



EMPLOYMENT TRIBUNALS

Claimant: Mr Jayachandran Kantharaja
Respondent: Royal Mail Group Ltd

Heard at: Watford Employment Tribunal
On: 9, 10, 11 and 12 February (deliberation) 11 March 2026
Before: Employment Judge Alliott
Ms S Johnstone
Mr D Sagar

Representation
Claimant: Mr T Pacey (counsel)
Respondent: Ms T Ahari (counsel)

:

RESERVED JUDGMENT

The judgment of the tribunal is that:

1. The claimant was unfairly and wrongfully dismissed.
2. The claimant was not disabled within the meaning of the Equality Act at any relevant time between 26 April 2023 and 5 December 2023.
3. The claimant's disability and religion and belief discrimination claims are dismissed.

FULL REASONS

Introduction

1. The claimant was employed by the respondent on 24 January 2005. The claimant was summarily dismissed on 25 October 2023, although his last day in service in the Royal Mail was 28 November 2023 as he had five weeks' annual leave outstanding.
2. By a claim form presented on 4 February 2024, following a period of early conciliation from 11 December 2023 until 10 January 2024, the claimant presents complaints of unfair dismissal, wrongful dismissal, failure to make reasonable

adjustments and direct discrimination on the grounds of religion or belief. The respondent defends the claims.

The issues

3. There is an agreed list of issues as follows:-

“UNFAIR DISMISSAL

Unfair dismissal (ss 94, 98 Employment Rights Act 1996)

1. It is admitted that the Claimant was dismissed.
2. What was the reason or principal reason for the Claimant’s dismissal? The Respondent contends that the Claimant was dismissed for reasons of conduct.
3. Was that reason a potentially fair one?
4. Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?
5. Did the Respondent follow a fair procedure in deciding whether to dismiss the Claimant?

Remedy for unfair dismissal

6. Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?
7. The Claimant wishes to be reinstated to his previous employment. Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.
8. The Claimant wishes to be re-engaged to comparable employment. Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.
9. What should the terms of the re-engagement order be?
10. What basic award is payable to the Claimant, if any?
11. 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?
12. If there is a compensatory award, how much should it be? The Tribunal will decide:
 - 12.1. What financial losses has the dismissal caused the Claimant?
 - 12.2. Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

- 12.3. If not, for what period of loss should the Claimant be compensated?
- 12.4. 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?
- 12.5. If so, should the Claimant's compensation be reduced? By how much?
- 12.6. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 12.7. Did the Respondent or the Claimant unreasonably fail to comply with it?
- 12.8. If so is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?
- 12.9. If the Claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?
- 12.10. If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?
- 12.11. Does the statutory cap of fifty-two weeks' pay apply?

DISCRIMINATION

Time limits (s 123 Equality Act 2010)

13. The claim was presented on 4 February 2024 following early conciliation between 11 December 2023 and 10 January 2024. Any complaint about something that happened on or before 11 September 2023 may not have been brought in time.
14. Were the claims for discrimination made within the time limit set out at s 123 Equality Act 2010? The Tribunal will decide:
 - 14.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 14.2. If not, did the acts form part of conduct extending over a period?
 - 14.3. If so, did that period end after 11 September 2023?
 - 14.4. If not, in relation to any acts which occurred outside the primary time limit, would it be just and equitable to extend time to hear complaints relating to those acts?

Disability (s 6 Equality Act 2010)

15. Is the Claimant disabled as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Claimant alleges that he suffers from anxiety and depression. The Tribunal will decide:
 - 15.1. Did the Claimant have a physical or mental impairment?
 - 15.2. Did the impairment have a substantial adverse effect on the Claimant's

ability to carry out normal day-to-day activities?

- 15.3. If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct that impairment?
- 15.4. Would the impairment have had a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities without the treatment or other measures?
- 15.5. Were the effects of the impairment long-term? The Tribunal will decide whether they had lasted at least 12 months, were likely to last at least 12 months or, if not, were likely to recur.
- 15.6. Did the Respondent know, or could it reasonably be expected to have known, that the Claimant was disabled? At what point in time?

Failure to make reasonable adjustments (ss 20-22 Equality Act 2010)

16. Did the Respondent apply the following provision, criterion or practices ('the PCPs'):
 - 16.1. A practice of not considering the impact of an employee's mental health on their ability to participate in a disciplinary process;
 - 16.2. A practice of not conducting regular Occupational Health assessments during a disciplinary process;
 - 16.3. A practice of not providing regular and / or meaningful support to employees who are suspended and / or on sick leave;
 - 16.4. A practice of providing short notice of disciplinary meetings and / or deadlines for written submissions;
 - 16.5. A practice of maintaining fixed deadlines for disciplinary investigations, without flexibility;

A practice of regularly sending the Claimant 'no contact' letters during the period of his suspension / sick leave;
 - 16.6. A practice of maintaining inconsistent communication channels during a disciplinary process.
17. Did any of the PCPs place the Claimant at a substantial disadvantage compared to a person who did not share his disability? The Claimant contends that:
 - 17.1. The Claimant was expected to attend a disciplinary meeting / provide written submissions without sufficient time to recover from his illness;
 - 17.2. The Claimant was unaware of the letter from Stephen Molloy dated 9 October 2023.
 - 17.3. The Claimant required additional time to prepare for and participate in the investigation process.

- 17.4. The Claimant did not receive meaningful support for his mental health conditions during the period of his suspension.
- 17.5. The disciplinary case against the Claimant progressed irrespective of his poor health and the Claimant was unable to attend the disciplinary meeting or provide a written explanation.
- 17.6. The Claimant's mental health conditions were exacerbated by the 'no contact' letters.
18. If so, did the Respondent know, or could the Respondent reasonably have been expected to know that the Claimant was likely to be placed at a substantial disadvantage by the relevant PCPs?
19. What steps could have been taken to avoid the disadvantage?
 - 19.1. Meaningfully consider and act on the recommendations made in the Occupational Health reports dated May and July 2023;
 - 19.1.1 Carry out regular Occupational Health assessments while the Claimant remained on sick leave;
 - 19.2. Provide regular support to the Claimant while he was suspended and / or on sick leave, in particular following the Occupational Health reports dated May and July 2023;
 - 19.3. Provide adequate notice of disciplinary meetings / deadlines for written submissions, having regard to the Claimant's health while doing so;
 - 19.4. Adopt a flexible approach towards deadlines in the disciplinary process, having regard to the Claimant's health;
 - 19.5. Stop sending the Claimant 'no contact' letters during the period of his sick leave (and as advised by Occupational Health in May 2023);
 - 19.6. Maintain consistent methods of communication during the disciplinary process.
20. Was it reasonable for the Respondent to take those steps?
21. Did the Respondent fail to take those steps?

