



EMPLOYMENT TRIBUNALS

Claimant: Mr. D. Suleiman
Respondent: Bamboo Connect Limited

Heard at: Watford
On: 21, 22, 23, 24 and 27 October 2025,
16 January 2026 (in chambers)
23 January 2026

Before: Employment Judge S. Matthews
Mr. D. Kendall
Mr. M. Bhatti MBE

Representation

Claimant: Ms. G Cullen (counsel)
Respondent: Mr. B. Frew (counsel)

JUDGMENT having been sent to the parties on 4 February 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

1. The claimant was employed by the respondent from 1 September 2009 to 31 December 2024 initially as a Sales and Purchasing Manager and latterly in the role of Insurance Fulfillment Manager. The respondent is a company that provides digital device support to insurers, banks, retailers, and telecoms operators.
2. The claimant brings claims of unfair dismissal and unauthorised deductions from wages. The respondent denies that it dismissed the claimant and asserts that his employment was terminated by mutual agreement or by his resignation. The respondent claims it was entitled to deduct sums from the claimant's final salary payment due to purported losses caused by the claimant.
3. The hearing took place over five days in October 2025 before a full tribunal panel. The panel met in chambers on 16 January 2026 for deliberations and the hearing has been listed for today to give judgment and to deal with remedy if appropriate.

4. At the beginning of the hearing, the tribunal considered the claimant's solicitors letter dated 6 January 2025 which set out:
 - 4.1 An application to amend the claim form to include unauthorised deductions from salary. That amendment was agreed by the respondent, and
 - 4.2 If the tribunal considered it necessary, an application to amend the claim form to plead in the alternative that the termination date was 31 December 2024. We decided that the claim form already included that alternative at paragraph 18, but we indicated in addition that if we were wrong about that we would allow the amendment in any event. Reasons for that decision was given orally at the time and are not repeated here. If either party requires written reasons for those decisions, they are to request them within 14 days of receiving this judgment.
5. At the outset of the hearing, the tribunal informed the parties that we would firstly hear evidence on liability, Polkey, and contributory fault, and, if the claimant was successful in his claim, we would consider remedy in the second part of the hearing.
6. There were discussions about disclosure at the beginning of the hearing. Counsel for the claimant and the respondent reached an agreement that an email that was arguably without prejudice should not be placed in the bundle and, accordingly, redactions were made from paragraphs 2.7 of the particulars of claim and the claimant's witness statement paragraphs 23 and 91.
7. In addition, at the beginning of the hearing, the claimant requested metadata relating to the notes at [190] [191] and [198] in the bundle. It was established that they were created on 3 September 2024.

The evidence

8. The tribunal were provided with a bundle of 500 pages.
9. The tribunal heard witness evidence on behalf of the claimant from the claimant and on behalf of the respondent from:
 - Juney Mistiki (Managing Director of the Respondent)
 - Han Aziz (Head of HR)
 - Michelle Thomas (HR Assistant)
 - Christopher Cully (external corporate investigator)
 - Shaun Kidd (Head of Integrated Services), and
 - Claire Seymour (external HR service provider)

10. These individuals provided written statements in advance, and the tribunal took time to read them. Each witness was asked questions about the evidence contained in their statements.
11. References to pages in the bundle below are set out in square brackets [X]. References to paragraphs in the witness statements consist of the witness's initials and number of the paragraph (AB/YZ), except for the claimant who is referred to as C (C/YZ).

The issues

12. The issues that the tribunal were to decide were agreed and finalised at the beginning of the hearing:
 1. Unfair dismissal
 - 1.1 Was the claimant dismissed and if so on what date?
 - 1.2 If the claimant was dismissed, what was the reason or principal reason for dismissal?
 - 1.3 Was it a potentially fair reason?
 - 1.4 Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?
 - 1.5 Did the Respondent adopt a fair procedure prior to dismissal?
 - 1.6 Is there a chance that the Claimant would have been dismissed anyway, had a fair procedure been followed or for some other reason? If so, should compensation be reduced and for how much?
 - 1.7 Did the ACAS code on disciplinary and grievance procedures apply and did C or R unreasonably fail to comply with it, and if so is it equitable to increase or decrease by up to 25%?
 - 1.8 Contributory conduct – did the Claimant cause or contribute to his dismissal by unreasonable conduct, and if so would it be just and equitable to reduce the award?
 2. Unauthorised deductions
 - 2.1 Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

Findings of fact

13. This Judgment does not seek to address every point about which the parties have disagreed. It only deals with the points which are relevant to the issues that the tribunal must consider in order to decide if the claim succeeds or fails. If we have not mentioned a particular point it does not mean that we have overlooked

it, it is simply because it is not relevant to the issues.

