



# EMPLOYMENT TRIBUNALS

**Claimant:** Robert Bennett

**Respondent:** Anderstore Ltd

**Heard:** in Leeds on 11 and 12 December 2025

**Before:** Employment Judge Ayre

## Representation

**Claimant:** represented himself

**Respondent:** Paul Smith, counsel

# RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

1. The claim of unfair dismissal is not well founded. It fails and is dismissed.
2. The claim for unauthorised deduction from wages in relation to commission for February 2024 is not well founded. It fails and is dismissed.
3. The claim for breach of contract in relation to commission for February 2024 is not well founded. It fails and is dismissed.
4. The claim for unauthorised deductions from wages in respect of non-payment of the National Minimum Wage is dismissed on withdrawal.
5. The claim for unauthorised deductions from wages in respect of the cost of a mobile telephone is dismissed upon withdrawal.

# REASONS

## Background

1. The claimant was employed by the respondent from 9 March 2016 until 6 March 2024 when he was dismissed with immediate effect. On 28 May 2024 he issued a claim in the Employment Tribunal following a period of early conciliation that started on 4 April 2024 and ended on 16 May 2024.
2. A Preliminary Hearing took place on 22 October 2024. At that hearing:
  1. The case was listed for a final hearing in April 2025;
  2. The claimant was ordered to pay a deposit of £100 in respect of the unfair dismissal claim on the ground that it had little reasonable prospect of success;
  3. Case management orders were made; and
  4. There was a discussion of the issues that fall to be determined in the claim.
3. The claimant paid the deposit and continues to advance his claim of unfair dismissal.

## **The hearing**

4. There was a bundle of documents running to 778 pages that had been produced by the respondent. An additional document was added to that bundle by consent at the start of the hearing. The claimant had also produced a bundle containing additional documents that he wanted to rely on. Two without prejudice documents were removed from that bundle and it was then introduced into evidence by consent. One of the documents in the claimant's bundle contained legal advice received by the claimant. The claimant indicated that he was happy to waive privilege in relation to this document as he wanted to rely upon it.
5. The Tribunal also viewed CCTV footage of the incident which led to the claimant's dismissal and listened, at the claimant's request, to an extract of a recording of the disciplinary hearing.
6. The Tribunal heard evidence from the claimant and, on behalf of the respondent, from Kevin Rooney, General Manager, and Alex Goodwin, Director.
7. We spent some time at the start of the hearing discussing the claims that the claimant is bringing. The claimant said that he wished to pursue claims for the following:
  1. Unfair dismissal;
  2. A commission of payment £1,287.0 which is pursued as a claim of unauthorised deductions from wages and, in the alternative, as a claim of breach of contract;
  3. £188 in respect of a deduction made from the claimant's wages because the claimant did not return his work mobile telephone; and
  4. A claim for unauthorised deductions from wages in respect of non-payment of

the National Minimum Wage in February and March 2024.

8. The respondent has, since the termination of the claimant's employment, made a number of payments to the claimant. These include a payment in respect of the claim for non-payment of the National Minimum Wage. The respondent made a further payment to the claimant on the first day of the hearing.
9. The claimant was given time over lunch on the first day of the hearing to consider whether, in light of the payments made to him by the respondent, he wished to pursue the allegation that the respondent had failed to pay him the National Minimum Wage. The claimant withdrew that element of his claim and it is dismissed.
10. The respondent told the Tribunal that if the claimant returned the mobile telephone that he had kept, then it would pay him the £188 he is claiming. On the second day of the hearing the claimant returned the mobile telephone to the respondent and the respondent paid him £188. The claimant withdrew the claim for £188 and that claim is also dismissed.
11. The only claims that therefore remained to be decided by the Tribunal were the claims for unfair dismissal and for a commission payment for February 2024.

## **The issues**

12. The issues that fell to be determined at the final hearing the following:

### Time limits

1. Was the claimant's claim of unauthorised deductions from wages and/or breach of contract presented within the three month time limit set out in the applicable legislation?
2. Was the breach of contract claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination of the claimant's employment?

