



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr M. Tafat v Transport UK London Bus Limited
Heard at: Watford (by CVP) **On:** 2 – 5 December 2025

Before: Employment Judge M. Hunt (sitting alone)

Appearances

For the Claimant: Mr J. Neckles

For the Respondent: Ms R. Jones

JUDGMENT having been sent to the parties on 23 December 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules 2024, the following reasons are provided.

REASONS

Introduction

1. The Claimant was employed by the Respondent as a Public Service Vehicle (bus) Driver until he was summarily dismissed for gross misconduct on 20 December 2023. He had been driving buses continuously for around 28 years for different companies.
2. From August 2023 onwards he was working permanently on Route 207 (or N207 at night).
3. The alleged gross misconduct consisted of two matters, both related to an alleged collision on 3 September 2023. Firstly, to have deliberately misled the Respondent about the collision that took place at White City Bus Station, at which the Claimant's bus lost its nearside mirror. Secondly, for posing a safety risk by pursuing his route without his nearside mirror, both prior to and then subsequent to having eventually reported it missing at Ealing Common.
4. The Claimant accepts the core facts, these being that his bus lost its mirror and that he pursued his route without it. He submits that no collision took place, accordingly that he did not mislead anybody about it, and that it was not unsafe for him to have continued to drive without his nearside mirror. Alternatively, even if it was unsafe for him to continue driving, it was unfair

to dismiss him for that. In reliance on these matters, the Claimant submits that his dismissal was both unfair and wrongful.

5. He alleges also that he suffered direct race discrimination and victimisation in the process leading up to, and subsequent to, his dismissal.
6. After a period of ACAS early conciliation between 16 January and 27 February 2024, by claim form presented on 26 March 2024 he brought his complaints to the Tribunal.
7. Evidence was provided to me by way of witness statements, one from the Claimant and two from the Respondent – the manager who investigated the matter and the manager who dismissed the Claimant (I will refer to them as the “Investigating Manager” and “Dismissing Manager”). All of the witnesses appeared at the hearing and answered questions. I am very grateful to everybody for their attendance and for doing their best to assist the Tribunal in determining the matters in dispute.
8. I also had regard to two files of documents. One consisted of 148 pages and the second, provided by the Claimant, consisted of 101 pages. A small selection of further documents was provided during the course of the hearing.
9. Additionally, I reviewed some short CCTV clips of the incident at the White City Bus Station and I heard an audio recording of a call between the Claimant and an employee of the Respondent, who I will refer to as the “iBus Controller”. “iBus” refers to a department of the Respondent that deals with the reporting and handling of technical matters, such as damage to buses. The CCTV clips consist of recordings of the bus taken from locations within and on the outside of the bus.

Findings of fact

10. The facts were largely agreed, save with respect to whether a collision occurred or not. What was really in issue in this case was whether those facts could amount, firstly, to a fair dismissal and, secondly, to a fundamental breach of the parties’ employment contract such as to entitle the Respondent to treat it as repudiated, permitting it to terminate the Claimant’s employment without notice. Additionally, whether anything done by the Respondent amounted to less favourable treatment on the grounds of the Claimant’s race or was due to him having done a “protected act” for the purposes of section 27 of the Equality Act 2010.
11. When required, I made findings of fact on the balance of probabilities, in light of all of the evidence that was available to me.
12. The Claimant transferred to the Respondent in or around 2019 from Metroline. The Respondent is a large employer operating out of six depots in London. It has a dedicated human resources function and employs somewhere in the region of 2,900 staff.

