

EMPLOYMENT TRIBUNALS

Claimant: Mr John Stephenson

Respondent: J & B Recycling Ltd

Heard at: Teesside

On: 19th; 20th and 21st January 2026

Before: Employment Judge Legard

Representation

Claimant: Mr Stephenson, Claimant's father and Mackenzie friend

Respondent: Ms Dalziel, Solicitor

JUDGMENT

The judgment of the Tribunal is as follows:

1. The complaint of unfair dismissal is not well founded and is dismissed.
2. The complaint of wrongful dismissal is not well founded and is dismissed.

REASONS

1. Issues

1.1 By a Claim Form dated 16th November 2024, the Claimant brought complaints alleging:

- Automatically unfair 'whistleblowing' dismissal contrary to s.103A ERA;
- Unlawful deductions;
- 'Ordinary' unfair dismissal;
- Wrongful dismissal;
- Breaches of the H & S at Work Act.

1.2 The Claimant notified ACAS on 5th September 2024 and the EC certificate was issued on 4th October 2024.

1.3 On 3rd June 2025 the unlawful deductions and H&S complaints were dismissed upon withdrawal and, on 3rd July 2025, the complaint under s.103A was also dismissed upon withdrawal. This left the unfair and wrongful dismissal complaints as 'live' complaints to be determined by the Tribunal.

1.4 At the outset of the hearing I confirmed with both Mr Stephenson and Ms Dalziel that the issues were those set out by EJ Lancaster following the Preliminary Hearing that took place on 21st March 2025 (save that, in light of the above withdrawal, any PIDA issues fell away). These were essentially as follows:

- i. What was the respondent's reason (or if more than one, its principal reason) for dismissing the claimant?
- ii. Was it a potentially fair reason (the Respondent relying upon misconduct)? Did the respondent genuinely believe the claimant had committed misconduct?
- iii. Did the respondent act reasonably in all the circumstances in treating [misconduct] as a sufficient reason to dismiss the claimant?
- iv. In particular:
 - Were there reasonable grounds for that belief?
 - At the time the belief was formed had the respondent carried out a reasonable investigation?
 - did the respondent follow a fair procedure, including, but not limited to, a fair appeals process?
 - Did the decision to dismiss fall within the range of reasonable responses open to the employer?
- v. Remedy:
 - If successful, what remedy, including compensatory award, is the claimant entitled to?
 - Was there a chance that the claimant would have been fairly dismissed in any event?
 - Did either party fail to comply with ACAS Code of Practice on Disciplinary and Grievance procedures and, if so, is it just and equitable to increase or reduce any award otherwise payable to the claimant?

1.5 No jurisdictional issues arose.

2. Evidence

2.1 On the Respondent's behalf, I heard evidence from Ms White, the dismissing officer and Ms Gilbertson who chaired the appeal. On the Claimant's behalf, I heard evidence from Mr Andrew Marriott, Maintenance Manager, and from the Claimant himself. All witnesses were thoroughly cross-examined.

2.2 The Claimant also sought to rely upon the contents of a statement by Ryan Lamb, a co-worker at the time of his dismissal. Mr Lamb was unable to attend the tribunal due to work commitments. Although large sections of his statement were of dubious relevance to the complaints before me, I nevertheless agreed to read and take into account the contents of his statement subject to the usual caveats (principally that the weight that could fairly be attached to it would be limited by reason of the Respondent's inability to challenge the same).

2.3 The Claimant was represented by Mr Stephenson. Mr Stephenson has some prior experience of representing litigants before the Employment Tribunal. The Respondent was represented by Ms Dalziel, solicitor. I was referred to a number of documents within an agreed bundle comprising 296 pages.

3. Findings of fact

3.1 The following findings are based on the balance of probability having regard to the totality of the evidence. The Respondent is a commercial

and household waste management and recycling business operating 24hours day, 7 days a week. It employs approximately 200 personnel and has a small dedicated HR resource, headed up by Ms White.

- 3.2 The Claimant was employed as maintenance engineer from 22nd December 2021 until his dismissal which took effect on 19th August 2024.

