EMPLOYMENT TRIBUNALS

Claimant: **Mr S Ahmed**

Respondent: **London Chamber of Commerce and Industry**

Heard at: **London Central** **On:** **6-7 November 2025**

Before: **Employment Judge Leonard-Johnston**

Representation
Claimant: In person
Respondent: Mr Lucas Nacif, of counsel

JUDGMENT having been sent to the parties on 7 November 2025, and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Background

1. This is a claim for unfair dismissal filed on 20 November 2024. The claimant was employed by the respondent from 15 July 2013 as an Export Documentation Assistant, until he was summarily dismissed without notice or pay in lieu of notice on 11 September 2024. The respondent relies on the potentially fair reason of gross misconduct. Unparticularised claims for unpaid wages were also included in the pleadings but were not pursued by the claimant.

Preliminary matters

2. In his claim form the claimant raised alleged breaches of the UK GDPR by the respondent. The Tribunal does not have jurisdiction to determine breaches of UK GDPR or to award any compensation in relation to such breaches. The claimant has been told this on numerous occasions but nevertheless continued to raise this before the Employment Tribunal. The claimant has also filed a complaint with the Information Commissioner's Office separately to these proceedings. The claimant was informed that this Tribunal would not be considering his claims that the respondent was in breach of UK GDPR because it does not have jurisdiction to do so.

3. In an application to amend his claim dated 28 October 2025 the claimant sought to change his claim to include discrimination. This was not particularised nor were any reasons given for the application being made so late in the day. The application was accompanied by a witness statement repeating allegations about the ET3 being filed late (see paragraph 5). The claimant raised the matter of a discrimination claim at the outset of the hearing and I considered it as an application to amend. I refused the application. I considered the nature of the claim being an entirely new matter, completely unparticularised and not capable of being responded to. The claimant did not clarify how he claimed he had been discriminated against. I considered that allowing the amendment would derail this hearing and cause significant delay, considering that the application was made only a week before the final hearing. The claimant had many previous opportunities to include a discrimination claim; indeed in his ET1 he specifically mentioned that he was not bringing a discrimination claim. The balance of hardship clearly fell on the respondent and it was in accordance with the overriding objective and the interests of justice to refuse the application to amend his claim to include a discrimination claim. Further, I considered the manner in which the application was being made at this point to be vexatious.

4. The claimant also made an application for a privacy order under Rule 49 of the Rules. His basis for making the application was his concern in relation to GDPR breaches and an allegation to events occurring in Pakistan which he did not clarify. I refused the application on the basis that he had not met the evidential burden for showing that the principle of open justice should be departed from, as he had not shown that any harm would be caused by the hearing proceeding in open as usual.

5. Finally, the claimant raised as a preliminary matter his concern that the ET3 had been filed late. This is a matter that had been raised repeatedly by the claimant and dealt with by the Tribunal. The claimant was informed on 13 January 2025 by Employment Judge Nash that the response had been accepted by the Tribunal because it had been received on 19 December 2025. The Tribunal confirmed this again on 5 February 2025. On 10 February 2025 Employment Judge Heydon wrote to the claimant confirming that the Tribunal had seen several pieces of correspondence from the claimant regarding this matter and informed the claimant that he could not continue to ignore the Tribunal's responses and write repeatedly asking for further investigation as it as waste of the Tribunal's time. He was told that the response was received in time and that was a final decision. When this was raised once more at the hearing, I reassured the claimant again that it had been investigated and confirmed the response was received in time. The fact that the claimant raised this again at the hearing shows that the claimant had ignored the directions of the Tribunal and was behaving in an unreasonable manner in relation to his belief that the ET3 had not been filed on time.

Evidence

6. I had before me a bundle of some 1.5 thousand pages and a supplementary bundle, witness statements, opening statements by both parties. I've not been taken to every page of the bundle and confirmed to the parties at the outset that I would only consider documents referred to

me. I have considered all the docs referred to me even if not specifically mentioned below.

