



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Simon Pipkin

**Respondent:** Hollowells Limited

**Heard at:** Watford

**On:** 16-17 March 2026

**Before:** Employment Judge MJ Smith

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Ms Jessica-Mae Scarborough-Lang (litigation consultant)

## RESERVED JUDGMENT

1. The claimant was an employee of the respondent at the relevant time. The claim for unfair dismissal was allowed to proceed.
2. The claimant's claim for unfair dismissal is not well founded and is dismissed.

## REASONS

### Introduction

1. This is a claim for unfair dismissal within the meaning of section 98 of the Employment Rights Act 1996 arising from the claimant being dismissed on the basis of conduct. It is also alleged that the respondent failed to follow the ACAS process when dealing with the claimant's investigation and disciplinary meetings. The

claimant alleged that the respondent's real reason for his dismissal was due to wanting to terminate the claimant's employment because his 'face no longer fit' the respondent's business and / or to ensure that a dismissal occurred before he was able to accrue two years' continuous service with them and stop his ability to bring an unfair dismissal claim.

2. The respondent is a funeral service provider which provides services to members of the public. It transports deceased persons to and from its premises, provides mortuary and funeral services.
3. The Claimant was employed by the respondent, as a driver bearer from 21 June 2021. He then began to work on the 'on call' team who worked out of office hours from August 2021. The claimant applied for and obtained a full-time role with the respondent starting on 2 May 2023. The claimant was summarily dismissed for conduct on 8 April 2025.
4. The claimant contacted early conciliation via ACAS on 14 April 2025 and the ACAS Certificate was issued on 20 May 2025. On 27 May 2025 the claimant presented a claim for unfair dismissal to the Tribunal.

## **Law**

5. Section 98 of the Employment Rights Act 1996 provides:

98.— General.

(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, or
- (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(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.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case

6. Section 230 of the Employment Rights Act 1996 provides:

230.— Employees, workers etc.

(1) In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act “worker” (except in the phrases “shop worker” and “betting worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly.

(4) In this Act “employer”, in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

(5) In this Act “employment” —

(a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and

(b) in relation to a worker, means employment under his contract;

and “employed” shall be construed accordingly.

(6) This section has effect subject to [sections 43K, 47B(3) and 49B(10)]<sup>2</sup>; and for the purposes of Part XIII so far as relating to Part IVA or section 47B, “worker” , “worker's contract” and, in relation to a worker, “employer” , “employment” and “employed” have the extended meaning given by section 43K.

(7) This section has effect subject to section 75K(3) and (5).

7. Section 108 of the Employment Rights Act 1996 provides:

108.— Qualifying period of employment.

(1) Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than [two years]<sup>1</sup> ending with the effective date of termination...

8. Section 203 of the Employment Rights Act 1996 provides:

203.— Restrictions on contracting out.

(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

(a) to exclude or limit the operation of any provision of this Act, or

(b) to preclude a person from bringing any proceedings under this Act before an [employment tribunal]<sup>1</sup> .

### **The evidence before me**

9. I was provided by the respondent with a bundle of 413 pages for the final hearing. There were witness statement from the claimant, Ms Helen Massey, Mr David Phillips and Ms Tracey Plant. I heard evidence from the claimant, Ms Helen Massey,

Mr David Phillips and Ms Tracey Plant. I was also provided with four separate CCTV videos which I viewed.