### Unfair dismissal

3. Did the respondent have a reason for dismissal falling within section 98(2) of the Employment rights act 1996?
4. Was the claimant dismissed by reason of gross misconduct as alleged by the respondent?
5. Did the respondent act reasonably in treating the claimant's gross misconduct as a sufficient reason for dismissal in accordance with section 98(4) of the Employment Rights Act 1996?
6. In particular:
  - i. Did the respondent genuinely believe that the claimant was guilty of

misconduct;

- ii. Were there reasonable grounds for that belief;
- iii. At the time the belief was formed had the respondent carried out a reasonable investigation;
- iv. Did the respondent act in a procedurally fair manner; and
- v. Was dismissal within the range of reasonable responses?

Unauthorised deductions from wages

7. Did the respondent make a deduction from the claimant's pay? If so, how much was the deduction and what was the reason for it?
8. If so, had the claimant signified in writing his agreement or consent to the making of the deduction?
9. Is the claimant entitled to be repaid the monies deducted from his wages? If so, how much money is the claimant entitled to?

Breach of contract

10. Did this claim arise or was it outstanding when the claimant's employment ended?
11. Did the respondent fail to pay the claimant commission to which he was entitled?
12. Was that a breach of contract?

**Findings of fact**

Background

13. The respondent is a business that provides fire protection services including fire safety risk assessments, the installation of fire alarms and the servicing of fire extinguishers. It is a small company that currently employs 9 people.
14. The claimant was employed by the respondent from 9 March 2016 until 6 March 2024, most recently as a Senior Fire Extinguisher Sales and Service Engineer. His role involved surveying and servicing portable firefighting equipment including fire extinguishers, at client's sites, identifying and maximising sales opportunities and cross selling the respondent's products.
15. The claimant was a good performer who was well thought of at work. He reported to Kevin Rooney, the General Manager, with whom he had a good working relationship.
16. The claimant was paid a fixed salary plus commission. He had the use of a

company van and wore company branded clothing whilst out at customer's sites.

Incident on 9 February

17. On Friday 9 February 2024 the claimant, in the course of performing his duties, attended a customer's premises at Sugar Mill Business Park in Leeds. He was driving a company van with the respondent's logo on it and wearing clothing with the company logo on.
18. He parked the van in an area of the carpark which was not a designated parking space, and which left little space for other vehicles to pass. The driver of another vehicle, Mr Bonner, became annoyed with the claimant because of where he had parked, and there was a verbal altercation between the two.
19. The claimant then walked towards Mr Bonner and began punching and kicking him repeatedly. Mr Bonner turned his back on the claimant, and the claimant repeatedly punched him in the back. The claimant pulled Mr Bonner to the ground and kicked him again. Two other people who were in the carpark intervened to stop the claimant attacking Mr Bonner anymore. The police were called, and the claimant was arrested.
20. On 9 February Mr Bonner telephoned the respondent's Office Administrator and complained that he had been attacked by the claimant. The Office Administrator informed Mr Goodwin about the attack, and Mr Goodwin sent an email to Mr Rooney, asking him to carry out an investigation into the alleged assault.
21. Mr Rooney telephoned Mr Bonner who told him that he had just left hospital. The event on 9 February was recorded on CCTV and Mr Rooney took steps to obtain the CCTV footage.
22. Mr Rooney telephoned the claimant but was unable to speak to him until Saturday 10 February. The claimant told Mr Rooney his version of what had happened the previous day.

Disciplinary process

23. On 12 February 2024 the claimant was suspended. His suspension was confirmed in an email sent to him by Alex Goodwin, which explained that the suspension was to allow an investigation to be carried out. The claimant was informed that "*suspension is in no way a punishment or disciplinary sanction*".
24. After he had been suspended, the claimant sent an email to Kevin Rooney asking if Mr Rooney wanted to carry out paperwork and how he should deal with any customers that contacted him. Mr Rooney replied that the claimant 'might as well' get on top of admin, and that if customers contacted him, they should be passed back to the office.
25. The claimant asked to see the 'full' CCTV footage of the incident. The respondent obtained it and sent it to him on 23 February. The claimant sent an email to Mr

Goodwin on 25 February thanking him for obtaining the CCTV as requested and writing: “*....I am sure you are aware I am entitled to use reasonable force to protect myself and property. One more than occasion I was threatened not only verbally but with the use of a motor vehicle....I will be requesting West Yorkshire Police to drop any/all charges against myself....I will also be asking for several driving and public order offences to be brought against the instigator...*”

