



# EMPLOYMENT TRIBUNALS

**Claimant:** Richard Pyman

**Respondent:** Alitex LTD

**Heard at:** Bristol (by CVP)

**On:** 12<sup>th</sup> and 13<sup>th</sup> February 2026

**Before:** Employment Judge Clarkson

## Representation

Claimant: Mr Mofatt, Lay representative.

Respondent: Ms Brown, Solicitor.

# JUDGMENT

The judgment of the Tribunal is as follows:

1. The complaint of unfair dismissal is well-founded and succeeds.
2. The Claimant's employment would have ended on 20 February 2025 when the Claimant would have been fairly dismissed.
3. The Respondent shall pay the Claimant the following sums:
  - (a) A basic award of **£1584, three weeks gross pay.**
  - (b) A compensatory award of **£2652**. This is loss of earnings for six weeks, the time it would have taken for a fair process to be carried out.

# REASONS

## INTRODUCTION

1. This claim is brought by the Claimant, Mr Pyman, against his former employer Alitex LTD. The Claimant was an installer of bespoke greenhouses, for the Respondent in their company of approximately 75 people.
2. The Claimant attended the hearing and gave evidence with the assistance

of his lay representative. On behalf of the Respondent, Mr Hancock the managing director attended and gave evidence as did Mrs Hall, the brand director and Mr O'Leary the installation manager.

3. There was a bundle of 164 pages that had been agreed between the parties. This exceeded the hundred pages provided for in the case management directions. Having considered the evidence within the bundle and the Respondent's application permission was given for the entire bundle to be considered for the hearing along with the three witness statements on behalf of the Respondent and the Claimant's witness statement.
4. The claim was heard on the 12<sup>th</sup> and 13<sup>th</sup> of February 2026 via CVP. The Claimant and the three witnesses for the Respondent gave oral evidence, adopted their statements, and were cross examined in relation to their evidence. I then heard submissions on behalf of both parties.

### **The claims and issues**

5. The claim was made for unfair dismissal on the basis that the Claimant was not given a valid reason for his dismissal nor was a fair process followed. The issues the Tribunal has to determine are:-
6. Was the Claimant dismissed?
7. What was the reason for dismissal? The Respondent ET3 sets out the factual basis for the dismissal, the serious allegation made against the Claimant. At the hearing the Respondent clarified that they considered the facts, a serious allegation, resulted in a breach of trust in the Claimant, and therefore were some other substantial reason, which is a potentially fair reason for dismissal under s. 98 (2) of the Employment Rights Act 1996 and in the alternative the reason was related to conduct.
8. Was the decision to dismiss a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with these facts?
9. Did the Respondent adopt a fair procedure? The Claimant challenges the fairness of the procedure in the following respects;
  - a) He was not notified of the real reason for his dismissal
  - b) He was not given the chance to present his version of events.
10. The Respondent conceded the dismissal was procedurally unfair.
11. If it did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?
12. If the dismissal was unfair, did the Claimant contribute to the dismissal by culpable conduct? This requires the Respondent to prove, on the balance of probabilities, that the claimant actually committed the misconduct alleged. The issues in relation to contributory fault are:-

- a. Was any conduct of the Claimant before the dismissal such that it would be just and equitable to reduce the amount of the basic award and, if so, by how much (per s122 (2) Employment Rights Act 1996)?
- b. Was the dismissal, to any extent, caused or contributed to by any action of the complainant and, if so, by what proportion is it just and equitable to reduce the amount of the compensatory award (per s123(6) Employment Rights Act 1996)

## **FACTS**

13. Most of the facts in this claim are undisputed. The dispute arises in regard to an allegation that another employee of the Respondent made against the Claimant. The Claimant does not accept this other employee's account or her allegations but did not challenge the credibility of the evidence of Mrs Hall, the brand director, to whom the report of the allegation was made by the other employee.
14. Mrs Hall provided a written witness statement and gave oral evidence, she was consistent in her evidence as well as detailed and I found her to be a full and frank witness. She was not challenged in regard to credibility by the Claimant, and I found her evidence to be supported by contemporaneous messages that were included within the bundle. Overall I find her to be a credible witness.
15. Her evidence was that on 19 December 2024 the Respondent held their Christmas party. The Claimant agreed that this was at a barn local to the company and that he attended. Mrs Hall gave evidence that she had seen the other employee at the party drunk and was aware that there was alcohol at the Christmas party.
16. During the weekend following the Christmas party, on 22 December 2024, the another employee of the Respondent contacted Mrs Hall to request a meeting the following day.
17. On 23 December 2024 Mrs Hall met with this employee and found her to be extremely distressed, very shaken and crying.
18. Mrs Hall's evidence was that she reported to her that she had not been in a fit state to give consent, that she had been driven from the party to the accommodation where she was staying with her friend by the Claimant. She also said that she had grazes over her face from falling on the driveway to this accommodation after the party. The Claimant accepted in his evidence that the other employee and her friend had been drunk and that he had driven them from the party to their accommodation and that she had fallen and injured herself.
19. The accounts of what happened next subsequently diverged. The other employee reported to Mrs Hall that the Claimant had stayed overnight, that her friend had seen him having sex with her during the night, that he had left in a hurry in the morning and left his underpants and that she had then made a report of being assaulted, had had a forensic examination and DNA samples taken and a record of what had happened had been made.

