EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Mr Paul Chenery

AND

Respondent: Hobbs Recovery Service

WRITTEN REASONS FOR A DECISION

Heard at: London South (Croydon) (by video link) **On:** 6 and 7 November 2025

Case number: 6017825 / 2024

Before: Employment Judge M Da Costa (sitting alone)

APPEARANCES:

Claimant: In person via video link
Respondent: Mr Malcolm Hobbs – Director – in person via video link
Ms Anne-Marie Went – HR consultant – in person via video link

WRITTEN REASONS

Background to the request for reasons

1. This case was heard on 06 and 07 November 2025. Oral judgment was given on 07 November 2025. Reasons for the decision were given orally at the same time. Pursuant to rule 60(4) of the Employment Tribunal Procedure Rules, at the close of proceedings after having given judgment I announced that written reasons would not be provided unless a party asked for them at the hearing or a party made a written request for them within 14 days of the sending of the written record of the decision.

2. On 7 November I wrote a judgment without reasons. This repeated, via footnote, that written reasons would not be provided unless a party asked for them at the hearing or a party made a written request for them within 14 days of the sending of the written record of the decision.

3. By email dated 18 November 2025 the representative for the claimant, Ms Anne-Marie Went, emailed the Tribunal Administrative Office to request a copy of the "judgment as given on 7th November" relating to the case.

4. On 20 November the Tribunal Office replied to Ms Went with correspondence. I assume that was the judgment referred to in paragraph 2 above.

5. In any event, the judgment referred to in paragraph above was promulgated to all parties by the Tribunal Administrative Office on 24 November 2025.

6. On 21 November by email Ms Went requested of the Tribunal Administrative Office "can we please have the written reasons for this case".

7. Ms Went's request for written reasons for the decision is in time. These written reasons are, accordingly, provided because Ms Went's written request for them was received within 14 days of the sending of the written record of the decision.

The judgment

8. The judgment promulgated on 24 November 2025 and signed by me on 7 November 2025 was in the following terms:

   "The claimant's claim for unfair dismissal is not well founded and is dismissed.

   The respondent had a potentially fair reason to dismiss the claimant with section 98(2)(b) of the Employment Rights Act 1996.

The respondent acted fairly in dismissing for that reason because the respondent acted reasonably in treating the reason as a sufficient reason for dismissing the claimant within the meaning of section 98(4) of that Act."

Background to the case

9. The claimant, Mr Paul Chenery, was employed by the respondent, Hobbs Recovery Service Ltd, as a roadside technician and recovery operator between 4 July 2022 and 31 July 2024. Hobbs Recovery Service Ltd had bought LAR Sussex in 2022 and previously in 2018 Elva Recovery had sold the company to LAR in 2018. Mr Chenery had worked for all these companies in the same or similar capacity since 2013 and had been transferred from one to another under TUPE.

10. The claimant was dismissed summarily without notice by letter dated 31 July 2024. He pursued an internal appeal within the respondent company against the decision of 31 July 2024. After an appeal hearing within the respondent company on 12 August 2024, the decision to dismiss him was maintained and communicated to him by letter on the same day.

11. The reasons for dismissal were stated in the 31 July 2024 letter as follows:

"1. Whilst supervising Chris Lewis, you instructed him to drive a transporter onto the public highway knowing that he was a provisional licence holder. This was a serious breach of driving regulations as you were not present in the cab. You stated in the [disciplinary] hearing "I should have driven around with him in the truck". At the time Chris questioned this asking you if you were sure and you responded "yes". This sequence of events is corroborated by CCTV and the phone call Chris Lewis made to you on 23rd July 2024 at 10:28pm. This constitutes gross negligence on your part.

2. You have failed to carry out Daily Vehicle Checks. In the [disciplinary] hearing you stated, "There are times when I have not done this". However, you have fraudulently submitted paperwork confirming that you have carried out these checks. As you are aware, walk around daily defect checks must be carried out in accordance with training given by the Company and VOSA guidelines. On 26 February 2024, you acknowledged that you received 1 to 1 training from Paul Rogers on a Defect Reporting Training Refresher Course. Failure to carry out Daily Vehicle Checks constitutes Gross Negligence on your part."

12. The claimant claimed that his dismissal was unfair within Part X of the Employment Rights Act 1996. He did not make any ancillary claim for unpaid wages or holiday pay.