Background

14. The claimant began working for the respondent on 1 September 2009. He was on the Senior Leadership Team.
15. Juney Mistiki, Managing Director, describes the company and the people within it as “very close knit”. The Senior Leadership Team consisted of various family members. For example, Han Aziz, Head of HR, is first cousin to Juney Mistiki and the IT Manager is the brother of Juney Mistiki. Juney Mistiki described the claimant as a very good friend of his outside work, and their families grew up together (JM/4).
16. Juney Mistiki referred frequently in his evidence to the company’s informal way of doing things. The company had grown successfully, and the private equity firm Rubicon invested in 2021, taking a 62% share.
17. The claimant had a clear disciplinary record. In his witness statement, Juney Mistiki refers to the claimant “effectively” receiving a verbal warning in January 2024 when it was considered that he was not following processes (JM/13). A file note dated 18 January 2024 refers to an incident where it is alleged the claimant did not follow processes and records that it will be discussed at his appraisal which is due to take place a few days later [176]. No investigation or formal process was followed, and Juney Mistiki conceded in evidence that there had been no verbal warning.
18. There is a record of the appraisal on 22 January 2024 [177-180]. The tribunal found that this was poorly written and vague. It stated that the claimant worked in a silo and needed to improve communication. Juney Mistiki asserts the claimant worked in a silo, did not communicate well and did not train the new Purchasing Manager, Kamilla, to take charge of purchasing (JM/13 to 17). Despite these comments by Juney Mistiki the tribunal found the claimant’s performance was never meaningfully or formally challenged while he worked for the respondent.

14 June 2024 meeting

19. On 14 June 2024 a meeting took place between the claimant, Juney Mistiki, Han Aziz (Head of HR) and Michelle Thomas (HR Assistant). Juney Mistiki says that the meeting arose from a complaint that the claimant had made the previous day about Kamilla not being qualified for the job, to which Juney Mistiki replied that the claimant had not trained her properly over the last six months (JM/18).
20. Juney Mistiki’s version of events is that on that day he was chatting to Han Aziz, and her assistant, Michelle Thomas, who had then been at the company for six months. It was a Friday afternoon, and they were discussing the claimant’s ongoing negativity and attitude [190]. He says that as a result of that, an impromptu meeting occurred with the claimant.
21. There are differing accounts of what was said at the meeting. What is agreed is

that after Juney Mistiki left the meeting, the claimant asked for a note of what had been discussed. Han Aziz wrote a note on her notepad, tore it out and gave it to the claimant (HA/17).

22. The note [192] stated:

“Passion for the business still alive!

6 months pay + keep your share (OPTION 1)

monthly

(OPTION 2) 2 years pay keep you on salary. Paid monthly no share.

Experience, knowledge utilise where you are able to showcase your skillset.

Think about options and exit gracefully, return on Wednesday.”

23. The claimant was told at the meeting that his IT would be revoked immediately and to log off and go home (C/7). Immediately after the meeting Han Aziz instructed the IT manager (Juney Mistiki's brother) to temporarily suspend his external access to all the respondent's systems, "since one of his options was to leave...to not put the company at risk" (HA/23).
24. Shortly after the meeting, at 5.12 pm, Han Aziz messaged the claimant and instructed him to tell his team that he was taking annual leave until Wednesday so that he was "allowed some space for reflection on the conversation that was just had".
25. The next meeting took place in a pub and the claimant never returned to the respondent's premises.
26. The claimant's version of events is that, at the meeting on 14 June 2024, he was told that he did not have the skillset for the next phase of the business. It was clear to him that he was being dismissed. Juney Mistiki had a piece of paper in front of him that he referred to during the meeting.
27. All three of the respondent witnesses deny that a dismissal took place. They maintain it was an impromptu meeting in which there was a long discussion about whether the claimant was happy in the business and the claimant decided to think about his future with the respondent.
28. Juney Mistiki denied that he said words to the effect that the claimant's skillset was not required. In oral evidence he said that it was not terminology he would use. Han Aziz denied that anyone had said that the claimant's skills were no longer required or anything to that effect (HA/19).
29. Juney Mistiki denied that he was referring to a piece of paper in the meeting. Michelle Thomas said that she does not remember whether he had a piece of paper or not.
30. No notes were taken during the meeting itself. The respondent relies on a note

which is not contemporaneous [190]. The metadata shows that it was prepared on 3 September 2024. Michelle Thomas admitted that the note was written in September 2024, after the ACAS certificate was received in late August 2024.

