

Neutral Citation Number: [2026] EAT 80

Case No: EA-2023-001124-AT

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 2nd June 2026

Before:

HIS HONOUR JUDGE JAMES TAYLER

Between:

MR P HOLMES

Appellant

- and -

KIRKLEES COUNCIL

Respondent

Nicholas Toms (instructed by Leigh Day Solicitors) for the **Appellant**
Peter Oldham KC (instructed by Kirklees Council) for the **Respondent**

Hearing date: 3 March 2026

JUDGMENT

SUMMARY

UNFAIR DISMISSAL, TRADE UNION RIGHTS

The Employment Tribunal did not err in law in dismissing complaints of unfair dismissal (including automatic unfair dismissal for taking part in the activities of an independent trade union) or dismissing complaints of trade union detriment.

HIS HONOUR JUDGE JAMES TAYLER:

The issues

1. The main issue in this appeal is whether the Employment Tribunal erred in law in its analysis of a complaint of unfair dismissal, primarily whether the reason, or principal reason, for dismissal was that the claimant had taken part in the activities of an independent trade union.

The Judgment appealed

2. The appeal is against the Judgment of Employment Judge Cox, sitting with members, at Leeds. The claim was heard on 8, 9, 12 to 16, 20 and 23 June 2023. The reasons were sent to the parties on 18 August 2023.

Outline facts

3. The claimant commenced work with the predecessor of the respondent, Kirklees Council, in 1973. He was a member of the Legal Services Department, but from 1998 he was on full-time release to act as the Branch Secretary of the Kirklees Branch of UNISON, one of the trade unions recognised by the respondent.

4. From February 2018, Deborah Lucas was the respondent's Head of People Services. Mrs Lucas was concerned that, because of his full-time trade union role, no one was monitoring the claimant's welfare or development. Mrs Lucas fixed a meeting with the claimant. The Employment Tribunal concluded that Mrs Lucas made a significant error of judgement in trying to develop a personal work relationship with the claimant because of their respective roles in industrial relations. Industrial relations had been turbulent. The Employment Tribunal found that Mrs Lucas was exasperated with the claimant's attitude and frustrated by her inability to form a positive and collaborative working relationship with him.

5. On 26 November 2019, Wendy Ellis, a chief steward in the Kirklees UNISON Branch and an employee of the respondent, sent a complaint to Mr John Cafferty, UNISON Regional Secretary, and copied it to Mrs Lucas, about some recent interactions between herself and the claimant. Ms Ellis asserted the claimant had acted in an inappropriately aggressive manner.

6. As a result of the allegations made by Ms Ellis, the claimant was suspended on 28 November 2019.

7. On 2 December 2019, Kath McHendry, an employee of the respondent and the UNISON Assistant Branch Secretary, made a complaint asserting that the claimant had threatened Stewart Jackson, an employee of the respondent and UNISON chief steward. The Employment Tribunal described her complaint:

Mr Jackson believed that the Claimant was unjustifiably interfering in a sensitive case with which he was dealing and expressed his concerns at that meeting. The Claimant **“completely lost his temper balled his fists and twice stated you are getting near my knuckles I believe he would have punched Stewart if I had not stopped the meeting.** Paul has also bullied the staff, a long standing member of staff left due to him and [as] usual he got away [with] it. I believe that he thinks he can treat people this way because he is untouchable.” [emphasis added]

8. The claimant asserted that his subsequent treatment was because of his trade union activities.

9. Mrs Lucas appointed an independent contractor to carry out an investigation into the claimant’s conduct. The investigator was described as “B” in the Judgment, because B was the subject of criticism in the Judgment but had not been a witness and had not had an opportunity to respond to the criticisms. The Judgment does not consider whether the anonymisation accorded with the open justice principle. The anonymisation was not challenged in the appeal.

10. On 2 December 2019, B agreed to investigate the allegations against the claimant.

11. In January 2020, Mrs Lucas received further complaints of bullying against the claimant, that she forwarded to B.

12. The investigation took a very long time. Mrs Lucas did not provide B with written terms of reference. The Employment Tribunal found that the investigation had been very poorly handled.

