



EMPLOYMENT TRIBUNALS

Claimant: Mr J Harper

Respondent: Gatwick Airport Limited

Heard at: Croydon (via CVP) **On:** 26 and 27 November 2025

Before: Employment Judge Leith

Representation

Claimant: In person

Respondent: Miss Minto (Counsel)

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

REASONS

Claims and issues

1. The Claimant claims unfair dismissal. The issues for the Tribunal to determine were discussed at a preliminary hearing before EJ O'Neill, who recorded that they were as follows:

“1. Unfair dismissal

1.1 What was the reason or principal reason for dismissal? The Respondent claims it was the claimant's conduct.

1.2 Was it a potentially fair reason?

1.3 Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the claimant?

1.4 The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

1.5 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.

1.6 If the reason was misconduct, did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The claimant does not believe that the process and outcome was fair. The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:

- 1.6.1 there were reasonable grounds for that belief;
- 1.6.2 at the time the belief was formed the respondent had carried out a reasonable investigation;
- 1.6.3 the respondent otherwise acted in a procedurally fair manner;
- 1.6.4 dismissal was within the range of reasonable responses.

2. Remedy for unfair dismissal

2.1 If there is a compensatory award, how much should it be? The Tribunal will decide:

- 2.1.1 What financial losses has the dismissal caused the claimant?
- 2.1.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
- 2.1.3 If not, for what period of loss should the claimant be compensated?
- 2.1.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- 2.1.5 If so, should the claimant's compensation be reduced? By how much?
- 2.1.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 2.1.7 Did the respondent or the claimant unreasonably fail to comply with it?
- 2.1.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- 2.1.9 If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?
- 2.1.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
- 2.1.11 Does the statutory cap of fifty-two weeks' pay apply?

2.2 What basic award is payable to the claimant, if any?

2.3 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

2.4 How much should the claimant be awarded?

Procedure, documents and evidence heard

2. I heard evidence from the Claimant. On behalf of the Respondent I heard from:
 - 2.1. Barry Dolan, Security Performance Manager (the investigating officer in respect of the matter for which the Claimant was dismissed);
 - 2.2. Robert Lunn, Senior Security Operations Manager (the Dismissing Officer); and
 - 2.3. Steven Kelso, Head of Engineer (the Appeal Officer)
3. Each of the witnesses gave their evidence by way of a pre-prepared witness statement, on which they were cross-examined.
4. I additionally had before me a bundle of 589 pages, and five videos (totalling almost three hours of footage). I informed the parties that I would only read documents to which I was specifically referred. I only watched the short extracts of video footage to which I was specifically referred by the Claimant (and neither party suggested that I needed to watch the remaining footage).
5. At the end of the evidence, I had the benefit of helpful oral submissions from Ms Minto and the Claimant (supplemented, in Ms Minto's case, by a skeleton argument).

Factual findings

6. I make the following findings on balance of probabilities. I have not dealt with every area canvassed before me; rather, I have focused on those necessary to reach a conclusion on the issues in the claim. References in the judgment in [square brackets] are to pages in the bundle.
7. The Respondent operates an airport serving London. It employs approximately 2,500 people.
8. Prior to August 2023, the Respondent had in force a disciplinary policy. Insofar as relevant, the policy provided that for a first incident of serious misconduct or gross misconduct, a final written warning might be given. The policy provided that where a final written warning was given, it would remain in force for 12 months. It would state on its face that any further misconduct may render the employee liable to further, more severe disciplinary action and potential dismissal [89].
9. The Respondent's disciplinary policy was updated in August 2023 [111]. The updated policy included a list of examples of gross misconduct, which included the following:

“Unlawful discrimination, harassment, bullying or victimisation.
[...]
Acts of indecency or sexual harassment.”

10. The Claimant was employed by the Respondent in the Security department. His employment commenced on 4 February 2019. With effect from May 2022 he was promoted to the role of Security Team Manager.
11. On 7 July 2023, the Claimant was given a final written warning [224]. The warning was imposed for an allegation that the Claimant had made inappropriate comments of a sexual nature towards a female colleague – specifically, he had suggested to a female colleague that he would wipe dirt off the rear of her uniform (in the area of her bottom). The Claimant was informed that his final written warning would remain valid for 12 months. The letter said this:

“I understand that there needs to be further training to ensure that all employees are clear on what is and is not acceptable in terms of behaviour, and that in the future this culture and any associated unacceptable behaviours will be subject to a zero-tolerance approach. My expectation is that you will fully support this initiative within your area.

