# EMPLOYMENT TRIBUNALS

**Claimant:** Derek Pickett

**Respondent:** Rolls-Royce Solutions UK Limited

**Heard at:** London South (in public by video)

**On:** 28 and 29 April 2025 (part heard) and 11 September 2025

**Before:** Employment Judge N Wilson

**Appearances**

For the claimant: Mr K McNerney (counsel)
For the respondent: Ms Niaz – Dickinson (counsel)

# JUDGMENT

1. The complaint of unfair dismissal pursuant to Section 94 of the Employment Rights Act 1996 is well-founded. The claimant was unfairly dismissed.

2. There is no finding that the claimant would have been fairly dismissed in any event. No reduction is therefore made to the claimant's award.

3. The claimant did not cause or contribute to the dismissal by blameworthy conduct, and it is not just and equitable to reduce the compensatory award payable to the claimant.

# REASONS

1. The Judgment in this matter was reserved as due to a funeral the Judge had to attend the part heard hearing listed for 11 and 12 September had to be reduced to the 11 September 2025 only. There was accordingly no time for me to deliberate and hand down my decision at the end of the hearing. We did however conclude hearing evidence and submissions on 11 September 2025.

2. I apologise for the delay in providing this decision which was due to other judicial commitments.

## Background

3. The claimant was employed by the respondent as a senior workshop engineer from 19 February 2018 until his dismissal on 8 May 2024. ACAS early conciliation started on 4 June 2024 and ended on 10 June 2024. The claim form was issued on 23 July 2024.

4. The claim is about unfair dismissal.

5. The claimant states he was pulled into an office for a work meeting on 8 April 2024 without any prior notice and that this was an investigation meeting. He states the notes of the meeting were taken by Josh Barnett in HR and they were inaccurate.

6. He states he was shown CCTV footage showing him picking up an iPad from a work toolbox within the training centre that is attached to the workshop. That CCTV was taken from a date in February 2024.

7. A disciplinary meeting was held on 8 May 2024 by Dave Wilson. The claimant attended with his union representative Gordon Lean. The claimant stated he was not informed that a decision was going to made when he adjourned the hearing, but when Mr Wilson returned, he announced the claimant was to be dismissed for gross misconduct – namely for theft of the iPad. He was dismissed without notice and escorted from the building.

8. An appeal hearing took place on 4 June 2024 (the claimant attended with his union representative Gordon Lean) and the claimant was told the dismissal was upheld on 17 July 2024.

9. The claimant states the respondent only disclosed a 2-minute video clip of him picking up the iPad and not any footage either side of it. He denies stealing the iPad.

10. The respondent's defence is the claimant was summarily dismissed for gross misconduct on 8 May 2024. The respondent states that on or around 9 February 2024 it came to the respondent's attention that one of its employees' iPads was

missing from site. The respondent looked for the missing iPad for some time and held discussions with all staff regarding the missing iPad in the respondent's weekly townhall meetings, asking if anyone had seen it. The iPad was not found, so in March 2024 the respondent obtained and reviewed CCTV footage from the date the iPad went missing (9 February 2024). They say the CCTV footage showed the claimant picking up the iPad from the respondent's Engine Training Room, appearing to unlock it with its passcode and exiting the respondent's site via a back exit fire escape that led to the car park.

11. On 29 April 2024, the respondent's response states the iPad was found in one of the respondent's Workshop rooms.

12. The disciplinary hearing took place on 8 May 2024, and the claimant was dismissed at this meeting.

13. On 9 May 2024 the respondent wrote to the claimant to confirm his dismissal. The respondent confirmed that it had been concluded the claimant had taken the iPad without permission and that this was an act of gross misconduct warranting summary dismissal. It was noted that the CCTV evidence showed the claimant taking and accessing the iPad and that the evidence the claimant had given in his defence did not match statements given by other colleagues, or the evidence that had been gathered by the respondent. Namely, the claimant had accepted that he had taken the iPad but alleged he had returned it the following day, on 10 February 2024. However, the respondent's position is that the iPad had not been found where the claimant had stated he had left it and was not found until 3 months after it had been taken, on 29 April 2024.

14. The claimant appealed the decision to dismiss him on 12 May 2024. The claimant attended the appeal hearing accompanied by a Trade Union Representative. The grounds of appeal and circumstances of the case were discussed. The respondent's appeal manager then adjourned the meeting to consider the facts and to undertake such further investigation as was believed necessary.

15. The meeting was reconvened on 17 July 2024. The claimant was informed that the dismissal would be upheld, and that the claimant had no further right of appeal under the respondent's procedures. The decision was confirmed to the claimant in writing on 23 July 2024.

16. I had before me:

- 6-page Trial Bundle index
- 383-page Trial bundle
- Video footage – 2 clips 'the engine training room clip'' and the 'bay clip'

17. I also had witness statements from:

- Derek Pickett – claimant
- Alex Tribe
- Simona Akery
- Gordon Lean
- Dave Wilson

18. We went part heard and concluded the evidence and submissions on 11 September 2025.

## The Complaints

19. The Tribunal will deal with the following complaints:

    a) Unfair dismissal – under section 94 of the Employment Rights Act 1996

## Legal Framework

### Unfair dismissal

20. What was the principal reason for the claimant's dismissal and was it a potentially fair reason under sections 98(1) and (2) of the Employment Rights Act 1996? The respondent asserted that it was a reason relating to the claimant's conduct.

21. If so, was the dismissal fair or unfair within section 98(4), and, in particular, did the respondent in all respects act within the band of reasonable responses? The claimant stated that the dismissal was unfair because the respondent followed an unfair process; he says the respondent failed to conduct a proper and full investigation, there was delay into the investigation in breach of the ACAS code of conduct.

22. If the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would still have been dismissed had a fair and reasonable procedure been followed, in accordance with the principles in **Polkey v AE Dayton Services Ltd [1987] UKHL 8**; **Software 2000 Ltd v Andrews [2007] ICR 825; W Devis & Sons Ltd v Atkins [1977] 3 All ER 40;** and **Crédit Agricole Corporate and Investment Bank v Wardle [2011] IRLR 604**.

23. Would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct before the dismissal, as set out in section 122(2) of the 1996 Act, and if so to what extent?

24. Did the claimant, by her blameworthy or culpable conduct, cause or contribute to her dismissal to any extent, and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award under section 123(6)? The respondent said that the compensation should be reduced by 100%.

## Findings of Fact

25. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point. References to page numbers are to the agreed Bundle of Documents. I refer to only as much of the evidence as is necessary to explain my decision.

26. I heard sworn evidence from:

    The claimant
    Alex Tribe
    Dave Wilson
    Simona Akery

27. The respondent chose not to cross examine Mr Lean. Ms Niaz Dickinson states this is because his evidence is largely hearsay and opinion and not relevant to the issues.

## Incident and CCTV footage

28. Glen Wanstall a Production Assistant had been issued with a new iPad two or three weeks prior to 9 February 2024. He left it in the engine training room on (Friday) 9 February 2024 and sometime after lunch that day realised the iPad was missing. Both Mr Wanstall and Tony Read looked for it.

