



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J La  
**Respondent:** Community Ambulance Service Ltd  
**Heard at:** Watford (remotely (by CVP))  
**On:** 26 – 27 August 2025  
**Before:** Employment Judge Heather

## REPRESENTATION:

**Claimant:** Mr R Pickard (counsel)  
**Respondent:** Mr P Singh (solicitor advocate)

# RESERVED JUDGMENT

**CORRECTED IN ACCORDAMCE WITH RULE 67 OF THE EMPLOYMENT TRIBUNAL PROCEDURE RULES 2024 (CORRECTION OF CLERICAL MISTAKES AND ACCIDENTAL SLIPS)**

**UPON A REQUEST FROM THE CLAIMANT’S COUNSEL, THIS JUDGMENT IS CORRECTED UNDER THE SLIP RULE IN THE WAY IDENTIFIED BY ITALIC TEXT AT PARAGRAPH 33.**

The judgment of the Tribunal is as follows:

## **Unfair dismissal**

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

## **Wrongful dismissal / breach of contract**

2. The complaint of wrongful dismissal is not well-founded and is dismissed.

# REASONS

## Preliminary matters

Format of the hearing

3. The hearing was conducted by video over 2 days.

Technical difficulties and interruption to the hearing

4. I had some technical difficulties connecting to the CVP room on the first day but after restarting my computer I had no further difficulties.
5. Around 11:15am on the morning of 27 August 2025 (the second day of the hearing) there was a fire alarm in the building where Mr Singh was working. He was initially hesitant to leave the hearing as he was not sure whether the alarm Singh's uncertainty I instructed him (and anyone else who was joining the hearing from to leave the building and not to return to the hearing until he was certain it was safe to do so. The hearing was adjourned at that point. My clerk was able to contact Mr Singh who confirmed that the alarm was a drill rather than a scheduled test or a live incident. I agreed that he hearing would resume once the fire drill had concluded and Mr Singh was permitted to re-enter the building.. We started the hearing again around 11:50am.

The claim

6. The claimant's claim was received by the Tribunal office on 15 December 2024. The claimant brings a claim for unfair dismissal and breach of contract (notice pay). The claimant was employed by the respondent from 14 November 2005 until 5 August 2024. He was employed as an Ambulance Care Assistant.
7. The claimant's grounds for complaint as set out in his claim form are:
  - 7.1 the sanction of dismissal was too harsh;
  - 7.2 the finding of bribery has tarnished the claimant's reputation;
  - 7.3 the respondent did not carry out any / sufficient investigation into the allegations against the claimant:
    - 7.3.1 there was no formal statement or adequate questioning of the patient;
    - 7.3.2 there was no formal statement or questioning of any third party who made a complaint against the claimant;
    - 7.3.3 there was no investigation or questioning of the nurse who handed the patient over to the claimant;
    - 7.3.4 there was no investigation or questioning of the hospital porter who assisted the claimant;
    - 7.3.5 there was no investigation or questioning of the two other patients who were potential witnesses;

- 7.3.6 the investigation referred to a previous written warning against the claimant which had expired in March 2024, prior to the incident in June 2024 which led to the claimant's dismissal;
- 7.4 the appeal officer did not fully consider the material available to her, failed to thoroughly investigate and based her decision on inadequate information and / or flawed reasoning:
  - 7.4.1 failed to recognise that two bandages were used because there were two separate injuries;
  - 7.4.2 made a finding that the claimant failed to keep a detailed record of the incident when there was no policy requiring the claimant to do so;
  - 7.4.3 gave no consideration to the claimant's lack of fluency in written English;
  - 7.4.4 failed to provide the claimant with copies of documents relating to safeguarding concerns;
  - 7.4.5 did not give the claimant an opportunity to respond to the safeguarding concerns;
  - 7.4.6 misinterpreted and misapplied the respondent's "Conveyance of Patients Policy";
  - 7.4.7 unreasonably upheld the finding of bribery against the claimant;

The response

- 8. The response was received on 13 January 2025. The claim for unfair dismissal and breach of contract is denied. The following information is provided by the respondent:
  - 8.1 the dates of the claimant's employment are agreed and the claimant's job role is agreed;
  - 8.2 the claimant made a number of admissions about his conduct;
  - 8.3 the respondent undertook a reasonable investigation;
  - 8.4 the respondent reached reasonable conclusions about the claimant's conduct in light of the claimant's admissions and other evidence and information available to the respondent;
  - 8.5 the claimant was given every opportunity to state his case;
  - 8.6 dismissal was a reasonable sanction;

Time estimate and decision to conduct the hearing in relation to liability only

9. The hearing was listed with a time estimate of 2 days. Given the number of witnesses (3) and the fact that English was not the first language of Mr La, that was an underestimate and it was not possible to give judgment at the end of the second day.
10. At the beginning of the hearing the parties requested that remedy be reserved. Given the concerns that had already arisen about the time estimate for the hearing I agreed that the hearing should only deal with liability.

List of Issues

11. As part of my preparation for the hearing, I had prepared a draft List of Issues. I read that List of Issues to Counsel at the beginning of the hearing and they both agreed that the List of Issues was appropriate and covered all relevant matters. The List of Issues is incorporated by reference under the heading "Discussion and conclusion".

Adjustments for the claimant

12. Mr Singh raised an issue on the first morning as to whether the claimant required an interpreter to assist him at the hearing. The reason that was raised was because English is not the first language of Mr La and he had requested someone to accompany him to assist with translation at the appeal hearing during the disciplinary process.
13. Whilst I adjourned for some reading time Mr Pickard took instructions and confirmed, when we resumed, that Mr La did not require a translator for the hearing or to give evidence but that he would need assistance with having technical language being explained to him in simple terms.
14. It was apparent during Mr Singh's cross-examination of Mr La that there were certain words and phrases that Mr La did not properly understand. I interjected a number of times either to re-phrase a question or to ask Mr Singh to re-phrase a question so that it could be understood by Mr La. There were also times when Mr Singh re-phrased his questions, without prompting from me, to assist Mr La's understanding of the question being asked.
15. I was satisfied that Mr La was able to understand and answer the questions put to him, that he was able to participate effectively in the hearing and to give the evidence that he wanted to give to the Tribunal.

Bundle and witness evidence

16. The hearing bundle had 384 pages (385 after the respondent's late evidence was included).
17. The following witness statements were received:

- 17.1 Mr La – 23 pages;
- 17.2 Ms Lamb – 8 pages;
- 17.3 Mr Rogatka – 7 pages;
- 17.4 Ms Burns – 2 pages;
18. Ms Burns' witness statement was not included with the witness statements that were sent to the Tribunal in advance of the hearing because the respondent did not intend to rely on the witness statement or to call Ms Burns to give evidence. At the hearing, Mr Pickard requested that the witness statement be sent to the Tribunal as it may support or undermine the position of the parties. Mr Singh did not object to the witness statement being admitted as evidence. I decided that it was in the interests of justice for it to be admitted as evidence and for me to read the witness statement.
19. I read each of the witness statements as well as the documents that I was specifically referred to by Mr Pickard and Mr Singh before I heard oral witness evidence. I also read relevant documents or extracts from documents that were referred to during the oral witness evidence.