13. The respondent contested the claim. It said that the claimant was fairly dismissed for gross misconduct in the form of firstly instructing a colleague, Mr Chris Lewis, to drive a car transporter onto the public highway unaccompanied knowing that Mr Lewis was a provisional licence holder, and secondly by failing to carry out daily

vehicle checks in breach of compliance with company requirements, instruction and training, and VOSA guidelines.

The hearing

14. I heard the claim on 6 and 7 November 2025. The claimant attended but was not represented. The respondent was represented by Ms Anne-Marie Went, an independent HR consultant working on behalf of the respondent. Mr Malcolm Hobbs, a director of the respondent company, was also in attendance and gave evidence. Mr Paul Elliott, an operations manager of the respondent, was also present for some of the time and gave evidence. I considered documents from a bundle of documents running to 103 pages which the parties introduced in evidence.

15. There were no preliminary matters that fell to be settled before the hearing. The claim had been presented in time.

The legal issues that the Tribunal determined were relevant to the case

16. No document entitled "list of issues" had been agreed between parties prior to the hearing. At the start of the hearing, I investigated with the parties what the issues relevant to the case were. It was agreed that remedy would not be considered until after a decision on liability had been made.

17. As to liability, the parties agreed that the claimant had been dismissed by the respondent and that the reason that the respondent had given to the claimant for his dismissal related to the claimant's conduct within the meaning of section 98(2)(b) of the Employment Rights Act 1996. Therefore, this point was not in dispute.

18. The parties agreed that, therefore, that issue for the Tribunal to decide was whether the dismissal was fair or unfair within the meaning of section 98(4) of the Employment Rights Act 1996, and, in particular, whether the respondent in all respects acted within the band of reasonable responses in treating the claimant's conduct as sufficient to amount to gross misconduct.

19. The respondent's case was that their actions in dismissing the claimant were firmly grounded in safety considerations which were critical to the operation of the company and therefore rightly taken very seriously by the company, and that the specific reasons for the claimant's dismissal had their foundations in the company's employee handbook where there is a non-exhaustive list of examples of what can amount to gross misconduct. The claimant's case was that the dismissal was unfair because in relation to the daily vehicle checks aspect he was unfairly singled out when failure to conduct a complete physical check before each shift was commonplace in the company both before and after his dismissal, and because in relation to the unaccompanied driving matter the account of events that formed the basis for the dismissal was factually wrong and evidentially insufficiently unsupported before the point of decision.

20. As a general proposition potentially going to fairness and genuine belief by the respondent in the reasons they gave for dismissal, the claimant alleged firstly that there was tension between Hobbs and aspects of Elva recovery's way of doing things which was no secret amongst staff, that he felt victimised as a result and that the tensions were taken out on him (in his words in a document that he submitted at the start of his employment appeal tribunal at page 49 of the bundle, that Hobbs *"had a history of picking on me"*), secondly that he felt retaining his previous contract after the TUPE transfer had *"done him no favours"*, and thirdly that a complaint by him to the company about damage to his car whilst in the company yard some 48 hours before the unaccompanied driving allegation had *"started the ball rolling"* as a catalyst for the disciplinary action that the respondent had gone on to take against him. The claimant's position was that these matters may have infected the decision to dismiss him by giving it impetus. The respondent on this aspect contended that their decision to dismiss was grounded solely and wholly on the unaccompanied driving and safety check reasons and that the other matters raised by the claimant played no part at all in the decision to dismiss.

Findings of fact

21. The Tribunal found the relevant facts to be as follows. Where I had to resolve any conflict of evidence, I indicate how I have done so at the material point. References to page numbers are to the agreed Bundle of Documents.

22. The chronology of the dismissal was not in dispute between the parties. The events were as follows:

    (a) On 25 July 2024 in writing, the respondent informed the claimant in that it was taking disciplinary action against him and invited him to a disciplinary meeting on 30 July 2024. The letter said that he may submit a written statement for consideration in advance of the meeting if he wished, that he would be given a full opportunity to explain his case at the meeting, that he may ask questions, dispute the evidence, provide his own evidence, otherwise argue his case, and put forward any mitigating factors relevant to his case. It also informed him that he had a statutory right to be accompanied at the disciplinary meeting either by a work colleague or by a trade union official of his choice.
    (b) The claimant attended the disciplinary meeting on 30 July 2024.
    (c) On 31 July 2024 in writing the claimant was informed that following a full investigation and after careful consideration, the respondent was terminating his employment with immediate effect on grounds of gross misconduct and gave him instructions in the event that he wished to appeal.
    (d) On 7 August 2024 the claimant was invited to an appeal hearing set for 12 August 2024.