Horseplay incident and FWW

- 3.3 In June 2024 the Claimant received a final written warning about his conduct. That warning was issued by Ms Gilbertson and arose as a consequence of a the Claimant and Mr Lamb both engaging in acts of what were termed 'horseplay' within the factory setting. There were a number of separate incidents caught on CCTV which are listed within the bundle but included:

- Attempting to karate chop some Perspex;
- Playfighting
- Tipping stepladders when another was on them;
- Walking along the 'handle' of a pallet truck;
- Throwing a plastic washer towards the maintenance office.

- 3.4 During his disciplinary hearing in respect of the above, the Claimant admitted the conduct and accepted that it was 'embarrassing' and amounted to 'complete stupidity' on his part. He was asked whether he could provide an assurance that it would not happen again to which he answered:

"I understand the rules and procedures, and this is not usually me, I always put safety first..."

- 3.5 The FWW was stated to remain on his file for a period of 12 months and he was warned that an immediate and sustained improvement in his compliance with standards and behaviour was required and that any further breaches would result in disciplinary action. In evidence before me, the Claimant candidly accepted that, on one view, it could be said that he was fortunate to have escaped with only a FWW. Although offered the right of appeal, the Claimant chose not to pursue the same.

The baler incident

- 3.6 On 9th August 2024 (less than two months after having received the FWW) the baler incident took place. I do not propose to set out in detail the precise operational mechanics of this item of machinery. Put simply, it was a relatively new machine (a Bigro 105 chanel baler manufactured by Lyndex) which was designed to bale waste cardboard. Unlike the other (older) baler machine, this one had a somewhat complicated interlock system which prevented the machine from being operated unless a series of so-called 'A' keys were present on the main operating panel.
- 3.7 On 9th August (a Friday) the interlock system failed due to a broken A key. A new key was ordered from the manufacturers. Until such time as the new key arrived, the safety interlock system was capable of being overridden. Following a discussion between Mick Robinson, the Respondent's Health & Safety Manager, and Brett Cullinane, the Operational Support Manager, it was decided, as a temporary safety measure, to fit a chain and padlock to the cage guarding what is called the 'needle and pin' pit of the baler in order to prevent unauthorised access and therefore prevent injury. The single key to that padlock was placed in the hands of the Shift Manager so that anyone needing access to the machine would have to approach the shift manager,

request the key and explain why he needed access.

- 3.8 During the evening shift that same Friday, at approximately 1900hrs, an electrical issue arose with the baler. That was remedied by an electrician but, in doing so, the electrician noted that two baler wires required replacement or repair. That, of course, was a job for a maintenance engineer. In order to replace or repair these wires, the engineer required access to the 'needle and pin' pit. On arrival, the Claimant, maintenance engineer on shift at that time, noticed that the pit had been secured by a padlock and chain. He did not know why or indeed who had done that.
- 3.9 At this point, it is worth explaining that the Respondent has in place a number of SOPs ('standard operating procedures'). All employees are expected to read, understand and sign the relevant SOPs and thereafter work in accordance with them. It is right to say that the SOPs included an SOP for 'locking off' the MRF (usually to allow for it to be cleaned). This may include machinery being secured by way of padlock and chain to prevent use and injury. The relevant SOPs state that each group of employees should have different 'colour coded' padlocks so that others know to whom that padlock belongs. The shift manager's padlock is or ought to be green; blue padlocks for shift personnel; black padlocks for the maintenance team. In the event of unplanned maintenance work or a fault, the relevant SOP makes clear that the individual responsible for the unplanned maintenance or repair must liaise with the Shift Manager ensuring that they (the Shift Manager) is aware of what is happening (p.125).
- 3.10 In addition, the Respondent carried out what are called 'Toolbox talks' whereby important updates or changes to Health & Safety policy were communicated to the workforce. One such Toolbox talk took place on 27th June 2024. The Claimant readily accepted that he had read and

understood the document entitled Toolbox talk and he had signed the same to that effect. Amongst other things the document stated:

This will involve the maintenance team attaching a name tag with your name clearly visible to your padlock when it is used to isolate and lock off machinery..'

This ensures....that you can be easily identified and contacted...'

You must only use your own padlocks and name tags to avoid confusion

If a padlock is needed to be cut off for any reason, then a senior member of management should be contacted for authorisation before the lock is removed.