13. The most significant point in dispute relates to the very start of the chronology that I need to refer to. This was the alleged collision that took place in White City Bus Station on 3 September 2023.
14. On entering the bus station and approaching his designated bus stand, the Claimant was shown by CCTV to be turning to the right. He was parking up adjacent to another bus before pursuing his next route as per his timetabled departure. The Claimant said that his mirror had been shaking beforehand and fell off just at the moment he was manoeuvring into his designated bus stand. The CCTV footage showed the approach to the bus stand. The Claimant slowed down as he turned into it. He was going relatively slowly at this point. Just as his nearside mirror passed the right rear “corner” of the adjacent stationary bus, the CCTV footage shows the nearside mirror flying off the Claimant’s bus and bouncing on the ground behind the parked bus. At the same time the driver looks around to the left. He slows the bus down momentarily at that point before proceeding into the bus stand to park. He immediately got out of the bus, walked right to the back of the adjacent bus, collected the mirror from the floor and stowed it inside his bus.
15. In light of that CCTV recording, although it was hard to detect precisely whether the angle of the recording captured any actual collision, I had no hesitation whatsoever in finding that a collision took place. It was in my view entirely fanciful to suggest otherwise.
16. The Claimant waited in the bus station for around ten minutes or so prior to his planned departure. He did not report the accident or how he lost the mirror to the iBus team or anybody else in a position of responsibility at the Respondent. He may have mentioned it to some fellow drivers who were at the station at the time.
17. The Claimant left the station as per his schedule and drove his bus for around 20 minutes or so to Ealing Common. There was some debate about the exact length of time it might take to cover that distance but I considered it unimportant. It was at least 10 minutes, more likely closer to 20. I was told that the Claimant left the station at around midnight and when he called iBus from Ealing Common, the time of the call was recorded as having been made around 00:24.
18. The Claimant reported to iBus that his mirror had fallen off. He denied having been in a collision. The iBus Controller asked if he could continue to Ealing Hospital and the Claimant said that he could. Ealing Hospital, I was told, is a convenient location to meet with engineers for repairs or to arrange a transfer to a replacement bus, if appropriate. After the call, the Claimant drove on to Ealing Hospital, which I was told was approximately a further 10 minutes’ drive.
19. The iBus Controller reported the incident, as per iBus procedure. The CCTV footage from the bus was downloaded and that was forwarded to the Claimant’s depot manager, alongside the iBus report and recording of the call between the Claimant and the iBus Controller.

20. The depot manager looked at the report and the CCTV. He determined that the matter needed to be investigated and became the Investigating Manager. He suspended the Claimant just prior to him starting his night shift on 19 September 2023. I was told at the hearing that was principally to allow the Claimant to have some rest before attending an investigation meeting the next day. Obviously, the Claimant would not have been in a very fresh state to do so had he just completed a lengthy night shift.
21. The Investigating Manager met with the Claimant on 20 September 2023 and they discussed the matter together. The Investigating Manager showed the Claimant the CCTV footage that I have mentioned. The Claimant denied the accident; he simply restated that the mirror had fallen off at that point.
22. The Investigating Manager then played the recording of the call between the Claimant and the iBus Controller. He was asked why he did not report the incident sooner. The Claimant said that he thought he could make it to Ealing and that in the future he would report such incidents.
23. The Claimant remained suspended following that investigation and further consideration of the matter. A couple of days later, the Investigating Manager decided to commence disciplinary proceedings for the following allegations of misconduct.
 - 23.1. Deliberate incorrect reporting of a collision (hitting the rear of the TP [third party] bus with the nearside mirror and incorrectly informing iBus).
 - 23.2. Action likely to threaten the health and safety of himself, other employees, customers or members of the public (CCTV confirms that you have driven the bus in service without a nearside mirror from White City to Ealing Hospital).
 - 23.3. Blameworthy or avoidable collisions or injuries whilst accompanying a vehicle (CCTV confirms that you have hit the rear of a stationary TP bus with nearside mirror).
24. The allegation in relation to blameworthy conduct or an avoidable collision was agreed by all parties to amount to a potential misconduct charge or a gross misconduct charge.
25. A disciplinary hearing was scheduled for 28 September 2023. Due to the Claimant having pre-booked annual leave and the absence of a union representative, the hearing was rescheduled to 17 October 2023. The hearing took place as planned and the Claimant attended with a union representative.
26. The Claimant accepted at that meeting that he should have called iBus from the White City Bus Station. However, he said that iBus usually tell him to carry on to Ealing Hospital. The manager conducting the disciplinary hearing (who became the Dismissing Manager) was clearly concerned about the safety risk of having driven at night without a nearside mirror and

mentioned that numerous times during the course of the disciplinary hearing.