23. Pages 55 to 58 document a vehicle recovery job at Beachy Head on 24 April 2023 following police action which was not assigned to the claimant. The claimant had alleged in a document to the Tribunal at page 49 that this evidenced Hobbs choosing younger and less experienced people over him, as part of the tension between Hobbs and the previous company. The respondent's position was that

there was nothing personal about this but instead that the job required a recovery vehicle of larger capacity that the one he was operating. There was no evidence for the claimant's contention. I therefore prefer the respondent's evidence on this and find as a fact that there was nothing malign in the respondent's choice of another operator for this job.

24. Pages 59 to 60 document the history of a complaint by a customer on 23 November 2023 in relation to possible gearbox or clutch damage to their car following a recovery made by the claimant. The respondent's oral evidence was that the claimant had alleged that the respondent had concocted the story so as to disadvantage him, but that in reality this had been a legitimate safety investigation following a customer complaint. The respondent said in evidence that this had played no part in their dismissal decision. They said that it was bad practice to drive a car onto a recovery vehicle as opposed to winching it on. They provided evidence at pages 79 to 89 that the claimant had been placed on a training course following the customer complaint. Their oral evidence was that the purpose of the course assignment was to test whether there was as skills fade on the part of the claimant, and whether as a result he needed refresher training, or whether instead the incident had been a hiccup. They said that the result of the course had indicated that there was no skills fade present. On the basis of their oral evidence that the clamant passed the course *"with flying colours"*, I find as a fact that the incident with the gearbox played no part in the dismissal decision either directly or indirectly.

25. On 20 April 2024 the claimant attended a disciplinary meeting with the respondent in relation to negligent damage to a company vehicle. This was documented at page 72 to 77. The outcome was a final written warning to be placed on his personnel file for 12 months. The letter stated that the warning would be *"disregarded for disciplinary purposes after 12 months provided the nature of your unsatisfactory conduct improves"* and that *"the likely consequence of further misconduct is a further disciplinary matter that could lead to your dismissal"*. Page 73 shows that the claimant agreed with the respondent to repay the £697.58 cost of the damage at £116.27 per month for 6 months. The claimant's oral evidence was that the damage was minor and accidental and his fault and that there was some friction between him and the respondent in relation to the cost of repairs and identity of the repairer and that he suspected this was *"probably one of the straws"* that led to the subsequent disciplinary action. The respondent's evidence was that this incident and any disagreement over the cost of repairs played no part in the subsequent decision to dismiss him. Pages 69 to 71 document that winching training undertaken subsequently to this incident was correctly passed by the claimant in April 2024 and the successful outcome was requested to be added to the claimant's HR file. The incident was not mentioned in the initial decision to dismiss the claimant at page 38. It was mentioned in the respondent's write-up after the appeal hearing at page 43 but only briefly and in response to the claimant's written request for an appeal hearing where he had alleged that the incident formed part of him being *"in the target area for some time"* and that the 20 April 2024 disciplinary had merged this incident with the 23 November 2023 incident. The write up said *"Paul's contract states negligent damage to vehicles is*

the driver's responsibility; HRS has recommended repairers for our fleet of vehicles". I do consider that the respondent's action in formally disciplining the claimant for accidental and minor damage was unnecessarily over-zealous. That said, I am satisfied and I find as a fact that, on the basis of all the oral and written evidence available, the decision to dismiss the claimant was not infected by this incident either directly or indirectly.

26. The write-up of the appeal hearing relating to the claimant's dismissal mentioned the claimant's attitude to training twice. In summary it said that the claimant's *"attitude towards further formal training gave us considerable cause for concern"* and *"was also being transmitted to other team members"*. This was in response to the claimant's request for an appeal hearing where he had said the 23 November 2023 complaint had *"turned into an issue that I had driven some vehicles onto the truck in situations where I said a risk assessment considered it safe and efficient timewise to do so"*. The respondent had provided at pages 61 to 68 certificates showing that the claimant had passed various IVR training course modules in June 2021, November 2022, December 2022, October 2023 and June 2024. The respondent's evidence was that this demonstrated their close focus on safety training, that it did not constitute a victimisation of the claimant and that other staff were required to do similar training. I find as a fact that there was some friction between the claimant and the respondent about the nature and level of training required. I also find as a fact that this provided a backdrop, or a background context, to their safety-related reasons for dismissal. However, I also find as a fact that the reasons for dismissal were factually free-standing from any previous friction between the parties over training, and for that reason I find that the decision to dismiss was cannot reasonably be described as having been infected by any previous general ill will over training.

