



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Mr Andrea Scaburri
Respondent: Hackett Limited
Heard at: in public by CVP
On: 1-2 December 2025
Before: Employment Judge Adkin

Appearances

For the Claimant: Claimant in person
For the Respondent: Ms I Brunton, Counsel

REASONS

Background

1. The claim of unfair dismissal is not well founded and was dismissed as was confirmed in oral and written judgments on 2 December 2025.
2. The Claimant requested written reasons.

Evidence

3. I had the benefit of an agreed bundle of 281 pages to which an addition was made at pages 239A further to my request for the document to be disclosed.
4. I have also received with evidence from both parties through witness statements and oral evidence from the following witnesses on behalf of the Claimant:
 - 4.1. The Claimant himself;

- 4.2. SS, his line manager;
- 4.3. Peter Louzado.
5. A number of witnesses and I will just list those witnesses for the Respondent:
 - 5.1. Fiona Charles, Cluster Manager, Claimant's second line manager;
 - 5.2. Jamie Shields; Cluster Manager, investigation;
 - 5.3. Patricija Barisaite, HRBP, recommended dismissal;
 - 5.4. Michael Freter, Retail Manager, Appeal manager.
6. It was a tightly timetabled case which required both parties to work hard to get through the material so as to give a decision within the two day window. I was grateful to both sides for working within the timetable to achieve that end.

SS store manager's identity

7. I have decided of my own motion to anonymise the full name of SS, whose identity is known to the parties. She was at the material time married with children and it is principally to protect her children that I have taken this step. She did not choose to bring this litigation, she is not a party and she is not alleged to have discriminated or in some other way acted unlawfully. On one view of this case she had been subjected to sexual misconduct, although in fact there is no animosity between her and the Claimant at all. I take the view that it was her role as the Claimant's line manager, not her identity that was the crucial aspect of this case.
8. I find that SS's article 8 right to a private and family life is engaged and weighs more heavily in the balance than article 6 and article 10 considerations under European Convention on Human Rights ("ECHR"). I find that anonymisation in this way is a proportionate interference with the principle of open justice.
9. Should any party or non-party wish to make application arising from that decision they can write to the Tribunal "**FAO EJ Adkin**" with the case reference number.

Findings of fact

10. The Respondent is a well-known retailer which provides a traditional style gentleman's outfitters with over 160 stores in the UK and some overseas.
11. The Claimant originally joined the company in around February 2019, although then left for a period of time before returning.
12. The period of employment relevant to this claim commenced on 6 November 2021.

13. The Claimant became an assistant store manager at One New Change (“ONC”) which is a retail development near St Paul's.
14. There was an interview for appointment to that position.
15. Ms Barisaite, HRBP was involved in the interview process for his promotion she says he presented as capable and motivated and and so he achieved that promotion.

Alleged “history” with Ms Barisaite re: recruitment

16. She says that thereafter they only interacted in routine HR matters. The Claimant disagrees with that. He says they had more interactions and put some emphasis on that. He put to her that the two of them had been involved in a recruitment exercise during which she asked him to do some work in his own time and he pushed back. She did not recall that. This is not something that is dealt with in the Claimant's witness statement nor his claim form.
17. I came to the conclusion that this was not an event with great significance at the time given Ms Barisaite's lack of recollection and the lack of evidence of it.
18. It seems not be in dispute that the Claimant as assistant store manager and SS worked effectively together and the store they ran was financially successful.

“History” re: immigration visa

19. The Claimant says that there was another point of conflict between himself in and Ms Barisaite in relation to an immigration Visa application process of a colleague. This colleague William, who was Taiwanese, sought the support of the business for his immigration Visa application in early 2024. Ultimately that application was successful. The Claimant blames Ms Barisaite for that application taking much longer than it should have done. He emphasised that he had to chase in order for this application to be progressed.
20. He says that he raised this with the cluster manager Ms Fiona Charles, that Ms Barisaite was failing to progress the matter and ignoring William's messages about it. The Respondent produced to the Tribunal a document at my request, which was an email exchange on the topic of the immigration Visa evidence which was referred to in evidence but not included in the bundle of agreed documents.
21. The email exchange was between the Claimant and Ms Barisaite in September 2024. It is an exchange of emails in the period 19th to 24 September. In it, the Claimant raises the possibility of using a different lawyer to progress matters. He suggests that William knew a particular lawyer who would be used. The tone of his messages is polite, as is a response from Mr Barisaite sent just four minutes later suggesting that they should make contact with a lawyer and they go on to arrange a zoom meeting to speak with a lawyer. The exchange was polite, productive and unremarkable. It does not suggest the Claimant was calling out Ms Barisaite for a lack of action.

