



EMPLOYMENT TRIBUNALS (SCOTLAND)
Case No: 4100447/2025

Held in Dumfries Sheriff Court on 15, 16 and 18 December 2025

Employment Judge M Robison

Mr S Hontarenko

**Claimant
In Person**

Plastic Technology Services Ltd

**Respondent
Represented by
Mr A Wallace
Plant Manager**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claim of unfair dismissal is not well-founded and is dismissed.

REASONS

1. The claimant lodged a claim with the Employment Tribunal on 20 March 2025 claiming unfair dismissal. The respondent entered a defence resisting the claim, asserting that the claimant was dismissed for gross misconduct and that dismissal was fair.
2. This final hearing was listed to take place over three days on 15, 16 and 18 December 2025 (the Sheriff Court in Dumfries being unavailable on 17 December 2025).
3. Prior to the hearing being listed, the claimant had requested a Ukrainian interpreter. The week before the hearing, Tribunal administration was advised that there were no “complex” level Ukrainian interpreters available to attend Dumfries Sheriff Court in person (and attendance by video was not an option because HMCTS personnel are not permitted to use SCTS equipment). Accordingly I agreed to reduce the level from complex to standard otherwise the hearing would have to be postponed. On the first day of the hearing, Ms K Brylova attended to interpret for the claimant. She explained that she did not have any experience of interpreting in a court room setting. Ms Brylova found her task challenging, but both Mr Wallace and Mr

Hontarenko confirmed at the outset and again during the hearing that they were happy to proceed on that basis. Ultimately, I was of the view that this did not impact my ability to decide this case fairly and justly. I am grateful to Ms Brylova for her perseverance and professionalism.

4. On the morning of the first day, Mr Alistair Wallace, representing the respondent, confirmed that he was due to give evidence and that it was intended that the respondent would also call Mr Douglas Shennan, the claimant's supervisor and Mr James Dykes, logistics manager, who heard the appeal against dismissal.
5. I noted that the respondent did not intend to call the decision-maker, Ms O'Hare. Mr Wallace indicated that he would be prepared to call her if she was deemed necessary. I advised that it was a matter for the respondent but normally the Tribunal would hear from the decision-maker in a claim for unfair dismissal.
6. We then discussed whether the Tribunal would hear evidence first from the respondent, which would be standard practice in an unfair dismissal claim. However, I explained that there is no rule requiring that and the order can be reversed if that is deemed to better meet the overriding objective. Following discussion, and in order to allow Mr Wallace time to call Ms O'Hare should he wish to, it was agreed that the claimant would give evidence first.
7. Accordingly, the claimant gave evidence, followed by Mr Wallace, Ms O'Hare, Mr Dykes and Mr Shennan. Parties had lodged separate files of productions. During his evidence, the claimant referenced documents he had not lodged and was permitted to lodge them, and likewise the respondent. Documents referred to during the hearing are noted in this judgment by file and page number.

Findings in fact

8. On the basis of the evidence heard and the productions lodged, the Tribunal finds the following relevant facts admitted or proved.
9. The respondent is a plastic recycling business which employs around 40 people.
10. The claimant was employed by the respondent as a process operator from 8 August 2022 until his dismissal for gross misconduct on 30 January 2025.
11. The claimant was issued with the employee handbook when he commenced employment with the respondent. Relevant extracts include the following.
12. "Long term absence: Absences lasting over 4 weeks are considered long term. The primary aim, in dealing with cases of long-term absence is to facilitate a safe return to work at the earliest reasonable point where this is appropriate. Where it is

expected that an absence will be ongoing and will continue for more than 4 weeks, consideration should be given to seeking advice from an occupational health report. Directors or line managers will discuss, negotiate, and agree when and how communication will be made with any employee absent from work due to ill health.... Considering advice received from OHS and through discussions with the employee, one or more of the following actions may be taken: reasonable adjustments such as changes to the workload, work practices, or work pattern may be identified and implemented, either as part of a phasing the employee back to work or on a more permanent basis; other support mechanisms may be identified and implemented”.

13. The employee handbook includes reference to the disciplinary process and procedure and sets out examples of gross misconduct, which are stated to be so serious that the employee who commits them will normally be summarily dismissed. These are stated to include: “any unauthorised possession or removal of company products of property, or property belonging to another employee, client, customer or visitor, fraud (including making fraudulent or false expense claims), deliberate falsification of records, false declarations in connection with employment or applications for employment or any other form of dishonesty” and “unauthorised absence, including failure to return from a period of annual leave or other approved leave of absence”.
14. It includes detail on occupational health referrals and phased return to work.
15. The respondent has required in the past to make work-place adjustments for members of staff to facilitate return to work. This included adjustments for Dougie Shennan, supervisor, after he had knee replacement surgery and also adjustments for a process operator who had a hand injury, which included tasks to be undertaken with one hand.
16. The claimant worked a “continental” shift pattern, of 12 hour shifts from 7 am to 7 pm, night shifts for two shifts one week and five day shifts the next, in alteration, working on average 42 hours per week.
17. His duties included ensuring the smooth-running and functioning of one of four extrusion machines, allocated as appropriate depending on the materials being processed, and as directed by the shift supervisor. The machines would either be fed automatically or manually to transform various plastics into pellets. This included checking the settings and adjusting as appropriate on a computer, as well as visual checks of the finished product.
18. Manual machines require two operators, one to feed the machine and the other to observe operations. Automatic machines require only one operator. They were fed

by a forklift. The claimant was also a forklift operator, having obtained a forklift operator licence after attending a four day external training course funded by the respondent. He received a higher rate of pay as a forklift operator.