31. It states that Juney Mistiki casually asked the claimant how he was feeling, and as they talked, the claimant complained about recent changes. Juney Mistiki outlined options should the claimant decide to explore different career paths. Juney Mistiki then left the meeting. Han Aziz jotted down some possibilities on the corner of her notebook and handed them to the claimant.
32. The tribunal found that Juney Mistiki told the claimant that his skillset was not required. The tribunal decided this because we found that the claimant has been very consistent in his assertion that was the wording that was used, from when he first complained about his treatment. A letter from the claimant's solicitor dated 18 July 2024 [213], just over one month after the meeting records what the claimant told his solicitors:

“He was not provided with a reason for this other than that his skills were not required in the Company's future”.

33. Moreover, the tribunal found the claimant credible with no tendency to exaggerate evidence. He was prepared to accept that the words “dismissal” or “termination” were not used, even though it would have bolstered his case to say that they were.
34. The tribunal found it probable that the respondent's witnesses collaborated to put forward what they considered the most favourable version of events. Michelle Thomas admitted that she and Han Aziz wrote their witness statements in the same room at the same time. Their record of the meeting [190] (paragraph 30 above) was only put together after the claimant contacted ACAS and Michelle Thomas referred in evidence to it being prepared in collaboration and reflecting their collective thoughts.
35. The tribunal did not accept Juney Mistiki's assertion that “skillset” was terminology he would not use. He uses the term in his witness statement when he talks about a potential new recruit (JM/41).
36. The note handed to the claimant after the meeting (paragraph 22 above) only gives two options. Both were to leave. There was no third option in the note for the claimant to remain employed. That position was subsequently and consistently followed up in correspondence. Nothing was ever put in writing by the respondent to suggest that the claimant had the option of remaining employed.
37. At the meeting, the respondent was very specific about what would happen regarding his shares. An offer concerning his shares is a significant offer to make without a discussion with majority shareholders, and the tribunal finds this was not an impromptu meeting, it was premeditated. The tribunal accepted the claimant's evidence that Juney Mistiki was referring to a piece of paper during the meeting.

38. The tribunal found that Juney Mistiki was likely to have discussed the plan with Rubicon, the majority shareholders, before knowing what offer he could potentially make regarding shares. He said in evidence that he did not know what was happening about the claimant's shares now and that issue was "with Rubicon". He conceded that there is a "bad leavers provision" in the shareholders' agreement.
39. The tribunal also concluded that the meeting was premeditated because, if Juney Mitiski had only wanted to talk about the claimant's negative attitude, he could have done it in a one-to-one meeting as he was the claimant's line manager. Conducting the meeting on a Friday afternoon with two HR representatives present, moving so swiftly on to discussing share options, immediately after the meeting revoking the claimant's IT and telling the claimant to inform his team he was on annual leave and not to return to the office is not consistent with a meeting that was impromptu.
40. The tribunal did not find it credible that, after many years' service, the claimant would discuss leaving the business at a meeting on a Friday afternoon that he had not called, with no job to go to, in a company which he had shares in, and where he asserted, as recorded in the note made at the end of the meeting [192], that his passion for the business was still alive.
41. The tribunal found that it was reasonable for the claimant to understand that words to the effect of "your skillset is no longer required" were equivalent to dismissal. We find that because of the informal way the respondent business operates; there are many directors and family ties. The claimant was in a senior role; they are words that are likely to be used in such a context rather than words such as "termination" or "dismissal" which may be used for a more junior employee or where an employer has a practice of using formal procedures. A reasonable employee in the circumstances the claimant was in would understand the words to mean that he was dismissed. The events after the meeting also communicated to the claimant that he was being dismissed; his IT access was stopped, he was told to tell his team he was taking annual leave, and the subsequent meeting was held off site.
42. The tribunal therefore finds that the respondent terminated the claimant's employment on 14 June 2024. No termination date was communicated at the meeting. There followed a pause until the following Wednesday.
43. The contract provided for six months' notice and, as set out below, the respondent subsequently imposed a termination date of 31 December 2024, which was less than six months' notice. It also imposed garden leave, although there was no garden leave clause in the contract.