27. Mentioned in his written request for an appeal hearing and also in oral evidence by the claimant, was an incident where the claimant's car was damaged whilst parked in the respondent company's yard. This occurred some 48 hours before the claimant was invited to the disciplinary meeting that resulted in his dismissal. The claimants oral and written evidence was to the effect that whilst the respondent agreed to fix the damage at their own expense, the claimant was made to feel that his insistence that the respondent bore the cost would have repercussions. I find as a fact that there is no evidence to substantiate the claimant's allegation that this had any repercussions relating to his dismissal.

28. As above, the reasons given for the claimant's dismissal effective from 31 July 2024 were gross misconduct in the form of firstly instructing a colleague, Mr Chris Lewis, to drive a car transporter onto the public highway unaccompanied knowing that Mr Lewis was a provisional licence holder, and secondly by failing to carry out daily vehicle checks in breach of compliance with company requirements, instruction and training, and VOSA guidelines. These were set out at page 32 in the letter dated 25 July 2024 informing the claimant of disciplinary action and in the initial dismissal decision letter at page 38 dated 31 July 2024. The letter dated 12 August at page 44 informing of no change to the dismissal decision did not repeat the grounds for dismissal. Included in the 25 July 2024 letter was an

allegation of persistent lateness at shift start times which the respondent has said in evidence was not proceeded with. There is no evidence that the lateness allegation was pursued and hence I find as a fact that it had no effect on the dismissal decision.

29. On 17 July 2024 Mr Malcolm Hobbs arrived at work at 8:25am and saw a group of employees chatting. These were a mixture of drivers and workshop employees. They were supposed to be on their shifts from 8:00am. The claimant was one of them. They scattered upon seeing Mr Hobbs arrive. Mr Hobbs asked the workshop manager to see who they were from the CCTV and to speak to them to make sure the late starts did not happen again. They were all spoken to and given verbal warnings.

30. As part of the viewing of CCTV footage following 17 July 2024, on 23 July 2024 Mr Hobbs saw CCTV footage showing Mr Chris Lewis driving a multicar carrier unaccompanied out of the yard and onto the public road. Mr Lewis has a provisional licence and so must be accompanied by a qualified driver. The same footage was viewed by Mr Paul Elliott, operations manager, together with Mr Hobbs again. This is how the investigation into the claimant that led to his dismissal started. It was identified at the same time also via CCTV that the claimant was driving out of the industrial estate at 9:15am on 17 July 2024 without having been seen to be doing any physical vehicle inspection check, returning at 9:27 to open a bay to get a tow truck out. This is documented at page 46. Documented at pages 35 and 37 is a vehicle inspection check record for vehicle HY68 FUD completed by the claimant for the same date starting 09:16 and ending 09:27. Page 35 is produced from a device called a PDA device which is the claimant's work telephone. The company's software systems links and synthesises all data including the CCTV cameras and PDAs, including syncing times and dates. The conclusion drawn was that the claimant did not carry out an external physical vehicle check before setting off in the vehicle on that day, instead doing it on his PDA device whilst he was driving the vehicle.

31. As part of the investigation, records were obtained that a telephone call was made by the claimant from Chris Lewis to the claimant at 22:28 on 23 July 2024. There is no audio record or transcript of the contents of that call. The Tribunal viewed CCTV footage of the manoeuvre of a transporter vehicle by Chris Lewis and movements of the claimant between 22:26 and 33:31 on 23 July 2024.

32. Chris Lewis gave an account to Paul Elliott of what occurred at the end of the day on 23 July by email on 27 July 2024 (page 34). This was as follows. On returning from an assignment on that day at around 10pm the claimant removed an "easetrack" (a tracked car lifting device) from the transporter vehicle but could not get it around the side of the truck because the yard was congested with cars. Consequently, the claimant opened the gate and asked Mr Lewis to back the transporter out of the yard and wait whilst he stowed the easetrack. Having waited 15 to 20 minutes Mr Lewis telephoned the claimant on his PDA asking what to do and was told by the claimant to drive it round to the other side of the yard. Mr Lewis asked again if this was correct and was told again by the claimant to do so. Driving

round to the other side of the yard unaccompanied involved driving on a public road that connected the two halves of the respondent's estate. Mr Lewis has given a written witness statement dated 27 January 2025 to the same effect.