27. During an adjournment, the Claimant proffered his resignation in writing, which was accepted. The Claimant later retracted that resignation, which was also accepted, and the disciplinary hearing was briefly reconvened on 20 October 2023. It was scheduled at 8am. The Claimant arrived at the relevant depot at 10am. The Dismissing Manager had already left the depot by then. Because of that, a Microsoft Teams video call was arranged from the depot and, over that call, the Claimant was dismissed for gross misconduct.
28. The Claimant's dismissal was confirmed in a letter that was sent to the Claimant on the following day. The letter referred to a risk to other road users and misreporting of the accident. The Dismissing Manager considered the Claimant's service and disciplinary history. I was told at the hearing that there was no relevant disciplinary record (i.e. incidents within 12 months). The Dismissing Manager had considered alternatives to dismissal but found dismissal appropriate, as follows:

"I considered alternatives to dismissal such as a final written warning and alternative job role which could include a demotion, although decided that these options are not appropriate because I strongly believe you were trying to run away from responsibilities of having a blameworthy incident and you put at risk other people around you while you drove without a mirror".
29. The Claimant was offered the opportunity to appeal and he took it. In that appeal he made allegations of race discrimination contrary to section 13 of the Equality Act 2010. He wished to be represented at this point by Mr Neckles. Mr Neckles has a long-standing and relatively complicated relationship with the Respondent. I shall not go into the details. In summary, the Respondent does not allow him to represent their employees in any disciplinary proceedings.
30. The appeal was noted and proceeded to an appeal hearing that was scheduled for 30 November 2023.
31. Mr Neckles wrote to the Respondent on 20 November 2023 to ask if he could attend. As I mentioned above, he is not allowed to do so due to a long-standing Respondent policy. Accordingly, the request was refused on 22 November 2023.
32. On 29 November 2023, the day before the appeal hearing, the Claimant repeated his request to be represented by Mr Neckles, or alternatively to postpone the appeal hearing to 13 or 14 December 2023 so that he could appoint an alternative union representative. On the same day, the Respondent accepted that request for a postponement and rescheduled the appeal hearing to 13 December 2023, 1pm. The Respondent's

communication indicated that written submissions could be made if the Claimant did not want to attend the hearing.

33. On 13 December 2023, a couple of hours before the rescheduled appeal hearing was due to take place, the Claimant rang to say that he had found no alternative union representative. He requested a further postponement of the appeal hearing in order to make written submissions. That request was refused, but the Claimant was allowed until 5pm that day to provide written submissions.
34. No submissions were made. As it turned out, the Respondent in fact waited a further 48 hours before deciding the appeal. Nothing had been submitted in writing by the Claimant.
35. The appeal officer nevertheless reviewed the case. He wrote a very detailed letter, responding at length to each ground of appeal. He reached the same conclusion as the Dismissing Manager. He wrote as follows.

“Having observed the CCTV of the incident and your reaction to this, it is clear that you knew exactly what had happened and yet despite this you were not honest in the account you gave to iBus, even when directly asked if you had hit anything. Therefore I am satisfied that the case of the deliberate incorrect reporting of a collision was proven. Having concluded the call to iBus you have then driven the bus from White City to Ealing Hospital with no nearside mirror. The fact that you have driven the bus for such a distance with no nearside mirror is both dangerous and reckless. As a professional driver you should know the importance of your vehicle being roadworthy and the potential implications to yourself, other road users and the company as a whole. In these cases it is clear to me that you made an active and deliberate decision to not tell iBus the truth about what happened and deliberately incorrectly reported the collision. This action then not only directly impacted on the decision by iBus to allow you to drive to Ealing as you suggested to them but could have resulted in Abellio [as the Respondent was known at the time] not being aware of the collision occurring which could have had both financial and reputational impact on the company. The fact that you have then driven the bus without the mirror and put at risk the safety of others and especially vulnerable road users, only increases the severity of this incident as a whole and as such I have decided that dismissal was the most appropriate sanction and therefore your appeal is dismissed”.

36. Apparently, the Claimant sought to make a further appeal but that was not accepted or progressed.
37. The Respondent has a disciplinary policy and examples of gross misconduct are provided. Just a number of those are as follows.
 - 37.1. Action likely to threaten the health and safety of yourself, fellow employees, customers or members of the public.

- 37.2. Failure to report a company vehicle collision / injury and complete an incident report, formal report, conviction or summons for a driving offence.
- 37.3. Deliberate or grossly negligent contravention of company rules or procedures.

