EMPLOYMENT TRIBUNALS

Claimant: Mr C Tweedie

Respondent: Edenbeck Ltd

Heard at: Watford Employment Tribunal; via CVP

On: 26 March, 27 March, 6 and 7 May 2026

Before: Employment Judge Tuck KC

Appearances
For the claimant: Mr A Leonhardt, counsel
For the respondent: Mr G Lee, solicitor.

Judgment

1. The Claimant's claim for unlawful deductions from wages and unpaid bonuses are withdrawn. They are not dismissed and the Claimant expressly reserves the right to pursued them elsewhere.
2. The Claimant was unfairly dismissed.
3. The Claimant did not contribute to his dismissal. I am not satisfied that a fair procedure would have resulted in the Claimant's dismissal (and so decline to make any "Polkey deduction").
4. The parties agree that the Claimant is owed four days of annual leave amounting to £1727.24 (which has been calculated as a gross figure).
5. The parties agree the Claimant's basic award is £5250.
6. The claimant is awarded compensatory award, subject to the cap of 12 months' gross pay: £112,271.16
7. Total award**: £119,248.40**

Reasons

1. I was provided with a bundle of documents for the liability hearing consisting of 459 pages which included the witness statements.

2. I heard evidence from Mr Gordon Ince, Mr Stuart Mayall, Director and Ms Jo Trimarco, external HR advisor of JT HR Consultancy Ltd on behalf of the Respondent, and from the Claimant and on his behalf, and also from Mr Christopher Mayall, Director (and son of Mr S Mayall). I had a written statement from Danny Nicholls, but he did not attend to give oral evidence and I did not take its contents into account.

3. At the outset, Mr Lee made an application on behalf of the Respondent that the statement of Mr Christoher Mayall be excluded because he was the subject of a Family Court Undertaking dated 29 April 2025 not to make derogatory statements about Mr Stuart Mayall. In fact, with selected paragraphs form the statement of Mr Christopher Mayall being deleted by agreement, this application did not have to be pursued.

4. Mr Lee cited five authorities in his written application dated 16 January 2026. Mr Leonhardt submitted that four of those did not accurately support the propositions being advanced, but expressed particular concern about the fifth authority. Mr Lee wrote at paragraph 14:

> "In **HSBC Bank Plc v O'Sullivan** [2016] IRLR 758, EAT, the EAT confirmed that tribunals should exclude evidence which is peripheral, unnecessarily inflammatory, or disproportionate to the issues being determined".

There is no case of that name within the 2016 IRLR law reports, and neither Mr Leonhardt nor I were able to locate any such EAT authority. Mr Lee said that the letter was his and initially said that it contained his own research. He then added that he had received a draft from a paralegal, and that "AI" had been used as a first draft, but recognised that responsibility for the document remained with him.

FACTS

5. The Respondent, at all material times, had two directors who are father and son. Mr Stuart Mayall, the father, was the finance director while his son, Chris Mayall was the managing director. At least in the period to late 2023, Stuart Mayall described himself as providing finance and HR support, while his son Chris Mayall largely ran the business. The activities

of the company included facilities management, including working in prisons for Government Facilities Services Ltd "GFSL", and an asbestos removal undertaking.

6. By early 2024 the relationship between the father and son directors had begun to break down and as set out above, I was referred to proceedings before the family courts between them.

7. The Claimant was employed by the Respondent between 1 April 2019 and 20 December 2024. The copy of his contract of employment before me is dated 12 April 2019 and is unsigned, but the final page has space for the claimant's signature, and alongside that says "signed by Stuart Mayall for and on behalf of Edenbeck Ltd". The Claimant's duties were to serve as "Manager, facilities management or other such role as we consider appropriate" and included an obligation on him to "faithfully and diligently exercise such powers and perform such duties as we may from time to time assign to you together with such person or persons as we may appoint to act jointly with you"; to "comply with all reasonable and lawful directions given to you by us", and to "comply with any electronic communication systems policy that we may issue from time to time".

8. The Respondent has a staff handbook, which includes a disciplinary policy. This says that an example of gross misconduct is "insubordination" which is defined as a "refusal to carry out duties or obey reasonable instructions"; and a further example of gross misconduct is "unauthorised or inappropriate use of email, internet and/or computer systems".

9. At all material times the Claimant was line managed by Mr Chris Mayall; he was not challenged on his evidence that he was "fully aware of [the Claimant's] day ot day activities, work progress and any factors affecting delivery of projects or opportunities".

10. In February 2024 Gordon Ince, who had previously been involved with the Respondent as a consultant, was engaged by Stuart Mayall as an employee of the Respondent. He was to be tasked with performing due diligence to be able to value the Respondent company as the two directors, Stuart and Chris Mayall, had each made enquiries about buying the other out.

11. On 20 February 2024 Chris Mayall sent an email to numerous members of staff, including the Claimant, in the following terms:

> "*As some of you may be aware of pending appointment of Mr Gordon Ince. (sic) Please be advised that his appointment is not recognised by me.*
> *Mr Ince has been appointed to act solely on behalf of Stuart Mayall and not on behalf of the company. Until a board meeting, where resolution is reached between Stuart and myself, I kindly request that you refrain from engaging with Mr Ince on matters relating to the company. …*"

12. There was no 'resolution reached', and over the summer of 2024 and into the Autumn, the asbestos side of the business ceased to operate and there were issues as to the bank account of the Respondent being frozen, and the office premises being vacated. In his statement Chris Mayall said that the claimant "who reported to me, became caught between conflicting instructions. It is my view that he became collateral damage int eh ongoing internal dispute between Mr Stuart Mayall and myself".

13. On 1 July 2024 Stuart Mayall emailed the Claimant, starting by stating "I am writing this email on the understanding that my 'deal' with CM could, at his whim, collapse at a minutes notice", and saying that "both solicitors" considered there were three options – one director buying shares from the other, or commencing proceedings to wind up the company. Mr S Mayall envisaged proceeding with him buying his son's shares and a settlement agreement being drawn up by mid-July. Given their ongoing contracts with GFSL, he wrote "it is imperative that you (and your family) are fully on board with what is planned once the shares change hand", and he proposed the claimant becoming "Director of Operations" with an increased remuneration package. The claimant says that this letter shows that he was not suspected of any misconduct or loss of trust at this time.