10. Having heard the evidence and read such documents as were referred to in the hearing bundle I made the following findings of fact

### **My findings of fact**

#### **Employment status**

11. It was agreed that the claimant had started work as a driver bearer on 21 June 2021. It was accepted that this was casual work which the claimant would fit around his other job. From August 2021 it was agreed by both parties that the claimant moved to the 'on-call rota' which took place outside of office hours and covered evenings and weekends. All witnesses agreed that the rotas were prepared between 6 to twelve months in advance and that individuals on the rota could change shifts but they had to arrange cover either by speaking to Ms Massey or other individuals dealing with the on-call team or by contacting a manager. It was accepted that sometimes shifts would have to be covered at short notice, for example if there was an illness or family emergency, with one of the people on call. Cover would then be arranged for that shift.
12. A standby fee was paid to each member of the on-call team for the period they were on call. It was paid regardless of whether there were any call outs during the on-call period. This was paid monthly to all individuals who were on call once their shift rota forms had been collated and verified. They would be paid an additional fee for each call out during the on-call period at a set rate depending on how far away it was from the premises.
13. As the members of staff on call were paid a flat rate for each on call period and because the rotas were prepared in advance there was a contract with each individual for each on call period such that this period would count towards the continuous period of employment for the purposes of section 108 of the ERA 1996.
14. Clause 1.1 of the employment contract between the claimant and the respondent stated that any period of employment prior to 2 May 2023 did not count towards the total period of employment. Parties are unable to contract out of any provision by seeking to limit or exclude the operation of the Act or to preclude anyone from bringing a claim under the Act. This clause is void and unenforceable. The claimant was an employee of the respondent from August 2021 until 8 April 2025 when he was dismissed.
15. All periods of time that the claimant spent as a member of the on-call team from August 2021 count towards his continuous service. The claimant had accrued more

than two years' of continuous service by the time of his dismissal on 8 April 2025 and was entitled to bring a claim for unfair dismissal.

## **Dismissal**

16. There was no issue between the parties that the claimant had been summarily dismissed on 8 April 2024 and that he was paid four weeks' pay in lieu of notice on the same day.

## **What was the reason for the dismissal?**

17. The respondent bears the burden of showing the reason for the dismissal and that it was a fair reason. The respondent alleged that the reason for the dismissal was due to conduct by the claimant or some other substantial reason namely the breakdown in the working relationship between the respondent and the claimant.

## **Conduct**

18. The issues raised by the respondent are as follows:

- (i) The claimant left the garage door of the respondent open when he left the premises contrary to the respondent's procedures. There was a coffin in the garage area on a hoist with a deceased person inside it. This could have been seen by members of the public if they had been walking past as the respondent's premises are located in a residential area.

19. The claimant asserted that this allegation was minor in nature and that it was accidental. He further alleged that other members of staff had also left the garage door open resulting in other members of staff simply closing the door once they realised and speaking to the individual in question about it. The claimant alleged that the reliance on this as part of the investigation into his conduct and subsequent disciplinary proceedings and dismissal was in order to terminate his employment.

20. The respondent alleged that this was a serious breach of their procedures because a member of the public could have access to the deceased person on the hoist and to the respondent's premises. There was CCTV of the claimant leaving the premises and it showed him leaving without pausing to check that the door was closed. The claimant accepted this but stated he had cleared it with the passenger in the van and they both shared the responsibility.

21. From the CCTV and the evidence of David Phillips it is clear that the claimant turned right out of the premises which would have meant he had the better view of the door in order to check that it was shut. The claimant also accepted that he had the remote control which closed the door in his possession. He accepted that he could have

gone back to check the door before going to collect the deceased person and that any delay would have been a matter of minutes. There was no evidence on the CCTV of the claimant slowing down to check the door was shut. I found that this incident occurred and that it was the claimant's responsibility to check that the door was shut because he had the better view of the door as he was turning right and he was in possession of the remote control for the door.