19. One aspect of the training and refresher training for forklift operators was a practice relating to three points of contact on entry, which was recommended but not a legal requirement. This meant that it was recommended that when entering the forklift two hands and one foot should remain in contact although it was possible to enter with one hand only.
20. The claimant was on one occasion referred to Alistair Wallace for refusing to drive the forklift. He advised that he did not require to operate the forklift but could move back to being a regular operator with consequent reduced pay. He heard nothing further regarding that matter.
21. Otherwise, the claimant had no issues at work prior to an incident which took place on 24 November 2024. On that date, in an event which took place outwith the workplace, the claimant was assaulted resulting in an injury to his finger.
22. He was taken by police to the accident and emergency department at Dumfries and Galloway Royal Infirmary. He was issued with a fitness for work certificate (“a fit note” or “sick note”) by the doctor who treated him, who confirmed that he was not fit for work for at least two weeks due to a “left finger digital phalanx fracture and human bite to the hand” (C26).
23. On 25 November 2024 the claimant handed in the sick note to the respondent’s office. The sick note was passed to Ms Mary O’Hare, company accountant, who dealt with payroll. While on sick leave, the claimant received statutory sick pay.
24. The claimant attended hospital again on 4 December 2024 and was signed off for a further four weeks. The claimant handed in the sick note to the office (C27).
25. On 24 December 2024, the claimant attended his GP and was signed off not fit for work until 14 January 2025 (C28). That day he texted Alistair Wallace to advise that his fit note had been extended to 14 January 2025 (C50).
26. On 26 December 2024, Alistair Wallace responded by text stating “Remember that you will need to bring the sick line in with you, but also that it is up to you how you feel about work. It is possible to do a review to get you back sooner on different/reduced duties, which I assume you haven’t discussed with your doctor. There is, I imagine, quite a few jobs you can safely do without interfering with the ring finger on your left hand (C50).”

27. On 10 January 2025, the claimant attended a scheduled appointment at the hospital with his consultant who completed a fit note on that date. That fit note stated that because of “crush injury left ring finger tip with fracture distal phalanx” it was advised that the claimant “may be fit for work taking account of the following advice...if available and with your employer’s agreement, you may benefit from workplace adaptations”, noting that “finger tip is painful and he may need workplace adaptations for six weeks to avoid pain from left ring finger”.
28. The claimant was not certain of the meaning of what was stated on the fit note, given his limited English. He took that sick note to the respondent that day and handed it in to the office. The office administrator called Alistair Wallace because he would normally deal with returns with adjustments to duties.
29. Alistair Wallace then asked the claimant to attend his office when they discussed the situation. They used “google translate” because of the claimant’s limited English. Alistair Wallace noted that the claimant was next due to work day shift the following Wednesday, 15 January 2025. He asked the claimant to attend work on that date for a meeting with him at 9 am to discuss workplace adaptations.
30. The claimant asked what sort of adaptations would be made. Alistair Wallace said that he wasn’t sure but that he expected that it would involve driving the forklift, keeping an eye on the machines, and operating the computer controls. The claimant raised concerns about dirty gloves and was advised that clean gloves would be offered as required. The claimant showed Alistair Wallace x-ray images (on his phone) in an attempt to prove that he could not wear gloves. Alistair Wallace confirmed that he would discuss the situation fully the following Wednesday.
31. Alistair Wallace’s intention was to conduct a “proper” return to work interview on that date. He intended to consider the position and to discuss it with the claimant’s supervisor to ensure that any adaptations were understood. He checked with John Dykes that who confirmed that the claimant could safely drive a forklift.
32. Shortly afterwards, Alistair Wallace texted the claimant advising that he was required to attend a return to work meeting on 15 January 2025 at 9 am to discuss workplace adaptations (C50). This was confirmed in an attached letter (C47).
33. The claimant went back to the hospital that same day and had a further consultation with his consultant. After the claimant explained his position, including further detail about what his job involved, the consultant withdrew the first sick note, and re-issued a sick note dated 10 January 2025 which stated that because of a “crush injury left ring fingertip with ongoing pain” that the claimant was not fit for work for six weeks.