Mrs Hall's oral evidence was that the employee was then told that she would have some time to decide whether she wished to proceed with the criminal prosecution against the Claimant. She informed Mrs Hall that she did not want the Claimant to be told the allegation as she needed time to decide what she would do.

20. Mrs Hall's evidence was that she was concerned for the safety and welfare this employee, the safety of the other employees and their customers. She had found the account to be highly credible.
21. The Respondent's company then closed for the Christmas holiday. On 7 January 2025 Mrs Hall told Mr Hall, the company chairman, and Mr Hancock the managing director, of the allegation made, with the employee's permission.
22. Mr Hancock's evidence was that he considered it was impossible to ensure that the Claimant and the other employee were kept apart at work. He was also concerned about the other female employees and customers and considered it best to dismiss the Claimant immediately. He was consistent in his evidence and it was consistent with the evidence of Mrs Hall and I accept this as the principal reason for the dismissal. I accept his evidence that the lack of trust meant that they did not want him to be about other females.
23. On 08/01/25 Mr O'Leary told the Claimant to attend a meeting at work the next day.
24. On 09/01/25 the Claimant had a meeting with Mr Hancock and the Claimant was dismissed. He was told this was on the basis of poor performance. He was given four weeks pay in lieu of notice.
25. On 10/01/25 the Claimant raised a grievance which the Respondent said they would treat as an appeal.
26. The Claimant then wrote to the Respondent to say that he did not wish to attend the appeal hearing on the 20/01/25 and the Respondent then sent him the written reasons for his dismissal citing poor performance on the 29/01/25.

## **THE LAW**

### 27. The legal framework

Section 98 of the Employment Rights Act 1996 (ERA) is the starting point. It provides:

- (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 ... 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

...

(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.

28. Section 98(1)(b) is a catch-all provision covering dismissal for 'some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held'. Sir John Brightman in RS Components Ltd v Irwin 1973 ICR 535, NIRC.

29. The reason must be genuine, 'one which is genuinely held, and particularly is one which most employers would be expected to adopt, it may be a substantial reason even where modern sophisticated opinion can be adduced to suggest that it has no scientific foundation' Harper v National Coal Board 1980 IRLR 260, EAT.

30. In regard to some other substantial reason the court of session in L v K 2021 CSIH 35 upheld the decision of the Employment Tribunal,

para 27 'In the proven circumstance it decided that it could no longer place the necessary trust and confidence in him, not because it was satisfied that he was guilty, but because there was a real possibility that he was an offender.'

Para 28 'The ET correctly recognised that the issue is whether the decision to dismiss for the stated reason fell within the band of reasonable responses, and for the reasons summarised above, which we regard as free of error or legal flaw, held that it did.'

Para 35. ' An employment contract is a bilateral relationship. Cases such as the present throw the parties' respective interests into acute and direct conflict. Nonetheless, however the case may seem from the perspective of the employee, particularly if in fact he is blameless, once a substantial and genuine reason in terms of section 98(1)(b) is established, the statutory test in subsection 4 must be applied.'

31. In determining whether the Respondent acted reasonably or unreasonably, I cannot substitute my own view as to what would have done in the circumstances. Instead, I am required to determine the range of reasonable responses open to an employer acting reasonably in the circumstances and determine whether this Respondent's decision to dismiss this Claimant fell within that range.