13. On 4 December 2020, B sent Mrs Lucas a draft of her investigation report. Mrs Lucas made comments on B’s investigation report that resulted in a number of amendments:

48. B eventually produced a draft investigation report for Mrs Lucas to comment on. The appendices to the report brought together all the statements that B had gathered during those interviews as well as the two initial complaints. The report itself presumably was intended to analyse the evidence and reach some sort of conclusion about what it showed, but unfortunately its quality and analysis were poor. **The first**

draft in particular was unclear in places and very poorly structured. Some of this lack of clarity was possibly due to the lack of clear terms of reference from Mrs Lucas. It was striking, for example, that the opening paragraphs of the first draft stated that the purpose of the report was to investigate a grievance from Ms Ellis rather than, as was actually the case, to carry out an investigation into an employee's conduct in the context of a disciplinary process.

49. **The Tribunal found it unsurprising, [given] the poor quality of the initial draft, that Mrs Lucas and Ms Pearson made a number of comments on it. As a result of their comments, B made several changes to the draft.** During the course of the Tribunal Hearing, the parties agreed the extent of the changes that had been made. The more significant ones were as follows.

50. **The initial draft said that there was insufficient evidence to support a threat of violence towards Mr Jackson. In the final version, this became a statement that there had been “threatening behaviour towards Stewart”.**

51. **In a section headed “bullying, intimidatory and manipulative behaviour” a final sentence was inserted in the final draft: “It is hard to believe that so many people, including Wendy Ellis, would come forward and share this view of his behaviour if there was not some element of truth to it”.**

52. **In the section headed “summary”, the first draft stated that incidents where B considered that the Claimant had acted in a bullying and controlling way “might be considered low level in nature”. This phrase was removed in the final draft as a result of a comment by Mrs Lucas that the Respondent would not consider them low level.**

53. **Confusingly, in both the initial and final drafts, B said in relation to the 20 November 2019 meeting between the Claimant and Ms Ellis: “I am unable to make a finding to support the allegation that he behaved in a bullying and threatening way towards [Ms Ellis]”. But then, in the summary section, after stating that some of the Claimant’s behaviours were bullying and controlling, both versions said: “having taken that view it is not impossible to believe that he may have behaved in a bullying way towards [Ms Ellis] over the secondment issue as she alleges . . .” And it was “possible to say that there might be some element of bullying in the behaviours described and the Council might want to consider what action, if any, they want to take in respect of this.” [emphasis added]**

14. On 30 March 2021, Mrs Lucas sent Julie Muscroft, Legal Services Director, a copy of the investigation report. At a meeting with Mrs Lucas on 7 April 2021, Ms Muscroft decided that there was a case for the claimant to answer. The Employment Tribunal accepted that Mrs Lucas had advised Ms Muscroft, but held that Ms Muscroft made the decision to progress the complaints.

15. On 15 June 2021, the claimant was invited to a disciplinary hearing to be held on 5 July 2021. The relevant allegations against the claimant were:

1) In a meeting in September 2019, with Kath McHendry and Stewart Jackson, you became angry, you raised your voice and clenched your fists towards Stewart, leading him to believe that you were going to hit him

2) You have bullied, intimidated, and manipulated a number of colleagues over a number of years which has had an impact on them professionally and personally, in particular with regard to their mental health, wellbeing and confidence; these colleagues include but are not limited to Anita Ambler, Georgina Bottomley, Cheryl Watson, Hayley Reid, Susan Stubley, Wendy Ellis, Angela Walker, Monique Slattery and Heidi Garcha

16. The disciplinary hearing was chaired by Colin Parr, a Strategic Director of the respondent. The hearing started on 6 September 2021 and took place over 12 non-consecutive days, concluding on 1 December 2021.

17. On 2 February 2022, the claimant was dismissed without notice. The dismissal letter set out Mr Parr’s conclusions in considerable detail.

18. The claimant appealed against his dismissal by letter dated 17 February 2022. An appeal hearing took place before a three person panel chaired by Melanie Meggs, Strategic Director for Children, Families and Communities. The appeal was dismissed on 18 August 2022.

The decision of the Employment Tribunal

19. So far as is relevant, the Employment Tribunal rejected a complaint of unfair dismissal, including a complaint that the dismissal was automatically unfair because the reason, or principal reason, for the dismissal was preventing or deterring the claimant from taking part in trade union activities, or penalising him for doing so.

The appeal

20. Four grounds of appeal have been permitted to proceed. I shall analyse each separately, after considering the relevant law.