22. There was no documentary evidence relied upon regarding any similar incidents involving other members of staff and the respondent's witnesses denied any knowledge of any other similar incidents. I make no particular findings about the behaviour of other staff as there was limited information available and the claimant did not name the relevant members of staff or provide any dates on which similar incidents may have happened.
23. On the CCTV it showed that the premises were in a residential area and it was possible for a member of the public to have access to the premises while the door was open. The claimant referred to workmen being on site and that the garage would have had people in it reducing the chances of a member of the public entering the premises. Even if there were workmen on site, it was for the respondent's staff to ensure that the door was shut. Mr Phillips stated in his evidence that when he saw on the CCTV that the door was open and he went to check, there was no one present in the garage. I accept his evidence on that point as there were no other people present on the CCTV at that time and he was clearly concerned enough to check the garage once he saw that the door was open.
24. The procedure of the respondent is to ensure that the door is closed once a vehicle has exited the premises to preserve the dignity of the deceased and to prevent members of the public from being able to access the premises. In failing to do this the claimant did not follow the respondent's procedures.
- (ii) The claimant took the respondent's Ford Galaxy vehicle while on call without seeking authorisation.
25. The claimant accepted that he took the vehicle without authorisation which was not the respondent's procedure. The claimant stated that he did not want to bother anyone as it was a weekend and it was accepted that he informed the respondent on Monday that he had taken the vehicle on Sunday. I found that this did happen and that the claimant's actions did not follow the procedure of the respondent.
- (iii) The claimant did not write the full name of a deceased person into the mortuary register which is against the respondent's procedures.
26. The claimant accepted that he did not write the full name of a deceased person on the mortuary register. He alleged that he did not do so because he was called away to assist a colleague whereby that colleague spilled a substance on the claimant which required him to change his trousers. He stated that the register had been

replaced while he was away and he was distracted which was why he had not completed the full name of the deceased.

27. This version of events only became clear to the respondent in the course of the claimant's evidence during the hearing. Previously in the investigation meeting the claimant had alleged that another member of staff, Ms Terri Waples, was responsible for the error. The claimant had been given the opportunity at two investigation meetings and a disciplinary meeting using his written responses to raise this matter with the respondent. The claimant had claimed in the course of the investigation and the disciplinary proceedings that Ms Waples was making false allegations about him. If this incident had occurred it is likely that the claimant would have raised it in those circumstances. He had raised other issues about Ms Waples during the course of both the investigation and disciplinary proceedings.

28. I found that the claimant did not write the full name of the deceased in the mortuary register that he did not follow the respondent's procedure.

(iv) The claimant mis-measured a coffin for a deceased person.

29. The claimant stated that the reason why the deceased did not fit the coffin was because he had stretched and that this was a regular occurrence in the mortuary. The claimant's evidence on this matter was vague and it was not clear if he accepted mis-measuring the deceased or if the fact of the deceased having stretched affected the previous measurement. Given the claimant's lack of clarity on this issue it was likely that the respondent would have thought at the time that he had mis-measured the deceased person. The photographs show that the coffin did not fit the gentleman correctly and I found this to be the case.

(v) The claimant did not prepare three deceased people to the respondent's standards.

30. The claimant alleged with respect to the gentleman at page 349 that he could not prepare the gentleman due to the condition of his body and that it was more ethical not to prepare him in line with the respondent's standards. When asked if he had discussed the condition of this gentleman with anyone in management the claimant's answer was unclear. There was no evidence that the claimant had sought clarification from the mortuary lead or anyone else in a more senior position. I found that the claimant had not sought clarification from anyone else before taking the decision not to prepare the deceased according to the respondent's procedures.

31. The respondent also alleged that were a family member of deceased to have decided to view him, the condition he was in would have caused distress to them. The claimant alleged that this would never have occurred because the family would have been advised not to view the deceased due to his condition.