The document included a photograph showing a padlock with label attached.

- 3.11 Returning to the incident in question. The Claimant, in evidence, said that, on seeing an unlabelled black padlock, he assumed that it must belong to a member of the maintenance team. He therefore rang around several such people in an attempt to find out whose it was and why it had been placed there. However that evidence is not consistent with the response that he gave in his disciplinary hearing, namely:

'I didn't ring Brett I didn't ring no-one because it was out of hours at work.' (p.204)

- 3.12 The Claimant readily accepts that he did not speak to or attempt to contact the Shift manager either to seek authorisation to cut the chain or indeed to find out why it was there in the first place. In evidence,

the Claimant was keen to criticise Brett C for failing to take what he described as 200 physical (foot)steps to obtain an appropriately colour-coded (namely green) padlock from the Shift manager and instead attaching an unlabelled black one. However, the Claimant could equally have made that short journey to seek both permission and information from the very same person. The Claimant cut the chain and removed the padlock and set about his work.

3.13 In his statement taken as part of the investigation, Brett C stated that he had spoken to the Claimant that same evening questioning him as to why he had cut off the padlock without seeking prior authorisation from the shift manager to which, according to Brett, the claimant explained he 'didn't want to bother anybody' – broadly consistent with the explanation he later gave in his disciplinary. Brett also made it clear to the claimant that he must, at all costs, replace the chain and padlock.

3.14 The following Monday, whilst doing his rounds, Brett C discovered that the chain and padlock had not been replaced and the machine had therefore remained insecure over the weekend. On confronting the Claimant about this, the Claimant said *'Oh shit, I forgot... That's me gone then.'* The Claimant in evidence readily accepted that he had said these words or words to that effect. Indeed, in his own statement taken as part of the investigation, the Claimant said:

'I hold my hands up, I forgot to reattach the key and chain.'

3.15 Unsurprisingly the Claimant was suspended and an investigation, conducted by Mick Robinson, followed. It was a relatively brief and straightforward investigation. The primary facts, namely the removal of the padlock and chain and the failure to replace them had been admitted. Mr Robinson noted that, on account of the Claimant's

actions and omissions, the 'cage to the needle pin pit' was left insecure over the weekend giving rise to the potential for any unauthorised persons to gain access. He concluded his report by saying that:

'The possible consequences to this could have been catastrophic.'

He recommended disciplinary action.

3.16 A disciplinary hearing took place on 15th August and was chaired by Ms White, an experienced HR manager. The Claimant was represented by his maintenance manager, Andy Marriott. It was a thorough hearing to which the 17 pages of typed notes attest. Those notes were provided to the Claimant following the meeting and his later amendments accepted in full by Ms White – they made no difference to the outcome. In terms, the Claimant's defence and/or mitigation was (as it has been during the course of this hearing):

- The failure by BC to use an appropriately colour coded and unlabelled padlock led to confusion as to why it was there and who had placed it there;
- That the fact that the needle pin pit was guarded by a heavy cage door was sufficient protection without the added requirement for a padlock and chain;
- He was suffering severe sleep deprivation due to a combination of call-outs and childcare which may have impacted his ability to think straight;
- Lack of monitoring by the Respondent as to the number and impact of 'call outs' on maintenance staff;
- That the Respondent operated a 'two-tier' approach to health and safety in part by turning a blind eye to other failings on the shop floor and by targeting himself and the maintenance team

but not others for similar breaches;

- That he was under severe pressure by the respondent to keep the plant running which necessitated the taking of short-cuts.

3.17 During the hearing, he accepted that he was sufficiently awake to perform his role indicating that, if he had not considered himself capable of work due to lack of sleep, he would not have come in. He readily admitted not having a clue as to who had placed the padlock and chain on the machine before cutting it off or indeed why it was there (he had just 'assumed' it was a maintenance padlock). When questioned about his failure to replace the same, he said 'I've got no excuse.' When questioned about the potential consequences of his actions, he said that, whilst he did not agree that removing the padlock gave rise to a risk of death, he nevertheless accepted that it was more likely to break a person's legs.