The relevant law

21. Section 98 **Employment Rights Act 1996** (“ERA”) provides:

98 General.

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

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

22. I considered the key tests in **Lamb v Teva UK Limited** [2026] EAT 8:

30. The fundamental test in a claim of unfair dismissal is that set out in section 98 ERA. There are three steps in the analysis:

30.1. the employer is required to establish the reason, or principal reason, for dismissal; for convenience, I will refer to the reason, or principal reason, as “the reason” for dismissal; at this stage the Employment Tribunal considers the factual reason for dismissal

30.2. the reason for dismissal established by the employer must be a potentially fair reason

30.3. if the employer establishes that the employee was dismissed for a potentially fair reason, the Employment Tribunal will go on to determine whether the dismissal was fair or unfair on application of the provisions of section 98(4) ERA; fairness is determined on a neutral burden of proof

31. The first issue for the Employment Tribunal is the reason the employer had for dismissing the employee. The words “it is for the employer to show” means that it is for the employer to establish in evidence the reason for dismissal.

32. In *Croydon Health Services NHS Trust v Beatt* [2017] ICR 124, Lord Justice Underhill considered what is meant by the term “reason” for dismissal, at Paragraph 30:

30. What tends to be treated as the classic expression of the approach to identifying the “reason” for the dismissal of an employee for the purpose of section 98 and its various predecessors is the statement by Cairns LJ in *Abernethy v Mott Hay & Anderson* [1974] ICR 323, at p. 330 B-C, that:

"A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."

As I observed in *Hazel v Manchester College* [2014] EWCA Civ 72, [2014] ICR 989, (see para. 23, at p. 1000 F-H), Cairns LJ's precise wording was directed to the particular issue before the Court, and it may not be perfectly apt in every case; but **the essential point is that the "reason" for a dismissal connotes the factor or factors operating on the mind of the decision-maker which cause them to take the decision** – or, as it is sometimes put, what "motivates" them to do so (see also *The Co-Operative Group Ltd v Baddeley* [2014] EWCA Civ 658, at para. 41). [emphasis added]

33. If the employer fails to establish the factual reason for dismissal, the complaint will succeed.

34. The second question for the Employment Tribunal is whether the reason established by the employer is one of the potentially fair reasons for dismissal, provided by section 98(2) and 98(1)(b) ERA. A reason that relates to the conduct of the employee is a potentially fair reason for dismissal: section 98(2)(c) ERA.

35. If the employer does not establish that the factual reason for dismissal was one of the potentially fair reasons for dismissal, the complaint will succeed.

36. If the employer establishes the factual reason for dismissal, and that it was a potentially fair reason, the Employment Tribunal will go on to consider, on a neutral burden of proof, whether the dismissal was fair. Section 98(4) ERA requires that the Employment Tribunal considers a number of factors to determine the core question of whether the dismissal is fair or unfair. The Employment Tribunal must have regard to the reason shown by the employer; i.e. the factual reason for dismissal and the potentially fair category of reason into which it falls. The Employment Tribunal must consider all the relevant circumstances, including the size and administrative resources of the employer's undertaking. Having regard to the reason shown by the employer, the Employment Tribunal must decide whether the employer acted reasonably or unreasonably in treating it (the reasons established by the employer) as a sufficient reason for dismissing the employee, which shall be determined in accordance with equity and the substantial merits.

37. The Employment Tribunal must not substitute its view for that of the employer. Employment Tribunals apply a range, or band, of reasonable responses test.

23. The Employment Tribunal assesses the fairness of the process as a whole, including any appeal: **Software 2000 Ltd v Andrews and others** [2007] ICR 825. Elias J said of the role of the Employment Tribunal:

their task is to apply the statutory test. In doing that, they should consider the fairness of the whole of the disciplinary process. If they find that an early stage of the process was defective and unfair in some way, they will want to examine any subsequent proceeding with particular care.

24. A dismissal is automatically unfair if the reason, or principal reason, for dismissal is that the employee has undertaken trade union activities. Section 152 of the **Trade Union and Labour Relations (Consolidation) Act 1992** (“TULR(C)A”) provides:

For purposes of Part X of the Employment Rights Act 1996 (unfair dismissal) the dismissal of an employee shall be regarded as unfair if the reason for it (or, if more than one, the principal reason) was that the employee— ... (b) **had taken part, or proposed to take part**, in the activities of an independent trade union at an appropriate time ...