Direct discrimination on the ground of religion (s 13 Equality Act 2010)

22. The Claimant identifies as Hindu.
23. Did the Respondent subject the Claimant to the following treatment:
 - 23.1. Accused the Claimant of improper use of a company vehicle.
24. If so, did the Respondent treat the Claimant less favourably than it would have treated a non-Hindu colleague using a company vehicle for personal reasons?
25. If so, was the reason for the less favourable treatment the Claimant's religion?

Remedy for discrimination

26. Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?
27. What financial losses has the discrimination caused the Claimant?
28. Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
29. If not, for what period of loss should the Claimant be compensated?
30. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
31. Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?
32. Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?
33. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
34. Did the Respondent or the Claimant unreasonably fail to comply with it?
35. If so, is it just and equitable to increase or decrease any award payable to the Claimant?
36. By what proportion, up to 25%?
37. Should interest be awarded? How much?

WRONGFUL DISMISSAL

38. Did the allegations said to be the reason for the Claimant's dismissal amount to a fundamental breach of contract?
39. If not, was the Claimant entitled to payment in lieu of notice by reason of his employment contract?
40. If so, how much? The Claimant contends that he was entitled to notice pay of £13,586.04.
41. Did the Respondent fail to pay the Claimant in lieu of notice?"

The law

4. Employment Rights Act 1996 - sections 98(1), (2) and (4) of the Act provide:

“98 General.

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
 - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if it—
- ...
 - (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."

5. Equality Act 2010 – sections 13, 23 and 136 of the Act provide:

“13 Direct discrimination

- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

“23 Comparison by reference to circumstances

- (1) On a comparison of cases for the purposes of section 13 ... there must be no material difference between the circumstances relating to each case.”

“136 Burden of proof

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.”

The evidence

- 6. We had a hearing bundle of 373 pages and a supplementary bundle of 24 pages.
- 7. On the second day of the hearing, we were provided with the claimant's GP notes covering the period 26 April – 2 August 2023.
- 8. We had witness statements and heard evidence from:

- 8.1 Ms Chanel Brown, Operational Performance Leader Support.
- 8.2 The claimant.
- 8.3 Mr Kehinde Adewuyi, a Customer Operations Manager and also a Communication Managers Association (“CMA”) representative.
- 8.4 Ms Helen Worfell, a Case Manager based at Tyneside Mail Centre at the relevant time. She heard the claimant’s appeal.

Preliminary issue on disability

- 9. Whether or not the claimant was disabled within the meaning of the Equality Act 2010 at any relevant time between 28 April and 5 December 2023 remains in dispute. We decided to deal with the matter as a preliminary issue as, if he was not, then the failure to make reasonable adjustments claims must fail.

The law

- 10. Section 6 of the Equality Act 2010 provides as follows:-

“6 Disability

(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities.”

- 11. Schedule 1 to the Equality Act 2010 provides as follows:-

“2. Long-term effects

(1) The effect of an impairment is long-term if –

(a) it has lasted for at least 12 months,

(b) it is likely to last for at least 12 months, or”

5. Effect of medical treatment

(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—

(a) measures are being taken to treat or correct it, and

(b) but for that, it would be likely to have that effect.”

- 12. The guidance on the definition of disability (2011) provides:-

“C3 In these contexts, “likely”, should be interpreted as meaning that it could well happen.

- C4. In assessing the likelihood of an effect lasting for 12 months, account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing the likelihood. Account should also be taken of both the typical length of such an effect on an individual, and any relevant factors specific to this individual (for example, general state of health or age).”

13. As per the IDS Employment Law Handbook on disability:

At 2.15

In *Goodwin v Patent Office* 1999 ICR 302, EAT, “The EAT said that the words used to define disability in (now section 6 (1) Equality Act) require tribunals to look at the evidence by reference to four different questions (or “conditions”, as the EAT termed them):

- did the claimant have a mental and/or physical impairment? (the “impairment condition”)
- did the impairment affect the claimant’s ability to carry out normal day to day activities? (the “adverse effect condition”)
- was the adverse condition substantial? (the “substantial condition”), and
- was the adverse condition long-term? (the “long-term condition”).

These four questions should be posed sequentially and not together.”

14. And at 2.21:

“The time at which to assess the disability (ie whether there is an impairment that has a substantial adverse effect on normal day to day activities) is the date of the alleged discriminatory act. This is also the material time when determining whether the impairment has a long-term effect.”

15. And at 2.128:

“The question of whether the effects of the impairment are likely to last for more than 12 months is an objective test based on all the contemporaneous evidence, not just that of the employer.”

16. “Likely” represents a significantly lower hurdle than the balance of probabilities.

The evidence

17. The claimant gave evidence and confirmed the contents of his impact statement and main witness statement.
18. The primary source of medical evidence before us was four Occupational Health reports in the main bundle. At the beginning of day 2 the claimant produced his GP records which covered the period from 26 April until 2 August 2023.

The facts

19. In case management orders made on 21 January 2025 the claimant was ordered to send to the respondent copies of the parts of his GP and other medical records that are relevant to whether he had the disability and, if so, on what dates, by 15 April 2025. The claimant clearly obtained some documents from his GP as the MED 3 fit notes are copies dated 30 July 2024 but, for whatever reason, his GP records for the relevant times have not been disclosed until the morning of day 2 of this trial.
20. The claimant relies upon the mental impairment of anxiety and depression.
21. The claimant's impact statement dates his mental impairment from 28 April 2023, the date of his first Med 3 fit note (it is actually dated 26 April 2023). The claimant was informed that his appeal had been rejected on 5 December 2023. Hence the relevant time is from 26 April until 5 December 2023.
22. The claimant was suspended on 9 March 2023 following allegations of misconduct. He had a fact finding meeting on 16 March 2023. On 26 April 2023 he submitted a Med 3 fit note signing him off work because of "work" although the GP notes make plain that the problem was "work related stress". The claimant was prescribed Mirtazapine on 26 April 2023 although the photograph of the box we were shown in evidence was dated 5 May 2023.
23. It is notable that in the GP records we have been provided with no diagnosis of depression or anxiety is made. Similarly, the six Med 3 fit notes we have been provided with only relate to "work related stress". Be that as it may, we have the four Occupational Health reports. These contain the following:-

23.1 10 May 2023:

"Mr Kantharajan [sic] is under the care of his GP and is on prescribed medication. He has been provided with contact details for support services.

A non-diagnostic assessment was completed. The result indicated severe symptoms of depression and moderate anxiety."