22. I acknowledge what the Claimant said, which is that he would be polite in his language but had a somewhat different thought process which was that he was frustrated with the lack of progress. It is difficult to see based on that email exchange however that Ms Barisaite would be likely to have a vendetta against the Claimant or a personal problem with him. The communication was polite and professional. It does seem to progress matters and does not suggest that Claimant raising delays had caused particular repercussions for Ms Barisaite nor difficulties in their working relationship.
23. I note Ms Barisaite's evidence which is that she accepts that there had been delays. She said that that was in part due to needing internal sign off from senior management, given that supporting immigration applications was not normally done by this employer.
24. I did not come to the conclusion that this matter had led to friction in the relationship between the Claimant and Ms Barisaite.

WhatsApp

25. Returning to the chronology directly relevant to the dismissal, in June 2024 the Claimant was on holiday overseas.
26. He sent a lengthy WhatsApp message with explicit sexual content to SS, who was the store manager and his direct line manager. It describes in explicit and graphic detail series of sexual acts between the Claimant and SS. Later in the narrative, it becomes clear that this was only a dream.
27. This was a private message sent between their personal mobiles using WhatsApp.
28. What SS said in this hearing has been very similar to what she said in the internal process. First, that she was taken aback by the message. She said it came out of the blue. She had hitherto had a friendly and somewhat flirtatious relationship with the Claimant. At the time she received the message she made some allowance for the fact that the Claimant was on holiday and she said, she thought possibly he had consumed alcohol.
29. She says that on his return she discussed the message with him and she did not regard it as a serious disciplinary matter. She says the whole thing was done and dusted between the two of them in an "adult" way. Her view was that there was nothing further to say. She says it did not affect their working relationship which continued without incident thereafter for months.

Ms Charles queries flirting

30. Moving forward to 30 October 2024, Fiona Charles, who is a cluster manager and SS's line manager, spoke to SS about alleged flirting and conduct in the store that appears on page 147.
31. This had come about because of a complaint from Graham Simpkins, who was Head of Tailoring, who had been in store for a particular promotion. There had also been comment from another employee who was a regular employee in the

store Mr Okwu Duribe who had described the Claimant's interactions with SS as unprofessional.

32. SS in that conversation with Ms Charles acknowledged that Mr Simpkins had told them that the Claimant should not massage her shoulders on the shop floor. She says the context was that she was stressed and he was just trying to her calm down, because Mr Simpkins had been challenging various things on that day. That day was a one day promotion in store which Mr Simpkins had attended. He was somewhat disappointed with the results.
33. As to Mr Duribe's comments on their conduct, SS told Ms Charles that he makes things up. She specifically denied the two of them were having an affair and agreed with Fiona Charles characterisation of it as "just harmless flirting".
34. No mention was made at that time about the explicit WhatsApp message sent in the Summer.

Husband's complaint

35. A week later on 6 November 2024 SS's husband called Fiona Charles, alleging that he believed that SS and the Claimant were having an affair and he forwarded the explicit WhatsApp message sent in the Summer.
36. Ms Charles recorded a file note. She noted that SS's husband said that the sexually suggestive communication was "all one way" coming from the Claimant. He asked that the two of them should not work together.
37. The Claimant has characterised this as no more than an anonymous complaint and is critical of the Respondent in simply accepting it without verification. I did not accept that characterisation of it. It is not realistically in doubt on either side of this dispute the SS's husband had seen the WhatsApp message and was furious about it. SS gave evidence to the Tribunal that this was a particularly dark time in her relationship.

