



EMPLOYMENT TRIBUNALS

Claimant: Ms M Adach
Respondent: Aspen Village Limited

Heard at: Watford
On: 13 to 16 January 2026
Before: Employment Judge Dick

Representation

Claimant: The claimant appeared in person but was assisted at points by her friend Mr N Parmenter. She also had the assistance of a Polish interpreter.
Respondent: Ms S Morley (consultant)

REASONS

1. I gave an oral judgment and what would now be described as full oral reasons at the conclusion of this case, finding that the claimant had not been unfairly dismissed. (There was at that time no power to give summary reasons as there now is under rule 60(4A).) Regrettably, although I issued my written judgment on 19 January 2026, it was not sent to the parties until 12 March 2026. The claimant's request for written reasons, dated 22 March and received by the Tribunal on 24 March, was therefore made in time, but it was only passed to me on 13 April. I therefore provide these written reasons under rule 60 and I apologise to the parties on behalf of the Tribunal for the delay.

INTRODUCTION; CLAIMS AND ISSUES

2. The claimant was employed by the respondent, from 2018, as a care assistant. An allegation was made that on 16 December 2023 the claimant had used force on a person in her care after that person had slapped her. Following separate investigation and disciplinary hearings, the claimant was summarily dismissed. That decision was upheld upon an internal appeal. The claimant's case is that her dismissal was unfair.
3. At an earlier hearing my colleague Employment Judge ("EJ") Smith had determined that it was not reasonably practicable for the claim to have been presented in time but that it was presented within such time as was reasonable, i.e. time for presenting the claim was extended. EJ Smith went on to set out the claimant's claim as follows:

- a. The respondent should not have allowed certain residents on to its premises when the staff are not skilled in the care of those residents.
 - b. The respondent did not provide any or any adequate training for the Claimant to deal with very aggressive, violent and/or unpredictable residents.
 - c. The respondent did not have staff on the day of the incident who were experienced and/or trained in dealing with these types of residents.
4. EJ Smith made the usual orders for preparation for the main hearing and identified the issues to be determined as follows:
 - 1.1 Was the claimant dismissed?
 - 1.2 Was it a potentially fair reason?
 - 1.3 Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the claimant?
 - 1.4 The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.
 - 1.5 What was the reason or principal reason for dismissal? The respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.
 - 1.6 If the reason was misconduct, did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:
 - 1.6.1 there were reasonable grounds for that belief;
 - 1.6.2 at the time the belief was formed the respondent had carried out a reasonable investigation;
 - 1.6.3 the respondent otherwise acted in a procedurally fair manner;
 - 1.6.4 dismissal was within the range of reasonable responses.
5. I use the same numbering there as was used in EJ Smith's orders. Something appears to have gone a little awry with the sequencing of the questions to be answered (1.5 should perhaps have come straight after 1.1) but in any case the issues were clear. There was no dispute that the claimant was dismissed, for reasons related to conduct. The claimant accepted that she had some physical contact with the person she was caring for, but said it was not a slap (as had initially been alleged). In all the circumstances (including those set out above at my paragraph 3) the claimant says that she should not have been dismissed. The respondent's case was that its decision to dismiss was within the band of reasonable responses and, in the alternative, if the dismissal was unfair, that the claimant's damages should be reduced on account of her contributory conduct. In the event I did not need to make findings about the latter.

PROCEDURE, EVIDENCE etc.

6. The claimant had not prepared a witness statement for the hearing because, she told me, she had not understood that EJ Smith's order for the parties to prepare and exchange witness statements applied to her (despite the following wording appearing in the order: "Everybody who is going to be a witness at the hearing, including the claimant, needs a witness statement.") The claimant pointed out that the respondent had complied with its disclosure obligations late and had also served its witness statements late. The respondent accepted that, but said there were good reasons for it. The claimant had also attended with documents which had not been put in the in the hearing bundle and complained (with some justification, it appeared to me) that some of the documents disclosed to her had been the subject of unnecessary redactions e.g. redacting the names of the claimant's colleagues on documents recording what they had told the respondent during the disciplinary investigation. On the first day of the hearing Mr Parmenter indicated on the claimant's behalf that he would be seeking a postponement in order for the claimant to obtain legal advice.
7. My preliminary view was that although the claimant had received documents late, she nevertheless had had sufficient time to consider them. The case had not become any more complicated recently and so it was unclear to me why legal advice had not been sought before. The case was not ready, but I decided that it would not be a proportionate use of Tribunal time to consider who was at fault and to what degree, since it seemed to me that the case could be got ready overnight and still be heard in the time available. The best course of action was therefore for me to order the claimant to prepare a witness statement overnight, which would also give the claimant time to speak to Mr Morley, so that both parties could be satisfied that they each had the documents that they should have (without unnecessary redactions) and so that anything that needed to be could be added to the bundle. I indicated that if the claimant was still asking for a postponement following all of that I would hear the application at the start of the second day. I also made an order by consent that the respondent's witness Ms Kay could give her evidence by CVP (videolink) and I made orders under rule 49 relating principally to anonymisation of any of the residents of the home at which the claimant worked. In consequence of that order, I use "Resident A" in place of the name of the person the claimant was alleged to have used force upon.
8. The claimant served her witness statement overnight and the parties were able to agree the contents of a revised bundle. In the event the claimant did not make an application for a postponement.
9. During the course of the proceedings I was twice asked to amend the name of the respondent by consent to ensure that the correct legal entity was named as the claimant's employer. The name of the respondent at the top of these reasons is the name that appeared on the claimant's payslip and is as ordered by consent upon the second amendment.