**Respondent's late documentary evidence**

20. The respondent made a written application to the Tribunal at 09:53 on 26 August 2025 to include an additional document in the bundle. The application was pursued orally by Mr Singh at the hearing. The document was a covering email which had been sent to Mr La at 11:55 on 22 July 2024. The email was part of a chain of emails and all of the other emails in the chain were already in the hearing bundle. The email itself was a covering email sending the investigation report, disciplinary invite and disciplinary procedure to Mr La. All of the documents attached to the email were already included in the bundle.
21. Mr La did not object to the additional email being included in the bundle.
22. I concluded that it was in the interests of justice to allow the email to be admitted as evidence and included in the bundle.

**Assessment of the evidence**

23. It is not necessary to reject a witness' evidence, in whole or in part, by regarding the witness as unreliable or as not telling the truth. The Tribunal naturally looks for the witness evidence to be internally consistent and consistent with the documentary evidence. Is the evidence credible? Is it corroborated by other witness evidence and/or by the contemporaneous records or documents? How does the evidence withstand cross-examination? How reliable is a witness' recollection? Is a witness speculating rather than testifying? What is the witness's motive for their account? How does the witness compare to other witnesses?

Mr La's evidence

24. There were a number of difficulties with Mr La's evidence.
25. It is worth noting that Mr La was represented by Counsel at the hearing but he has been represented by his niece, Ms Ellen La, during the proceedings. Although she is a solicitor it is not my understanding that she practices in employment law. Mr La confirmed that his witness statement was written for him by Ms La. He said that he knew what was in the witness statement and that it included the things that he wanted to say. When Mr La was asked to explain what he was trying to say at paragraph 53 of his witness statement he was unable to answer the question. It was apparent that Mr La was struggling to read the written words in the witness statement and to be able to convey in English what the words meant. There were other occasions during Mr La's evidence where it appeared that he was struggling to read the passages he was being referred to.
26. There were several occasions where there were inconsistencies between the evidence that Mr La gave orally and the written evidence that he had provided in his witness statement. I have preferred to rely on the oral evidence that Mr La gave at the hearing as I am satisfied that the oral evidence represented his answers to the questions that were asked of him rather than being prepared by somebody else on his behalf.
27. I noted that there were times during Mr La's oral evidence that he gave contradictory answers to questions. One example being that he said at one point that the photographs of the ambulances that he had provided were taken after the incident with the patient and at another point said that those photographs had been taken in 2023 because he had concerns previously about ambulances blocking the hospital entrance. Where there are inconsistencies in Mr La's oral evidence I have been careful to consider whether there is other evidence or information that can assist me in assessing his oral evidence. I have also considered carefully the precise question that was asked and whether it is possible that any inaccurate answer from Mr La was down to misunderstanding or language barrier.

Mr Rogatka

28. I am satisfied that Mr Rogatka gave his evidence honestly and to the best of his belief. He was willing to provide further context and explanation to his evidence and explained that whilst a manual handling breach on its own wouldn't justify dismissal he had made his decision on sanction based on all of the findings that had been made against the claimant. Mr Rogatka was willing to make concessions where appropriate (that the company may have been able to take steps to prevent or limit damage to its reputation) but also maintained his position on certain matters when he was challenged (that the information that the respondent had about the patients' health and medical conditions meant that it was necessary for medical attention to be sought regardless of Mr La's visual assessment of the patient's injuries).

Ms Lamb

29. I am satisfied that Ms Lamb gave her evidence honestly and to the best of her belief. She was willing to explain her evidence and to make sensible concessions. When she was asked, for example, if a manual handling error would justify a sanction of dismissal she readily said that manual handling errors could always be dealt with by further training. She was clear, though, that manual handling errors could still amount to misconduct or even gross misconduct.

Ms Burns

30. Neither party has called Ms Burns to give evidence and neither has sought to rely on the witness statement. I have therefore only considered the witness statement of Ms Burns to the extent that it provides me with information about the nature and extent of the investigation that the respondent undertook. I do not consider that the witness statement provides me with any probative information beyond what is contained in the contemporaneous documents.

**Chronology and findings of fact**

31. The chronology and facts are largely agreed, or at least not disputed, between the parties. Where matters are agreed I will make findings of fact based on what is agreed. Where matters are not agreed then I will make such findings of fact that are necessary for me to determine Mr La's claim. It is not necessary for me to make findings of fact about every point of dispute between the parties.
32. The chronology is as follows:

Contract information

- 32.1 The claimant was employed by the respondent (or its predecessor(s)) from 14 November 2005;
- 32.2 The claimant's latest contract of employment is undated but is stated to take effect from 1 January 2015;
- 32.3 The notice period provided for in the claimant's latest contract of employment (based on his length of service) is 12 weeks;

Training prior to incident on 21 June 2024

- 32.4 The claimant had a manual handling training assessment on 15 January 2024, which he completed successfully;
- 32.5 The claimant failed a First Aid at Work assessment in March 2024. The feedback from the trainer included information that the claimant "was nodding his head in response to the trainer in his understanding but when the trainer asked John a question he did not know it" as well as

reference to the claimant struggling with his eyesight and not being able to read the paper;

- 32.6 On 2 April 2024 an internal email was sent by an Operations Manager to two colleagues regarding the claimant's next session of First Aid at Work training. The email requested that information be sent to the claimant by email and stated that the Operations Manager would speak to the claimant in person;
- 32.7 The claimant successfully completed the First Aid at Work course and his certificate is dated 16 April 2024;
- 32.8 The claimant attended a "Safer moving of people" course on 17 May 2024 and met the learning outcomes;

Incident on 21 June 2024

- 32.9 The date of the incident which led to the claimant's dismissal was 21 June 2024;
- 32.10 At 14:18 an internal email was sent between two employees of the respondent which stated, "*kiran rang and asked if anyone can help with john la to do a form but he is going to base lol its just incase*";
- 32.11 The claimant was assisted by a colleague to complete an Incident Report Form when he returned to the office (the form has been scribed by the colleague). The relevant narrative information set out in the report is:  
  
*"I picked up the patient from Hammersmith Hospital – Renal Block F. I put him in my wheelchair and secured his lap belt. As I was wheeling him back to the vehicle, we went down a small pavement slope. When the wheels hit the ground, the patient fell forward and injured his left foot and right amputation site. A porter came and assisted me in putting the patient back into the wheelchair. I offered to take him to A + E, however he refused. When we arrived at his address I cleaned his wounds and applied plasters."*
- 32.12 The patient's injuries are described in the incident form as "*scratch on left foot*" and "*scratch on right amputation*".