29. The iPad was only reported missing from the 'engine training room' on Monday 12 February 2024.

30. On Monday 12 February another iPad was discovered in the engine training room, but it was discovered to be one belonging to a former employee Ben Bristow. The respondent did not investigate how a former employee's iPad had turned up in the engine training room in place of Mr Wanstall's missing iPad. The respondent adduced no evidence to challenge Mr Pickett's assertion that he must have picked up Ben Bristow's iPad from the team leader cabin thinking it was the one he had given to Mr Kettley to clear tickets on 9 February. They did not at any point based on their witness evidence consider whether this supported the claimant's version of events that he had on 10 February indeed returned an iPad to the engine training room.

31. CCTV footage of the material date (9 February 2024) shows the claimant walk into the engine training room on his mobile phone (at 25.30 mins on my time stamp of the footage). He is seen to pick up an iPad which has an orange and black case and a strap. It appears to have a standard non personalised screen saver on it. It appears he inputs a password and unlocks the screen. The clip is very short and shows him leave the room with it. He then returns to the room less than 15 minutes later. Whilst Mr Tribe in his statement makes the point of the claimant glancing at the toolbox repeatedly, I do not understand why he considers this to be objectively suspicious from what I have seen. If Mr Pickett had stolen the iPad, why would he return to the engine room (when the respondent and the claimant both accept he did not ordinarily work in there) and keep 'glancing' at the location from which it

was taken? Objectively I do not find this to be suspicious having observed he footage Mr Tribe relies on to arrive at this conclusion. It is telling the interview with the claimant on 8 May does not put that question to the claimant. A reasonable response would have been to ask the question of the claimant if Mr Tribe considered it to be suspicious to afford the claimant the opportunity to put his version of events in this regard as part of the investigation.

32. Similarly, I do not find the way in which the claimant approaches the iPad casually whilst on his mobile phone is on the face of it objectively suspicious. He does not take it for example and attempt to conceal it. He openly picks it up and removes it. He is not observed to be looking around the room to check if anyone is in there. He does not inspect it or seek to hide it.

33. The claimant gave a very credible explanation as to why he was glancing at the toolbox when he returned to the engine room which I find far more plausible than someone simply looking over at an area repeatedly that they had allegedly stolen something from which does not make proper sense. I find the claimant nearly knocked the tools off when picking up the iPad up, so as he was chatting to Tony Read he was simply checking that area for this reason.

**Investigation**

34. Mr Tribe was the investigating officer for the allegation. He accepted it was his role to be impartial and to collect evidence both ways.

35. The respondent's Mr Wanstall became aware of the iPad being missing from the engine training room on 9 February. No formal report was made until Monday 12 February. They do not conduct the investigation meeting with the claimant until 8 April 2024 some two months later. This is despite surely knowing they had available CCTV footage from the location which could have been viewed contemporaneously.

36. For reasons which are largely not explained satisfactorily by the respondent, the CCTV footage is not acquired immediately but at Tony Read's suggestion is made available on or around 8 March 2024. Mr Tribe in his statement refers to a further delay between obtaining the CCTV and commencing the investigation due to 'us' (it is not clear who specifically 'us' are ) needing to gain clarity on the procedure they needed to follow and to ensure they were following the policies but there is no evidence advanced about what specifically about any policies and procedures result in such a delay.

37. The respondent relies on having repeatedly made it clear to engineers the iPad was missing by the time they speak to Mr Pickett on 8 April 2024 yet take no steps to secure CCTV footage sooner than they did, when it would be obvious to a reasonable employer that this was a reasonable and necessary step to take in the circumstances. They do not even take the step of finding out how long the CCTV cycle was to ensure any crucial dates for the relevant period would still be available and if not to ensure they were preserved. This would have been a reasonable step to take given they considered the matter involved theft.

38. Mr Mason who obtained the CCTV is likely on balance to have viewed this footage when he did obtain it on 8 March. Mr Tribe could not recall how long after this he was informed the CCTV showed the claimant taking the iPad or how long it took for him to look at the CCTV footage himself. Again, no reasonable explanation is given for why there was a delay in Mr Tribe viewing the footage. I find a reasonable investigation would have involved the investigator immediately viewing the footage once told it showed the claimant taking the iPad.

39. Mr Tribe referred to needing to speak to HR and the availability of certain people causing the delay between the obtaining of the CCTV on 8 March and speaking to the claimant on 8 April. Mr Tribe accepted in cross examination part of the delay was due to his lack of understanding of the role of the investigating officer and needing to rely on HR.

40. When the claimant is interviewed on 8 April, he immediately states it was over a month ago, so he is not sure, but he thinks he was looking for Ryan Mitchell's (his apprentice's) iPad to clear some tickets. He said he thought it was Ryan's iPad, picked it up and used it. He says he was sure he had put it back. He also says he was not sure where he took the iPad, but he thinks it was to Stewart Kettley, and he said he put it back on Saturday 10 February after he realised it was not Ryan's iPad because he found Ryan's iPad at the bottom of Ryan's toolbox the next day. Mr Pickett has been consistent with this explanation throughout.

41. Mr Tribe accepted in evidence the CCTV footage was on a 30-day cycle. It stands to reason had they spoken to the claimant on or around 8 March immediately after the footage was obtained and viewed, they would have been able to secure the footage of 10 February. No one at the respondent has viewed that footage notwithstanding that it is clearly hugely relevant to the allegation in this case and the claimant's response to the allegation of theft. It was only after the disciplinary Mr Tribe says that the respondent tried to recover the further footage the claimant had referred to. However, the disciplinary hearing was not until 8 May.

42. In evidence Mr Tribe confirms what the claimant said to him. Mr Pickett informs Mr Tribe that he picked up the iPad thinking it belonged to his apprentice Mr Ryan Mitchell and he recalls trying to get his tickets signed off because he was not working that day but then putting the iPad back on a different day.

43. Mr Pickett gave this information to Mr Tribe on the 8 April. Had he been asked about the same matter and shown the CCTV on or around 8 March on balance I find he would have given the same information which would have enabled the respondent to investigate his response far sooner and obtained crucially the CCTV of 10 February (and any other relevant CCTV including the team leader's cabin if there is CCTV in this location of both 9 and 10 February) and gathered better quality witness accounts.

44. The respondent failed to obtain the CCTV of 10 February, and they lost the opportunity for this due to their delay in speaking with Mr Pickett when they originally obtained the CCTV of the engine training room on 8 March.

45. It stands to reason if that CCTV footage did indeed show the claimant return an iPad on 10 February the respondent would have formed a different view of the CCTV as a whole. It may have resulted in them looking for other relevant CCTV for example the team leader cabin if available for the 9 and 10 February.

46. Mr Tribe was asked in multiple ways whether he had asked the IT department to obtain the CCTV footage for 10 February 2024. His repeated response was he could not recall. I find on balance Mr Tribe did not make any request for this footage. He accepted in evidence that from what has been disclosed by the respondent in the bundle it appears they did not ask anyone to provide the CCTV footage for 10 February.

47. Mr Tribes evidence is that the iPad that was returned was different to the missing iPad and therefore he would have still recommended disciplinary action. Mr Tribe stated that an iPad had been returned on Monday 12 February, but that iPad was different to the one which had been taken. The respondent says the claimant took an iPad on 9 February which was a brand-new iPad with a strap in an orange case and had only been issued 2 or 3 weeks previously. They say the iPad the claimant is talking about returning was a different iPad visually and owned by Mr Bristow. However, the respondent has to accept that the iPad for Mr Bristow was found on Monday 12 February and the claimant's evidence was that he returned the iPad on Saturday which would have been 10 February. It is not clear why the respondent's have discounted that the iPad of Mr Bristow found on Monday 12 February is the same iPad Mr Pickett says he returned on Saturday 10 February nor that this could support what he was saying that he must have mistakenly picked up an iPad from the team leader cabin and returned it to the engine room thinking it was the same one he had left with Mr Kettley. The respondent's Mr Tribe simply does not even entertain how or why an ex-employee's iPad had turned up in the exact same location as one that had gone missing a mere 3 days earlier. This would clearly be relevant to the investigation.