10. Before the evidence was called I explained to the parties that I would read the witness statements but they should be sure to refer me to any documents of relevance in the agreed bundle during the course of the evidence or submissions. I also directed the parties to the list of issues so that all were aware what I would be deciding.
11. After taking time to read the statements, I heard evidence from the witnesses. In each case the usual procedure was adopted, i.e. their written statements stood as their evidence-in-chief and they were then cross-examined. The respondent called Ms Kate Kay, its Operations Manager at the material time, who took the decision to dismiss the claimant, and Ms Rosamunde Willis-Read, its Chief Operating Officer at the material time, who decided the claimant's appeal against the dismissal. The claimant gave evidence on her own behalf.
12. Although in light of what I was told about the police investigation (see below), it may not strictly have been necessary, I did explain to the claimant that she had a right not to answer questions which might incriminate her in the commission of any criminal offence. The claimant chose to answer all questions put to her.
13. At the conclusion of the evidence I heard oral submissions and after taking the time to consider the matter I delivered an oral judgment and reasons.

FACT FINDINGS

14. I find the following facts on the balance of probabilities. I have not made findings on every factual dispute presented to me, but merely on those which assisted me in coming to a decision bearing in mind the list of issues.

The claimant's work

15. The claimant was employed by the respondent from 2018 at a care home ("the Home"). She was responsible for caring for vulnerable adults, whom I shall refer to as residents. The claimant's duties involved meeting the residents' everyday needs – personal care, helping with mobility, serving meals and drinks and feeding them where necessary. Although I did not hear formal evidence about the respondent's size and resources, as Mr Morley for the respondent put it in submissions, the respondent did not plead poverty – in other words there was no suggestion that the respondent lacked the resources to conduct a thorough and proper investigation into the allegations against the claimant.

Resident A

16. There was no dispute that Resident A was elderly and vulnerable. She required the use of a full body hoist or sling for all "transfers" (in other words being moved from one place to another). She had vascular dementia and exhibited behaviours which the respondent termed "very challenging". When she became frustrated she could spit, slap, shout, pull hair or kick out at people, which could also hurt herself. There is of course no suggestion that there was any malice or intent behind those actions. Resident A had a care plan which said that she required support from two members of staff with all aspects of personal care. It is not clear to me whether the plan positively said that there should not be *more* than two members of staff in order to avoid Resident A becoming agitated or

upset, but all the witnesses (including the claimant) seemed to agree that was the accepted approach.

Training and the claimant's concerns

17. I accept the (unchallenged) evidence of the respondent's witnesses to the effect that the respondent's staff, including the claimant, did regular industry-standard accredited training. In particular, and there was no dispute about this, the claimant had, in May 2023 done a course called "behaviours that challenge".
18. In her statement for the investigatory hearing/meeting (see below), the claimant said: "Training Challenging Behaviour in [Resident A's] case doesn't teach staff on how to protect ourselves [...] My mistake is that all my concerns I reported to unit manager and senior carers verbally instead in writing. I was suggesting that maybe [Resident A] should be on different medications or the Home is not right place for her, its not safe for her or staff. I suggested to deliver to her room a TV or radio as well. I made mistake to not put in writing." When asked in the later disciplinary hearing who she had told about those concerns the claimant said she told her unit's lead and senior carers many times. "I wanted [Resident A's] medication changing, hoping it would change behaviour." The claimant agreed she had never documented her concerns as there was not time on a 12 hour shift. In her appeal hearing the claimant said that she thought that Resident A's medication should have been changed but she did not know if that had been done; she had talked to the senior lead about this. The claimant said that she had also suggested that Resident A was being cared for in the wrong place and that she thought Resident A should have a TV or radio. The claimant does not appear to me to make any assertion that she told the respondent – before the events of 16 December 2023 – that her training was inadequate or that she needed further training.
19. During the conduct of the claimant's appeal, Ms Willis-Read interviewed four members of staff about what concerns the claimant had raised. One, Elizabeta Eva, agreed that the claimant and others had raised concerns about Resident A; she did not say exactly what concerns. She said that Resident A's medicines were reviewed and increased under GP supervision. She was asked about a mental health nurse and said the following:
- There was a MH nurse [...] who worked here about 4 years ago. She was a lovely person and very helpful . [...] She was so kind. She did tell us things about how to manage residents with challenging behaviour but whatever she told us was already in the training we had [...]
20. One other person interviewed was asked about what concerns the claimant had raised about Resident A and said: "yes, she raised something like that. She is mental. Not only [the claimant]." (In the context, the employee appears to have meant that the claimant had said that Resident A was "mental" – it is unclear whether that was the claimant's or the other employee's choice of word – and that the claimant was not the only one to have said it.) When asked what actions had been taken following the claimant raising concerns he said that