3.18 Ms White was not an operative or engineer so, before finalising her decision, she sought further information from MR and BC as to the operability of the new baler machine and specifically how a broken or missing A key might affect the interlock system. That information, including a helpful series of photographs, was duly provided.

3.19 By letter dated 19th August, Ms White dismissed the Claimant for gross misconduct. Ms White accepted that there were shortcomings in terms of communicating why and by whom the padlock and chain had been fitted but that overall the Claimant's actions constituted a major breach of health and safety justifying summary dismissal. In evidence, which I accept, she made clear that, in her opinion, these matters amounted to gross misconduct by themselves but she also made clear that she had also taken into account the fact that the Claimant was subject to a FWW. A 'breach of safety rules which seriously endanger health and safety' is listed as an example of gross

misconduct in the Respondent's disciplinary police.

- 3.20 The Claimant was offered a right of appeal. Initially, he indicated that he would avail himself of this opportunity but subsequently wrote to the Respondent setting out a number of what he termed were 'pre-conditions' before such an appeal could or should take place. He lodged, in its place, a grievance, the contents of which were essentially grounds of appeal. Unsurprisingly and perfectly reasonably, the Respondent rejected these pre-conditions but, notwithstanding the Claimant's refusal or reluctance to attend, an appeal hearing took place on 3rd September. It was chaired by Ms Gilbertson who had earlier in the year chaired the disciplinary hearing which resulted in the Claimant receiving a FWW. I was particularly impressed with Ms Gilbertson as a witness. She gave clear and compelling testimony and was not challenged to any meaningful degree by Mr Stephenson. In effect, Ms Gilbertson undertook a further detailed investigation into the underlying facts and, having done so, reached the same conclusion as Ms White had done before her concluding, amongst other things, that the cutting off of the padlock and failing to replace the same constituted a major breach of H&S procedures which had the potential to result in serious injury. She was particularly concerned as to what she considered to be the Claimant's minimisation of his actions – a concern that I share having heard the Claimant give evidence. She found no evidence that the Claimant had been unfairly 'targetted' and she dealt with matters that formed or may have formed part of the now withdrawn PIDA complaint. Ms Gilbertson upheld the decision to dismiss and notified the Claimant accordingly.

4. Relevant law

- 4.1 The law relating to unfair dismissal is well rehearsed. In summary it is for the employer to establish a potentially fair for dismissal. Should it do so, the Tribunal will go on to consider whether it “*acted reasonably in treating (the reason) as a sufficient reason*” within the meaning of s.98(4) of the 1996 Act and in doing so will take into account, amongst other things, the size of the Respondent's undertaking and the administrative resources at its disposal. The test of ‘reasonableness’ is to be determined “...*in accordance with equity and the substantial merits of the case.*”
- 4.2 Misconduct is a potentially fair reason. However in order for the Respondent to have “*acted reasonably*” the Tribunal must be satisfied that the decision itself fell within a “*range of reasonable responses*” and a fair procedure was followed. At all stages, including the determination as to whether dismissal is an appropriate sanction, the Tribunal should apply the range of reasonable responses test - ***Sainsburys –v- Hitt***.
- 4.3 ***British Home Stores Ltd – v – Burchell [1978] IRLR 379*** which is still a leading case on this issue, makes clear that, in general terms, an employer must show that he genuinely believed that the employee committed the misconduct in question; that he had reasonable grounds on which to sustain that belief and that his belief, genuinely and reasonably held, was the product of a reasonable investigation.
- 4.4 Finally the Tribunal is also charged with determining whether the sanction (dismissal) was a fair one in all the circumstances. In looking at whether dismissal was an appropriate sanction, the question is not

whether some lesser sanction would, in the employer's view, have been appropriate, but rather whether dismissal was within the band of reasonable responses that an employer could reasonably make in the circumstances. The fact that other employers might reasonably have been more lenient is irrelevant (see the decision of the Court of Appeal in **British Leyland (UK) Ltd v Swift [1981] IRLR 91** and of the Inner House of the Court of Session in **Gair v Bevan Harris Ltd [1983] IRLR 368**).

