



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr O Dalkiran

**Respondent:** British Airways plc

**Heard at:** Watford      **On:** 20-22 October 2025

**Before:** Employment Judge Cowen

## Appearances

For the claimant: Ms Minto (counsel)

For the respondent: Ms Kendrick (solicitor)

# WRITTEN REASONS

1. An oral judgment having been provided, the Claimant requested written reasons on 23 October 2025. Due to the workload of the Tribunal it has not been possible to produce this document until now. The Tribunal apologises for the delay.

## The Facts

2. The facts in this case centre around the Crew Report Centre at London Heathrow airport on 14/15 August 2023. The allegation against the Claimant was of inappropriate sexual conduct in the presence of a female colleague.
3. The report/rest centre is a facility within the airport open 24 hours per day to crew members whilst they rest between flights. One part of the rest centre has a number of camp beds in an open plan room, with short panelled dividers between the beds. Crew members are allowed to come to this room to rest before their next flight.
4. The allegation centred around the fact that X was present at the report centre when the Claimant attended there. X thought she saw the Claimant masturbating in the bed next to hers.
5. X went to leave the room and asked Mark Finnegan, another member of

- staff who was also sitting on a bed in the room, if he had seen what she had seen. He told her he had not. But they went for a cigarette together and 10 minutes later when they returned to the room, the Claimant was asleep.
6. X moved to another bed further away from the Claimant. X sent message to her friend reporting to her what she thought had just happened.
  7. The next day X reported it to a manager and an investigation was launched.
  8. Approx 2 weeks later the Claimant was arrested on 2 September 2023 and was escorted from the airport. He was charged with intentionally exposing himself intending to cause alarm and distress.
  9. The Claimant was also told that he was being accused of a breach of dignity at work and conduct prejudicial to good name of BA, by being arrested in front of customers at Heathrow.
  10. On 27 September the Claimant was suspended after a meeting. At the meeting the Claimant said that he was in the crew report centre, that he had watched TV on this phone and gone to have a cigarette and gone to the toilet, and back to the room and had slept. He did not hear anything unusual. He told Henrique Souza the investigating officer, that " I do not know who she is, it's possible it happened there but wasn't me". This was a position which the Claimant maintained throughout.
  11. The Claimant also told Mr Souza that he was taken for a police identity picture parade, but that X had not picked him out. He told Mr Souza that X approached Mark Finnegan on his way back to his bed and asked if he had seen anything, Mr Finnegan said he had not.
  12. The Claimant also told Mr Souza that X had said he had a moustache and was sleeping on his left side and looking at her through a gap in the panel. He explained that he does not sleep on his left due to a previous back problem.
  13. The Claimant also explained that he was anxious, stressed and upset as a result of the allegation and that he had panic attacks.
  14. On the second day after his arrest, he was charged with one count of indecent exposure with intent to alarm or distress,
  15. The Claimant was bailed unconditionally, but volunteered to surrender his passport. He therefore could not leave the UK.
  16. On 5 October Mr Finnegan was interviewed and gave a statement. He described seeing the Claimant outside the rest room watching his phone. He said that when he came back from getting a coffee, the Claimant was not there. He said that he sat for a while and that X approached him as he got up to leave and said that the man in the next bed was playing with himself and she had seen everything. Mr Finnegan said, X said she didn't want to go back in there on her own, so she went to vape whilst Mr Finnegan smoked. When they returned, the Claimant was asleep and X said she would move to another bed, which she did.