32. The legal principles on the correct approach to fairness in s.98(4) of ERA are well established and were not in dispute. A useful summary of the relevant principles as they apply to misconduct is set out in the judgment of Aikens LJ in Orr v Milton Keynes Council [2011] ICR 704 at paragraph 78. While the fairness of dismissal is judged on the basis of facts known to the employer at the time, the important words “in accordance with the equity and the substantial merits” in s.98(4) ERA mean that the band is not “infinitely wide” and mean tribunals should not turn the assessment of fairness into a matter of “procedural box ticking”: see Bean LJ (with whom King and Sir Terence Etherton agreed) in Newbound v Thames Water Utilities [2015] IRLR 734 at paragraphs 60-61.
33. Mummery LJ in London Ambulance v Small [2009] IRLR 563 contrasted the exercise conducted by an employment tribunal in objectively reviewing the fairness of a dismissal with the very different issue about an employee’s conduct in relation to contributory fault, which is a decision for the tribunal, not the employer, based on the evidence heard by the tribunal (paragraph 44). 31. 32. Mummery LJ added this advice at paragraph “... As a general rule, however, it might be better practice in an unfair dismissal case for the ET to keep its findings on that particular issue separate from its findings on disputed facts that are only relevant to other issues, such as contributory fault, constructive dismissal and, increasingly, discrimination and victimisation claims. Of course, some facts will be relevant to more than one issue, but the legal elements of the different issues, the role of the ET and the relevant facts are not necessarily all the same. Separate and sequential findings of fact on discrete issues may help to avoid errors of law, such as substitution, even if it may lead to some duplication.”
34. Where an ET has found the dismissal to be unfair, it will proceed to consider the question of remedy. In doing so, the amount of any compensatory award shall be: “123 Compensatory award (1)...such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.”
35. In determining what is just and equitable for these purposes, an ET is entitled to reduce the compensation by a percentage, representing the chance that the employee would still have lost their employment had the dismissal been fairly carried out (see Sillifant v Powell Duffryn Timber Limited [1983] IRLR 91 per Browne-Wilkinson J (as he then was at page 96), cited with approval by Lord Bridge of Harwich at page 163 Polkey v A E Dayton Services Limited G H [1988] ICR 142 (“the Polkey reduction”).
36. In Software 2000 Limited v Andrews & Ors [2007] ICR 825, Elias J (as he then was) set out (at paragraph 54) a summary of the principles to be applied in assessing compensation where a Polkey deduction is being considered.

37. It should be noted that this case was decided at a time when s.98A(2) of the 1996 Act was in force. That provision was of course repealed in 2012 and so those parts referring to s.98A(2) no longer apply.

38. However, the remainder of the summary of the principles remains relevant:

“(1) In assessing compensation the task of the Tribunal is to assess the loss flowing from the dismissal, using its common sense, experience and sense of justice. In the normal case that requires it to assess for how long the employee would have been employed but for the dismissal.

(2) If the employer seeks to contend that the employee would or might have ceased to be employed in any event had fair procedures been followed, or alternatively would not have continued in employment indefinitely, it is for him to adduce any relevant evidence on which he wishes to rely. However, the Tribunal must have regard to all the evidence when making that assessment, including any evidence from the employee himself. (He might, for example, have given evidence that he had intended to retire in the near future).

(3) However, there will be circumstances where the nature of the evidence which the employer wishes to adduce, or on which he seeks to rely, is so unreliable that the tribunal may take the view that the whole exercise of seeking to reconstruct what might have been is so riddled with uncertainty that no sensible prediction based on that evidence can properly be made.

(4) Whether that is the position is a matter of impression and judgment for the Tribunal. But in reaching that decision the Tribunal must direct itself properly. It must recognise that it should have regard to any material and reliable evidence which might assist it in fixing just compensation, even if there are limits to the extent to which it can confidently predict what might have been; and it must appreciate that a degree of uncertainty is an inevitable feature of the exercise. The mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence.

(5) An appellate court must be wary about interfering with the Tribunal's assessment that the exercise is too speculative...”

39. It is clear therefore that the burden does lie on the Respondent; that at this stage it is inevitable that there is a speculative element to the exercise which the Tribunal has to undertake; and that the Tribunal should have regard to all relevant facts and matters in coming to its conclusions.

## **CONCLUSIONS**

40. It is necessary to first determine what was the reason or the principal reason for the Claimant's dismissal. The Claimant had been informed that his dismissal had been related to poor performance. The Claimant asserted in his witness statement that he did not believe this to be the real reason for his dismissal. The Respondent accepted in their response to

the claim that the real reason for the dismissal of the Claimant was the assertion made by the other employee. It was not disputed that the Claimant had not been told the real reason for his dismissal. The Respondent asserted that they were in a very difficult position as the other employee had requested that they did not inform the Claimant that she had made the allegation. On the evidence before me, and on consideration that issues had arisen with the Claimant's performance previously which had not resulted in dismissal, I conclude that the principal reason for the Claimant's dismissal was the allegation of assault.