List of issues

7. The list of issues was agreed with the parties at the outset and explained to the claimant. The issues to be determined were as follows.
    a. What was the principal reason for the claimant's dismissal and was it a potentially fair reason under sections 98(1) and (2) of the Employment Rights Act 1996? The respondent asserted that it was a reason relating to the claimant's conduct.
    b. whether the respondent genuinely believed the claimant had committed misconduct, based on the information they had at the time.
    c. whether the respondent acted reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that conduct as a sufficient reason to dismiss the claimant? Including:
        i. whether there were reasonable grounds for that belief
        ii. whether at the time the belief was formed the respondent had carried out a reasonable investigation, and the respondent otherwise acted in a procedurally fair manner;
        iii. whether dismissal was within the range of reasonable responses.

8. I also sought evidence and submissions on the following issues relating to remedy:
    a. If the dismissal was procedurally unfair, whether the claimant would have been dismissed if a fair procedure had been carried out.
    b. Whether the claimant contributed by his conduct to his dismissal.

Legal framework

9. Section 94 of the Employment Rights Act 1996 ("ERA") confers on employees the right not to be unfairly dismissed. In this case the respondent admits that it dismissed the claimant (within section 95(1)(a) of the 1996 Act) on 11 September 2024. Section 98 of the 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, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

10. Section 98(4) 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.

11. In misconduct dismissals, there is well-established guidance for Tribunals on fairness within section 98(4) in the decisions in **Burchell 1978 IRLR**

379 and Post Office v Foley 2000 IRLR 827.

12. The Tribunal must decide:

    a. whether the employer had a genuine belief in the employee's guilt.
    b. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation.
    c. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances.

13. 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 (**Iceland Frozen Foods Limited v Jones 1982 IRLR 439, Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23,** and **London Ambulance Service NHS Trust v Small 2009 IRLR 563**).

Relevant findings of fact

14. In relation to the oral evidence, I heard from the dismissing officer Neil Stanfield and the investigating officer Meena Aiyer. Both those witnesses I found to be credible and reliable, as their evidence was consistent with documentary evidence.

15. I found the claimant's oral evidence to be less reliable and I have placed some, but less weight on his evidence because of that. I considered his evidence to be obstructive and argumentative. At points the claimant refused to answer questions because he did not want to, despite being warned that negative inference could be made if he refused to answer questions. He was evasive, often answering a different question to the one he was asked. He was fixated on the respondent's perceived lack of action in relation to his emails of 19 February 2024 and 6 March 2024 (to do with "the punctuality disciplinary proceedings") and despite having asked questions of the witness and being asked to move on he ignored that direction and continued to raise the issue. He was repeatedly asked to avoid giving evidence when asking questions and struggled to comply with directions that he did not agree with. I did not perceive this to be necessarily deliberately obstructive behaviour, rather the claimant lacks self-awareness and an awareness of his impact on others and adopts an overly rigid, subjective view of events.

16. I have placed significant weight on the documentary evidence before me in making the following factual findings.

17. On 15 July 2013 the claimant commenced employment at the respondent full time as an Export Documentation Assistant.

18. On 17 August 2022 the claimant disclosed to the respondent that in addition to his full-time hours at the respondent he was working part time

as a delivery driver during the evenings and at weekends.

19. On 5 October 2022 the claimant was issued a formal written warning [856] due to a high absence rate and lack of punctuality and requiring the claimant to improve his punctuality over the next 3 months.

20. The claimant was subject to a performance improvement plan in 2022-2023 [882].

21. On 19 June 2023 an email was sent to the claimant stating that there remained punctuality performance issues [928].

22. On 22 June 2023 a disciplinary meeting was held with the claimant, regarding a customer complaint about the claimant's behaviour [930]. The outcome was a letter of concern dated 27 June 2023 [147].

23. On 12 July 2023 [951] the respondent raised further punctuality concerns with the claimant and stated that this was a final verbal warning. The claimant was put on notice that any further punctuality concerns between then and 26 July 2023 and the respondent would move towards disciplinary action.

24. Between 17 August 2023 and 22 November 2023 complaints were made about the claimant over his behaviour with other colleagues [956], as well as performance, punctuality and attendance.

25. On 12 December 2023 the claimant was invited to a disciplinary hearing on 14 December 2023 regarding his punctuality [149]. The outcome was sent on 3 January 2024 [150] and the claimant was issued with a written warning for misconduct remaining active for 6 months.