48. On either version of events if the claimant had returned the same iPad on 10 February or as the respondent believed he had returned a different iPad belonging to Mr Bristow on Monday 12 February, to establish what had actually happened (and when) a reasonable employer would have obtained CCTV footage for both dates – given the seriousness of the allegation – the CCTV for the 10 and 12 February would have surely resolved whether the claimant's explanation that he had retrieved an iPad and put it back was supported or not. The claimant is adamant throughout the investigation and disciplinary that the respondent checks all the CCTV; this is not the actions of someone who is expecting the CCTV to show anything other than supporting his version of events. There is no evidence when he asks them to view other CCTV that he knew it would no longer be available by that time.

49. Having made an assumption that the iPad they found which had belonged to Mr Bristow was the same iPad the claimant had spoken about returning two days earlier on 10 February, and again for reasons which were not satisfactorily explained by Mr Tribe in his evidence having discounted that this supported the claimant's version of events, it is clear the respondent does not seek to obtain the CCTV footage for the 10 or 12 February 2024.

50. By the time of the disciplinary hearing the opportunity to view it had been lost but no steps were taken to contact the CCTV company (Vindex) to see if that footage could subsequently be recovered.

51. Mr Tribe in evidence stated he was not sure what the 'added value' was in looking for the footage of Saturday 10 February. I find this belies a mindset of someone who has reached a foregone conclusion without investigating the claimant's version of events.

52. When Mr Richard Gambiragiou, the regional IT manager, was spoken to by Simona Akery in the further investigation meeting on 11 June 2024 (as part of the appeal) he was asked about whether the CCTV company Vindex would be able to extract the additional footage by Simona Akery (page 224). The response is '*I wouldn't want them in the building as they mess everything up when they come in'.* The response from him to the questions posed about whether they would be able to do it is; *we don't know*. It was not reasonable to assume from this the footage could not be obtained. The response from the IT manager is not a reasonable one to an allegation of theft.

53. Based on the 2 CCTV clips (the 'engine training room' and 'bay' footage) it was decided by the HR team that the matter needed to progress to an investigation and Mr Tribe was told to lead the investigation by Joshua Barnett in the HR team.

54. Both Mr Barnett and Mr Tribe asked the claimant verbally to attend an investigation meeting with them on 8 April. There was no notice given to the claimant for this meeting.

55. It is unchallenged evidence that the respondent's policy in their handbook allows them to hold investigation meetings without notice because no disciplinary action is being take at that time. The respondent's position is therefore at this stage in the proceedings the meeting is informal and designed to determine the facts only.

56. The claimant's position throughout and from this first informal meeting is that he picks up the iPad thinking it was his apprentice, Ryan's. He takes it to clear Ryan's tickets. He then takes it to Stewart Kettley so that he can approve clearing the tickets because only team leaders are able to have final approval of tickets. The claimant says in this meeting that he passed the iPad to Stewart directly.

57. He informs Mr Trobe that the following day on 10 February he found Ryan's iPad in his toolbox and therefore realised the iPad he had passed to Stewart was not Ryan's. He then when to retrieve the iPad from the team leader cabin, located it there and returned it to the engine training room where he had originally found it.

58. His response to not raising it to anyone when they had been raising the missing iPad in the team meeting and the town halls was that he did not register it.

59. Mr Tribe says he carried out further meetings after this with:

    a. Chris Elsegood – operations supervisor
    b. David Uden – Corrick – workshop team leader
    c. Jack Halstead – workshop team leader

d. Matt Mason – workshop team leader
e. Stewart Kettley – workshop team leader
f. Colin Burgess – Pike – technical supervisor and trainer
g. Glenn Wanstall – workshop production support
h. Tony Read – workshop engineer.

60. The investigation with these people took place on 9 April 2024 some two months after the material event. It largely comprised of two questions being asked namely; did the claimant give you the iPad belonging to Glen Wanstall and did Derek Pickett give you any iPad at any point.

61. From the the investigation meeting notes of these meetings it is evident that a number of them say 'I can't recall' in response to a specific question about being handed Mr Wanstall's iPad. The question presupposes that the iPad they are asking about is Mr Wanstall's so of course unless they were made aware that the iPad being handed to them was Mr Wanstall's at the material time they would more likely than not respond no or I don't recall. Which is precisely how they respond.

62. It is troubling that none of them even ask what day 9 February is when the question is asking them to recall a date 2 months previously.

63. When asked if they were given an iPad at any point, Mr Elsegood and Mr Halstead reply they can't recall. Mr Kettley's immediate response to this second question is *'not that I can remember. It was a long time ago*'. In response to 'when you went for a tea break did you see or meet him', he responds '*I chat to people when I see them but no I don't think so'.*

64. It is evident Mr Kettley's immediate response is that he cannot recall if the claimant handed him an iPad as it was a long time ago. He is then led in questioning by the interviewer, Mr Tribe, that given he was told by Glenn that his iPad was missing that afternoon that this would have jogged his memory if the claimant had given him an iPad and Mr Kettley simply responds 'yeah'. It is clear that Mr Kettley simply does not recall if he was handed an iPad by the claimant that day. It is not reasonable for the respondent to rely on this (which is what they do) as evidence of Mr Kettley contradicting or not supporting Mr Picketts version of events. It falls far short of that.

65. The respondent's position appears to be throughout that once it became evident that Mr Wanstall's iPad was missing that everybody who might have been handed an iPad to do anything with ought to have linked the two matters. However, on 9 February there was no indication of any theft. It is clear team leaders were handed iPads to clear tickets so there would be nothing unusual to recall if an iPad had been passed to them to clear tickets by Mr Pickett on that day. It is also clear that Mr Wanstall initially thought it was a practical joke. The matter was not formally reported until the Monday after the iPad was missing on the Friday.

66. I do not find Mr Kettley's interview by Mr Tribe demonstrates someone who is accurately remembering that on 9 February no iPad was handed to him by the claimant. To the contrary his interview shows he could not recall and he himself says it was a long time ago. This should have alerted Mr Tribe to the fact he could not recall the day sufficiently accurately to discount Mr Pickett's version of events.

A reasonable employer would not have considered Mr Kettley's response was evidence that the claimant had not handed him an iPad to clear tickets that day. If anything, it ought to have alerted them that the footage of 10 February was crucial.

67. The questions put to those interviewed as part of the investigation also imply that the facts are simply that Mr Pickett is saying he 'gave' someone an iPad. When the actual position advanced by Mr Pickett at the investigation meeting is that he took it to clear tickets thinking it was his apprentice's. The question 'did Mr Pickett ask you to clear tickets' on this day was never put to any team leader, yet this is what he says he was asking the team leader to do with the iPad. It is troubling the question was not put in this way, given it is clear that team leaders were handed iPads to clear tickets and that was the claimant's explanation to the allegation.

68. That is a very different question to just being asked if the claimant had 'given' them Mr Wanstall's iPad on that day or any iPad at any point (which implies he was handing someone an iPad for no particular reason which might have been more unusual).