Investigation

38. What then happened was an investigation began, carried out by James Shields, a Cluster Manager.
39. He interviewed various people. First, was an Ian Donato, who described playfulness, hugging and joking banter. He said that the hugging was excessive, which was inappropriate. But despite that, in his view that he had witnessed anything unprofessional and he said that the Claimant and SS worked well as a team and that they were hard-working.
40. Second, William (mentioned above), characterised the relationship between the Claimant and SS as close friends who known each other for a long time. He said it's a great friendship and he said that they all hug each other (including himself) at the beginning and end of day. He said that had had observed nothing unprofessional.

41. The following day, 8 November there was an interview with Mr Duribe. He says that the Claimant made suggestive comments giving the example "she likes it tight". He said that the Claimant was tickling the SS who would say "Stop it, it hurts" that in a joking way, to the Claimant say "I have big muscles, I'm strong, I'm Italian". He said that that happened on a daily basis. He said that there was an interaction in the staff room which was shocking and he was lost for words. He said he was thinking of the SS's lovely husband thought it would cause issues with the family and he said that the two of them turned round and looked shocked when he had come in. He was not explicit about what it was that he had seen, there is an implication that he had disturbed some sort of intimate moment, although that is not clear.

Suspension

42. On 11 November HR sent a suspension and investigation letter to the Claimant, which was signed by Ms Barisaite. In relation to the suspension there is a section of the letter that says these are your obligations during your suspension:

As far as possible, please remain available in case I need to contact you. Please **do not at this stage access the workplace, or contact any of our customers, suppliers or your work colleagues other than your union representative for the purpose of obtaining advice.**

I understand that you may find the support of a colleague helpful at this time so please do let me know if you do wish to contact a colleague. However, to maintain the fairness and independence of the investigation, it is important that you do not attempt to influence any individuals in the investigation. If you do this, it will be dealt with under the **disciplinary process.**

Policy handbook wording

43. There there is further wording on suspension which is contained in the employee handbook which is at page 73.

"Suspension

In some circumstances the Company may need to suspend an employee under disciplinary investigation from work. The suspension will be for no longer than is necessary to investigate the allegations and the Company will confirm the arrangements to the employee in writing. **While suspended the employee should not visit the Company's premises or contact any of the Company's clients, customers, suppliers, contractors or staff, unless they have been authorised to do so by their manager.** The decision to suspend is entirely at the Company's discretion.

Any suspension will be reviewed regularly to ensure that it does not become protracted.

Suspension of this kind is not a disciplinary measure and does not imply that a decision has already been made about any allegations. The employee will normally continue to receive their full basic salary and benefits during the period of suspension.

44. On 75 the handbook has the following long list of bullet points defining gross misconduct as follows:

Gross Misconduct

Discriminating against or harassing a customer, another employee, or any person involved with Company business;

Violation of any Company policy or procedure;

Or any other matter which on the basis of reasonable common sense could be considered a gross breach of the employee/ employer relationship.

45. The Claimant's position is that did he have that available to him, but it was not something particularly looked at.

Investigation continues

46. Graham Simpkins was interviewed. He described a single incident where the Claimant was massaging SS's best shoulders and he approach them, said it "wasn't appropriate" and that also "that's how rumours get started", so pack it in. His view was that it was not "unprofessional", but it was inappropriate as other members of staff could have seen it.

Claimant investigation meeting

47. The Claimant was invited to an investigation meeting on 13 November, which he did not make, but did attend the following day.

48. There were two events on 14 November.

Shop visit

49. The Claimant went into the Regent Street store on 14 November 2024. This was regarded as a "flagship" store. There is CCTV footage of his visit described and in a one-page handwritten note by Dariusz Marzecki, Director of that store.

50. The Claimant came into the store at 14:52 and remained there until 14:12, wrongly calculated as 22 minutes rather than 20 minute, although that slight discrepancy is not material.

51. This account in summary, is that the Claimant had exchanged greetings with various members of staff, looked around the shop floor, went upstairs and spoke to another colleague and then another colleague, went to the toilet then looked around the “formal” floor.
52. There was also witness statement and from Martina Ovcharova, who confirmed that she spoke to the Claimant. She recorded that he said that he needed to use the toilet and thought he’d visit the store.

