



EMPLOYMENT TRIBUNALS

Claimant: Mr D Patel

Respondent: London Borough of Harrow

Heard at: Watford

On: 10-11 August 2023

Before: Employment Judge Caiden

Representation

Claimant: Mr L Betchley (Counsel)

Respondent: Mr T Lester (Counsel)

JUDGMENT having been sent to the parties on 16 October 2023 and written reasons having been ordered by the Employment Appeal Tribunal, the following reasons are provided:

REASONS

A) Introduction

1. By an ET1 presented on 6 January 2023, the Claimant claimed he had been unfairly dismissed by the Respondent on 31 August 2022.
2. At the hearing the Claimant was represented by Mr L Betchley of counsel and the Respondent by Mr T Lester of Counsel. The Claimant also had the benefit of a Gujarati interpreter throughout the two-day hearing. In terms of documents, the Tribunal was provided with the following:
 - 2.1. an agreed bundle that ran to 298 pages, including the index, although an additional two pages were added with agreement at the beginning of the hearing. All page references in these reasons relate to this Hearing Bundle and any references in square brackets are to paragraph or clause numbers as appropriate;
 - 2.2. a witness statement of the Claimant;
 - 2.3. a witness statement of Mr Grover, chair of the disciplinary;
 - 2.4. a witness statement of Mr Galloway, chair of the appeal.
3. In terms of witness evidence, the Tribunal heard from all three witnesses who had provided statements, all of whom confirmed the truth of their statements after having taken their respective oaths and affirmations.

4. On 11 August 2023, both parties made closing oral submissions on the issue of liability.
5. The Tribunal confirms that it considered all the documents that had been provided and took particular care on pages within the hearing bundle which it was referred to during live evidence and were referred in the witness statements.

B) Issues

6. After having concluded some preliminary reading the Tribunal discussed with the parties the relevant liability issues. Mr Betchley clarified that the Claimant accepted (i) that the reason for his dismissal was conduct, (ii) further that all of the *Burchell* elements were accepted as having been made out, with no challenge on investigation, (iii) that the procedure in general was not challenged. In essence, Mr Betchley made clear the only challenge lay in s.98(4) Employment Rights Act 1996 ("ERA") and whether the decision fell within the band of reasonable responses, with the reason for challenge in particular being (a) the sanction being too severe and (b) disparity of treatment.
7. Following such clarification and further discussion, all parties agreed the live issues before the Tribunal were as follows:
 - 7.1. The parties confirmed that it was not in issue that the reason for dismissal was conduct, and that the Respondent had an honest belief in that conduct. Therefore s.98(2)(b) ERA is satisfied. The sole issue is whether the dismissal for conduct within the range of reasonable responses available to a reasonable employer in accordance with equity and the substantial merits of the case, pursuant to s.98(4)? In that regard the Claimant alleges:
 - 7.1.1. the sanction of dismissal was too severe and fell outside the reasonable band of responses, having regard to his length of service and clean disciplinary.
 - 7.1.2. there was disparity of treatment (inconsistency of treatment) as he alleges others who committed similar misconduct have not been dismissed.

C) Findings of fact

8. The Tribunal heard and considered much evidence. It made the following findings of fact on the balance of probabilities of those areas that were material to the decision it had to make.

Policy type documents

9. The Respondent is a large employer and has several policy type documents. Relevant ones the Tribunal was shown are set out below.
10. The Respondent had an Employee Handbook, which at the material time could be found online, and it was common ground that this stated an employee should *inform their manager immediately if at any point during their employment, they receive a criminal conviction, caution, bind overs or reprimand or are charged with an offence, irrespective of the post they hold'; and it is made*

clear that if employees have failed to 'disclose convictions, etc. at the appointment stage, or during the course of their employment at Harrow, their employment may be subject to disciplinary action including dismissal.'

11. The Respondent also had a disciplinary procedure which was stated as being contractual (p.42). It noted in its examples of misconduct that *"Breach of the Council's Code of Conduct"* fell within this class, but in gross misconduct *"Serious breach of the Council's Code of Conduct"* was an example given (pp.43-44).

12. The Respondent also had Guidance to the procedure, which was stated as non-contractual, which in so far as relevant to this case stated p.51 [1.6]

If an employee is charged with, or convicted of, a criminal offence not related to work, the manager should establish the facts and consider whether the offence, or alleged offence, is one which makes the employee unsuitable for their type of work.