14. In his statement the Claimant stated that from August 2024 Stuart Mayall was becoming increasingly frustrated with the conflict with his son, and wanted him to "pledge my commitment and loyalty to him which I wasn't prepared to offer", such that Stuart Mayall would lose his temper, and after heated conversations would hang up on the Claimant. It is apparent that the Claimant was not willing to work with Mr Inc.

15. On 11 September 2024 the Claimant attended a meeting with CM and two representatives from GFSL in London. It is apparent that SM thought the reason for that meeting was so that CM could seek to get Peakbrook Ltd (a separate company which Mr Ince describes in his statement as being "connected to CM") onto the GFSL preferred supplier list. The Claimant said that GFSL had suspended the Respondent as a supplier as they could not get hold of them (since the disconnection of the phones which had gone to the Alma Road office), and that he gave his mobile number

which led to the Respondent's reinstatement. He said that he left this meeting earlier than Mr Chris Mayall, and gave his company credit card to Chris Mayall as he was leaving, as requested. The details of this meeting became relevant during the investigation which followed: the Claimant denied in his investigation interview that Peakbrook was discussed at the September 2024 meeting, and when asked again in his disciplinary hearing, said "I can categorically say it wasn't discussed at that meeting".

16. On 15 October 2024 Mr Ince emailed the Claimant, cc'ing Stuart Mayall, saying that "we received a telephone call" from GFSL, and asking for updates in relation to work at three prison sites. On 16 October 2024 the Claimant relied substantively to Stuart Mayall. Mr Ince responded the same day saying that it had been unhelpful to have omitted him to the response and asking other questions. It seems likely that Mr Ince instructed Jo Trimarco, an independent HR practitioner, on this date – from a "blank email" from him to her.

17. On 16 October 2024 Stuart Mayall invited he Claimant to a meeting at 7.30am the next day; the Claimant telephoned at 6.45am saying he had another commitment. His position seems to have been that he would attend a meeting with Mr Stuart Mayall, but not if Mr Ince was present. Stuart Mayall thought this untenable and insubordinate.

18. On 21 October 2024 Ms Trimarco emailed the Claimant (cc'ing Stuart Mayall) saying that she had been "tasked with arranging an informal meeting to discuss several serious issues that I have come to the attention of Senior Management". She proposed a meeting on 24 October. On 22 October the Claimant replied saying he would attend a meeting but asking who would be there and what the issues were. He copied Chris Mayall into his reply on the basis that he was "still my current line director within the company structure". Ms Trimarco's reply was that she would be the sole attendee and that the meeting was to have "*an open and honest conversation and approach these issues in general terms before determining whether formal procedures need to be initiated*".

19. On 23 October 2024 Mr Ince emailed Ms Trimarco setting out four matters which were said to be "key issues with Chris Tweedie". The email concludes that "*Stuart does not see CT as an integral part of the business, instead he sees him as a maverick and a potential threat from which the business needs to protect itself*". Stuart Mayall in his evidence confirmed that this reflected how he felt at that time as he saw the Claimant being a "law unto himself". When asked if it was because Stuart Mayall saw the Claimant as too closely aligned with his son, he said it was "not just that".

20. The Claimant did not attend the "informal meeting" with Ms Trimarco. On 24 October 2024 she sent a draft suspension letter to Mr Ince to "review then share with Stuart", and on 25 October emailed Mr Ince again, saying "thinking about the insubordination matters – can we demonstrate examples of the following…. Ignoring orders: Yes we know this one…. I'll change the heading in the letter to gross insubordination".

21. In her statement Ms Trimarco says that she was instructed to conduct an impartial investigation, that she was formerly instructed on 25 October 2024 by Stuart Mayall, and that she approached the investigation with an open mind. This is at odds with the content of her contemporaneous correspondence which suggests very strongly that from at least 23 October 2024 Ms Trimarco was engaged to facilitate the outcome Mr Ince and Mr Stuart Mayall sought. This was the dismissal of the Claimant, who had been characterised as not being integral, but rather, a "maverick".

22. By letter dated 25 October 2024 the Claimant was suspended. The letter drafted by Ms Trimarco, sent in the name of Stuart Mayall, said that this was to investigate customer complaints from GFSL, duty related complaints, gross insubordination – in particular in relation to not attending a meeting on the morning of 17 October 2024, "trust / dishonesty and bribery" in relation to the meeting of 11 September 2024 in London, and "fraud" connected to "invoices referenced above".

23. The Claimant attended an investigation meeting with Ms Trimarco on 14 November 2024. The Claimant was not provided with copies of any customer complaints or evidence of "duty related complaints"; he did give explanations about the difficulties in communications with GFSL in the period after the disconnection of office telephones, and the fact he could not have a phone with him while on prison premises.

24. Ms Trimarco did not interview Mr Ince or Stuart Mayall in the same way she had done so with the Claimant, but rather she prepared witness statements for them. On 26 November 2024 Ms Trimarco emailed Mr Ince saying that she had "made changes to Stuart's statement in line with your comments", and she also attached a draft of her investigation report. Mr Stuart Mayall said in cross examination that "as a matter of course we would go through the draft report. It was only a draft".

25. Ms Trimarco signed her investigation report on 26 November 2024. Statements from Mr Ince and S Mayall are dated 3 December 2024 and include responses to what the Claimant had said in his interview. Earlier drafts were not retained or disclosed in these proceedings. The claimant was not given the opportunity to comment on what Mr Ince or S Mayall

had said. No other people were interviewed, and Ms Trimarco appears not to have sought any evidence independently of the accounts give to her by Mr Ince and Mr Stuart Mayall – for example by asking for emails or notes of any relevant meetings.

26. By letter dated 4 December 2024 the Claimant was invited to a disciplinary interview to take place on 11 December 2024.

27. A disciplinary hearing was convened on 11 December 2024 with Stuart Mayall chairing and Ms Trimarco present as "HR Rep". The purpose of the meeting was said to be to "explain fully the Company's case, for example, negligence and incompetence in the performance of your duties; insubordination, i.e. failure to comply with reasonable and lawful directions; dishonesty/secrecy leading to loss of trust", and stated "these actions amount to gross misconduct".