17. On 12 October 2023 the investigation was paused due to the criminal proceedings. On 17 October 2023 the Claimant informed BA that his trial would be at Uxbridge Magistrates on 20 November 2023, this was acknowledged by Christie Lewis the standards and police specialist. BA did not send anyone to observe or note the hearing.
18. On 20 November 2023 the Claimant was found not guilty at the magistrates court, where it was said that the Magistrates took into account the bodyworn camera footage of the location, the lighting, that the partitions had blankets covering and restricted visibility. They also took into account that there were others in the room who did not see or hear what X said she did. They found that the identity of the Claimant was not disputed. They said that the Claimant's evidence in court corroborated with this interview. They concluded that he was not guilty of the offence.
19. The Claimant recalled that the magistrates had said that, on the basis of beyond reasonable doubt, they did not consider that it was likely that the incident had occurred as X had described
20. BA restarted their investigation after the end of the criminal case. X was interviewed on 12 December 2023, when she gave a statement. In this statement she said that the Claimant came into the room after her and laid on the bed. That she sat on her bed looking at her phone, before lying down. It was when she rolled over she said the Claimant was staring at her, so she turned away from him again. It was about 15 mins later that she heard a 'loud clapping sound' coming from the bed next to her. She said she felt/sensed that he was masturbating. And she turned round and saw that he was masturbating. She described him having a blanket over his legs up to his waist but said she could see his penis in his right hand. She froze for 10 seconds, then pretended to look for something in her bag before leaving. At the same time another person also left the room and this was Mark Finnigan. She asked him if he had seen what she had seen and he said not. They went for a cigarette together and when she returned the Claimant was asleep. At this point she texted her friend to tell her what had happened. The texts are timed at 12.18am.
21. The BA internal Investigation meeting took place on 28 December 2023— Ms Wignall asked the questions. The Claimant told Ms Wignall that he had sat on the bed and watched TV and had gone out for cigarettes until he fell asleep. He denied that he had seen X, also denied that he had masturbated. He pointed out in the interview a number of errors/inconsistencies in X's account e.g. mistaken about headphones of both the Claimant and Mark Finnegan.
22. Mr Hall, the Claimant's trade union representative provided a statement in which he said that the Magistrates had said not only could they not be sure that the offence had taken place, but that based on the evidence it was highly improbable that this offence had taken place. This was therefore information which was told to BA on 27 September. He listed the unlikelihood of X being able to see the Claimant through the screen and in the dark and the fact that no one else in the room had witnessed this even though X said it went on for 5 minutes. Mr Hall said " I feel that the magistrates summing up in this case is crucial in redressing that balance of probability to very little to none". He went on to say of the Claimant; " He's

told himself that he believes that she must believe what she saw and heard what she saw, even though he knows she didn't and must have simply misinterpreted the situation".

23. On 19 January 2024 the Claimant was told that there was a case to answer and the matter would proceed to a disciplinary hearing.
24. Laura Holloway was allocated as the disciplinary manager and listed a Disciplinary hearing on 8 February 2024 – this was rearranged to 13 February so the Claimant's trade union representative could attend
25. The notice of hearing provided the Claimant with the preliminary investigation report and the disciplinary policy. The Claimant was told of his right to be accompanied and was told that there was a risk of dismissal, if the allegations were upheld.
26. As part of the investigation the disciplinary manager sent questions to X, via the CIPS, as it was thought that she was not allowed to be contacted as part of the disciplinary investigation. She did provide written answers. Ms Holloway did not meet with X, nor with Mr Finnegan to ask any questions. It was not clear to the Tribunal why Ms Holloway was not allowed to speak to X, as Mr Leaves (appeal officer) later did so.
27. One of the questions asked by Ms Holloway outlines to X the Claimant's response, that X may be mistaken, but then went on to ask X if it could have been someone else that she saw. This did not represent the Claimant's position at all and was a misunderstanding by Ms Holloway. As a result of this mistake, the investigation was taken in a different direction.
28. At the disciplinary hearing, the Claimant again told Ms Holloway that he believed that X was mistaken that this had happened. He says that he has not made any reference to anyone fabricating anything. Ms Holloway said in her conclusion that "the Claimant accepts that she beliefs(sic) she seen what she's seen, she (sic) doesn't accept that's what has happened ". Ms Holloway also said " there is no dispute it was C in the room that night, next to her"
29. In answers to questions about his arrest, the Claimant explained that there were no passengers left on the aircraft when the police arrived, it was only his colleagues. He walked through the domestic arrivals area to the police van. He was not in handcuffs.
30. X's answers to questions also suggested that the Claimant made eye contact with X twice, both times whilst he was in the act of masturbating.
31. The Claimant was allowed to comment on X replies, but not allowed to ask X any questions. Mr Hall sent an email to Ms Holloway on 25 February 2024 making it clear that the Claimant had never suggested that this was an issue of mistaken identity.
32. On 27 March the Claimant was told he would receive outcome on 5 April. The outcome letter stated that the Claimant was cleared of any allegations by a magistrates court. It also stated that the Claimant and Mr Hall have emphasised his proven innocence in court, but goes on to say that the BA

procedure is to find whether there is a genuine belief that the misconduct occurred, on a balance of probabilities. Ms Holloway said that she had to weigh up both X and the Claimant's version of events to make a finding of fact.