19 June 2024 meeting

44. Han Aziz sent a What's App message to the claimant inviting him to a meeting offsite, in a pub, on the following Wednesday, 19 June 2024 [193-194]. The claimant was not invited to be accompanied. The message stated:

“Hi Den,

I can understand you would have found our conversation difficult. I completely understand that clarity is essential when discussing these important matters. Can we meet on Wednesday to discuss the options again along with any relevant clauses or terms for your consideration.

I would suggest we take this discussion offsite to avoid us being disturbed and not at the office.

Your understanding and comfort with the information provided are of utmost importance to us. Can you meet us to discuss on Wednesday at 12.30pm at The Crown Pub, Old Nazeing Road, Broxbourne EN10 6QT.

Best regards

Han”

45. The tribunal finds that the tone of the WhatsApp message demonstrates the respondent had already given notice of termination of the claimant's employment. There is no suggestion of a discussion with the claimant to explore how he could remain in employment.
46. The respondent's note of this meeting [198] is not contemporaneous, and, as with the note of the meeting on 14 June 2024, was created on 3 September 2024. It states the claimant informed Han Aziz and Michelle Thomas that after reflecting on the conversation on 14 June he had decided he did not wish to return to the office and, although this came as a surprise to them, “it was mutually agreed that the most respectful and appropriate course would be for Dennis to serve his notice period on garden leave as he had expressed a clear decision not to return to the office”.
47. Michelle Thomas and Han Aziz both gave evidence that they did not think that they needed to take notes at this meeting. That is not a credible position for HR professionals with the experience and qualifications of Han Aziz and Michelle Thomas. They would or should know that in a situation where there is discussion about employment being terminated (whether by an employee or employer) it is incumbent on HR to take notes.
48. The respondent asserts that the conversation that was had at that meeting amounted to a resignation and/or that a mutual agreement was reached to terminate the claimant's employment. The claimant strongly denies that was the case.
49. The tribunal notes that even the non-contemporaneous note which the respondent relies [198] does not describe the meeting in those terms. It records that the claimant had decided he did not wish to return to the office. A discussion about whether he wanted to go back to the office does not alter the position that he was dismissed on the previous Friday. Whether he should work his notice had not been finalised. The reality was that he could not work at that time because

his IT access had been revoked. And because his employment had, as he clearly saw it, been terminated, he had no expectation of going back.

50. The tribunal therefore accepts the claimant's version of what happened at the meeting. The only two options were the ones that he had previously been given on 14 June 2024. There was no option to stay. The tribunal finds that it was the claimant's reasonable understanding that he had been dismissed by then, and he was seeking clarity of the terms of the offer and any restrictive covenants so he could take legal advice.
51. On 3 July 2024 the respondent refers to the decision to end the claimant's employment being mutually agreed on 14 June 2024 [204 to 207]:

“Following our recent conversation on 14 June 2024, I am writing to confirm that we have mutually agreed to end your employment.

Your final date of employment with our organisation will be 31 December 2024. However, instead of you working out your notice period, we have agreed you are to be on garden leave from 20 June 2024.”

52. The tribunal note the reference to the conversation on 14 June 2024, not the later date of 19 June 2024, when they now say the agreement was reached.
53. The claimant replied to the letter denying that a mutual agreement had been reached

‘Just for clarification, I have not yet agreed either option and will respond once I have a better understanding of the legal repercussions.’

54. On 18 July 2024, the claimant's solicitors wrote to the respondent setting out the claimant's version of events on 14 and 19 June 2024. In summary, he was advised by Juney Mistiki that his employment was being terminated with notice, that he was not provided with a reason other than his skills were not required in the future, and he was provided with two options to leave the business. He was informed his access to company systems would be removed and that he would have a few days to reflect and discuss further on Wednesday 19 June 2024. The options on offer and other terms and conditions were put to him again on 19 June and he was informed that to protect the reputation of both parties it was best to agree on a mutual parting of ways.