33. The claimant was invited by letter dated 25 July 2024 to a disciplinary meeting on 30 July 2024 (page 32). No record of the minutes of that meeting has been provided to the Tribunal. The respondent's oral evidence is that the result letter (indicating dismissal) at page 38 is a summary that contains all pertinent information. At paragraph 1 of the letter, it is stated that the claimant said at the disciplinary meeting *"I should have driven around with him in the truck"*. At paragraph 2 of the letter, it is stated in relation to vehicle checks that the claimant said at the disciplinary meeting *"there are times when I have not done this"*.

34. Following a written request for an appeal against dismissal (pages 39-40) the claimant was invited in writing on 7 August 2024 for an appeal hearing on 12 August 2024 (page 41). Pages 42 to 43 document a summary of that appeal hearing. Page 42 has handwritten contemporaneous notes of Ms Ann-Marie Went. Page 43 has typed notes made following the meeting (the oral evidence of the respondent being that this was done by Paul Elliott probably very shortly afterwards, though the respondent concedes that the time of writing is not proven by record). The tenor of what is noted in the document is that the evidence in general backs up the account of Chris Lewis. Specifically, the document notes materially as follows:

    (a) As to the vehicle check allegation, that the procedure carried out by the claimant was wrong because the required procedure is a thorough physical walk around check on the first day of each shift, that the claimant did not do that on day 1 and was "signing of off whilst walking to the soco bay".

    (b) The meaning of a note saying "seen as very separate issue and not" is not clear but suggests that the claimant saw the vehicle inspection check as a separate issue from the unaccompanied driving issue.

    (c) As to the unaccompanied driving allegation page 43 notes that *"the evidence was shown to Paul"*. It is not clear what that "evidence" was – whether it was the email of Chris Lewis at page 34 and the CCTV footage. However, it is clearly stated that he denied the evidence but that despite the denial the respondent relied on the report of Chris Lewis, and that the driving was unsupervised.

    (d) Also as to the unsupervised driving, It is noted that there is no audio evidence either on telephone or via CCTV.

35. As to the vehicle check allegation, the respondent's oral evidence was that if the claimant saw the vehicle inspection check as a separate issue from the unaccompanied driving issue, that was not the correct way to understand it because both are core safety requirements. This accords with the oral evidence given by the respondent to the Tribunal to the effect that both are core safety

requirements and that safety is core to the successful and safe running of the respondent business.

36. On the record at page 100 is the claimant's written response to the written record of the appeal hearing of page 43. As to the unauthorised driving it states that the fact that a phone call was made (without a record being available of what was actually said in that phone call) does not back up Chris Lewis's version of events, that the claimant had decided to get the truck out of the way before bringing the transporter around from the other half of the estate, that the CCTV does show him walking across the yard after Mr Lewis had driven round to the yard alone, but that his intention had been to go back around to accompany Chris back in the transporter, and that the reason Chris drove the transporter round alone was possibly that he had misunderstood what the claimant had wanted him to do. It is recorded that he did not *"have a go at"* Mr Lewis for having driven the transporter round alone. It is clearly stated that the claimant's statement in the disciplinary meeting that *"I should have been in the cab"* was not an admission of having instructed Mr Lewis to drive round alone.

37. In oral evidence at the hearing, the claimant was clear that he had not instructed Mr Lewis to drive the transporter from one side of the yard to the other, across the public road, unaccompanied. He was clear that they had agreed that there was not space to move the eastrack round the side of the unloader truck safely without risking damaging nearby vehicles and that for this reason he had instructed Mr Lewis to back the transporter, unaccompanied, out of the way towards but not into the public road, thus allowing the claimant to stow the eastrack in the soco bay, store the keys, move the unloader truck and return to accompany Mr Lewis back to the other side of the yard. He was clear that on briefly going to the other side of the yard via the interconnecting footway after having retrieved his own car keys and water bottle and putting his water bottle in his car, he was surprised to see that Mr Lewis had already driven around and was coming in through the gates. He said that since Mr Lewis had already come in, he did not see any point in doing a *"hissy fit"* because what was done was done, but instead walked towards the back of the transporter to help Mr Lewis back into the space and on the way past said to Mr Lewis words to the effect of *"you should not have done that"*. He said that the window of the transporter was open so he thought Mr Lewis would have heard that. He said that he did not discuss it with Mr Lewis or with the management of the company in the following days because there would be no point in stirring things up, that it is more effective and a better outcome just to have said what he said at the time, that Mr Lewis would have learned from that and not done anything similar again, and that there is a balance to be struck when there is a difficult line to tread. He said he failed to see how anything in the CCTV or from the bare fact of the record of a telephone call having been made proved anything to the contrary. He said that he did not recall what the telephone call was about, and that it could have been simply to indicate an agreement for him to move the other truck out of the way before returning to accompany Mr Lewis in the transporter back to the other side of the yard. Generally as to why Mr Lewis might have given the account he gave in terms of having been positively instructed to drive in the public road unaccompanied, the claimant said that either Mr Lewis had misunderstood the