28. In his evidence Stuart Mayall agreed that a number of issues were raised in the course of the disciplinary hearing with the Claimant for the first time which had not been part of the investigation. In cross examination Stuart Mayall said that it was "important for all issues to be raised"; there was no appreciation that it was unfair to the Claimant to be asked about issues which had not been subject to any investigation. The new issues raised included allegations of favouritism of particular staff, incorrect timesheet entries and failing to provide 'work in progress' valuations. These are matters which are likely to require consideration of documents to be able to answer fairly – an opportunity never afforded to the claimant.

29. On 17 December 2024 Ms Trimarco convened another investigation meeting with the Claimant and provided him with four emails "as evidence to indicate misuse of the company's computer and email facilities by subscribing and receiving inappropriate emails". The emails were dated 7 and 10 November 2024 and 3 and 12 December 2024 and were from "Hot Cougar Dates, Cheap Sex Dates and Dating Cell". The Claimant denied anything to do with the emails, noting that other people had access to his emails and that all four emails dated from when he was suspended. He asked rhetorically, "why would he sign up to emails knowing others had access" to his email account, and said he "felt he was being victimised, felt like this was a scatter gun approach trying to get something to stick". On 18 December 2024 Ms Trimarco emailed the claimant and said that all four emails had been found in his inbox (rather than spam / junk), and that in relation to the "hot cougar dates, further examination indicates that this account is associated with you". In evidence she indicated that this was because a photograph of the claimant is uploaded to the user; it appears that it is probably a "selfie" of the claimant's face and a bare shoulder. She took no steps to see whether, for example, that photograph could have been available on a social media account such as facebook, and used without the Claimant's permission or knowledge.

30. On 19 December 2024 the Claimant emailed that he was "deeply aggrieved by the introduction of baseless accusations, seemingly

fabricated to support the exiting proceedings against me." He said that the "entire process appears orchestrated to replace me with Gordon Ince and to build a case against Chris Mayall (issues that have nothing to do with me, my role or responsibilities)". On 20 December Ms Trimarco replied saying that his comments had been "duly noted" and that the allegations would be "thoroughly investigated". In oral evidence she was unable to tell us what further investigation took place and said that her opinion was that the 'dating site' emails were evidence of breaches of policy.

31. At 17.08hrs on 20 December 2024 Stuart Mayall emailed the claimant attaching a letter setting out his decision to summarily dismiss the Claimant. Unsurprisingly where there were disputes of fact between him and the Claimant, he favoured his own evidence. Stuart Mayall set out the explanations the claimant had given in relation to the four "matters of concern", and then his conclusions. These were as follows:

    a. **Negligence and incompetence:** "You mentioned that some issues and delays were occasionally due to factors beyond your control, such as prisons located outside your area. Additionally you noted that with Easybop, it was often more effective to create a manual invoice because of system errors that Easybop presented." Mr Mayall went on in setting out why he considered the explanations to be unsatisfactory to say "the evidence clearly indicates that there was a lack of proactivity in your responsibilities. I disagree with your perspective on Easybop. When utilised correctly there should be no need for invoices to be generated manually."

    I pause here to note that during the disciplinary hearing there was a brief exchange between the Claimant and Stuart Mayall about whether "processes and info [were] being put through Easybop". When the Claimant considered the notes of this meeting he corrected the entry in this regard saying that "Easybop has different numbers for quotes and contracts therefore invoicing would populate incorrect details". No evidence was put to the claimant about these issues, and this was not the topic of any cross examination before me. There was no mention of "Easybop" in either Mr Lee's written or oral closing submissions.

    b. **Insubordination:** The letter of dismissal makes clear that this charge related to the Claimant's refusal to work with Gordon Ince, and Mr Mayall's conclusion that "your statement that you don't recognise Gordon Ince as an employee is preposterous". The investigation report by Ms Trimarco did not engage with the instruction which Chris Mayall had sent to the Claimant and others, that Mr Ince was not an employee. Nor did Ms Trimarco seek to interview any other witnesses to consider how they had dealt with the different instructions from the two directors – if it had impacted them at all.

    c. **Dishonesty / secrecy:** this related to the meeting of 11 September 2024 which the Claimant and Chris Mayall attended with GFSL. There was a dispute of fact between the Claimant and Stuart Mayall as to whether the former was "secretive" about the meeting.

Ms Trimarco during her investigation did not seek to interview or ask questions of anyone else at the meeting, nor to explore the time at which the Claimant left and whether it was possible that any mention of Peakbrook – which Stuart Mayall thought was the purpose of the meeting – might have been after the Claimant had left.
While improper expenditure on the company credit card is in some exchanges inferred, the investigation did not get copies of any receipts or set out what expenses were incurred.

d. **IT misuse**: Stuart Mayall's letter stated that "on 17th December you were subject to further investigation for the misuse of the company's computer and email facilities whereby you subscribed to inappropriate websites using your Edenbeck email account." The emails were all received when the Claimant was suspended. There was no investigation into earlier periods. As the claimant's photo was on one of the accounts Mr Mayall found that the Claimant had lied in his denials.

32. The Claimant was told that he could appeal against his dismissal, and that " a 3rd party will be nominated by the company to hear the appeal". The Claimant did not submit any appeal, setting out in an email sent on 6 January 2025 that "having considered the circumstances, including the size of the company, ongoing internal issues and my personal experience in this matter, I do not have confidence that the internal appeal process would be unbiased or objective".

33. In late December emails were also exchanged concerning a claimed bonus entitlement to a sum in excess of £250,000. The claimant has expressly herein reserved his right to bring such a claim to the High Court given the contractual jurisdictional limit of compensation of £25,000 in the ET. The Respondent has stated that it has an unpaid loan due to it.

Submissions

34. Having completed the oral evidence on 27 March 2026, both parties produced written submissions at the reconvened hearing on 6 May 2026.