23.2 22 May 2023:

"Using clinically recognised tools his mental health was assessed today and indicates ongoing symptoms of severe anxiety and depression. I did recommend he continues to access counselling and attends GP appointments to review medication and ensure on correct dose and treatment as this can take time."

23.3 22 June 2023:

"Mr Kantharajan [sic] is under the care of his GP and is on prescribed medication.

A non-diagnostic assessment was completed. The results indicated moderate symptoms of depression and anxiety."

23.4 4 July 2023:

"Today he completed a non-diagnostic standardised depression and anxiety symptoms questionnaire and scored at severe level."

24. Based on the conclusions of the Occupational Health reports, we find that the claimant did have the mental impairment of severe anxiety and depression as from 26 April 2023. We adopt this date due to the fact that that is when the claimant was prescribed Mirtazapine.
25. We have gone on to consider whether the claimant's mental impairment affected the claimant's ability to carry out normal day to day activities.
26. The claimant's impact statement describes really quite significant impacts on his ability to undertake day to day activities but is dated 18 June 2025 and does not differentiate between how his day to day activities were impacted between 26 April 2023 and 5 December 2023 as compared to when he made the statement.
27. If anything, the GP records suggest that the impact on his day to day activities was not as severe as described in his impact statement. For example, there is an entry on 9 May 2023 referencing the claimant feeling better and the main thrust of what is contained within the GP notes relates to the claimant's sleep.
28. Nevertheless, and relying on the Occupational Health reports, we have taken account of the following matters:
 - 28.1 10 May 2023:

“Mr Kantharajan [sic] reported experiencing symptoms associated with depression and anxiety, including worry, disrupted sleep, overthinking, fluctuating moods, low motivation, irritability.”
 - 28.2 22 May 2023:

“He reports symptoms of low mood, anxiety, sleep disturbance, low motivation and severe headaches at the time of the assessment, and these are impacting greatly on all his daily activities.”
 - 28.3 22 June 2023:

“He reported experiencing ongoing symptoms associated with depression and anxiety, including disrupted sleep, low motivation, reduced confidence and isolation.”
 - 28.4 4 July 2023:

“Mr Kantharajan [sic] reports his symptoms continue to be significant, and that he is experiencing low mood, sleep difficulties, rumination, low motivation, interest and concentration, worrying, anxiety, restlessness.”
29. As far as the claimant's ability to carry out normal day to day activities is concerned, Ms Ahari did not challenge the claimant on the contents of his impact statement, albeit that at that time Ms Ahari did not have the GP records.
30. We accept the conclusions in the Occupational Health report and find that the claimant's ability to undertake day to day activities was affected by reason of his mental impairment and that this was from the first Occupational Health report on 10 May 2023. Further, we find that the adverse effect was substantial.

31. By the date of dismissal on 25 October 2023 and the rejection of the claimant's appeal on 5 December 2023, the claimant's mental impairment had not lasted 12 months.
32. We have gone on to consider whether it was long term, ie, likely to last for 12 months. Once again, we have relied upon the Occupational Health reports which generally reflect an optimistic approach to the claimant's recovery. They include the following:-
 - 32.1 10 May 2023:

“It is likely a prompt conclusion to ongoing work-related matters may be beneficial to his wellbeing recovery.”
 - 32.2 22 May 2023:

“If the work-related issues are dealt with, the long-term prognosis is likely to be positive and it is expected that the current symptoms will improve over time.”
 - 32.3 22 June 2023:

“I cannot confirm a return to work date, but anticipate he may be fit to return to work within the next six weeks if his symptoms improve and work-related matters are resolved.”
 - 32.4 4 July 2023:

“I am unable to comment on the outlook, but it is hoped that with ongoing GP input and the aid of medication Mr Kantharajan's symptoms will start to reduce in the next three to four weeks, if he responds well to treatment.”
33. In addition, the recent disclosure of the claimant's GP records indicate that he was referred to the Community Mental Health Team on 5 July 2023 and on 2 August 2023 the referral outcome was to close his case. We have no further medical information beyond 2 August 2023.
34. As far as the claimant's general health is concerned we have no history of any other mental impairments. The claimant was 42 years old at the time. We had no medical evidence as to the typical length of any effect on an individual although we take judicial notice that mental health impairments may vary across a broad spectrum of how long they are likely to last. In our judgment, we find that at no time during the course of the claimant's employment between 26 April 2023 and 5 December 2023 could it be said that it could well happen that the duration of the claimant's mental impairment would be 12 months or more. Consequently, we find that the claimant was not disabled within the meaning of the Equality Act at any relevant time.
35. As a result, the failure to make reasonable adjustments claim must fail.

The facts

36. The claimant was employed by the respondent on 24 January 2005 as an Operational Postal Grade (“OPG”).

37. With effect from 27 September 2021 the claimant was appointed to a long term temporary promotion as Delivery Line Manager.
38. With effect from 23 May 2022 the claimant was appointed as a long term temporary Customer Operations Manager (“COM”). The claimant worked across a number of locations in line with operational requirements. In the period leading up to his suspension he was predominantly deployed at the Cricklewood Delivery Office although he was also allocated on rotas at other units including Hammersmith and Chiswick.
39. Although we were not provided with a precise date, around the end of 2021 the respondent introduced a Sunday operation. Managerial cover for the Sunday operation was provided by way of overtime payments to COMs. Whilst the overtime was nominally voluntary, the claimant gave evidence that, due to operational requirements and a shortage of management cover, he was expected on a regular basis to work as the manager in charge at Cricklewood on Sundays.
40. The respondent has a large number of Royal Mail vans and hire vehicles. The respondent has an Overnight Retention of Vehicles Policy. This provides for quite a regulated process to be followed if a staff member was permitted to take an official vehicle home overnight. The manager concerned was required to fill in a copy of the “Authorised Retention of Official Royal Mail Vehicles Agreement” which would stipulate what vehicle was allowed to be retained overnight. The Agreement includes the condition:-

“I agree not to use the vehicle for any personal or private use whatsoever.”
41. The policy also states:-

“Unauthorised use of vehicles is not covered by Royal Mail insurance.”
42. It may well be that the strict authorisation process was not adhered to on a regular basis when managers authorised the overnight use of a Royal Mail vehicle. We heard evidence of a number of occasions when authorisation had been given to the claimant and others. However, it was clear to us and we find, that it was common knowledge in a general sense that Royal Mail vehicles should not be taken home overnight without management permission.
43. We were not taken to any specific policy in relation to the use of Royal Mail vans during the working day. The position appears to be less clear cut in that Kehinde Adewuyi gave us evidence that Muslims were either allowed to use Royal Mail vehicles or their use was tolerated when they went to a local mosque for Friday prayers. However, in general terms we find that there was an awareness amongst the Royal Mail workforce generally, and the claimant in particular, that authorisation would be needed for use of a Royal Mail vehicle for personal reasons.
44. In addition, the respondent has a Conduct Policy. One of the guiding principles

is:-

- No employee will be dismissed for a first breach of conduct, except in the case of gross misconduct, when the penalty will normally be dismissal without notice or payment in lieu of notice.”