33. The outcome letter went on to spell out that Ms Holloway did consider whether X could have in fact seen someone else do this and that X was sure it was the Claimant.
34. She also recalled X saying that there was a moment of eye contact and she was sure it was the Claimant.
35. Ms Holloway also relied on the fact that Mr Hall had proposed motivation for X making an allegation, but then discounted them all and referred to them as potentially defamatory and concluded that they were an attempt to discredit X. Ms Holloway also labelled Mr Hall questioning why X would remain in the room as a further attempt to discredit her. She discounted the fact that this was questioned by the Magistrates.
36. Ms Holloway's findings say that the act occurred 15 minutes after X arrived in the room.
37. Ms Holloway concluded that she believed X because, what she witnessed had affected her and that she had messaged her friend at the time.
38. She also found that X had identified the Claimant in a police line up to be a 'poignant factor', illustrative of the impact of the events. She also placed reliance on the evidence of Tracy Brentnall, saying how this had effected X's mental health.
39. Ms Holloway said that she believed X more than she did the Claimant 'based on everything that has been investigated and presented to me'. She concluded that what X said happened did occur.
40. She also found that the Claimant was arrested in a public place and escorted through the airport in BA uniform and that this was conduct prejudicial to the good name of BA. She concluded that being placed in a police transport would have been likely to draw the attention of customers and in a negative light.
41. The decision to dismiss – Ms Holloway said that it was irrelevant that the Claimant had 26 years of unblemished service. She concluded that an isolated incident was sufficient to warrant dismissal. She took into account the impact on X, saying that the Claimant had not considered this and instead suggested that X may have been malicious. Ms Holloway said that she contemplated the courage and strength of X to report what she experienced.
42. The Claimant was therefore dismissed on 9 April 2024.
43. The Claimant appealed the decision and it was heard by Rosa Muccio, as appeal manager, who held a hearing on 3 May 24.
44. At the meeting the Claimant was given the opportunity to discuss each of

his appeal points.

45. He complained that Ms Holloway had not provided reasons why she believed X more than him, or why he was not believed. He also complained that Ms Holloway had relied on the evidence of Tracy Brentnall which was wrong and prejudiced.
46. Mr Hall read out a written submission which pointed out again that X had been discredited at the Magistrates court and that in doing so, this amounted to a reason not to believe her and to believe the Claimant instead.
47. First stage outcome (appeal) on 24 May 2024 said that the Claimant was inconsistent between the disciplinary hearing and the appeal. Ms Muccio concluded that Ms Holloway had not misunderstood the Claimant's defence. Ms Muccio told the Tribunal, " After all, in the initial assessment conducted by Henrique Souza on 27/9/23 the Claimant did state that it was possible that the incident happened in the rest area room but that it was not performed by himself".
48. Ms Muccio found that the Claimant had not provided a satisfactory explanation of the events that took place and therefore the Claimant had not been entirely honest about what really happened.
49. She considered that the Claimant had altered his answer about who he was aware of on the next bed to him and that was an indication of unreliability.
50. Ms Muccio also found that being taken by police through a public area was sufficient to amount to potentially causing reputational damage. She therefore upheld the decision to dismiss.
51. The Claimant was allowed to bring a Second stage appeal on 30 May 2024. Initially Charlotte Davis was appointed to hear the appeal.
52. There was a significant delay in the process due to an issue between the trade union and the management. No details were provided to the Tribunal about this and therefore it was considered irrelevant.
53. Anthony Coombes was subsequently appointed, in December 2024 when the appeal was allowed to proceed. The Claimant met with him on 10 January 2025.
54. Once again both the Claimant and Mr Hall indicated that the Claimant's defence was that he had not done this and Mr Hall had provided other possibilities in response to Ms Holloway's question as to 'why would X make this up?'.
55. They also brought his attention to the comments made by the Magistrates in dismissing the criminal allegation.
56. On 8 April Mr Coombes met with X; She repeated her assertion that she had heard a clapping noise and that she was sure it was the Claimant. She asserted that she did see him masturbating