34. Later that day, the claimant returned to the respondent and handed in this second fit note to the receptionist. Alistair Wallace was again asked to come down to reception. He spoke to the claimant and asked him to leave the premises because he did not know how to deal with the second sick note which apparently contradicted the first. He wanted to take time to consider next steps. On this occasion, they did not use google translate.
35. At 19.33 on 10 January 2025, the claimant sent a text to Alistair Wallace stating “thank you for the appointment on January 15 2025 at 9.00 am, please postpone this meeting until the end of the sick leave, I cannot start work due to the doctor’s ban. I am attaching a sick note (you have a copy)” (C50).
36. At 21.24 that same evening Alistair Wallace responded that he was required to attend because of the sick note which stated that he was able to work with adaptations (C50).
37. On 13 January 2025, the claimant attended his GP surgery. A practice nurse issued another fit note which stated that due to “fracture left ring finger” that the claimant was not fit for work from 13 January 2025 to 27 January 2025 (C31).
38. At 13.11 on 13 January 2025, the claimant sent a text to Alistair Wallace stating that, “I am providing you with a sick leave (sic) in which another doctor confirms my incapacity for work” (C50), attaching the sick note (C31).
39. At 14.42 on 13 January 2025, Alistair Wallace sent a text to the claimant advising that he was to attend a meeting on Thursday 16 January at 10 am. An accompanying letter stated: “we have received three different Statement of Fitness for Work forms recently as follows: 10/1/25 – Fit to Return to Work (may require adaptations); 10/1/25- Not Fit to Return to Work (6 weeks); 13/1/25 – Not Fit to Return to Work (2 weeks). We are therefore cancelling the meeting on Wednesday 15 January 2025. However, you are required to attend a meeting on Thursday, 16 January 2025 at 10 am so that we can receive an update on your health and discuss your expectations regarding a return to work and the length of time you anticipate being off. The history of Statement for Work forms that we have in relation to your injury at home is as follows: 25/11/2024 – Not Fit to Return to Work (2 weeks); 4/12/2024 – Not Fit to Return to Work (4 weeks). If you have any further statements, please bring these in, as you messaged on 24 December 2024 that your leave had been extended, however, we have no record of this” (C48).
40. Alistair Wallace contacted the claimant’s GP surgery which confirmed that they had issued the sick note dated 13 January 2025. He also attended the reception at the hospital and asked for confirmation of the position regarding why a second sick

note was issued on the same day. He was advised to contact an NHS information officer, which he did by e-mail on 13 January 2025.

41. By text dated 16 January 2025 at 8.26 am, the claimant advised that he could not be present at the meeting scheduled for that day because he was not feeling well, and that “I have constant pain and discharge of pus from my finger, so I’ll go to the reception department of the hospital, thank you”. The claimant attended accident and emergency department on that date when he “represented with ongoing pain” (C86 and 87) but he did not inform the respondent afterwards that he had done so or provide any medical certificate.
42. Alistair Wallace then decided, given the potential complex implications of contradictory sick notes, that he should refer the claimant to their occupational health providers for further information. He thus contacted Genesis Occupational Health Services and they offered an appointment.
43. On 16 January 2025, Alistair Wallace texted the claimant regarding the OH appointment, which stated (R26) “Further to your failure to attend our meeting scheduled for today 16 January 2025 at 10 am, you are required to attend a meeting with Genesis Occupational Health Services to assess your fitness to work”. The meeting was scheduled to take place on 21 January 2025.
44. On 17 January 2025, Alistair Wallace received a reply from an information governance officer for NHS Dumfries and Galloway (Alan Oswald) who confirmed that both fitness work certificates dated 10 January 2025 were genuine and provided by NHSDG. He stated that the reason a second certificate was issued later on the same day was because “the patient returned to Dr Thomas to say that his employer was unable to make the required adaptations to allow him to return to work safely”.
45. On 21 January 2025, the claimant attended the OH appointment in person. The outcome of that meeting was reported to Alistair Wallace by letter dated 21 January 2025 (R34). It reported that the claimant had provided information from his GP and orthopedics which stated that he had been declared unfit for work for a period of 6 weeks, with a review of the finger and further x-ray in 3 weeks. It stated, “[the claimant] says his finger is painful at all times and he is unable to perform manual labour.....based on the information provided to me today, it is my opinion that [the claimant] is not fit for work due to infection and pain of his finger” and “would be unable to perform the duties of his job role” (R34).
46. As a result of the information supplied by the NHS information officer and the Genesis Occupational Health report, Alistair Wallace decided that he should

conduct an investigation. He asked the company accountant, Mary O'Hare, to conduct a disciplinary hearing.

47. On 21 January 2025 she wrote to the claimant requiring him to attend a disciplinary meeting on 30 January 2025, when consideration would be given to his "absence from work and dishonesty in receiving sick notes". He was advised that he would receive a copy of the investigation report prepared by Alistair Wallace on Monday 27 January 2025, including copies of all relevant witness statements and CCTV evidence showing him driving a car. He was advised that he could be accompanied by another work colleague and that the possible consequences arising from the meeting might be: no further action; written warning; final written warning; or dismissal.
48. Alistair Wallace interviewed Jill Scott, receptionist who had received the sick notes, on 21 January 2025; Greg Rice, who said that he had seen the claimant driving his car, on 22 January 2025; and Dougie Shennan, the claimant's supervisor whom the claimant had initially contacted to advise of his absence, on 26 January 2025. The notes of interview were sent to the claimant along with other documentary evidence, including the sick notes which the respondent had in its possession, the occupational health reports and a "one note" record of events made by Alistair Wallace from 13 January 2025.
49. On 23 January 2025, the claimant attended his GP and was issued with a sick note stating that he was not fit for work and that would be the case until 13 February 2025. He did not provide this sick note to the respondent at the time.
50. On 23 January 2025, following a conversation between Alistair Wallace and Erin Wilson, head of business at Genesis OHS, Alistair Wallace e-mailed her as follows: "You confirmed that when our employee attended his fitness for work assessment, he only presented a sick note from the Orthopedics Department signing him off for 6 weeks. You further confirmed that he did not show any alternative Sick Notes. You confirmed that the nurse did not view any further sick notes, although I provided 3 x Sick Notes (all different) by way of email on 13 January 2025. You mentioned that as the nurse only had sight of the single sick note showing 6 weeks signed off, they were unable to assess further or review adjustments that could be made. You then explained that now that you have had sight of the alternative sick note, combined with the e-mail from the hospital (sent outside office hours on Monday 20 January) that you could now review adjustments that could be made. The following are all adjustments that are available for [the claimant] this list is not exhaustive: Use of computers (online training and control of machinery – i.e. temperature controls); Assistance with translation of documents; Visual review of pellets and production; Hand brushing of classifier/water bath in event of pellet