You should note that a failure to improve or repeat of a similar misconduct or any other instance of misconduct of any kind within 12 months is likely to lead to the next stage in the procedure, i.e., potential dismissal.”

12. The Claimant appealed that decision. He attended an appeal meeting on 26 July 2023. The outcome letter was dated 9 August 2023 [246]. Part of his appeal was that the correct policy was not followed in respect of the investigation. The outcome letter said this, regarding that part of the appeal:

“1. With regards to the post incident investigation, I accept that, whilst it was carried out in a timely and thorough manner with the best of intent, the process was not always in line with the best practice as laid out in the bullying and harassment policy. Further guidance and training will be issued within the security teams to ensure that best practice is followed at all times in the future.

However, the fact that on this occasion the investigation did not follow best practice at every stage does not in itself change the facts of this incident, which I believe have been established.”

13. The substance of the appeal was not upheld, and the final written warning remained in force.
14. On 24 October 2023, an incident occurred between the Claimant and Maisie Scotting, an Airport Security Officer (“ASO”).

15. On the following day, 25 October 2023, Ms Scotting formally reported the matter. Barry Dolan was appointed to investigate. He met Ms Scotting on 25 October 2023 [255]. Notes of the meeting were kept by Agnieszka Karpicka, and Lauren Rodrigues attended to provide HR support. Mr Dolan asked Ms Scotting to explain what had happened, and she said this:

I was on the lane and saw STM Josh Harper walking down the lanes saying 'hello' to everyone. Couple of hours later I was on lane 8 and Josh was on lane 10, I saw him walking away from the lane and approaching me when I was on a bag search. We said hello, and then he walked away. Later we had code 500 and we needed a manager's assistance. As there was no manager on our lane, I went over to ask him to assist. He did and I then searched that bag. Later he came over to me and said that I looked good in black uniform and asked me why I was wearing black trousers. I explained that I ordered trousers that would fit me as I'm quite tall and the standard trousers don't fit. He then asked me to come with him to complete the uniform order. I explained that I already did that, and he said that the colour was the problem. I was surprised that he only asked me off the lane, there were at least two other colleagues wearing black trousers that day.

When he started ordering the uniform, he also started sharing information about his private life.

He made a comment that all men in Gatwick would be annoyed at him for ordering different trousers for me. It made me feel uncomfortable. I didn't want to say anything to escalate further.

My manager Claudia asked him to send me back to the lane as my team was in dieback. Josh started showing me photos on his phone, and simply started chatting.

After, when the form was submitted, I went back to my lane. My manager Claudia took me aside and asked me what happened. I eventually said to her what comment he made."

16. Ms Scotting explained that she had initially not wanted to raise the matter to create a problem for the Claimant, but that she shared it with her manager, Claudia Abreu Freitas (who was a manager at the same level as the Claimant). She explained that Ms Abreu Freitas had advised her to sleep on it and see how she felt in the morning. Having done so, she then decided to report the matter formally.
17. Mr Dolan also interviewed Ms Abreu Freitas. She gave broadly the same version of events as the Ms Scotting – that is, that Ms Scotting had told her about what had occurred with the Claimant, and she had advised Ms Scotting to sleep on it before deciding whether to raise it formally.

18. On 27 October 2023, the Claimant was suspended.

19. On 2 November 2023, Mr Dolan interviewed the Claimant [277]. The Claimant explained that he had seen Ms Scotting wearing a black top and black trousers, which was not the correct uniform for the area in which she was working (black uniform was only worn by external security staff). He explained that he offered to help Ms Scotting order the correct uniform, which he then did.

20. Mr Dolan asked the Claimant if he had commented about Ms Scotting looking good in the black uniform. The notes recorded that the Claimant said this:

“I only said that anyone would look better in that (external) uniform.”

21. Mr Dolan asked the Claimant why he had not challenged two other members of staff working in the same area as Ms Scotting who were also wearing black trousers. The Claimant said this:

“She kept coming over asking for stuff, we got on well. The black trousers really stood out. I can only speak for the ones I noticed. It is not my job to challenge everyone.”

22. Mr Dolan asked the Claimant if he had commented that “all the men in Gatwick would be annoyed at me (you) for ordering different trousers for her”. The Claimant replied that he did not recall the comment being made. Mr Dolan asked the Claimant if he understood why that comment would make Ms Scotting feel uncomfortable, to which the Claimant replied:

“No, not really. I did not say this.”