25. However, not all conduct that occurs in the context of undertaking trade union activities is protected. In **Morris v Metrolink RATP Dev Ltd** [2018] EWCA Civ 1358, [2019] I.C.R. 90, Lord Justice Underhill held:

19. In my view the principle underlying these cases is—as so often—most clearly stated by Phillips J. If Slade J in *Mihaj v Sodexo Ltd* intended to suggest that there was some difference between his approach in *Lyon* and that taken by this court in *Bass Taverns*, I would respectfully disagree. At the risk of simply repeating less succinctly what Phillips J says in the passages which I have quoted, **there will be cases where it is right to treat a dismissal for things done or said by an employee in the course of trade union activities as falling outside the terms of section 152(1), because the things in question can fairly be regarded as a distinct reason for the dismissal notwithstanding the context in which they occurred; and his reference to acts which are “wholly unreasonable, extraneous or malicious” seems to me to capture the flavour of the distinction.** That precise phraseology should not be treated as definitive (any more than Slade J's formulation in *Mihaj*); but the point which it encapsulates is that in such a case it can fairly be said that it is not the trade union activities themselves which are the (principal) reason for the dismissal but some feature of them which is genuinely separable. *Azam v Ofqual* is a good illustration of such a case: the employee's deliberate breach of confidence could fairly and sensibly be treated as a reason for dismissal distinct from the fact that it occurred in the context of trade union activities.

20. However, as Phillips J points out, this distinction should not be allowed to undermine the important protection which the statute is intended to confer. An employee should not lose that protection simply because something which he or she does in the course of trade union activities could be said to be ill-judged or unreasonable (NB that Phillips J, I am sure deliberately, says “wholly unreasonable”). *Bass Taverns Ltd v Burgess* [1995] IRLR 596 is a good illustration of this: the employee was held to fall within the scope of the section even though he had gone “over the top”.

The grounds of appeal

Ground 3 – Error of law in relation to Allegation 2 due to the failure of the Tribunal to consider the Appellant’s case in relation to the allegations dating back many years and/or to provide reasons for rejecting the same

26. The Employment Tribunal clearly appreciated that there was potential unfairness in respect

of the second allegation. The overall procedure operated by the respondent was carefully considered and was found to be fair:

84. In relation to Allegation 2, **the Claimant argued that he had not had a fair opportunity to put his side of the case because he had not been told in advance of the disciplinary hearing exactly what he was said to have done that amounted to misconduct.** It was not until Mr Parr set out in his letter confirming the Claimant's dismissal the specific incidents that he considered to be misconduct falling under Allegation 2 that the Claimant was aware of the case he had had to answer. Those incidents are set out in paragraph 89 below. The Claimant had not, therefore, had a fair opportunity to prepare his response to Allegation 2.

85. **The Tribunal accepted that this was a significant shortcoming in the Respondent's management of the disciplinary process.** Just as Mrs Lucas did not identify to B the conduct that she considered might amount to misconduct and needed to be investigated, she did not identify from the multiple statements in the appendix to the investigation report what conduct she was referring to when she framed Allegation 2. **As a result, in advance of the disciplinary hearing, the Claimant did not know which particular incidents within the 27 statements that had been gathered were regarded by management as falling within Allegation 2,** whether in relation to the individuals named in the invitation to the disciplinary hearing or others as yet unnamed. (Allegation 2 gave a list of the colleagues the Claimant is alleged to have bullied, intimidated and manipulated but stated that the list was not exhaustive.) He did not, therefore, know in advance what he should focus on in preparing for the hearing.

86. **The Tribunal considered carefully whether this was a failing that made Mr Parr's decision to dismiss the Claimant unreasonable.** In doing so, it took into account the contents of the ACAS Code on disciplinary procedures, as it was required to do (Section 207(2) TULR(C)A). Paragraph 9 advises that the employee be given "sufficient information about the alleged misconduct . . . and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting."

87. Having given the issue careful consideration, the Tribunal concluded that in all the circumstances Mr Parr's conclusion that Allegation 2 was made out was reasonable.

88. The Claimant had fair notice of what was alleged in relation to his conduct towards Ms Ellis under Allegation 2. He knew the content of her initial complaint and had a copy of her witness statement in advance of the disciplinary hearing. He had a fair opportunity to put his side of the case at the disciplinary hearing. The evidence Ms Ellis gave in the disciplinary hearing was detailed and consistent with her initial complaint and her statement to B. Towards the end of her evidence, when describing how terrified she had been during and after the meeting on 20 November, she broke down in tears and had to leave the hearing. Mr Parr found her evidence credible and the Tribunal accepted that he had reasonable grounds for doing so.