38. In relation to disciplinary process, the policy says as follows.

“The employee has the right to be accompanied at any formal meetings such as the disciplinary hearing or appeal hearing, by a willing workplace colleague or a certified Trade Union representative. The employee has the right to choose who would accompany them and the company has the right to refuse any person who may have a conflict of interest or is denied permission to enter any of Abellio premises. In this case the employee would be encouraged to seek an alternative representative. Any employee wishing to exercise their right to be accompanied must notify the appropriate manager at least 48 hours prior to the hearing with the details of the person they wish to bring to the hearing. It is the responsibility of the companion (workplace colleague / certified Trade Union Representative) to obtain permission to be stood down from their normal work duties in order to accompany the employee to the hearing. This request should be made as soon as the companion is notified of the meeting arrangements by the employee”.

39. In relation to disciplinary hearings, the policy says as follows.

“If after the investigation has been carried out it is considered that there is a case to answer and before a decision is taken or any conclusion reached, the employee will be advised in writing of the complaint against them and will be invited to attend a disciplinary hearing. Before the hearing the employee will be provided with any relevant information, statements or evidence that will be relied upon during the hearing”.

40. In relation to second appeals, the policy provides, under the heading “Managing Director Review”, as follows.

“A full time Trade Union Officer may raise a case in writing where there was a decision to dismiss and the Trade Union concerned considers that a serious injustice has occurred. The Managing Director or one of the fellow Directors will review the case and respond in writing”.

41. The Respondent also has a policy on accident reporting, an excerpt of which is as follows.

“Personal accidents / incidents including any near misses, however trivial, must be reported to your line manager immediately or at the end of your shift. All details must be entered in the accident book which is

available at the front desk in operations and within engineering at each depot. You must provide as much detail as possible to enable a full investigation to be conducted so that action can be taken to prevent a recurrence.

With regards to vehicle accidents or any other incident that occurs whilst driving a company vehicle, it must be reported immediately to iBus Control initially. You should exchange details at the scene by use of the Abellio bump card in clear vision of the CCTV camera”.

42. The Claimant said that the Respondent operated a policy whereby iBus would not ask bus drivers to take any action prior to entering the vicinity of Ealing Hospital. I saw no good evidence of that and suspected that such a policy was inherently unlikely. Perhaps in relation to relatively minor matters that might be the case for operational convenience. However, I cannot imagine that important safety matters would result in such a recommendation from any iBus controller.

The law

43. The relevant law that I need to apply is as follows.

44. Firstly, section 94 of the Employment Rights Act 1996 is as follows.

94. The right.

- (1) An employee has the right not to be unfairly dismissed by his employer.

45. Section 98 of the Employment Rights Act 1996 provides as follows.

98. General.

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-

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

- (2) A reason falls within this subsection if it-

- (a) ...
- (b) relates to the conduct of the employee...

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

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

46. The Equality Act 2010, section 39, provides as follows.

39. Employees and applicants

(2) An employer (A) must not discriminate against an employee of A's (B)-

(a) ...

(b) ...

(c) by dismissing B,

(d) by subjecting B to any other detriment.

(4) An employer (A) must not victimise an employee of A's (B)-

(a) ...

(b) ...

(c) by dismissing B,

(d) by subjecting B to any other detriment.

47. Section 13 of the Equality Act 2010 provides as follows.

13. Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

48. Section 27 of the Equality Act 2010 provides as follows.

27. Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because-

- (a) B does a protected act...
- (2) Each of the following is a protected act-
 - (a) ...
 - (b) ...
 - (c) ...
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
- 49. Section 109 of the Equality Act 2010 indicates that a Respondent is liable for the actions of any of its employees.
- 50. Section 136 of the Equality Act 2010 relates to the burden of proof in Tribunal proceedings and is as follows.
 - 136. Burden of proof
 - (1) This section applies to any proceedings relating to a contravention of this Act.
 - (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
 - (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
- 51. Section 10 of the Employment Relations Act 1999 is as follows.
 - 10. Right to be accompanied
 - (1) This section applies where a worker-
 - (a) is required or invited by his employer to attend a disciplinary or grievance hearing, and
 - (b) reasonably requests to be accompanied at the hearing.
 - (2A) Where this section applies, the employer must permit the worker to be accompanied at the hearing by one companion who-
 - (a) is chosen by the worker, and
 - (b) is within subsection (3).
 - (3) A person is within this subsection if he is-

- (a) employed by a trade union, and
 - (b) an official of a trade union.
52. Section 207 of the Trade Union and Labour Relations (Consolidation) Act 1992 provides that the Tribunal will take into account ACAS Codes of Practice if it considers it relevant to any question arising in the proceedings.