35. Mr Leonhardt submitted that this was not this was not a process where some unfairness seeped in, but was rather an inherently unfair process. The investigation was not independent or impartial, and the approach of Stuart Mayall during the disciplinary was also fundamentally flawed as he saw it as an opportunity to raise further allegations. This approach was in fact still apparent at this reconvened hearing for which Stuart Mayall has produced a further statement purporting to raise allegations of incompetence in relation to "RAM's" – Risk Assessment documents. This was not a matter relied upon as part of the reasons for dismissal; it is however indicative of the approach he took in the disciplinary hearing when he raised matters which had not been investigated.

36. Mr Leonhardt went through the reasons given for dismissal in the termination letter:

a. Negligence and incompetence - It was denied that there was a genuine belief in misconduct concerning complaints from GFSL as it was not clear what the subject of the complaint was, in what form it was made nor to whom it was sent. Furthermore there were allegations about a lack of professionalism or breach of ethics on the part of GFSL employees, but Stuart Mayall did not want to give details as to this because he did not want to "throw them under a bus".
b. Insubordination – while there was a genuine belief that the Claimant refused to engage with Mr Ince, this was in compliance with a direct instruction from Chris Mayall. The Claimant was 'caught in the middle' between waring directors and this was not a topic engaged in either in the investigation or disciplinary. Ms Treviso simply accepted the position of Stuart Mayall and Gordon Ince that the Claimant had "disengaged" from the business.
c. Dishonesty / secrecy – this allegation seems to relate to the meeting of 11 September 2024; there was no genuine belief in misconduct, and any such belief was not based on a reasonable investigation.
d. IT misuse – this issue – in which the Respondent did have a genuine belief - came to light after first disciplinary hearing in December. The Claimant has been categorical – that he has no knowledge of these emails. The evidence before Ms Treviso was limited to emails from period of Cl's suspension, a period during which there was real concerns about whether the Claimant's inbox was secure.

37. As to Polkey, Mr Leonhardt submitted that the legal question is whether THIS employer would have dismissed this employee in any event. (Not a reasonable or hypothetical employer). He said there was simply no clear evidence from which a conclusion could be drawn as to what would have happened had a fair process been followed. He said that there was no evidence of the Claimant's wrongdoing on IT, but if the contrary was accepted, this was a matter for contribution because insufficient basis to make any sensible prediction of what this Respondent, who was thoroughly unreasonable, would have done.

38. As to contribution – for compensatory award the conduct in question must be causally relevant to the dismissal. Here it is not. The whole process was unfair and the outcome was inevitable. It was accepted that it is permissible to make a deduction from the basic award on the basis of culpable conduct even if it was not causally relevant.

39. As to an ACAS uplift, he underlined the matters set out in his written submissions. It is correct that the Claimant declined to present an appeal but submitted that it was understandable as to why the Claimant had no faith in such a process. Finally, he took issue with the submission of Mr Lee in relation to the failure to appeal - while an appeal could remedy

procedural unfairness, the failure to appeal cannot make an unfair dismissal, fair.

40. For the Respondent, Mr Lee having provided written submissions, supplemented those orally. He emphasised the senior status of the Claimant, whose contract had been executed by Mr Stuart Mayall.

41. The two reasons for dismissal on which Mr Lee focused during his oral submissions were firstly "insubordination" and the Claimant's refusal to cooperate with Gordon Ince as instructed, and secondly misuse of IT, about which the Respondent had a genuine belief after a reasonable investigation.

42. As to insubordination, Mr Lee submitted that the question of whether the Claimant's position was compromised by the wider director dispute – should be rejected. Stuart Mayall had the authority of Edenbeck to direct the way of working, so it is not a justifiable basis for refusing to comply with reasonable instructions. In answer to the question of whether Chris Mayall had the authority to direct the Claimant, Mr Lee answered "*as line manager, he had day to day ability, but the critical issue was that Stuart Mayall had overall authority he had signed the contract*". In fact the signature descriptor at the bottom of the contract said "signed by Stuart Mayall for and on behalf of Edenbeck Limited" but the version before me was unsigned. (In later submissions considering relevant mitigation efforts and the impact of restrictive covenants, Mr Lee in fact suggested that the Claimant might not have been bound by the contract because it had not been signed.)

43. Mr Lee submitted that regardless of procedural irregularities during the investigation, it was "open for dismissal to have taken place" and underlining that the ET cannot substitute its own view for that of a reasonable employer.

44. The Claimant did not appeal – and did not call for the ensuring of the independence of an appeal officer, which should result in a reduction to any compensation. Furthermore, the question of contribution is of relevance when considering IT misuse; the evidence includes a private photograph of the Claimant showing that he did engage with these websites. There is a dishonest explanation by the Claimant – so any procedural unfairness would have had no impact on outcome or timings of dismissal. Ongoing employment relationship was not viable. Was a fair and reasonable outcome.

45. I asked Mr Lee about the basis for two particular authorities which he cited: one was from paragraph 13 of his written document, where he gave a citation of [2015] IRLR 582 for the case of *Robert Whiting Design Ltd v Lamb*. That page of the 2015 law reports is from the case of *Usdaw*. There is a report of a case of this name in [1978] ICR 89 – a case pre-dating Burchell. He could not explain the incorrect citation. Secondly, he cited *Preece v JD Weatherspoons* [2011] IRLR 925, EAT. While my own

research indicated an ET authority of that name, I was unable to find any EAT authority, and certainly not in the 2011 IRLRs. He could not explain to me who he came across these citations / case names or the errors. After the issue with the AI 'hallucinated' authority cited in his January 2026 letter, explored at some length during the hearing in March 2026, it was disappointing that more care had not been taken. After submissions had been completed Mr Lee emailed the tribunal to correct the citation of the *Preece* case, saying it was "ET 2104806/10", and said "I apologise for the incorrect citation". This was the first (and only) apology proffered by Mr Lee and did not explain how he had given a citation from the IRLRs or how he had described it as an EAT authority.

Law

46. The fairness of a dismissal is determined in accordance with the principles set out in s.98 of the ERA 1996. An employer bears the burden of establishing that the dismissal is for a potentially fair reason within the meaning of s.98(2) ERA 1996, and then, if that is established, the Tribunal will determine whether that dismissal was fair or unfair, (section 98(4)) - having regard to the reason shown by the employer. That determination will depend upon "whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case". The critical question, therefore, is whether, having regard to those matters, the employer acted reasonably or not in treating the particular, potentially fair reason, as a sufficient reason for dismissing a particular employee.

