



EMPLOYMENT TRIBUNALS

Claimant: Mr B Lynas

Respondent: Martin Childs Limited

Heard at: Norwich Employment Tribunal (CVP)

On: 27, 28 November 2025

Before: Employment Judge Magee

Representation

Claimant: Mr West (Solicitor)

Respondent: Mr Herny (Solicitor)

JUDGMENT having been sent to the parties on 23 December 2025 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

Introduction

1. Mr Lynas (“the claimant”) brings claims for unfair dismissal, unlawful deductions from wages and holiday pay against his former employer Martin Childs Limited (“the respondent”).
2. I apologise to the parties for the delay in sending out full written reasons. I hope that the delay has not greatly inconvenienced the parties.

The Hearing

3. The case was heard at Norwich Employment Tribunal by CVP on 27 and 28 November 2025.
4. Mr Lynas was represented by Mr West. The respondent was represented by Mr Henry.

5. There was a bundle consisting of 42 pages. References to the bundle pages will be in (round brackets). Mr Lynas provided a witness statement. The respondent produced a witness statement from Mr Childs, Managing Director and shareholder of the respondent. Mr Lynas and Mr Childs gave evidence.
6. The respondent accepted that had not complied with its disclosure obligations in the case. All parties agreed that they wished the final hearing to proceed. It was in keeping with the overriding objective to do so.
7. At the commencement of the hearing Mr Henry made an application to serve an amended witness statement from Mr Childs. Mr West did not object to the amendment.
8. Mr West made an application to prevent the respondent from relying on Mr Childs' witness statement. The tribunal rejected that application as Mr Childs' statement was short and dealt with a limited number of matters. The late service of the statement did not prevent Mr West from challenging the evidence and he would not have been prejudiced by the relatively short period to prepare cross examination. Were I to rule that the respondent could not rely on Mr Childs' statement then they would be unable to call evidence to assert a positive case. The balance of prejudice favoured the respondent and I rejected Mr West's application.
9. Mr West indicated that Mr Lynas wished to withdraw the claim for holiday pay.
10. Mr Henry indicated that the respondent conceded the Unlawful deduction from wages claim.
11. The only claim which the tribunal had to decide upon was the allegation of unfair dismissal.

Issues

Unfair dismissal:

12. 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.
13. If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:
 - a. there were reasonable grounds for that belief;
 - b. at the time the belief was formed the respondent had carried out a reasonable investigation;
 - c. the respondent otherwise acted in a procedurally fair manner;

- d. dismissal was within the range of reasonable responses.

Remedy for unfair dismissal

14. If there is a compensatory award, how much should it be? The Tribunal will decide:

- a. What financial losses has the dismissal caused the claimant?
- b. Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
- c. If not, for what period of loss should the claimant be compensated?
- d. Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- e. If so, should the claimant's compensation be reduced? By how much?
- f. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- g. Did the respondent or the claimant unreasonably fail to comply with it by [specify alleged breach]?
- h. If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- i. If the claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?
- j. If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

15. What basic award is payable to the claimant, if any?

16. Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

Facts

17. The Respondent is a contracting company specialising in the manufacture and installation of sluices, lock gates, flood gates, penstocks, flap valves and tilting weirs. The respondent is a small company with 13 employees.