Resident A's medication was increased. After that she was settled and not that bad but she started again and had another review, resulting in a further increase in her medication. Another interviewee recalled the claimant raising concerns once. She had explained to the claimant that the mental health team and a GP were already involved and there were processes to go through. Another interviewee could not remember the claimant raising concerns.

21. In the claimant's statement for these proceedings she said that the concerns she had raised were: (i) about Resident A's medication; (ii) that Resident A might be in the wrong place and it was not safe for her and the staff (iii) that Resident A's quality of life would be improved with a radio or TV. In her oral evidence the claimant maintained that she had raised these concerns and had told people that Resident A was "not manageable for us".
22. There was no dispute that any concerns the claimant did raise were raised orally to colleagues. I find the following. I accept that the claimant did tell colleagues that she thought Resident A's medication might need revising, that she thought Resident A might be in the wrong care setting and that Resident A would benefit from having a TV or a radio. I do not accept that (before 16 December 2023) the claimant explicitly raised concerns about her own safety or her own ability to deal safely with Resident A. Nor did she request any further training.

The allegation (16 December 2023) and the investigation

23. An investigation was conducted by Kelly Halford, the manager of the Home. I did not hear evidence from Ms Halford, but I was provided with a written report ("the Report") that she prepared, along with minutes of the investigatory meeting which she conducted with the claimant. Regarding the latter, a point made on behalf of the claimant was that as there were inaccuracies in the minutes for the appeal hearing (on which see below) then it should not be assumed that the minutes of the investigatory meeting, or indeed the disciplinary meeting, were accurate. The claimant did not assert that there were any particular inaccuracies in either of those documents, although I appreciate of course that the meetings happened some time ago. There was evidence from Ms Kay that the minutes of the disciplinary meeting were accurate to the best of her recollection. Ultimately I considered it reasonable to treat the minutes of both the investigation meeting and disciplinary meeting as broadly accurate, keeping in mind that they were not (and were not said to be) verbatim transcripts. In the absence of any suggestion to the contrary, I also accept that Ms Halford's report is an accurate record of the investigation.
24. The initial allegation reported to the respondent (in fact to the "Care Coordinator, MJ", the Report records) was that on 16 December 2023: "[The claimant] was supporting [Resident A] to put her sling on when she slapped [the claimant] across the face. [The claimant] immediately reacted by slapping [Resident A] back, across her face." As will become evident, during the course of its investigation the respondent concluded that the claimant had not in fact slapped Resident A, but had pushed her. No suggestion was made by the respondent during the course of these Tribunal proceedings that the claimant had done anything other than push Resident A.

25. The police attended the Home on 19 December. Statements taken during the criminal investigation were not, as I understand it, provided to the respondent (and were not, therefore, provided to me). The Report records that all those said to be witnesses – four people apart from the claimant – were spoken to (by, I assume Ms Halford) and provided statements. I was not provided with those statements (if they were separate documents) but the statements, or parts of them, were reproduced in the report. One witness said she saw the claimant hit Resident A on her arm. That is all the report records about what that witness said. There is more detail about what the other three witnesses said. One described how she arrived to see a Resident A on the floor with three others (including the claimant) trying to convince Resident A to go into her room. Her colleagues brought the hoist but nobody managed to put the sling on because she was very agitated. All three said that the claimant had been hit by Resident A, variously described as “hit on the face”, “slapped on the face” and “slapped hard”. One said that the claimant had been calm and said “Stop! Enough!”; she did not see whether the claimant hit Resident A or just defended herself by pushing Resident A’s hand. Another said she saw the claimant “reacting immediately back towards [Resident A] with a push-slap on [Resident A’s face]”. The other said that the claimant “pushed [Resident A’s] hand with a slap.”
26. The claimant was requested/required to attend an investigatory meeting by letter dated 19 December 2023, which explained that the allegation appeared to amount to gross misconduct, meaning the claimant could be liable for summary dismissal unless she was “exonerated, or the outcome [was] found to be less serious”.
27. Ms Halford conducted her investigatory meeting with the claimant on 29 December 2023 with a note taker. When told that the allegation was that she had slapped Resident A across the face, the claimant said she has pushed, not slapped, Resident A. Ms Halford records that the claimant demonstrated the gesture which involved “using her hands to shove [Resident A] on her shoulder to move her away from her, using force”. The claimant said that she was on her knees as Resident A was on a crash mat and she was trying to support Resident A to put the sling on. Resident A had slapped the claimant across the face and when Resident A went to slap the claimant across the face again the claimant reacted by shoving Resident A’s shoulder using force. The claimant said that Resident A preferred male staff but none were on duty that day. When asked why there were four members of staff in the room, when it was known that Resident A was better with fewer staff, the claimant said she didn’t know.
28. The claimant was also asked about comments she had made to a member of the respondent’s staff that Resident A was “mental” and “should be in a cage”. The claimant said she had used the wrong words and had meant that Resident A should be in a soft room so she didn’t hurt herself. (In her oral evidence to this Tribunal the claimant accepted that that was what she had said and that it had happened shortly after the incident. While I accept that the claimant would have been understandably in a heightened emotional state, and I do not doubt that she did not really mean what she said, I found the claimant’s attempt to

