



EMPLOYMENT TRIBUNALS

Claimant: Mr R Payne

Respondent: DHL Services Limited

Heard at: Watford (in person)

On: 21-22 January 2026

Before: Employment Judge Margo

Representation

Claimant: In person

Respondent: Ms B Clayton (counsel)

JUDGMENT having been sent to the parties on 16 March 2026 and written reasons having been requested by the claimant, the following reasons are provided:

REASONS

Introduction

1. The claimant commenced employment with Medical Services Limited on 11 November 2013. On 8 September 2019, the claimant's employment transferred to the respondent, pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006.
2. Early conciliation started on 13 May 2024 and ended on 17 May 2024. The claim form was presented on 5 July 2024. Accordingly, claims relating to acts or omissions which took place on or after 14 February 2024 will have been brought within the primary limitation period.
3. The claimant was employed as an Ambulance Care Assistant. As part of his role he was required to transport sick and vulnerable patients from their homes to appointments. The claimant was a 'take home driver', meaning he could take his

vehicle home with him and did not have to return to a base at the end of each day.

4. The claimant was summarily dismissed for gross misconduct on 3 April 2024. The respondent's case was that he was dismissed for breaching the respondent's Substance and Misuse Policy by refusing to take a drug and alcohol test. The claimant's case was that he did not refuse to take the test but that he was not able to take the test because, to use his words, he was "not able to pee".
5. The claims brought were clarified in a Record of Preliminary Hearing following a Preliminary Hearing on 21 May 2025 conducted by EJ Hunt (p.48 of the Bundle). The claimant agreed at the start of the Final Hearing that these were indeed the claims he was pursuing; namely, claims of ordinary unfair dismissal, automatic unfair dismissal contrary to s.152 of the Trade Union & Labour Relations (Consolidation) Act 1992 ("**TULR(C)A**") and detriment claims under s.146 of TULR(C)A. For convenience, I set out below the detriment claims as recorded in the Record of Preliminary Hearing:

"Detriment on grounds relating to union membership or activity contrary to section 146 of the Trade Union & Labour Relations (Consolidation) Act 1992. The Claimant alleges that the following acts were done to penalise him for being a trade union member and/or for taking part in trade union activity and/or for making use of trade union services.

4.2.1. Being retained at the Respondent's base for 3 hours for no good reason on the day he reported damage to his vehicle.

4.2.2. Being asked to take a drugs and alcohol test that day.

4.2.3. Being refused water to enable him to take that drugs and alcohol test.

4.2.4. Being subjected to disciplinary hearings related to an alleged failure to take the drugs and alcohol test."

6. However, in his closing oral submissions the claimant said in respect of the detriment claim set out at paragraph 4.2.2 of the Record of Preliminary Hearing (i.e. the alleged detriment of being asked to take a drug and alcohol test) that he did not know why he was asked to take the test (i.e. he did not know if it was to penalise him for being a trade union member and/or for taking part in trade union activities). Further, in respect of the claim at paragraph 4.2.3 of the Record of Preliminary Hearing (i.e. the alleged detriment of being refused water to enable him to take the drug and alcohol test) he said his case was that the detriment was not being offered water rather than being refused water. The respondent did not object to the claimant running his case on this alternative basis and the reasons below include my reasoning on that alternative case.

7. A draft list of issues had been prepared by the respondent and shared with the claimant (p.72-73). It contained an accurate summary of the issues that arose on the basis of the claims as set out in the Record of Preliminary Hearing.
8. On behalf of the respondent, I heard evidence from (1) Mr Mick Jackson who is a Business Facilitator at the respondent and was the dismissing manager; and (2) Mr Curtis Blackman who is the General Manager of Patient Transport at the respondent and who heard the claimant's appeal against his dismissal.
9. The claimant gave evidence in support of his case.
10. The parties had agreed a Bundle of 302 pages. Reference in these Reasons to page numbers are to pages of that Bundle.
11. In addition, there was a fuller copy of the minutes of the Disciplinary Hearing that was provided by the respondent at the start of the hearing and which the claimant had an opportunity to read on the first morning from 10:45-11:30am, during the time that I completed my pre-hearing reading. The document included an additional six pages from the reconvened part of the Disciplinary Hearing and was relevant because it contained Mr Jackson's reasons for dismissing the claimant.
12. The other additional documentary evidence was the claimant's UNISON card which was shown both to the Tribunal and to the respondent.