45. Further:-

Under “Conduct approach”

“Fact-finding

When it is considered that an employee’s conduct or behaviour has not met the required standard, the employee’s manager will make a prompt and detailed investigation of the facts and may seek a more detailed explanation from the employee. It may include examination of relevant documents and a fact-finding meeting where the employee has a right to be accompanied by their union representative or by a work colleague, normally from the same work location.

Following the fact-finding meeting the manager should consider the information available and decide whether the case can be dealt with informally, formally or closed if there is no case to answer.”

Further, the policy provides for precautionary suspension if a serious incident occurs or has been reported to a manager and there is a reasonable belief that the suspected conduct may be repeated or an investigation hampered.

46. In addition, the respondent has a Business Standards Employee’s Guide. This sets out manager duties of care and also includes:-

“Use of company funds and property.

...

You must:

- Not claim money from the company for hours you did not work;”

47. No document has been placed before us setting out what the duties of a COM were when working on a Sunday operation. It is the claimant’s case that Sunday working was completely improvised such that he was left to use his own initiative. This was corroborated by Kehinde Adewuyi who described the working practice on a Sunday as “amorphous.” He told us that the whole impetus was to get the mail and parcels delivered and that how it was done was down to the manager. We note that in the claimant’s response to Stephen Molloy’s comments on the appeal, the following was said:-

“As I mentioned earlier, this scenario has occurred at various times – we all were told “manage your unit like your business” and “this is your business to run, you won’t be punished for using initiative” (these were Grant McPherson’s quotes at the Beyond event at the Midlands Superhub)”

Although we were not specifically taken to this part of the document in evidence, we suspect that that was drafted by Kehinde Adewuyi.

48. We accept Kehinde Adewuyi's evidence and find that on the Sunday operation the manager was given a high degree of discretion as to how the operation should be conducted.
49. At the Cricklewood Delivery Office the claimant would be the only COM on duty on a Sunday. The claimant was responsible for getting 15/20 OPGs organised and out delivering mail and parcels. Royal Mail vans were allocated to the OPGs who would sign for them on an allocation sheet and be handed the keys. Once the OPGs had gone out on their delivery rounds the only staff at the delivery office would be one person at the customer services point, possibly some agency staff doing indoor work and the claimant as manager.
50. The claimant's role as a manager was to ensure that the operation ran smoothly. There could be emergency situations which might require the claimant to sign out a Royal Mail van and attend away from the unit. For example, an OPG may be involved in a road traffic accident or a van could break down. In addition, there could be local difficulties experienced by an OPG with a personal digital scanner device. In addition, the claimant told us that on occasions he would go out to deliver parcels himself. The claimant was able to monitor on his laptop how many parcels were being delivered, where the OPGs were and who might need extra support. The claimant would be available on his mobile.
51. Kehinde Adewuyi told us that from a manager's point of view there was a "dead zone once they (OPGs) had gone out on delivery on a Sunday."
52. It is clear to us and we find that, strictly speaking, during this time the claimant would have been able to answer his mobile and monitor his laptop without actually being within the delivery office unit.
53. Later in the day, the claimant would be expected to be at the delivery office unit to manage the OPGs as they returned and handed in the vehicle keys and to ensure that all the parcels and mail had been delivered. Ultimately, it was the claimant's responsibility to lock up the delivery office.
54. The only oral evidence called by the respondent has been from Helen Worfell who dealt with the appeal. Consequently, neither the claimant nor ourselves have been able to ask questions concerning the contemporaneous documentation that led to the investigation into the claimant and his dismissal.
55. At the beginning of March 2023 three communications were sent to management at the respondent. We do not know how they were sent and they look like emails to us but they may be transcripts of telephone calls. They were as follows:-
56. The first communication:-

“On a Monday 5/6 weeks ago at Cricklewood DO. I went out to do my van checks – Jay [the claimant] has pulled out in the middle of yard in a van parked it and he looked like he was in a rush. Gave me keys and ask me to give the keys to Ash [Ashraf Saleh]. I did my van check, I went to hang my jacket in the union room and told my union rep what had just happened. I gave them to Morne instead, this was around 06:45 – 07:00.

1st March 2023”

57. The second communication was:-

“On 6th February, Monday morning I went out into the yard and saw Jay come into the yard in a Royal Mail van and then got onto his motorbike and left.

2nd March 2023”

58. The third communication was as follows:-

“...[redacted]

...what has been going on at our branch NW2 Cricklewood on Sundays on return of delivery. We have come to believe that the agency staff are locking up the office.

The office is open by a full-time member of staff every Sunday as usual. I come in 8.15–30 am and begin preparations for work. The manager (Jay) comes in about 9 am and he organises the signing on sheets, duty vans, van keys and scanners. We prepare our work, and then go out to deliver our parcels at around 10.30-11 am.

However, on return between 3 – 3.30 pm, there has been agency staff member asking to collect my scanner and van keys, as well as asking me if I have carried out the correct procedure on parcels with no answer. As a team we are slightly worried that an agency staff member should hold this role, since it is the full-time Royal Mail staff members that have been trained and vetted on how to do this.

... [redacted]

Additional responses from A1

JS – Can you please provide dates of the Sundays where this has happened.

A1 – This has happened every Sunday since 15th January, when I first started my new duty.

JS – Have you ever seen Jay driving a Royal Mail van?

A1 – I have seen him but only on Royal Mail duty. Not aware if he is using it for private purposes.”

59. This document has been redacted as indicated above and the sender anonymised as “A1.”

60. Although all three statements are anonymous/anonymised, it is clear that Jack Slaughter (JS) was aware who had sent them. At the appeal stage it was revealed to the claimant that the first two statements were sent by Michael McAndrew and Hans Von-Paulsen, both Communication Workers Union representatives at the time. The third statement clearly had A1’s name on it and, indeed, Jack Slaughter went back to him/her to seek clarification on some points.

61. The third communication has been redacted and the redactions appear to go further than merely anonymising the maker of the document. Consequently, after we began deliberations, we requested an unredacted copy of that document. The response from the respondent’s solicitors was as follows:-

“The document at page 148 of the bundle is a photocopied version of the original document, as such, we are unable to remove the redaction using our software.

