EMPLOYMENT TRIBUNALS

Claimant: Mr S Jackman

Respondent: John Lewis plc

Heard at: Reading (by video)

On: 19 and 20 March 2026

Before: Employment Judge Hawksworth

Appearances
The claimant: represented himself with assistance from Mr T Ronayne (non-legal representative)
For the respondent: Mrs G Holden (counsel)

JUDGMENT

The claimant was not unfairly dismissed. The complaint of unfair dismissal fails and is dismissed.

FULL REASONS

Introduction

1. The claimant worked for the respondent as an LGV1 driver from 15 November 2021 until his summary dismissal on 5 March 2025. He claimed unfair dismissal.

2. The respondent defended the claim. The respondent said that the claimant was fairly dismissed for conduct reasons.

3. The hearing took place by video on 19 and 20 March 2026. There was a bundle which had 624 pages. I read the witness statements before the hearing.

4. As the claimant was not legally represented, I decided that he should give evidence first, so that he had more time to prepare his questions for the respondent's witnesses, and experience of being asked questions. I heard evidence from the claimant on the morning of 19 March 2026. We took a long lunch break to give the claimant time to prepare his questions to the respondent's witnesses, Andrew

Digney and Nigel Towse. I heard their evidence on the afternoon of 19 March 2026. The claimant asked them questions.

5. During the breaks in the evidence I also viewed the parts of the CCTV footage which had been shown to the claimant during the investigation/disciplinary process.

6. To assist the parties to prepare their closing comments, at the end of the evidence I sent the parties the relevant parts of section 98 of the Employment Rights Act 1996 and a summary of the tribunal's approach in alleged misconduct cases. (This is included in the section 'The Law' below.)

7. On the morning of 20 March 2026 Mrs Holden made oral closing comments on behalf of the respondent, and Mr Ronayne made oral closing comments on behalf of the claimant.

8. After taking some time for deliberation, I told the parties my judgment and explained my reasons. I gave full reasons under rule 60(4A)(b)(ii) of the Employment Tribunal Procedure Rules 2024.

9. The claimant asked for written reasons. These are provided under rule 60(4D).

Issues

10. The issue for me to decide was whether the claimant was unfairly dismissed. The parties confirmed at the start of the hearing that this was the only complaint being made by the claimant.

Findings of facts

11. This section of the judgment explains what I decided happened in the claimant's case. I do not include all the facts. I focus on those matters which assist to decide the complaint.

12. The claimant started employment with the respondent on 15 November 2021. He was an LGV1 night shift driver.

13. In August 2024 the claimant had an informal conversation with managers because he had taken an extended break. There were mitigating circumstances for the claimant taking this break and he later apologised. His managers made it clear at this meeting what the expectations were about properly recording work and break time. The claimant's manager said they could take it further, but they wouldn't do so because the claimant had apologised.

14. The claimant was working on the night shift on 7/8 February 2025. A manager raised a concern about a 51 minute 'other work' period between the time the claimant arrived back at the de-kit area after his first job, and the time he was allocated his next job.

15. The claimant went on holiday shortly after this shift. When he returned, the respondent began an investigation into events during the shift of 7/8 February.

16. Stephen Forrest-Hawkins was appointed as investigation manager. He held a meeting with the claimant on 19 February 2025. At the meeting Mr Forrest-Hawkins showed the claimant the CCTV footage of the shift and went through it with him. The claimant thought the footage was black and white. I find that the CCTV film that was shown to the claimant during the investigation and disciplinary procedures was the colour footage which was also shown to me during this hearing.

17. The claimant did not think the image was clear enough to identify him, and did not accept that the person on the CCTV was him. He also made a complaint about the way he was spoken to by a manager in connection with the allocation of his second job on 7/8 February. The respondent conducted a separate investigation of that complaint. Mr Forrest- Hawkins decided to pause the investigation meeting to give time for further enquiries and for reflection.