build-up (currently single handed); Forklift driving (modified: right hand must be used to release hand brake. Per forklift training, no adjustments to the forks should be done while the forklift is moving. This means that single handed use is what is trained – right hand on the steering wheel at all times. When stopped, right hand adjustments of fork controls. If the injury was on the right hand, this would not be available as the fork controls are on the right-hand side); Single handed lifting of small weights (no more than 10 kg) – for example tubs of masterbatch or luperox being dosed into machines (the tubs are the size of a butter container); Logging production bags and weights; Marking up sample bags”.

51. Without speaking further to the claimant, Genesis OHS provided another report to Alistair Wallace dated 23 January 2025 (R39) which stated that “it has come to light....that the six-week fit note was provided after [the claimant] informed them that no adjustments to his duties would be available. You have since provided information of one-handed duties that will be available for [the claimant] to perform while he recovers....based on the information provided to me today, it is my opinion that [the claimant] is fit for work with adjustments...as [the claimant’s] injury involves his left hand, in my opinion he will be able to perform all of these duties...”
52. The claimant did not attend the disciplinary hearing scheduled for 30 January 2025. Alistair Wallace e-mailed him at 13.35 that day (copying in Mary O’Hare) asking him to confirm the situation (R45). He did not reply.
53. Mary O’Hare decided to go ahead with the disciplinary hearing in his absence, on the basis of the paperwork that she had. She decided that the claimant should be dismissed. She considered that he had been dishonest in his provision of sick notes and that this was a breach of the employee handbook.
54. Mary O’Hare wrote a letter dated 3 February 2025 addressed to the claimant. That letter was headed “notice of disciplinary outcome” and stated that: “I am writing to tell you that following your failure to attend your disciplinary hearing on 30 January 2025 a decision has been made with available evidence. You did not inform us you would not be attending and did not respond to an email sent to you by Alistair Wallace, Plant Manager, on 30 January 2025. Given evidence available I find that there has been gross misconduct such that you are being dismissed without notice. Therefore, we consider that your employment terminated with us on 30 January 2025” (R46).
55. The claimant did not receive that letter because it was sent to the claimant’s old address by post. This was not e-mailed or sent to the claimant by text. It was subsequently returned to the respondent by the post office. The claimant did not contact the respondent again until 21 February 2025.

56. On 21 February 2025, the claimant e-mailed the respondent with the heading “complaint” stating that he was writing concerning “illegal dismissal, the reasons for which are not explained, in the presence of sick leave certificates, accusation of illegal receipt and failure to show up for work. Coercion to work with violation of safety regulations, namely operating a forklift with one hand. I raised the matter informally but haven’t been satisfied with the outcome. 10.1.25 there was an attempt to explain that my hand has a purulent process, and it is impossible to wear gloves for work in the production area...depression, taking anti-depressants. I would welcome the chance to talk this through with you at a convenient time and place. I would like to be accompanied to the meeting by legal representative” (R49).
57. Alistair Wallace responded by attaching the notice of dismissal letter dated 3 February 2025.
58. In response at 12.20 on 21 February 2025 (C88/2), the claimant asked “Why did you notify me about this only today. I did not show up for the meeting because I was diagnosed with depression and was taking anti-depressants, for which I have a sick leave certificate. You brought me to depression with illegal accusations and forcing me to go to work and work with safety violations. Why was I not notified about my dismissal”.
59. Alistair Wallace responded that same day at 13.07 stating that the letter was mailed out as per notification requirements (C88/3).
60. The claimant advised in response at 13.20 (C88/1) that he did not receive the letter and was not properly notified of his dismissal. At 13.42, Alistair Wallace replied that it was sent to the address that was on file and that he could drop in any PPE to avoid deductions. In a reply at 13.48 the claimant advised that he had not received the letter.
61. Alistair Wallace decided to treat these communications as an appeal of the decision to dismiss.
62. By letter dated 23 February 2025 (R51) headed “notice of disciplinary outcome appeal”, Alistair Wallace invited the claimant to attend a disciplinary appeal meeting on 27 February 2025 to be chaired by Jim Dykes. He was advised that he could be accompanied by a fellow employee of his choice. The appeal was accepted although outwith the time frame, because the disciplinary outcome letter did not reiterate the right of appeal and timeline to do so; and because the claimant claimed not to have received the letter due to a change of address.
63. The letter referenced the employee handbook which states a requirement for employees to notify a change of address, and referenced various letters sent by e-

mail and text prior to 28 January referencing his old address, noting that he failed to inform them of the change.