Our client has advised that unfortunately the original document is not in the claimant’s file. The investigation manager and the conduct manager are no longer with the business and are uncontactable. As such, our client is unable to recover the original document.”

62. The claimant’s representatives have taken exception to this explanation and have asserted that the document should be recoverable since it was probably created electronically.
63. The respondent has been asked to clarify whether a search has been made beyond the claimant’s file for a document that probably has been stored electronically.
64. The first and second communications were clearly reporting that the claimant had used a Royal Mail van overnight.
65. The third communication was to the effect that the claimant would arrive late and was not present in the afternoon when the OPGs returned.
66. In his witness statement the claimant says that both Michael McAndrew and Hans Von-Paulsen had previously abused him on several occasions.
67. In the claimant’s appeal document, he goes into greater detail concerning how he thought it came to be that these anonymous allegations were made against him. The following is stated:-

“I sincerely believe that these attacks are politically motivated due to the CWU wanting to remove me from management.

...

On the week commencing, 20 February 2023 – I was placed in Hampstead, as a covering manager – I had an OPG who went home early despite there being mail to be delivered in the unit. I asked him to return to the unit, despite him apparently wanting to go to the gym – he initially refused. He eventually came back and said to me “I fry bigger fish than you!” – Apparently, he is friends with Patrick Carey (CWU Area Rep). He was on the phone to him the entire time he came back – he also said to me “You’re shaking feathers in here; you don’t know who you’re messing with” – this was around two weeks before my suspension.”

...

Even more telling is that Patrick Carey has been involved in the investigation process. During my suspension I was not allowed to contact anyone at work or even enter a Royal Mail site – whilst Patrick Carey, a CWU area representative, was canvassing around asking people to write statements against me.”

68. Attached to the appeal document are a number of statements from OPGs who had worked under the claimant referencing Pat Carey asking for statements.
69. Kehinde Adewuye told us that the CWU was a very powerful union. We find that

three anonymous allegations being made against the claimant at roughly the same time was not a coincidence. We now know that at least two of the individuals were CWU representatives. We find that in all probability, due to previous conflict between the claimant and certain individuals, they had decided to try and get him into trouble by reporting him for issues that they knew could cause him to be subjected to disciplinary action.

70. Whilst we find it would be perfectly legitimate for management to investigate allegations of wrongdoing irrespective of the motive of the informer, it does, in our judgment, raise concerns as to the extent to which management may have colluded/gone along with the CWU in the treatment of the claimant. Against that observation, we have had no evidence from the investigating officer, Jack Slaughter, and the dismissing officer, Stephen Molloy.

71. On 9 March 2023 Jack Slaughter had an informal discussion with the claimant. This was termed a “seeking explanation meeting”, and the claimant agreed with that. In his witness statement the claimant states:

“... I was unexpectedly invited on 9 March 2023 to discuss allegations relating to the use of a Royal Mail vehicle and claiming overtime whilst allegedly being at home.”

72. From the unchallenged notes of the meeting on 16 March 2023 the claimant told Jack Slaughter that on a Sunday he would go home during the day and denied leaving an agency member in charge (see paragraphs 77 and 78 below).

73. On 10 March 2023 the claimant was placed on precautionary suspension. The letter to him states as follows:-

“I am writing to confirm your precautionary suspension from work with full pay on 10/03/2023 pending further investigation into

- Unauthorised use of Royal Mail and hire vehicles.
- Fraudulent claiming of overtime on Sunday.

I have enclosed a report giving detail of the reasons for my decision to precautionary suspend.”

74. The attached report states as follows:-

“Precautionary suspension should only be used when a serious incident occurs or when a serious incident is reported to a manager. The main circumstances are:

- Alleged inappropriate behaviour.
- Alleged serious breach of contract where there is a reasonable belief that the serious breach might be repeated and/or there is risk to people, property, mail or the good image of Royal Mail Group.
- The investigation may be hampered where the employee remains at work.

Please record the reasons why you consider precautionary suspension appropriate:

- Alleged serious breach of contract where there is a reasonable belief that the serious breach might be repeated and/or there is risk to people, property, mail or the good image of Royal Mail Group.
- The investigation may be hampered where the employee remains at work.”

75. The claimant has complained that he was unnecessarily placed on suspension. We have not heard from Jack Slaughter as to his reasoning save as set out in a rather formulaic way in the suspension letter. However, on the face of the allegations as drafted, namely unauthorised use of Royal Mail and hire vehicles and fraudulent claiming of overtime on Sunday, we consider that the decision to suspend the claimant, whilst harsh, was not outside the range of reasonable responses of a reasonable employer.

76. Also on 10 March 2023, the claimant was invited to a fact finding meeting initially scheduled for 14 March but actually held on 16 March 2023.

77. We have two sets of notes of the meeting; the second set as amended by the claimant.

78. The following is recorded in the notes:-

“JS – Have you ever taken a van home outside of that one time?

JK – On Sundays I have taken a van home, that is because I am on duty.

...

JS – Did anyone authorise you to take the van home on Sunday?

JK – Because I took it during the weekdays, I took it on Sunday for a work purpose. I can’t do anything without the van.

JS – In what capacity have you used the van?

JK – No, I would go home but if I was in delivery I would be doing delivery. [The claimant denied saying this and has substituted “I used the van to perform my duty”]

JS - In your seeking explanation you stated that on a Sunday you go home during the day. What time do you go home?

JK – It varies, depending on the shift, I don’t go every Sunday. I go home on Sundays, days that I pray and days that I fast. The earliest I would leave would be 12:45 majority of the time I would be back at 15:00 at the latest.

JS - Did you use a Royal Mail vehicle or hire vehicle?

JK - Majority of the time it was a Royal Mail van. Can I note because I had authorisation prior to this to take the van home, I did not know I need authorisation to take the van home on Sundays as well.”

79. Further extracts are as follows:-

“JS – Have you ever left the unit unattended on Sunday without a manager?”

JK – Yes, there were times.”

And

“JS – How many hours do you claim for working on a Sunday?”

JK – It would be 12 hours.

JS – Do you claim the same amount of hours every time?

JK – Yes.

JS – How many of them do you work in the unit?

JK – There are times I have done 10 hours, 14 hours and 9 hours. [To which the claimant has added “- However, even though I am not physically in the building I am working – on the phone, dealing with issues and potentially attending to breakdowns etc. I am also on PDA frontline as well, watching the scans to ensure things are going to plan.”

And

“JS – In your seeking explanation you denied leaving an agency member in charge. Do you still deny this?”