23. Mr Dolan watched the CCTV footage of the area for the times in question. He kept a note of what he had seen. There were two different versions of that in evidence before me. Mr Dolan explained that he had taken an initial log of what he had seen on his first viewing. He had then gone back and watched the key areas in more detail, zooming in as appropriate, and the second version reflected that. The earlier version included comments such as that Ms Scotting could be seen to be smiling at various points, which were not included in the final version. The chronology also stated that the Claimant spent 6 minutes ordering the replacement trousers for Ms Scotting, and 5 minutes chatting to Ms Scotting. The whole interaction between the Claimant and Ms Scotting had lasted for much less than 11 minutes. Mr Dolan’s evidence was that the two time periods referred to in the chronology overlapped.

24. On 10 November 2023, Mr Dolan reinterviewed Ms Scotting. Mr Dolan put the Claimant’s contention that he had said everyone looks good in black to Ms Scotting. The notes recorded that exchanges as follows:

“BD: Firstly, you mentioned that Josh said you looked good in black uniform, can you confirm?”

MS: He said you look good in all black. I was testing liquids. On lane 8. Already on lane for 500. He said you look good in all black and then said in all seriousness why are you wearing black?

BD: According to him he said, everyone looks good in black as opposed specifically to you?

MS: That is not what he said, specifically to me and not about everyone”

25. Mr Dolan also put to Ms Scotting that she had been coerced to make the complaint. Ms Scotting denied that.
26. Mr Dolan also interviewed Ms Abreu Freitas. He asked her if she had coerced Ms Scotting into complaining about the Claimant. Ms Abreu Freitas denied doing so.
27. Mr Dolan did not formally interview Abda Mirza, another STM. His evidence was that he spoke to her because Ms Abreu Freitas had referred to Ms Mirza having to ask the Claimant to leave a member of her team alone. His evidence was that he asked Ms Mirza if it had happened, and she informed him that she had told the Claimant to stop “sniffing around” a member of her team; but that as that did not appear to relate in any way to Ms Scotting’s allegations, he did not formally interview Ms Mirza for the investigation. His evidence was that he considered that doing so would have painted the Claimant in a bad light, in way that was irrelevant to the allegations he was investigating.
28. Mr Dolan was asked in cross-examination why he did not ask other individuals nearby if they had heard the alleged comments. His evidence was that from the CCTV there was nothing to suggest that anyone else had heard the Claimant’s conversation with Ms Scotting. His evidence was that in the circumstances, interviewing those around would simply have increased the number of people who were aware of the allegation without gaining any additional evidence, which would have been unfair on the Claimant as the subject of the allegations.
29. Mr Dolan produced a report setting out the steps he had taken and the evidence he had gathered [348]. He concluded that the comments alleged had been made. He described Ms Scotting as “consistent and believable” in both of her interviews. He considered that in contrast, the Claimant had not been consistent in that he had first said he did not recall the comment about the men in Gatwick being annoyed with him, then later said that he did not make the comment. He noted, by way of mitigation, that the Claimant had explained that he was having a difficult time in his personal life. He

concluded by recommending that the matter should proceed to a formal disciplinary hearing.

30. His report contained a list of the supporting documents he had gathered. That list included reference to the CCTV timeline document.
31. The Claimant was invited to a disciplinary hearing on 23 November 2023. The invitation letter noted that a copy of the evidence collated during the investigation was enclosed. The Claimant's evidence was that he was not, in fact, sent a copy of the CCTV timeline.
32. The Claimant was unwell, so the hearing was postponed.
33. On 21 November 2023 the Claimant raised a grievance [367]. He referred in that grievance to the Respondent allowing false statements to be brought up and entered in evidence against him. He referred also to Ms Scotting having hugged him earlier in the day on 24 October 2023.
34. On 27 November 2023 the Claimant raised a further grievance [368]. Within that grievance he complained about Ms Scotting having hugged him, describing it as inappropriate physical contact. The Claimant requested that his grievances be heard before the disciplinary hearing.
35. The Claimant remained unwell. When his health improved, he attended a grievance meeting on 5 March 2024. His grievance was heard by Aaron Bassett, Stable Operations Lead. On 28 March 2024, Mr Bassett wrote to the Claimant. He explained that the Claimant's grievance was partially upheld. Of particular relevance, he partially upheld a complaint the Claimant had raised regarding confidentiality. In respect of the allegation regarding being hugged by Ms Scotting, Mr Bassett concluded that the hug was not of a sexual nature but was inappropriate. He noted, however, that in the Claimant's position as a leader, he was required to give colleagues timely feedback to resolve matters of that nature. The remaining parts of the Claimant's grievance were not upheld [457].
36. The Claimant appealed the outcome of the grievance [461].
37. Also on 28 March 2024, the Claimant was invited to a rescheduled disciplinary hearing, to take place on 4 April 2024 [466]. The invitation letter noted that dismissal was as possible outcome. It reminded him of his right to be accompanied to the meeting by a colleague or Trade Union representative.
38. The disciplinary meeting was chaired by Mr Lunn. Prior to the start of the meeting, Mr Lunn and the Claimant viewed the CCTV footage of the two incidents being referred to in the disciplinary process. The Claimant asked if Mr Lunn had viewed the footage of the incident when Ms Scotting hugged him. Mr Lunn indicated that he had not, because it was the subject of the Claimant's grievance and was not relevant to the disciplinary.