26. Mr Rooney carried out an investigation into the incident on 9 February. He obtained witness statements from the claimant, from Mr Bonner and from Caroline Wright, the Manager of Sugar Mills Business Park where the incident had taken place. In his witness statement the claimant said that he had kicked Mr Bonner in the groin and hit him five or six times in the head. He also said that Mr Bonner “*was cowering and asking me to stop hitting him. I grabbed him by his head and hurled him to the floor and kicked him. I wanted him on the floor*”. The claimant also suggested that Mr Bonner had deliberately provoked him and said that “*He was curled up like a ball on the floor so I stepped away thinking that he had had enough.*”
27. In her statement Ms Wright described the claimant as running at Mr Bonner and attacking him. She said that Mr Bonner had turned away from the claimant, but the claimant started hitting him about the head, grabbed him round his neck then wrestled him to the ground where he kicked him. She also said that she and another woman had stepped between Mr Bonner and the claimant to stop any further fighting.
28. Mr Bonner described being hit in the head, getting a ripped tee shirt, holes in his trousers and a sore head for a few days. He also said that the claimant “*said “you don’t think you’re fucking clever now do you?” as he booted me in the head. That’s all I remember hearing him say. He had no intention of stopping, he had to be dragged off.*”
29. Mr Rooney produced an investigation report summarising the evidence he had gathered.
30. On 27 February 2024 Alex Goodwin wrote to the claimant by email inviting him to a disciplinary hearing to “*consider allegations in relation to the alleged assault at Sugar Mills on 09/02/24.*” He set out that the respondent would be considering whether the claimant had engaged in:
  1. Conduct tending to bring himself or the company into disrepute;
  2. Threatening behaviour, fighting or physical assault whilst representing the company;
  3. The use of aggressive behaviour or excessive bad language whilst representing the company; and
  4. Serious breach of the company’s health and safety rules or a breach of health and safety legislation.
31. All of the above conduct is listed as potential gross misconduct in the respondent’s handbook, and the claimant was advised of that in the email inviting

him to a disciplinary hearing. He was also warned that a potential outcome of the disciplinary hearing could be that he was summarily dismissed for gross misconduct, and advised of his right to be accompanied at the hearing. A number of documents were sent to the claimant with the invite, including the witness statement, the investigation report and the General Staff Handbook.

32. The disciplinary hearing took place on 29 February 2024 and was chaired by Alex Goodwin. Mr Rooney was also present as notetaker and investigator. The hearing was recorded and a transcript of the recording was in evidence before the Tribunal.
33. Towards the start of the disciplinary hearing the claimant said that he did not believe that the hearing should be going ahead whilst the police investigation was ongoing. He also said that the respondent had a duty of care for him as a member of staff to look after his wellbeing and safety, and that during the incident he had been subject to verbal abuse, physical abuse using a motor vehicle, intimidation and verbal insults.
34. The claimant referred to having been off with a stress related illness less than a year ago, and that he had been let down by the respondent. He maintained that he had acted in self-defence because he was threatened and that he was allowed 'legally to use reasonable force'. The claimant denied having used threatening behaviour, fighting or physical assault. He also denied using aggressive behaviour or excessive bad language whilst representing the company. He described what had happened as "defensive measures" rather than a fight but also accepted that Mr Bonner had not raised his hands towards him. It was clear that the claimant thought he had used reasonable force towards Mr Bonner.
35. Mr Goodwin asked the claimant if he thought his actions on the day were reasonable, and the claimant replied 'yes'. Mr Goodwin also asked him if he would do the same thing again in the same or a similar situation, and the claimant replied that he could not answer, but that he considered his life was placed in danger. The claimant also accused the respondent of 'hanging him out to dry'.
36. During the disciplinary hearing the CCTV footage of the incident was played, and the claimant had the opportunity to comment on it.
37. The disciplinary hearing on 29 February 2024 lasted some considerable time, and at the end of the hearing it was adjourned for Mr Goodwin to reflect on the evidence and make his decision. The hearing was reconvened for the following day, 1 March. Mr Goodwin originally scheduled the meeting for 11.30 am but then changed the time of the meeting to 12 noon and then again to 2pm. Mr Goodwin sent an email to the claimant and Mr Rooney informing them of the change in the time of the meeting, but the claimant did not read the email until approximately 12.45. The claimant arrived at the office at approximately 12 noon and, when he heard that the time of the meeting had been changed, he refused to wait and left.
38. Mr Goodwin called the claimant and left a message for him. The claimant called him back later that afternoon and said that he felt that 2pm was too late to start the meeting and that he would have missed his train home. When asked why he did not

attend the meeting at 2 pm on 1 March the claimant replied 'because I'd had enough. I'm not sitting round like a naughty boy'.