JK – Yes, I have not left anyone in charge but they were there doing indoor work.

JS – What indoor work were they doing?

JK – Prepping walks and tidying up and distribute D2D’s.

JS – Would you leave that agency member alone in the unit when you left on a Sunday?

JK – Yes, he was there on his own. It was on Sunday.”

80. The notes were sent to the claimant on 16 March 2023, after the meeting and the claimant returned his additions or comments on the notes thereafter. We have a letter dated 23 March 2023 wherein Jack Slaughter disputes the changes.
81. On 20 March 2023 the claimant’s suspension was reviewed and the decision was to confirm that he would remain on suspension.
82. As part of his investigation, Jack Slaughter interviewed Adrian Lingam and Graeme Richardson. Adrian Lingam denied authorising the claimant to take a Royal Mail van home other than on industrial action days.
83. Graeme Richardson also denied authorising the claimant to take a van home.
84. On 27 March 2023 the claimant’s suspension was reviewed again and confirmed.
85. On 29 March 2023 Jack Slaughter interviewed Ashraf Saleh. The interview notes include the following:-

“JS - Jay alleges that you knew that he was taking a van home. Is that correct?”

AS - Yes, I had inkling. I had asked him not to take a van home. But he was telling me he was taking a van home and then coming back in the evening 17:00/18:00. He would be here to 18:00/19:00 on a Monday – Saturday. I have not asked Jay to take a van or advise him to. If he has taken a van home off of his own back.”

86. We find this exchange illuminating. Ashraf Saleh was the de facto line manager of the claimant from Monday to Saturday. It is clear to us and we find that Ashraf Saleh clearly knew that the claimant was taking a van home and that that was happening during the shift on Sundays. It is clear to us and we find that the fact that Ashraf Saleh had “an inkling” that the claimant was doing this notwithstanding that he claims to have told the claimant not to take a van home, indicates that the claimant’s conduct was, in fact, tolerated by his line manager. We find that that it was poor management to, in effect, shrug and say it was down to the claimant if he did.
87. On 11 April 2023 the claimant’s suspension was reviewed and confirmed.
88. On 24 April 2023 the claimant’s suspension was reviewed and confirmed.
89. On 26 April 2023 the claimant was signed unfit for work due to work-related stress.
90. On 1 May 2023 the claimant’s suspension was reviewed and confirmed.
91. On 11 May 2023 the claimant’s suspension was reviewed and confirmed.
92. Each of the suspension review letters had a response slip which the claimant never returned.
93. We have a letter dated 9 May 2023 pointing this out to the claimant and Jack Slaughter stated that he had been able to offer support or discuss the precautionary suspension if necessary.
94. There is a letter dated 11 May 2023 addressed to the claimant from Jack Slaughter referencing new evidence and seeking to arrange a meeting to discuss it on 16 May 2023. In the claimant’s witness statement, he states that no evidence was attached to the email and the proposed meeting never took place.
95. For reasons that have not been explained to us, it would appear that Jack Slaughter ceased dealing with the case around this time. We have a letter dated 4 October 2023 from a Colin Fergusson to the claimant which states:-

“Following a fact finding meeting on 16/03/2023 with Jack Slaughter concerning allegations of fraudulent overtime claiming on Sundays and unauthorised use of Royal Mail and hire vans please note this case has now been referred to a higher authority manager for consideration of any further actions, and I consider the potential penalty to be outside my level of authority.

Stephen Molloy will contact you shortly.”

96. A letter dated 9 October 2024 was sent to the claimant asking him to attend a

disciplinary hearing on 16 October 2024. The letter was sent by signed for delivery and the claimant states that he never received it. The tracking history suggests that it was refused on 11 October 2023 but the claimant denied this. In our judgment what exactly happened is not strictly relevant as a letter incorrectly dated 16 October 2024 [should be 2023] was later sent to the claimant inviting him for a disciplinary hearing on 19 October 2023.

97. The 16 October 2024 [2023] letter attached to it the previous letter that the claimant says he did not receive. The letter dated 9 October 2024 [should be 2023] sets out the charges as follows:-

- “• Why you left your place of work unmanaged for significant amounts of time without permission on Sundays.
- Why you took RM vans home on Sunday without permission.
- Why you claimed overtime for hours not worked on Sundays.
- Why you left a casual in charge of your unit on a Sunday – not even a RM employee.

I have associated with this letter all the correspondence I will be referring to at the interview.”

98. It is completely unclear to us what, if any, investigation material was sent to the claimant prior to this disciplinary hearing. We are not confident that the claimant was sent all the relevant material, including the interviews with the three managers referenced above.

99. The claimant received the 16 October 2024 [2023] letter as, on 18 October 2023, he sent an email to Stephen Molloy as follows:-

“Afternoon Stephen Molloy,

Following the receipt of your letter today 18/10/2023, unfortunately I am still off sick and not in a right state of mind to attend the meeting neither provide a written reason for any of the charges have been alleged. May I take this opportunity to inform I have not had any recent correspondence from Royal Mail part from a letter from Colin fergusson on 04/10/2023.”

100. On 18 October 2023 Stephen Molloy replied:-

“You have now been on suspension fully paid since March 2023.

As such I need you to comply with what I have written to you. It is up to you if you do not attend interview or indeed to make it easier (for you) do not write your explanation.

Once again if you do not write to me or attend interview I will make a decision on the balance of the evidence I have in front of me without any further input from yourself.

I strongly advise you to seek advice from the CMA [Communication Managers Association].

If you do not attend for interview or I have not received a written notification by 23rd

October I will make a decision in line with my letters dated 9th and 16th October .

I remind you that one possible outcome could be your dismissal.”

101. Later, on 18 October 2023, the claimant replied:-

“I did not receive any letters from you until today, however I’m unable to attend an interview or provide a written explanation as I’m tremendously sick with stress – which you are adding to. Please see the attached sick note.”

102. Stephen Molloy replied later on 18 October 2023 as follows:-

“Thank you for your email and confirming you will not be attending interview or putting forward written evidence.

I will now make a decision on the balance of the evidence available to me.

I will communicate my decision next week.”

103. We have a Med3 fit note dated 6 October 2023 signing the claimant as not fit for work for six weeks.

104. Stephen Molloy then contacted Maria Broomfield, Senior HR Business Partner, on 18 October 2023. He stated:-

“See attached.

This is a manager alleged to have fraudulently claimed overtime and taken a vehicle without permission.

He has been on suspension since March and the case has been with Colin since who didn’t interview to give the respondent the opportunity to recover.

I have reviewed the case he is saying in the sick certificate its work stress but clearly he has brought this stress in himself.