18. The investigation meeting continued on 21 February 2025. The claimant maintained his position that the CCTV was not clear enough to identify him. Mr Forrest-Hawkins said he believed the footage showed the claimant enter the de-kit area, talk to a colleague for a couple of minutes, leave to go to the toilet, return after 3 minutes, help unload for around a minute and then talk to a colleague for 36 minutes before booking in for his next job. Mr Forrest-Hawkins decided that the case should proceed to a disciplinary meeting. The claimant was suspended.

19. Another manager, Andrew Digney, was appointed as disciplinary manager. The disciplinary hearing took place on 5 March 2025. The claimant was accompanied by a colleague.

20. Mr Digney showed the claimant the CCTV footage again. They discussed the other evidence including work schedules and time records from an online system called Microlise. The Microlise records said the claimant was on ‘other work’ for a 51 minute period in the de-kit area. Mr Digney believed, based on the CCTV and the Microlise reports, that the claimant had deliberately wasted time to avoid completing his schedule. Mr Digney decided that this amounted to work avoidance, one of the types of conduct listed in the disciplinary policy as an example of misconduct that can result in dismissal without notice. He reached this decision because he decided:

    20.1. The claimant’s explanation that he was in the toilet only accounted for 3 minutes of the time;
    20.2. The claimant’s explanation that he was supporting a colleague who was stressed and upset was not correct. Mr Digney preferred the statement of the claimant’s colleague which said that it was ‘general chit chat’. He found from the CCTV evidence and the statement of the claimant’s colleague that the conversation lasted around 30-40 minutes;
    20.3. The claimant should have known not to do this, because he had previously had an informal conversation with managers about a similar incident;
    20.4. If the claimant had booked onto his second job more quickly, he could have left earlier and then he would have arrived back in time to complete the de-kit at the end of his second job, rather than another driver having to do it.

21. Mr Digney decided that the claimant should be dismissed. He considered whether another outcome other than dismissal was possible. He took into account the previous informal conversation, and the fact that the claimant had not acknowledged that he had done anything wrong. He decided that dismissal was the only appropriate response.

22. Mr Digney sent the claimant a letter confirming his dismissal on 6 March 2025.

23. The claimant appealed against the dismissal. Another manager, Nigel Towse, was appointed as appeal manager. The appeal took place on 20 March 2025. Mr Towse gave the claimant the opportunity to raise his concerns about the process and the decision. He wrote to the claimant on 25 March 2025 to say that the dismissal was upheld.

The law

24. Section 98 of the Employment Rights Act 1996 says:

> *"(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."*

<u>Summary of the tribunal's approach in alleged misconduct cases</u>

25. The employer must show that misconduct was the reason for dismissal: that it had a genuine belief that the employee was guilty of misconduct (*British Home Stores Ltd v Burchell* 1980 ICR 303, EAT).

26. If the reason was misconduct, the tribunal has to consider whether the respondent acted reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant. The tribunal's assessment of whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide whether:

    a. there were reasonable grounds for the belief;
    b. at the time the belief was formed, the respondent had carried out a reasonable investigation;
    c. the respondent otherwise acted in a procedurally fair manner; and
    d. dismissal was within the range of reasonable responses.

Conclusions

27. I applied these legal principles to the facts to reach my conclusions on the complaint of unfair dismissal.

28. The legal test is set out in section 98 of the Employment Rights Act 1996. There are broadly two parts to the test.

29. The first is that the reason for dismissal has to be one of the reasons that is listed in section 98(2), also known as potentially fair reasons. They are the only reasons for which someone can be fairly dismissed once they have the right to not to be unfairly dismissed, once they have, like the claimant, worked for an employer for more than two years.

30. Here the respondent relied on conduct as the reason for dismissal. A reason relating to the conduct of the employee is a potentially fair reason included in section 98(2).

31. I have to decide whether the respondent, and specifically Mr Digney who made the decision to dismiss, had a genuine belief that the claimant had committed misconduct. I am not deciding whether I think the claimant was guilty of misconduct. I have to focus on what Mr Digney believed.