Investigation meeting

53. Also on 14 November 2024 and it may be before or after that earlier event that there was an investigation meeting held with the Claimant. This was back in his home branch ONC back in St Paul's.
54. Mr Shields went through the evidence of colleagues referred to above and asked the Claimant for his comments. The Claimant denied that he was pressed up against the SS at the back to give her a kiss. He admitted that he agreed with Graham Simpkins that it was inappropriate.
55. He characterised the relationship as playful banter. He did not accept it was excessive. He said it was Italian and hugged other people and accepted that his conduct, playful, generally.

Disciplinary

56. There was a disciplinary invite letter sent on 15 November and initially to take place on the 21st, although that did not happen until a few days later.
57. Around about this time the Claimant obtained a doctor’s note and 26 November advising up to 3 months for recovery. I accept the Claimant's health had been affected quite significantly that he was evidently very stressed by the experience of suspension, investigation and disciplinary.
58. It seems that that doctor’s note was not provided until to Ms Barisaite until after this meeting had taken place.

SS disciplinary

59. SS attended her own disciplinary meeting. She was facing potential gross misconduct in her case. She accepted that her shoulders have been “lightly massaged” by the Claimant and she said that that was due to the stress of the visit by Mr Simpkin. She emphasised that their relationship was nothing more than friendship. She said that the relationship was hard-working and she also suggested that it contained “playful banter”.
60. She did admit questioning herself whether she had been unprofessional. When it came to the explicit WhatsApp messages, she said that she said it could be seen as unprofessional, but she said it was “ridiculous”. She did not think of it as harassing and she said, because of his holiday then hers, they forgot about it.

61. She remained on suspension.

Disciplinary

62. On 27 November 2024 the Claimant attended a disciplinary meeting held by Ms Barisaite. There were two disciplinary matters discussed in that meeting, first the Claimant's failure to adhere to the suspension terms was discussed and they told them he was shown the witness statement in relation to his visit to the Regent Street store on 14 November. He said the suspension letter simply said do not access the workplace. He said he'd visited the store to use the toilet.
63. His position in the Tribunal hearing was that social pleasantries with colleagues is not the same as "contacting" them and furthermore the Regent Street store was not his place of work since he worked in store in St Paul's.
64. He did not accept ensure there was any breach of the terms of suspension.
65. As to the explicit WhatsApp message at the Claimant made the point that he made in this hearing which is that is that there is nothing in the Respondent's policy about private messages exchanged on private phones.

Submission of GP note

66. On the following day, 28 November the Claimant submitted a doctor's note to HR.
67. There is a slight discrepancy between the Claimant's written and oral evidence as to and whether, when this was submitted. His oral evidence to the Tribunal is that it was submitted before the hearing. His written evidence is that it was after the hearing. He says it must be a typo.
68. Given the direct conflict, obviously both positions cannot be right. On balance I accepted the Respondent's position is that the witness statement is correct and that the although the doctor's evidence was obtained before the disciplinary hearing, it was not submitted to the Respondent until afterwards. That makes more sense in the context of the Claimant's witness statement paragraph 3, which is that he'd decided that he was going to attend the meeting, even though he had received that medical advice. My finding is that the content of the Claimant's witness statement was accurate and the Respondent did not see the doctor's evidence until afterward.

Dismissal

69. On 29 November 2024 the Claimant's dismissal was confirmed by letter.
70. Although it was said gross conduct he was paid one month's notice which said to be an act of goodwill.
71. What that letter details as the Claimant made an admission that the message in question, sent to his line manager was unprofessional and inappropriate.

72. The basis for the dismissal which is at page 201 was

“The panel has found the allegations of gross misconduct against you have been substantiated. In particular, it was proven, on the balance of probabilities, that you breached company regulations by failing to adhere to the suspension guidelines outlined in our employee handbook during your suspension on the 14th of November 2024. Furthermore, you engaged in inappropriate behaviour and failed to demonstrate the expected standard of professionalism.”