Events on 24 June 2024

- 32.13 At 10:51am an internal email was sent setting out that information had been received from the Renal Supervisor at the hospital attended by the patient that the patient had made a complaint which included the following allegations:
  - 32.13.1 wheeled in a wheelchair down a curb, forward facing;
  - 32.13.2 patient fell out of wheelchair;

- 32.13.3 claimant was unable to pick patient up;
  - 32.13.4 2 members of the public attempted to help, unsuccessfully;
  - 32.13.5 another Ambulance Care Assistant assisted the claimant to get the patient back into his wheelchair;
  - 32.13.6 patient had injuries to his amputee leg and toes on other foot;
  - 32.13.7 claimant bandaged patient's toes which were bleeding heavily;
  - 32.13.8 emergency services were not called and no other medical assistance was sought;
  - 32.13.9 claimant asked patient not to report the incident because the claimant said that he would lose his job and the claimant left £20 with the patient;
- 32.14 On 24 June 2024 Nancy Burns made a telephone call to the patient as part of her investigation. There is no direct evidence as to what time the call took place. I surmise that it was at lunchtime or early afternoon as the patient said during the call that he had returned from his dialysis session and the district nurse was present. I note that the patient returned from his dialysis session at lunch time / early afternoon on 21 June 2024 and it is not unreasonable to assume that the timings on 24 June 2024 may have been similar. Further the report from the District Nursing team to the Local Authority was at 3.44pm on 24 June 2024 (see below at paragraph 32.19). Nothing in particular turns on the timing of the telephone call save that it informs where I have placed this event in the chronology;
- 32.15 The district nurse was present with the patient when Ms Burns telephoned. The telephone call lasted for 12 minutes and 8 seconds. The patient and nurse each provided some information about the patient's injuries. The patient and nurse described injuries to his big toe on his left side including that the toe is bruised and was previously bleeding, a graze or skin tear to the right stump, an injury / broken finger. The patient explained that he could feel liquid on his legs when he fell out of the wheelchair and that the claimant and other person who helped to pick him up told him that he was bleeding;
- 32.16 The patient said that he had been asleep in his wheelchair after his dialysis session on the day of the incident and that he was also feeling sleepy at the time of the telephone call because he had just come home from having dialysis. The patient confirmed that he had wanted to come home following the incident;

- 32.17 The patient went on to say that the claimant gave him £20 saying “*you can buy lunch*”. When Ms Burns probed the reason why the claimant had given money to the patient he said he didn’t know why the claimant had given him money before repeating that the claimant had said, “*you can buy lunch*” and then again saying he didn’t know the reason why;
- 32.18 Towards the end of the call the patient said on two separate occasions, “*don’t punish this him*”, “*don’t punish this guy, please, he’s a good man*”;
- 32.19 At 3:44pm on 24 June 2024 an email was sent from the District Nursing team to the patient’s GP and social services regarding the incident on 21 June 2024, reference was made to the fall and injuries as well as to money being left with the patient by the claimant;
- 32.20 At 4:46pm an internal email was sent with a report from the member of staff who had received the complaint from the Renal Supervisor. The email reads as follows:

*“[16:43] [name of staff member]  
Dear all,*

*I hope this email finds you well.*

*This morning at around 08:30 AM I was approached by [name of patient] who said that he needs to have a word with me.*

*[name of patient] was very upset regarding an incident that occurred on the 21<sup>st</sup> of June 2024.*

*Patient was collected by PTS295 ( John La ) and on the way to the vehicle (outside the unit ) patient had a fall from our wheelchair due to incorrect manual handling. (ACA went down the curb facing forward in the wheelchair instead of backwards as per our training) , which caused [name of patient] to have a fall from the wheelchair.*

*Patient is a one leg amputee and informed me that he was hurt when falling. His injuries were on his amputated leg and on his other leg he was bleeding from his toes.*

*According to the patient, the ACA tried to get help from 2 members of the public to lift him back into our wheelchair. Patient is saying that they could not lift him and that another CA stepped in and together with Johnny, lifted him into the wheelchair.*

*Patient was saying that he was brought into the ambulance, where the ACA was trying to stop the bleeding using our First Aid Kit, but the bandages did not help.*

*Once they have arrived at the patient's address, [name of patient] informed me that the ACA asked him not to report him as he would lose his job and offered him £20.*

*I have done a welfare check on the patient and the members of staff in Auchy have also checked for any other injuries. Patient does have dried up blood on his toe, but he is well otherwise.*

*Patient has asked me if we are able to provide him with a solicitor or does he need to do that by himself.*

*If you require more information, please do not hesitate to contact me.*

*(name of staff member)  
Renal Team Transport Supervisor  
Mobile: 07580556287"*

#### Investigation meeting – 25 June 2024

32.21 The investigation meeting took place on 25 June 2024 from 9:38am until 10:05am. The claimant was accompanied by a colleague;

#### Events of 25 June 2024 to 1 July 2024

32.22 The email from the member of staff who had received the report of the patient's complaint was forwarded to Nancy Burns (who was not one of the recipients of the internal email on 24 June 2024) at 10:53am on 24 June 2024;

32.23 On 26, 27, 28 June and 1 July 2024, further emails were exchanged between the NHS and Social Services regarding the referral made by the District Nursing Team on 24 June 2024;

32.24 At 2:13pm on 1 July 2024, the email chain commencing with the district nurse's referral was forwarded to the respondent by Imperial College Healthcare NHS Trust;

32.25 The respondent replied at 4:25pm confirming that it is aware of the incident, is investigating, has interviewed the staff member and will keep the NHS updated;

#### Claimant's suspension

32.26 The claimant was notified that he was being suspended on 3 July 2024 whilst allegations of gross misconduct were investigated. The allegations were stated to be:

32.26.1 during a patient transfer on 21 June 2024, you failed to comply with the correct Health & Safety and Safeguarding procedures

whilst transporting a dialysis patient. This resulted in a patient sustaining an injury after falling out of their wheelchair;

- 32.26.2 you offered/ left money for a patient after the incident which is against company policy and could be construed as an attempt to “bribe” a patient;
- 32.26.3 your actions potentially brought the company into disrepute resulting in several complaints from outside bodies including other healthcare professionals;

12 July 2024

- 32.27 On 12 July 2024 Ms Burns made a second telephone call to the patient. In the call the patient told Ms Burns that he still had injuries which the district nurse was continuing to treat. Ms Burns told the patient that the internal processes had happened and that a report had been submitted;

16 July 2024

- 32.28 At 5:00pm on 16 July 2024 an email was sent from Social Services to the respondent and the NHS chasing an update in relation to the safeguarding referral that had been made by the district nurse;

19 July 2024

- 32.29 The respondent replied to Social Services at 11:33am on 19 July 2024 stating that:
  - 32.29.1 employee was removed from frontline duties when notified of the incident;
  - 32.29.2 employee was subsequently suspended;
  - 32.29.3 the investigation has been completed and will be discussed at a meeting later in the day;
  - 32.29.4 the recommendation of the investigation is to proceed to disciplinary due to gross misconduct;

Events leading up to disciplinary hearing

- 32.30 On 20 July 2024 the respondent circulated an internal email with the investigation report and stated that the recommendation is that a disciplinary hearing is convened;
- 32.31 On 22 July 2024 Mr Rogatka was appointed as the disciplinary officer;