32. The claimant said in his appeal that he thought other managers wanted to get rid of him because of his change of shift pattern after his return to work from sick leave. I do not find that this played any part in Mr Digney's decision. The return to work was 8 or 9 months earlier. There was no evidence that Mr Digney had any hidden agenda, or that he was being directed by another manager to take any steps for other reasons. Mr Digney made his decision purely on the basis of what he decided happened on 7/8 February. He genuinely believed the claimant's conduct amounted to misconduct.

33. Therefore, the reason for Mr Digney's dismissal of the claimant was his belief that the claimant's conduct during his shift on 7/8 February 2025 was misconduct. That is a potentially fair reason for dismissal. I accept that the first part of the test – a genuine belief in misconduct as the reason for dismissal - is satisfied.

34. This means that I go on to the second part of the unfair dismissal test. The second part of the test is that the dismissal must be fair in all the circumstances. That is set out in section 98(4). I have to consider whether the respondent acted reasonably in these circumstances in treating the conduct as a sufficient reason to dismiss the claimant.

35. I consider this overall fairness question on a neutral basis, that means neither party has the burden of proving these points. As I explained in the hearing, my role is not to make my own decision about whether the claimant should have been dismissed. I do not decide whether I would have dismissed the claimant in these circumstances, or even whether the respondent's decision was the right decision. Instead, my role is more limited. The reason for this more limited role is that the law recognises that different employers might take different approaches in the same circumstances. The rules I am applying accept that there might be more than one reasonable approach in the same situation. I have to assess whether this decision by the respondent is one of the possible reasonable approaches in this situation. Another way of putting it is that I ask whether dismissal is a decision that no reasonable employer could have made.

36. I look at a number of factors when considering fairness. I consider whether:

    a. At the time the belief was formed, there were reasonable grounds for the respondent's belief;

    b. Again, at the time the belief was formed, the respondent had carried out a reasonable investigation;

    c. a fair procedure was adopted overall; and

    d. dismissal was within the range of reasonable responses.

37. I have called these questions a to d.

38. Question a: at the time the belief was formed, were there reasonable grounds for the respondent to believe that the claimant had committed misconduct ? I have decided that there were. Mr Digney's belief was based on the statements obtained in the course of the investigation, the CCTV evidence, the schedules and the Microlise reports.

39. Mr Digney believed that there was no good explanation for the claimant spending 51 minutes in the de-kit area. He rejected the explanation that the claimant had been in the toilet, because he accepted the evidence of the CCTV footage that this accounted for no more than 3 minutes. He rejected the explanation that the claimant was supporting a colleague who was stressed and upset, because he accepted the evidence of that colleague that they had only been having a general chit chat. It was open to Mr Digney to prefer the evidence of the CCTV and the claimant's colleague over what the claimant was saying. It was reasonable for him to rely on his identification of the claimant from the CCTV in circumstances where the claimant accepted he was in the de-kit area at a time when no other driver was present, and the timings were supported by the Microlise evidence. It was reasonable for Mr Digney to conclude that in the absence of a good explanation, the time spent was deliberate and amounted to work avoidance. The delay led to

the claimant leaving late for his second job and arriving back at the depot later than he otherwise would have done. This meant another driver had to do the de-kit. These were reasonable grounds to believe that there was misconduct by the claimant.

40. Question b: was there a reasonable investigation? The investigation by Mr Forrest-Hawkins was reasonable. Mr Forrest-Hawkins held two investigation meetings with the claimant. He took statements from relevant colleagues. He recorded the complaint the claimant made about a manager so that it could be investigated separately. He took statements about the informal conversation which took place in August 2024. He assessed the CCTV footage, work schedules and Microlise evidence. As the claimant said in his appeal, the claimant was not given any notice or informed of a right to be accompanied at the investigation meeting, but that is not a requirement of the Acas Code of Practice. It was not an unreasonable approach to have adopted at the fact finding (rather than the decision making) stage. Similarly, it was not unreasonable to delay the investigation while the claimant was on holiday.

41. Question c: A fair procedure was adopted overall. The claimant was told what the allegations against him were and he was given meaningful opportunities to respond. There were investigation, disciplinary and appeal hearings with different managers, and there was no suggestion that any of the managers were not impartial or that they failed to consider any relevant points. The claimant was told that he could be accompanied at the disciplinary and appeal hearings and was accompanied by a colleague at the disciplinary hearing. Overall, the requirements of the Acas code, which sets out what a fair procedure looks like, were followed.