39. On 4 March Mr Goodwin sent an email to the claimant inviting him to a reconvened disciplinary hearing on 6 March. In the email Mr Goodwin explained that in addition to the original allegations, he would also be discussing further misconduct in relation to the claimant's non-attendance at the hearing on 1 March. He explained that the General Staff Handbook contained a provision that "*Where the employee's presence is required at any such formal meeting....a failure to promptly attend or notify without good reason may be grounds for Gross Misconduct and thus may result in summary dismissal*".
40. The claimant told Mr Goodwin that he would not be attending the meeting on 6 March because he was 'not stupid' and felt that the result was already predetermined. He later sent an email stating that he would only attend the meeting if the respondent met his conditions, which were payment of his expenses for attending the meeting by the following day, and sending him a copy of the CCTV footage.
41. The claimant did subsequently attend the meeting on 6 March, which was also recorded.
42. Mr Goodwin concluded that the claimant's conduct on 9 February amounted to gross misconduct. He also concluded that the claimant did not take accountability for his actions on 9 February, was unreasonable in his responses during the disciplinary hearing and that the claimant's version of events was not consistent with the CCTV footage. For example, the claimant had said that Mr Bonner had clenched his fists and approached him in a threatening manner. The CCTV footage however showed Mr Bonner walking away from the claimant with one of his hands in his pocket immediately prior to the assault by the claimant. When presented with the CCTV footage, the claimant would not accept that his account of what had happened was incorrect.
43. Based on the claimant's responses during the disciplinary hearing, Mr Goodwin was concerned that the claimant may behave in a similar way in the future. Mr Goodwin has worked for the respondent for over 20 years and could not recall any other employees having ever committed such an assault whilst at a customer site. He was concerned that the claimant's actions were a public safety issue and that they could potentially damage the respondent's reputation.
44. Mr Goodwin considered alternatives to dismissal but concluded that they were not appropriate. He was particularly concerned that the claimant did not accept that he had acted inappropriately and was unable to give any reassurance that he would not act in a similar manner in the future.
45. Mr Goodwin decided that the appropriate disciplinary sanction was dismissal with immediate effect for gross misconduct.
46. After the meeting Mr Goodwin sent an email to the claimant confirming the decision to dismiss him. In the email he wrote that:

*“....the reasons for your dismissal are that:*

- *you have engaged in:*
  - *...conduct tending to bring [your] self or...the Company...into disrepute....*
  - *threatening behaviour, fighting, [or] physical assault...whilst Representing the Company....*
  - *...the use of aggressive behaviour or excessive bad language whilst Representing the Company....; and*
  - *serious breach of the Company's health and safety rules....; and*
  - *you failed to promptly attend or notify without good reason a formal disciplinary meeting....*

*I am therefore writing to you to confirm the decision that you will be summarily dismissed without notice for gross misconduct and that your last day of service with the Company is today, 6 March 2024....”*

47. The claimant was informed that he had the right to appeal against the decision to dismiss him. He did not appeal.

48. In June 2025 the claimant was convicted of assault by beating.

#### Respondent's commission scheme

49. At the start of his employment the claimant signed a Service Agreement which contained the following relevant provisions:

#### **“5. REMUNERATION AND EXPENSES**

##### *5.1 During the Appointment:*

*5.1.1 the Company shall pay to the Employee a Salary at a rate of £11,500 per annum or at such rate as may from time to time be agreed between the Company and the Employee;*

*5.1.2 the Salary shall be payable in arrears by equal monthly instalments on the last working day of each month into a bank account nominated by him or her; and*

*5.1.3 the Employee shall be entitled to participate in:*

*5.1.3.1 a commission scheme; and*

*5.1.3.2 a length of service award scheme*

*on such terms and subject to such conditions as may be decided from time to time by the Company. The Company reserves the right to vary or replace any such*