26. On 30 January 2024 the claimant was invited to a second disciplinary meeting relating to his punctuality [157] ("the punctuality disciplinary proceedings"). The respondent raised three dates in particular in relation to this second disciplinary meeting as follows:

    a. "24th of January: You were due to start work at 09:00am but were late starting work from home due to being late back from the Gym.
    b. 25th of January: You were asked by Karen to arrive at the Blairs office at 08:30am and did not arrive until 08:46am.
    c. 30th of January: You were due to arrive at 09:00am as per the rota, you arrived at 09:45am."

27. The second disciplinary hearing was heard on 8 February 2024. On 12 February 2024 the allegations were upheld [173] and the claimant was issued with a final written warning ("the final written warning") for misconduct, remaining live for 12 months. The claimant was given an appeal.

28. The claimant appealed the final written warning on 19 February 2024. His appeal letter raised concerns about the three dates mentioned in the disciplinary hearing. The appeal hearing originally arranged for 29 February 2024 was rearranged for 7 March 2024. On 12 March 2024 the appeal was upheld by Neil Stanfield [198].

29. In June 2024 new complaints were made by colleagues about the claimant's behaviour including inappropriate behaviour toward female colleagues. Meena Aiyer was the investigating officer and she carried out investigatory meetings with the complainants and other members of his team between 1 and 10 July, including the claimant on 9 July 2024.

30. Ms Aiyer produced an investigation report on 11 July 2024 and recommended disciplinary action be taken against the claimant [254]. The investigation report found that the claimant had made inappropriate comments. In relation to a colleague Ms KP, he had made a comment about her attire being old-fashioned. In relation to a colleague Ms ESC, he had whistled at her and made inappropriate comments about her bracelets and tattoos. In addition, he had sent an inappropriate WhatsApp message to his line manager Ms ND about her attire that made her feel objectified.

31. The report also found the claimant had engaged in disrespectful and undermining behaviour and general disrespect and miscommunication [256]. It found that he often did not follow instructions, raised his voice and often made a colleague feel belittled and bullied, including by sending a team email suggesting that she wasn't competent to conduct training. The investigation report's conclusion was

> "*The investigation reveals a pattern of inappropriate comments, disrespectful and undermining behaviour, particularly towards female colleagues, and a general lack of professionalism by Sirshar Ahmed. These actions have contributed to a hostile work environment and have affected the morale and productivity of the team. Consider appropriate disciplinary action in accordance with company policies to address the misconduct and prevent future occurrences."*

32. The claimant was invited to a disciplinary hearing scheduled for 23 July 2024, to be chaired by Neil Stanfield.

33. On 23 July 2024 the claimant said that he was unfit to work due to work-related stress and the disciplinary hearing was postponed [281]. On 22 August 2024 the claimant provided another fit note from his doctor saying he was not fit to work until 23 September 2025 due to a stress-related problem [286]. On 23 August 2024 Ms Aiyer emailed the claimant inviting him to suggest adjustments to enable him to attend the disciplinary meeting. The claimant responded on the same date stating that he would attend a disciplinary once he had fully recovered [289]. In that email he requested the disciplinary be revoked because it "was based on previously incorrect disciplinary." By this, he was referring to the previous final written warning dated 12 February 2024 relating to punctuality, which he believed was incorrect.

34. On 4 September 2024 Ms Aiyer emailed the claimant stating that the respondent had become aware that the claimant had been working as a delivery driver whilst receiving sick pay from the respondent. Ms Aiyer asked for an explanation and advised the claimant that dishonest actions would result in disciplinary action [288]. The respondent had come to know about this because one of the claimant's colleagues had bumped into him

on the street in Balham and the claimant had told her he was doing delivery driving work. This was not denied by the claimant.

35. On 6 September 2024 the claimant admitted in an email that he had been working as a delivery driver whilst signed off sick [287]. He stated that he was working fewer than 20 hours as an Uber delivery driver and that this work was better for his mental health. He again raised issues in relation to the substance of the final written warning and what he considered was an incorrect disciplinary (punctuality issues being incorrect recorded on MS teams).