39. The Claimant was given the opportunity during the meeting to give his version of events, which he did [486]. The Claimant also referred to what he described as inaccuracies in Ms Scotting's statement, and to the CCTV footage not suggesting that she was uncomfortable around him or with anything he had said.
40. Mr Lunn produced a document in which he set out his own thought process [488]. Within that document he included his own timeline of the CCTV footage he had viewed. He referred to being able to see the Claimant at one point "visibly looking Ms Scotting up and down from behind".
41. Mr Lunn wrote to the Claimant on 3 May 2024 to provide the outcome of the disciplinary hearing [506]. In summary, the letter said this:
- 41.1. In respect of the first alleged comment, he referred to the Claimant's explanation (that he had singled Ms Scotting out for wearing non-uniform trousers was because she was also wearing a black polo shirt). He referred also to the Claimant's explanation that the comment about looking good in black was a general comment not referring specifically to Ms Scotting. He concluded that the comment was made, and referred specifically to Ms Scotting – that is, it was not a general comment which was misconstrued by Ms Scotting.
 - 41.2. In respect of the second alleged comment, he referred to the Claimant denying the comment having been made. He noted that he Claimant had accused Ms Scotting of lying about the comment, but noted that there was no explanation as to why Ms Scotting would have done so. He noted that because both alleged comments referred to Ms Scotting's appearance in black trousers, he considered it more likely that the second comment had also been made.
 - 41.3. He noted that the Claimant had not made any other uniform requests based on other members of staff being non-compliant, so he believed that the Claimant had signed Miss Scotting out. He described the comments on Ms Scotting's physical appearance as being "abuse of power in your position as a manager in the organisation". He concluded that the comments were unwanted and inappropriate, and constituted sexual harassment.
 - 41.4. He referred to the live final written warning. He explained that he had therefore decided that the Claimant was summarily dismissed for gross misconduct. He reminded the Claimant of the right to appeal.
42. The Claimant wrote to the Respondent on 7 May 2024 to appeal his dismissal [510]. His appeal was heard by Steve Kelso. The appeal hearing was conducted on 27 June 2024.

43. Mr Kelso had the minutes of the disciplinary hearing, the dismissal letter, and the Claimant's appeal. He was not given a copy of the disciplinary investigation report or the underpinning evidence, such as the investigation meeting minutes. He did, however, watch the CCTV footage.

44. Mr Kelso wrote to the Claimant on 19 August 2024 to provide the outcome to his appeal [548]. He took each of the three points raised by the Claimant in his appeal in turn:

44.1. In respect of the first point (you felt that the Company policy and the legal right to a fair investigation was not followed), he noted that the Claimant had referred to evidence which he said had not been gathered – namely CCTV footage showing interactions with Ms Scotting earlier in the day, and also a statement from Abda Mirza, another STM. Mr Kelso noted that he had viewed the additional CCTV, and did not consider it would have had any impact on the decision. He concluded that the point was not upheld.

44.2. In respect of the second point (you felt that the outcome is discriminative because you note that you are a man of colour) he referred to the Claimant having considered that there was unconscious bias at play, and referenced sexual harassment and inappropriate conduct towards him from Ms Scotting. Mr Kelso concluded that there was no unconscious bias at play. He noted that the Claimant, as a leader and manager, had a responsibility to lead by example and call out inappropriate behaviour. He concluded that the point was not upheld.

44.3. In respect of the third point (you felt that you had further evidence and witnesses that should be considered), Mr Kelso noted that the Claimant had referred to the CCTV appearing to show that Ms Scotting was not harmed or upset and returned to her duties that day visibly smiling. He also referred to screenshots of messages the Claimant had exchanged with another STM, Jessica Slade. Mr Kelso noted that situations impact different people in different ways, and body language or facial expressions cannot be taken as a sign that an individual is OK. He concluded that the point was not upheld.