*schemes in place from time to time at any time.”*

50. The respondent has a Service Engineers' Handbook. That Handbook contains the rules governing the commission scheme, with the following relevant provisions:

***“POL-4 Performance Related Pay (“PRP”) Schemes***

***POL-4.1 All PRP Schemes – General Rules***

*1 Any and all PRP schemes are designed to drive performance and improvements in performance. They are subject to the following rules.*

*2 The following are fundamental requirements of eligibility for any PRP scheme:*

*2.1 the employee must work in the interests of the Company and the Group and provide assistance as reasonably requested to the best of his or her abilities;*

*2.2 the employee must work in the manner instructed (including the requirements to adhere to the terms of their contract of employment, and the Company's policies, procedures and required standards of work);*

*....*

*2.6 the employee must not commit, or be found guilty of, any disciplinary offence (including poor performance);*

*....*

*4 There is no entitlement to any PRP scheme without the express written confirmation of the Company. For the avoidance of doubt, unless otherwise expressly agreed in writing, there is no entitlement to any PRP scheme rewards and none will be paid, whilst the employee is absent for whatever reason or otherwise unable to perform work for the Company (including sick-absence, annual leave, weekends, bank/public holidays, any periods of suspension preceding being found guilty of a disciplinary offence, garden leave, any unworked notice period, any period for which payment in lieu of notice is made, etc.), except as required by statute or contract.*

*....*

*10 The Company and/or any Group Company reserve the right, in their sole discretion:*

*10.1 ....*

*10.2 to withhold any payment of PRP scheme rewards:*

*10.2.1 until such time as entitlement to it has been fully ascertained;*

*10.2.2 pending conclusion of any investigation or proceedings concerning disciplinary, performance or capability concerning the employee are underway which might affect entitlement....*

11 *If the employee fails to meet the fundamental eligibility criteria laid out in paragraph 2 above:*

*11.1 during any period for which a scheme runs, entitlement to any reward for that, or any other, scheme in that period is forfeit, and/or*

*11.2 in respect of any matter associated with any work or other aspect of performance on which entitlement to any PRP scheme reward is measured or earned, entitlement to any reward for that work or other aspect of performance is forfeit...."*

51. The claimant was entitled to participate in the respondent's Performance Related Pay scheme, which was referred to by the parties as the commission scheme. The rules of that scheme, which are set out in the handbook, state that in order to be eligible for the scheme, the employee must not commit or be found guilty of any disciplinary offence. They also state that there is no entitlement to any payments whilst an employee is suspended prior to them being found guilty of a disciplinary offence.
52. The rules also state that the respondent has the right to withhold payment of any rewards under the scheme pending the conclusion of any disciplinary investigation or proceedings.

53. On 23 February 2023 the claimant sent an email to Kevin Rooney asking for an explanation of what payments he would receive whilst he was suspended. Mr Goodwin responded to the email on 28 February. In his response, Mr Goodwin set out the rules of the Performance Related Pay Scheme and wrote that:

*"Given the matters that are the subject of the disciplinary meeting on Thursday, we may temporarily withhold your commission until such time as your entitlement to is has been fully ascertained and pending conclusion of the relevant matters. This is, to be clear, the operation of the scheme's rules and not any result of any disciplinary, which as you are aware has yet to be decided.*

*However, instead of temporarily withholding the full amount, I have, mindful of the implications, instructed for a one third proportion in the sum of £643.65 to be released. Needless to say, we will of course release the balance or other due sum as may be required in due course and without undue delay in accordance with the scheme's rules and contractual and legal obligations...."*

54. On 29 February 2024 the claimant was paid his salary for February, together with a commission payment under the Performance Related Pay scheme of £643.65 gross. On 3 March he wrote to Mr Goodwin stating that he considered the withholding of the commission to be malicious and unlawful. Mr Goodwin replied on 5 March explaining the position and offering to meet the claimant to discuss any issue. He asked the claimant to provide further information if he still considered he was being paid unlawfully. The claimant did not take Mr Goodwin up on the offer of a meeting.

55. No further commission was paid to the claimant because he was dismissed for

gross misconduct. The respondent did not seek to recover from the claimant the commission of £643.65 paid to him in February 2024.