69. Notably the meeting notes show that Mr Uden- Corrick says the claimant asked him if he could take his own iPad home because he had a medical appointment for his son. I find this demonstrates the claimant is someone who would not even take his own iPad off site without seeking a manager's permission.

70. Mr Halstead, in the meeting notes, states the claimant has been doing so well lately he did not see why he would throw it away by stealing an iPad.

71. The only person interviewed who refers to 'it looks suspicious' bases this on seeing the CCTV footage showing the claimant leave the room with the iPad and return later without it.

72. Objectively when viewing the CCTV footage, the way the claimant is on the phone, sees the iPad, casually picks it up carries on with his call and takes it shows on balance someone who is not 'stealing' something. Observing him doing this from the training room CCTV footage if viewed objectively is not something I consider looks suspicious. Nor is the particular emphasis by Mr Tribe to the footage showing the claimant 'glancing' at the toolbox when he returns to the engine training room after his tea break. I have watched the footage several times and cannot reasonably infer and nor do I find anything untoward or suspicious about this. Objectively if one was looking at this footage without knowing any iPad was stolen there would be nothing noteworthy. Even knowing that he had picked up the iPad by this time, it cannot be reasonably concluded that anything he does is suspicious. I do not find a reasonable employer viewing this footage as part of an objective investigation would arrive at this conclusion.

73. Mr Burgess Pike says he is never handed iPads to close tickets but then says he does close tickets and then directly contradicts this by saying the engineers will hand him the iPad and they stand with him while he closes the ticket and he hands it back to them.

74. What is clear is team leaders are handed iPads to clear tickets so what Mr Pickett says he did with the iPad is not unusual and is plausible.

75. Mr Read says Mr Pickett was 'hovering' or 'lingering' and he remembers thinking it 'didn't feel right' but then said he could not remember whether that was on the day the iPad went missing or the day before. He goes onto say he saw the claimant with an iPad with a strap which was the only one he has seen with a strap, and he thought it was suspicious. Yet given the respondent refers to the numerous times the missing iPad was mentioned, it is troubling Mr Read makes no mention of this at the material time if this was a genuinely held suspicion and is not even asked why he did not mention anything until over 2 months later.

76. Mr Tribe concludes from this that the investigation is complete and no further information can be obtained.

77. He concluded the CCTV shows the claimant has taken the iPad without permission or without informing anyone. I find the CCTV footage shows no such thing. It shows Mr Pickett enters the training room casually picking up an iPad whilst speaking on the phone and leaving the room with it.

78. The investigation does not contradict what the claimant has said about giving the iPad to Mr Kettley. To the contrary Mr Kettley clearly says he he cannot recall if he was handed an iPad as it was so long ago. The respondent will have known or ought to have known engineers did hand iPads to team leaders to clear tickets.

79. The claimant has provided a clear version of events involving him having returned to the team leader cabin the next day on 10 February to get the iPad and putting it back in the engine training room. The claimant has been consistent throughout. I have heard no evidence from the respondent about whether any CCTV footage was available for the team leader cabin. Nor why there is no CCTV secured for wherever the claimant says he located Ryan's iPad in his toolbox which similarly on 10 February could have proven or disproven the claimant's explanation.

80. Mr Tribe and the respondent throughout rely heavily on the fact that Mr Wanstall's iPad looks very different to Ryan's because it has an orange and black case and a strap. They say Ryan's was much older and without a strap.

81. There is no evidence to support that Ryan's iPad did not have a strap nor that it was not also orange and black. The respondent seeks to persuade me that hardly anyone used a strap with their iPad, but the claimant's evidence and indeed the CCTV footage disclosed contradicts this.

82. The respondent was unable to view the CCTV on 10 February as by this time it was too late to obtain that footage.

83. Based on this investigation the matter proceeded to a formal disciplinary meeting.

**Disciplinary and dismissal**

84. The claimant's original disciplinary hearing was scheduled for 30 April 2024.

85. On 29 April 2024 (a Monday) at 5.10 am the claimant sent an email to Jack Halstead and Chris Elsegood requesting a Team Leader supervised site search of "*Every draw in workshop office, every toolbox, every locker; assigned and not, every cupboard and maybe offices"*

86. At 6.48 am, Jack Halstead messages the workshop group chat with a photo of an iPad tucked inside a ring binder found under a changing room locker bench. It was confirmed that it was found by Dave Harvey.

87. By this time, it is evident, given the number of people Mr Tribe had talked to as part of this investigation, that a number of people were aware the claimant was being linked to the missing iPad. On balance it is reasonable to assume that those people may have discussed this investigation and the missing iPad with others.

88. Mr Tribe says he wants to review the CCTV following the iPad being discovered. It is clear that he is suspicious that the claimant has not only taken the iPad but that he has also returned it. The changing room where it is discovered is not covered by CCTV. There is no evidence that this was known to the claimant or only known to the claimant and no other employees. Mr Tribe reviews the CCTV footage of the preceding weekend and the Monday that the iPad is discovered.

89. Mr Tribe confirms this review of the footage showed no evidence to support an assumption the claimant put the iPad back. Mr Tribe's evidence is that the claimant had a 'large window' to return the iPad in, but given the location it was found and how obviously it can be seen in the picture, on balance I find the iPad was more likely than not to have been put there either on 29 April or certainly in the day or two before it was discovered. It is wholly unlikely (particularly given the respondent states earlier searches had been carried out) that if it was returned sooner that it would have taken so long to be seen/discovered by anyone. It is reasonable to assume that it was placed where it was discovered on or around 29 April.

90. Despite the fact the respondent clearly believed it is the clamant who has returned the iPad this allegation is not made a formal allegation as part of his disciplinary. Nor is it investigated fully aside from Mr Tribe watching the CCTV of the weekend before and the Monday of the iPad being discovered. Nor is it put to the claimant.

91. The fact that the iPad is discovered and the CCTV footage shows no signs of the claimant having come into work over that weekend and on the morning of Monday 29 April there is footage that shows the claimant walking to the changing rooms without a bag and does not look like he is hiding anything without wearing a lot of clothes would have alerted a reasonable employer to the fact that the return of the iPad ought to be properly investigated. It is clear the respondent's Mr Tribe and Mr Kettley make a number of assumptions which supports their suspicions at the material time (e.g. the claimant did not car pool that day and the claimant came into work earlier that day) when an investigation would have alerted them to the

explanation for this which Mr Tribe had to accept in evidence. I am troubled that Mr Tribe did not consider the relevance of the CCTV footage showing the claimant without any visible iPad or bag that it could have been hidden in, or any attempts to conceal anything by Mr Pickett on that morning when the iPad was returned.

92. At the very least it ought to have alerted to an investigator in these circumstances that the return of the iPad was directly relevant to it's theft and needed to be investigated.

93. To the contrary no investigation is carried out other than review of the CCTV which plainly does not evidence the claimant had returned the iPad. This should have alerted the reasonable employer to at the very least interview those who discovered the iPad and whoever had taken the photographs as well as anyone else who had entered this location on the morning of 29 April. No such steps were taken.

94. No reasonable explanation is given as to why no such investigation was considered necessary. I find this is because the respondent had already decided that it was the claimant who had returned the iPad with no objective evidence to support this. They make this assumption based solely on the timing of the claimant's text requesting them to carry out a search and the discovery of the iPad coupled with him not carpooling that morning and coming in earlier that day.