89. In his dismissal letter, Mr Parr recorded that multiple witnesses had given evidence that the Claimant was bullying, intimidating, manipulative, made misogynistic comments and would cold-shoulder people. He identified various specific incidents of this. These were, in summary:

89.1 In 2019 in a stewards' meeting the Claimant had acted in a threatening way towards Hayley Reid.

89.2 In 2010 at a union meeting the Claimant had said to Monique Slattery that he knew she didn't like him but that he didn't care, everything had to go through him.

89.3 At a UNISON conference in 2018, he had asked Angela Walker "are you telling me to fuck off?"

89.4 At various times he had told Wendy Ellis to shut up or called her an idiot.

89.5 He had mocked the accent of a Russian employee, Natalia, in comments he made to Heidi Garcha and Kathie Hirst.

89.6 He had undermined and derided the attempts of the office staff (Hayley Reid, Anita Ambler, Bev Foster, Sue Stublely and Georgina Bottomley) to clear their desks before they went on leave, refusing to see them before they went.

89.7 He had made a comment to Hayley Reid: "oh women just don't get that joke".

89.8 At a Branch Christmas event "a few years ago" he had ignored Monique Slattery: in a food queue when she said "hi".

89.9 After Joanne Pearson made a complaint about a missing election nomination form, the Claimant had ignored her for two years.

89.10 The Claimant had ignored Bev Foster after an incident when she had challenged the comment made in a conversation to which the Claimant was party "oh blooming women members".

89.11 The Claimant had ignored Stewart Jackson after their meeting in September 2019.

90. Whilst the Claimant did not know in advance that these were the incidents that Mr Parr would choose to illustrate his conclusions, the Tribunal was satisfied that there was a substantial amount of evidence before Mr Parr from many witnesses, including all five current office staff, that gave him reasonable grounds to conclude that the Claimant's behaviour was routinely bullying and intimidating in nature. **The Claimant had a fair opportunity to question all of these witnesses during the course of the disciplinary hearing. He chose not to question the office staff about their evidence because he did not have any issue with them and felt that they had the right to make a complaint about him if they wanted to. In the event, Mr Parr did ask a few questions of some of these witnesses.**

91. At the appeal stage, Mr Pearson told the Respondent that he may want to present two further statements which, he said, "may be relevant as a consequence of the detail of the dismissal letter itself". In the event, he forwarded a character reference from Gail Gillespie, who had worked with the Claimant at the Branch until 2014, and a letter from Mick Donoghue, a convenor and former steward with a substantive post in the cleansing department, about the disciplinary outcomes in other cases involving violence that had not resulted in dismissal. These were taken into account by the appeal panel when they

confirmed the decision to dismiss. **If there was other evidence or documentation that the Claimant wanted to put forward to challenge the basis of his dismissal that he had not had the opportunity to advance before because Allegation 2 had not been particularised, he had the opportunity to do so at the appeal stage. ...**

93. In summary, Mr Parr concluded in relation to Allegation 2 that the Claimant had “displayed a set of inappropriate behaviours over a sustained period of time”, outside the values and behaviours expected of all the Respondent’s employees. He had shown a lack of awareness or disregard of the impact of his behaviour on others. The Tribunal accepted that Mr Parr had reasonable grounds for his conclusions. [emphasis added]

27. It is asserted in this ground that many of the allegations dated back over years and were brought by those who had a political axe to grind with the claimant, some of whom had subsequently been dismissed. The Employment Tribunal was clearly aware of the antiquity of the allegations but was entitled to conclude that it was permissible for the respondent to take them into account.

28. It is asserted in this ground that the Employment Tribunal “made no attempt to address whether it was reasonable for the Respondent to consider these earlier allegations as part of the disciplinary case against the Appellant and/or to justify his dismissal in part by relying on them”. That assertion is clearly negated by the passages I have quoted. The Employment Tribunal clearly was troubled by allegation 2, but, having carefully analysed the evidence, concluded that the dismissal was fair when the whole process was taken into account.