suggest that she had used the word cage in error to be unconvincing. Although the claimant used the services of an interpreter at points during the hearing, she had a good command of the English language.) In the meeting the claimant was reminded about a comment she had made (on 18 December) to Ms Halford that “I do not have training for people who are aggressive and violent. I need to be able to protect myself and that is what I did. Do you expect me to be beaten up?” The claimant agreed that she had completed the respondent’s “behaviours which challenge” training, but said that it did not cover Resident A, who was very violent, though it did cover things such as a resident trying to strangle and push. The claimant agreed that the training did not teach her to “hit out or shove” a resident. The claimant said that she thought that Resident A needed different medication. (On this point I accept the evidence of the respondent’s witnesses that Resident A’s medication was regularly reviewed; as Ms Halford observed in the meeting, Resident A had recently started a new medication.) When asked whether she had ever told anyone else her view that Resident A was better with only one staff member in the room, the claimant said she had reported that to one of her colleagues but it was not always possible because more than one person was required to use the hoist. When asked whether she had anything else to add the claimant said: “How do we know what others do to protect themselves when the door is closed” and said that she felt she was unlucky because there were three witnesses who saw what she did. Ms Halford was so concerned at this statement that she asked the claimant to repeat herself to make sure she been heard correctly. She had indeed been heard correctly.

29. In the findings and conclusions of the Report, Ms Halford briefly summarised what the four witnesses had said, then said the following

MA [i.e., the claimant] denies hitting [Resident A] in her face but confirmed she did make contact with [Resident A], using her hand to shove/push (the demonstration given by MA showed force was used) her on her shoulder. MA states she did this as a reaction to [Resident A] attempting to hit her in her face for a second time. MA confirmed she knew this was not right thing to do and that during her training for behaviours that challenge, she was not trained to react in this way.

MA showed no remorse, neither did she sincerely apologise for what had happened. She stated “I feel I was unlucky as I had 3 witnesses who saw what I did”.

It is my belief that we hold enough evidence to prove that MA made contact with [Resident A], using her hand in reaction to being slapped in the face. Although there is some differences in where staff have reported MA ‘hit’ [Resident A], she did ‘hit’ her. This constitutes gross misconduct and assault and should result in immediate dismissal.

30. It is not clear to me whether the claimant was at that stage provided copies of the witnesses’ statements or Ms Halford’s report, though nothing was raised about that in the course of the evidence. Given that the respondent essentially

accepted the account given by the claimant (see below), it would appear that the claimant was not put at any disadvantage in this regard.

31. The claimant provided a statement to the respondent dated 2 January 2024. It is unclear whether this was provided before or after the Report was written. The statement said that the claimant and a colleague had been dealing with Resident A and were then joined by two other colleagues. The claimant went off to get the sling. Then, the statement says, "I was bending over the sling when [Resident A] hit me in my chest and it was very painful. She was about to hit me again so to defend myself and to defend myself from her hitting me again I pushed her away. I had no time and place to step away."

The disciplinary hearing

32. The disciplinary hearing, conducted as I have said by Ms Kay, took place on 8 January 2024 and lasted half an hour. The claimant was accompanied by a colleague and a note taker was also present. The account given by the claimant was as follows. She had left the room to get the hoist and when she came back there were three people in the room. She and her colleagues were trying to put the sling on to hoist Resident A but Resident A was kicking and fighting. The claimant was kneeling down next to Resident A, who slapped the claimant in the chest, which was painful. "It was an instant reaction, I pushed her away. It was instant to avoid pain. I'm not happy with my reaction but it was so quick." The claimant later said: "I pushed her away on her shoulder. Not my intention at all." When asked why she would enter the room when there were already three people in there with Resident A, the claimant said that she was the one who knew how to put on the hoist. She thought that there was no chance of putting on the sling. When asked why she would continue if Resident A was distressed and she felt it wasn't going to work, the claimant said, "There was four people in the room, we didn't know what to do. We can't leave her crawling in the corridor." When asked why she had not got anyone more senior, the claimant said that one of her colleagues who was there was a team leader and had not said to get anyone else. When asked about the comment she had made in the investigatory hearing about feeling unlucky that three people had seen her, the claimant said: "This kind of things happen all of the time. I had three people to witness. We don't have mental health nurses. We have no one with knowledge to help here."