73. What was also detailed was a breach of the company regulations by failing to adhere to the suspension guidelines outlined in the employee handbook that letter.

74. As to the identity of the decision maker, it seems that Ms Barisaite made a recommendation of dismissal, which Dan Slater, a Vice-President in the retail operation accepted.

Video of Mr Duribe

75. On 30 November 2024 the Claimant sent a video of Mr Duribe, his colleague to Fiona Charles.

76. I have seen a video in the course of this hearing. Mr Duribe is dancing to music next to a cleaner who is cleaning a sink. He seems to brush against her. She seems to push back. It's a short video.

CCTV footage not available

77. It was identified in the evidence of the Respondent is that there was no CCTV footage of the ONC store available, which might have helped to investigate the allegations made about the Claimant. The Claimant is sceptical about the apparent non-availability of the CCTV footage.

78. I do not have any solid evidential basis to say that the CCTV footage of ONC was available to the Respondent and yet not considered.

SS disciplinary

79. On 4 December 2024 there was another meeting with SS.

80. By this stage a decision had already been taken in the Claimant's case.

81. The parties have different interpretations as to what was going on this meeting.

82. The Claimant's case is that the Respondent was attempting to bolster their case against him as part of the internal appeal. He argues that the questions asked of SS in this meeting were leading.

83. The Respondent's case is that this was about the appropriate sanction in SS's case, hence they were considering mitigating circumstances which might be

taken account. The question was should she be dismissed or something less than dismissal? I accept that this was the reason, since this was legitimately potential mitigation.

Leading questions

84. We looked at this in some detail. In that meeting Ms Barisaite who was also dealing with that disciplinary asked SS whether the messages from the Claimant were welcome or unwelcome. SS said what she said in today's evidence which was that it was unexpected. It was out of the blue, she said. In that meeting, the reason being that they were friends that he was just dreaming and it was unexpected.
85. She was asked whether the messages were well received. She answered "not well received". She clarified that it was unwelcome, but she knew that it was a dream. She said to him that they'd never speak of it again.
86. She denied that it caused her discomfort. SS said "he was on holiday and [she] was wondering what boys were like in the summer".
87. She went on holiday herself and then it was put in the past.
88. She did say it is shocking to read. She said they did a good relationship. Again asked about "discomfort", she said she was "taken aback".
89. I can see why the Claimant characterises this as "leading". The line of questioning was somewhat directed toward this being some sort of sexual harassment or similar, when SS's evidence was clear that she really did not see as being hugely significant and put it behind her, although was not particularly "welcomed" by her. In other words she was saying that it had not affected their interpersonal or working relationship.
90. As regard disciplinary sanction: SS was moved to a different store and given a warning, but not dismissed. I accept her evidence that Ms Barisaite told her something to the effect that had the decision been up to Ms Barisaite alone rather than involving Dan Slater, VP she would have been dismissed SS as well.

Claimant's appeal

91. On 5 December there was an appeal hearing.
92. The Claimant's appeal hearing was heard by Michael Freter.
93. The Claimant made it clearly was not interested in reinstatement the was really looking for some other sort of outcome.
94. The Claimant, that realistically is not critical of Mr Freter for bringing that meeting quite quickly to a conclusion.
95. On 6 December there was an appeal outcome letter in which the dismissal was upheld, with a very short letter confirming that fact.

ET claim

96. A claim was presented to the Tribunal on 28 December 2024.

Later evidence

97. Moving onto events that are outside of the internal process, sometime around about March or April 2025 at the evidence of Peter Louzado, the Claimant's witness, is that Mr Duribe admitted to him that he had lied and said that the Claimant and the SS were kissing inside the store. According to Mr Louzado, he made that complaint to get back at them for reporting him for repeated misconduct.

98. That evidence is not contested. I made two observations.

99. First, this was after the conclusion of the appeal. The first Respondent knew about this evidence was during these proceedings, after the appeal had concluded.

100. Second, Mr Duribe's evidence in the internal investigation was not that they were kissing each other. He did imply however they'd been caught doing something.