Findings of fact

13. As stated, the claimant worked for the respondent as an Ambulance Care Assistant. He was a take home driver. He joined UNISON in 2021 and became a steward. In 2022 he accompanied two colleagues to investigation meetings in his capacity as a trade union representative.
14. At the start of each day, before any vehicle should be driven, employees, including the claimant, were required to complete a pre-vehicle usage compliance and safety check, also known as an "Ops 13". This is a health check of the vehicle and any damage or incident involving the vehicle needs to be documented in the Ops 13. The Ops 13 checks are required to be carried out for insurance purposes to ensure the roadworthiness of vehicles and for health and safety purposes. The claimant would carry out these checks on a mobile "PDA device".
15. On the morning of 2 February 2024, the claimant reported damage to his vehicle that had allegedly occurred overnight. Mr Wilson Dias of the respondent took advice from Kamil Glowa, a manager in the respondent's transport team, and based on that advice Mr Dias told the claimant to come to the respondent's base at Enfield. Mr Glowa told Mr Dias that the claimant should report the incident to the police to get a crime reference number for a hit and run, complete the accident reporting process and carry out a drug and alcohol test.

16. The claimant arrived on the site at around 8am. He called the police but was told it was not a police matter.
17. The claimant waited around for approximately 2.5 hours before he was asked to provide a urine sample for the drug and alcohol test. No evidence was provided by the respondent as to why the claimant had to wait that long in circumstances where, according to the evidence Mr Blackman, which I accept, the test should be carried out as soon as possible. The respondent's witnesses could only speculate as to possible reasons for the delay.
18. During the time that he was waiting at the Enfield base, the claimant was free to wander around what is a small building. He was free to use the toilet, or the facilities in the kitchenette as he pleased, and he remained on full pay. The claimant said in evidence, which I accept, that he was bored during this time and that ultimately he was angered by the delay.
19. I pause there to set out the relevant terms of the Substance Misuse Policy (the "**Policy**") which appear at pp.112-113 and pp.116-117 of the Bundle:

3.2 For Cause Testing

Reasonable Cause/Suspicion - Where the Company suspects there has been a breach of this policy the Company will immediately invoke the "For Cause" testing procedure. The following non exhaustive list provides examples of where the Company may invoke "For Cause" testing:

- After discovery of illegal substances or empty alcohol containers on Company Property.

In cases of:

- Abnormal behaviour (e.g. aggression, euphoria, hyperactivity or lethargy and tiredness).
- Difficulty in walking normally
- Incoherent speech.
- Smell of alcohol/drugs e.g Cannabis
- Bruising and/ or injection marks.
- Reports from third parties.

3.3 Accidental Investigation

In all of the following cases, For Cause testing will form part of the Company's accident investigation procedure. The following list, which is not exhaustive, provides examples of situations where the Company will apply "For Cause" testing.

- Any accident, incident or near miss which has resulted in, or has the potential to cause, death or injury to an employee, agency staff, contractor or member of the public

Any accident, where a person is injured as a result of action by a member of Staff.

- Any accident or incident where there is damage to Company or third party property, equipment or Company products. This will include "Dangerous occurrences" as defined and requiring notification under the Reporting Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 2013 and "near misses" in line with Health & Safety reporting for accidents or incidents.
- Any accident or incident which involves the use of any mechanical handling aids and equipment (e.g. pallet truck, fork lift truck, stair climbers etc.).