- 32.32 At 11:55am on 22 July 2024 the claimant was sent a letter by email inviting him to a disciplinary meeting and providing him with a copy of the investigation report and disciplinary procedure;
- 32.33 The allegations against the claimant as set out in the invitation to the disciplinary hearing were:
- 32.33.1 non-compliance of patient health and safety by not following the appropriate manual handling procedures necessary when safely transporting a patient. It is alleged that you:
    - 32.33.1.1 did not reverse wheelchair on ramp to maintain control;
    - 32.33.1.2 did not use lap restraint in company wheelchair during transport;
    - 32.33.1.3 used a member of public to assist with transport of a patient;
  - 32.33.2 breach of company regulations – alleged bribery, by engaging in an unauthorised activity which conflicts with the interest of the Company, its clients and customers by offering money to persuade the patient not to report the injuries received during transport;
  - 32.33.3 bringing the company into serious disrepute by damage caused to the business by offering the patient money and causing external third parties Health and Social Services to lodge complaints with the company regarding the above incident;

Disciplinary hearing

- 32.34 The disciplinary hearing took place on 31 July 2024. Mr La was accompanied by his trade union representative;
- 32.35 The meeting was adjourned for Mr Rogatka to consider his decision;
- 32.36 The hearing resumed on 5 August 2024. Mr Rogatka informed the claimant that each of the allegations had been proven and that the sanction being imposed was dismissal without notice;
- 32.37 A letter was sent to the claimant on 7 August 2024 confirming the outcome of the disciplinary hearing;

The appeal

- 32.38 The claimant appealed against the dismissal by way of email dated 15 August 2024;

- 32.39 An appeal hearing took place on 12 September 2024. At the claimant's request he was accompanied by his niece who acted as an interpreter for him;
- 32.40 The minutes of the appeal meeting were sent to the claimant on 17 September 2024. A response was sent by the claimant's niece on 22 September 2024 with her comments on the minutes;
- 32.41 The outcome of the appeal was sent to the claimant on 22 October 2024. The respondent upheld one element of the claimant's appeal (that it was not unreasonable to seek assistance from a hospital porter to lift the patient) and rejected all other elements of the appeal. The respondent found that the finding of the disciplinary officer of gross misconduct was proportionate;

Disputed matters

- 32.42 The disputed matters about which I need to make findings of fact are:
- 32.42.1 can the claimant read and write in English;
- 32.42.2 if not, was the respondent aware that the claimant cannot read and write in English;
- 32.43 It is not possible for me to formally assess the claimant's ability to read and write in English. I observed during the hearing that the claimant struggled to read or to understand written passages that he was referred to in his own witness statement. The claimant needed to be directed, during his evidence, to certain wording on his training records but once he found the place he was being directed to he was able to identify the words and information that he was being asked about. I note that there are references in the feedback from the trainer after one of the claimant's courses that he had appeared to be struggling to read (although there is at least an inference there that the difficulty may have been an eyesight problem rather than a specific reading difficulty). On the day of the incident on 21 June 2024 when the claimant reported the matter verbally he requested assistance to prepare the written report which was confirmed in an internal email and the claimant did subsequently have support to complete the report (it was scribed by a colleague);
- 32.44 I am satisfied that the claimant has limited ability to read and write in English. The claimant is not able to read English fluently and cannot understand documents such as training notes. He is not able to write fluently in English and cannot write sufficiently to complete an incident report form. and that the respondent was aware of that during the time that he was employed by the respondent;
- 32.45 The respondent was aware of the claimants' difficulties with reading and writing in English whilst he was employed by the respondent because the

respondent knew that the claimant could not complete the incident report form himself and the respondent knew that the claimant had struggled to read training materials when he was attending a course;

- 32.46 I am also satisfied that the respondent was able to communicate effectively with the claimant orally. That is evidenced by the claimant being able to telephone the office, request support to complete the Incident Report Form and actively engage in his day to day work, training sessions, the investigation meeting and disciplinary hearing.

### **Claimant's submissions**

33. Mr *Pickard* provided written submissions which were 11 pages long. The Tribunal will not attempt to summarise those submissions but incorporates them by reference.
34. The additional oral submissions on behalf of the claimant can be summarised as follows:
- 34.1 Ms Lamb accepted in oral evidence that manual handling errors, in isolation, do not amount to gross misconduct;
- 34.2 Ms Lamb accepted in evidence that the claimant had not actually bribed the patient;
- 34.3 Mr Rogatka did not have enough evidence to conclude that the claimant had bribed or attempted to bribe the patient;
- 34.4 Mr Rogatka acknowledged that the claimant's action in leaving money with the patient may have been well intentioned;
- 34.5 the investigation report identifies as mitigation the fact that the claimant's action in leaving money with the patient may have been a misguided effort to support the patient;
- 34.6 Mr La provided clear and credible oral evidence about his attempt to go to the pharmacy which was not inconsistent with what he said at the appeal hearing;
- 34.7 the respondent did not take any steps to investigate any reputational damage;
- 34.8 Mr Rogatka accepted in evidence that any potential reputational damage could have been mitigated by informing third parties that the claimant had reported himself;
- 34.9 the money left by the claimant was not "hush money" as the claimant reported the incident himself shortly after it occurred;

- 34.10 it was not reasonable of Mr Rogatka to conclude that the injuries sustained by the patient were a medical emergency that required immediate medical attention;
- 34.11 the objective evidence is that the patient's injury was not serious. The claimant had visually inspected the injury. The welfare check from the district nurse was that the patient had dried up blood but was otherwise fine. The nurse referred to the injury as a graze and a skin tear but there was no clarification with the nurse as to the precise nature of the injury;
- 34.12 the claimant provided first aid for the patient's minor injury, acted in accordance with the patient's request to go home and arranged follow up care for the patient. Those were reasonable steps for the claimant to take and the patient's safety was not compromised;
- 34.13 the claimant's delay in reporting the incident was a modest amount of time and did not warrant dismissal without notice;
- 34.14 the respondent substantially overreacted in considering the patient's injury to be a medical emergency without foundation which resulted in the unfair dismissal of the claimant;
- 34.15 the claimant's conduct did not undermine the employment contract to amount to termination;

**Respondent's submissions**

- 35. Mr Singh provided written submissions which were 9 pages long. The Tribunal will not attempt to summarise those submissions but incorporates them by reference.
- 36. The additional oral submissions on behalf of the respondent can be summarised as follows:
  - 36.1 at best the claimant's evidence is not his own, in its totality;
  - 36.2 the claimant's answers in cross-examination were often in direct contrast with his written evidence;
  - 36.3 the claimant accepted in oral evidence that he knew that it was wrong to transport the patient without checking the lap belt was fastened and that it was wrong to wheel the patient down the curb facing forwards;
  - 36.4 the claimant accepted in oral evidence that he knew that he should contact the control room as soon as the incident had occurred;
  - 36.5 the respondent cannot be criticised if the claimant has not read the investigation report especially when the claimant confirmed at the outset of the disciplinary hearing that he had received the report;