42. Question d: That leaves the overarching question of whether dismissal was in the range of reasonable responses. As I have explained, I have to make an assessment of whether dismissing the claimant was one of the decisions which a reasonable employer could have made in these circumstances, or whether it was a decision which no reasonable employer could have made.

43. I have first considered whether the claimant could have reasonably been expected to have understood that his conduct would be regarded as misconduct. I have decided that he could, for two main reasons:

    43.1. The disciplinary policy was referred to in the claimant's contract, and contained in the employee handbook which was available on the intranet. It expressly included work avoidance as one of the examples of the type of conduct which would be liable to result in dismissal without notice;

    43.2. The claimant had previously had an informal conversation with managers about a similar situation where his recording of breaks had been questioned and expectations had been made clear.

44. I have also considered the points raised by the claimant about the fairness of the dismissal in his appeal document and at the hearing (other than those I have dealt with already). These are:

    44.1. That the August 2024 conversation was 'off the record' and not a verbal

warning. The respondent accepts that this conversation was informal, and that no warning was given. But the claimant was not dismissed because of a course of poor conduct and a series of warnings. He was dismissed for his conduct on one occasion. The previous conversation was a factor which the respondent was entitled to take into account, not as step on a procedure towards dismissal but as evidence that expectations had been made clear to the claimant.

44.2. That the claimant in talking to a colleague who was stressed and upset was simply showing compassion. The respondent was entitled to prefer the evidence of the claimant's colleague that it was just a general chit chat;

44.3. That another manager confirmed to the claimant, before there was any investigation, that there was no problem. The respondent was still entitled to carry out an investigation and to decide to proceed to a disciplinary process on the basis of the evidence gathered as part of that investigation.

44.4. That there was a failure to investigate a complaint the claimant made about his manager's conduct on the day. I have found and the claimant fairly accepted on being shown the documents in the bundle, that this complaint was investigated separately.

44.5. That there was inconsistency of treatment by the respondent of the claimant and his colleague who was involved with the conversation. I accept that there was a separate procedure followed for this colleague as well, albeit his conduct was seen as less serious because he had a different role.

45. Having decided that the claimant's conduct amounted to misconduct, Mr Digney considered whether another outcome other than dismissal was possible. He took into account the previous informal conversation, and the fact that the claimant had not acknowledged in the course of the investigation and disciplinary process that he had done anything wrong. He decided that dismissal was the only appropriate response.

46. It appears that the claimant's key concern (and this was also explained by Mr Ronayne in his closing comments) was that dismissal was too severe a sanction. Mr Ronayne emphasised the claimant's 3.5 years' service and clean disciplinary record. The claimant described it as things going from zero to dismissal because of one conversation with a colleague. Some employers might have given the claimant a formal warning about this conduct rather than dismissing him, and some might regard dismissal in these circumstances as harsh. But the test for me is not whether the decision was harsh, but whether dismissal was one of the responses available to a reasonable employer.

47. I have decided that, looking at all the circumstances here, dismissal was not outside the range of reasonable responses open to a reasonable employer. I reach that conclusion bearing in mind the following factors in particular:

47.1. The respondent's belief that there was no adequate explanation for the long period of time spent in de-kit and the belief that it was deliberate work avoidance;

47.2. The express inclusion of work avoidance in the disciplinary process as conduct justifying dismissal without notice;

47.3. The informal conversation in August 2024 highlighting to the claimant the need for accurate timekeeping;

47.4. The serious impact of work avoidance in this specific context, because of the importance of scheduling, timekeeping and the respondent's need to trust drivers to record their own work and manage their own breaks.

48. For those reasons, I cannot say that no reasonable employer would have dismissed the claimant in these circumstances, and so the claim for unfair dismissal does not succeed.

Approved by:
Employment Judge Hawksworth

Date: 20 March 2026

Sent to the parties on:
11 May 2026

For the Tribunals Office