29. The Employment Tribunal further held that allegation 2 was of secondary importance in the decision to dismiss, which would have been made absent that allegation:

92. In any event, **Mr Parr considered at the time he was making his decision whether he would have dismissed the Claimant for Allegation 1 alone. He concluded that he would. In relation to Allegation 2, he confirmed in his evidence to the Tribunal that he regarded the more recent incidents as the most significant.** The Claimant’s conduct towards Ms Ellis on 20 November 2019 was the most recent incident he considered, and the one that had set the whole disciplinary process in motion. As already stated above, the Tribunal accepted that Mr Parr had very clear grounds for concluding that Ms Ellis’s account of that incident was correct. [emphasis added]

30. The Employment Tribunal rejected the assertion that the allegations had been used as an opportunity to be rid of a troublesome trade union representative:

94. **In his closing submissions, the Claimant said that Mr Parr took the opportunity to get rid of a troublesome trade union official** whose return might directly impact on industrial relations in his department, which included refuse services. Alternatively, Mr

Parr simply took the “easy option” to go along with the management case presented by Mrs Lucas regardless of the actual evidence. He implied that Mr Parr had not upheld Allegation 3 to give an impression of fairness.

95. The Tribunal found that, on the contrary, Mr Parr conducted a very fair and extremely thorough disciplinary hearing, took account of all the evidence he had heard and gave very careful consideration to whether the management case had been made out. [emphasis added]

31. This was a conclusion that was open to the Employment Tribunal on the evidence before it.

Ground 3 is not made out.

Ground 6 – error of law by substituting a case for that of the Respondent and/or reaching a perverse finding in relation to the conclusion that Ms Lucas’ comments on the draft report prepared by the independent investigator appointed by the Respondent were simply designed to improve it

32. The Employment Tribunal held of Mrs Lucas’s comments on the draft report of B:

54. The Tribunal finds that Mrs Lucas’s comments on the draft report, like those of Ms Pearson, were largely an attempt to improve the quality of the report. Mrs Lucas had identified from the evidence that B had gathered, which was set out in the appendices, that the Claimant had a disciplinary case to answer. On the Tribunal’s own objective assessment of those statements, she had reasonable and well-evidenced grounds to conclude that that was so. Mrs Lucas’s comments on the report were not made with the purpose of penalising the Claimant for, or deterring the Claimant from, his union activities. Her purpose was to improve the quality of the report sufficiently to ensure that those aspects of the Claimant’s conduct that she considered might amount to misconduct and could fairly be regarded as distinct from his union activities should be captured for the purposes of deciding whether the matter should go forward to a disciplinary hearing. [emphasis added]

33. The Employment Tribunal further stated that:

64. The Claimant alleged that Mrs Lucas caused B to re-write the investigation report to change its conclusions. As already recorded above, the Tribunal accepted that Mrs Lucas did make comments on the initial drafts and these did lead to some changes to B’s report. Mrs Lucas’s purpose was not to penalise the Claimant for, or deter him from, his trade union activities but to improve the quality of the report to ensure that it properly reflected the evidence in the appendices. [emphasis added]

34. The Employment Tribunal was highly critical of the report produced by B. The Employment Tribunal noted that in the initial draft produced by B it was said that there was insufficient evidence to support a threat of violence towards Mr Jackson; but that, after Mrs Lucas’s comments, in the final version, this became a statement that there had been “threatening behaviour towards Stewart”. Reading the Judgment as a whole, it is clear that when the Employment Tribunal referred to Mrs

Lucas seeking to “improve the quality of the report” this did not merely mean in terms of presentation and the like but to “ensure that it properly reflected the evidence in the appendices”. That was a finding of fact that was open to the Employment Tribunal.

35. The claimant asserts that this was inconsistent with **Ramphal v Department of Transport** [2015] IRLR 985, which is contended to be authority for the proposition that the role of human resources should only be to advise on procedure rather than culpability and any appropriate penalty.

36. The situation in **Ramphal** was materially different. In **Ramphal** a member of a human resources department unduly influenced the decision maker. In this case, the Employment Tribunal found as fact that Mrs Lucas did not take the decision to instigate disciplinary charges. That decision was taken by Ms Muscroft. The Employment Tribunal held that Mr Parr took the decision to dismiss having taken “account of all the evidence he had heard” and having given “very careful consideration to whether the management case had been made out”. That was a factual decision that was open to the Employment Tribunal. Ground 6 is not made out.