4.5 In determining whether the Respondent has acted reasonably or otherwise, it is not the role of the Tribunal to enter the arena and conduct its own mini-trial of the Claimant (or indeed any other employee). The one clear and consistent principle which has always been applied is that it is not for the Tribunal simply to substitute its own opinion for that of the employer as to whether certain conduct is reasonable or not. Rather its job is to determine whether the employer has acted in a manner which a reasonable employer might have acted, even although the tribunal, left to itself, would have acted differently. See also **Collin v United Distillers** and the case of **London Ambulance Service v Small** and specifically the quote from Mummery LJ which begins with the words “it is all too easy even for an experienced Tribunal to slip into the substitution mindset”.

4.6 In **Iceland Frozen Foods v Jones [1982] IRLR 439** the test was formulated in the following terms:

- (1) the starting point should always be the words of [s 98(4)] themselves;
- (2) in applying the section an Industrial Tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the Industrial Tribunal) consider the dismissal to be fair;
- (3) in judging the reasonableness of the employer's conduct an Industrial Tribunal must not substitute its decision as to what 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's conduct within which one employer might reasonably take one view, another quite reasonably take another;
 - (5) the function of the Industrial Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair'.

4.7 Should a Claimant succeed in his Unfair Dismissal claim he will (generally) be entitled to a basic award (a sum, identical to a statutory redundancy payment, calculated by reference to both his age and years served) and a compensatory award. The latter (and, occasionally, the former) can be subject to reduction and/or extinguishments on the following grounds:

- contributory conduct
- 'Polkey' principles
- failure to mitigate

Warnings

4.8 The issuing of a warning is primarily a matter for the employer and a tribunal must be particularly careful not to fall into the error of substituting its own view of whether the warning should have been given in the first place - ***Stein v Associated Dairies Ltd*** [\[1982\] IRLR 447, EAT](#) . Generally speaking, provided the warning was issued in good faith and there were prima facie grounds for it (or, to put it another way, provided the warning was not issued for an oblique

motive or was not manifestly inappropriately issued) the employer and the tribunal are entitled to regard the warning as valid for the purposes of any dismissal arising from subsequent misconduct, provided that the subsequent misconduct is such that, when taken together with the warning, the dismissal or the decision to dismiss is a reasonable one. and in *Davies v Sandwell BC* [\[2013\] EWCA Civ 135](#), [\[2013\] IRLR 374](#) ; see also the guidance given in *Wincanton Group plc v Stone* [\[2013\] IRLR 178](#), EAT:

*A Tribunal must always remember that it is the employer's act that is to be considered in the light of section 98(4) and that a **final written warning** always implies, subject only to the individual terms of a contract, that any misconduct of whatever nature will often and usually be met with dismissal, and it is likely to be by way of exception that that will not occur."*

Wrongful dismissal

- 4.9 In contrast to the test for unfair dismissal, the question of whether the Respondent was justified in dismissing the Claimant without notice is very much a question of fact for the Tribunal – did the claimant commit an act of misconduct which was so serious as to constitute a repudiatory breach of contract?

5. Submissions

- 5.1 Both Ms Daziel for the Respondent and Mr Stephenson provided oral and written submissions. They were extremely helpful.

6. Conclusions

Reason for dismissal

- 6.1 I find that the respondent has shown that the reason for the claimant's dismissal was misconduct, a potentially fair reason. There was no serious challenge to this by the Claimant.
- 6.2 Equally I have no hesitation in finding that the Respondent held a genuine belief in misconduct; that it had reasonable grounds for sustaining that belief and that they acted reasonably within the meaning of s.98(4) of the 1996 Act in treating it as the reason for dismissal. In applying this test, I took account of both the *equity and the substantial merits of the case.*" A fair (indeed arguably overly thorough) procedure was followed at all stages, including the investigatory, disciplinary and appeal processes. Furthermore the decision to dismiss fell squarely within a "*range of reasonable responses.*"
- 6.3 The Claimant was already the recipient of a FWW, handed out for ostensibly H&S reasons only two months or so prior to the events in question that led to his dismissal. There was no requirement for me to enquire deeply into the reason why the FWW was delivered given that there was no suggestion that it had been issued in bad faith or on a false factual premise. Nevertheless, the matter having been raised in evidence, I briefly considered the same. The FWW was handed down for reckless and unsafe horseplay; it represented a clear breach of H&S as well as ordinary common sense; the conduct was admitted – unsurprisingly given that it was caught on

CCTV and there was no appeal. The Claimant was not 'singled out' – there was a co-accused in the form of Mr Lamb. The Claimant could quite easily and reasonably have been dismissed for gross misconduct at that point.