45. He then said this.

“As a manager of the business, you have a responsibility to remain professional at all times and lead by example. The comments that we believe you have made towards a female colleague are entirely inappropriate. I consider this as an abuse of power in your position as a manager and I have reasonable belief based on the evidence, that the alleged comments made by you were said to Maisie Scotting.”

46. Mr Lunn therefore conclude that he appeal was not upheld, and the dismissal remained in place.

47. The Claimant notified ACAS under the early conciliation process of a potential claim on 2 May 2024 and the ACAS Early Conciliation Certificate was issued on the same date. The claim was presented on the same date.

Law

48. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that they were dismissed by the respondent under section 95.
49. Section 98 of the 1996 Act 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. The section 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.
50. Misconduct is a potentially fair reason for dismissal under section 98(2).
51. 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. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. 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. 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).
52. Where an employee has been dismissed following a previous final written warning, it is not for the Tribunal to reopen the final written warning and rule on whether it was legally valid or a nullity. The core test for the Tribunal remains that set out in section 98(4) of the 1996 Act. It is, however, relevant for the Tribunal to consider whether the final warning was issued in good

faith, whether there were prima facie grounds for following the final warning procedure and whether it was manifestly inappropriate to issue the warning (*Davies v Sandwell MBC* [2013] EWCA Civ 135).

Conclusions

53. I start with the final written warning. There is nothing in respect of the final written warning which suggest to me that it was inappropriate for Mr Lunn to rely on it, or appropriate for me to look behind it. The Claimant had appealed the final written warning, and his appeal had not been upheld. While the appeal outcome had noted that there were some issues with the way the investigation was carried out, it had not ultimately overturned the decision to issue the final written warning. The fact that the appeal decision-maker had recognised issues with the process was not, in my judgment, suggestive of bad faith. Rather, it was suggestive of the very opposite, that the Claimant's appeal was properly considered, and that the conclusion ultimately reached was that the procedural flaws identified did not undermine the decision to give a final written warning. What appeared to have happened was that in that case, the complainant's evidence was preferred to that of the Claimant. Given the allegation against the Claimant, once the Respondent had preferred the complainant's evidence, issuing a final written warning could not in any sense be said to be manifestly inappropriate.

54. I turn then to the reason for the dismissal. The reason relied upon was conduct. I am satisfied that Mr Lunn genuinely believed that the Claimant had committed misconduct. I reach that conclusion for the following reasons:

54.1. Mr Lunn set out in some detail in his dismissal letter why he had reached the conclusion that he had. He was faced with two contradictory versions of events. He preferred the evidence of Ms Scotting in respect of both alleged comments. He explained why he had reached that conclusion.

54.2. Having concluded that both remarks were made, he explained in his outcome letter why he considered that they constituted misconduct. His reasoning in that regard was hard to fault; the comments alleged to have been made to Ms Scotting were plainly gross misconduct, as set out in the Respondent's policy.

55. I find also that Mr Lunn had reasonable grounds for his belief. In particular:

55.1. He was faced with two different versions of events; those of the Claimant and Ms Scotting. He was entitled to prefer Ms Scotting's version to that of the Claimant. He was entitled not to accept the Claimant's explanation for only speaking to Ms Scotting about wearing non-uniform trousers, and not to the other colleagues on shift in black trousers. And once he had done so, he was entitled to conclude that the Claimant had singled Ms Scotting out as a result.

55.2. He was entitled also to reach the conclusion that Ms Scotting's presentation on the CCTV did not undermine her claim to have been upset by the Claimant's comments.

56. I find also that the Respondent had carried out a reasonable investigation. In particular:

56.1. Ms Scotting was interviewed.

56.2. The Claimant was then interviewed, and given the opportunity to provide his version of events.

56.3. After he had done so, Mr Dolan then interviewed Ms Scotting again so as to put the Claimant's version of events to her and challenge her evidence.

56.4. Mr Dolan viewed the CCTV footage in some detail.

56.5. It was reasonable of Mr Dolan to conclude that there were no other direct witnesses to interview, given that the CCTV footage did not suggest that anyone would have overheard the conversation. It was entirely reasonable for him to conclude, in the circumstances, that interviewing the other individuals present would only have served to have shared the allegation more widely for no evidential benefit.