The decision to dismiss

33. Ms Kay wrote to the claimant on 12 January 2024 to explain that she was being dismissed for gross misconduct. Ms Kay summarised the claimant's response to the allegations, noting that the claimant denied hitting Resident A but agreed she had made contact with Resident A, using her hands to shove/push Resident A on the shoulder, which the claimant had said was a reaction as Resident A was hitting her. The claimant had confirmed that she was aware this was not the right thing to do and that she had not been trained to react in this way. The claimant had also, Ms Kay wrote, raised concerns about being able to safely care for Resident A and said she had raised this with other staff. Ms Kay said that she considered the claimant's explanations unsatisfactory:

- Whilst I appreciate you state this was a reflex action to protect yourself, you still made physical contact with a significantly vulnerable resident. As we work in an environment where people have cognitive impairment and can become distressed and potentially show physical aggression towards us as care providers, I feel there would be a potential of this reoccurring.
- You also stated that you felt unlucky because there were witnesses to this. This statement concerns me as [it] indicates that you are not remorseful for making physical contact with the resident but remorseful that you were witnessed doing so.
- I was unable to find any evidence that you had raised your concern about being able to safely provide care to [Resident A], and you did state yourself that you had not raised this with any of the senior management within the home. I reviewed your documented notes when you provided care to [Resident A] and there was no evidence within these that this lady had ever shown any distress or challenging behaviour towards you, except for your entry relating to the above incident on the 16th December 2024.

34. In her evidence in these proceedings Ms Kay agreed that when she referred to a lack of evidence in that last paragraph, she meant written evidence. Ms Kay said that the claimant had confirmed that she had made physical contact with Resident A by using her hands to shove or push the resident on her shoulder, in reaction to being hit herself. The claimant had accepted that this was not the correct response and had accepted that she had not been trained to react in that way. Whilst she acknowledged the claimant's assertion that her actions were a reflex reaction, Ms Kay remained concerned, she said, that the claimant had made forceful and unnecessary physical contact. In her oral evidence Ms Kay said that she believed (i) that the claimant had accepted that she had lashed out and that (ii) and that she, Ms Kay, believed that the claimant's actions, though in self-defence were probably voluntary rather than a reflex in the literal (i.e. involuntary) sense of the word, but whichever of those was right she was concerned there could be a repeat; the claimant's action was unacceptable. She did not think it was a deliberate action in the sense of it being done in revenge. Ms Kay said that she had been in a comparable position many times – she was an experienced carer herself – and had never once made physical contact with a resident. When it was pointed out that if there were too many people in the room then the claimant could not have been the only one at fault, she replied that the claimant was the only one said to have made physical contact with the resident. Staff, Ms Kay said, were trained to manage such behaviours without resorting to physical force. She was concerned by the claimant's statement to the effect that she felt unlucky because there had been witnesses to the incident and suggested that this showed remorse for having been seen rather than remorse for the conduct. She also noted in her written evidence that the claimant had not formally raised concerns; in her oral evidence she agreed that what she meant there was that the claimant had not raised any concerns in writing. (As I have said, the claimant accepted that she did not raise any concerns in writing, including in Resident A's notes.) Ms Kay ultimately decided that the claimant's conduct

amounted to gross misconduct and that the appropriate sanction was summary dismissal.

35. I reach the following conclusions on Ms Kay's decision. I accept that Ms Kay genuinely believed the things I have set out in the preceding paragraph. Although there was no detailed discussion about how the claimant, Resident A and others were positioned during the course of the incident, Ms Kay essentially accepted the claimant's account about what had physically happened. It seems to me that the conclusions Ms Kay drew were reasonable on the basis of what the claimant and others had told her and on the basis of her own experience. In particular, I consider that Ms Kay's conclusion that the claimant's action was likely not involuntary, and was an inappropriate action in the circumstances, was a conclusion that was reasonably open for Ms Kay to have reached.