64. It continued, "In your email dated 21 February 2025 you suggest that you are suffering from depression. It is noted that no sick note nor occupational health referral makes any reference to this. Nor was this ever previously given as a reason for your failure to attend the following meetings: 15 January 2025 – to discuss workplace adaptations; 16 January 2025 – to receive an update on your health and your expectations of length of absence; 30 January 2025 – Disciplinary meeting. It is noted that an email was sent to you on 30 January 2025 requesting details of your non-attendance. You did not respond to this email."
65. By e-mail dated 24 February 2025, the claimant forwarded to Alistair Wallace a copy of his sick note dated 23 January 2025 in which it was stated that the claimant was not fit for work until 13 February 2025 because of a "fracture and open injury tip left ringfinger still healing" and stating "This man had the above injury on 24 November 2025 requiring surgery. He has had infection in the wound on 31/12/24. The wound is slowly healing now but remains extremely tender with some dead tissue still to come off. He also has Dupuytren's contractures affecting left ring finger and less so middle (has been listed for surgery). He is unable at present to perform manual work using his left hand for lifting due to pain and difficulty with grip and closing fingers (unless you are able to meet with him to discuss further and offer different tasks). I would suggest an independent occupational health referral would be useful for you. He is increasingly stressed regarding this situation and has started anti-depressants" (C32).
66. On 24 February 2024, Alistair Wallace said that he would pass this to Jim Dykes who would review it as part of the appeal process, but noted that he had never before furnished them with a copy of that sick note and that no-one had seen it before.
67. The claimant attended the dismissal appeal hearing meeting. Notes were taken by admin assistant Maryna Akimchenko, who also assisted with translation.
68. At the appeal hearing, Jim Dykes asked the claimant why he had obtained two sick notes on the same day. The claimant replied that he had to prove to the doctors and the respondent that he was really unfit to work due to the prolonged suppuration of his finger. He explained that he did not agree with Alistair Wallace that he could return to work in the factory using only one hand when he was not able to put on any gloves because of the constant pain, and that he did not believe it was possible to drive a forklift with one hand, referring to the three point of contact entry methods. That was why he returned to the hospital to get another sick note.

When asked why he did not turn up for his disciplinary hearing, the claimant said that he had depression because of pressure from the respondent and the doctors. He admitted that he could drive his own car.

69. He was also asked about the two OH reports and why he only passed on the single sick note saying he was unfit for work for six weeks. He said that he had not provided them because he was feeling depressed at the time and that he did not agree with the second report from Genesis since it was made without his presence. Jim Dykes advised that the appeal was not related to the claimant's depression, because the claimant had not advised the respondent of his depression prior to the dismissal. The claimant expressed a desire to continue in employment with adjustments and asked when he could return to work.
70. By letter dated 4 March 2025, the claimant was informed of the outcome of this appeal and that the decision to dismiss stands. That letter was signed by both Jim Dykes and Alistair Wallace. That letter was posted and e-mailed (R57). The claimant responded by asking for the reasons for his dismissal.
71. On 4 March 2025, Alistair Wallace advised that as he had been advised in the letter of 21 January 2025, the disciplinary action was regarding his absence from work and dishonesty in receiving sick notes. He was advised that Mary O'Hare had made a decision in his absence based on the evidence available (all of which had been presented to him). As stated in the letter of 3 February 2025, the reason for dismissal was gross misconduct, and he referenced an extract from the employee handbook which stated that gross misconduct included: Fraud (Including making fraudulent or false expense claims), deliberate falsification of records, false declarations in connection with employment or applications for employment or any other form of dishonesty; and unauthorised absence, including failure to return from a period of annual leave or other approved leave of absence.
72. The claimant was subsequently declared unfit for work by his GP until mid November 2025 and had surgery to his hand on 21 November 2025 then was deemed unfit for work. The claimant has now been offered compensation from the Criminal Injuries Compensation Authority. The claimant is now in receipt of universal credit.

Relevant law

73. The law in relation to unfair dismissal is contained in the Employment Rights Act 1996. Section 98(1) provides that, in determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason for dismissal and, if more than one, the principal one, and that it is a reason falling within s.98(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. Conduct is one of these potentially fair reasons for dismissal.

74. Section 98(4) provides that where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair, having regard to the reason shown by the employer, 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 dismissal and this is to be determined in accordance with equity and the substantial merits of the case.
75. In a dismissal for misconduct, in *British Homes Stores Ltd v Burchell* [1980] ICR 303, the EAT held that the employer must show that: he believed the employee was guilty of misconduct; he had in his mind reasonable grounds upon which to sustain that belief, and at the stage at which he formed that belief on those grounds, he had carried out as much investigation into the matter as was reasonable in the circumstances.
76. In considering the reasonableness or unreasonableness of the dismissal the Tribunal must consider whether the procedure followed as well as the penalty of dismissal were within the band of reasonable responses (*Iceland Frozen Foods Ltd -v- Jones* [1982] IRLR 439). The Court of Appeal has held that the range of reasonable responses test applies in a conduct case both to the decision to dismiss and to the procedure by which that decision was reached (*Sainsbury v Hitt* 2003 IRLR 23). The relevant question is whether the procedure falls within the range of reasonable responses that a reasonable employer might have adopted.