41. The employer in claims of unfair dismissal must show that the reason they dismissed the employee was a reason of a kind to justify that dismissal. The Respondent clarified at the hearing that there was some other substantial reason, namely a loss of trust and a breakdown of the relationship between the employer and the employee. In the alternative they asserted the conduct of the employee justified the decision.
42. I note that the allegation was reported to the Respondent promptly and before the decision had been made about whether to pursue a criminal prosecution. I also note that the Respondent's evidence included concern and consideration for other employees and women that made them very uncomfortable reflecting the lack of trust in the Claimant. I have concluded that this demonstrated that the Respondent felt that they could no longer place the necessary trust and confidence in their employee, not because they were satisfied that he was guilty, but because there was a real possibility that he was an offender. I accept that the circumstances and reasoning amount to some other substantial reason, L v K 2021 CSIH 35 considered on the principle that guilt did not need to be shown but a real possibility of being an offender.
43. Given the gravity of the allegation, along with the detailed consistent evidence given to the Respondent, it was reasonable for the Respondent to no longer have the necessary trust and confidence in the Claimant. Had the employer not discharged the burden in regard to some other substantial reason I would have accepted that conduct in the circumstances would also satisfy the test of establishing a potentially fair reason for dismissal.
44. I therefore move on to consider whether the Claimant's dismissal was fair. The burden in this regard is neutral and I have had regard to the reasons given by the Respondent, its size, the company of 75 people, and its resources including the fact that it did not have a HR department and had previously instructed solicitors for legal advice. I have considered fairness in accordance with the principle of equity and the substantial merits of the case.
45. I accept that the allegation relates to an issue that happened outside the course of the Claimant's normal employment but that 'actings... Reflect upon the employer-employee relationship' Thomson v Alloa motor company Ltd 1983 IRLR 403 EAT, and can amount to the basis for dismissal.
46. Whilst I accept that some circumstances are so grave that an employee may be fairly dismissed on the basis of a charge alone, such as a charge

of murder Kearney v Royal Mail Group Ltd ET Case No.3100476/10. I note that the facts in this case are to be differentiated because at the date of dismissal no criminal charges had been brought against the Claimant. I also note that the case law in regard to when criminal charges are brought is consistent with the ACAS Code in considering the employee's actions in relation to their ability to continue to work with colleagues and the potential reputation damage to their employers.

47. The Respondent failed to carry out a reasonable investigation. The allegation as reported to them indicated that there was potentially a witness as well as potential objective evidence. There was also the potential for criminal charges being brought which may have affected the employer's ability to carry out an investigation. But despite this the Respondent's failure to carry out any investigation or notify the Claimant of the real reason for his dismissal was not procedurally fair.
48. The Respondent accepted that the procedure was not fair and I have concluded on the evidence before me that they believed there was a real possibility that the Claimant was an offender but 'Of course, it would be unfair, as it was found to be here to a marginal extent by the Tribunal, to take into account matters that were not fully vented between decision maker and employee at the time that the decision was to be made' Phoenix House v Stockman 2017 ICR 84 EAT, para 21. The Respondent had failed to have a procedure where the Claimant was aware of the actual reason for his dismissal, the alleged assault, and therefore this should not have been taken into account in the decision-making process.
49. Whilst I accept that the Respondent was in a difficult position faced with the conflicting rights of two different employees I note that the impact on the employee of the potential loss of his job, his reputation, and effect on future employment should be 'subject to the most careful investigation' A v B 2003 IRLR 405 EAT, which it was not in this case rendering the dismissal unfair.
50. It would have been a reasonable response to have suspended the Claimant for a period of six weeks from 09/01/25 in order to carry out an investigation. This period would not have started any earlier, Zen Internet v Stobart [2025] EAT 153 considered, as the company was closed over Christmas. This would have allowed them sufficient time to contact the other employee and find out if a criminal charge was pending, consider any objective evidence, and decide whether to contact any witnesses, and most importantly give the Claimant the opportunity to respond so that an account could have been taken of what he says happened, to decide on a reasonable and fair response.
51. I have considered whether it is just and equitable to award a lesser amount than would otherwise be appropriate for the loss sustained in consequence of the unfair dismissal under section 123 (1) of the Employment Rights Act 1996. This includes my assessment under Polkey. I have considered whether there was a real chance that the Claimant would have remained in employment, Venkatesan v Surabi Ltd and anor EAT 0193/14 in order to do this I must consider whether there was a likely dismissal in the event that there had been a fair procedure. In considering

this hypothetical dismissal the test that I must apply is an assessment that is specific to the particular employer and the particular facts, Williams v Amey Services Ltd EAT 0287/14.