- 36.6 the claimant had a trade union representative at the disciplinary hearing;
- 36.7 neither the claimant nor the trade union representative asked for an adjournment or requested further time to read the report;
- 36.8 the respondent does not have to undertake a forensic investigation;
- 36.9 the respondent was entitled to rely on the various admissions that were made by the claimant;
- 36.10 the Tribunal should consider the scope of the investigation in the context of all of the information that was available;
- 36.11 the investigation was not rushed. In fact the respondent was chased by the Safeguarding team at the local authority for a response to the safeguarding concern;
- 36.12 Mr Rogatka did not find the decision easy to make and he did not rush the decision;
- 36.13 the respondent is entitled to consider all of the strands of the evidence when assessing whether the claimant's actions amounted to a bribe or an attempt to bribe the patient;
- 36.14 the respondent's disciplinary policy includes bribery as an example in its non-exhaustive list of examples of conduct that may amount to gross misconduct;
- 36.15 given the nature of the respondent's business even the perception of a bribe could be considered gross misconduct;
- 36.16 Ms Lamb considered the appeal very carefully and did not attempt to justify each of Mr Rogatka's findings. She made a different finding in relation to using the assistance of a hospital porter and she had different reasons to Mr Rogatka for concluding that leaving money with the patient was unacceptable. Nevertheless, Ms Lamb concluded that Mr Rogatka's decision to dismiss should be upheld;
- 36.17 the claimant is not medically trained and should not have made a decision about the nature of the patient's injuries based on a visual inspection;
- 36.18 any attempt by the claimant to purchase bandages or to arrange for the patient to purchase bandage was unreasonable because it was so far outside of the claimant's training;

**Relevant law and legal principles**

**Unfair dismissal**

37. The relevant law in relation to unfair dismissal is set out in the Employment Rights Act 1996.

38. Section 94 of the Act provides that:

*“an employee has the right not to be unfairly dismissed by his employer”.*

39. The parties agree that the claimant was an employee of the respondent and that he was dismissed without notice. Therefore, I do not need to consider section 95 and section 97 of the Employment Rights Act 1996.

40. I turn then to the reason for the dismissal. Section 98 sets out that:

*“(1) in determining for the purposes of this Part whether the dismissal of an employee is fair or unfair it is for the employer to show –*

- a. *The reason (or, if more than one, the principal reason) for the dismissal, and*
- b. *That it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

*(2) A reason falls within this subsection if it –*

- a. ...
- b. *relates to the conduct of the employee*
- c. ...
- d. ...

*(4) where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*

- a. *depends 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*
- b. *shall be determined in accordance with equity and the substantial merits of the case*

41. It is for the respondent to prove, on the balance of probabilities, that the reason for the dismissal was one of the potentially fair reasons set out in section 98 (1) – which includes conduct.

42. If a potentially fair reason for dismissal is established, the Tribunal will consider whether the respondent acted reasonably (or unreasonably) in treating the reason as sufficient reason for dismissing the Claimant. In a misconduct dismissal, this requires consideration of whether the respondent had a genuine belief that the claimant was guilty of misconduct, whether there were reasonable grounds for this belief and whether it carried out as much investigation as was reasonable (***Burchell (1978) IRLR 389 EAT***).
43. The Tribunal must consider whether dismissal was within the range of reasonable responses for a reasonable employer (and it is not for the Tribunal to substitute its own decision as to whether it would have dismissed the Claimant). The “range of reasonable responses” test applies to the issue of whether the respondent had followed a reasonable procedure, just as it does to the decision to dismiss itself (***Sainsbury’s Supermarkets Ltd v Hitt 2003 IRLR 23 CA***).
44. The question is whether the sanction is one that could be imposed by a reasonable employer. Dismissal can be found to be unfair if on careful consideration of the facts the Tribunal finds that the sanction is one that no reasonable employer could impose.
45. By section 207 (2) of the Trade Union and Labour Relations (Consolidation) Act 1992 “*any provision of the (ACAS Code of Practice Disciplinary and Grievance Procedures) which appears to the tribunal to be relevant to any question arising in the proceedings shall be taken into account in determining whether the dismissal is fair or unfair*”.
46. The employer should be even handed and focus on potential evidence which exculpated the employee as much as evidence directed towards proving the disciplinary charges (***A v B 2003 IRLR 405***).
47. If the Tribunal finds that the dismissal was unfair, it goes on to consider whether there should be deductions from compensation. On the authority of ***Polkey (1987) IRLR 503*** compensation may be reduced on the basis that had the employer taken the appropriate procedural steps which they did not take then that would not have affected the outcome.
48. I have to assess the facts and circumstances of the case that acted on the mind of the decision maker who made the decision to terminate the employment.
49. If the dismissal was unfair, the Tribunal then considers what was the chance that Mr La would have been fairly dismissed at some stage in the future? That is, did the claimant contribute to the dismissal?

### **Discussion and conclusion**

50. I will deal with the issues in dispute by applying the relevant legal principles to the facts as I have found them to be. In doing so I turn to the list of issues as determined by me on the first day of the final hearing.

### **Unfair dismissal**

What was the reason or principal reason for the dismissal?

51. The parties agree that the reason for the dismissal was conduct.

Was that a potentially fair reason for the dismissal?

52. Conduct is a potentially fair reason for dismissal in accordance with section 98 (2) of the Employment Rights Act 1996.

Did the respondent genuinely think that the claimant had committed misconduct?

53. I am satisfied that the respondent, and in particular Mr Rogatka as the dismissing officer, genuinely believed that Mr La was guilty of misconduct, namely:

53.1 non-compliance with health and safety, manual handling and patient safety;

53.2 bribery;

53.3 bringing the company into disrepute;

54. It was apparent from Mr Rogatka's written and oral evidence that he had considered each allegation individually and concluded that they were each proven. Mr Rogatka's belief was based on the information available to him which included various admissions from the claimant, contemporaneous evidence and information gathered during the investigation. Mr Rogatka explained clearly that he believed, regardless of the intentions of the claimant, that the allegation of attempting to bribe the patient had been proven.

55. I am also satisfied that Ms Lamb genuinely believed that the claimant was guilty of each allegation of misconduct. Even though Ms Lamb had a different view to Mr Rogatka about whether it was appropriate to ask the hospital porter to assist the claimant to lift the patient after the fall (Ms Lamb considered that was better than the alternative of the claimant not being able to lift the patient back into the wheelchair), Ms Lamb still concluded that overall the allegations were proven and the claimant was guilty of misconduct.

Were there reasonable grounds to hold the belief that the claimant was guilty of misconduct?

56. Mr Rogatka provided clear and consistent reasons as to why he made the findings that he did. Some of the findings were very straightforward because Mr La made admission. The claimant accepted, for example, that he had not checked whether the lap belt was secured when he collected the patient and that he had pushed the patient down a ramp facing forwards rather than backwards.

57. Other findings made by Mr Rogatka were based on the totality of evidence and information available to him. Mr Rogatka gave a detailed explanation for his finding that Mr La had attempted to bribe the patient. Mr Rogatka explained that

even if Mr La had good intentions his actions could be interpreted as an attempt to bribe the patient and therefore “*could reasonably be defined as an attempt to bribe*”. The claimant says that Mr Rogatka should have focused on the definition of bribery in the respondent’s policy rather than the intentions of Mr La. I have not been directed to any definition of bribery in the respondent’s policy. The reference given by Mr Pickard for that contention was a reference to an example of conduct that may amount to gross misconduct.