Claimant's employment

13. The Claimant's employment commenced on 10th December 2001 (p.74) with the Respondent. Since 21 February 2014 the Claimant's role was that of a Civil Enforcement Officer (p.77), although he was later promoted to the role of Senior Civil Enforcement Officer from 1 August 2019 (p.83). The job description for this role included *"To monitor, report and enforce misuse of the disabled blue badge"* and *"To attend and give evidence in Court relating to criminal law of civil law breaches observed on duty whether parking related or not"* (p.80 [28] and [30]).

14. In relation to the blue badge, it was common ground before the Tribunal, and the Tribunal accepts, that:

14.1. it allows free on street parking in places that have pay and display machines. Therefore, the blue badge holder is not having to pay for parking that other motorists without the badge would have to pay to park in the same location;

14.2. it carries the name of the person entitled to use it. Therefore, only if that person is in the car can it be used and that individual can travel and use the badge in any car;

14.3. it has an expiration date and so after that one would need to reapply for it.

Death of Claimant's mother and incorrect use of the blue badge

15. The Claimant's mother was a blue badge holder. Her blue badge was valid from 22 August 2018 until 21 August 2021 (p.108). On 31 May 2021, so just under 3 months before (82 days) expiry of this Blue Badge, she died (p.112).

16. On 20 September 2021 a Penalty Charge Notice was issued in relation to the Claimant's car (p.112). The car had been found using the Claimant's mother's Blue Badge. Pausing there, during the preliminary investigation stage the Claimant explained that his aunt was with him in the car, he left to get some

shopping having parked the car and she later left the car displaying the Blue Badge (p.113). He also explained at this stage that he did not pay for parking *"via machine or phone as it was during COVID so didn't know if payment was required"* (p.115). The Tribunal records that at p.120 the Claimant's Aunty provided in effect corroborative evidence that she was the one who displayed the badge.

17. Returning to the chronology, on 20 September 2021 a Data Protection Act 2018 request was received in relation to a Blue Badge holder in the Respondent's Fraud Inbox (p.146) and 28 February 2022, the Respondent was contacted by Brent Counter Fraud Office in relation to the it investigated the *"unlawful use of a disabled Blue Badge"* and the Claimant in particular (p.94).

Claimant's conviction

18. On 26 May 2022, the Claimant pleaded guilty in the Magistrates Court to s.117(1A) Road Traffic Regulation Act 1984, wrongful use of a disabled person's badge and received a fine and conviction.

Investigation

19. The Claimant was invited to an investigation meeting as part of the formal disciplinary procedure. The 1 June 2022 letter inviting him to this warned that the allegation amounted to gross misconduct (p.129). Others were interviewed but the detail of this is not necessary to descend to given this aspect of the investigation is not in issue.

Disciplinary meeting

20. By letter dated 8 August 2022 (p.211) invited the Claimant to a disciplinary hearing which was to take place on 31st of August 2022. This letter set out the allegation as being:

That at a trial in a Magistrates Court on May 2022, following an investigation by Brent Fraud Team, you entered a guilty plea to the criminal charges filed against you with respect to the misuse of a disabled parking badge belonging to a deceased badge holder.

21. The letter noted that the allegation was treated as potential gross misconduct and warned that dismissal may be the outcome of the hearing.
22. At this disciplinary hearing, which was chaired by Mr Grover who was advised by Mr Gilchrist from HR, the notes record the following was stated by the Claimant's companion at the hearing:
"Mr Patel explained that different family members have access to the car and would drive around with the blue badge on the dashboard. Mr Patel explained this was a silly mistake and didn't think the matter would go further."