32. The claimant alleged with respect to the lady at pages 218 and 219 of the bundle that her gown was not stapled down due to a lack of staples as a result of the building work ongoing at the respondent's premises. The photograph also showed the deceased's mouth had come open and exposed the packing materials inside her mouth and throat. The photograph also showed the sutures used as part of the preparation process. All parties agreed that the usual process was for the mouth to be sutured closed once the packing of the mouth and throat was complete. All parties agreed that sutures are not supposed to be seen due to the way in which this process is carried out.
33. The claimant's explanation was that the reason for the mouth becoming open was due to further decomposition following his preparation of the deceased. The respondent alleged that any preparation would not allow for the mouth to remain open. The respondent alleged that were a family member of the deceased to ask to view her, the state of her gown and her overall condition would have caused distress. The claimant alleged that this would never have occurred because the family would have been advised not to view the deceased due to her condition.
34. The claimant alleged with regard to the third deceased person at pages 232 to 234 of the bundle that page 232 showed complete preparation and that page 234 showed the claimant's incomplete preparation. The photographs show this to be the case and I found the claimant's preparation to be incomplete.
35. The evidence of the instructions for this gentleman was in the bundle which the claimant alleged showed that he had signed the form as being only partially complete having ticked only two items on the sheet. The claimant accepted that he had not washed the hair of the deceased nor shaved his face. He alleged that this was due to the gentleman's dentures and clothing not having arrived at the respondent's premises. He also alleged that he had spoken to his mortuary lead, Ms Terri Waples and had agreed to pause his preparation and wait for those items to arrive.
36. There were two examples of instructions in the bundle. Both showed the claimant's signature and date. The instructions for this gentleman also showed that there were two ticks next to the instructions for preparation. The claimant alleged that this would have been clear to other staff members that the preparation was incomplete. The respondent's evidence was that the sheet is only signed and dated if complete. Regarding the alleged conversation with Ms Waples, even if that did occur, the signing and dating of the instruction sheet would have been viewed by other members of staff as the preparation having been completed and Mr Phillips' evidence was that once a preparation had been started it should be completed before moving on to another task. I found that the respondent would have thought that the claimant's preparation was complete due to the instruction sheet being signed and dated by the claimant.
37. The respondent alleged that were a family member of the deceased to ask to view him, his overall condition would have caused distress. The claimant alleged that this would never have occurred because the family would have been advised not to view the deceased due to his condition.

38. Taking into account all of the above the respondent would have had cause for concern regarding the claimant's conduct. The respondent specifically alleged that the claimant's inability to accept he may have made a mistake and to seek to rectify it caused them to have concern about the effect on the reputation of the business. This was especially so, it alleged, due to the nature of the funeral industry and the high level of trust placed in funeral service providers.
39. In evidence the claimant asserted that any impact regarding his actions regarding the deceased would be minimal due to the fact that the deceased persons were all 'no viewing'. The respondent asserted that all deceased persons in their care were to be treated the same way irrespective of whether they were to be viewed or not. The claimant's differentiation between those to be viewed and those not to be viewed during the course of his evidence showed that he approached his work differently depending on this distinction. Any issues which arose were not always discussed with his mortuary lead and the claimant stated many times that he was using his own initiative. While the claimant thought he was acting with the best of intentions for the business, he made decisions which could have affected the business without always seeking authorisation.
40. I found that the reason for dismissal was misconduct. Some of the conduct was so serious, for example the leaving open of the garage door, that this would have caused the respondent concern. This is shown by its decision to investigate the claimant for the leaving open of the door and the taking of the vehicle without authorisation. The other actions merely contributed to the respondent's initial concerns.

#### Some Other Substantial Reason

41. If I am incorrect in my findings regarding conduct I considered whether there was some other substantial reason for the dismissal. The respondent alleged that there had been a breakdown in working relationship such that it was entitled to dismiss the claimant.
42. The respondent conducted an investigation before commencing disciplinary proceedings against the claimant. The investigation focused on his conduct. The respondent gave the independent HR disciplinary investigator a number of allegations relating to the claimant's conduct and its impact on their reputation. The allegations regarding the impact on the respondent's reputation were not upheld as there had been no direct impact.
43. However, the claimant's conduct, the fact that he stated he had no need for further training and his inability to accept having made a mistake would have caused the respondent some concern regarding his future actions if he were to continue working for the respondent and the potential impact of those actions. I found that the respondent had lost confidence in the claimant such that it was entitled to dismiss him for some other substantial reason.