20. Appendix A to the Policy sets out the testing procedure and further states that refusal to take the drug and alcohol test amounts to a breach of the Policy and amounts to gross misconduct.
21. Appendix C then provides as follows:

APPENDIX C – ALCOHOL DISCIPLINARY ACTION

The following conduct will be treated as gross misconduct:

- Consuming alcohol while on Company premises or during working hours.
- Where alcohol consumption has been permitted (e.g. at a social event, celebration or corporate entertainment), being drunk or behaving in a way that is unprofessional or breaches any other Company Policy or might otherwise damage the company's reputation.
- Declining to provide a breath sample for testing or refusing to co-operate with the testing process.
- Interfering with or obstructing an alcohol test of another employee, agency worker or contractor.
- Declining to undertake an approved course of treatment (as recommended by the Company or its medical advisor, counsellor or other suitable person) for an alcohol-related problem or discontinuing treatment before satisfactory completion.
- Failing a breath test or other test to determine alcohol levels.
- Knowingly providing alcohol to a third party for consumption on Company premises.

Any serious incident that involves alcohol may result in disciplinary action and will usually result in summary dismissal. Please refer to **the alcohol testing procedure in Appendix A**. Please note that this list is by way of example only and is not exhaustive.

The loss of a driving licence due to drink or drug driving outside of work which renders an employee unable to perform their duties will not of itself be treated as gross misconduct; however it may ultimately lead to their dismissal where they can no longer perform their role due to the ban. Each case will be considered according to the individual circumstances. The Company will take such action as it deems appropriate in the case of agency workers and contractors.

22. Accordingly, the Policy sets out that drug and alcohol tests will be administered if there is an accident resulting in damage to company property and that declining or refusing to co-operate with the testing process would be treated as gross misconduct that would usually result in summary dismissal. The same provisions are replicated in respect of testing for the drug testing procedure.
23. The claimant accepts that he knew that this was the policy. Indeed, he had once before been summarily dismissed under the Policy but was subsequently reinstated by the respondent. The claimant said, which I accept, that on that previous occasion he had not refused to take the test but had been unable to take it because he was not able to pass urine.
24. Further, the claimant accepts that the Policy applied to him in the circumstances of this case given the damage he had reported to his vehicle on 2 February 2024. In short, the Policy applied to the claimant and he understood at the time that he

would be required to undertake a drug and alcohol test. He also understood that, under the Policy, a refusal to take the test was classified as an act of gross misconduct that was likely to result in summary dismissal.

25. I find as a fact that Mr Dias did ask the claimant to provide a urine sample and that the claimant refused to provide that sample. This is a conclusion I reach on the balance of probabilities based on the contemporaneous documentary evidence. The key contemporaneous evidence is set out below.
26. First, the claimant raised a grievance on 5 February 2024 (p.143) in which he stated that he had “categorically refused” to take the drug and alcohol test and then set out a series of reasons why he had refused to take the test.
27. Secondly, in the subsequent Disciplinary Hearing, the claimant told Mr Jackson that he did not take the test because it was against his human rights. The minutes of the meeting (pp.246-247) read as follows:

MJ- We need to move along, first you said the transport team does not know what to do, however you then said Wilson told you to contact the police which contradicts that. The second allegation is related to the first. Are you aware of the substance misuse policy DHL have?

RP- Yes

MJ- Then you will be aware that any ACAs that have been involved in an incident would be expected to undergo a drug and alcohol test.

RP- Yes

MJ- for the purpose of clarity it was a yes or no question. Why did you not take part in the drug and alcohol test?

RP- Because it was against my human rights. I was kept there for 2 hours before they announced I needed to take the drug test. It was in my grievance.

MJ- Lets move on from the grievance.

RP- It was common knowledge if you are certain people, you do not need to take a drug and alcohol test.

MJ- We are not talking about other people.

RP- Because I have been victimised by certain members of staff, this is why I refused.

28. The claimant said in evidence that he did not remember saying those things in the Disciplinary Meeting. However, although the claimant did not sign the minutes of the meeting, he accepted in evidence that he was sent them at the time and that he did not challenge their accuracy either as part of his internal appeal or at all. Accordingly, I find that the minutes are an accurate record of

what the claimant told Mr Jackson in the Disciplinary Hearing about what happened on 2 February 2024 in respect of his refusal to take the drug and alcohol test.