The issues

53. As to the issues for me to determine, a list of issues was prepared by Employment Judge Dick earlier on in 2025.
54. In summary, the first issue related to whether a TUPE transfer had taken place and whether Metroline policies had been contractual and therefore still applicable to the Claimant.
55. In relation to the unfair dismissal claim, the first issue for me to address was the reason for the Claimant's dismissal.
56. If it was conduct as the Respondent submits, the next issue was whether the Respondent acted reasonably in all the circumstances in treating the Claimant's conduct as a sufficient reason for his dismissal. That issue includes considering:
- 56.1. whether the Respondent had formed a genuine belief, on reasonable grounds, that the conduct was a sufficient reason for dismissal;
 - 56.2. that at the time the belief was formed the Respondent had carried out a reasonable investigation into the Claimant's conduct;
 - 56.3. that the Respondent otherwise acted in a procedurally fair manner; and
 - 56.4. whether dismissal was within the range of reasonable responses to the conduct identified.
57. In relation to the wrongful dismissal claim, it is for the Tribunal to determine whether the Claimant's behaviour constituted a fundamental breach of his employment contract such as to entitle the Respondent to dismiss the Claimant without notice.
58. It is clear that there is a different emphasis in each case. In a case of unfair dismissal, the Tribunal is investigating the actions and decision-making processes of the Respondent, assessing at each stage whether any step taken was within the range of reasonable steps to take. In the wrongful dismissal claim, the Tribunal is taking an objective assessment of whether a breach of contract occurred and whether it was sufficient to constitute a fundamental breach of contract. That issue cannot be decided in a vacuum. It must take proper account of the context of the particular contract that exists between the parties.

59. In relation to the claim to have suffered race discrimination, there were a list of issues that I shall not repeat here. They relate to the disciplinary process and whether anything done during that process, including dismissal, was because of the Claimant's race.
60. In relation to the victimisation complaint, very similar matters were raised, although relating only to the appeal process (as it was only after his dismissal that the Claimant did a protected act). The parties agreed that the Claimant did a protected act, but not that he was subjected to any detriment because of it.

Conclusions

TUPE Transfer

61. In relation to the first issue, I found the issue of a TUPE transfer to be entirely irrelevant. It was highly unlikely in my view that any disciplinary policies were contractual between the parties. I was presented with no evidence to show otherwise. Even if they were contractual, there was no indication of any substantive differences between the Metrolink disciplinary policy and the Abellio disciplinary policy that was followed in this case. I determined that the policies were likely to have been very similar. In any event, in a case such as the one before me, any differences between those policies was unlikely to have had any effect on the outcome.

Wrongful Dismissal

62. Taking matters rather out of order from the list of issues, I will deal with the wrongful dismissal claim first.
63. I have made findings of fact that an accident did take place in White City Bus Station, that the Claimant did not report that to iBus Control immediately, that he misled the managers who were investigating the matter, and that he pursued his route without a nearside mirror. It was both company policy and commonsense to have immediately reported the incident and given honest information about it.
64. I did not accept that there was a policy not to report technical matters to iBus before arriving at, or close to, Ealing Hospital. Possibly there may have been an informal position in relation to relatively minor technical matters, but I did not accept there was any such policy in relation to matters that might impact on safety. Maybe the Claimant thought that driving without a nearside mirror was not especially serious, but I considered that that was a decidedly unprofessional view for an experienced bus driver to hold.
65. I am satisfied in light of those findings of fact that there was a breach of the implied term of mutual trust and confidence that must exist between all parties to an employment contract, especially those in employment in public transport. Was it a fundamental breach? I find that it was. Misleading behaviour is almost invariably going to be a fundamental breach of that implied term and it will always be difficult to justify. In this case, the Claimant

failed to follow clear company policies. Whether or not he knew about the detail of those policies, he should have done, he knew about iBus reporting protocols and they are nothing other than commonsense in any event. If a public service vehicle you are driving suffers damage that can entail a safety risk, potentially putting people at risk of serious harm, it should be inherently obvious (especially to an experienced driver) that it should be reported immediately and steps taken to make the vehicle safe before pursuing one's route. The consequences of doing otherwise could be extremely serious.