23. The tribunal accepts and makes a finding of fact that those matters were stated at the disciplinary hearing.

24. At the conclusion of the disciplinary hearing Mr Grover explained he had decided to dismiss the Claimant (p.221). A written letter confirming dismissal was sent on 5 September 2022 (p.228). In so far as material it stated:
- 24.1. *"Before making my decision, I took into account your explanation at the hearing that it was in fact your aunt who displayed the blue badge in the vehicle registered to you and the statement made by your colleague Sunday Nger, that you had already suffered enough in terms of the fine and being found guilty by the court. However, based upon the evidence presented I have concluded the following serious breaches took place"* (emphasis added);
- 24.2. *"You did not disclose the alleged offence to your employer prior to your manager Gary Cooley's meeting with you on 7th April 2022, at which point Gary Cooley was already aware of the allegation and brought it to your attention. This is a breach of Harrow Council's Employee Handbook";*
- 24.3. *"Given your role as a 'Senior Civil Enforcement Officer' and your tenure at Harrow Council of over 20 years, you should be leading by example and ensure that any matters relating to fraud would be disclosed to Management at the earliest opportunity"*
- 24.4. *"Your failure to recognise the seriousness of your actions...In contacting Brent Council, you advised the process for renewing blue badges had been delayed by the issuing local authority Harrow Council, when in fact the badge holder was known by you to be deceased. This raises serious concerns regarding your honesty and moral principles".*
- 24.5. *"I take into consideration your explanation that: - that the disabled blue badge had been left on your dashboard for a while, your aunt was in the car with you and she also possesses a disabled blue badge, you were unaware of the Staff Handbook or its contents";*
- 24.6. *"On the balance of probabilities, I am satisfied with the evidence presented to uphold the allegation and consider this to be gross misconduct. Your actions have resulted in a fundamental and irretrievable breach of trust and confidence, which is at the very heart of the employment relationship/contract of employment within your position at the Council as a Senior Civil Enforcement Officer. Your role is a position of trust, requiring confidentiality and honesty, the level of trust required for your role has been broken by your actions. Based on the information presented it is clear to me that you cannot continue to be employed in this role by Harrow Council."*
25. In live evidence, Mr Grover stated that the reasons for his dismissal were (1) failure to disclose the criminal proceedings, (2) found guilty of the offence, (3) the Claimant's role was to enforce parking restrictions which he was guilty of, (4) reputational damage. Mr Grover also stated that the Claimant would probably be dismissed even if there had been a disclosure but convictions, or no disclosure but no conviction in these circumstances. In short, the failure to disclose and the convictions were separate gross misconduct dismissal reasons (or charges that were found).
26. Mr Grover also stated that he did not accept the suggestion that the Claimant did not know needed to disclose or that there was nothing 'deliberate' in how, that some of his explanations did not seem to make sense, such as not paying for parking when he left the car. In short, he did not believe the Claimant was being entirely truthful. This is consistent with reference to "*honesty*" in the

dismissal letter. The Tribunal accepts that these were Mr Grover's honestly held views and by virtue of his position as dismissing officer, the Respondent's.

Appeal hearing

27. On 13 September 2022, the Claimant appealed his dismissal. Material to the current judgement in reasons, one of his points was *"I feel like I have been discriminated against. Previously there have been cases where the Harrow Council, employees have had worse convictions than me and they got fair decision. These employees have been publicly shamed online with our Harrow Council name. I asked why was Harrow Council's reputation not damage enough here for dismissal but it is in my case?"* (p.238).
28. An appeal hearing occurred before Mr Galloway as chair (who was advised by Ms Iweka of HR) on 25 October 2022. There were notes taken which showed the following occurred (and which the Tribunal accept as having occurred);
- 28.1. *"AI – questioned if DP knew the rules for pay and display and did not understand why DP did not use the Pay and Display? DP – explained that his auntie was in the car and he came back and she suddenly displayed the Blue Badge"* (p.261);
- 28.2. *"TG questioned of the Blue Badge is always in the car? DP - said that he is not the only one uses the car, his brother and wife use it also and the Blue Badge has always remained on the dashboard so when the incident happened, he was not sure whether it was his brother or his wife. He went on to explain that he went to Harrow Council for the Badge but as it was Covid time everything was closed and it was not his intention to leave it in the car."* (p.262).
- 28.3. the Claimant was asked what should happen following death with someone's Blue Badge and he confirmed *"handover to the expire or Throw it or anything"* (p.262).
29. By letter dated 31 October 2022, the appeal was dismissed (p.275). This recorded that the Claimant's case in part was that *"You felt discriminated against as there have been cases where Employees have had worst convictions than you and got a fair decision after they have been publicly shamed online."* In relation to the appeal, it made the following material findings:
- 29.1. *"With regard to your view that you never told Brent Council that you were renewing the disabled parking badge but told them that you were delayed in your response to their message because you were abroad. You had the opportunity to correct this mistaken belief with Gary during the preliminary enquiry on 7 April 2022 and Silvana Keen, 29th Investigating Officer during the investigation meeting on June 2022. You were not able to clearly articulate to the appeal panel why you did not correct this mistaken belief with Gary and Silvana"*. (p.278)
- 29.2. *"As an Enforcement Officer with 20 years' work experience and 2 years work experience as a Senior Enforcement Officer, you have the training and experience to enforce traffic regulations in Harrow Council therefore, you should have known about the severity and the implications of being in possession of and the misuse of a disabled parking badge belonging to a deceased badge holder"* (p.278);