55. They continue regarding the suggestion that termination was by mutual consent:

“This was followed up by an open letter purporting to advise that our client's employment had been terminated by mutual consent. **This is not our client's understanding of the situation.** Our client is, and has always been, dedicated to his role and the success of the Company. It is our client's position that the decision to dismiss him was a surprise; he had not been given any warning...”

56. Their version of events was not challenged by the respondent at the time. In internal correspondence on the same day Han Aziz refers to that letter in an email to senior managers and does not deny the version of events or indicate she does not agree with it. She says that the claimant obviously feels unfairly treated [216]. Her reply to the claimant's solicitors simply acknowledges receipt

[218].

57. There had been a complete failure to follow the ACAS Code on Disciplinary and Grievance Procedures. The respondent was not clear in evidence which disciplinary policy they would have applied. One policy in the bundle [139 to 144] refers to statutory procedures which have been out of date since 2009. It was created in 2009 and last updated in January 2016. Another policy disclosed by the respondent [206] refers to the claimant by name suggesting it was put together during the disciplinary process.
58. The tribunal concluded that the respondent did not know what policies and procedures they would rely on. That is reflective of Juney Mistiki's evidence that the respondent had an informal way of doing things.

Subsequent Allegations of Misconduct

59. On 25 July 2024, the respondent's senior management had a meeting with a potential new employee, Lee Poulastides [221]. Lee Poulastides made allegations against the claimant which were recorded in a note which was created six days later. The note states:

"She felt as Denis had decided to leave the company, she should morally share this information. She said that when she worked at Rapid Source, Denis was doing under hand dealings with Paul Watkins the owner for money. Juney left at this point as he had another meeting to go to. Leigh continue to disclose further details on how initially the money was paid in cash and then when it started to involve large amounts of money, Denis and his wife would raise invoices. This was happening back in 2013 and continued to 2015."

60. Lee Poulastides started working for the respondent shortly afterwards as Global Account Manager [247]. Her role was to oversee purchasing and assist the sales team. That had previously been part of the claimant's role. She has now left the respondent company and did not give evidence in these proceedings.
61. An investigation into the allegations was set up. The investigation was carried out by Christopher Cully who had been introduced to the respondent through their HR company and Rubicon. Christopher Cully emailed Juney Mistiki and said, "this matter should be managed *for the best interests of Bamboo* financially and reputationally" and he was keen to be appointed as investigator "to provide a *satisfactory result for Bamboo*" [233-234] (tribunal emphasis).
62. The tribunal finds that he was not independent because of the way he was appointed and his attitude to the investigation. He demonstrated bias in favour of the respondent because he said he wanted to resolve the matter in the best interests of Bamboo. He did not have any HR qualifications, was not aware of the ACAS procedures, and was not a forensic accountant.
63. On 4 November 2024, the claimant was sent an allegation of misconduct letter and suspended [241-246]. He was on garden leave at that time. The allegations were that during the period 2013 to 2015 he had acted in collaboration with the owner of a supplier company to purchase stock at an inflated price and retain excess funds.

64. Mr. Cully carried out various investigation interviews with existing staff of the respondent. The owner of the supplier company was not approached or interviewed. The claimant's solicitors raised many concerns about the fairness of the investigation [254] [303-305].
65. The claimant was invited to an investigation meeting which took place on 20 November 2024 [258]. At that meeting, Michelle Thomas took notes. Christopher Cully decided that her note taking slowed the whole process down and gave the claimant too long to think about things (CC/23) (again demonstrating bias). He decided he wanted another meeting which was to be recorded [306] [330]. The claimant cooperated fully with the investigation.
66. Following the investigation, the claimant was invited to a disciplinary hearing on 19 December 2024 [332]. The allegations were that he had accepted bribes between 2012 and 2015 from the supplier company.
67. That meeting was postponed to 7 January 2025 to give the claimant an opportunity to prepare and because of the proximity to Christmas.
68. On 24 December 2024, Han Aziz sent the claimant an email concerning the end of his employment, stating that a deduction of £2604.18 would be made from his final salary regarding mobile phones which the respondent said had been sold to his contacts at a loss [339-340]. That allegation had not been put to the claimant before. The sales date back to 2022.
69. Han Aziz also referred to a deduction for handsets he had purchased in 2024 of £790.86, which is not in dispute. The claimant accepts that it is normal procedure for those purchases to be deducted at the end of the year.
70. In a further email on 31 December 2024 [341] the respondent said that they had uncovered "additional unauthorised transactions" which they had not quantified but which surpassed his final salary. The upshot was that the claimant was not paid for the month of December at all.
71. The respondent relies on clause 6.3 in the claimant's contract of employment, "The company may deduct from the salary, or any other sums owed to you, any money owed by the Company by you" [70].
72. On 3 January 2025, the respondent informed the claimant of a further allegation [345]:

"It is alleged that between 2022 and 2024 you sold phones to your contacts at reduced rates and also put through items for yourself at reduced rates. These transactions were unauthorised and have resulted in a total loss of £14,969.33."

That allegation was never separately investigated.

73. A disciplinary hearing took place on 15 January 2024 [384-433] before Shaun Kidd, Head of Integrated Services, and Claire Seymour from an external HR company. The claimant was accompanied by his wife. On 20 February 2025, the outcome letter stated that the claimant would have been dismissed for gross misconduct if he had still been employed [434-443]. The claimant was not

allowed an appeal because he was no longer employed by the respondent.

74. The tribunal found that the claimant was dismissed on 14 June 2024. The subsequent disciplinary procedures were not related to the reason for that dismissal. The tribunal found that the outcome was pre-determined, and the respondent acted outside the band of reasonable responses open to an employer in the circumstances. The conclusion of the respondent was not based on a reasonable investigation by either Christopher Cully or Shaun Kidd. For the reasons we set out above Christopher Cully had decided to find in favour of the respondent from the time he was appointed. Shaun Kidd conceded that there was no direct evidence against the claimant. He based his decision on his view that the claimant was being 'evasive.' He was "disappointed [the claimant] did not make a plea of innocence". His explanation for his findings does not demonstrate that he was open-minded and independent.
75. The tribunal found that the respondent did not establish that the claimant owed them money in respect of the matters set out in paragraphs 68,70 and 72 above.
76. The allegation that phones were sold to friends and family at a loss between 2022 and 2024 was a bare assertion that was not supported by documentary evidence. The respondent has produced an excel spreadsheet which gives figures for "net price" and "price list" [145 – 148]. No external price list was produced. There is no evidence or information about how the excel spreadsheet was populated. Shaun Kidd could not give evidence when questioned other than to say the spreadsheet was done "by Abby in Finance or someone else in Finance".
77. The alleged policy about sales to friends and family was not produced. The claimant was unaware of one. Shaun Kidd found an email dated 8 November 2021 [441] after the meeting but did not give the claimant an opportunity to comment on it.
78. The claimant was owed 4 days holiday which is agreed at £1211.52.

The law

Dismissal

79. Section 95 (1) (a) Employment Rights Act (ERA) 1996 defines dismissal as termination of the employment contract by the employer, with or without notice. The burden of proof is on the employee to show that s/he has been dismissed, and the standard of proof is balance of probabilities.
80. The test as to whether ambiguous words amount to a dismissal or a resignation is an objective one. In Chapman v Letehby & Christopher Ltd [1981] IRLR 440, the EAT said that consideration of what amounts to a dismissal "should not be a technical one but should reflect what an ordinary, reasonable employee... would understand by the words used."
81. Any ambiguity is likely to be construed against the person seeking to rely on it, Graham Group plc v Garratt EAT 161/97.

82. When considering all the circumstances, tribunals will look at events both preceding and subsequent to the incident in question and take account of the nature of the workplace in which the misunderstanding arose (Futty v D and D Brekkes Ltd 1974 IRLR 130 ET).
83. In Morton Sundour Fabrics Ltd v Shaw 1966 2 KIR 1, Div Ct, Mr Justice Widgery stated that an employer could not dismiss an employee by saying 'I intend to dispense with your services at some time in the coming months'. Notice to terminate a contract of employment must either state the date of termination or contain material from which the date can be positively ascertained.
84. In Mitie Security (London) Ltd v Ibrahim UKEAT/0067/10/ZT it was held there had been no dismissal where the Respondent initiated a four week consultation period and gave a warning to the Claimant that if no alternative employment was found for him in the next four weeks the Respondent might then be in the position of having to give him notice of termination.