instruction or that he realised he had done something wrong and was trying to cover up to protect himself and protect his job. The claimant gave a written witness statement dated 28/1/2025 which broadly tallies with his oral evidence, but which does not include reference to his words to Mr Lewis *"you should not have done that"*. The claimant said in oral evidence at the Tribunal that he did not know why he did not include that in his witness statement, acknowledging that it is a key point, and said that he had thought he had included it and that the omission might have been a typo.

38. Witness statements from both Paul Elliott and Mac Hobbs (pages 91 and 92) have the identical line *"when I rechecked the footage, it became apparent that Paul Chenery had instructed Chris Lewis to drive the vehicle onto the road"*. Paul Elliott gave evidence that the words *"became apparent"* related to a hand gesture made by the claimant on CCTV indicating thanks to Mr Lewis for having driven the vehicle around. The Tribunal viewed the CCTV footage in order to check this. The footage showed: (1) the transporter sitting parked waiting at 22:26 on 23/07/24, (2) the transporter backing into the road towards the public road at 22:31 on 23/07/24, (3) the transporter returning after 22:31 into the other side of the estate. In footage (3) the claimant is shown emerging from a gate into the yard as the transporter drives in, raising his hand in a gesture towards the incoming vehicle and walking to his car, then towards the back of the transporter that has arrived. The claimant's oral evidence was that he was raising his hand in order to open the door or his car remotely with his key fob. The respondent's oral evidence was that the CCTV showed no sign of the claimant remonstrating with Mr Lewis on discovering him having driven around alone, and that it would have shown such if the claimant's account had been true.

39. The Tribunal made the following findings of fact in relation to the unsupervised driving:

    (a) Chris Lewis drove the transporter alone from one side of the estate to the other unaccompanied, which involved driving it on a public road.

    (b) He should not have done that because he was a provisional licence holder.

    (c) The claimant was the responsible person in relation to ensuring that Mr Lewis did not drive unaccompanied.

    (d) The claimant knew that Chris Lewis was not in possession of a full licence.

    (e) There was a telephone call where the claimant and Mr Lewis discussed the vehicle movement arrangements on the night of 23 July 2024. The evidence in totality, including oral evidence and the CCTV, was not conclusive as to whether Mr Lewis' account of that arrangement is factually correct or the claimant's account is factually correct. However, the evidence in totality on the balance of probabilities supported the account of Mr Lewis more than it supported the account of the claimant. For this reason taken together with the

specific observations at paragraphs (f) to (h) immediately below, the Tribunal preferred the evidence of the respondent over the evidence of the claimant.

(f) In particular in relation to the hand gesture in the CCTV, the Tribunal accepted that the CCTV did show the claimant holding his key fob but concluded that on the balance of probabilities the gesture indicated a combination of a "thank you" sign at the same time as the operation of a key fob.

(g) Also in particular, the Tribunal found the respondent's oral evidence to be convincing that, had the claimant's evidence been true about Mr Lewis having driven the transporter round unaccompanied without or against the specific direction of the claimant, the CCTV would have shown clearer signs of the claimant's disagreement with what Mr Lewis had done. The Tribunal agreed with the respondent that the CCTV showed no signs of the claimant having "remonstrated with" Mr Lewis. It found that the CCTV showed no signs of disagreement at all from the claimant, but that on the contrary what it showed was more likely to be affirmation on the part of the claimant. In this respect, it found the CCTV to be inconsistent with the claimant's account. This finding of the Tribunal was also consistent with the claimant's statement in the disciplinary meeting that *"I should have been in the cab"*, which in light of the Tribunal's findings can reasonably be construed as an admission.

(h) Also in particular, the Tribunal found that the claimant's account as to the potential need for a telephone call was at odds with what the CCTV showed. The claimant's account was that, whilst he could not recall what the telephone call was about, it could have been simply to indicate an agreement for Mr Lewis to move the transporter truck out of the way before the claimant would return to accompany Mr Lewis in the transporter via the public road back to the other side of the yard. This, the Tribunal found, did not make logical sense because the phone call was made at 22:28 which was at a time when the transporter truck was already seen to be waiting outside the gates of the yard where the eastrack had been unloaded, so already out of the way. The transporter truck was then seen to start backing towards the public road only some 3 minutes after the telephone call was made, which does not tend to indicate an agreement for Mr Lewis to wait for the claimant to return, but instead is much more consistent with Mr Lewis's account of an instruction by the claimant to move the transporter around unaccompanied.