58. There was various information available to Mr Rogatka about the money that the claimant left with the patient. The patient reported the issue on the morning of 24 June 2024 to a member of staff at the hospital. He repeated the information later that day to Ms Burns as part of her investigation. The patient provided some contradictory information about the reason that the claimant had left the money from it being to buy lunch, that the patient didn’t know the reason or that it was to prevent the patient reporting the incident. The patient also said more than once that he did not want the claimant to get into trouble or to be punished. The claimant says that he reported the incident himself within about an hour. It is right that the claimant reported the fall and the patient’s injury, but the claimant did not report giving money to the patient when he reported the incident on the afternoon of 21 June 2024. The claimant first acknowledged that he had given money to the patient when he was asked about that during the investigation meeting on 25 June 2024. The claimant provided an explanation that he had left money with the patient so that the patient, or someone else on his behalf, could purchase additional bandages. I am satisfied that there was a sufficient basis for Mr Rogatka to conclude that even if the claimant’s actions had been well intentioned his conduct still amounted to an attempt to bribe the patient.
59. Ms Lamb took a different approach to Mr Rogatka regarding the money that the claimant left with the patient. Ms Lamb said that the claimant’s intentions may have been pure but that it was inappropriate for an employee to leave money with a patient in any circumstances. Despite their different approaches, Ms Lamb concluded that it was not unreasonable for the respondent to make a finding that the claimant was trying to bribe the patient.
60. Ms Lamb also reached a different conclusion to Mr Rogatka about seeking assistance from the hospital porter to lift the patient back into his chair. Ms Lamb concluded that seeking assistance was better than leaving the patient on the ground if the claimant was unable to lift the patient on his own. She did not consider that was sufficient to disturb the overall conclusion that Mr Rogatka had reached that the claimant was guilty of gross misconduct or to interfere with the sanction that had been imposed.
61. Mr Rogatka gave a clear and detailed explanation for his conclusion that the claimant ought to have sought medical attention for the patient. The reasons included that the claimant is not medically trained and should not have relied on a visual inspection of the patient’s injuries, the respondent and claimant knew that the patient had complex medical diagnoses and therefore assistance should have been sought from trained medical professionals, the patient’s injuries required bandages and the patient described that he was bleeding heavily. The claimant’s evidence was that the patient would need to have the bandages

changed later in the day and that he understood that a carer would be attending to the patient later in the day. The welfare check at the hospital and assessment by the district nurse were both on 24 June 2024, which was three days after the incident. Although those checks did not indicate that the patient required any urgent treatment at that time the district nurse said that she had cleaned blood of the patient's wounds and the patient said that he was still receiving visits from the district nurse when Ms Burns made a further call to him on 12 July 2024. I am satisfied, therefore, that Mr Rogatka's conclusion was one he was entitled to reach on the evidence that was available to him.

62. Ms Lamb's explanation about her assessment of the patient's injuries was far less convincing than Mr Rogatka's. She said for example that the district nurse's description of a "graze" and "skin tear" meant that the district nurse had subsequently clarified that the injury was a more serious "skin tear" and that the patient must have been bleeding heavily because that was the patient's description and the claimant needed to use two bandages. Ms Lamb's conclusion that the district nurse's description of "skin tear" was clarification of a more serious injury is not an obvious inference that can be drawn from the transcript of the telephone call. That may be a correct understanding, but no clarification was sought from the district nurse. Ms Lamb did not address the point raised by the claimant that the reason that two bandages were used was because the patient had two separate injuries that were bleeding. Ms Lamb did not interfere with the conclusion that Mr Rogatka had made at the conclusion of the disciplinary hearing.
63. Ms Lamb's assessment of the nature of the patient's injury at the appeal stage of the disciplinary process does not undermine the conclusion that Mr Rogatka came to at the end of the disciplinary hearing. Overall, I am satisfied that the respondent, through Mr Rogatka as the disciplinary officer, had reasonable grounds to believe that the claimant was guilty of misconduct in not seeking medical assistance for the patient's injuries.
64. There was ample evidence and information available to Mr Rogatka for him to conclude that the claimant's actions had brought the respondent into disrepute. The respondent had received a complaint directly from the patient who had suggested that he wanted to take legal advice about the matter, and the company had been notified that the district nurse who visited the patient a few days after the incident had made a safeguarding referral to the local authority. It is worth noting that the allegation set out in the invitation to the disciplinary hearing described that external third parties had lodged complaints with the respondent. In reaching his conclusion about the allegation, Mr Rogatka carefully identified that the report was to Social Services (rather than to the respondent) but he still concluded that it reflected badly on the respondent.
65. When challenged in cross examination Mr Rogatka accepted that any harm to the respondent's reputation with external third parties may have been ameliorated by informing the third parties that the claimant had self-reported the incident. He did not, however, resile from his finding that the respondent's reputation had been brought into disrepute by the claimant's actions. It is natural and to be expected that a business will take appropriate steps to protect its

reputation, limit and damage and take steps to repair any damage to its reputation. Just because the respondent is able to take steps to limit or repair the damage to its reputation does not mean that conduct from an employee which brings the respondent into disrepute should be tolerated or does not amount to misconduct.

66. Ms Lamb made a limited concession in cross examination that the external agencies did not know that the claimant had not self-reported the incident and so the respondent's reputation was not damaged in that regard. However, the claimant's actions had led to a complaint from the patient and a safeguarding referral from the district nurse which was investigated by the local authority. She did not say that there had not been damage to the respondent's reputation or that the claimant's actions had been acceptable.
67. The claimant maintained until he gave his oral evidence that any delay in reporting the incident was minimal and did not justify a finding of misconduct. The respondent's "Registrations Policy" states that incidents must be recorded "promptly" and send for validation "as soon as possible". During cross-examination the claimant admitted that he knew that he ought to have called control straight away. When the claimant reported the incident on 21 June 2024 he did so between 1 – 3 hours after the event. The report that was given was only a partial report of the incident. The claimant referred to the patient having scratches and applying plasters rather than that the patient was bleeding and required bandages. The claimant did not tell the respondent that he had left money with the patient when reporting the incident on 21 June 2024. I am satisfied that there was sufficient information for the respondent to conclude that the claimant was guilty of misconduct for not reporting this incident immediately.
68. The respondent, through Mr Rogatka, considered all of the evidence that was given to the disciplinary hearing including the investigation report from Ms Burns, representations from Mr La and his union representative as well as documents and photographs that were provided by Mr La.
69. I am satisfied that there were reasonable grounds for the respondent's belief that the claimant was guilty of misconduct.