Observations on the evidence and the witnesses

77. In this case there is little dispute on the key facts. There was clearly a misunderstanding about the interpretation of those facts. Where there was any dispute about the facts or different interpretations, I have preferred the evidence of the respondent's witnesses. Mr Wallace's evidence was clear and straightforward. Although the evidence of Ms O'Hare and Mr Dykes in particular was rather hesitant, I accepted that their evidence was credible and essentially reliable.
78. It would appear that the claimant may have misunderstood certain events because of his limited understanding of English. That does not however explain the claimant's actions (which were not explained in evidence), including: not waiting until after the meeting proposed to discuss adjustments before contacting his doctor again; not attending the meeting on 16 January and not providing any medical certificate to explain his actions; and not attending the disciplinary hearing on 30 January 2025, not explaining why he had not attended and not providing any

medical report to support his position (despite then having a fit note dated 23 January 2025, and two reports from Genesis OHS).

79. The claimant's failures clearly raise questions about the rationale for these decisions, but at the very least the result of the claimant's actions is that he failed to properly explain himself to his employer.

Tribunal's deliberations and decision

80. In assessing whether a dismissal for gross misconduct is fair or unfair, I must consider each element of the Burchell test, set out above. The first limb of the Burchell test requires the employer to show that they believed that the employee was guilty of misconduct. It is clear that the claimant was dismissed for misconduct (dishonestly and unauthorised absence from work) and that is a potentially fair reason for dismissal.

Reasonableness of decision to dismiss

81. The key question for the Tribunal is of course whether the respondent acted reasonably in dismissing the claimant for misconduct. The question is whether it was reasonable in all the circumstances for the respondent to dismiss the claimant for misconduct, and not whether this Tribunal would have dismissed the claimant in these circumstances, there being a range of reasonable responses open to the respondent.

Reasonable grounds for belief

82. In considering whether or not dismissal was reasonable in all the circumstances, the second limb of the Burchell test must be considered, that is whether or not the respondent had in mind reasonable grounds upon which to sustain the belief that the claimant was guilty of misconduct.
83. In this case, the reason for holding the disciplinary hearing was stated to be absence from work and dishonesty in regard to the sick notes.
84. In early January 2025, the claimant handed in a sick note which confirmed that he was fit to work with adjustments. Although that sick note was dated 10 January 2025, Mr Wallace asked the claimant to come in to discuss adjustments the next time he was on day shift, which was 15 January 2025. I heard evidence from Mr Shennan about a number of adjustments which had been made for other staff, including him, and another member of staff who had a hand injury. The respondent therefore had experience of making adjustments in circumstances similar to the claimant's injury, and the proposal was to discuss the claimant's situation.

85. Whether the claimant misunderstood what was decided on 10 January or misunderstood the import of the meeting on 15 January (he had limited English, although Mr Wallace said they used google translate) he went back to the doctor straight after. He said in evidence that he then gave more detail about the nature of his job such that the consultant withdrew the first sick note and replaced it with another.
86. The claimant subsequently said that he could not make the meeting on 15 January 2025 because he was signed off work. Although this position differed from the position set out in the first fit note, Mr Wallace accepted that, because he arranged another meeting with a different purpose for 16 January 2025, that was to discuss the claimant's health and fitness for work more generally. Unfortunately, the claimant did not attend that meeting so that he did not take the opportunity to explain any misunderstandings or to explain his own position including misgivings about whether there were reasonable adjustments which might mean that he could work safely. Although he sent a text to say that he was not attending, he did not provide a medical report to confirm why not. The claimant said at the appeal that it was because he was depressed, but he apparently made no reference to that when he visited accident and emergency on 16 January 2025. He did however visit his GP on 23 January 2025 when he was prescribed anti-depressants, but for whatever reason, he did not provide the sick note produced by his GP on that date to his employers (until the appeal). Accordingly, the respondent was unaware that the claimant was suffering from depression at the time.
87. Mr Wallace decided given the three contradictory sick notes he should make an appointment for the claimant with their occupational health providers, with whom they have an ad hoc arrangement for further advice, to inform his next steps.
88. However, the next day on 17 February 2025, Mr Wallace received an e-mail from the NHS information governance officer in response to his query about the contradictory sick notes. He said in evidence he was surprised to hear that the reason given for the second sick note on 10 January from the hospital was that the claimant had told his consultant that his employer was unable to make the required adaptations to allow him to return safely. Given that he had in fact only arranged a meeting to discuss workplace adaptations, Mr Wallace was of the view that was disingenuous. Subsequently, on 21 January 2025, he received the occupational health report and noted that the claimant had referenced only one sicknote, although by then he had three. In fairness to the claimant, he may well have been relying on the fact that the first sick note had been withdrawn, but still he did not make that clear to the OH nurse.