Comparators

101. The Claimant relies on some comparators.

102. These are other people whom he suggests have received more lenient treatment than him in terms of investigation and disciplinary sanction.

103. The first is Darius Marzecki, the store director at Regent Street store and there was a complaint about the employee that his page 209. It looks like quite a serious complaint and the headlines are threats, intimidation, public humiliation. He was apparently threatening retaliation against staff and this is from someone called Mr Pannett, who resigned at that time.

104. This was quite a lengthy complaint. The Claimant also contends that this individual's wife had come to the store and there had been a confrontation arising from a belief that there was some sort of affair going on and he is additionally quite critical of the investigation notes which have been disclosed. He says that they are her scripted notes suggesting has just been produced by Ms Barisaite without a genuine investigation and those appear at page 213 onwards in the bundle. She denies it and says that this was an adequate investigation of the matters that have been raised.

105. The Claimant's final point of comparison is a purported customer complaint which appears on 29 April and her which was that seems to have been submitted by "trust pilot". That appears at page 233. That is from someone called Ivan who has given a one star rate and described extremely disappointing experience and discusses Martina, who is a member of staff speaking in Bulgarian and said that to have served this customer. Ivan complains:

“To my surprise, they were speaking negatively about my wife and me. Additionally overheard remarks suggesting an inappropriate relationship between Martina and the store manager in regent Street, which allegedly was influencing her career progression within the company”

106. Mr Frater, the appeal manager, says that after some initial investigation. The business is now treating this complaint is potentially suspicious and they are investigating further complaint so would not have disclosure that further investigation. There is quite a surprising degree of detail given by someone who is alleged to have been customer in the store for a short period of time.
107. The Claimant says that it is now months further down the line, so he is on suspicious of that absence of disclosure.

Respondent's conduct and disclosure

108. The Claimant is critical of the Respondent's conduct in the tribunal proceedings. He said it has been very difficult to get documents out of them, at least initially, and that the Respondent has not complied with employment tribunal orders.
109. I have noted what he said about that. The focus of this hearing has been in the complaint of unfair dismissal. I mentioned to the Claimant that poor conduct or delay might be relevant to an application for costs. That is not something we are dealing with in this two-day hearing.

LAW

Dismissal for conduct

110. The law on dismissal for misconduct is set out in a three stage test in the well-known case of **Burchell v BHS** [1978] ICR 303, namely (i) did the respondent believe the claimant to be guilty of misconduct; (ii) at the time of dismissal did the respondent have reasonable grounds for believing the claimant was guilty of that misconduct and (iii) at the time that the respondent formed that belief on those grounds, did the respondent carry out as much investigation as was reasonable in the circumstances?
111. As to the sanction of dismissal, this was considered by the Court of Appeal in **British Leyland (UK) Ltd v Swift** [1981] IRLR 91, CA, where Lord Denning MR stated: ‘The correct test is: Was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair. But if a reasonable employer might reasonably have dismissed him, then the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness, within which one employer might reasonably take one view: whereas another quite reasonably takes a different view.
112. In **Iceland v Jones** [1983] ICR 17 the EAT confirmed that (1) the starting point should always be the words of section 98(4) themselves; (2) in applying the section an industrial tribunal must consider the reasonableness of the employer's conduct, not simply whether the Tribunal considers the dismissal to

be fair; (3) in judging the reasonableness of the employer's conduct the Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer; (4) in many (though not all) cases there is a band of reasonable responses to the employee conduct within which one employer might reasonably take one view, another quite reasonably take another, it would only be if the decision to dismiss is outside of this band that it would be unfair.

113. There is a limit to the amount of investigation reasonably required where the misconduct is admitted — **Royal Society for the Protection of Birds v Croucher** 1984 ICR 604, EAT.
114. In **Sainsbury's v Hitt** [2002] EWCA Civ 158 the Court of Appeal held that band of reasonable responses test applies to the procedure followed by an employer as well as the substantive decision to dismiss.