## The Law

### Unfair dismissal

56. In an unfair dismissal case, such as this one, where the respondent admits that it dismissed the claimant, the respondent must establish that the reason for the dismissal was one of the potentially fair reasons set out in section 98(1) or (2) of the Employment Rights Act 1996.

57. Section 98(1) provides that: "*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.*"

58. Section 98(2) states that:

*"A reason falls within this subsection if it –*

- (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,*
- (b) relates to the conduct of the employee,*
- (c) is that the employee was redundant, or*
- (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment."*

59. The burden of establishing a fair reason for dismissal lies with the respondent. The reason for dismissal has been held to be the factor or factors operating on the mind of the decision maker which causes them to make the decision to dismiss (***Croydon Health Services NHS Trust v Beatt [2017] ICR 420***).

60. Conduct does not have to be culpable, blameworthy or reprehensible in order to amount to a fair reason for dismissal, although this can be a factor when deciding the fairness of the dismissal (***Jury v ECC Quarries Ltd [1980] WLUK 116*** and ***JP Morgan Securities Plc v Ktorza [2017] 5 WLUK 237***).

61. Misconduct can be either deliberate or inadvertent (***Philander v Leonard Cheshire Disability [2018] 11 WLUK 4***) and can include gross negligence as well as deliberate wrongdoing, even where the behaviour is neither blameworthy nor wilful.

62. Section 98(4) of the Employment Rights Act 1996 provides that:

*"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."*

63. Where conduct is established as the reason for dismissal, the starting point for the Tribunal when considering whether the dismissal was fair is the test in ***British Home Stores Ltd v Burchell [1980] ICR 303***, namely:

1. Did the respondent have a genuine belief that the claimant was guilty of the misconduct?
2. Did the respondent have reasonable grounds for holding that belief; and
3. At the time it formed that belief, had it carried out as much investigation as was reasonable?

64. One of the considerations under section 98(4) is whether dismissal was within the range of reasonable responses, i.e. was it an option that a reasonable employer could have adopted in all the circumstances. The Tribunal must not substitute its view of the appropriate disciplinary sanction for that of the employer (***Iceland Frozen Foods v Jones [1983] ICR 17***). The range of reasonable responses test is not a perversity test, and it applies also to the procedure followed by the respondent including the investigation (***Sainsbury's Stores Ltd v Hitt [2003] IRLR 23***).

#### Breach of contract

65. Article 3 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 provides that:

*"Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if*

*—*

- (a) *The claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;*
- (b) *The claim is not one to which article 5 applies; and*
- (c) *The claim arises or is outstanding on the termination of the employee's employment."*

66. This provision gives employment tribunals the power to hear claims for damages for breach of a contract of employment or any other contract connected with the employment.
67. The time limit for presenting claims for breach of contract in the Employment Tribunal is contained within Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the Order") which states that:
- "Subject to article 8B, an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented –
- (a) *Within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or*
  - (b) *Where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has terminated, or*
  - (c) *Where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable."*
68. Article 8B contains provisions for the extension of the time limit to enable Early Conciliation to take place before a claim is presented.
- Unauthorised deductions from wages
69. Section 13 of the Employment Rights Act 1996 states that:
- "(1) An employer shall not make a deduction from wages of a worker employed by him unless –
- (a) *The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*
  - (b) *The worker has previously signified in writing his agreement or consent to the making of the deduction...*
- (3) *Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions) the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."*
70. Section 23 of the Employment Rights Act 1996 gives workers the right to bring complaints of unlawful deductions from wages to the Employment Tribunal. The time limit for bringing such claims is contained within Sections 23(2), (3) and (4) which provide as follows:

*“(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with –*

*(a) In the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made....*

*(3) Where a complaint is brought under this section in respect of –*

*(a) a series of deductions or payments...*

*the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.*

*(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.”*

71. Section 27 of the Employment Rights Act 1996 defines ‘wages’ for these purposes as including:

*“....any sums payable to the worker in connection with his employment, including –*

*(a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise....”*

72. Commission payments are included in the definition of wages, but if they are subject to a prior condition, cannot be claimed as unauthorised deductions from wages unless the condition has been met (**Johnson v Veritas Technologies (UK) Limited [2023] EAT 15**).