47. In the context of a conduct dismissal, it is clearly established that that test requires a Tribunal to address the following three matters:
    a. Whether the employer genuinely believed that the employee was guilty of the relevant misconduct; and, if so,
    b. Whether that belief was based on reasonable grounds; and
    c. Whether that genuine belief on those reasonable grounds had been formed after having carried out a reasonable investigation.

This, oft cited statement has its origins in the following passage from Arnold J.in *British Homes Stores v Burchell* [1978] IRLR 379:

> *"The case is one of an increasingly familiar sort in this Tribunal, in which there has been a suspicion or belief of the employee's misconduct entertained by the management, it is on that ground that dismissal has taken place, and the tribunal then goes over that to review the situation as it was at the date of dismissal. ... What the tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in question … entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at*

that time. That is really stating shortly and compendiously what is in fact more than one element. First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. It is the employer who manages to discharge the onus of demonstrating those three matters, we think, who must not be examined further. It is not relevant, as we think, that the tribunal would itself have shared that view in those circumstances. It is not relevant, as we think, for the tribunal to examine the quality of the material which the employer had before them, for instance to see whether it was the sort of material, objectively considered, which would lead to a certain conclusion on the balance of probabilities, or whether it was the sort of material which would lead to the same conclusion only upon the basis of being "sure," …[or] .. "beyond reasonable doubt." The test, and the test all the way through, is reasonableness;"

48. When considering section 98(4) ERA, the relevant question is not whether a tribunal would have made the decision to dismiss the employee; I must not simply substitute their view for that of the employer (*Morgan v Electrolux Ltd* [1991] IRLR 89 CA; *London Ambulance Service NHS Trust v Small* [2009] IRLR 563, CA). Over the years, Tribunals have been reminded that they must judge the standard of a fair dismissal, not by that which they would, or might have done, but by reference to the options open to a reasonable employer, in other words by an objective standard. A dismissal is only to be held to be unfair if it was outside the range of reasonable responses open to a reasonable employer. This assessment, of whether the decision to dismiss this particular employee in respect of a particular matter or issue, came within the range of reasonable responses open to a reasonable employer lies at the heart of the law relating to unfair dismissal; it is the litmus test by which each stage of the dismissal process and the decision to dismiss is to judged. *Sainsbury's Supermarkets v Hitt* [2003] IRLR 23, particularly para. 30.

49. Mr Lee advanced the proposition that misuse of IT systems can amount to misconduct; this is uncontroversial. Whether or not it in fact amounts to misconduct and if so whether any dismissal is fair is however fact dependent.

50. The amount of any compensatory award under s.123(1) ERA 1996 can be reduced to account for the fact, notwithstanding procedural unfairness in a dismissal process, the employer might or would have dismissed the employee in any event (***Polkey v AE Dayton Limited [1987] UKHL 8***).

51. As submitted by Mr Leonstadt;

"the principle from *Polkey* is simply one aspect of the application of s.123(1), that the amount of the compensatory award *"shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer"*.
"The relevant question is whether the *particular* employer involved in the case could and would have dismissed, and not what a hypothetical reasonable employer would have done (for example, in ***Pal v Accenture (UK) Ltd 2026 EAT 12***, where the EAT criticised an ET for basing its conclusion on a hypothetical course of action for which there was no evidence that the employer would have carried out)".

Further statement of Mr Mayall and "Edembeck mitigation document".

52. Prior to the reconvened hearing on 6 May 2026 Mr Lee sent to the tribunal a supplementary statement for Mr Mayall and a mitigation bundle of 115 pages. He did not make any application to have those included, though I read the six-page statement and considered its contents. Mr Leonhardt submitted that much of the statement was in fact in the nature of submissions – for example in relation to the Claimant's failure to appeal and commentary on mitigation attempts. It did however also include an assertion that the dismissal arose from "repeated failures in relation to RAMS and documentation" and set out further disclosure on those issues. As Mr Lee did not seek to adduce further evidence in relation to liability before moving to closing submissions, and did not call Mr Mayall to give further evidence as to liability issues, I have not taken those matters into account. I did take into account what Mr Mayall said as to failure to appeal and mitigation, to which I return below.

Conclusions on the issues

53. Has the Respondent shown a potentially fair reason for dismissal, namely misconduct? Both parties structed their submission by examining each of the reasons for dismissal – save that Mr Lee also added further reasons seemingly discovered since the March 2026 hearing (in relation to "RAM" documents about which I heard no evidence and no application was made to adduce it), and he also made submissions under a heading of 'cumulative loss of trust and confidence'. This was not given as a reason for dismissal and not put to the claimant during his cross examination. This was not in issue before me.

Reasons for dismissal

54. The Respondent's letter of dismissal of 20 December 2024 set out four reasons for dismissal:

(a) Negligence and incompetence.

55. Ms Trimarco in her investigation findings referred to a "GFSL complaint submitted in early October 2024", and wrote "if I accept the complaint form GFSL as an accurate representation of the circumstances, the evidence

indicates hat CT was not effectively managing GFSL's account, which suggests a potential negligence of his responsibilities". Neither the Claimant nor the tribunal were ever show any such complaint, and while the Claimant was asked about certain work projects in emails of 15 and 16 October 2024, there was no consideration as to whether his replies were unsatisfactory, by Ms Trimarco, Mr Stuart Mayall or at all. The letter of dismissal, set out above, makes no mention at all of the GFSL complaint and seems to rely on failures concerning a system called "Easybop". The claimant did give the "Easybop contract numbers" in answering the queries raised in the 15 October email, but was asked nothing more about them in the investigation and not given any specific examples during his disciplinary hearing.

56. The Respondent has failed to show that it had a genuine belief that the Claimant had demonstrated negligence or incompetence in his work. Moreover, even if Mr Mayall did genuinely hold such a belief, his letter of dismissal indicates that this related to issues concerning the use of an "Easybop" system. It cannot be said that the investigation was inadequate in this regard, rather it was completely absent. Failure to correctly use an invoicing system could reasonably generate numerous examples which could have been put to the Claimant for his replies. Any belief as to negligence or incompetence was certainly not founded on a reasonable investigation.