**Was the dismissal reasonable?**

44. I considered whether dismissal was within the band of reasonable responses available to the respondent.
45. In considering the facts available to the respondent at the time of the dismissal, those are set out above. At the time of the dismissal the respondent had concerns about the claimant's behaviour which it had raised with him. It had conducted an internal investigation and completed disciplinary proceedings using an external HR organisation.
46. At the time of the dismissal the respondent thought that the claimant had under two years' service with the company and that they were entitled to dismiss him. In evidence Ms Plant stated that they had taken the views of the HR organisation into account regarding a final written warning being issued instead of a dismissal.
47. As set out in the reasons above the respondent was concerned about the potential reputational impact of the claimant's conduct and any possible repetition of the conduct. It took into account the fact that the claimant did not think that he required any further training and that he understood his role.
48. The respondent is a small business and had undertaken an internal and external procedure prior to dismissal. In light of the claimant's conduct, dismissal was within the band of reasonable responses available to the respondent.

**Was the internal procedure fair?**

49. The respondent held an investigation meeting on 10 March 2025 into the claimant's conduct with respect to omitting the surname of a deceased person from the mortuary register, leaving the garage door of the mortuary open and taking the respondent's Ford Galaxy vehicle without authorisation. Mr Phillips and Ms Plant were both present with the claimant during that meeting.
50. A further investigation hearing took place on 21 March 2025. In which additional allegations relating to the preparation of deceased persons by the claimant was discussed. The claimant was issued with a suspension letter on 21 March 2025 stating that he was suspended on contractual pay pending an investigation. He was informed that this was not disciplinary action. A letter inviting the claimant to a disciplinary hearing was sent on 22 March 2025. The claimant was provided with a list of all the documents to be considered at that hearing and was also provided with copies of those documents and relevant CCTV footage.

51. The claimant was then invited to a to a formal disciplinary hearing on 31 March 2025 which was conducted by an external HR organisation namely Peninsula Face2Face. The letter, dated 25 March 2025, set out the allegations in full, provided a list of evidence to be considered at the hearing and provided copies to the claimant including the CCTV footage. The claimant attended the hearing which was conducted by Mr Anthony Leather but was unable to participate in person and it was agreed that he would provide written representations. The claimant provided written representations which were considered by Mr Leather as part of the disciplinary proceedings.
52. Mr Leather provided a case summary of his findings and recommendations to the respondent on 2 April 2025. The respondent considered the document and decided to dismiss the claimant. They informed him of the decision on 8 April 2025 and stated that the claimant's employment was terminated immediately. He was paid four weeks' pay in lieu of notice.
53. The respondent's procedure was fair. The internal investigation necessarily had to be conducted by senior staff at the respondent because it is a small, family owned business. By engaging the services of a neutral third party at the disciplinary stage, the respondent had maintained the fairness of the procedure.
54. The claimant had an opportunity to see the evidence against him and to provide his version of events to the respondent at all stages of the process. The claimant chose not to appeal the disciplinary findings.
55. I found that the procedure followed was fair given the size and resources available to the respondent.

## **Conclusion**

56. The reason or principal reason for dismissal was conduct. If I am wrong about that, the reason or principal reason for the dismissal was some other substantial reason namely the breakdown in the working relationship between the respondent and the claimant.
57. The dismissal was within the band of reasonable responses available to the respondent. The procedure followed by the respondent in its investigation of the claimant and in the disciplinary proceedings was fair and the claimant chose not to appeal the outcome of the disciplinary hearing.
58. For the reasons set out above the claimant's claim for unfair dismissal is not well founded and is dismissed.

**Approved by  
Employment Judge MJ Smith  
20 March 2026**

Judgment sent to the parties on:  
24 March 2026

For the Tribunal:

## **Notes**

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

[www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/](http://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)