56.6. It was also reasonable of him not to formally interview Ms Mirza, who had no evidence relevant to the specific allegations (and whose evidence would, at best, have cast doubt on the Claimant's character).

57. Turning then to the fairness of the procedure generally:

57.1. It is surprising that Mr Dolan's CCTV log was not provided to the Claimant prior to the disciplinary hearing, as it was provided to Mr Lunn. But the final version was rather bland, and Mr Lunn in any event viewed the relevant footage himself and compiled his own chronology. So Mr Dolan's CCTV log did not form an important part of the evidence taken into account by Mr Lunn. I can therefore see no unfairness to the Claimant in him not having been provided with Mr Dolan's CCTV log.

57.2. I do not consider that there is any issue with the same HR representative, Ms Rodrigues, being involved throughout. HR advisers are not decision-makers. Neither Mr Lunn nor Mr Kelso suggested that they had deferred to Ms Rodrigues. Both made their own decision – Mr Lunn in particular. The function of an HR adviser is to provide professional HR advice, not to step into the shoes of the decision-maker. Had Ms Rodrigues have been the one taking the decisions, her involvement throughout may well have rendered the process unfair – but there is simply nothing to suggest that that was the case.

57.3. Mr Kelso explained in his appeal outcome letter that he had concluded that he was satisfied that the Claimant had committed the misconduct alleged. Given that he did not have the statements of Ms Scotting before him, it is not quite clear to me how he reached that conclusion. Mr Kelso watched the CCTV, of course; but it had no

audio. So he had no primary evidence before him of the alleged comments, only the Claimant's denial and the (silent) CCTV. His oral evidence on the point was somewhat vague, and did not really answer the point.

57.4. It appeared that the exercise Mr Kelso was attempting to carry out was a review of Mr Lunn's decision, rather than a complete rehearing of the disciplinary allegation. That is, in and of itself, not an unreasonable way for an appeal to be conducted. What it was clear Mr Kelso did do was to consider the points the Claimant raised (including the extra CCTV which Mr Lunn had not watched). He gave the Claimant a reasoned response to each of the three appeal points he raised. That is, he concluded that he had no reason to depart from what Mr Lunn had decided.

57.5. So while I cannot see that Mr Kelso could personally have had reasonable grounds to conclude based on the evidence before him that the misconduct alleged had occurred, what is necessary is that the Respondent overall had reasonable grounds to conclude that misconduct had occurred. I have already explained why I am satisfied that Mr Lunn did have reasonable grounds to conclude that the misconduct had occurred.

57.6. Stepping back and looking at the process as a whole:

57.6.1. The Claimant was informed of the allegation against him.

57.6.2. A reasonably detailed investigation was carried out, during which the Claimant was given the opportunity to put forward his version of events.

57.6.3. The evidence of Ms Scotting was tested against the Claimant's version of events.

57.6.4. The Claimant was provided a copy of the evidence gathered (with the exception of the CCTV log).

57.6.5. The disciplinary process was paused while the Claimant's grievance was investigated.

57.6.6. After the grievance had been investigated, the Claimant was invited to a disciplinary hearing. He was reminded in that letter of his right to be accompanied.

57.6.7. The Claimant was given the opportunity at the disciplinary hearing to state his case.

57.6.8. He was then given a reasonably detailed outcome in writing.

57.6.9. The Claimant was given a right of appeal, which he exercised,

57.6.10. He was reminded again of right to be accompanied at the appeal hearing.

57.6.11. Each of the Claimant's grounds of appeal was considered, and he was given a reasoned outcome why each Mr Kelso had concluded that each of them was not upheld.

57.7. I therefore conclude that the process, as a whole, fell within the range of reasonable responses open to a reasonable employer.

58. Finally, I turn to consider whether dismissal fell within the range of reasonable responses. In doing so, I am not considering what I would have done. In that regard:

58.1. The Respondent was entitled to consider that conduct of the sort that Mr Lunn had concluded that Claimant had been guilty of was unacceptable, and constituted gross misconduct.

58.2. The Claimant had a live final written warning, which remained in force, and to which Mr Lunn was entitled to have regard. The final written warning was for broadly similar conduct.

58.3. The Claimant was in a management position, and was senior to Ms Scotting. The Respondent was entitled to treat that as an aggravating factor.

58.4. Weighing all of that up, I conclude that dismissal fell within the range of reasonable responses open to a reasonable employer.

59. It follows therefore that the dismissal was as fair one. The claim is dismissed.

Approved by:
Employment Judge Leith
Date: 5 January 2026

Sent to the parties on:
Date: 6 January 2026