The appeal

36. On 17 January 2024 the claimant lodged a written appeal against the decision to dismiss her. So far as is relevant, she said that the incident was not as serious as it had been made out to be. She had only pushed Resident A away to defend herself from an assault. If she had been given the correct training and support on how to deal with violent people her "defence action would have been different". It seems to me that – albeit likely inadvertently – this was a significant concession on the claimant's part. The claimant must implicitly have been conceding that there were actions open to her other than a push.
37. An appeal hearing took place on Teams on 23 January 2024. The claimant was informed in advance that she had the right to be accompanied. The hearing was chaired, as I have said, by Rosamunde Willis-Read. The meeting was recorded by the respondent but the claimant also made her own recording. The claimant produced in evidence what she said, and what I accept, was a full transcript of her recording. It differed in places with the respondent's minutes, which were not said to be a verbatim transcript. I have relied on the claimant's transcript rather than the respondent's. The claimant explained that although there had been training (about how to deal with violence) that had been about someone coming to strangle you and Resident A was unpredictable. When asked about "breakaway" techniques, the claimant agreed that she had never been taught to push someone away. She said they were taught to step away but she had been unable to do that (because, she meant, of the way she and Resident A had been positioned; in particular the claimant had been kneeling). When asked whether she should instead have put her hands up to protect herself, the claimant said: "this was like you know instinct, this was just by, didn't think in this particular moment". When asked whether in hindsight she thought a better action might have been to "do that" she agreed (Ms Willis-Read plainly had been demonstrating some alternative action, but what sort of action is not clear from either transcript). In the past, the claimant said, a mental health nurse had been very supportive to her but there was no one with this kind of knowledge now. When asked about staffing there was a discussion about the use of agency workers but the claimant did agree that on 16 December they were not short-staffed.

38. Following the hearing with the claimant Ms Willis-Read conducted interviews with four other members of staff as I have set out above (paragraphs 19 and 20). The interviewees were also asked about staffing and Resident A's medication.
39. Ms Willis-Read produced a report by way of a written decision ("the Decision"), completed on 26 February and 8 March 2024. The Decision set out numerous sources that Ms Willis-Read had consulted, including: the interviews I have already mentioned; a review of the respondent's "behaviours that may challenge" training"; a review of the claimant's training records and of the relevant rotas and policies. (In her oral evidence Ms Willis-Read explained that she was herself an accredited trainer and had gone so far as to attend one of the respondent's training session on challenging behaviour.)
40. In her Report Ms Willis-Read said that the claimant had accepted that she pushed Resident A "in direct retaliation" for being slapped. While I regard this as somewhat overstating what the claimant had said, I do think it was reasonable for Ms Willis-Read to have concluded, as she did, that the claimant was saying her action was voluntary – i.e. deliberate – rather than a totally involuntary reflex. Ms Willis-Read noted that though the various witnesses had described somewhat different actions, all descriptions (including the claimant's) came within the relevant policy's definition of "physical abuse", which included hitting, slapping and pushing. She noted that the claimant's account was that she was defending herself and had been unable to move away. She concluded that the claimant had failed to note – and I consider this to have been a conclusion fairly open to her – that one option of self defence may have been for the claimant to have raised her arms/hand to protect herself. Ms Willis-Read dealt with the claimant's training in some depth, but in short concluded that the training had been adequate. She noted that the claimant had said she, the claimant, had raised concerns about Resident A and further noted that the people she, Ms Willis-Read, had interviewed had agreed with that. Ms Willis-Read noted that Resident A's records indicated that her medicines had been reviewed on three occasions on the lead up to the incident. She did not accept the claimant's suggestion (made at the appeal) about short staffing. She also dealt with other aspects of the claimant's appeal which raised points that were not pursued in the course of these Tribunal proceedings.
41. In the conclusions of her Report Ms Willis-Read said that she had taken account of the claimant's length of service. She said that the claimant continued to believe that she was acting in self defence and was "resolutely un-remorseful", demonstrating a lack of insight and learning from the incident. She considered that there was a "breakdown in trust and confidence [the claimant] would work in the best interests of residents, should she be supported back into the workplace". Ms Willis-Read upheld the decision to dismiss the claimant for gross misconduct.
42. In her evidence in these proceedings Ms Willis-Read explained her view that the claimant had taken a retaliatory action rather than acting in self defence. Ms Willis-Read accepted that it might not have been possible for the claimant to have stepped away as she was kneeling, but said that the technique taught

in training was, if on the floor, to balance on one knee so as to be able to rock backwards if need be. She considered that even if the claimant had been unable to move away, the claimant had other options, which were taught in training, such as raising hands to deflect the blow, as she had mentioned at the appeal hearing (this was plainly an explanation for the alternative action I refer to above at paragraph 37). The training, she said, would never indicate “laying hands”. In this context, it is important to note Ms Willis-Read’s uncontested evidence that she personally has many years experience as a carer and had never had to apply force in the way that the claimant accepted she had. Ms Willis-Read continued to believe, she said, that the claimant had had adequate training. She noted that the claimant continued to assert that she had acted correctly which she considered to be of concern. Also of concern, she said, was the way the claimant had used what she termed “dehumanising language” about Resident A (a reference to the remarks I describe above at paragraph 28).

43. Ms Willis-Read also noted that during the disciplinary process the claimant had indicated that she had seen other people behaving in the way that she had, but would only be prepared to consider disclosing their identities if she was reinstated. (The claimant said in her oral evidence that she did not want to be “snitchy”.) Given that the claimant maintained that she had acted correctly and did not have insight, Ms Willis-Read concluded there was a high risk of recurrence if the claimant were allowed to return to work.