Unfair dismissal

85. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Section 98 of the 1996 Act deals with the fairness of dismissals.
86. Section 98 Employment Rights Act 1996 states:

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

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

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

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant,

.....

(3) In subsection (2)(a)—

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

87. The employer must show that it had a potentially fair reason for the dismissal within section 98(2). The employer has to show the reason for dismissal and if there is more than one reason the employer must prove the principal reason. As set out in Abernethy v Mott, Hay & Anderson [1974] ICR 323:

“A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee.”

88. If the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.
89. Section 98(4) deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.
90. In misconduct dismissals, there is well-established guidance for Tribunals on fairness within section 98(4) in the decisions in British Home Stores v Burchell 1980 ICR 303. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer (Iceland Frozen Foods Limited v Jones 1982 IRLR 439, Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23, and London Ambulance Service NHS Trust v Small 2009 IRLR 563).
91. The Tribunal should also refer to the ACAS code of practice on Discipline and Grievance Procedures 2015 and take account of the whole process including any appeal (Taylor v OCS Group Ltd 2006 ICR 1602, CA).
92. The ACAS code of practice provides (introduction, paragraph 1):
- “Disciplinary situations include misconduct and/ or poor performance. If employers have a separate capability procedure they may prefer to address performance issues under this procedure. If so, however, the basic principles of fairness set out in this Code should still be followed, albeit that they may need to be adapted.”
93. In a case where the tribunal decides that there has been an unfair procedure the employer is unable to argue that even if it had followed a fair procedure, it still would have dismissed the employee. This was established by the House of Lords

in Polkey v AE Dayton Services Ltd 1988 ICR 142, HL. However, the issue of whether a failure to follow a proper procedure made any difference to the decision to dismiss could be taken into account when calculating the compensatory award at the remedies stage. A tribunal may reduce such an award proportionately to the chance that the employee would have been fairly dismissed in any event had a proper procedure been complied with.

94. In O'Donoghue v Redcar and Cleveland Borough Council 2001 IRLR 615, CA the Court of Appeal rejected the employee's appeal against a finding that she would have been dismissed in any event as a result of her conduct, stating that:

“If the facts are such that an [employment] tribunal, while finding that an employee/applicant has been dismissed unfairly (whether substantively or procedurally), concludes that, but for the dismissal, the applicant would have been bound soon thereafter to be dismissed (fairly) by reason of some course of conduct or characteristic attitude which the employer reasonably regards as unacceptable but which the employee cannot or will not moderate, then it is just and equitable that compensation for the unfair dismissal should be awarded on that basis.”

95. Conduct contributing to dismissal is referred to at s. 123 (6) ERA 1996 which provides:

“Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.”

96. Evidence relating to whether an employee has ‘caused or contributed’ to his dismissal may not be the same as that relating to an assessment of what is ‘just and equitable’ to award the complainant having regard to the loss sustained in consequence of the unfair dismissal.

97. Redundancy is defined in s.139 ERA 1996. Subsection (1)(b) provides that an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to —

(b) “the fact that the requirements of that business —

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.”

Unauthorised Deductions

98. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction.

99. Section 13(3) provides that where the total amount of wages paid on any occasion by an employer is less than the total amount of the wages properly payable to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.
100. The question of what is properly payable requires interpretation of the relevant terms of the contract and a factual analysis of the claim.

Submissions

101. The tribunal received written and oral submissions from counsel for the respondent (Mr. Frew) and from counsel for the claimant (Miss Cullen) which we have incorporated by reference into the summary of facts and our conclusions.