36. On 11 September 2024 Mr Stanfield wrote to the claimant informing him that he had been summarily dismissed for gross misconduct. The reasons given were [134]:

> "In your email reply to Meena dated 6 September 2024, you admitted that you have been working as a food delivery driver which I note is while you are claiming full salary as sick pay from the Company. You have provided no explanation or justification why you can work as a delivery driver (the status of your engagement – self-employed or employee is irrelevant) but neither work for the Company or attend the disciplinary hearing scheduled with you. You are clearly able to undertake normal day-to-day activities in your role delivering food (which would require you to take instructions, turning up at a specified time, locate addresses and deliver orders to the correct address, no doubt under time pressure and repeat this for each shift). I consider your conduct an act of gross misconduct as you have dishonestly claimed and received Company sick pay.

37. The claimant appealed the dismissal on 11 September 2024 and on 22 September 2024 asked to postpone the appeal for one month. On 9 October 2024 the claimant asked the respondent to further postpone the appeal until late November 2024. The appeal process was never finalised because the claimant did not engage with it.

38. On 20 November 2024 the claimant submitted this claim.

Conclusions

Issue 1: What was the principal reason for the claimant's dismissal and was it a potentially fair reason under sections 98(1) and (2) of the Employment Rights Act 1996?

39. The respondent asserted that the reason for the dismissal was a reason relating to the claimant's conduct. The Claimant's termination letter of 11 September 2024 [134] stated that the reason for dismissal was, in summary;

    a. On 18 July 2024 the claimant was invited to a disciplinary meeting to address allegations of inappropriate comments and text message, being disrespectful and insubordinate towards supervisors and a manager.
    b. The claimant submitted a doctor's note on 23 July 2024 stating that

he was unfit for work due to “a stress related problem.” And a further note on 22 August 2024 saying he was not fit for work until 23 September 2024. The claimant declined to attend the disciplinary hearing whilst on sick leave despite efforts being made by the respondent.

c. On 4 September MA wrote to the Claimant stating that he had been observed working as a delivery driver whilst off sick. On 6 September 2024 the claimant admitted he had been working approximately up to 20 hours a week as a delivery driver whilst claiming full salary sick pay. The respondent considered this to be an act of gross misconduct because he was dishonestly claiming and receiving sick pay. This was explicitly mentioned in the claimant’s contract as a category of gross misconduct.

40. The key paragraph from the dismissal letter is:

> “*I have considered whether an alternative to dismissal was appropriate, and taken account of your length of service, but given the seriousness of the allegations including for example, you falsely claiming sick pay from the Company, your conduct towards your colleagues, the contractual terms set out above, and the fact you have an active final written warning dated 12 February 2024 (effective for twelve months), then I do not find that any other sanction would be appropriate. The evidence of your misconduct and the gravity of it is such that it justifies your dismissal with immediate effect*.”

41. Taking into account the evidence before me I am satisfied that the Respondent has discharged the burden of establishing that the claimant’s conduct was the reason for the dismissal. There was no real challenge to this and the evidence was consistent with the claimant’s conduct being the reason for dismissal.

42. I note here that the claimant raised his final written warning (for punctuality issues) on numerous occasions throughout these proceedings, as he considered that the dismissal was based on a previous incorrect disciplinary. I note that the previous written warning was not the reason for the dismissal. However, it was taken into account by the respondent when deciding whether to dismiss, when deciding whether a lesser sanction would be appropriate. Counsel for the respondent clarified that the reason for the dismissal was the belief that the claimant was falsely claiming sick pay, in the context of the disciplinary proceedings for harassment and insubordination. I will therefore consider the punctuality disciplinary not as forming the reason for dismissal, but as part of the relevant background information as to whether in all the circumstances the dismissal was reasonable.

Issue 2: Did the respondent have a genuine belief based on reasonable grounds that the claimant was guilty of the misconduct alleged.

43. Having heard the evidence from the dismissing and investigating officers, I am satisfied that they had a genuine belief that the claimant had both acted inappropriately in the workplace (known in this hearing as the harassment allegations, but including insubordination), but then then by

working in another job whilst claiming sick pay.