(b) Insubordination.

57. The letter of dismissal makes clear that this charge related to the Claimant's refusal to work with Gordon Ince, and Mr Mayall's conclusion that "your statement that you don't recognise Gordon Ince as an employee is preposterous". The Respondent in the form of Stuart Mayall had a genuine belief in the underlying facts about this refusal to accept Mr Ince.

58. Ms Trimarco was engaged as an independent investigator. In cross examination she accepted that she was aware of Chris Mayall's instruction not to engage with Mr Ince. She did not interview Chris Mayall, nor indeed any other staff member to find out what the reaction of other employees had been to this directive and in the period of time after it had been given. Nor did Ms Trimarco consider at all what had changed in October 2024 such that a situation which had been tolerated – that he had no contact with Mr Ince – no longer was. She did not examine or consider whether the Respondent had taken any steps to clarify the position of employees who were being given different instructions from the two directors, because she was being paid by, and taking instructions only from one, and was entirely partisan.

59. I accept entirely that the Claimant was caught between two warring Directors. I accepted the evidence of the Claimant that Stuart Mayall's response when he had said he would not go to a meeting with Gordon Ince present was to raise his voice and lose his temper. Stuart Mayall's belief as to insubordination was not founded on a reasonable investigation, but more fundamentally, he was completely conflicted. It was not within a range of reasonable responses for him to have dismissed a senior, relatively long

serving employee who, through no fault of his own, found himself in this situation. Stuart Mayall had in fact made up his mind before Ms Trimarco started her investigation, as Mr Ince put hin his email of 23 October 2024, that the Claimant was not seen as "an integral part of the business [but[instead he sees him as a maverick and a potential threat from which the business needs to protect itself".

(c) Dishonesty / Secrecy.

60. The letter of dismissal indicates that this 'charge' related to the meeting of 11 September 2024 between the Claimant, Chris Mayall and GFSL. Ms Trimarco did ask about this meeting during her investigation process, though under an allegation that it was "fraud /bribery" because of Stuart Mayall's suspicion that the purpose of the meeting was to introduce to GFSL his 'new' company, Peakbrook, and that this was why hospitality was being offered. There as no evidence whatsoever to support Stuart Mayall's suspicion, and Ms Trimarco failed to seek evidence from Chris Mayall, due, I find, to her partisan approach to the entire process. When this meeting was discussed in the disciplinary hearing the Claimant gave his account, said who the meeting was with and explained that he gave his company credit card to Chris Mayall when he left first.

61. The "bribery" allegation in fact seems to be Stuart Mayall's belief that the GFSL employees were guilty of some kind of misfeasance in public office in accepting hospitality.

62. The "secrecy" issue is outlined in the disciplinary hearing note, as "SM said when he initially became aware of this meeting and questioned CT about this, he refused ot disclose to him the reasons for the meeting. Why? CT said this was not true, SM shouted at him and threatened to take the expenses form his wages. SM said he begged to differ on this…". Stuart Mayall was clearly conflicted in this matter.

63. There was not a reasonable investigation of this meeting, and in any event dismissal because of it, by Stuart Mayall, was outside a range of reasonable responses. Stuart Mayall's real concern about this meeting was whether Peakbrook had been introduced to GFSL, and there was no evidence whatsoever to support his suspicion in that regard, and less still that this occurred in the presence of the Claimant.

(d) IT Misuse.

64. Mr Lee is undoubtedly correct that computer misuse can constitute a potentially fair reason for dismissal. Stuart Mayall had a genuine belief that the Claimant had subscribed the websites which the Respondent's policies would properly regard as a misuse of their internal systems. However, this belief was not based on a reasonable investigation. The emails were all received during the Claimant's suspension. There was no investigation as to who else had access to his account, and no consideration whatsoever as to whether the claimant could have been signed up to any websites without his permission. There was not even the most basic of checks to see if the

Claimant might have responded to similar messages by examining his 'sent' or 'deleted items', and no critical consideration of why the claimant would have signed up to such sites and retained his subscriptions with his work email account while suspended and having been told that his account was not secure.

65. I have accordingly concluded that the Respondent did not have a genuine belief following a reasonable investigation into any of the matters it relied upon to dismiss the claimant.

Reasonableness of dismissal

66. In any event, I would not have found that the dismissal was reasonable. While the range of reasonable responses is broad, and it is improper for the decision of the employer to be substituted, it is clear that this outcome was predetermined. There investigator worked closely with the decision maker from the outset, and was decision maker, even before the process began, had expressed a firm view – from which there is no evidence that he ever deviated – that the claimant was a "maverick" from whom the business needed to be protected. Stuart Mayall admitted that at least part of his decision making was because he considered the Claimant to be aligned with his son. I considered carefully the issue of the size and administrative resources of the Respondent. There was no evidence about this specifically, and the sections of the ET3 form asking for the number of employees was left blank. I was however aware that Stuart and Chris Mayall were the only directors, and the Claimant was a senior member of staff. This goes to whether there was anybody else who could have considered this matter fairly; however, the Respondent recognised that any appeal would need to be conducted by an independent third party. Given the disputes of fact between the Claimant and decision maker (for example as to whether the Claimant was open the first time he was asked about the meeting of 11 September 2024), it was obvious that an independent person was needed for this earlier stage.

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67. I have considered whether there was any or sufficient evidence to show what this employer would have done, had a fair procedure been followed. A fair procedure, which had not been prejudged, and would have involved a full investigation. It may well have been that workplace mediation was proposed to enable staff to be clear as to whose instructions should be followed between the contradictory demands of the two directors.

68. I cannot see any basis from which I could conclude that a fair procedure even had a chance of resulting in dismissal because of negligence, insubordination or secrecy/ dishonesty.