Conclusions

Unfair Dismissal

102. The respondent denies the claimant was dismissed. Mr. Frew's submitted that he either resigned or the contract was terminated by mutual agreement. The respondent's case that the claimant resigned was not formally pleaded.
103. The tribunal found that the claimant was dismissed with notice on 14 June 2024. We reached that conclusion based on the words used on 14 June 2024, and the surrounding circumstances, in particular the events that occurred immediately after the meeting. We were satisfied that an ordinary reasonable employee would understand the words used to constitute dismissal taking into account the nature of the workplace and the claimant's seniority (paragraphs 32-42 above).
104. Following the claimant's dismissal taking place there was a delay of a few days before they met in a pub. Shortly thereafter, the respondent imposed garden leave and a termination date of 31 December 2024. We do not accept Mr. Frew's submissions that by failing to communicate the termination date on 14 June 2024 no dismissal took place on that date. Juney Mistiki's words that the claimant's skill set was no longer required was a sufficiently unequivocal statement to demonstrate the respondent's intention to terminate the contract.
105. Mr. Frew referred in submissions to cases which were predominantly redundancy situations and where specific dates for termination were not given. The tribunal did not find that reflected the circumstances on 14 June 2024. It was clear that the respondent intended to terminate the claimant's employment. The respondent was not saying that they would be terminating his employment at an unspecified future date. He was told not to return to the office, and his access to IT systems was revoked. The note written at the conclusion of the meeting made it clear that the claimant would be paid for a period of six months or two years depending on whether he kept his shares.
106. Having decided that the claimant was dismissed, it is necessary for the tribunal to find the reason or principal reason for the dismissal. Mr. Frew submitted that if the tribunal did find the claimant was dismissed, the tribunal should find on the

facts that the principal reason was redundancy or capability.

107. The tribunal did not find that the principal reason was redundancy because the respondent has not satisfied section 139 ERA 1996, namely that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was employed by the employer, had ceased or diminished or were expected to cease or diminish.
108. The tribunal decided that the reason the respondent dismissed the claimant was because of the beliefs of Juney Mistiki relating to the claimant's conduct. Five months prior to the meeting on 14 June 2024, the respondent had criticised the claimant in an appraisal for working in a silo and needing to improve communication. Juney Mistiki made the same criticisms in his statement and alleged he had not trained Kamilla properly (paragraph 18 above).
109. Mr. Mitiski used the words "skillset" in the meeting on 14 June. There had been no previous criticism of the claimant's skills or capability. Conduct is closely related to capability, and the respondent conflated the two reasons.
110. The tribunal find that it was not within the range of reasonable responses to dismiss the claimant for conduct. The respondent's belief was not based on an investigation into his conduct or performance; no investigation was carried out before 14 June 2024. No disciplinary or performance procedure was followed.
111. The ACAS Code should have been applied because the reason for dismissal in the respondent's belief was conduct. No procedure was followed. No investigation was carried out. The claimant was not notified in advance of the meeting on 14 June 2024 of the case against him, he was not given the right to be accompanied at any meeting, and he was not given a right of appeal. The only explanation given by Mr. Frew was that the respondent did not accept there was a dismissal. The tribunal has decided to award the maximum uplift of 25% to the compensatory award to reflect that the respondent made no attempt whatsoever to follow the code.
112. Even if the principal reason was capability (as Mr. Frew submitted), the ACAS Code provides that disciplinary situations include misconduct and/or poor performance, and the code should have been applied to the claimant.
113. In respect of the allegations put to the claimant after 14 June 2024 and the indication that he would have been dismissed for gross misconduct in any event the tribunal found that the investigation and process conducted were significantly flawed and any belief in the claimant's misconduct was unreasonable. The tribunal found there was a complete lack of independence, a pre-determined outcome and no right of appeal.
114. Accordingly, the tribunal do not find the claimant would have been fairly dismissed in any event and a Polkey reduction is not appropriate.
115. The tribunal do not find contributory conduct by the claimant because the allegations subsequent to his dismissal were not known to the respondent at the

time of his dismissal on 14 June 2024 and cannot have contributed to it.

Unauthorised Deductions

116. Deductions from wages can be made under a relevant provision of the worker's contract. It is for the employer to prove the underlying facts.
117. The claimant's contract provided for deductions of sums owed by the claimant to the respondent. We found that the respondent did not prove that the claimant owed them the sums in dispute (paragraphs 76 and 77 above). Accordingly, the respondent made an unauthorised deduction from the claimant's wages.
118. The amount in dispute has been agreed between the parties. The holiday claim is four days annual leave and the sum is £1,211.52. The further deduction which the tribunal found to be unauthorised is £7,090.32. That makes a total of £8,301.84.

Summary

119. The claimant's complaints of unfair dismissal and unauthorised deductions from wages accordingly succeed. The tribunal will proceed to a hearing to decide remedy relating to the complaint of unfair dismissal.

Approved by:

Employment Judge S Matthews

12 March 2026

JUDGMENT SENT TO THE PARTIES ON
13 March 2026

FOR THE TRIBUNAL OFFICE