73. When determining whether a sum is properly payable to a worker, the Tribunal may have to interpret the terms of the worker’s contract (**Aggarwal v Cardiff University and others [2018] EWCA Civ 2084**).

74. In **New Century Cleaning Company Ltd v Church [2000] IRLR 27** the Court of Appeal held that, in order for wages to be ‘properly payable’ to a worker, the worker must have some legal entitlement to the wages, although that entitlement does not have to be a contractual one.

## Conclusions

75. The following conclusions are reached having considered carefully the evidence before the Tribunal, the relevant legal principles and the submissions of the parties.

### Unfair dismissal

76. The respondent admits that the claimant was dismissed. The first question I have

had to consider therefore is whether the respondent has proved a reason for dismissal falling within section 98(2) of the Employment Rights Act 1996.

77. On the evidence before the Tribunal, I have no hesitation in finding that the claimant was dismissed because of his behaviour on 9 February 2024 when he assaulted a member of the public whilst dressed in company uniform and on company business at a customer's premises. It is clear from all the documents relating to the incident itself, the disciplinary investigation and the disciplinary hearing and outcome that this was the reason in the respondent's mind at the time of the dismissal, and that the respondent considered the claimant's behaviour on that day to amount to gross misconduct. The claimant's behaviour on 9<sup>th</sup> February falls squarely within the definition of gross misconduct set out in the respondent's handbook.
78. The claimant was dismissed for conduct, which is a potentially fair reason falling within section 98(2) of the Employment Rights Act 1996. The respondent has discharged the burden of proving a potentially fair reason for dismissal.
79. I have then considered whether, at the time the respondent took the decision to dismiss the claimant, it had a genuine belief that the claimant was guilty of misconduct. The key evidence in this respect is that of Mr Goodwin who took the decision to dismiss. Having considered carefully the evidence of Mr Goodwin, which is consistent with the documentary evidence, I accept that he genuinely believed the claimant to be guilty of gross misconduct. Indeed, there was no suggestion by the claimant that Mr Goodwin did not genuinely believe that the claimant was guilty of misconduct.
80. At the time he took the decision to dismiss the claimant Mr Goodwin had before him the CCTV footage which clearly shows the claimant attacking Mr Bonner, as well as the statements of the claimant himself, Mr Bonner and Ms Wright. The evidence before Mr Goodwin is, in my view, compelling.
81. There was no dispute as to the key facts of the case. The claimant did not deny that he had hit and kicked Mr Bonner, and the CCTV footage shows him doing this. Rather, the focus of the claimant's defence to the allegations was that he was provoked and acted with reasonable force to defend himself.
82. I find that the respondent did, on the evidence before it, have reasonable grounds for concluding that the claimant was guilty of gross misconduct.
83. I turn next to the investigation carried out by the respondent. As part of that investigation, the respondent obtained the CCTV footage of the incident and shared it with the claimant. It also obtained witness statements from the claimant himself, from the victim of the attack, Mr Bonner, and from Ms Wright who was an independent witness to the assault. Mr Rooney produced an investigation report and shared that with the claimant. The claimant had the opportunity to put forward his version of events as part of the investigation.
84. The claimant did not suggest that any further investigations should have been

carried out, and I have no hesitation in finding, on the evidence before me, that the investigation carried out by the respondent was a reasonable one.

85. The procedure followed by the respondent in this case involved obtaining relevant evidence (in the form of the CCTV footage) and witness statements and sending the evidence and the investigation report to the claimant in advance of a disciplinary hearing. Different managers were involved in the investigation and in the disciplinary hearing.
86. The claimant was invited to a disciplinary hearing, told in advance what the allegations were, warned in advance of the potential consequences of the hearing, and reminded of his right to be accompanied at the meeting.
87. A lengthy and detailed disciplinary hearing took place at which the claimant had the opportunity to state his case and respond to the allegations against him. After the disciplinary hearing on 29 February Mr Goodwin adjourned to reflect on what action to take. It is clear that he did not take the decision lightly, and gave it some considerable thought, which was why the time of the reconvened hearing due to take place on 1 March was pushed back.
88. The claimant was informed of the decision to dismiss him in writing and was offered the right of appeal. He chose not to exercise that right.
89. I therefore find that the procedure followed by the respondent was a fair procedure and in line with the ACAS Code of Practice.
90. The final question is whether dismissal was within the range of reasonable responses. In considering this question I have reminded myself that it is not for the Tribunal to step into the shoes of the employer and decide what decision it would have taken.
91. The behaviour of the claimant on 9 February amounted to an assault of a member of the public. It was committed by the claimant whilst he was on a customer's premises, carrying out his duties on behalf of the respondent and wearing clothing that clearly identified his employer. The respondent was entitled to conclude that the claimant had, through his actions, engaged in conduct tending to bring himself and the respondent into disrepute. The respondent was also entitled to conclude that the claimant had engaged in aggressive behaviour and physical assault whilst representing the company.
92. The claimant showed no remorse for his behaviour and took no accountability for his actions. Rather he maintained consistently that his behaviour that day was justified and that it was the respondent who had let him down. Even before the Tribunal he maintained that, had the respondent acted differently, he would not have committed the assault. That submission was, quite frankly, incredible, and was not supported by any evidence.
93. The claimant gave the respondent absolutely no reassurance that he would not act in the same way again, despite being given the opportunity by Mr Goodwin to do