95. It is clear there were a number of other employees who were aware of the missing iPad and the respondent's suspicions against Mr Pickett. The investigation makes it clear to those being interviewed that Mr Pickett was under suspicion. It is therefore plausible someone else could have returned the iPad realising the matter was now progressing to a serious misconduct issue.

96. An impartial and fair investigation would have involved the interview of those employees who also came into work over the relevant weekend and Monday 29 April and were seen going into the changing room. The suspicions Mr Tribe and Mr Kettley had about the return of the iPad ought also to have been put to the claimant.

97. The claimant was invited to a rescheduled disciplinary meeting on 8 May 2024 by letter dated 30 April 2024. The letter was sent by Josh Barnett Senior HR advisor.

98. The allegation which is the subject of the disciplinary is that the claimant took an iPad belonging to Glenn Wanstall without permission which was never returned. The incident was a conduct issue for suspected theft which is an act of gross misconduct. The claimant is also informed in this letter that the outcome of the meeting may be summary dismissal without notice.

99. Prior to the disciplinary meeting the iPad belonging to Glen Wanstall is discovered in the locker rooms. The photographs of the locker rooms with the iPad shown in it's discovered position are at pages 179 and 180 of the bundle. Those pictures were put to Mr Dave Wilson who conducted the disciplinary meeting on 8 May 2024. The pictures were taken by Mr Harvey. Mr Wilson did not have the photographs at the time of his disciplinary hearing. It is not clear when the photographs were taken and why they were not given to Mr Wilson given his role

in the disciplinary. Mr Wilson was however aware by the time of this disciplinary hearing the iPad had been returned. He did not consider it relevant to investigate the return as part of the allegation despite someone returning the iPad being clearly relevant to the allegation being made against Mr Pickett.

100. Mr Wilson accepted in evidence that Mr Tribe had looked at the CCTV of the day the iPad had been returned, and Mr Tribe had confirmed that the claimant on the CCTV footage on 29 April did not have a visible bag with him or any evidence that he was concealing the iPad. Whilst Mr Tribe refers to Mr Pickett coming in earlier than any others that day as suspicious, in cross examination he had to concede Mr Pickett had just had a flexible work request approved so on that day it was actually not unusual for him to have started earlier. He accepted in evidence that knowing this fact now the claimant coming in earlier is indeed not suspicious. Mr Tribe also makes an assumption based on a comment by Mr Kettley that the claimant not carpooling that day as he normally did was suspicious, but again this is explained by his starting earlier due to his flexible working request. None of these suspicions are put to the claimant in the disciplinary. He is not afforded the opportunity to explain why he had come in earlier that morning.

101. I am troubled by the two pictures in the bundle of where the iPad was discovered. They are clearly of two different locations. The respondent advances no explanation for this and clearly this is also relevant to who could have returned it and when. I find a reasonable employer ought to have interviewed whoever discovered the iPad and whoever took the photographs as a minimum given nothing observed on the CCTV footage supported that it was the claimant who returned it.

102. Mr Wilson was the person who made the decision to dismiss. He says he decided that the claimant had taken the iPad without factoring in the return of the iPad but then stated the later return of the iPad did make him look more guilty. There is no cogent explanation given for why the return of the iPad made the claimant look more guilty other than he was the one who asked for a search to be carried out on the morning the iPad was discovered. A reasonable employer would have known the return of the iPad was clearly relevant to the theft allegation yet Mr Wilson also did not consider it necessary to pause the disciplinary so the return could be properly investigated. I find this was not a reasonable response to this new event.

103. I do not find it plausible that Mr Wilson being told the claimant had not carpooled as usual and had come in earlier than usual did not influence or increase suspicion in Mr Wilson of the claimant's guilt. Mr Wilson had to accept that he concluded the claimant had returned the iPad albeit he seeks to persuade me this had no bearing on his decision to dismiss. I do not find this plausible. He has clearly concluded the claimant not only took the iPad but that he also returned it. The return of it and the suspicion that it was the claimant who returned it without any objective evidence to support this on the part of Mr Tribe clearly materially contributed to Mr Wilson's findings about the allegation of theft. It clearly contributed to the decision to dismiss. It is simply not plausible based on evidence and the email from Mr Tribe upon discovery of the iPad that the respondent's Mr Tribe and Mr Wilson do not make a presumption (which is not supported by evidence) that the claimant is the one who returns the iPad.

104. Mr Wilson's decision is also contributed to by the CCTV footage of 9 February of the engine training room showing the claimant pick up the iPad. Clearly the claimant's version of event relies on footage of the 10 February (showing him returning the iPad) and at no point does Mr Wilson consider the significance of trying to obtain that footage and the absence of it from the investigation. Mr Wilson says he was not informed that Vindex could have been approached for the CCTV. Troublingly he also says even if he had been made aware of this, he would not have obtained that footage.

105. It is concerning, given the outcome of this disciplinary could be dismissal, that neither Ms Akery nor Mr Wilson take the simple step of approaching Vindex for the CCTV footage of 10 February. I find a reasonable employer given the nature of the allegation would have taken this step as part of a fair impartial and proper investigation.

106. Mr Wilson adjourns the disciplinary meeting for about 40 minutes and discusses the CCTV footage with Mr Tribe. He does not disclose what that discussion was to the claimant before he then returns and informs the claimant he will be dismissed.

107. His evidence is he was adjourning to check the position with the CCTV because Mr Pickett had made an allegation about the CCTV being withheld. He concluded after satisfying himself there was no withheld CCTV footage, that dismissal was the best outcome. Whilst he says he considered alternatives to dismissal neither his witness evidence nor the dismissal letter set out what if any alternatives to dismissal were considered. I do not find he considered any other alternatives to dismissal.

108. Mr Wilson confirmed in oral evidence the CCTV bay footage of the claimant, which the respondent relies on as evidence that the claimant was heading to the car park on 9 February, did not show the claimant placing anything in his car after leaving the engine training room with the iPad. I accept that there appears to be no CCTV footage which shows the position of the claimant's car. He also notably however accepted that the claimant could have been going anywhere via the same exit the CCTV shows him leaving through once he leaves the engine training room.

109. I am satisfied that the exit the CCTV shows the claimant using in the bay footage does not only lead to the car park. I have heard nor seen any cogent evidence to be able to reasonably conclude the claimant left that exit to place an iPad in his car. I accept the claimant's evidence that the exit shown in the bay footage leads to the tea hut and the car park.

110. The claimant gave clear cogent and compelling evidence to persuade me that his account was not only consistent but also plausible. He clearly informed the respondent (notwithstanding they did not raise the CCTV footage with him until 2 months after Mr Wanstall's iPad went missing) immediately when it was put to him that he had picked up an iPad thinking it was Ryan's, he thought he had taken it to Stewart Kettley and then the next day realising it was not Ryan's because he found Ryan's iPad he returned it to the engine training room. I found him to be a credible witness. I accept he and Stewart Kettley attempted to sign off tickets on the iPad he thought was Ryan's but they could not get into it so the iPad got left on his bench in the team leader cabin until the next day.

111. I was also not persuaded that there was anything unusual about the claimant being in the engine training room at the material time. Certainly, the CCTV footage does not objectively appear suspicious. I accept Mr Pickett's clear unchallenged evidence that as the only fully qualified engineer at the time to work on those engines he would often talk to Tony (Read) about the engines in the room even though it was not his working area at the time. His evidence about there being a lack of chargers was also unchallenged and therefore I accept it was reasonable for him to look for an iPad in that area believing it could have been placed there to be charged. I do not find it unusual in those circumstances for him to be looking for an iPad by reference to where they may be being charged.