29. Thirdly, at no point in the internal appeal process did the claimant say that he had not refused to take the test, nor did he suggest that he had been unable to take it because he was unable to pass urine.
30. The claimant said in his evidence that he had become angry as a result of waiting around at the Enfield base. I accept that to have been the case. Accordingly, doing the best I can on the available evidence, I find that the claimant was angered by having to wait at the base and that this at least partly explains why he refused to take the test.
31. Returning to the events at the base, I find as a fact that after the claimant refused to take the test by providing a urine sample and that there was no discussion about whether or not he should drink water and that he was not offered water. In my judgement it follows from the fact that the claimant refused to take the test that there would have been no reason to offer him water, which in any event the claimant had access to in the Kitchenette. If the claimant had told the respondent that he was willing to take the test but unable to do so because he did not need to pass urine, then he may well have been offered water. Further, the claimant accepted in his evidence that he did not ask for water. His evidence was that he was not going to do the manager's job for them.
32. There was also no offer to the claimant of the drug and alcohol test being carried out in a different way - for example by a swab test. I find that some alternative way of the test being conducted may have been offered to the claimant if he had said that he could not pass urine, but because he did not say that and simply refused to take the test no such possibility was considered by the respondent.
33. Following the events on 2 February 2024, the claimant was suspended pending an investigation.
34. As part of that investigation, which was conducted by Mr Samuel Atakpa, it was identified that, at least on the respondent's case, that the claimant had not completed his Ops 13 checks from 22 January 2024 to 29 January 2024 and that he had incorrectly completed his Ops 13 checks from 30 January 2024 to 2 February 2024.
35. I make no findings as to whether or not the claimant had indeed failed to complete the checks as alleged because, first, I was not presented with the evidence upon which I could make such a finding; and, secondly, because the respondent's case and evidence, which I accept, was that these issues were not and would never have been treated as more than misconduct and were not the reason for the claimant's summary dismissal.

36. As already mentioned, the claimant raised a grievance on 5 February 2024 in which he complained about the events of 2 February 2024 and in which he raised separate allegations against a female colleague, the content of which is not relevant to the issues I need to decide.
37. On 8 March 2024, the claimant attended a grievance hearing and the outcome was confirmed in writing the same day. Both grievances were not upheld.
38. On 8 March 2024, the respondent wrote to the claimant and invited him to an investigation meeting on 14 March 2024 in relation to the pre-vehicle checks and in relation to the allegation that he had refused a drug and alcohol test.
39. On 14 March 2024, the claimant failed to attend the investigation meeting. He did not attend because his UNISON representative was not available.
40. The respondent therefore wrote to the claimant on 15 March 2024 and invited him to attend a further investigation meeting on 20 March 2024. It was stated that the meeting would be held in the claimant's absence if he failed to attend.
41. The claimant did not attend the meeting and it was held in his absence. At the meeting, Mr Atakpa decided there was a disciplinary case to answer.
42. As accepted by the claimant in evidence, Mr Atakpa had not been the subject of any previous grievances or complaints raised by the claimant in the course of his employment. As such, there was no factual basis for any assertion that Mr Atakpa's decision was based on anything other than a genuine belief that there was a disciplinary case to answer and I find as a fact that he did indeed hold that genuine belief.
43. The Disciplinary Hearing took place on 2 April 2024 and was then reconvened on 3 April 2024. The claimant was supported at the hearing by Mark Belkin of UNISON.
44. I have already set out my findings on the key parts of the discussion in relation to the drug and alcohol test at paragraphs 27-28 above.
45. Mr Jackson's findings in respect of the key allegation relating to the refusal to take the drug and alcohol test is set out as follows in the minutes:

"it is evident that you were aware of the consistent approach of DHL in applying the Substance misuse policy in the event of reporting any damage to a vehicle, meaning that you would be required to undertake a supervised drug and alcohol test. This you refused to do, stating in the meeting that it was against your human rights. As a result of these findings in relation to the allegations I am summarily dismissing you from your employment with DHL, effective of today [sic] 3rd April 2024."