52. Firstly in this hypothetical scenario I have considered whether the Respondent would have dismissed the Claimant. I have accepted that it is reasonable for the employer to consider the acts of the employee even outside of their employment and that case law as well as the ACAS code for discipline and grievance sets out consideration of offences on an employee's suitability to do the job, relationship with the employer, work colleagues and customers. These are all considerations that I have accepted the Respondent took into account in making the decision and conclude that these would have been potentially fair considerations for dismissal.
53. I therefore move on to whether the Respondent would have dismissed the Claimant in this hypothetical situation. I have considered that subsequent to an investigation over a period of six weeks, at its highest the Respondent may have had independent corroborated evidence of the allegation and potentially a criminal charge having been made but at the lowest it would remain a claim by one employee against another employee.
54. The allegation by one employee was that she was raped by the other employee, she had been an unfit state to give consent and that Mrs Hall, the brand director, had accepted that employees account as credible, having been reported the next day, being visibly distressed reporting the offence, reporting there to be a witness, reporting there to be forensic evidence, and submitting to DNA examination. Mrs Hall had given evidence that she knew that there was alcohol at the party, that the employee had been drunk, and saw no reason for her to lie. I therefore conclude that had an investigation taken place the Respondent would have still have found this other employee's evidence to be credible and would have had to weigh that against the response they would have received from the Claimant.
55. I have concluded that the Claimant would have responded in the same way that he has done in his evidence in this claim, namely denial. The Claimant admitted in his oral evidence that he took the other employee and her friend to their accommodation after the party. That the other employee was intoxicated and that she fell and hurt her face on the driveway of accommodation. He denied that he had entered the property or that any assault had taken place. He asserted in his witness statement paragraph 20 that he would provide proof, 'I could have given a full account of my movements on the night in question provided evidential proof that no assault, whatever is now alleged, could have been committed by me.' Despite having been aware of the allegation since at least June 2025 he has not provided any evidential proof and in oral evidence did not assert that any was available or provide any more details in regard to that evening.
56. I note that in this hypothetical consideration of dismissal for the Respondent Mrs Hall and Mr Hancock had both said that consideration

was given for the safety of others despite it only being an allegation, due to the gravity and nature of the allegation.

57. The question of a Polkey deduction requires the tribunal to consider both whether the employer could have dismissed fairly and whether it *would* have done so. Furthermore, the enquiry is directed at what the particular employer before the tribunal would have done, not what a hypothetical fair employer would have done. The role of the tribunal is to decide what the chances of a (fair) dismissal were.
58. I have concluded that had there been an investigation that at the lowest would have resulted into differing accounts of what happened on that evening. Given the Respondent's accepting one employee's detailed evidence is credible and the lack of weight of the evidence provided by the Claimant on balance they would have found the other employee to be the most credible and would have preferred her evidence. They would therefore have been bound to accept and prefer the other employee's account and would therefore continue to have lost the trust and confidence in the Claimant and would have dismissed him in any event.
59. As I have concluded that the Claimant would have been dismissed fairly in any event he is entitled to full losses and then no further loss, in this case six weeks, O'Donoghue v Redcar and Cleveland Borough Council 2001 IRLR 615, CA.
60. I have not made a reduction for contributory conduct as there was no investigation to seek verification of the Claimant's actual guilty conduct. The correct test is to consider would be if the conduct was culpable, blameworthy, foolish or similar which includes conduct that falls short of gross misconduct and need not necessarily amount to a breach of contract Nelson v British Broadcasting Corporation (No. 2) [1980] ICR 110. This was not done by the Respondent. I have not applied an uplift for failure to follow the ACAS code as I have found that the grounds for the dismissal of some other substantial reason and therefore the ACAS code does not apply, Phoenix House v Stockman 2017 2017 ICR 84 EAT.
61. The Claimant is entitled to the basic award of three weeks' gross pay and the compensatory award of six weeks' net pay for the period that it would have taken the Respondent to carry out a fair investigation and then dismissed the Claimant fairly.

Approved by:  
**Employment Judge Clarkson**  
**13 February 2026**

JUDGMENT SENT TO THE PARTIES  
ON 31 MARCH 2026

Jade Lobb  
FOR THE TRIBUNAL OFFICE

### **Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

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/)