- 29.3. *“You maintained that you felt discriminated against as there have been cases where Employees have had worst convictions than you and got a fair decision even after being publicly shamed online. You were of the view that everyone makes mistakes, you have paid severely for this mistake and you have paid the fine. It was noted at each stage of the process that you failed to recognise the seriousness and implications of using the disabled parking badge of a deceased person. Whilst you have maintained that it was not you who displayed the disabled parking badge, you are responsible for this action as the vehicle is registered to your name. I sympathise with you regarding the loss of your mum and the impact it had on you however, you had enough time from the time of her passing on 31st May 2021 and the date of the incident 29th September 2021 (about 4 months) to return the disabled parking badge. You also confirmed that the vehicle is used by other family members and that the disabled parking badge had been used by your Aunty on previous occasions. You left the disabled parking badge in your vehicle where it could be easily accessed and you confirmed that you did not pay for parking via machine or phone. There is no evidence throughout this process to support your discrimination claim.” (p.279).*

D) Relevant legal principles

30. The Employment Rights Act 1996 (“ERA”) at s.94(1) provides “An employee has the right not to be unfairly dismissed by his employer”. As to the meaning of unfair dismissal this is set out in s.98 ERA:

s.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) *[In any other case 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.

31. In terms of relevant case law, given the arguments concerned s.98(4) ERA, the Tribunal had particular regard to the following:

- 31.1. s.98(4) ERA amounts to a ‘range of reasonable responses’ test and it applies to all elements of this from investigation to sanction: *Sainsbury’s*

Supermarkets Ltd v Hitt [2002] EWCA Civ 1588, [2003] IRLR 23 at [29]-[30];

- 31.2. the Tribunal should not substitute its own view for that of the employer but apply the range of reasonable responses test: *British Leyland (UK) Ltd v Swift* [1981] IRLR 91 at [11]. Equally *British Leyland (UK) Ltd* at [12] and [22] confirms that conduct after an offence has been alleged is a relevant consideration for an employer in deciding whether dismissal fell within the reasonable band. In that case the tribunal erred as it failed to take into account such conduct, which included Mr Swift putting forward a wholly untruthful account;
- 31.3. if the dismissal for misconduct (whether it be with or without notice) fell within the 'band of reasonable' responses the claim of unfair dismissal must fail - this applies even if the employee was summarily dismissed for gross misconduct in cases where an Employment Tribunal find his dismissal should have been with notice: *Weston Recovery Services v Fisher* UKEAT/0062/10/ZT at [11]-[16];
- 31.4. there is no legal principle that dismissal has to be a last resort before it can fall within the range of reasonable responses: *Quadrant Catering Ltd v Smith* UKEAT/0362/10 at [16];
- 31.5. length of service is a factor which can be properly considered by an Employment Tribunal in deciding whether the reaction of an employer to an employee's conduct (namely dismissal) is an appropriate one: *Strouthos v London Underground Ltd* [2004] EWCA Civ 402; [2004] IRLR 636 at [29] and [31]. Although where misconduct is gross the length of service may have little relevance (e.g. *British Leyland*) and also in some cases as set out in IDS Employment Law Handbooks – Unfair Dismissal at [7.69] “an employee's long service can also count against him or her. In *Somers v Metropolitan Police Authority ET Case No.2318747/10*, for example, where the employee (who worked for the police) gave false details when arrested, the tribunal stated that ‘the difficulty with the claimant's length of service was whilst on the one hand it was rightly argued that she had a long and untarnished career, on the other hand it was concluded that with her long years of service she really ought to know and indeed did know what was her duty’.”;
- 31.6. inconsistency of treatment towards misconduct may render a dismissal outside the band of reasonable responses, however arguments as to consistency only come into play if the cases are truly parallel and the range of reasonable responses applies just as much to consistency arguments: *Hadjioannou v Coral Casinos Ltd* [1981] IRLR 352 (EAT) at [24]-[25], which was endorsed by the Court of Appeal in *Paul v East Surrey District Health Authority* [1995] IRLR 305 (CA) at [34]-[36], and *Wilko Retail Limited v Gaskell* UKEAT/0191/18 at [31];
- 31.7. In *P v Nottinghamshire* [1992] IRLR 362 it was stated that “when an employee has pleaded guilty to an offence, or has been found guilty by a decision of a court or the verdict of a jury, it is reasonable for an employer to believe that the offence has been committed by the employee. Any other conclusion would be ridiculous.”;
- 31.8. with respect of the range of reasonable responses to the issue of investigation into misconduct, the matter is judged as a whole when assessing the reasonableness of the investigation and *Burchell* does not require each line of defence to be investigated: *Shrestha v Genesis Housing Association Ltd* [2015] EWCA Civ 94; [2015] IRLR 399 at [23].