Ground 7 – failure to consider adequately or at all as to whether the Appellant’s alleged conduct was the sufficient to take it outside of the protection afforded to trade union officials even though they accept that at all times he was undertaking trade union activities and, if it was, to provide reasons for their decision

37. The Employment Tribunal held:

78. The Tribunal accepted Mr Parr’s evidence that he kept in mind at all times the protection that the Claimant had against being dismissed for his union activities. He had taken legal advice to ensure that this distinction was clear in his mind. For that reason, he did not consider it appropriate to take into account matters that had emerged in the course of the investigation that he viewed as part of the cut and thrust of union politics, namely, the Claimant’s actions in relation to the election of the Assistant Branch Secretary. Nor did he consider it appropriate to subject the Claimant to any disciplinary sanction in relation to the working practices of the Branch, even if they were antiquated and may have shown a controlling way of working, since they were the result of the union’s democratic processes and part of the union’s activities. He therefore did not uphold the third allegation.

79. Mr Parr was satisfied, however, that the Claimant had made a threat of violence towards Mr Jackson and been guilty of a pattern of bullying, intimidating and manipulative behaviour that had caused distress to his colleagues in the Branch. Mr Parr believed that this conduct could fairly be regarded as distinct from the Claimant’s trade union activities. [emphasis added]

38. The claimant correctly points out that separability is a matter of objective analysis rather than merely considering what the decision maker thought.

39. The Employment Tribunal was asked about its analysis under the **Burns/Barke** procedure by an order of John Bowers KC, Deputy Judge of the High Court, sealed on 20 February 2025. The Employment Tribunal answered by letter on 7 March 2025:

The Tribunal did not believe that the conduct that led to the Claimant's dismissal was activity protected by Section 152 of the *Trade Union and Labour Relations (Consolidation) Act 1992*.

Its reasons for that view were that, on the basis of the evidence it heard (which included the evidence before Mr Parr and the additional evidence given at the Tribunal Hearing), **it accepted that the Claimant had in fact threatened Mr Jackson with violence in their meeting in September 2019 and that he had been guilty of bullying, intimidating and manipulative behaviour towards his colleagues. Whilst this conduct occurred in the context of the Claimant carrying out union activities, the Tribunal believed that it could fairly be regarded as distinct from them because it was wholly unreasonable and extraneous.** [emphasis added]

40. This was a factual determination that was open to the Employment Tribunal. Further, on a realistic analysis, the principal reason for the dismissal of the claimant was Mr Parr's conclusion that the claimant had threatened violence to Mr Jackson. That conduct was clearly wholly unreasonable and extraneous to the claimant's trade union activities. Ground 7 is not made out.

Ground 9 – perversity in concluding there was no evidence to support a finding that Ms Lucas had been involved in manipulating the decision to dismiss the Appellant

41. The claimant asserts that it was perverse of the Employment Tribunal to find that Mrs Lucas did not manipulate the decision to dismiss the claimant because:

- (a) she commissioned the investigation and worked closely with the investigator behind the scenes;
- (b) she had significant changes made to the disciplinary report which went to culpability;
- (c) she was heavily involved in the decision to refer the case to a disciplinary hearing;
- (d) she drafted the charges elevating the allegations from insufficient evidence and low level to gross misconduct;
- (e) she presented the Respondent's case at the disciplinary hearing;
- (f) she was involved in preparing the disciplinary hearing including the relevant

paperwork; and

(g) she prepared the Respondent's witnesses for the hearing

42. The Employment Tribunal did not accept these assertions in full. More importantly, the Employment Tribunal held that it was Ms Muscroft who decided that disciplinary action should be taken, Mr Parr independently made the decision to dismiss on the basis of a careful consideration of the immensely detailed evidence before him and that decision was upheld on appeal by a three person panel chaired by Ms Meggs. The matters relied on by the claimant, even if made out, would not in those circumstances establish that Mrs Lucas manipulated the decision to dismiss the claimant. The claimant is not able to surpass the high threshold required to establish perversity. Ground 9 is not made out.

Conclusion

43. As Mr Toms, Counsel for the claimant, accepted in his skeleton argument, "any challenge based on perversity presents a high hurdle for an appellant" which "requires an overwhelming case". This appeal at heart contends that the decision of the Employment Tribunal was perverse. The claimant has not been able to make out an overwhelming case. The Employment Tribunal reached conclusions that were open to it, that cannot validly be challenged on appeal. The appeal is dismissed.