57. Mr Coombes decided he needed to speak with all the key witnesses,. By 16 May he had done so and said he would get back to the Claimant.
58. On 20 July the meeting with Mr Coombes was cancelled as he was absent. He remained absent, so Richard Leaves took over on 7 August.
59. On 15 August Mr Leaves met with Ms Holloway who said there wasn't any factual evidence, but there was a lot around the impact on X. Ms Holloway said that the Claimant focused on the criminal process but that was completely separate and she did not want to be influenced by anything which happened externally . Ms Holloway admitted that she put emphasis on the impact to X.
60. The appeal hearing was further reconvened on 18 August 2024.
61. On 3 September Mr Leaves interviewed X who said that the level of visibility in the rest room was quite high. This interview occurred after X's evidence at the Magistrates court where she was found to be unreliable. She also said that Mr Finnegan came into the room when it was happening – a further distinction from her earlier account.
62. Mr Finnegan's interview evidence is significantly different from previously as he provides opinion rather than just fact.
63. On 8 October Mr Leaves provided his outcome – the appeal was upheld on the issue of delay only.

### **The Law**

64. The Tribunal must consider whether the dismissal was unfair. In doing so they consider the following issues in accordance with s.98 Employment Rights Act 1996 ('ERA') and BHS v Burchell [1978] ICR 303;
- a. What was the principal reason for the dismissal and was it a potentially fair reason in accordance with section 98 of the Employment Rights Act 1996?
  - b. Was the dismissal fair in all the circumstances in accordance with equity and the substantial merits of the case (and section 94 of the Employment Rights Act 1996)?
  - c. Did the respondent have a genuine belief in the misconduct which was the reason for dismissal?
  - d. Did the respondent hold that belief in the claimant's misconduct on reasonable grounds?
  - e. Did the respondent carry out a reasonable investigation in all the circumstances?

### **s.98(4) Fairness**

65. In considering s.98(4) the Tribunal must be satisfied that the employer has acted reasonably in all the circumstances in treating that reason as sufficient. There is no burden of proof and the Tribunal must consider all the facts in order to reach their own conclusion as to whether the decision to dismiss lay within the band of reasonable responses

66. The fact that other employers might reasonably have been more lenient is irrelevant (see the decision of the Court of Appeal in *British Leyland (UK) Ltd v Swift* [1981] IRLR 91
67. In accordance with *Iceland Frozen Food v Jones* [1982] IRLR 439 the Tribunal will consider whether the decision to dismiss was a fair sanction, that is, was it within the reasonable range of responses for a reasonable employer.

### **Appeal**

68. It is not necessary to consider whether the appeal was a review or a rehearing as *Taylor v OCS Group Limited* [2006] IRLR 613, CA indicated that what is important is that the procedure was fair overall. It also sets out that an appeal can correct any defect in the initial investigation or procedure.

### **Decision**

69. The issue in this case is whether Ms Holloway (Ms Maccio and Mr Leaves) had reasonable grounds based on a reasonable investigation to determine that the Claimant was guilty of the allegations.
70. They had X version of events which was given to CIPS and her answers to Ms Holloway.
71. They also knew that she had not been believed at the Magistrates court – as the Claimant had told them so. They knew that no-one else in the room had heard/seen anything.
72. They knew that the lighting in the room was quite dark and conducive to rest/sleep.
73. Ms Holloway's outcome letter makes it clear, as does her interview with Mr Leaves that she relied on the fact that X seemed to be upset about it. She believed this indicated credibility. This is not sufficient to reason on its own to find that X should be believed.
74. Ms Holloway failed to test the credibility of X's version of events. She failed to obtain any details from the Magistrates court in order to investigate whether what was being said by the Claimant and Mr Hall was accurate.
75. Ms Holloway also failed to question why she could not meet with X. Nor why the Claimant could not question her. Ms Holloway relied on TB account of how upset X was and used this. However, this account was also called into question, but Ms Holloway did nothing to investigate this point either. She clearly had a genuine belief that X was right and should be believed.
76. However, when considered objectively whether that belief was reasonable based on the evidence available, the Tribunal considered that there were

significant errors in Ms Holloway's handling of the case. She took the Claimant's lack of an alternative version of events to mean that he was guilty. This should not have been relied upon without more to support it.