E) Submissions

32. The Tribunal now briefly summarises the main points made in Closing Submissions by counsel for each party. For the avoidance of doubt this is a summary only and the Tribunal considered the entirety of the submission made before coming to its conclusion, however it has included this summary as it is important to appreciate how the case at Tribunal was being argued.
33. On behalf of the Claimant, Mr Betchley made the following points:
- 33.1. it was reiterated that there was no challenge to the way the agreed list of issues had been framed and there were two planks to why the dismissal should be found unfair namely (a) too severe a sanction, primarily because of the clean length of service and (b) disparity of treatment given others had criminal convictions and were not dismissed;
 - 33.2. in relation to the first plank, that the sanction was too severe this was evident from him being a long service employee. It was submitted that the fact had been used against him rather than seen, as it was submitted it should have been, a positive factor. Had it been properly so analysed it was suggested the Claimant would not have been dismissed and the failure to properly factor it in rendered dismissal unfair under s.98(4) ERA;
 - 33.3. with respect to the second plank, the disparity of treatment was not really drawing on specific individuals as such – although there was a particular suggestion that p.299 ‘my London’ article online was comparable. Instead, the argument was that there was a failure to check for consistency when the issue was raised in general terms of someone having worst convictions and publicly shamed yet remaining in employment.
34. On behalf of the Respondent, Mr Lester made the following points:
- 34.1. there were plain breaches of policy and the main point being that the Claimant was found criminal liable of an offence which went to the heart of his role as someone responsible for parking enforcement;
 - 34.2. indeed, in terms of the range of reasonable responses under s.98(4) ERA it was stressed that there had been this criminal conviction based on the wrongful use of a disabled person badge. That was something that obviously was properly analysed as making the allegation in the employment sphere a summary dismissible offence for the very reasons set out in the dismissal letter namely (a) the conviction was linked to the core responsibilities as someone responsible for parking enforcement, (b) the long service actually could only lead to greater culpability, (c) failure to inform the employer of proceedings was something that was obvious without the need for any policy, (d) lack of honesty displayed by the Claimant in the circumstances, and (e) reputational damage;
 - 34.3. in response to the length of service point, that is not relevant in truth in circumstances where the dismissal was for gross misconduct and in any event s.98(4) ERA does not oblige one to view it only as a positive factor in this context it can be viewed within the band of reasonable responses as a negative factor. Additionally, a reason for the dismissal was in effect that the Claimant’s honesty or truthfulness was not accepted and in those circumstances length of service is immaterial;
 - 34.4. in response to the inconsistency of treatment point, there was nothing to show lack of consistency and it is not right to say it was not considered as there were insufficient particulars given in fact.

F) Analysis and conclusions

35. The Tribunal sets out its analysis and conclusion on the claims, having regard to the agreed issues which are set out at paragraph 7 above. However, before doing so it briefly sets out that the concessions made at the start of the hearing, and throughout, were correct. That is there can be no dispute that the reason for the dismissal fell within conduct, a potentially fair reason within s.98(2)(b) ERA. There is no competing reason and both the written and oral evidence only points to the 'conduct' issue – namely the conviction and failure to disclose this. Additionally, in terms of *Burchell*, whilst fundamentally the words of the statute are key, it is also correct that there must have been an honest belief in the conduct leading to dismissal following a reasonable investigation. This is a case where there was a conviction and the underlying core points had been admitted. The key was how matters were analysed by the stage of concluding the disciplinary hearing/appeal, as opposed to some earlier investigation stage type scenario where there were disputes as to the underlying factual points that made up any disciplinary 'charges' (allegations).
36. The Tribunal therefore moves to consider the s.98(4) ERA points and two lines of attack in particular taken by the Claimant's counsel. However, before doing so it reminded itself that it should not substitute its view for the employer and the issue is whether the dismissal lay within the reasonable band of responses (paragraph 31.2 above). Indeed, in this case there was no claim of wrongful dismissal so even a dismissal with notice being found to lay within the reasonable band would be the end of the matter (paragraph 31.3 above). The fact there is a 'reasonable band' means that two employers can legitimately reach different decisions on the very same facts.
37. Turning to the first line of attack, the issue of length of service is not some immutable shield. It is not the case that whenever someone has been a long serving employee with a clean record, they cannot be dismissed for serious misconduct. Indeed, as pointed out in the extract from IDS – paragraph 31.5 – length of service is unlikely to be pertinent in situations where gross misconduct is found to have been committed. After all that is the very point of dismissal for a first-time offence – gross misconduct as opposed to lesser warning type misconduct – it applies to all employees ordinarily regardless of length of service. Indeed, the wording of s.98(4) ERA and the case law does not suggest that length of service has to be only viewed in one way – positive. The Tribunal concludes that there was nothing outside the band of reasonable responses in the Respondent in this case determining that – in effect – the lengthy service meant the Claimant should have definitely know better and so it would not offset the very serious misconduct (which was indeed classed as gross misconduct). This it seems to the Tribunal to be a paradigm case where the reasonable band of responses could legitimately allow both an employer to view the employee's actions as 'worse' (the Respondent's position), as well as another to view this as bad slip on an otherwise faultless career deserving of a 'second chance' (the Claimant's position). It follows that this line of attack fails.