44. I find that that belief was reasonable in respect of both allegations because:

    a) In relation to falsely claiming sick pay, the claimant had admitted on 6 September 2024 that he was working whilst on sick leave. That alone is sufficient to amount to reasonable grounds to believe that he was guilty of misconduct, in the context of clear contractual and policy terms to that effect.
    b) In relation to the harassment allegations, an investigation report 10 July 2024 outlined the following evidence. There were 5 allegations, including one WhatsApp message, two comments and then allegations of being disrespectful and insubordinate to supervisors.
        a. The claimant admitted to sending the WhatsApp message to a colleague commenting on her clothing. There was a dispute about whether it was or was not inappropriate which I will come to, but there was evidence that the recipient of the message felt sick to her stomach, and the fact that she had reported it indicates the impact it had on her.
        b. Witnesses had confirmed two of the statements made to two women. The claimant admitted making a comment to a colleague about how she dressed, but again, disputed that it was inappropriate. The respondent had evidence that that person felt targeted for her age because of the comment.
        c. The claimant appeared to admit that a colleague raised a concern with him about whistling but appeared to deny actually whistling, and in those circumstances, with the event corroborated by another witness, it was reasonable for R to conclude that an inappropriate incident had occurred.
        d. The report found that the claimant had engaged in disrespectful and undermining behaviour towards two female colleagues who were his superior. Both reported feeling belittled, bullied, and humiliated. The claimant denied being inappropriate. The report found that the claimant's general disrespect and confrontational behaviour was particularly problematic towards female supervisors.

        e. The outcome of the investigation report was summarised as:

            "*The investigation reveals a pattern of inappropriate comments, disrespectful and undermining behaviour, particularly towards female colleagues, and a general lack of professionalism by Sirshar Ahmed. These actions have contributed to a hostile work environment and have affected the morale and productivity of the team*."

45. With the evidence before it at the time I find that there were reasonable grounds for the R to conclude that the claimant was guilty of the misconduct in respect of both the harassment allegations and falsely claiming sick pay.

Issue 3: Whether the respondent had carried out a reasonable investigation.

46. I note that in respect of the second investigation and disciplinary proceedings for the harassment allegations, the claimant did not point to any specific part of the respondent's disciplinary procedure or the ACAS Code of Conduct on disciplinary and grievances ("the ACAS Code") that he said the respondent was in breach of.

47. The claimant's real concern was that the second investigation was infected by what he regarded as incorrect findings under the punctuality disciplinary proceedings, which resulted in the final written warning of 12 February 2024. However, the investigation report does not mention the final written warning or the events that led to it. Nor does the letter of 18 July 2024, inviting the claimant to a disciplinary hearing. It is therefore not correct to say that the punctuality disciplinary infected the harassment disciplinary.

48. I find that there is nothing in the Meena Aiyer investigation that the claimant has said was procedurally unfair and I find that she carried out the investigation impartially and thoroughly.

49. As for the second disciplinary proceedings in relation to the harassment allegations, I note that the claimant was invited on 18 July 2024 for a 23 July meeting. There followed a number of emails discussing a date for the disciplinary hearing, however ultimately on Monday 22 July he asked to postpone the hearing on 23 July because he wasn't ready, having got in touch with his union representative. The claimant then provided a sick note dated 23 July 2024.

50. The next event in the timeline was that a colleague informed the respondent's HR that the claimant had been working and on 4 Sep 2024 the respondent emailed the claimant informing him of their concerns, which were confirmed by the claimant.

51. The termination occurred without the disciplinary meeting taking place. Neil Stanfield the dismissing officer, explained in evidence that:

"The Claimant's employment was terminated without a formal disciplinary hearing to consider the allegations against him. The Claimant refused to attend the disciplinary hearing despite the LCCI's efforts to reschedule and offer alternative attendance methods. I do not believe that the Claimant's attendance at a formal disciplinary hearing would have changed the outcome given the strength of the evidence against him. This was a factor in my decision to terminate his employment when I did; I believed it would have been futile to wait for the Claimant to agree to attend a disciplinary hearing (which, at that stage, was indefinitely postponed). I did not and do not believe there is anything the Claimant could have said which would have changed the outcome."

52. As to whether this complied with fair procedure, the respondent's evidence from Ms Aiyer was that they considered their internal policy and considered this decision was in line with their policy. Whilst they did not consider the ACAS code at that point, I note in particular 23 and 25 of the Code.

23. Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. But a fair disciplinary process should always be followed, before dismissing for gross misconduct.

25. Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause the employer should make a decision on the evidence available.

53. At the point that the respondent made the decision to dismiss, the respondent believed that the claimant was falsely claiming to be sufficiently unwell that he could not engage in the disciplinary proceedings. If that was the case then it would have been reasonable to conclude the situation fell within paragraph 25 ACAS code.

54. Whilst, there could have been a further disciplinary hearing proposed to the claimant in early September, at the point the respondent became aware of the claimant working as a delivery driver whilst on sick leave, failure to do so is not determinative. The test is not whether a perfect procedure was followed but whether the procedure was reasonable in all the circumstances. I am satisfied that the decision to forgo a further attempt at a disciplinary hearing was well within the range of reasonable responses available to the respondent, bearing in mind the failure of the claimant to engage in the ongoing proceedings, and the respondent's view that it would have been futile given the evidence they had and the claimant's admission to working whilst on sick pay.

55. On the evidence before me I am satisfied that the decision to dismiss was procedurally fair, in that the respondent acted within a range of reasonable responses in the way it approached the disciplinary procedure.

Issue 4: Whether the dismissal overall was in the range of reasonable responses.

56. This is the key question in an unfair dismal case such as this. I have reminded myself not to substitute my own views but to consider what the range of responses from reasonable employers would be, and whether the decision was within in that range. The focus must be on the reason for dismissal – in this case the act of gross misconduct by the claimant working whilst claiming sick pay.

57. On the evidence before me it is apparent that the claimant appears to struggle to see the difference between being truthful about the fact that he was undertaking the delivery driver work, which he was honest about, and being honest about whether he was too sick to work for the respondent such that he was entitled to fully paid sick leave. The claimant denies that was dishonest because he considers that telling the truth about doing the delivery work was enough, but he misses the point that if he was well enough to work in one part-time job it calls into question whether he was unfit to work for the respondent. I find the respondent was reasonable to conclude that this was a dishonest act. I do not accept the claimant's evidence that he was well enough to work as a delivery driver but not able

to attend work at the respondent or engage in disciplinary proceedings in July, August and September 2024. This is for the following reasons.

58. The claimant's oral evidence was that he was able to work as a delivery driver using multiple platforms, working at various hours of the day and night, and in addition was studying a number of further education courses. This is inconsistent with his assertion that he was too sick to attend work at the respondent or engage in the disciplinary process, with any adjustments.

59. The claimant says that he was stressed because of the disciplinary and that working as a delivery driver helped to alleviate the stress. I have considered whether the claimant could have been too sick to work for the chamber and yet be well enough to do alternative work. However, in this case I consider the respondent had reasonable grounds to believe, based on a reasonable investigation, that he had misrepresented his state of health. When the respondent became aware of the possibility that he was working whilst on sick leave they emailed him inviting him to comment and he confirmed it. I find that many reasonable employers would consider a person to be working part time, in any capacity, when allegedly too stressed to attend work, to be misrepresenting their health. By submitting the sick notes to the respondent relating to stress, the claimant was representing to the respondent that his mental health was in a sufficiently bad state that he was not capable of working. Being too ill to work because of stress implies a certain level of impairment. I note that there is no medical evidence to the effect that symptoms presented in the way described, i.e. that he was too ill for one job but not too ill to do another job and study.

60. Finally, on numerous occasions in his oral evidence and submissions the claimant mentioned that his position at that time was that he would not go back to work, or attend the disciplinary meeting, until the respondent revoked the final written warning issued on 14 December 2023, given for punctuality performance issues. Not only was this completely unrealistic, but it is indicative of what the claimant real mindset was at the time. He gave evidence that in August and September 2024 he was ready and willing to return to work at the respondent, if only they would revoke his final written warning. I compare that to what one would reasonably expect of a person who is genuinely unable to work due to stress – where they would have symptoms that would make immediate return to work not possible or would result in a deterioration of their health. The claimant's position that he would have been able to return if only the respondent had withdrawn its previous final written warning indicated that the was claimant was choosing to avoid the disciplinary proceedings in a misconceived attempt to get the respondent to change its position.