44. I accept that Ms Willis-Read genuinely believed all of the things which I set out in the preceding paragraphs.

Other points

45. The claimant was never previously alleged to have done anything remotely similar to the conduct she was accused of on 16 December 2023. I accept her evidence that she genuinely cared about the residents under her care. I accept her assertion that the training she was given – like any training – could not possibly have covered every conceivable scenario. I do however find that the claimant was given adequate training in how to deal with the sort of behaviour that she was dealing with on 16 December 2023.

46. I accept the claimant’s evidence that Resident A was more difficult to deal with than any other resident she had dealt with in a 10-year career in care. But I do not accept that the claimant has produced sufficient evidence to support the conclusion that Resident A was not being properly cared for. I do not think it more likely than not that the respondent should not have been caring for Resident A in the setting in which it was caring for her, though I accept that the claimant may genuinely have believed that. I do not accept the suggestion that on 16 December the respondent did not have enough suitably-qualified staff on duty.

47. I accept that the claimant was sorry about the incident of 16 December in the sense that she regretted what had happened. But the claimant maintained that what she did was the only thing she could have done in that instant. It seems

to me reasonable for the respondent to have concluded that she was wrong about that – in other words, that there were options other than a push even if they had not occurred to the claimant in the heat of the moment.

48. The claimant agreed that she was aware that only two members of staff at a time should deal with Resident A, and reasonably pointed out that the other members of staff who were involved, one of whom was a team leader, would have known this too.
49. I have not made detailed findings of fact about what actually happened on 16 December 2023. It was not necessary for me to do so, since the issue in this case was whether the respondent's actions in dismissing the claimant were within the band of reasonable responses – I had to consider how the respondent investigated the allegation and the conclusions it came to, rather than what the claimant in fact did.
50. The parties agreed that there were no ongoing investigations into the claimant's conduct. In particular, I was told that so far as the parties were aware there was no criminal investigation ongoing and the claimant of course was never charged with, let alone convicted of, any criminal offence. As well as the police, the local safeguarding team and the CQC were informed of the allegation by the respondent at an early stage. I do not accept the suggestion made on behalf of the claimant that the respondent should have conducted its own investigation before informing those bodies. In the circumstances that suggestion was in my judgment entirely unrealistic. I was told that the claimant was the subject of a referral by Ms Willis-Read to the Disclosure and Barring service. Decisions, by others, made in that context are not in my judgment relevant to my decision.
51. During the course of the proceedings the claimant sought to refer to a subject access request she had made to the respondent. I remain unpersuaded that this had any relevance to the issues I had to decide.
52. The claimant's suggestion (made, so far as I am aware, for the first time in the statement she prepared after I adjourned the proceedings on the first day) was that after she was dismissed, other members of staff accused of treating residents badly were treated more leniently than her. Without any detailed evidence about that it is impossible for me to say whether, even if that is correct, their circumstances were comparable to the claimant's. The claimant's assertion did not assist me in coming to a decision in this case.

LAW

53. Section 94 of the Employment Rights Act 1996 ("ERA") 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. The employee must show that they were dismissed by the employer (see s 95 ERA), but in this case the respondent admits that it dismissed the claimant.
54. S 98 ERA deals with the fairness of dismissals in two stages. First, the employer must show that it had a potentially fair reason for the dismissal within

section 98 (1) and (2). Second, if the employer 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.

55. Regarding the first stage of fairness, S 98 ERA provides, so far as is relevant:

(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— ...

(b) relates to the conduct of the employee...

56. So in this case it is for the respondent to prove that the principal reason for the claimant's dismissal was (mis)conduct.

57. The second stage of fairness is governed by s 98 (4) ERA:

(4) ... 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.

58. In deciding fairness, I therefore must have regard to the reason shown by the respondent and to the resources etc. of the respondent. In general, the assessment of fairness must be governed by the band of reasonable responses test set out by the EAT in *Iceland Frozen Foods Ltd v Jones* 1983 ICR 17. In applying s 98(4), it is not for me to substitute my judgment for that of the employer and to say what I would have done. Rather, I must determine whether in the particular circumstances of this case the decision to dismiss the claimant fell within the band of reasonable responses open to a reasonable employer.

59. In a misconduct case, the Tribunal starts with the test set out by the EAT in *British Home Stores Ltd v Burchell* 1980 ICR 303. Broadly, the question is whether the employer entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. The employer must show that:

a. it believed the employee guilty of misconduct;

- b. it had in mind reasonable grounds upon which to sustain that belief; and
- c. at the stage at which that belief was formed on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances.

60. In considering (b) and (c) above it is however important to note that the *Burchell* test was formulated when the burden was on the employer to prove reasonableness – now that is no longer the case. The *Burchell* test also applies to the question whether it was reasonable for the employer to treat the reason as a sufficient reason to dismiss (although again the burden is not on the employer at that stage). In *Sainsbury's Supermarkets Ltd v Hitt* [2003] I.C.R. 111 the Court of Appeal held that the range of reasonable responses approach applies to the conduct of investigations as much as it applies to other procedural and substantive aspects of the decision to dismiss for a conduct reason.