112. The respondent has failed to establish the claimant knew about Mr Wanstall's iPad going missing on 12 February (which is when they say it was formally reported). I accept Mr Pickett did not find out about it until some time later, but he accepted he knew about the missing iPad before the meeting with Alex Tribe on 8 April 2024.

113. All the iPads issued were black and orange. I accept the claimant's unchallenged evidence that Ryan's iPad also had a strap although sometimes he used it and sometimes he did not.

114. The respondent relied on a Town Hall meeting summary of 27 March where Alex Tribe records that Glen's iPad is still missing and gives people the last chance to come forward with any information before HR investigate the matter. This is almost 7 weeks after the iPad went missing on 9 February. The claimant's evidence that he was not aware the iPad went missing from the engine training room to have essentially linked him taking the iPad with the same event is entirely plausible. Ultimately, I accept he did not link the two things because first of all he did not know Mr Wanstall's iPad went missing from the engine training room immediately after 9 February and secondly because he had simply put the iPad he believed he had taken back the following day. Therefore, it is entirely plausible that for him, what he had done was an innocuous event. This is perfectly plausible and I find this is precisely why he did not link him taking the iPad and returning it to Mr Wanstall's missing iPad.

115. The claimant also gave a very credible explanation as to why he was glancing at the toolbox when he returned to the engine room which I find far more plausible than someone simply looking over at an area repeatedly that they had allegedly stolen something from which does not objectively make proper sense. I find the claimant nearly knocked the tools off when picking up the iPad up so when he was chatting to Tony he was looking at the toolbox for this reason. If the claimant did not ordinarily work in the engine training room, why would he return to it to glance over at the location from which he allegedly had stolen the iPad from shortly before? Again, objectively if he had just committed a theft from this location this makes no sense.

116. I accept that he manages to unlock the iPad with what he knew to be Ryan's passcode. I did not hear evidence from Mr Wanstall to be able to reasonably conclude otherwise, and the CCTV footage appears to show he was able to unlock it. I am not persuaded of how this is evidence of theft.

117. Much was made about the claimant saying in the investigation meeting initially before he was shown the CCTV footage that he could not get into the iPad (and I find he meant he could not get into go care app). But holding any investigation meeting 2 months after what was an innocuous matter for the claimant, was certainly more likely than not going to make someone in the same position have difficulty recalling specific details, certainly without some time to think about what was being put to them. I do not find this is evidence of a changing version of events which demonstrates the claimant's account is not credible. It is a reasonable response to someone being asked to recall in detail something that had occurred two months earlier. Unless you were the perpetrator of the theft, doing what the claimant was saying he did was a non event. He picked up an iPad thought it was Ryan's, handed it to Stewart Kettley, they could not get into it because of the go care app. The next day he found Ryan's iPad and his evidence is that he put the one he had given to Stewart Kettley back in the training engine room.

118. It is also not suspicious that he had to be shown the CCTV before he could recall unlocking the iPad – a reasonable response to this would have been to accept this was something that happened two months earlier so why would he recall it immediately particularly if objectively you were fact finding at this point as the respondent asserts this meeting was.

119. Mr Kettley's evidence and the respondent's position throughout that the iPad having a strap on it would obviously not belong to Ryan and could only have been a brand new one because no one uses the strap on their iPads is contradicted by the bay CCTV which shows an employee walking with a strap on his iPad. I am not persuaded nobody issued with an iPad would use the strap. I have heard no cogent evidence to rebut the claimant's evidence in this regard.

120. The respondent's own evidence from Mr Read is that Mr Wanstall did work on that iPad which directly contradicts the respondent's assertion in this case that his iPad was 'brand new' and looked 'brand new' (to support their contention that the claimant could not therefore have reasonably mistaken it for Ryan's iPad). Where you have evidence from Mr Read that Mr Wanstall had used the iPad for 2/3 weeks to work on, it is reasonable to conclude that in an environment such as this the iPad (particularly if it was left charging on top of a tool box in the engine room) may not have looked as brand new and unused as the respondent is now trying to establish. It is clear Mr Wanstall had been using the iPad for 2/3 weeks; it was not brand new out of the box at the time it went missing. There is no evidence before me from which I can reasonably conclude in those circumstances it had factory settings and a blank screen on it, nor that it was so different to how Ryan's iPad looked at the material time. I cannot reasonably conclude that it was not plausible for Mr Pickett to have made the assumption that it was his apprentice's iPad when he picked it up.

121. I also accept that before the meeting which was originally scheduled for 29 April the claimant asked for a full search of the premises because of the seriousness of the allegation. I am persuaded that at the time of this request he did not believe the respondent had carried out multiple searches. He gave unchallenged evidence that the respondent never asked him for his toolbox or locker keys and so in the

absence of locker and toolboxes being searched he did not consider the respondent had undertaken any thorough search. The respondent's evidence about what those 'multiple searches' comprised of (who carried them out when and of what locations) is seriously lacking. I would have expected there to be witness evidence to support these searches given their reliance on this as part of their reasons for being suspicious of the iPad being found in the locker room.

122. What is clear is the respondent never entertains anything other than it must have been the claimant who retuned the iPad. It is evident they do not even consider the possibility of someone else returning the iPad.

123. The respondent relies on the timing close to the disciplinary the next day being suspicious, but I accept the claimant's evidence that he had not confirmed his availability for the meeting by the time of making the request for the search because he was still waiting to hear from his union representative.

124. No explanation is given by the respondent as to whether there was CCTV footage available (and if so whether any attempts were made to view it) of the team leader cabin where the claimant says a) the iPad was left on a bench and b) he went to retrieve it the following day to return it.

**Appeal**

125. Ms Simona Akery, the respondent's finance director, was the appeal hearing officer. The appeal against dismissal was heard on 4 June 2024. The claimant attended the hearing with support from Gordon Lean his trade union representative.

126. Notably Mr Pickett at the appeal again repeats that the CCTV footage of 10 February would show he put the iPad he picked up in the engine room on 9 February back the next day.

127. Additional evidence was given about it not being unusual for employees to have straps on the iPad cases. He also asks for the person who had found the iPad to be interviewed.

128. Ms Akery stated she adjourned the hearing to investigate these points.

129. Her investigation comprised of speaking with a number of people including Alex Tribe and Tony Read and Stewart Kettley as well as the claimant's apprentice. She decided not to speak with David Harvey. She also seemingly considered the return of the iPad to be irrelevant.

130. The appeal was reconvened on 17 July 2024, and Ms Akery gave her decision that she did not find the disciplinary procedure was unfair or inappropriate. She upholds the appeal but again gives no reasonable explanation of why she did not simply contact Vindex to obtain the deleted CCTV footage from 10 February.

131. Ms Akery also does not consider the relevance of the return of the iPad nor the fact that the CCTV footage for that date (29 April) shows the claimant walking into work without a bag, he is not wearing a lot of clothes and he is not concealing anything. Ms Akery's evidence was that it was very suspicious 'how we found it'. But she refused to accept that she thought it was the claimant who returned it. Why else would she consider it suspicious? This is simply not plausible. If she considered it was suspicious and did not think the claimant was the one who returned it then why was the return of the iPad not investigated?