40. In oral evidence as to the vehicle safety check, the claimant accepted that there have been times when he has not done vehicle checks straight away. He disputed the respondent's oral evidence to the effect that a driver cannot accept a job until the safety check has been done and logged, instead saying the phone issues a warning noise as a reminder. He said that these noises were heard on a daily basis around the yard and ignored often, and that it was a running joke that staff had better things to do. This is corroborated in the witness statement given by Paul Rogers at page 97. The claimant said that Mr Hobbs had said in the disciplinary appeal hearing that there was a culture of drivers not doing safety checks and that he was going to crack down on it. This is also corroborated in the witness statement

of Paul Rogers. The claimant said that he had known drivers to submit checks whilst at home watching the television.

41. The claimant in oral evidence disputed the respondent's oral evidence that the vehicle check submission of 17 July 2024 was done whilst the vehicle was moving. He said that the drive from one side of the yard to the other is perhaps 3 minutes, and that you cannot hit send straight way after having completed a vehicle check on the PDA because the system prevents that until a time period has elapsed. He said first that the time period was 15 minutes, then confronted with the evidence of the time lapse at page 36 said it could be 10 or 15 minutes, he could not remember.

42. In general in relation to vehicle checking, the claimant's oral evidence was that he did not wilfully ignore the safety issue, but instead he would check in various ways at different times (a quick glance at tyres on the way past, dashboard observations, checking information such as winches and beacons as and when used). He said he would always do a thorough check several times during a wider shift and that he was particularly fastidious about keeping winch cables un-bunched. He said that, taken as a whole, he always reported a problem when that was needed and that taken as a whole he was good at looking after the safety of any vehicle that he was in charge of.

43. The Tribunal made the following findings of fact in relation to the vehicle check aspect:

    (a) The vehicle check submission on 17 July 2024 was not done whilst the vehicle was moving. The claimant's account that it was submitted 10 minutes after it was started is persuasive and the respondent's own evidence at page 42 shows that it was done whilst walking to the soco bay.

    (b) Therefore, the allegation of the respondent in the respondent's dismissal letter dated 31 July 2024 that the claimant had *"fraudulently submitted paperwork confirming that you have carried out these checks"* is not made out.

    (c) It was common for drivers to ignore warning reminder noises from their telephones, and it was routine for drivers not to carry out safety checks at the very start of their shifts. In particular in this respect, the Tribunal found that even if the claimant had, technically speaking, been deficient in the manner that he carried out the vehicle check on 17 July 2024, this was materially no different from the common standards of drivers in the yard.

    (d) The proposition that the claimant was, as a general proposition, slapdash about physical vehicle safety cannot be fairly supported on the evidence. In particular, the Tribunal accepted as genuine the claimant's evidence that in a general sense he was diligent as to looking after the safety of any vehicle that he was in charge of.

The relevant law and conclusions

44. Section 94 of the Employment Rights Act 1996 gives employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to an employment tribunal under section 111. The claimant must show that he was dismissed by the respondent under section 95, but in this case the respondent admits that it dismissed the claimant on 31 July 2024.

45. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

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

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

48. In misconduct dismissals, there is well-established guidance on fairness within section 98(4) in the decisions in *Burchell 1978 IRLR 379* and *Post Office v Foley 2000 IRLR 827*. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer (*Iceland Frozen Foods Limited v Jones 1982 IRLR 439*, *Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23*, and *London Ambulance Service NHS Trust v Small 2009 IRLR 563*).

49. I find that the respondent's management, Mr Hobbs, held a genuine belief that the claimant was guilty of gross misconduct. Their evidence was clear about why they dismissed, about the dismissal and the outcome and appeal letters were unequivocal. Whilst the claimant did dispute (both within the disciplinary procedure and here at the Tribunal) the allegation of positively having instructed Mr Lewis to

drive unaccompanied, he did not dispute the underlying fact that Mr Lewis drove the vehicle on a public road unaccompanied when it was his responsibility to ensure Mr Lewis was driving accompanied. Neither has the claimant disputed that the management believed that he did not always carry out a complete physical walk around vehicle check before leaving at the start of a shift. He disputes that on 17 July 2024 there was a safety issue because he says he did not submit the electronic check whilst the vehicle was moving. But he admits not carrying out the visual walk around safety checks in the exact manner stipulated by the company. He therefore accepts the core of the safety check allegation as pleaded by the respondent during the disciplinary process.