*Did the respondent carry out a reasonable investigation?*

70. This is the area that is most contentious between the parties.
71. The claimant's position is that the investigation was flawed in a number of respects:
  - 71.1 the respondent did not take reasonable steps to ascertain the relevant facts;
  - 71.2 the respondent did not interview the other two patients who were present when the incident occurred

- 71.3 the respondent did not interview the hospital porter who assisted the claimant to lift the patient back into the wheelchair;
  - 71.4 Ms Burns and Mr Rogatka prematurely categorised the allegations against the claimant as gross misconduct;
  - 71.5 the respondent failed to ascertain the extent of the patient's injuries;
  - 71.6 the respondent failed to request photographic evidence of the patient's injuries;
  - 71.7 Ms Burns failed to clarify the extent of the injury to the patient's stump in light of the varying references to "skin tear" and "graze";
  - 71.8 the respondent did not contact the porter who assisted the claimant to lift the patient back into his wheelchair when the porter would have observed the patient's injuries;
  - 71.9 the respondent did not enquire whether the patient required any aftercare;
  - 71.10 Ms Burns did not ask the claimant, the patient or the porter whether the description of the patient "bleeding heavily" was accurate;
  - 71.11 Ms Burns did not take any steps to establish whether the respondent's reputation had actually been damaged;
72. The respondent's position is that the investigation was reasonable:
- 72.1 the investigation manager attempted to contact the other two patients, but they did not respond;
  - 72.2 the respondent was unable to even attempt to contact the unidentified hospital porter;
  - 72.3 the respondent had ample evidence from the claimant's admissions, the complaint from the patient, follow up call with the patient and safeguarding referral from the district nurse;
73. The respondent was first aware that an incident had occurred when the claimant reported the incident on the afternoon of 21 June 2024. I have not received any evidence as to whether the respondent initiated any investigation at that stage or whether it intended to review or consider the information received from the claimant. I infer that by the morning of 24 June 2024 the respondent had not made any decision to take further action based on the report received from the claimant. I note that the report the claimant made was a partial report which did not detail the extent of the patient's injuries as later admitted by the claimant or the fact that the claimant had left money for the patient.

74. On the morning of 24 June 2024, the respondent received details of a complaint from the patient from staff at the hospital. That complaint included details of the patient falling out of his wheelchair, sustaining injuries, the patient being asked by the claimant not to report the incident and the patient being left money by the claimant.
75. The catalyst for the investigation was the complaint from the patient. Given the nature of the respondent's business, a reasonable employer would have investigated the allegations contained in the complaint from the patient.
76. Ms Burns was the investigation manager in relation to the incident on 24 June 2024. She began gathering information straight away including making a telephone call to the patient the same day.
77. The investigation meeting with the claimant took place on 25 June 2024. The claimant was accompanied by a colleague. The claimant was an active participant in that meeting, answering questions and providing information. It is apparent from the minutes that there were occasions when the claimant did not understand the question that was asked of him. It is not clear if that was because of a language barrier or simply a misunderstanding that can happen in any discussion. What is clear is that when the claimant did not understand a question it was rephrased, and the claimant was able to provide an answer. During the investigation meeting, the claimant's companion was able to provide information and clarification on behalf of the claimant. The companion also asked questions of the claimant to ensure that his answers were properly understood.
78. Ms Burns' report sets out that she had received information from both the district nurse and the patient that he was receiving after care for his injuries arising from the incident both on 24 June 2024 and on 12 July 2024. The claimant's suggestion that Ms Burns did not enquire about whether the patient required aftercare is therefore not correct.
79. Ms Burns' report also sets out that a complaint had been received from the patient and that a report was made by the district nurse about the incident. Ms Burns therefore had sufficient information to conclude that the claimant had a case to answer in relation to the allegation of bringing the respondent into disrepute.
80. Ms Burns' investigation report is detailed and thorough. It identifies her methodology in gathering evidence and information. Ms Burns explains the steps that she took to identify and contact the other patients who were potential witnesses.
81. I do not have any account from Ms Burns about whether she considered it appropriate to seek any clarification as to the nature and extent of the patient's injuries in light of the conflicting description of the "skin tear" or "graze" to the patient's leg stump. Nor do I know why photographs of the injuries were not pursued when these were offered by the district nurse and Ms Burns sought verbal consent from the patient to seek further information. I note that Ms Lamb

gave oral evidence about the respondent's policy of patient focused information gathering and the need to avoid causing any distress to patients.

82. In relation to each allegation that she was asked to investigate, Ms Burns provides details of the supporting evidence, mitigation factors and aggravating factors. She then reaches a reasoned conclusion as to why she considers that the claimant does nor does not have a case to answer in relation to each allegation. She identifies that "policy" suggests each allegation is gross misconduct.
83. The investigation was not rushed nor unnecessarily prolonged. The report itself states that it was completed on 28 June 2024 but that cannot be correct because the report refers to the safeguarding report from the district nurse which the respondent was not aware of until 1 July 2025. I note that the respondent told the local authority on 19 July 2024 that the investigation had been completed and that Ms Burns' report was circulated internally on 20 July 2024. It is reasonable to infer that the report was completed on or around 19 July 2024. The investigation process therefore lasted about 3 ½ weeks.
84. On 3 July 2024 the respondent wrote to the claimant explaining the terms of his suspension and set out that the respondent was investigating allegations of gross misconduct relating to the claimant's actions on 21 June 2024. I do not agree that identifying that the respondent considered that the claimant's actions may amount to gross misconduct makes the investigation unfair or outside the band of reasonable responses. Correctly identifying the potential category of conduct is essential in order for the respondent to properly consider the nature and extent of its investigation.
85. When Ms Burns completed her investigation report it was even more important that the respondent considered and identified the nature of the allegations against the claimant. At the point that the respondent considers whether to hold a disciplinary hearing it has to consider whether dismissal may be a potential sanction if the allegations are proven. Therefore, categorising the allegations is an essential element of a fair investigation.
86. I have considered the positions of both parties carefully and reminded myself that it is for the respondent to establish that a reasonable investigation was undertaken in light of the size and resources of the Respondent.
87. The respondent is a large organisation with a number of dedicated HR professionals. It is therefore reasonable to expect that it will undertake detailed and thorough investigations that are proportionate to the matter in hand. It is not necessary for an employer to consider every possible avenue of enquiry or to take accounts from everyone present, especially if they are not able to provide any useful information. Perfection is not the standard that is being applied.
88. The respondent undertook the investigations that it considered necessary to gather information that established the facts in relation to the allegations against the claimant. I am therefore satisfied that the respondent carried out a reasonable investigation into the allegations against the claimant.

Did the respondent otherwise act in a procedurally fair manner?

89. The claimant says that respondent acted in a procedurally unfair manner because:
- 89.1 Mr Rogatka introduced additional allegations that had not been investigated by Ms Burns. Those allegations were that the claimant should have returned the patient to the renal unit and that the claimant should have immediately reported the incident to dispatch;
  - 89.2 The claimant was not provided with copies of the call logs with the patient or the emails with external agencies.
  - 89.3 The claimant was not provided with copies of the policies referred to in the appeal outcome letter from Ms Lamb (the Registrations Policy and Conveyance of Patients Policy);
90. An employee needs to know what allegations of misconduct they have to answer. The allegations should be investigated before the employer decides whether there is a case to answer. The employee should have a chance to consider the evidence against them and to be able to prepare fully for the disciplinary hearing.
91. The claimant was not told at any point that failing to report the incident immediately or failing to take the patient to the renal unit were allegations that formed part of the investigation or part of the case that he had to answer at the disciplinary hearing. They were not included as allegation in the invitation to the disciplinary hearing. The respondent did not raise either of those matters with the claimant at the investigation meeting.
92. The respondent asked the claimant very brief questions about those matters during the disciplinary hearing. A review of the minutes of the minutes of the disciplinary hearing shows that these were side issues and were not the allegations that were being pursued by the respondent.
93. Mr Rogatka initially said that these were not new allegations because they formed part of the general allegation that the claimant had not complied with patient health and safety. He subsequently accepted that these allegations had not been particularised.
94. It is unfair to make a finding that an allegation of misconduct against an employee has been proven when the allegation has not been investigated and the employee has not been notified of the allegation. I have considered whether the findings of failing to report the incident immediately and failing to return the patient to the renal unit are sufficient closely related to the existing allegations that the findings are incidental. They are not. The existing allegations against the claimant all related specifically to manual handling errors which are distinct from reporting incidents or responding to an injury to a patient. I have concluded that it was procedurally unfair for the respondent to make findings that against the

claimant in relation to the allegations of failing to immediately report the incident and failing to return the patient to the renal unit.