89. The claimant did not attend the disciplinary hearing on 30 January 2025, and therefore the respondent was not aware of any reasons the claimant might advance to explain the situation. Significantly, the claimant did not reply to an e-mail from Mr Wallace asking him to explain the situation. The claimant having failed to attend, and not having provided any explanation for not attending or the position with the sicknotes, the information available to the respondent was limited. In particular, they had three contradictory sick notes; the claimant had only referenced one at the occupational health meeting; he had been offered a meeting to discuss adjustments which might be suitable but not attended; and when he had returned to the doctors when the original sick note was replaced, he had apparently told the doctor that his employer was unable to make required adaptations to allow him to return to work safely, whereas he had been offered a meeting to discuss that but the claimant had not attended.
90. Given that background, I concluded that there were reasonable grounds for the belief that the claimant was guilty of the conduct in question.
91. The respondent must have formed that belief having carried out as much investigation into the matter as was reasonable in the circumstances. This is the third limb of the Burchell test.
92. The claimant submits that he was dismissed without a proper investigation and without properly considering medical documents which meant that the process was not transparent. That submission appears to relate to an assertion that the respondent failed to understand the seriousness of the injury and failed to appreciate that a human bite can be a particularly serious injury which can take a long time to heal. It would appear that the witnesses were not at least initially aware that the injury was caused by a human bite, the respondent having initially believed it to be the result of an accident at home. Although the first fit note does reference a human bite, neither Mr Wallace nor others focused on that. I considered this to be a red herring, that is a distraction from the key issues which required to be determined in this case. The respondent was relying on the fit notes, but those fit notes gave contradictory information, and that was apparently because of the information which the claimant had, either inadvertently (given his limited English) or deliberately (because of his concerns about going back to work at all), given to the doctors.
93. Further, the claimant could have had the opportunity to further explain himself had he attended the meeting on 16 January 2025, or even submitted a medical report relating to that.

94. The respondent, through Mr Wallace, undertook an investigation. Mr Wallace gave evidence that he was concerned to understand the receipt of two different sick notes for the same day, and then a third two days later with further conflicting information. He said that he checked the position with the GP's surgery and also with the hospital. Although they were inevitably circumspect about the information which they would give him, he was able to obtain further information through official NHS channels. Although the claimant queried the role of Alan Oswald, I was satisfied that he is an NHS information officer answering a genuine enquiry. Mr Wallace also conducted three interviews and liaised with occupational health, who confirmed that the claimant had referenced only one of the fit notes which had been issued.
95. Accordingly I was satisfied in this case that the extent of investigation was reasonable, given the investigation undertaken by Mr Wallace, and the reliance of Ms O'Hare on the documentary evidence in circumstances when the claimant did not attend the disciplinary hearing or take any opportunity to input or give any explanation for his behaviour.

Reasonableness of the sanction of dismissal

96. I then turned to consider whether the sanction of dismissal was reasonable in all the circumstances, having regard to equity and the merits of the case. I had regard in particular to the size and administrative resources of the respondent.
97. As noted above, there were a number of "red herrings" raised in this case, that is side issues which were not relevant to the key issues to be determined.
98. One of those was the matter of the claimant being able to drive his car, which did not appear to be a relevant consideration, except to the extent that it might indicate that the claimant could drive a forklift truck.
99. Further, some time was spent hearing about evidence whether the claimant could, with his injury, safely operate a forklift truck. Although the claimant referenced the need to have three points of contact when entering the forklift truck, the respondent's witnesses, all experienced forklift operators, confirmed this was a recommendation but not a legal requirement. In any event, the claimant failed to take advantage of the meeting proposed by Mr Wallace to consider adjustments, when this matter could have been discussed further.
100. The focus in this case was not whether the claimant was being forced back to work in an unsafe environment, because Mr Wallace was first dealing with a sick note which said the claimant was fit to return to work with adjustments and arranged a meeting to consider that. No decision was in fact made about that, beyond Mr

Wallace acting on the information contained in the fit note. When he became aware that there was a contradictory sick note, he accepted that the circumstances had changed, cancelled that meeting and arranged another one to discuss the situation more generally. There was no suggestion of forcing the claimant to return to work to an unsafe environment or with inappropriate adjustments.

101. The medical report obtained to support his claim, dated 3 June 2025, which the claimant referred to in evidence states that “he appears to have a very good reason why he could not continue to work. I am unsure whether specific alterations at work could be made which would enable to have worked with amended duties, but I am not sure how far this was explored”.
102. Clearly, the intention was that should be explored, but it did not happen because the claimant did not attend the meetings, did not explain why he had not attended the disciplinary hearing, and did not present any medical evidence about why he could not attend (until the appeal).
103. The respondent is a small company which relies heavily on having a full complement of staff. I heard evidence from Mr Wallace about the need for two operators on the manual machines, and that if one was absent (for breaks for example) then production would require to stop. I accept that staff on sick leave present challenges for the respondent, and that it would not be straightforward for such a company to hold positions open for staff who found themselves on long-term sick leave. Mr Wallace said in evidence that the claimant would inevitably have been dismissed subsequently for capability reasons because as it transpired he has been on sick leave ever since. However, the fact is in this case that the respondent took the view, based on the information gathered during a reasonable investigation, that the claimant was dishonest regarding his attendance at work and in regard to the submission of the sick notes, such that trust and confidence had broken down.
104. The respondent relied on their company handbook and examples of gross misconduct, which included “any unauthorised possession or removal of company products of property, or property belonging to another employee, client, customer or visitor, fraud (including making fraudulent or false expense claims), deliberate falsification of records, false declarations in connection with employment or applications for employment or any other form of dishonesty”. The claimant took issue with the reasons for dismissal during the hearing, and in particular the reference to fraud as well as dishonesty, suggesting that fraud was different, and more serious, with criminal implications. However, I was satisfied from the evidence that that respondent was simply referencing an extract from the employee handbook, and that the reason for dismissal was in fact “any other form of

dishonesty". The handbook states that a finding of misconduct of that nature would normally result in summary dismissal.