46. The same reasoning was provided in an outcome letter of 3 April 2024 (p.257).
47. On 8 April 2024, the claimant appealed the dismissal. The appeal hearing took place on 23 April 2024 and was chaired by Mr Blackman. The claimant was accompanied by Richard Ferrow of UNISON.
48. The claimant's appeal was rejected as confirmed to the Claimant in writing on 29 April 2024.
49. Part of the claimant's case in the appeal was that he should not have been required to take a drug and alcohol test because he was a take home driver who had found the damage first thing in the morning and because the Policy was discretionary. Mr Blackman rejected both of those aspects of the appeal: he found (as indeed was accepted by the claimant before me) that the Policy did apply to him on the facts of the case and that the Claimant was required under the Policy to take the drug and alcohol test.
50. In terms of the application of the Policy more generally, Mr Blackman's evidence, which I accept, is that in the year 2023 – 2024 there were 211 instances of drug and alcohol tests being conducted under the Policy and that there were four refusals to take a test which resulted in four dismissals.
51. Following the appeal, the claimant contacted Acas on 13 May 2024. He said in evidence that he had not progressed the Tribunal proceedings sooner because he was getting all his paperwork in order so that he could provide it to UNISON.
52. Finally, both of the witnesses were asked questions in evidence about their knowledge of the claimant's trade union membership and activities. Mr Jackson said, which I accept, that he did not know that the claimant was a trade union member. Indeed, he said that he did not believe the claimant was a trade union member. This evidence was given prior to the claimant producing his trade union membership card.
53. Mr Blackman said in evidence, which again I accept, that he knew that the claimant was a UNISON member but he did not know that the claimant was a shop steward. He noted that the only union recognised at the respondent was Community Trade Union.

The law

54. Section 94 of the Employment Rights Act 1996 (the "**ERA 96**") confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111 of the ERA.

55. Section 98 of the ERA 96 deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Secondly, 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.
56. Section 98(4) then deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.
57. 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* [1978] IRLR 379 and *Post Office v Foley* [2000] IRLR 827.
58. 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: see *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.
59. Fairness should be judged at the time of dismissal. However, when considering whether an employer acted reasonably in dismissing an employee, the whole process including any appeal should be considered: see *Taylor v OCS Group Ltd* [2006] ICR 1602.
60. So long as the whole process leading to the dismissal is within the band of reasonable responses, the dismissal will be fair: see *Sainsbury's Supermarket Ltd v Hitt*.
61. In respect of automatic unfair dismissal, s.152 of TULR(C)A provides as follows:

“Dismissal of employee on grounds related to union membership or activities.

- (1) *For purposes of Part X of the Employment Rights Act 1996 (unfair dismissal) the dismissal of an employee shall be regarded as unfair if the reason for it (or, if more than one, the principal reason) was that the employee—*
 - (a) *was, or proposed to become, a member of an independent trade union,*
 - (b) *had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time,*
 - (ba) *had made use, or proposed to make use, of trade union services at an appropriate time,*
 - (bb) *had failed to accept an offer made in contravention of section 145A or 145B, or*
 - (c) *was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused, or proposed to refuse, to become or remain a member.*
- (2) *In subsection (1) “an appropriate time” means—*
 - (a) *a time outside the employee’s working hours, or*
 - (b) *a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union or (as the case may be) make use of trade union services;*

and for this purpose “working hours”, in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.”

62. Section 146 of TULR(C)A provides an employee with the right not to be subjected to a detriment related to union membership or activities. So far as is relevant, it provides as follows:

“Detriment on grounds related to union membership or activities.

- (1) *A worker has the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place for the sole or main purpose of—*
 - (a) *preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so,*

- (b) *preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so*
 - (ba) *preventing or deterring him from making use of trade union services at an appropriate time, or penalising him for doing so...*
- 63. A “detriment” occurs when a reasonable worker would or might take the view that he had been disadvantaged: *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337, per Lord Hope at paragraph 34.
- 64. An unjustified sense of grievance cannot amount to “detriment”, but it is not necessary to demonstrate some physical or economic consequence: *Shamoon* at paragraph 35.
- 65. The time limit for bringing a detriment claim is set out in s.147 of TULR(C)A:
 - “(1) *An employment tribunal shall not consider a complaint under section 146 unless it is presented—*
 - (a) *before the end of the period of three months beginning with the date of the act or failure to which the complaint relates or, where that act or failure is part of a series of similar acts or failures (or both) the last of them, or*
 - (b) *where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.*
 - (2) *For the purposes of subsection (1)—*
 - (a) *where an act extends over a period, the reference to the date of the act is a reference to the last day of that period;*
 - (b) *a failure to act shall be treated as done when it was decided on.*