so. The consequences of the claimant's behaviour on 9<sup>th</sup> February were serious. A member of the public was injured and had to attend hospital, and the claimant was arrested and charged.

94. In these circumstances it cannot be said that dismissal was out with the range of reasonable responses. Particularly since the respondent's handbook makes clear that the type of behaviour that the claimant engaged in on 9<sup>th</sup> February would be considered as gross misconduct and may result in summary dismissal.

95. For these reasons I find that the dismissal of the claimant was fair. The claim of unfair dismissal is not well founded. It fails and is dismissed.

Claim for commission payment

96. The first issue for consideration in relation to the claim for commission is whether the claim was presented on time. The relevant dates are as follows:

1. Date upon which the claimant says the commission should have been paid : 29 February 2024 (the date upon which the claimant was paid his wages for February);
2. Date of termination of the claimant's employment : 6 March 2024;
3. Date upon which early conciliation started : 4 April 2024;
4. Date upon which the early conciliation certificate was issued : 16 May 2024; and
5. Date upon which the claim was presented : 28 May 2024.

97. The claimant began early conciliation and issued his claim within three months of the date upon which he says the respondent made the unauthorised deduction from his wages (29 February). The claim for unauthorised deduction from wages is therefore in time.

98. The claimant also began early conciliation and issued his claim within three months of the effective date of termination of his employment (6 March). The claim for breach of contract is therefore also in time.

99. I have gone on to consider whether the total amount of wages paid to the claimant in February 2024 was less than the total amount of wages properly payable to him on that occasion. The claimant says that he is entitled to the full amount of commission that he had earned, rather than the sum that was actually paid to him.

100. It is clear however, from the rules of the commission scheme, as set out in the Service Engineers' Handbook, that it was a fundamental condition of eligibility of the scheme that the claimant must not commit, or be found guilty of any disciplinary offence. The scheme rules also give the respondent the right to without any payment of commission pending the conclusion of any disciplinary proceedings which might affect entitlement to a payment.

101. In addition, the rules state that if an employee fails to meet the fundamental eligibility criteria for the scheme, then entitlement to any payment is forfeited. The wording of the scheme rules is clear and unambiguous.
102. The reason why the full commission payment was withheld from the claimant is that he was subject to an investigation and disciplinary proceedings that resulted in him being found guilty of gross misconduct. As a result, the claimant did not meet the eligibility criteria for the scheme and forfeited his entitlement to any payments of commission. The respondent was not obliged to pay him any commission in February 2024.
103. It cannot therefore be said that the amount of wages paid to the claimant in February was less than the wages properly payable to him on that occasion. The claim for unauthorised deduction from wages is not well founded. It fails and is dismissed.
104. The claimant has also failed to establish that the respondent was in breach of contract by not paying him full commission in February 2024. He was entitled under the terms of his service agreement to participate in the commission scheme, but his service agreement specifically states that participation in the scheme is on such terms and subject to such conditions as may be decided from time to time by the respondent.
105. The terms and conditions of the scheme, as set out in the Service Engineers' Handbook, make clear that in the circumstances the claimant faced, he was not entitled to any commission payments.
106. The claim for breach of contract is not well founded. It also fails and is dismissed.

Employment Judge Ayre  
Date: 7 January 2026

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