61. Overall, in my view it was reasonable for the respondent to conclude that if he was capable of functioning in such a way that he could work then he was misrepresenting his level of impairment, and that this amounted to serious dishonesty. It was a clear breach of contractual terms and respondent's misconduct policy which specifically mentioned dishonestly claiming sick pay. I am satisfied that the dismissing officer properly considered this point.

62. The decision to decision to dismiss on this basis alone was within the band of reasonable responses.

63. The contextual harassment claims also contributed to the decision to dismiss. I am satisfied that taken together with the dishonest claim for sick pay, the dismissal on the basis of the investigatory report was within the band of reasonable responses. Not only had the claimant admitted to the conduct that the respondent deemed to be inappropriate, but he had shown no understanding of his impact on others or acceptance that his behaviour was blameworthy. The claimant's perception of his conduct lacks self-awareness and the respondent was within the range of reasonable responses to take this into account as a significant factor in dismissing the claimant.

The final written warning

64. The decision to dismiss also took into account the final written warning of 12 Feb 2024.The claimant has become fixated with this aspect of the respondent's decision, believing the dismissal to be "based on an incorrect disciplinary". I'm addressing this issue because it is of real concern to the claimant but I am acknowledging that it was not the reason for dismissal relied upon by the respondent.

65. The claimant's real concern is that the final written warning was based on a false premise, namely that incorrect dates were relied upon when determining that he was late on three occasions and that he wasn't in fact late on some occasions. I start by acknowledging that the final written warning was subject to an investigation and an appeal. The claimant raised his concerns about incorrect dates numerous times with his manager and the appeal officer. He points to an email dated 19 February 2024 as being key to understanding why the three dates relied upon for the punctuality written warning were incorrect. The minutes of the appeal show that that email of 19 February 2024 was discussed at the appeal hearing.

66. The minutes of the appeal meeting show that Neil Stanfield had received the email of 19 February 2024 and took into account the claimant's view that dates were incorrect. The minutes of the appeal meeting also show that Neil Stanfield and the claimant discussed the issue about the timing on MS teams being 3.5 minutes out, which the claimant says incorrectly resulted in his written warning. Mr Stanfield confirmed he would look at the email from IT confirming that the clock on MS Teams was 3.5 minutes out.

67. Whilst the first disciplinary procedure is not the subject of the unfair dismissal, for the avoidance of doubt, I consider the respondent to have acted reasonably in the way it approached this disciplinary appeal. The claimant had an opportunity to explain his concern about the dates and the timings recorded, and confirmed in the appeal hearing that he was content with the final letter.

68. The information about the incorrect clock on MS was taken into account by the respondent. Even if it hadn't been – at most that would have allowed the claimant 3.5 minutes extra time to turn up to work. The 5-minute

leeway given by his manager was not a change to his contractual start time which was 9am. If he had clocked in at 9am which was his start time, then the incorrect clock on MS teams wouldn't have made a difference because he would have been within the 5 min leeway allowed. It was reasonable for the respondent to treat the incorrect clock issue as not making a difference to the outcome.

69. In summary, the claimant's assertion that the respondent did not deal with the 19 February email is incorrect. It was considered and discussed at the appeal hearing. The claimant is simply disagreeing with the appeal outcome. A final written warning on record is a relevant factor to be taken into account when making a decision to dismiss, even if the conduct is not the same type of conduct as the reason for dismissal. The respondent acted reasonably when taking it into account.

Alternative sanction

70. I turn to the question as to whether dismissal was a reasonable choice as opposed to a lesser sanction. I consider there would have been very few reasonable employers who would have chosen a lesser disciplinary action in these circumstances, even taking into account the claimant's length of service. The claimant had already received a final written warning for conduct, and subsequently was investigated for two further and separated categories of misconduct. Most reasonable employers would have acted the same way as the respondent.

Conclusion

71. The claim for unfair dismissal is not well founded and is dismissed.

72. Finally, I note that in the ET1 the claimant ticked the boxes for breach of contract, holiday pay and unpaid wages, but nowhere were these claims particularised nor were they pursued by the claimant. Those claims are also dismissed.

Approved by:

EJ Leonard-Johnston
19 December 2025

JUDGMENT SENT TO THE PARTIES ON

23 December 2025

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FOR THE TRIBUNAL OFFICE