Conclusions

- 66. In these conclusions I deal in turn with the claims as clarified and set out in the Record of Preliminary Hearing and with the relevant issues that arise in respect of each of those claims.
- 67. As a preliminary point, the respondent accepted in closing submissions that the claimant was a member of UNISON and had engaged in trade union activities at an “appropriate time”. Accordingly, those “gateway issues” were not in dispute for the purposes of the claim of automatically unfair dismissal or the detriment claims.

Ordinary unfair dismissal and dismissal for trade union activities

Was the claimant dismissed?

68. There is no dispute that the claimant was dismissed.

What was the reason or principal reason for dismissal and was it a potentially fair reason?

69. The reason for the claimant's dismissal was his conduct, which is a potentially fair reason for dismissal. The clear provisions of the Policy are that a refusal to take a drug and alcohol test would be treated as gross misconduct that would be likely to lead to summary dismissal. I have found as a fact that the claimant told Mr Jackson that he had refused to take the test. Further, there is simply no evidence to suggest that Mr Jackson or indeed Mr Blackman made their decision for any reason connected to the claimant's trade union activities. Indeed, Mr Jackson's evidence, which I accept, is that he had no knowledge of the claimant having been a member of a trade union or involved in any trade union activities.

Were there reasonable grounds for the belief in the misconduct?

70. There were such reasonable grounds because the claimant told Mr Jackson that he had indeed refused to take the test and he maintained that position through the course of the internal disciplinary process.

At the time the belief was formed had the respondent carried out a reasonable investigation?

71. Again, the answer is "yes" – because the claimant stated in the Disciplinary Hearing that he did indeed refuse to take the test.

72. In this context I note that the claimant focused his submissions upon the fact that the respondent had not called evidence from either Mr Dias or Mr Glowa. If the claimant's case at the Disciplinary Hearing or, thereafter at the appeal stage, had been that he had not refused to take the test, then it may well have been necessary for the respondent to have conducted a more thorough investigation in order to establish precisely what happened on the day in question at the Enfield base (albeit that I note that a written statement from Mr Glowa was obtained at the investigatory stage which supported the conclusion that the claimant had refused to take the test). In any event, and critically, the questions for the purposes of the unfair dismissal claim concern the belief that the employer formed and whether, at the time the belief was formed, a reasonable investigation had been conducted. Here, no further or more detailed investigation was required because, in the Disciplinary Hearing, the claimant admitted the fact that he had refused to take the test and that continued to be his stance throughout the internal disciplinary process.

Did the respondent otherwise act in a procedurally fair manner?

73. In my judgment the process was fair when looked at in the round. The claimant was given the opportunity to attend investigation meetings, albeit he had issues in securing trade union representation for those meetings. Importantly however, the claimant did have trade union representation at the Disciplinary Hearing and at the Appeal Hearing and he had every opportunity to put his case forward. Again, and critically, the claimant told the respondent that he had refused the test. In those circumstances, there was no other evidence that either needed to be gathered or needed to be seen in order to establish what happened at the Enfield base on 2 February 2024.

Was dismissal within the range of reasonable responses?

74. In my judgment the dismissal was in the range of reasonable responses. The respondent has a clear policy on refusals to take drug and alcohol tests. Such a refusal will be treated as an act of gross misconduct and is likely to lead to summary dismissal. Indeed, in 2023 – 2024 there were four such refusals all of which resulted in dismissals. The claimant was entirely familiar with this policy.
75. Further, the reason for having such a policy is clear, the respondent needs to be able to assure itself that any accident or damage to a vehicle has not potentially been caused by the driver having been affected by drink or drugs. In summary, the question is not whether this Tribunal would have dismissed the claimant in the same circumstances. The question is whether the dismissal was within the range of reasonable responses and in my judgment it clearly was.