105. I accept therefore that the sanction of dismissal in these circumstances fell within the range of reasonable responses.

Procedural fairness

106. The claimant argues that there was a lack of procedural fairness. He argues that there was a failure to follow the ACAS code of practice.
107. In this case the claimant failed to attend meetings arranged to discuss the situation, and failed to attend the disciplinary hearing itself. It might therefore be argued that the respondent should have given the claimant further opportunities to explain his position. However, as discussed above, the respondent is a small company which cannot afford to operate with staff on long term sick leave. But more importantly, the claimant failed to respond to the e-mail sent to him on 30 January 2025 asking him to confirm why he did not attend the disciplinary hearing. This was despite the fact that he had by then a sick note from his GP dated 23 January explaining the position, and that he had attended his GP again on 28 January 2025. That failure on the part of the claimant is rather inexplicable, but it is difficult to conclude that in a small company such as the respondent they could or should have done more.
108. In this case, I was aware that the investigation was conducted by Mr Wallace who as plant manager was the most senior member of staff. His evidence was that Ms O'Hare was a member of the senior management team, as was Mr Dykes, so there was clearly the potential for them to be influenced by the views of Mr Wallace. It was not clear to me why at least the appeal was not heard by one of the non-operational directors of the company, who would be more senior to Mr Wallace.
109. The claimant was therefore rightly concerned about potential influence that Mr Wallace might have on his colleagues in regard to the decision to dismiss.
110. However I was satisfied that, given the fact that the respondent was a small business, that there was no evidence to support any suggestion that the dismissing officer or the appeal chair were influenced by the views of Mr Wallace. They were sufficiently independent to the extent that they had not been directly involved in the investigation. The essential steps set out in the ACAS code were followed here, including the collation of evidence by the employer the investigatory stage for use at any disciplinary hearing and different people carried out the investigation and the disciplinary hearing.

111. The claimant also made much of the fact that the letter of dismissal was sent to his old address. I considered this also to be a distraction from the key issues to be determined in this case. In any event, the respondent did send the letter of dismissal by post. While the respondent usually also sent correspondence by text and/or email, Mr Wallace advised that on this occasion he had forgotten to do so. The claimant seemed to think that the respondent should have picked up from the address in the sick notes that he had changed address, but the employee handbook makes it clear that the claimant should have informed his employer of any change of address. In any event the only consequence was a delay in the claimant being informed of his dismissal.
112. I also noted that the claimant's GP referenced in his report dated 3 June 2025 (and 6 May 2025) that he had consulted his GP on 28 January 2025, who noted that he had been dismissed from work by then. Although the disciplinary hearing was not until 30 January this must be a mistake but it suggests that the claimant was aware of that as a possibility.
113. Further and in any event, the claimant did not take any steps to contact the respondent apparently from 16 January (apart from the meeting with occupational health on 21 January) until 21 February 2025. This was despite the fact that the last sick note which he had sent to the respondent – by text on 13 January – expired on 27 January which was contrary to the sick note sent on 10 January which stated that he would be unfit for work for six weeks. Further, the claimant did not (until the appeal hearing) send in the sick note dated 23 January 2025 which made reference to the claimant suffering depression and suggested an OH referral.
114. Given that he attended his GP and was again prescribed antidepressants on that date (28 January 2025) he could have advised his employer before the event that he was unable to attend the disciplinary hearing for that reason but he did not.
115. There was also the issue of the failure of the respondent to advise the claimant of his right to appeal, but that failure was of course rectified when the respondent decided, taking account of the fact that the dismissal letter had not reached the claimant, to allow an appeal. The claimant of course did attend that appeal, and although he produced yet another fit note, he did not explain why he had failed to attend the meetings beyond stating that he was depressed at the time, and although he had medical evidence to support that he did not produce that at the time. Further the claimant's explanation why he returned to the doctor and obtained a different sick note was related to a misunderstanding or mistaken belief that he was being forced to work in an unsafe environment, and that he did not agree with Mr Wallace. However, Mr Wallace was acting on advice from the claimant's doctor, and the claimant had not taken the opportunity given to him to attend to discuss

the situation before returning to his doctor, and had not advised that he was suffering from depression.

116. The range of reasonable responses test applies to the procedure undertaken as well as decision to dismiss. I have taken account in particular of the fact that the respondent is a small company, with no HR department and limited resources in terms of senior management. Given that background, I conclude that the procedure undertaken by the respondent in connection with dismissal fell within the range of reasonable responses open to the employer.
117. Accordingly, I concluded that there was no procedural unfairness in this case such as to make dismissal outwith the range of reasonable responses open to the employer.

Conclusion

118. I conclude that, in all the circumstances, dismissal for gross misconduct was within range of reasonable responses open to the respondent, and therefore that the dismissal was not unfair. The claim is therefore dismissed.

**Entered in register: 28 January 2026
and copied to parties**