132. I find it was a foregone conclusion that the claimant had returned the iPad and this was a belief held by Mr Tribe, Mr Wilson and Ms Akery. This belief was formed without any investigation. This belief materially contributed to the decision to dismiss by Mr Wilson and the reason for the appeal being refused by Ms Akery. The CCTV which was viewed if anything tended to absolve the claimant. The reason neither Mr Tribe, Mr Wilson and Ms Akery considered the return of the iPad to be important or relevant is because they had already concluded it must be the claimant who returned it. This is based on the claimant's request for a search and the CCTV of the engine training room showing Mr Pickett having picked up an iPad in the training room.

133. The return of the iPad being suspicious or being something the respondent believes the claimant did is never put to him as a formal allegation either by Mr Wilson or by Ms Akery yet both I find were clearly influenced by it and I find it is more likely than not both believed that it was the claimant who had returned it.

134. Neither Ms Akery nor Mr Wilson considered the CCTV of the 10 February to be of equal value to the footage of 9 February despite the claimant repeatedly saying the 10 February footage would have shown him putting the iPad back. I find a reasonable employer would not have ignored that the 10 February footage given the gravity of the allegations would be relevant and important.

135. Ms Akery accepted in evidence that she did not believe obtaining the CCTV from Vindex (not making the enquiry of them) would 'lead to anything' because there was other evidence that supported what had happened. The key evidence of course being the CCTV on 9 February showing the claimant picking up the iPad.

136. Mr Kettley's second interview as part of the appeal clearly states he is given a lot of iPads to sign off tickets. He also says the claimant could have given him an iPad. He repeatedly says he would have remembered a brand-new iPad but there is no evidence from him to explain why. I did not hear oral evidence from Mr Kettley, and I am simply not persuaded that the accounts he gives during the initial investigation nor as part of the appeal would lead to a reasonable conclusion that he was not handed an iPad by the claimant on 9 February as asserted by the claimant. To the contrary a reasonable response to Mr Kettley's initial investigation response would be to conclude it does not contradict what the claimant says because he simply cannot recall the events of that day. The respondent's case is not that Mr Wanstall's iPad was so brand new that it was entirely blank. Yet Mr Kettley appears to be under that impression when answering questions put to him during the appeal investigation given he responds that he would have questioned a brand-new iPad being given to him because it would be blank.

**Relevant law and conclusions – unfair dismissal**

137. 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 she was dismissed by the respondent under section 95, but in this case the respondent admits that it dismissed the claimant (within section 95(1)(a) of the 1996 Act) on 4 March 2019.

138. 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.

139. In this case it is not in dispute that the respondent dismissed the claimant because it believed he was guilty of misconduct. Misconduct is a potentially fair reason for dismissal under section 98(2). The respondent has satisfied the requirements of section 98(2)

140. Section 98(4) then deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.

141. 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 2009IRLR 563**).

142. Mr McNerney and Ms Niaz Dickinson provided me with written and oral submissions on fairness within section 98(4) which I have considered in reaching my conclusions.

143. Where the respondent relies on having raised the iPad being missing for some time and the iPad still not being returned despite this, the easiest way to determine what had happened was to view footage of the room where it was last seen on the relevant date as soon as possible and commence the investigation as soon as possible. A company the size of the respondent ought to have had sufficient resource and appropriate guidance about conducting an investigation of this nature involving CCTV.

144. I do not find a reasonable employer would have waited this length of time to acquire the CCTV nor do I find it reasonable or fair to then delay commencing the investigation and speaking with Mr Pickett by another month, knowing that the iPad by the time they had acquired the CCTV had already been missing for a month. Particularly if they had formed a view about it being stolen (which I find they did) and had seen Mr Pickett remove an iPad from the training room on the same date. It is wholly unsatisfactory (and without any good justification advanced by the respondent) that they did not speak to Mr Pickett at the time the CCTV was first made available on 8 March. The respondent's failure to speak to Mr Pickett at the time the CCTV was available and first viewed on 8 March 2024 was unreasonable. Their failure to speak to him in a timely manner had clear and serious consequences in that it delayed them speaking to others to corroborate Mr Pickett's version of events. It is evident speaking to them some 2 months later will have impacted their ability to recall events accurately on 9 February, particularly for an incident which at the material time on the claimant's' version of events was as innocuous as him giving a iPad to clear tickets on it to a team leader and the next day returning it.

145. The orange colour and the strap I find is largely a red herring. The respondent seeks to persuade me because it was so distinctive due to its case and strap, the claimant could not have picked up that iPad reasonably believing it was Ryan's. I do not find this to be the case. One can clearly see Mr Pickett is on the phone when he picks up the iPad, he barely looks at it in any great detail. He certainly does not inspect it. He is engrossed in a conversation on the phone and I find it is perfectly plausible this could easily distract him so that he a) would not have been paying any real attention to notice any differences between Ryan's and Mr Wanstall's iPad and b) even if with the benefit of hindsight one could say there was a clear difference in the two when considering the context of how he picks it up and that he is clearly not paying that much attention to it, is perfectly plausible that he could have picked it up thinking it belonged to his apprentice. I am not persuaded the CCTV shows someone who is stealing an iPad.

146. The return of the iPad being suspicious or being something the respondent believes the claimant did is never put to him as a formal allegation either by Mr Wilson or by Ms Akery yet both I find were clearly materially influenced by it when arriving at their decision to dismiss and in refusing the appeal respectively, and I find it is more likely than not both believed that it was the claimant who had returned

it. I do not find it was a reasonable response to not put their suspicions about the return of the iPad to him particularly where Mr Tribe's email clearly suggests there is something improper about the claimant not carpooling that day and coming in earlier than usual (both of which I have found there was a clear and credible explanation for yet the claimant is not given the opportunity to provide this explanation).

147. Neither Ms Akery nor Mr Wilson considered the CCTV of 10 February to be of equal value to the footage of 9 February despite the claimant repeatedly saying the 10 February footage would have shown him putting the iPad back. I find a reasonable employer would not have ignored the 10 February footage given the gravity of the allegations and a reasonable response would be to consider that footage to be relevant and important and to take steps to retrieve it.

148. Ms Akery accepted in evidence that she did not believe obtaining the CCTV from Vindex (nor making the enquiry of them as to its availability) would 'lead to anything' because there was other evidence that supported what had happened. The key evidence of course being the CCTV on 9 February showing the claimant picking up the iPad. However the claimant has given an explanation for that yet the respondent takes no reasonable steps to ascertain whether that CCTV could be retrieved. They had already arrived at a foregone conclusion that the claimant was guilty of the theft without attempting to locate evidence which could have supported his version of events.

149. Their reliance on Mr Kettley's account as being evidence to contradict the claimant's version of events is not within the range of reasonable responses. Mr Kettley clearly says he is not able to recall the events of 9 February. The questions posed to him in the investigation are leading and he still only ever goes so far as to assume he would have remembered someone handing him a brand new iPad. The claimant's version which is that he handed a team leader an iPad to clear tickets was in fact never directly put to Mr Kettley. Troublingly when interviewed again as part of the appeal he clearly says he is given a lot of iPads to clear tickets. He simply says he would have remembered a brand-new iPad and would have questioned him because it would have been blank. However, there is simply no evidence to support Mr Wanstall's iPad would have been blank at the material time. Indeed, the evidence from the respondent is that he had been using it for 2/3 weeks prior to it going missing. The respondent allows Mr Kettley to have this misconception and does not correct it. I find this was unreasonable given it was not a brand new out of the box iPad that was being handed over to Mr Kettley. This misconception clearly informs his responses.