66. The Claimant had accepted that the mirrors on his bus were there for safety reasons and that, if it happened again, he would have reported it.
67. In the context of this particular employment relationship, it is clear to me that the Claimant committed a fundamental breach of contract that entitled the Respondent to treat it as repudiated. It was therefore entitled to dismiss the Claimant without notice and the claim of wrongful dismissal is not well-founded and must be dismissed.

Unfair Dismissal

68. In relation to the unfair dismissal claim, I am entirely satisfied that the reason for the Claimant's dismissal was misconduct.
69. As to whether the Respondent had formed a genuine belief on reasonable grounds that the conduct was a sufficient reason to result in his dismissal, the Respondent believed that the Claimant had committed gross misconduct in relation to two matters. Firstly, in relation to a deliberate failure to report the accident at White City Bus Station and, secondly, to have continued driving, thereby presenting a health and safety risk both to himself and potentially to members of the public.
70. Plainly, that was a genuine belief and it was formulated on reasonable grounds. The CCTV footage provided and the iBus audio transcript was all that was required to establish that. The Respondent was perfectly entitled not to believe the Claimant's account and, therefore, to believe that he had intentionally misled it about the accident. It was also entitled to consider the Claimant's continued pursuit of his route to be decidedly unsafe.
71. I have explained in relation to the wrongful dismissal claim that those actions would justify the Respondent considering the parties' contract to be repudiated. For very similar reasons, I find that it was reasonable for the Respondent to consider that those matters amounted to gross misconduct.
72. The Claimant's representative presented some very interesting arguments about bias and pre-judgment in the investigation process that led to the disciplinary process culminating in the Claimant's dismissal. However, ultimately, they failed to recognise that in this case there was very clear and obvious evidence of the Claimant's actions and that they could be considered gross misconduct. There was no real indication of bias during this process. Both the Investigating and Dismissing Manager made straightforward and logical decisions at every stage.

73. As to whether a reasonable investigation took place, I am satisfied that it did. There was sufficient objective information obtained, which amounted to the CCTV recording and the recording of the Claimant's discussion with the iBus Controller. The matter was then investigated with the Claimant directly. Again, the Claimant's representative made some very interesting submissions about what else might have been done in this case. The difficulty with his arguments was that the evidence that had already been produced was very clear and compelling; nothing more was required for the Respondent to be in a position to fairly consider the matter. Indeed, it would have been entirely disproportionate for further evidence to have been sought.
74. The Claimant's representative also made some interesting arguments about allegations that are due to be presented to a disciplinary panel having to be put in writing to the employee concerned first, giving them an opportunity to respond. As a general proposition I am not sure that is required (and it is for an employer to decide how it handles its disciplinary processes), although certainly in some cases it might be advisable. In this particular case, all of the facts that led to the allegations being presented were investigated with the Claimant. His opportunity to defend the allegations was provided by the disciplinary hearing. I accept that the facts that led to the allegations being formulated needed to be explored during the investigation to render it reasonable, but they amply were in this case.
75. Another argument was raised that a suspending officer cannot also fairly take on the role of Investigating Manager. In a large organisation that may be standard practice and it could be a good idea. In this case, it was principally a pragmatic decision taken to enable the Respondent to hold a prompt investigation in which the Claimant could participate in a suitably rested state. It was entirely reasonable and warranted for the Investigating Manager to suspend him the day before the investigation meeting.
76. It is also worth noting that I was told (and accepted) that the Investigating Manager was working alone at the Claimant's depot at the time because his colleague (the only other manager of suitable seniority on site) was on annual leave. There was nobody else who could obviously have suspended the Claimant in his place. I concluded there was nothing either abnormal, unreasonable or unfair about this.
77. As to whether the Respondent otherwise acted in a procedurally fair manner in the process leading up to the Claimant's dismissal, I am satisfied that it did. I have nothing to add to what I have already written, save in one respect related to the Claimant's appeal.
78. In this case, a difficulty with the appeal process arose when the Claimant expressed his wish to be represented by Mr Neckles and the Respondent refused.
79. As to the relevant chronology, an appeal hearing was scheduled. Around two weeks before that hearing, the Claimant was informed that Mr Neckles would not be allowed to attend. The hearing was then postponed allowing

plenty of time for alternative representation to be identified. By the time the rearranged hearing was due to take place, the Claimant had had ample time to find alternative representation. He did not take that opportunity and wrote to the Respondent only two hours before the hearing to say that he had not found an alternative.