61. By operation of s 207 Trade Union and Labour Relations (Consolidation) Act 1992, any failure to take account of the ACAS Code of Practice on Discipline and Grievance Procedures will be relevant to the issue of the fairness of the dismissal. In summary, the Code provides that employers must normally:

- a. carry out an investigation to establish the facts;
- b. inform the employee of the problem;
- c. hold a meeting with the employee to discuss the problem;
- d. allow the employee to be accompanied at that meeting;
- e. decide on the appropriate action;
- f. provide the employee with an opportunity to appeal the decision.

62. It will also be relevant whether the employer followed their own procedures. Other points relevant to whether the employer acted within the band of reasonable responses may include: the nature of the allegations, the position of the employee and the size and resources of the employer. A meticulous investigation of the kind that would be done in a criminal enquiry is not required.

CONCLUSIONS

63. The respondent has succeeded in proving that the reason for the claimant's dismissal was conduct – there was no real dispute about that and no suggestion that there was any other reason for the dismissal. That is a reason falling within s 98(2) ERA so I must now go on to consider fairness in general. In doing so I consider the whole of the process from investigation to appeal. I also remind myself that the question for me is not what I think the respondent should have done, but whether the decision to dismiss the claimant fell within the band of reasonable responses open to a reasonable employer. I answer that question in the context of the respondent's effective concession that its size and administrative resources were no barrier to a thorough investigation and a good decision-making process.

64. On the basis of my factual findings above, it is clear that the respondent – through both Ms Kay and Ms Willis-Read – genuinely believed the claimant to have committed gross misconduct.
65. I find that the respondent reached that conclusion having conducted a reasonable enquiry and otherwise acted in a procedurally fair manner. Given the career-ending nature of the allegations, a thorough enquiry was warranted and I find that that is what happened. Of course the standard is not similar to that of a criminal trial, for example with the claimant given the opportunity to cross-examine witnesses. It appears to me that all of the relevant witnesses (including the claimant) were spoken to; the claimant had the chance to give her account at three stages of the process. At the third stage, upon appeal, Ms Willis-Read took the opportunity to speak to further witnesses to see what they had to say about potentially important aspects of the claimant's account. While the witnesses were not all asked about, for example, exactly where everyone was positioned, it seems to me that enough questions were asked for the decision makers to have a good sense of what happened. When considering what was the necessary scope of the factual enquiry, it is also significant in my judgment that ultimately the respondent accepted the claimant's account of what she had done and in what circumstances. The principal issue was, therefore, not what the claimant had done, but whether what she did was so inappropriate as to amount to gross misconduct (and then whether dismissal was the appropriate response). Given their own experience and the enquiries that had been conducted, in my judgment Ms Kay and Ms Willis-Read were in a position to be able to fairly make that judgement.
66. I further find that there were reasonable grounds for the respondent's belief. The claimant had herself accepted that she pushed Resident A, and on the basis of what the claimant said in all three hearings it was not unreasonable for the respondent to have concluded that what the claimant did, although it was not done in malice or revenge, was nevertheless a deliberate or conscious action. I further find that it was reasonable for Ms Kay and Ms Willis-Read to have concluded – as the claimant accepted – that the claimant could have put her hands up instead of pushing Resident A. In the circumstances it was not unreasonable to conclude that even that momentary action amounted to gross misconduct. I say this even in the context where the respondent might have considered that the claimant's action was to some degree instinctive, even if not entirely involuntary, and genuinely done in self defence in the claimant's view at the time. The respondent was entitled to conclude in these circumstances that the claimant's action was sufficiently disproportionate as to amount to gross misconduct. Nor was it unreasonable for the respondent in all the circumstances I have set out to have taken the view that, given what the claimant had said about her actions, a repeat could not be ruled out.
67. Even upon a finding of gross misconduct dismissal is not, of course, inevitable. But I find that both Ms Kay and Ms Willis-Read went on to give proper consideration to whether dismissal was an appropriate response, and they gave proper consideration to those things which the claimant raised in mitigation.

68. In all of the circumstances – given particularly the vulnerability of those in the claimant's care and her own acceptance that what she did was not in accordance with her training – I cannot say that it was unreasonable of the respondent to have decided that the claimant's action, even being as it was an isolated and momentary lapse in a very challenging situation, warranted dismissal. I make clear that I am not making any finding that what the claimant did was morally or otherwise wrong. The claimant was doing a hard job in difficult circumstances. It may be that some other people in those circumstances might have done exactly what she did. It may also be that another employer might reasonably have reached a different conclusion to that reached by the respondent. But that does not mean that this respondent's decision was outside the range of reasonable responses. Ultimately, I conclude that it was not and so the claim must be dismissed.

Approved by:

Employment Judge Dick

16 April 2026

JUDGMENT SENT TO THE PARTIES
ON 16 April 2026

FOR THE TRIBUNAL OFFICE

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.