95. It is trite to say that it would ordinarily be appropriate as part of a fair process to provide copies of relevant evidence to an employee. That is set out in the ACAS code of practice on disciplinary and grievance procedures and is also a matter of common sense. That is not to say that every failure to provide copies of relevant evidence renders a disciplinary procedure unfair. The respondent acknowledges that the claimant was not provided with supporting documents beyond the invitation to the disciplinary meeting, the investigation report and the disciplinary policy. The claimant did not receive the telephone call logs or copies of emails until they were disclosed to him within these proceedings.
96. Ms Lamb said in her oral evidence that the policies were no longer accessible on the respondent's internal system as the respondent had been going through a period of transition.
97. I note that the claimant said in his evidence that he had not read his contract of employment or other documents that had been provided to him previously. Neither had he read the disciplinary policy which was sent to him before the disciplinary hearing. The claimant expressly said that he was willing and able to proceed with the disciplinary hearing. Neither the claimant nor his trade union representative sought an adjournment of the disciplinary hearing.
98. It is clear from the minutes of the disciplinary hearing that the claimant was able to understand and respond to questions that were asked of him. The claimant also knew what the respondent's various policies and procedures were.
99. In this case I do not consider that there was any unfairness in not providing copies of relevant evidence to the claimant because the claimant knew what the stated allegations against him were, the claimant knew what the respondent's relevant policies were, the claimant admits that he has not read documents that were sent to him during the course of his employment, the claimant admits that he did not read the disciplinary policy that was sent to him during the disciplinary process, the claimant has limited ability to read written English and there is no reason to suppose that the claimant would have read any additional documents that may have been sent to him during the disciplinary process.

Was dismissal within the range of reasonable responses?

100. The claimant's position is that:
  - 100.1 any misconduct on his part did not warrant a sanction of dismissal;
  - 100.2 his conduct in leaving money with the patient could have been dealt with by further training;
  - 100.3 the respondent did not take immediate action when the claimant reported the incident;

- 100.4 the respondent did not take any account of the factors which suggested that the patient's injuries were minor;
  - 100.5 did not take account of the claimant's efforts to safeguard the patient and to arrange further treatment for the patient;
  - 100.6 did not consider the claimant's 20 years of service;
101. The respondent's position is that:
- 101.1 on the basis of the claimant's admitted conduct there was a sufficient basis to justify a sanction of dismissal;
  - 101.2 dismissal was one of the sanctions legitimately available to the respondent;
  - 101.3 Mr Rogatka carefully considered the claimant's length of service;
  - 101.4 Mr Rogatka considered the claimant's misconduct as a whole when considering the appropriate sanction to impose;
102. It is not clear what, if any, action the respondent would have taken in relation to the claimant's report of the incident but I note that the claimant's report was a partial report on a Friday afternoon and did not make any reference to the fact that the claimant had left money with the patient. The respondent acted very quickly once it received the complaint from the patient which included the information that the claimant had left money with the claimant. It was not outside the band of reasonable responses to start an investigation on the next working day after the incident and when the respondent had fuller information about what had happened.
103. I have already concluded that the respondent, through Mr Rogatka, had ample grounds to conclude that the claimant ought to have sought medical assistance for the patient regardless of the claimant's visual assessment of the patient's injuries. Therefore I do not accept the claimant's submissions that the respondent did not take account of factors which pointed to the patient's injuries being minor or the steps that the claimant took to safeguard the patient.
104. Mr Rogatka gave credible and emphatic evidence that he wrestled with making the decision to dismiss the claimant. He said that the manual handling errors would not on their own justify dismissal but that his decision was based on the totality of the misconduct, for which he considered that dismissal was the appropriate sanction. Mr Rogatka said that whilst the claimant's previous written warning was referred to in the investigation report he did not take it into consideration when deciding what sanction to impose because the written warning had already expired. Mr Rogatka said that it was a difficult decision to make as he liked the claimant so it was not something that he took lightly. I do not accept the claimant's submission that the respondent did not take into account the claimant's 20 years of service. I am satisfied that Mr Rogatka

carefully considered the relevant factors when deciding what sanction to impose for the misconduct that he had found the claimant to be guilty of.

105. Ms Lamb's evidence was equally emphatic. She was plain that manual handling would be dealt with appropriately by way of further training. Ms Lamb had a very strong view that the bribery alone enough to justify dismissal and that dismissal was the appropriate sanction in the claimant's case.
106. I agree with the respondent's submissions that dismissal was a sanction that was legitimately available to the respondent and that dismissal would have been within the band of reasonable responses based on the claimant's admitted conduct of manual handling errors and leaving money with the claimant.

Did the respondent act reasonably in treating the claimant's conduct as sufficient reason to dismiss the claimant?

107. I am satisfied that the respondent did act reasonably in treating the claimant's conduct as a sufficient reason to dismiss the claimant. The respondent had reasonable grounds to believe that the claimant was guilty of misconduct, the respondent carried out a reasonable investigation, the procedural unfairness of making findings against the claimant that had not been investigated or put to him as allegations in the invitation to the disciplinary hearing did not, in all the circumstances, render the dismissal itself unfair, and dismissal was within the range of reasonable responses.

Breach of contract (notice pay)

What was the claimant's notice period?

108. The claimant's notice period was 12 weeks in accordance with paragraph 18 of his contract. The contract is undated but is stated to take effect from 1 January 2015.

Was the claimant paid for that notice period?

109. It is agreed between the parties that the claimant was not paid any notice pay as he was summarily dismissed on 5 August 2024.

Was the claimant guilty of gross misconduct or did he do something so serious that the respondent was entitled to dismiss without notice?

110. R has found guilty of misconduct and classified as gross misconduct for each of the allegations that were proven. The claimant made conscious decisions to undertake each act which he knew were in breach of the respondent's policies and procedures. the respondent has acknowledged that manual handling failures alone could be dealt with by way of retraining. However Mr R was clear that the decision to dismiss was made on the basis of the misconduct as a whole which flowed from the incident which included the manual handling failures, failure to report the incident immediately, bringing the respondent into disrepute and attempting to bribe the patient.

111. The claimant was guilty of gross misconduct and the respondent was entitled to dismiss him without notice

**Conclusion**

112. The complaint of unfair dismissal is not well founded and is dismissed.

113. The complaint of wrongful dismissal / notice pay is not well founded and is dismissed.

**Approved by:**  
**Employment Judge Heather**  
**25 September 2025**  
**Amended date: 12 December 2025**

Judgment sent to the parties on:

26 September 2025

For the Tribunal:

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