38. Turning to the second line of attack, the alleged inconsistency, the Tribunal rejects that as being made out. To start with there is insufficient evidence. The case law has made clear (paragraph 31.6 above) that the circumstances must be truly parallel and that is not the case. There is no comparison that was legitimately shown at the time, or even now. The one example relied upon at the Tribunal - p.299 - concerned someone whose conviction led to them losing their job as a police officer (following a custodial sentence it appears) and the Respondent subsequently employing them in a parking attendant capacity. That is completely different from the present case where the criminal conviction came *whilst* at the Respondent. The Tribunal did consider long and hard about the issue of the failure to adequately investigate an alleged inconsistency argument that was raised at the appeal stage would lead to a finding of unfairness but concluded the answer to this point lay in *Shreshtha* (paragraph 31.8 above). The matter is not judged looking at every single line of defence in isolation but rather as a whole. The Respondent in this case did not have any pertinent details to look through and so was not – owing to s.98(4) ERA in this particular context – under some general duty to conduct some employer wide search to see if there had been consistency in a situation which on the face of it appeared ‘unique’. For the avoidance of doubt, there may well be other cases where enough is raised that would lead a Tribunal to conclude that there was a breach of s.98(4) ERA for failure to investigate alleged inconsistency in general (or raise on appeal in particular) but given the vagueness of information provided and it being just one point raised (on appeal) this Tribunal concludes on these facts it is not outside the reasonable band of responses under s.98(4) ERA for the Respondent to fail to launch some general full scale enquiry into any potential other cases.
39. Stepping back from the two particular lines of attack, the Tribunal focused on whether in general the dismissal lay outside the band of reasonable responses under s.98(4) ERA. It concluded it did not for the following reasons:
- 39.1. the matter fell within prior warned gross misconduct, so on the face of it dismissal would be a usual result from any such misconduct;
 - 39.2. the key matters had been established by the criminal conviction, and it was legitimate for it to view that as conclusively establishing the fundamental facts – the Claimant being responsible (in the sense of being the register owner) – of a car that had improperly displayed a blue badge contrary to legal provisions. This largely deals with the point about the aunt allegedly being the one to display the blue badge;
 - 39.3. there was a particularly strong relationship between the criminal conviction and the Claimant’s job. He should therefore have known of the position and was in fact responsible for enforcing it. Once again this was plainly something that was on the mind of the Respondent at the material time (paragraph 25 above);
 - 39.4. the Respondent had concluded that the way the Claimant had behaved after the allegations were raised with him was not honest. Honesty is something that is at the heart of the employment relationship and as pointed out in *British Leyland (UK) Ltd* at [12] and [22] – conduct after an offence has been alleged is a relevant consideration for an employer in deciding whether dismissal fell within the reasonable band. In this case the decision makers did not find the Claimant’s explanations to

be truthful (honest). In particular (a) the explanation of contacting a council for extension of blue badge made no sense (paragraph 24.4 and 26 above), (b) the reason for the Claimant not seeking to make payment for the parking if there was no intention of ever relying upon the blue badge (paragraph 26 and 28.1 above), (c) the reason for the blue badge remaining in the car for such a lengthy period of time despite the death of the Claimant's mother which in effect allowed the events to occur (paragraph 28.2-28.3 and 29.3 above).

40. Accordingly, the claim of unfair dismissal is dismissed.

Approved by:

Employment Judge Caiden

18 May 2026

JUDGMENT SENT TO THE PARTIES
ON 19 May 2026

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions: Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.