77. Ms Holloway made a significant error in misunderstanding the defence put forward by the Claimant, which was one of mistake. Not mistaken identity.
78. The Claimant and Mr Hall repeatedly and consistently said that they did not controvert that X believed what she thought she saw, but that they considered it to be a mistake.
79. Ms Holloway's mistake took her to a place where she asked questions of X to confirm the Claimant's identity – which was not in doubt. Ms Holloway then relied on this to support X's credibility.
80. Possibly more worryingly, she turned this on the Claimant and accused him of trying to undermine X and to defame her.
81. Mr Halls' submissions were to some extent unhelpful in this regard as he hypothesized in such detail that Ms Holloway took this to be the Claimant's alternative version of events. Had Ms Holloway read this with an impartial and open mind, she would have realised that what he was doing was expounding his views, not that of the Claimant. Unfortunately, Ms Holloway did not come to his submissions with an open mind.
82. The lack of opportunity for the Claimant to address X's account and the lack of the Respondent obtaining a true understanding of what was said at the criminal trial, were both serious failings in the process of disciplinary, which fall short of a reasonable process. Had either of these points occurred, further information would have been available which would have potentially corrected Ms Holloway's mistake.
83. Ms Holloway failed to take into account evidence which was before her – the darkness of the room, the lack of other witnesses, the consistency of the Claimant's version of events. The independent witness who did not support X version.
84. In relation to the allegation of reputational damage, Ms Holloway did not base her conclusion on the evidence before her. She did not mention that there were no passengers on the plane when the Claimant was approached by the police. Nor that he was not handcuffed and led away. Nor the location of where he was searched or put into a police van. The decision on this point appeared to rather lead on from her views about the Claimant's guilt, rather than looking at the evidence and circumstances.
85. She may have had a genuine belief, but it was not one which was reasonable based on the evidence before her.
86. The appeal which was conducted by Ms Muccio was not one which was open minded and considered. She too took the view that X's credibility rested on the impact which the incident had on her. She too failed to understand or appreciate that this of itself should not lead to acceptance of

X version of events. She also misunderstood the Claimant's position that he was not denying that he was present, but asserting that X was mistaken in what she saw.

87. Ms Muccio's appeal therefore also relied on a mistaken understanding of the Claimant's position and therefore did not fairly balance the evidence before her.
88. The second appeal at least suggested that Mr Coombes undertook some investigation.
89. Further that he had indicated to Mr Hall that he was trying to persuade BA to allow the Claimant to return, but was facing some push back. The Tribunal were told that there was no written outcome from Mr Coombes. BA instead decided, when Mr Coombes went off sick to start again. This led to an even larger delay than had already been faced by the Claimant.
90. Mr Leaves knew that X had changed her version of events from the Claimant lying on his left side to lying on his back. He also knew there was this issue about the blanket and whether it was covering the Claimant or not. These were points which could have been put to X, to see whether she was consistent and whether her evidence was credible, - but they failed to do so.
91. Likewise Mr Leaves said that X's text to her friend at the time was what he relied on. This is a contemporaneous complaint, but does not dispel the theory that X could have been genuinely mistaken as to what she saw/heard.
92. There was no definitive basis on which the Respondent could decide whether the Claimant was guilty of this offence. They had to consider who, on a balance of probabilities they believed.
93. The evidence which was available, which the Respondent had, showed that X had been inconsistent about a number of points and that she had not been believed by the Magistrates. Not just to the extent of not satisfying the standard of proof to a criminal level but to the point where the Magistrates commented that they didn't consider the incident had happened. This ought to have been at least a flag to the investigators and disciplinary officers of the Respondent, but instead they chose to believe X because she was upset.
94. Mr Leaves should not have taken into account the opinion evidence of Mr Finnegan, which arose after a long period of reflection. The Respondent did not consider the evidence in its entirety, and did not place significant reliance on the independent assessment of the room such as Mr Finnegan's evidence at the time, the lighting.
95. The delays in investigation and appeal in this case, whilst not rendering the outcome unfair, have not helped the Respondent to be able to rely on the recollections of the witnesses and this has not been remarked upon or taken into account.

96. The Tribunal therefore concluded that the Claimant had been unfairly dismissed as the belief of Ms Holloway was not reasonable and her decision was unsafe. The further appeal processes have not rectified those mistakes.

97. The claim for unfair dismissal therefore succeeded.

98. Parties were asked to try to reach agreement on compensation.

Approved by

Employment Judge Cowen

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Date 23 January 2026

REASONS SENT TO THE PARTIES ON

26 January 2026

FOR THE TRIBUNAL OFFICE

### **Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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### **Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>