief.

61. Miss King submitted that the respondent reached a faulty interpretation of the CCTV. Miss Charalambous puts the respondent's position on this in her closing note, especially paragraph 7. As I have noted, whilst both parties reminded me that it is not my role to decide what happened, they spent a considerable time reviewing the CCTV and cross examining on what it showed. The claimant submitted that I should find that the respondent's interpretation of the CCTV was flawed, the respondent that it was correct.
62. My conclusion is that the findings that the Disciplinary and Appeal Managers reached about what the CCTV showed were not faulty and were a reasonable interpretation of the CCTV evidence. Despite extensive cross examination about the CCTV taken on a frame-by-frame basis Miss Giordic maintained her description of what she saw on the CCTV, as reflected in her disciplinary findings, and her explanation as summarised at paragraph 36 was cogent and reasonable. Mrs Dubarry spoke to the CCTV in answering cross examination and again her answers were consistent with her appeal decision and were reasonable.
63. Miss King also submitted that the respondent failed to consider evidence that was for, rather than against, the claimant, such that the process used by the respondent would be unfair under the decision in Pennine. She referred to the claimant's own recollection of events, pointing out that of all those involved in the disciplinary procedure, only the claimant was at the Incident; she further referred to the evidence of the police who supported the claimant's interpretation of the CCTV that he acted in self-defence. Having reviewed the evidence I do not find that the Disciplinary and Appeal Managers failed to take account of evidence showing the claimant in a positive light. The dismissal summary and letter and the appeal decision and letter all deal with the claimant's perspective: it was taken into account. The decision makers did not accept the claimant's position (even though it was supported by the police) that the claimant acted in self-defence, and they explain why not. I find that those explanations were reasonable.
64. Miss King also submitted that the appeal and review managers were biased towards and gave undue weight to the (she submitted faulty) findings of Ms Gioroc, and that consequently, the grounds on which they relied were tainted. In making this submission Miss King also asserted that the descriptions Ms

Gioroc gave to the stills photos of the CCTV used in the disciplinary were not neutral and that looking at the disciplinary file before watching the CCTV led the subsequent appeal and review managers to be biased by its contents. I have already concluded that Ms Gioroc's findings were reasonable. I conclude that looking at the disciplinary stage file before the CCTV as part of their considerations did not serve to create a bias against the claimant in the appeal and review managers. As I have found in the facts recited above, they considered all the evidence themselves. The Appeal Panel went into some detail to explain their own decision to uphold the findings of gross misconduct and why they upheld the decision to apply summary dismissal.

65. I conclude that the genuine belief of the Disciplinary and Appeal Managers that the claimant was guilty of gross misconduct was held on reasonable grounds and was within the band of reasonable responses.

#### Fair and reasonable investigation

66. Miss King submits that the respondent did not carry out a reasonable investigation, in particular that police evidence was misinterpreted or ignored. I have dealt with why I do not conclude that this is right. More generally the respondent took evidence from the claimant on the day after the Incident, had CCTV of most of the Incident and a police report. It relied on training records and its published procedures to consider the case. It also held meetings with the claimant and his TU Reps where the claimant's position was put in detail over several hours on different days. Within the range of reasonable responses available to it, the procedure adopted by the respondent was fair.

67. Specifically in relation to the Disrepute Allegation Miss King says that there was a complete lack of appreciation that there was no evidence of actual harm in the form of social media (or other) coverage of the Incident. As I have already discussed at paragraph 56, I conclude that this is not determinative of that part of the case. In relation to the Assault Allegation she says that the respondent refused to see the 3P as a threat, spending longer on his exculpation than on hearing the claimant's view. Having considered the evidence carefully I do not agree that this was how the case was heard. The claimant's view was considered and the respondent's views on why it did not accept the claimant's reasons for the Incident explained at each stage.

68. Miss King also submitted that its failure to consider the Safety Allegation as misconduct rather than gross misconduct meant that the respondent's investigation was flawed. I conclude that this submission is not supported by the facts. It is for the employer, with knowledge of its business, to make the judgment on whether the behaviour constitutes misconduct and, if so, how severe that misconduct is. I have reminded myself to be careful not to fall into the

trap of substitution. This employer's policy allows safety issues to be treated as either misconduct or gross misconduct depending on their severity and in this case, the respondent treated the allegations as gross misconduct and found them to be gross misconduct with reasons why given at the dismissal stage. The Appeal Panel considered this point and, in their letter (p153), explain their conclusion that the correct decision was summary dismissal in response to gross misconduct. Mr Harris saw no reason to interfere with these decisions.

69. Further criticisms were made about procedural fairness. First, it was submitted that the disciplinary hearing was unfair as the claimant was not initially permitted an adjournment during the disciplinary hearing. It is correct that initially Ms Gioroc refused an adjournment, however, after the claimant explained about the pain in his hand the adjournment was allowed and upon reconvening the claimant said he was ready to continue. In these circumstances I find that the claimant was fully able to put his case before any decision was made and that the initial refusal to adjourn did not render the process unfair. It was also submitted that, in line with Pennine, this was not an assault as the claimant acted throughout in self-defence. I conclude that this case is distinguishable from Pennine. Here the Disciplinary and Appeal Managers considered whether there had been an assault or whether the claimant had only acted in self-defence. They concluded that there was an assault and that self-defence was not an answer to the allegation the claimant faced.

70. I find that the respondent carried out a fair and reasonable investigation that fell within the band of reasonable responses.

Was the decision to dismiss a fair sanction?

71. In this case the respondent's witnesses were clear first, that they considered that all 3 allegations against the claimant were misconduct, and secondly that they considered each of them severe enough to be gross misconduct. The way that they approached this was distinguishable from Pennine where the allegations were considered in the round.

72. Each of the Disciplinary and Appeal Managers considered the claimant's explanation of his actions and all the submissions he and his TU Reps put forward in support of his defence to the allegations. They noted personal empathy or understanding of his behaviour. They noted his previous good disciplinary record. However, their view was that the breaches of company regulations were severe enough to warrant summary dismissal. Safety, business reputation and physical assault are all matters of significant importance to this employer. The decision to dismiss summarily, to uphold that

decision on appeal, and not to reengage during the review were all within the range of reasonable responses available.

73. The purpose of the investigation was to establish whether there were reasonable grounds for the belief that the Disciplinary and Appeal Managers had formed, from the circumstances that arose during the Incident, that there had been misconduct on the claimant's part, to which a reasonable response was a decision to dismiss him. I find that the respondent met these tests and that the dismissal was, therefore, fair.

Remedy

74. Given my decision on liability, I have not dealt with points raised by the parties on adjustments to a remedy award i.e. no difference and contribution. My decision on liability also means that the remedy hearing listed for 23 January 2026 is not required and it will be vacated.

**Approved by Employment Judge Harrison**

1 December 2025

JUDGMENT SENT TO THE PARTIES ON

18 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](http://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/>