6.4 Turning to the index incident that gave rise to the subsequent disciplinary and dismissal. The Claimant again admitted the essential elements of the charges against him, namely the cutting off of a padlock and chain and the failure to replace them. This was an extremely serious breach – as MR made clear, the consequences could have been catastrophic – even the claimant conceded that unauthorised access could have led to leg breakage. The fact that no unauthorised access was attempted; that the relevant part was partially 'protected' by a heavy cage or that no injuries did occur over the time during which the needle pin pit was left unsecured are wholly beside the point. Health and safety is all about taking preventative action to guard against injury.

6.5 The fact that C failed to discover why the padlock had been placed there in the first place is a key point. He was a maintenance engineer working on machinery that has potential to cause fatal injury. It is and was incumbent upon him, an experienced engineer, to ascertain precisely why that padlock and chain had been placed there; who had put it there and to seek express authorisation from a shift manager or above before attempting to cut it off. I acknowledge that the Toolbox talk document states that employees '*should*' as opposed to '*must*' seek authorisation from senior management but the absence of mandatory language, on the facts of this particular case, is not a key point – indeed it was a matter that I, not Claimant, brought to Respondent's attention during the course of evidence. I am satisfied that it was plain and obvious to all, including the claimant, that express permission was a requirement. Equally The

pressure of keeping the plant running is always going to be subservient to following basic common sense H&S procedures. In any event, his actions were in blatant contradiction to the toolbox talk document that he had only read and signed in late June.

6.6 It is right to say that BC appears to have used the wrong colour padlock and also failed to attach a label to the padlock. That was unfortunate and no doubt could have and indeed did lead to an element of confusion in the Claimant's mind. He assumed that it had been placed by a member of the maintenance team. That assumption was not itself unreasonable. However, that element of confusion made it even more important that he sought shift managerial permission before cutting it away.

6.7 I reject the Claimant's arguments relating to sleep deprivation and to the Respondent's purported two-tier approach to H&S matters. Yes, I accept that the C may well have been tired (due to call outs and childcare) but he himself readily conceded both in his disciplinary and in evidence that he was perfectly capable of performing his job – otherwise he would not have turned up for work. The decision to cut through the chain and fail to replace it had nothing whatsoever to do with sleep deprivation. Equally there was no evidence, certainly none that could withstand scrutiny, of the Respondent operating a two-tier approach to H&S. It may be that the old baler (still operational) had less protective devices but so what. This case concerned the interlock system on the new baler and a temporary safety measure in the form of a padlock and chain – this has nothing to do with any other machinery. Whether MR had kicked a football on the factory floor (and there was precious little evidence to this effect) is again beside the point. The Respondent was faced with an experienced employee, on a FWW, who had, by his own admission, committed not one but two major breaches of

H&S policy – there was no realistic alternative open to them other than to dismiss him.

- 6.8 C makes much of the fact that MR not called to give evidence. There is no requirement for him to have given evidence. The facts were largely agreed; the case was a simple one and his attendance at the Tribunal would likely have contributed very little. In any event, from a technical point of view, both Ms White and Ms Gilbertson undertook their own extremely thorough enquiries into the workings of the relevant machinery and specifically the interlock mechanism and procedure. The investigation, disciplinary and appeal processes were all thorough, balanced and fair.
- 6.9 In all the circumstances, I find that the Respondent acted reasonably; conducted a fair and thorough investigation and that the decision to dismiss fell well within a range of reasonable responses open to them – the complaint of unfair dismissal must therefore be dismissed.
- 6.10 I also find that, by cutting off the padlock and chain without first seeking permission from the shift manager or knowing or understanding why or who had placed it there and secondly by failing to replace it leaving the relevant part of the machinery unprotected for a weekend during which time the plant was or may have been operational, that the Claimant committed an acts of gross misconduct justifying dismissal without notice. Accordingly the complaint for wrongful dismissal must also fail.

Employment Judge Legard

Date 17 February 2026

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