Burden of proof

115. The employer must show the reason for dismissal and that it is a potentially fair reason. In this case is conduct.
116. After that there is a neutral burden as to fairness that is neutral between the parties.
117. The there are just two points of law that I'm just going to refer to before account in the conclusions which are these the burden of proof and

Private communications - law

118. The Respondent has in skeleton argument draw my attention to a decision of the Employment Appeal Tribunal in **Garamukanwa v Solent NHS Trust** UKEAT/0245/15/DA [2016] IRLR 476, which in summary, says that an employer may rely on private communications, including personal emails and messages where they are relevant to workplace relationships for alleged misconduct, even if this communications are on private mobile phones. There must be a legitimate reason to investigate. There was no reasonable expectation of privacy in that case in relation to (i) material provided to the employer by G himself and (ii) additionally to photographs on G's mobile phone which the Police had provided to the employer in the context of an investigation about alleged malicious emails.

Conclusions

Private communications in the present case

119. In the present case I accept that the WhatsApp message had been put into the Respondent's way by SS's husband to support his complaint about the Claimant's inappropriate relationship with his wife.
120. In forwarding that message and his distressing concerns raised with Fiona Charles, combined with the concerns about the Claimant and SS's conduct in

the store raised the week previously, it was difficult for the Respondent to ignore and it was part of legitimate investigation by an employer.

1.1 what was the reason or principal reason for dismissal?

121. The Respondent says the reasons for dismissal was conduct.
122. The tribunal will need to decide whether the Respondent genuinely believed that the Claimant had committed misconduct. Leaving to one side, whether it was gross misconduct, I find that the Respondent through the chair of the disciplinary Ms Barisaite and Dan Slater, who was the VP of Retail, believed that the Claimant had committed misconduct and the matters set out in the dismissal letter. Although I did not receive evidence separately from Mr Slater, the basis for the decision to dismiss was the content of the investigation known to Ms Barisaite.

1.2. If the reason was misconduct did the Respondent act reasonably in all the circumstances in treating that sufficient reason to dismiss the Claimant?

1.2.1 whether they were reasonable grounds for that belief

123. The evidence I will just summarise briefly:
- 123.1. there is the explicit WhatsApp message which is at page 157;
- 123.2. and there's the fact that that was forwarded by SS's husband to Ms Church to make contact her;
- 123.3. three witness statements that were critical of the Claimant and SS. Graham Simpkins; Okwu Duribe (at stage the Respondent did not have the evidence I now have which raises a question about him) and then Ian Donato. That last statement was very mild in its criticism;
- 123.4. there is the summary of the CCTV footage at page 183 by Mr Marzecki.
- 123.5. there is the witness statement of Martina Ovcharova in which she gave an account of talking to the Claimant.
124. This evidence did provide reasonable grounds for believing misconduct.

1.2.2 at the time that the belief was formed the Respondent had carried a reasonable investigation?

125. I have considered whether there are some criticisms that should be made of the investigation. It would have been better if the Claimant had actually been able to see the CCTV footage of himself on 14 November 2024 in the Regent St store. This would be so that he was able to comment on it. He did however receive a summary of what the footage shows. What the footage showed does not seem to be in dispute. It was not said that the Claimant was trying to talk about his case or speak to interviewees in the investigation, it was simply that he was there, which was not in dispute. He was there for 20 minutes or so,

talked to a few people and went to the toilet. On balance therefore, standing back, I did not find that failing to allow the Claimant to watch footage made the process leading to the decision to dismiss unfair.

126. As to the CCTV footage of the Claimant's ONC in St Paul's, the Respondent's investigation found that footage was not available. It would have been perhaps better had we had documentary evidence of the licensing problem alleged. I do not however have any evidence that the footage was available and what we are told is it simply, that there was a problem the CCTV licence at that branch and that is why it was not there. This is a "wrinkle", a minor but legitimate criticism that might be made of the process. Again however, I did not find that it made the whole process unfair.

Whether the Respondent had otherwise acted in a procedurally fair manner

127. The Tribunal has been taken through the through the whole process. I have dealt with two minor criticisms above and the criticism of Ms Barisaite, below.
128. The Claimant was given multiple opportunities to comment on the evidence that has been gathered.