69. I had greater pause for thought in relation to IT misuse, and particularly in relation to the 'dating' account which had a photograph of the Claimant next to his profile name. However, the complete lack of investigation or of any curiosity as to why the claimant would sign up to such sites and permit

ongoing emails to be sent to his work address while he was suspended, is such that there is simply insufficient evidence for me to say dismissal was likely. I also bear in mind that the Claimant, a man in his late 50s with an exemplary work record, completely denies any involvement in signing up for such sites, and that I have seen on basis for the Respondent to have concluded he had been dishonest in any respects.

Contribution

70. The approach to contribution is different and requires a finding of blameworthy or culpable conduct. On the evidence before me I am unable to conclude, on a balance of probabilities, that the Claimant engaged in such conduct.

REMEDY

71. Having given a short oral judgment setting out my conclusions in relation to liability, I heard further evidence from the Claimant in relation to remedy. He produced a further witness statement and mitigation bundle. I also invited further evidence or submission as to appropriate uplifts or deductions from any compensatory award.

72. The Claimant described his shock and dismay at being summarily dismissed, and noted the warning in his dismissal letter as to the restrictive covenants which would be in force for a further six months, and that any breach would result in the Responding “taking action”. He accepted that he could have appealed to an “independent third party”, but repeated what was in his letter of January 2025, that he had no faith in the fairness of any such process with a person chosen by the Respondent. Mr Lee cross examined the claimant asking whether he had taken advice on the fact that as the Claimant had not signed his contract the covenants may not be enforceable. The Claimant had not sought or received such advice.

73. The Claimant said that his wife had undergone serious surgery in late May 2025 and he had caring responsibilities over the 8 to 10 weeks after that. There was no suggestion from the Respondent that the Claimant would have been unpaid for any time away from work.

74. The claimant initially sought to make use of his personal contacts to explore other work which would not place in him breach of his covenants. He kept a log of efforts made from February 2025 until October 2025, setting out approximately 35 roles he had made enquiries about or applied for. He had not kept any underlying documents relating to those. One of the discussions did result in the claimant being offered a job in around July 2025 as a contract manager, but unfortunately the contract fell through. From November 2025 the Claimant did keep some records of applications made by online platforms, and evidence of 28 roles applied for. Across the whole period, the claimant said that he feared that at the age of 58 or 59, he might not be as attractive a candidate as he had been 10 or 20 years before – though he had no evidence of actual age discrimination. He had applied for

roles he thought realistic in terms of his skill set, the geography involved and the salary it attracted.

75. The Respondent produced a 115-page bundle described as “mitigation document”, but it in fact contained documents related to the Claimant’s period of employment with the Respondent. There were no job vacancies advertised which the Respondent had identified that the Claimant could have applied for but didn’t. Nor was any general or anecdotal evidence adduced about the state of the job market in this sector. Mr Lee put to the Claimant that he had chosen to sit on his hands and not apply for any jobs for 11 months after his dismissal, as there was no evidence of applications before November 2025. The Claimant said this was not right and save for the period when he was caring for his wife, he had made vigorous attempts to seek jobs in contract or facilities management. I accepted that the record the Claimant made was a truthful document.

76. The claimant did not claim any benefits, but in fact cashed in a pension to help offset expenses since his dismissal.

Submissions

77. Both counsel referred to the case of ***Cooper Contracting Ltd v Lindsey*** UKEAT/0842/15. This was cited with approval most recently in ***Macausland Design Ltd v Portosi*** **[2026] EAT 51**. In Cooper, Langstaff P set out the following principles which apply when considering the duty to mitigate / failure to mitigate losses:

> (1) *The burden of proof is on the wrongdoer; a Claimant does not have to prove that he has mitigated loss.*
> *(2) It is not some broad assessment on which the burden of proof is neutral. I was referred in written submission but not orally to the case of Tandem Bars Ltd v Pilloni UKEAT/0050/12, Judgment in which was given on 21 May 2012. It follows from the principle - which itself follows from the cases I have already cited - that the decision in Pilloni itself, which was to the effect that the Employment Tribunal should have investigated the question of mitigation, is to my mind doubtful. If evidence as to mitigation is not put before the Employment Tribunal by the wrongdoer, it has no obligation to find it. That is the way in which the burden of proof generally works: providing the information is the task of the employer.*
> *(3) What has to be proved is that the Claimant acted unreasonably; he does not have to show that what he did was reasonable (see Waterlow, Wilding and Mutton).*
> *(4) There is a difference between acting reasonably and not acting unreasonably (see Wilding).*
> *(5) What is reasonable or unreasonable is a matter of fact.*
> *(6) It is to be determined, taking into account the views and wishes of the Claimant as one of the circumstances, though it is the Tribunal's assessment of reasonableness and not the Claimant's that counts.*
> *(7) The Tribunal is not to apply too demanding a standard to the victim; after all, he is the victim of a wrong. He is not to be put on trial as if the*

losses were his fault when the central cause is the act of the wrongdoer (see Waterlow, Fyfe and Potter LJ's observations in Wilding).
(8) The test may be summarised by saying that it is for the wrongdoer to show that the Claimant acted unreasonably in failing to mitigate.
(9) In a case in which it may be perfectly reasonable for a Claimant to have taken on a better paid job that fact does not necessarily satisfy the test. It will be important evidence that may assist the Tribunal to conclude that the employee has acted unreasonably, but it is not in itself sufficient.

78. Both counsel also cited ***Software 2000 Ltd v Andrews*** [2007] ICR 825 which says that losses flowing from dismissal should be assessed on the basis of findings of fact, by the tribunal using its "common sense, experience and sense of justice".

79. In relation to uplifts, Mr Leonstadt submitted that the breaches of the ACAS code upon which he relied were:
    a. Failure to carry out necessary investigations to establish the facts of the case
    b. Failure to provide copies of written evidence
    c. Refusal of the right to be accompanied (the claimant was told he could not have Chris Mayall).

    He contended that an uplift of 25% was appropriate, and that while some deduction for failure to appeal might be made, it could be set off against this uplift and should not be more than 10%.

80. Mr Lee submitted that the claimant had failed to ask the Respondent to release him from his covenants, but in any event had failed to identify any roles these covenants prevented him for applying for. In relation to the failure to appeal, he noted that an independent third party would have been engaged, and contended a significant reduction should be made for that.