I left Paul Vines a message two days ago which he has not responded to which indicates his view (maybe) of the case ie one of guilt.

So I’m thinking I will dismiss early next week.”

105. Later, on 18 October 2023, Maria Broomfield replied to Stephen Molloy as follows:-

“Thanks for looping me in.

It may be worth checking whether the managers have been supporting this colleague whilst off through OH advice and referrals before you make a final decision. Wouldn’t want this to be overturned due to him not being fit enough to attend and having not had any intervention or support during the time he has been off.

There was no attachment to the email – assume it was the fit not?”

106. Later, on 18 October 2023, Stephen Molloy replied to Maria Broomfield as follows:-

“Yes was fit note.

My worry is the whole thing is self-inflicted and he has been on full pay since March.”

107. On 24 October 2023 the claimant was sent a letter of dismissal. This states:-

“Further to my letters to you dated 9th and 16th October and our email exchange on 18th October I am now in a position to relay my decision in relation to the charges expressed in the letter of 9th of October.

In reaching my decision I have considered the medical opinion that Optima Health gave following a telephone consultation with you on 30th June 2023. The advice that they gave the company was that you shouldn’t be interviewed for 3/4 weeks but “I also anticipate that once the work-related issues are addressed/removed, the employee’s psychological wellbeing is likely to increase”.

As you know I gave you two opportunities to attend a face-to-face interview with myself and an opportunity to put forward reasons in writing to answer the charges.

I believe I have been wholly reasonable in giving you an opportunity to answer the charges.

Having reviewed the paperwork and considered the evidence in front of me, it does indicate that you did indeed:-

1. Claim overtime that you did not work – insomuch that attend for overtime at the start of your shift and without permission went home leaving nobody or indeed alleged leaving a casual in charge of the shift.
2. You took a Royal Mail vehicle home without permission.

I have concluded that point 1 above amounts to what we call ghosting for frontline employees ie you knew you was paid but left your place of work and still put in the overtime claim. I have also reviewed the papers I have as you had previously said you had been given permission to use a vehicle – there has been a number of managers interviewed all refuting that they gave permission to use a vehicle on a Sunday – they did not in fact know that you was disappearing from work and not effectively working the shift.

I have concluded that this amounts to gross misconduct as you knowingly fraudulently claimed overtime and took a Royal Mail van home without permission.

I have therefore decided that dismissal is appropriate, given this is gross misconduct and you will be summary dismissed which means your last day of duty is 25th October 2023, you have five weeks annual leave outstanding which means your last day of service in Royal Mail will be 28th November 2023.”

108. The Acas Code of Practice on Disciplinary and Grievance Procedures provides as follows:-

“9. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification.

...

11. The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case.”

109. In addition, we note that the Acas Guide on Discipline and Grievances at Work (2020) contains the following:-

“What if an employee repeatedly fails to attend a meeting?

There may be occasions when an employee is repeatedly unable or unwilling to attend a meeting. This may be for various reasons, including genuine illness or a refusal to face up to the issue. Employers will need to consider all the facts and come to a reasonable decision on how to proceed. Considerations may include:

- Any rules the organisation has for dealing with failure to attend disciplinary meetings.
- The seriousness of the disciplinary issue under consideration.
- The employee’s disciplinary record (including current warnings), general work record, work experience, position and length of service.
- Medical opinion on whether the employee is fit to attend the meeting.
- How similar cases in the past have been dealt with.

Where an employee continues to be unavailable to attend a meeting the employer may conclude that a decision will need to be made on the evidence available. The employee should be informed where this is the case.”

110. We find that the claimant was not sent the witness statements prior to the disciplinary hearing.
111. We find that the claimant was not given a reasonable time to prepare.
112. We find that the decision to proceed in the claimant’s absence was unreasonable. The claimant was a long-standing employee with a good general work record and a good disciplinary record. We find that the medical opinion, courtesy of the fit note, was that he was unfit to attend work and the claimant was telling Stephen Molloy that he was unfit to attend the hearing. We find that the only reasonable response to the first time the claimant had declined to attend a meeting due to ill-health would have been to have postponed it and to seek further medical evidence.
113. We find that the claimant was not given an opportunity to set out his case and answer the allegations that had been made.
114. We find that notwithstanding that the claimant was told he had until 23 October to notify whether he would attend for an interview or not, in fact, Stephen Molloy had decided to dismiss the claimant on or before 18 October 2023.
115. Accordingly, we find that the dismissal was both procedurally unfair and in breach of the Acas Code of Practice on Disciplinary and Grievance Procedures.

116. We have gone on to consider the dismissal itself.
117. We find that the reason for the dismissal was gross misconduct and that Stephen Molloy genuinely believed that the claimant had committed gross misconduct. That is a potentially fair reason.
118. We have gone on to consider whether Stephen Molloy had reasonable grounds for that belief based on a reasonable investigation.
119. We find that the investigation was not reasonable and was inadequate.
 - 116.1 Whilst it is clear that in the interview on 16 March 2023 the claimant indicated that he claimed 12 hours overtime for work on a Sunday and is initially recorded as saying that he would work in the unit 10/14/9 hours, the claimant did in his amendments to those notes qualify that statement by indicating that when he was not physically in the building he was still working remotely on the phone etc.
 - 116.2 Whilst the claimant did state that he took the van home on a Sunday he explained that he did so under his general authority as a manager.
120. Both of those propositions/explanations were worthy of further investigation in our judgment. As we have already found, there was a high degree of discretion as far as the manager was concerned as to how he conducted the operations on a Sunday. As we have found, the claimant could still monitor his mobile and laptop whilst away from work. The claimant was entitled to a 1 hour lunch break and could leave the unit during that time. He was perfectly entitled to fast and pray during that lunch break. Stephen Molloy equated absence from the unit as not working and that claiming overtime for such absence automatically meant that the claimant was 'ghosting', i.e. fraudulently claiming pay for time not worked. However, we find that the issue was more nuanced and that objectively Stephen Molloy did not have grounds for making such a conclusion. We find that it had not been established that the claimant was claiming pay for unworked hours. Further, the system for signing out a van was not the overnight system but merely required an employee to sign for the van to get the keys. As such, that would appear to us to be within the remit of a manager.
121. In addition, the conclusion that a number of managers all refuted giving the claimant permission to use a vehicle on a Sunday and that they did not know the claimant was disappearing from work we find to be plain wrong in light of Ashraf Saleh's statement. He had tacitly approved by not taking action despite knowing the claimant was using a Royal Mail vehicle and expressly knew the claimant was leaving the unit to go home during a shift on Sundays.
122. Consequently, we find that Stephen Molloy did not have reasonable grounds for his belief that the claimant had committed gross misconduct.
123. Accordingly, we find that the dismissal was substantively unfair.
124. Consequently, we find that the claimant was summarily dismissed in breach of contract and the claim of wrongful dismissal must succeed.