150. As part of the appeal Ms Akery also interviews Mr Tribe and he accepts it is possible to clear tickets on someone else's iPad and that Mr Pickett could have quite possibly been looking for Ryan's iPad to clear tickets. This should alert the respondent to the possibility that the claimant's version of events again has some plausibility and requires investigation.

151. I find the respondent did not act within the band of reasonable responses in a number of key aspects including (but not limited to):

    a. Not obtaining the CCTV of the location they new the iPad had gone missing from when it was formally reported on 12 February until almost a month after it was formally reported missing.

    b. Waiting another month between 8 March when the CCTV was obtained and viewed and the 8 April to speak with Mr Pickett about his picking up an iPad.

    c. Putting the questions in the way they were put by Mr Tribe to those who were interviewed as part of the investigation. It was not reasonable to have not simply put the claimant's version to them namely had he given them an iPad to clear tickets on 9 February.

    d. Accepting the wholly unclear recollection of Mr Kettley as evidence of him contradicting the claimant's' version of events sufficient to discount the claimant's version of events as being plausible.

    e. Allowing Mr Kettley to have the misconception they were talking about the claimant handing him a brand new out of the box blank iPad.

    f. Not obtaining CCTV footage or even making enquiries with Vindex about the availability of the footage of 10 February as part of the investigation, the disciplinary nor the appeal.

    g. Assuming the 10 February footage would not have been of any use or relevance due to a foregone conclusion that the claimant had stolen the iPad and whatever was shown on the 10 February would not have supported the claimant's version of events.

    h. Not putting the return of the iPad and their suspicions about it being the claimant who had returned it directly to the claimant before the decision to dismiss was made or part as part of the appeal, in particular their suspicions that there was something unusual and suspicious about him not carpooling that day and having arrived earlier for work.

    i. Not having interviewed anyone about the return of the iPad particularly given the photographs of the returned iPad in the bundle disclose two seemingly different locations.

    j. Discounting the relevance of the returned iPad and making the assumption that it must have been the claimant despite the CCTV footage of that morning showing him not wearing too many clothes, not carrying a bag and not appearing to be concealing anything.

    k. Not considering any CCTV footage of the team leader cabin which could have supported the claimant's version of events on 10 February.

152. I find Mr Wilson and Ms Akery believed the claimant was guilty of theft but this belief was not formed following a reasonable investigation being carried out.

153. The way in which Mr Tribe, Mr Wilson and Ms Akery's assessed the claimant's explanation is relevant to the procedure they followed. They all presumed guilt based on the CCTV footage of the engine training room, Mr Wanstall's iPad being new and having a strap which would have alerted the claimant to the fact the iPad was not Ryan's, Mr Kettley's account, and the return of the iPad on the day the claimant asked for a search to be carried out.

154. I have the band of reasonable responses clearly in mind in reaching my decision. It is immaterial what decision I would have made. The claimant's case is that the respondent's management did not carry out a procedurally fair dismissal in a number of aspects.

155. I have considered the size of the respondent's undertaking. This is a large employer, with a HR department, HR Manager and well-drafted written policies. A formal disciplinary process was followed, although it was flawed. Within the range of reasonable responses, the respondent's size and resources do not excuse the unfairness in management's actions in this case.

156. I find the decision to dismiss was not reasonable based on the investigation which was clearly not reasonable and was lacking in a number of crucial aspects as outlined above.

**Relevant law and conclusions - Polkey**

157. I asked the parties to address me on whether any adjustment should be made to the compensation on the grounds that if a fair process had been followed by the respondent in dealing with the claimant's case, the claimant might have been fairly dismissed,(in the event I found the dismissal was unfair) in accordance with the principles in **Polkey v AE Dayton Services Ltd [1987] UKHL 8**, **Software 2000 Ltd v Andrews [2007] ICR 825; W Devis & Sons Ltd v Atkins [1977] 3 All ER 40;** and **Crédit Agricole Corporate and Investment Bank v Wardle [2011] IRLR 604**. I turn to this issue now.

158. I cannot reach a reasonable conclusion that had a fair process been followed then the outcome would still have been dismissal. This is because on the claimant's case had steps been taken to obtain the CCTV footage of 10 February it would have disclosed the claimant retrieving the iPad from the team leader hub (if CCTV footage was available of this location) and returning it to the engine training room (and we know there was CCTV footage of this location). The respondent seeks to persuade me this would not have made any difference, but I fail to see how it could not have made a difference. Had it shown the claimant doing what he said he did it would clearly support his explanation and discount that he had taken Mr Wanstall's iPad with the intention of stealing it. On balance the entire weekend footage for 10 and 11 February becomes relevant once the iPad is reported missing on 12 February when Mr Wanstall says he last saw it on the morning of 9 February.

159. I heard no evidence to persuade me that it was no longer possible for Vindex to retrieve the CCTV footage for the relevant period to properly investigate the claimant's version of events. I am therefore unable to reasonably conclude that had a fair process been adopted that the dismissal would still have occurred particularly if there had been no delay as did occur. It is more likely than not this employer would have obtained a better recollection of the relevant dates from Mr Kettley and others interviewed about the events of 9 February. It is also quite possible the CCTV of 10 February would have supported the claimant putting back an iPad. Had they investigated the return of the iPad properly and put this as an allegation to the claimant the respondent may have determined it was not the claimant who had returned the iPad. Whether or not the CCTV footage of 10 February supported the claimant's explanation as to why he picked up the iPad and that he had in fact taken it to Mr Kettley and then returned it goes to the heart of the matter and I find the absence of an earlier investigation and the failure to secure the CCTV footage of 10 February makes it impossible to speculate about whether the dismissal would still have taken place had a fair process been followed. I cannot reasonably find in those circumstances that had a proper investigation been carried out the claimant would still have been dismissed.

**Relevant law and conclusions - Contributory Fault**

160. Neither party addressed me on contributory fault. The claimant has been successful with his unfair dismissal complaint, and his remedy claim will be for basic and compensatory awards that flow from his unfair dismissal.

161. The Tribunal may also reduce the basic or compensatory awards for culpable conduct in the slightly different circumstances set out in sections 122(2) and 123(6) of the Employment Rights Act.

162. Section 122(2) provides as follows:

*"Where the Tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the Tribunal shall reduce or further reduce that amount accordingly."*

163. Section 123(6) then provides that:

*"Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.*"

164. I heard no evidence to enable me to find the dismissal was caused by any blameworthy conduct on the part of the claimant. He picked up an iPad and on his version of events simply took it to a team leader to get tickets cleared thinking it belonged to his apprentice. Upon discovering his apprentice's iPad the next day he realised it was not his iPad and went to retrieve it from the team leader hub and

    returned it to the engine training room. On the face of it had those facts been established by an earlier investigation and an investigation which involved the securing of 10 February CCTV his actions would not have been conduct which contributed to his dismissal. There is no evidence that I heard which persuades me it would be just an equitable to reduce the claimant's compensation for contributory fault,

165. The matter will be listed for a separate hearing to deal with remedy for one day. The parties will receive directions to comply with ahead of that hearing.

**Public access to employment tribunal decisions**

All judgments and written reasons for the judgments (if provided) are published in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the parties in a case.

Employment Judge N Wilson
Dated: 12th December 2025

Sent to the parties on:
9th January 2026
For the Tribunal Office