81. As to issues of grossing up and the order of applying uplifts and the statutory cap again there was agreement between counsel that the cap is the final thing to be applied, as confirmed in ***Hardie Grant London Ltd v Aspden*** UKEAT 0242/11.

Law

82. Section 118 ERA provides that a tribunal may make an award of compensation consisting of a basic award – calculated in accordance with sections 119 – 122 and 126, and a compensatory award – calculated in accordance with sections 123, 124, 124A and 126. Section 124 provides that compensatory awards are capped at 52 weeks pay or, in December 2024, £115,115, whichever is the lower.

83. In relation to what is commonly referred to as “the duty to mitigate”, I had careful regard to the ***Lindsay*** case set out above, and that it is in fact for the Respondent to show a failure to mitigate on the part of the Claimant.

84. Where an award relates to the termination of a person’s employment, section 401 ITEPA 2023 applies; a recipient enjoys a tax free amount of £30,000 in any particular tax year and will pay tax on sums in excess of this figure. As compensatory awards are calculated using net earnings, the figure above £30,000 may be grossed up.

85. Compensation for holiday pay are calculated as a gross figure and are not therefore to be grossed up.

86. Basic awards as well as compensation awards are payments in connection with the termination of employment and fall to be taxed. The EAT in Hardie Grant London v Aspden made clear that when considering compensation for unfair dismissal it is appropriate to consider the losses which flowed from the dismissal, then to apply any adjustments (eg for failure to comply with ACAS), then to gross up, then finally to apply the statutory cap.

87. The point on which there appears to be no direct appellate court authority is whether, when taking off the tax free amount of £30,000, it is necessary to “use” that allowance against the basic award, and then apply its balance to the compensatory award. Or, alternatively, whether one can apply the whole of the £30,000 to the compensatory award, and then ‘gross up’ the basic award.

Conclusions on the issues

88. The Respondent did not show that the Claimant had acted unreasonably when seeking to mitigate his losses. He has applied for in excess of 50 positions, all of which he has carefully considered as to whether they are realistic in terms of his skills, their geographical location and salary. There is no evidence whatsoever about steps he could have taken and has failed to.

89. I am entirely satisfied that the claimant’s loss of earnings from his EDT to the date of this hearing flow from the unfair dismissal.

90. The claimant did not seek future loss of earnings.

91. I agree that the provisions of the ACAS code identified by Mr Leonhardt were not followed by the Respondent. While lip service was paid to carrying out an investigation, the result was predetermined and it was so wholly inadequate that the code cannot be considered to be complied with.

I do not however consider it is egregious as a complete failure. I consider that an addition to compensation of 20% would be appropriate.

92. I have also considered the Claimant's failure to appeal. While I have considerable sympathy for the Claimant's scepticism as to the likelihood of a fair appeal process, particularly when the "independent" HR consultant had been so partisan, he did deliberately refuse to engage with this part of the process. There was some chance that a third party might have approached the situation fairly – but this cannot now be know. I consider that a 10% reduction of compensation is appropriate.

93. Netting off this increase and reduction, an uplift of compensation of 10% is appropriate. And standing back and looking at the process of a whole, I consider this amount to be equitable.

94. The Claimant's gross salary was £9355.93 per month, and £1415,94 net per week. The Claimant's gross salary for 52 weeks (and therefore 'his' statutory cap) is £112,271.16

95. The parties agreed that the claimant's outstanding holiday of four days amounted to a gross sum of £1727.24.

96. The basic award is agreed in the sum of £5250 given the Claimant's age and length of service.

97. The compensatory award for the Claimant is made up of 77 weeks x the net sum of £1415.94 = £100531.74. 10% added to this gives a figure of £110,584.91. This must then be 'grossed up'.

98. Whilst I initially considered it appropriate to take £30,000 of this as the tax free sum and gross up the remainder, this then left the basic award to be grossed up. Mr Lee submitted this was incorrect as the basic award should be "tax free" as less than £30,000. In cases where there is no statutory cap, it may make no difference as to whether the tax free amount is 'used' first by the basic award or compensatory award. However, in cases such as this where the compensatory award exceeds the cap, if all of the tax free allowance is used against the compensatory award, this would mean that the basic award must be grossed up – in this case at 40% as this is the tax band into which this 'additional' sum falls.

99. As set out, I could find no binding authority on this point. I therefore began by considering section 118, which refers to making (a) a basic award, and (b) a compensatory award. They must be calculated separately as it is

only the compensatory element which is subject to a cap. The fact that a basic award is listed first did indicate that it could be appropriate to allow the tax free element to be 'assigned' to that head of claim first, with the remainder being measured against the compensatory award. In Harvey on Industrial and Employment Law, in Division D1 paragraph [3144.02] a first instance tribunal case of 2021 (*Thomas v Lancashire Teaching Hospitals NHS Trust* 2403352/17) is summarised, and it says that the "basic award was deducted from the £30,000 tax free amount under ITPEA s401, to leave £27,844.50 applicable to the compensatory award". Similarly in *Berrington v The Book People* 3301560/20 an ET is noted as taking an approach as "after deducting the basic award and injury to feelings awards associated with the dismissal from the £30,000 tax free element applied to termination payments, £7315 of the compensatory award was to be subject to tax". Whilst these cases are not binding, and I have not accessed the full judgments, they do indicate that the appropriate approach is to 'utilise' the tax free element against the basic award in first instance and credit the remainder to the compensatory element.

100. The appropriate calculation is therefore as follows:

Total Compensatory Award:	£110,584.91
Amount of £30,000 after basic award	£24,750.00
Total non-taxable	£37,320.00
Total compensatory award taxable:	£73,264.91
At 20%	£37,700.00
At 40%	£35,564.91
Total Tax at 20%	£7,540.00
Total Tax at 40%	£14,225.96
Total Tax Payable	£21,765.96
Tax Payable Grossed Up	£36,276.61
Grossed up total compensatory	£146,861.52
Compensatory Award after Statutory Cap	**£112,271.16**
Basic Award	**£5,250.00**
Holiday Pay	**£1,727.24**

Grand Total	**£119,248.40**

Approved by

Employment Judge R Tuck KC
7 May 2026

Sent to the Parties

Date: 1 June 2026

For the Tribunal Office