125. We have gone on to consider what the chances are that the claimant would have been found guilty of misconduct and dismissed on notice had a fair procedure been undertaken.
126. We find that there were legitimate conduct issues for the respondent to investigate. As a manager, the claimant was absenting himself from the unit for 2 – 2 ¼ hours. He was driving 30/40 minutes each way to his home and advanced praying/fasting as being a reason. As such, his use of a Royal Mail vehicle was, at least to an extent, for personal reasons.
127. We find that a proper investigation would have established that there was no clear instruction or requirement for the claimant to remain at the unit for the whole of his shift, that he could still work whilst away from the unit, that it could not be said that he was claiming pay for time not worked and that he had authority to sign out a van as a manager. Further, it should have been appreciated that the claimant's de facto line manager was aware of what he was doing and had not taken formal action.
128. In addition, we find that there were significant mitigating circumstances. The claimant was an employee of 19 years standing. There had been no other concerns about his performance. This was a first offence. The circumstances of how the allegations had first been made were highly suspicious and were probably retaliatory against a manager who had taken entirely appropriate action against an OPG. The claimant was a manager working on his own without direct support in an unstructured environment of the Sunday operation.
129. In the circumstances, we find that it was probable that the reasonable response of a reasonable employer would have been that the claimant would have been spoken to informally and no formal finding of misconduct would have been made. Further, we find that had a formal finding of misconduct been made, we find that a reasonable employer would only have imposed a warning. We find that any decision to dismiss for misconduct summarily or on notice would have been outside the range of reasonable responses of a reasonable employer.
130. Consequently, we find that there was no chance of the claimant being dismissed summarily or on notice for misconduct had a fair procedure been adopted.
131. However, we find that the claimant was not blameless. We find that the claimant was aware in general terms that Royal Mail vehicles should not be used for personal reasons and that the claimant was taking advantage of a slack system by absenting himself from the workplace during the working day. We find that the claimant's conduct before he was dismissed contributed to his dismissal and that it would be just and equitable to reduce the amount of the basic award and the compensatory award by one third.
132. The claimant appealed his dismissal. His appeal is as follows:-

“Thank you for you email, wish to appeal against the penalty given on the following grounds, as per advise from my CMA representative:

- This was not a fair process.

- No regard was given to my mental health.
- The claims against me are completely false.
- Attacks are politically motivated.
- No feedback.

Finally I would like to request the appeal manager is outside of the ROD area, due to the nature how this process has been handled.”

133. On 2 November 2023, Helen Worfell wrote to the claimant to advise that his appeal had been arranged to take place by Microsoft Teams on 9 November 2023. The bundle of documentation associated with his appeal was said to be enclosed.
134. On 3 November 2023, the claimant confirmed that he would be putting his case as a written appeal.
135. On 8 November 2023, the claimant presented a 16 page appeal document with 19 pages of attachments.
136. Having reviewed the claimant’s appeal document Helen Worfell sent the claimant a list of questions which the claimant replied to on 16 November 2023. The basic points he made are as follows:-

- Managing on Sunday was a completely improvised situation with no PCOM, no point of contact, no 318 (duty structure) and that he was left to his initiative.
- That he always worked at least 12 hours per shift and there were many days he would exceed that.
- That he disputed using the Royal Mail for his personal use as he would work on his laptop when at home.
- That he remained in charge, albeit remotely.
- That he claimed overtime for when he was not at the unit as he was still working.”

137. On 22 November 2023, Helen Worfell had a meeting with Stephen Molloy via Microsoft Teams. Helen Worfell simply accepted Stephen Molloy’s assertion that the claimant had been sent the relevant documentation and did not raise the fact that the decision to dismiss was taken without a disciplinary hearing with the claimant as he was sick at the time. On the key issues to whether the claimant was required to be at the unit at all times during the shift, Stephen Molloy responded:-

“J was responsible for managing the Sunday in the unit and therefore I would expect him to be there.”

138. On 24 November 2023, the claimant was sent a copy of the meeting notes with

Stephen Molloy and the claimant returned his comments on the notes in due course.

139. On 5 December 2023, the claimant was informed that his appeal had been rejected. Helen Worfell produced a 13 page conduct appeal decision.
140. The appeal was by way of a rehearing. We find that the appeal did rectify the procedural defects of not sending the claimant all the information in advance and allowing him to participate.
141. However, we find that the appeal did not rectify the failure to investigate the matter properly. We find that simply interviewing Stephen Molloy, the dismissing officer, and accepting his simply expressed expectation that the claimant would be at the unit for the whole shift to have been unreasonable. She concluded that at the factfinding interview the claimant never raised that he was working from home but only that he had gone home to pray and eat when fasting as he could only eat at home. That disregards the amended notes that the claimant had supplied. Our conclusions as to what should have been the subject of further investigation and what the likely outcome would have been are the same as already found in relation to Stephen Molloy's decision to dismiss.
142. A somewhat bizarre aspect of Helen Worfell's oral evidence before us was when she was adamant that the claimant was being disciplined based on his conduct on one Sunday alone. She maintained this even during re-examination when counsel took her to the decision section of the conduct appeal decision. If, as Helen Worfell told us, the alleged misconduct was confined to a single shift then, in our judgment, that reinforces our conclusion that no reasonable employer would have dismissed, as such a decision was even further outside the band of reasonable responses of a reasonable employer.
143. We found Helen Worfell's reasoning to be unjustified and that the procedural and substantive unfairness was not rectified and remained.
144. Consequently, we find that the claimant was unfairly dismissed.

Direct discrimination on the ground of religion

145. We find that the respondent did accuse the claimant of improper use of a company vehicle.
146. We find that the appropriate comparator would be a non-Hindu colleague using a company vehicle for personal reasons. We find that the only association with religion is that the claimant's reason for use of the company vehicle was to go home to pray and eat whilst fasting. We find that a non-Hindu colleague in similar circumstances would have been treated exactly the same and accused of improper use of a company vehicle. Consequently, we find that this was not less favourable treatment.
147. In any event, we find that any difference in treatment was not because of the claimant's religion. It was because of the general prohibition on Royal Mail vans being used for personal circumstances.

148. Due to our findings of facts, we do not deal with the time issue.

Approved by:

Employment Judge Alliot

Date: 27 April 2026

JUDGMENT SENT TO THE PARTIES ON
5 May 2026

FOR THE TRIBUNAL OFFICE