Conclusion

76. Accordingly, the claimant's claim of unfair dismissal is dismissed. Further, on the basis of my conclusion as to the reason for the dismissal (i.e. the reason was the claimant's conduct), the claim of automatic unfair dismissal is also dismissed.

Detriments for trade union activities and membership

77. The only allegation that has been brought within the three-month time-limit is the allegation that that the claimant was subjected to a detriment on trade union grounds by being subjected to disciplinary hearings. The other alleged detriments all took place on 2 February 2024 with the result that the claimant would have had to commence early conciliation by 1 May 2024 if time was to be stopped before the expiration of the three-month time-limit. He did not in fact contact Acas until 13 May 2024.
78. The decision that the claimant should face a disciplinary hearing was taken by Mr Atakpa. The claimant confirmed in evidence that Mr Atakpa had not been the subject of any previous grievances that the claimant had brought against colleagues at respondent. The claimant also gave and provided no evidence to

support the conclusion that Mr Atakpa's decision had anything to do with the claimant's trade union membership or activities and I have found as a fact that it did not. Indeed, given that the claimant had only taken part in two investigation hearings in his role as a steward in 2022, it would be very surprising indeed if any acts of the respondent two years later had anything to do with those activities or indeed with his trade union membership more generally.

79. Further, the respondent's policy is that refusals to take a drug and alcohol test would be treated as gross misconduct. Accordingly, given that the case as reasonably understood by Mr Atakpa at the time, and indeed as put forward by the claimant more generally, for example in his grievance of 5 February 2024, was that the claimant had indeed refused to take the test, a disciplinary hearing was inevitable. It follows that in my judgment that the claimant being subject to a disciplinary process and disciplinary hearings had nothing to do with the claimant's trade union membership and/or activities.
80. Because the only in-time detriment claim has failed, all the other detriment claims are out of time and the claimant would need to establish that it was not reasonably practicable for those claims to have been brought in time.
81. Given that the claimant's explanation for the claim not having been brought earlier was that he was preparing the papers for UNISON, it was, in my judgment, reasonably practicable for the remaining detriment claims to have been brought in time. Therefore, I conclude that the Tribunal does not have jurisdiction to consider the remainder of the detriment claims.
82. In any event, those remaining claims would have failed on their merits.
83. Taking those remaining detriment claims in turn:
 - a. I have found that the claimant was kept at the Enfield base of 2.5 hours before he was asked to take the drug and alcohol test. However, the claimant has not proved any facts that could support the conclusion that this happened because he was being penalised for being a trade union member or for taking part in trade union activities. There was no evidence that Mr Dias or Mr Glowa had any issue whatsoever with the claimant's trade union membership or activities and, as noted, the claimant's only activities as a UNISON steward had been back in 2022;
 - b. Further, having to wait at the Enfield base does not, in my judgement, amount to a detriment because it is not reasonable to view waiting at the base as a disadvantage: the claimant remained on full pay and was able to spend his time at the base as he pleased.
 - c. There is similarly no evidence that there was any connection between the claimant's trade union membership or activities and the fact that he was asked to take the drug and alcohol test. Further, the taking of the test was required by the Policy and therefore the fact of the Policy provides a complete explanation for the reason why the claimant was asked to take the test.

- d. In respect of the claimant not being offered water, based on my findings of fact, that occurred because the claimant did not say that he was unable to pass urine. If the claimant had given that explanation for not taking the test then it is likely in my view that he would indeed have been offered water – or at least it would have been suggested that he drink some water, that was freely available to him in the Kitchenette. The claimant clarified in his closing submissions that his case was not that he asked for but was refused water. In any event, I have found that there was no such refusal.
84. It follows that even if the Tribunal had jurisdiction to consider those remaining detriment claims, they would all have been dismissed on their merits.
85. Accordingly, all the claimant's claims are dismissed.

Approved by:

Employment Judge Margo

11 February 2026

REASONS SENT TO THE PARTIES ON

16 March 2026

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FOR THE TRIBUNAL OFFICE