50. The respondent gave oral evidence during the Tribunal hearing about reasons why the safety and security considerations were of paramount importance in the particular sector in which the respondent company works. These were that the company's insurance could be voided if a serious incident were to take place, that accidents could cause danger to the public with or without insurance (more seriously without insurance), and that lack of adherence to operational processes could compromise the integrity of evidence in the context that the company does a lot of work with police and connected to scenes of crimes. I accept this evidence as pertinent to the categorisation of both elements which formed the basis for the claimant's dismissal. In addition, the respondent cited paragraphs 12(l) and (r) of its Employee Handbook ((l) serious or repeated breach of health and safety rules or serious misuse of safety equipment, (r) serious neglect of duties or serious or deliberate breach of contract or operating procedures) as relevant examples relied on at the time of the dismissal from a list of non-exhaustive examples of gross misconduct. In that context, and taking into account the admissions that the claimant made (he should have been in the cab at the time of the driving and he did not always carry out vehicle safety checks in the ways required), I find that dismissal as a sanction was within the band of reasonable responses for a company of the nature and size of the respondent's. In the context of the unaccompanied driving, this is so in view of the finding that I made above that Mr Lewis's account is more plausible than the claimant's. However, if I had found the other way around (namely that the claimant had not directly authorised the unaccompanied driving and Mr Lewis had expressly gone against his instructions or had simply driven unaccompanied wholly of his own initiative), I would not have arrived at the same conclusion.

51. It is noteworthy that the claimant denied Mr Lewis's version of events. It is clear to me that he told the respondent so at the disciplinary appeal hearing. I find that it was within the band of reasonable responses for the respondent not to go back to Mr Lewis and challenge Mr Lewis's account before making the decision to dismiss. The account of Mr Lewis was made early on, and it was both possible and reasonable for the respondent to construe it in line with the CCTV and the events of that day. Therefore, I find that it was within the band of reasonable responses for the respondent to rely on it as against the account of the claimant.

52. I have found above that vehicle check submission on 17 July 2024 was not done whilst the vehicle was moving, that it was common for drivers to ignore warning

reminder noises from their telephones, that it was routine for drivers not to carry out safety checks at the very start of their shifts, and that even if the claimant had, technically speaking, been deficient in the manner that he carried out the vehicle check on 17 July 2024, this was materially no different from the common standards of drivers in the yard. In view of that finding, I can say that if failure to do a vehicle check on 17 July 2024 had been the only ground on which the respondent had dismissed the claimant for gross misconduct, I would not have found that, taking account of the overall context, it would have been within the band of reasonable responses for the respondent to dismiss him for gross misconduct. However, I find that the allegation of either negligently allowing, or of positively instructing Mr Lewis to drive the transporter unaccompanied on a public road knowingly without him possessing a full licence was on its own sufficient to bring the respondent's dismissal of the claimant for gross misconduct within the band of reasonable responses.

53. The claimant has not alleged any deficiencies as regards the overall structure and conduct of the investigation and of the decision-making process. None emerged from the evidence.

54. For the reasons above, the claimant's appeal is not well founded and is dismissed.

55. However, in closing I wish to put on the record some observations. Firstly, although I have found that the previous disciplinary matter regarding the damaged vehicle for which the claimant paid did not infect the decision about his dismissal, I find it highly questionable and extremely unfortunate that a company would launch disciplinary proceedings against an employee who caused damage by mistake and then willingly paid for it. Secondly, although the claimant alleged unfairness in the form of victimisation of various kinds and I found that friction between the claimant and the respondent did not formally infect the respondent's decision to dismiss, I do think that there is a tenable suggestion that the claimant was thought of as trouble by management and this may have been in the back of their minds. Whilst this does not on the facts of this case reach the bar of being unlawful, it is arguably close and is again therefore extremely unfortunate. Finally, it is clear that in relation to the failure to carry out physical safety checks in the correct way "to the letter", the claimant was very far from the only culprit, and his conduct here had little to no practical negative effect. It may be said that the decision of the respondent to include the matter of failure to make a vehicle check in the investigation on the same level as the investigation regarding unaccompanied driving was at the very least opportunistic. Again, whilst I have found that this does not on the facts of this case reach the bar of being unlawful, it is arguably close and is again therefore extremely unfortunate.

M Da Costa

Employment Judge M Da Costa
21 December 2025

Note - Public access to employment tribunal decisions
Judgments (apart from judgments under rule 52) 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.