80. I accept that the blanket policy the Respondent applies to Mr Neckles is troubling. It does not seem to be consistent with the Employment Relations Act 1999, which is an argument that Mr Neckles has made before the Tribunal on numerous previous occasions. I understand that the Respondent has been informed by several Employment Judges over time that it would be appropriate to review that policy. There is nothing much more I can add. However, in this case, it is very difficult to see what real effect a representative could have had on the Respondent's decision to dismiss the Claimant. The facts were abundantly clear from the CCTV and iBus audio recordings. There was little doubt of the Claimant's misconduct. The Claimant had the opportunity to attend an appeal hearing. He had ample opportunity to prepare for that, including finding a representative to assist him. Even though he didn't, the appeal officer conducted a very thorough review of the matter, even though the Claimant failed to attend the hearing.
81. Even though the Respondent potentially breached the Employment Relations Act 1999, that is not sufficient for me, in the application of section 98 of the Employment Rights Act 1996, to find overall that this rendered the Claimant's dismissal unfair.
82. The Claimant's representative also highlighted some possible inconsistencies between the Respondent's actions in this case and ACAS Code of Practices or guidance. I am far from satisfied that any of those alleged inconsistencies amounted to any significant departure from ACAS' guidance. I note in that respect that there is no absolute requirement for any employer to adhere to the letter of any ACAS Code of Practice or guidance. That is not the statutory test of unfair dismissal. Such policies help guide employers in establishing and following fair disciplinary processes but they are not mandatory requirements to be rigidly applied in every given case. Even if there was any relevant inconsistency with ACAS' guidance, I am satisfied that the process followed by the Respondent was reasonable and fair overall.
83. As to whether the Claimant's dismissal was within the range of reasonable responses to his conduct, I have already largely addressed that by finding that it amounted to a fundamental breach of contract. They were serious matters. I find that the Respondent was plainly entitled to consider them as gross misconduct. Dismissal was well within the range of reasonable responses to that conduct.

Discrimination and Victimisation

84. I shall take the claims for discrimination and victimisation together.

85. Ultimately, I considered that the complaints were rather fanciful allegations. There were no facts to suggest that anything was done in this case because of the Claimant's race, or because he had done a protected act.
86. It was plain to me that everything that took place was simply because of the Claimant's misconduct and nothing else.
87. I have addressed above that there were no failures at any stage in the dismissal process. The "facts" asserted in support of the discrimination complaints therefore simply did not exist.
88. For instance, there was no failure to conduct a reasonable investigation. The investigation was entirely appropriate. The Claimant submitted that the Claimant was not permitted to appeal. He was and did. His appeal was properly considered. The appeal hearing was not conducted in the Claimant's absence because of any discrimination or victimisation; the Claimant simply chose not to attend. It had been rearranged at his request.
89. In relation to the denial of the Claimant's statutory rights of accompaniment, that was not because of the Claimant's race or because he raised allegations to have suffered discrimination. It was simply because of the Respondent's strict policy towards Mr Neckles.
90. In relation to upholding the findings supported his dismissal, the finding of gross misconduct was amply proven on the facts. I am satisfied that there was nothing in that decision that was because of the Claimant's race or because he had made an allegation to have suffered discrimination.
91. In relation to the refusal to consider and progress the Claimant's second appeal, whether or not to do so is a matter entirely at the Respondent's discretion. There is absolutely no good reason why it might have considered doing so in this case. There was plainly no serious injustice that was suffered by the Claimant. There was absolutely no evidence that that process, at any point, was infected by discrimination or victimisation.
92. Accordingly, I found that none of the claims were well-founded and concluded that all of them should be dismissed.

Approved by:

Employment Judge M. Hunt

Date: 26 January 2026

Sent to the parties on: 29 January 2026

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For the Tribunal Office.

Public access to Employment Tribunal decisions

Judgments and Reasons for the Judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.

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 is likely to be payable in most but not all circumstances. 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/>