1.3 whether the dismissals in the range of reasonable responses

129. The Claimant argues the following matters make is dismissal unfair and the first is the HRBP Patricia Barisaite who was the Chair of Disciplinary in the case had a grudge against him arising from his complaint about her in relation to immigration visa. I noted that the Claimant also included some of the history about recruitment exercise. His case was that there was some friction between them such as to make it unfair that she should decide this case.
130. The Claimant was involved in a Visa application process, which became delayed. I did not find however that that this was a case where there was a grudge which has made the whole process unfair. The communications on the topic were polite and I accepted Ms Barisaite's evidence that the causes of delay were not due to her and she did not feel under pressure in relation to the application.
131. In any event, it seems from the outcome of the disciplinary in the case of SS, that Mr Slater would not simply "rubber stamp" the recommendations of Ms Barisaite.
132. The next point is insufficient evidence of gross misconduct. There is evidence of misconduct which I have summarised above.

1.3.3 the Respondent failed to properly investigate relevant CCTV in communicating the Claimant any such investigation.

133. This is dealt with above. There is a criticism that can be made that the footage was not available and there was not a paper trail produced to that effect.

1.3.4 sanction inconsistent with earlier disciplinary sanctions for other employees

134. I have considered whether these were similar cases.
135. The case law makes it clear that we need to look to see whether there are truly parallel cases, i.e. very similar circumstances with different outcomes.
136. Having looked at the comparator's cases mentioned by the Claimant and there are not any cases which have the element of both the inappropriate conduct and the breach of suspension. I understand why the Claimant says he feels that he's been treated harshly, but it does not seem that there is an obvious case that is in very similar circumstances to his own. For that reason, this is not a case where the sanction is unfair because of inconsistency.

1.4 did the Respondent act reasonably in all circumstances in treating this as a sufficient reason to dismiss the Claimant?

137. The Claimant argues the sanction of dismissal was disproportionately harsh.
138. I considered the policy documents. There is the suspension policy 73, which has some wording relating to suspension to essentially lies together with the content of the suspension letter what's been important is to look at page 75 and 76. This is part of the employee handbook. The parts that have been emphasised here are just looking at the bullets under the heading gross misconduct on page 75:
- 138.1. discriminating against or harassing a customer, another employee
- 138.2. Violation of company policy or procedure
- 138.3. Or any other matter which in reasonable commonsense is gross misconduct.
139. I have reminded myself that I should not substitute my view on whether or not I would dismiss.
140. An employer may fairly dismiss an employee for an accumulation of several matters, each one of which individually is less than gross misconduct.
141. Some might think that the dismissal was a little harsh in these circumstances. The legal test however is whether the sanction of dismissal was within the range of reasonable responses open to an employer acting reasonably.
142. Based on the investigations carried out before the decision was taken to dismiss the Claimant it would be overstating it to suggest the Claimant had harassed Ms Singha. His lengthy and explicit message to her was however unprofessional and inappropriate. It put her in awkward position as his manager and led to the situation in which the Claimant's husband approached Ms Church which brought an apparently private communication within the purview of the employment relationship. Given his level of concern and the fact that concerns about the Claimant's relationship with SS had been raised by

other employees only a week earlier it was difficult for the employer to ignore. This certainly merited some disciplinary sanction.

- 143. The inappropriate conduct of the message and the flirtation in the office have to be seen together with the breach of the suspension policy. The Claimant was given instructions in relation to his suspension. Although he disputes that there was a breach of the suspension policy, the Respondent was entitled to find that he was in breach of that policy. There was clear (undisputed) evidence that he was in store for 20-22 minutes and talking to employees.
- 144. He was talking to people and those with they were on the face of it, breaches or least evidence of breaches that suspension policy.
- 145. Not all employers would have dismissed. Some might perhaps have given a final written warning.
- 146. Some employers acting reasonably might, however have dismissed. For that reason I find that the sanction of dismissal does fall within the range of responses. Given this I do not find that this was unfair dismissal.
- 147. The claim of unfair dismissal does not succeed.

Employment Judge Adkin

Date 27 January 2026

SENT TO THE PARTIES ON

13 February 2026

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FOR THE TRIBUNAL OFFICE