18. Mr Lynas commenced employment on 6 Jul 2020 (33) as a Project manager, managing the day-to-day activity on a number of sites where the respondent was working. He responded to Mr Childs. His time was split between the majority of time at project sites and otherwise at the office. The majority of Mr Lynas' communications to Mr Childs were by phone. His starting salary was £36,500. By the time of his dismissal it had increased substantially to £50,000.
19. Mr Lynas was provided amongst other items with a company car, a company credit card and a mobile phone.
20. The tribunal will deal with issues of credibility generally. There are a number of issues of disputed fact in relation to whether Mr Lynas' expenses were authorised and what happened on the day that he was dismissed. The respondent's evidence on what happened on the date of dismissal was contradictory, vague and at times evasive. In the ET3 and Mr Childs' witness statement he stated that he attended the site with the intention of possibly delivering a verbal warning. His oral evidence was that he believed Mr Lynas had committed gross misconduct and that he may well dismiss him. In his statement, he stated that it was Mr Lynas' aggression that caused him to dismiss him. The dismissal letter (36) makes no mention of aggression. The respondent's failure to disclose documentation in relation to financial matters upon which they seek to rely further undermines Mr Childs' credibility. In contrast Mr Lynas' evidence on the dismissal was consistent and clear and consistent with the contemporaneous documentation. I prefer Mr Lynas evidence in relation to the matters in dispute.
21. There is a dispute between the parties in relation to a number of items of expenditure namely;
- a. Repairs to Mr Lynas' wife's car;
 - b. Purchase of tools on Mr Lynas' credit card;
 - c. Fuel expenditure on Mr Lynas' credit card.
22. In September 2023 Mr Lynas' wife's car had broken down. Mr Lynas stated that he approached Mr Childs to ask if a second company vehicle could be provided. Instead, Mr Childs offered to pay for the repair of the car at the company garage (Duncan McLean Repairs Ltd). Mr Lynas took the car to be repaired and was told by the mechanic to bring the car to be serviced and MOT'd the following month. Mr Childs stated that no such approval had been given and that Mr Lynas had dishonestly sought to gain financial advantage for himself.
23. Mr Childs stated at paragraph 12 of his witness statement that he was not aware of the payment until it was tendered on 23 October by the garage. His letter to Mr Lynas dated 30 April 2024 (37) directly contradicts Mr Childs' account that the car payment was not authorised. It stated that Mr Lynas owed money to the respondent for paying the Benefit in Kind tax for the "repairs to your wife's car in September 2023". Mr Childs stated that this

was a drafting error. He stated at paragraph 10 of his witness statement that the repairs were unauthorised. This evidence is contrary to the letter that clearly demonstrates that the September repairs to Mr Lynas' wife's car were authorised by the business. Further the BIK tax liability would only have accrued through the respondent recording it through PAYE. The tribunal concludes that the repairs to Mr Lynas' wife's car were authorised by the business.

24. Mr Lynas gave evidence about having requested replacement tools, a drill and a grinder. They were not purchased as requested and so he used his company credit card to buy them. Mr Lynas stated that he informed the office about the purchase and handed the receipts. Mr Childs did not confirm with Tracey in the office about Mr Lynas' account at para 10.3 about the purchase of the tools. The respondent has not produced any evidence to rebut Mr Lynas' account of the tool purchase. The Tribunal concludes therefore that the tool purchase was authorised.
25. In respect of the allegations about the use of the credit card and fuel, the respondent has produced no documentation in support of this contention. Mr Lynas has denied any wrongdoing and given my findings about credibility above and the absence of any evidence to support the claim, I cannot conclude that it is more likely than not that he misused the company credit card.
26. The dismissal letter (36) stated the reasons for dismissal were:
 - a. Unauthorised expenditure on the company credit card
 - b. Unauthorised purchases through company suppliers credit account
 - c. Failure to undertake duties as per company procedure.....
 - d. Negligence in the management and delivery of safety critical works
27. In respect of the negligence, Mr Childs stated that workers at the site drew matters to his attention after Mr Lynas was dismissed. No evidence was produced to support this assertion. I do not conclude that Mr Lynas was conducting activities at the site negligently.
28. Mr Childs attended the site on 26 April 2024. Mr Childs' account is that Mr Lynas became aggressive and defensive when Mr Childs challenged him. Mr Lynas account is that Mr Childs challenged him saying "you've been getting fat off the company credit card" and sacked him. Mr Lynas accepted swearing at Mr Childs but only after he had been fired. The Tribunal accepts Mr Lynas' account of what occurred for the reasons of credibility that I set out above, and Mr Childs' vague inconsistent and evasive answers as to what his intention was upon arriving at the site. The Tribunal finds that Mr Childs arrived at site, with a preformed view as to Mr Lynas' dishonesty and a likely intention to dismiss him.

Law

29. Per section 98(4), where the employer satisfies the Tribunal that the reason or principal reason was one falling within subsection (2), the question whether the dismissal was fair or unfair:

- (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.

26. The leading case of *Iceland Frozen Foods v Jones* [1982] IRLR 439 sets out how the test under section 98(4) of the Act should be applied in practice:

- (1) The starting point is the wording of section 98(4) itself;
- (2) The Tribunal must consider the reasonableness of the employer's conduct, and not simply whether they consider the dismissal to be fair;
- (3) In determining the reasonableness of the employer's conduct, the Tribunal is not entitled to substitute its decision as to the right course to adopt for that of the employer;
- (4) There is generally a band of reasonable responses within which one employer might reasonably take one view, and another employer a different view;
- (5) The role of the Tribunal is to decide whether in the particular circumstances of each case the dismissal fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal is within that band, it is fair; if it does not, it is unfair.

27. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

28. The respondent's case is that it dismissed Mr Lynas because it believed he was guilty of misconduct, namely unauthorised use of company expenses and credit card. Conduct is a potentially fair reason for dismissal under section 98(2).

29. Section 98(4) then deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the

employee; and shall be determined in accordance with equity and the substantial merits of the case.

30. In misconduct dismissals, there is well-established guidance on fairness within section 98(4) in the decisions in **Burchell 1978 IRLR 379** and **Post Office v Foley 2000 IRLR 827**. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer (**Iceland Frozen Foods Limited v Jones 1982 IRLR 439**, **Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23**, and **London Ambulance Service NHS Trust v Small 2009 IRLR 563**).

Conclusions

31. Whilst the respondent was unclear as to precise reason for the dismissal, namely aggression or theft, the respondent dismissed for a potentially fair reason namely conduct.
32. Did the respondent genuinely believe that Mr Lynas was guilty of misconduct? Mr Childs had clearly formed the view that Mr Lynas was abusing the company credit card and stealing from him prior to his arrival on site on 26 April 2024. The respondent genuinely believed that Mr Lynas was guilty of misconduct.
33. Were there reasonable grounds and reasonable investigation within the band of reasonable responses. There was no gathering of evidence to establish precisely what allegations were being made. The paper trail of the financial transactions were not set out. Mr Childs did not make enquiries in the office as to what Mr Lynas had told them. Mr Childs was not independent and did not appoint anyone independent to investigate the matter. The allegations were not put to Mr Lynas. There was no opportunity for Mr Lynas to provide a detailed answer to the specific allegations. The investigation was Mr Childs looking at a number of financial records and forming a view as to Mr Lynas misconduct, without providing him with an opportunity to provide an account.
34. The dismissal occurred in the open on a working site, with a short exchange of words.
35. Even for an employer of the relatively small size of the respondent, this was outside the band of reasonable investigation that a reasonable employer would carry out.
36. The dismissal was procedurally unfair. It is more likely than not that Mr Childs intended to dismiss Mr Lynas prior to arrival on site. Within a short

time of his arrival Mr Childs had determined that Mr Lynas was guilty of theft and that he would dismiss him.

37. No allegations were put to Mr Lynas in advance. He was not invited in writing to a meeting, the purpose and consequences of which were clear. The meeting was in public. The allegations were not put in any detail such that Mr Lynas knew what case he had to meet. Mr Lynas was given no opportunity to meet the case and to provide his explanation. He was not given a right of appeal.
38. I have to conclude whether Mr Lynas would have been dismissed had a fair process been followed. It is clear from the evidence above that had a reasonable investigation been carried out, Mr Lynas would have been likely to have answers to those matters for which evidence has been presented at the tribunal. An investigation would have uncovered that evidence. I do not find that Mr Lynas would have been dismissed had a fair process been followed.
39. For the reasons set out above, there is no reduction for contributory fault.
40. There were a number of fundamental breaches of the ACAS code. No investigatory meeting was held (5), Mr Lynas was not notified in writing (9), the respondent did not set out their case and Mr Lynas was given no opportunity to put his (12), Mr Lynas was not given a right to be accompanied (13), no appeal was offered (26). In the circumstances it is appropriate to provide an uplift of 20%.
41. Mr Lynas obtained a new job on 10 June 2024. In the period 27 April until 9 June 2024, Mr Lynas lost £4,548 in wages. This flows from the dismissal and is just and equitable. The respondent did not seek to argue that Mr Lynas had not mitigated his loss.

42. Remedy

Unlawful Deductions from wages	£2,749
Basic Award	
4x£700	£2,800
Compenatory award	
Loss statutory rights	£500
Loss of Earnings	£4,548
Total compensatory	£,5,048
ACAS uplift (20%)	£1,009.60

TOTAL COMPENSATORY	£6,057.60
TOTAL AWARD	£11,606.60

Approved by

Employment Judge **Magee**

Date 4 May 2026

SENT TO THE PARTIES ON

5 May 2026

FOR THE TRIBUNAL OFFICE

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