



EMPLOYMENT TRIBUNALS

Claimant: Mr Jonathan Roberts

Respondent: St Bartholomew's School

Heard at: Watford Employment Tribunal by CVP

On: 5, 6, 7, 8 and 15 (in Chambers) May 2026,

Before: Employment Judge Freshwater
Tribunal Member Mr C Juden
Tribunal Member Mr J Appleton

Representation

Claimant: In person

Respondent: Ms C Urquhart (counsel)

RESERVED JUDGMENT

1. The claimant's complaint of unfair dismissal is well-founded and succeeds.
2. The claimant's complaint of wrongful dismissal is well-founded and succeeds.

REASONS

Introduction

1. The claimant is Mr Jonathan Roberts. The respondent is St Bartholomew's School. For clarity, through this judgment the parties will be referred to as the claimant and the respondent. Witnesses will be referred to by name.
2. The claimant was employed as a teacher by the respondent, until his dismissal following a disciplinary investigation which resulted in a finding of gross misconduct.

Claim and issues

3. The complaint is one of unfair dismissal and wrongful dismissal.
4. The issues were agreed between the tribunal and the parties as follows:
 - a. Was the reason, or principal reason, for the Claimant's dismissal a potentially fair reason under s98 Employment Rights Act ('ERA')? The Respondent relies on conduct (s98(2)(b) ERA).
 - b. Has the Respondent proven on the balance of probabilities that the reason for the dismissal of the Claimant was conduct?
 - c. Did the Respondent act reasonably in treating that as a sufficient reason for dismissal? In particular:
 - i. Did the Respondent genuinely believe that the misconduct had occurred?
 - ii. Were there reasonable grounds for that belief?
 - iii. Were those grounds based on a reasonable investigation?
5. In relation to the reasonableness of the investigation, in summary the Claimant challenges:
 - a. Failure to follow school policies, guidance including KCSIE, including on suspension;
 - b. Inappropriate investigating officer who had prejudged the matter and intimidated witnesses;
 - c. Unfair reliance on inaccurate/misrepresented evidence or evidence not put to the Claimant; evidence presented selectively;
 - d. Improper reliance on CCTV evidence;
 - e. Disciplinary chair had undisclosed conflict of interest.
6. Was the dismissal fair taking into account the size and administrative resources of the Respondent?
7. Was dismissal within the range of responses which a reasonable employer might have adopted, having regard to equity and the substantial merits of the case? In summary the Claimant challenges:
 - a. The Respondent failed to take his inexperience into account;
 - b. Decision was inconsistent with other cases;
 - c. Decision was outside the band of reasonable responses.

Procedure and hearing

8. The case was heard remotely by Cloud Video Platform over the course of 5 days (including one day for deliberations). Judgment was reserved.
9. The tribunal was referred to a bundle of documentary evidence of 1490 pages, a witness statement bundle, an opening note, list of issues and legal authorities from both parties.
10. The tribunal read witness statements and heard oral evidence in support of the claimant's case: Jonathan Roberts, Alison Lane, Glyn Evans, Ian

Keetch, James Wilder and Mark Owen.

11. The tribunal read witness statements and heard oral evidence in support of the respondent's case: David Fitter, Jon Bastable, Daisy Hutchinson and Joanna Larmour.
12. The tribunal considered witness statements from two witnesses who did not give oral evidence: Siobhan Bosley and Karen Pollard.
13. Written and oral submissions were made on behalf of both parties.

The law

14. Section 94(1) of the Employment Rights Act 1996 states that an employee has the right not to be unfairly dismissed.
15. Section 98 of the Employment Rights Act 1996 (the "ERA 1996") provides:

*"(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 (of, 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 to justify the dismissal holding the position which the employee held."*

16. Section 98(2) states that conduct is one of the potentially fair reasons for dismissal.
17. Section 98(4) states that:

*"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."*

18. In the case of Foley v Post Office; HSBC Bank plc (formerly Midland Bank plc) v Madden 2000 ICR 1283, CA, the Court of Appeal held that although members of the tribunal can substitute their decision for that of the employer, that decision must not be reached by a process of substituting themselves for the employer and forming an opinion of what they would have done had they been the employer. The test for the tribunal is therefore an objective one.
19. In the case of British Leyland (UK) Ltd v Swift 1981 IRLR 91, CA, the test to consider if respect of what a reasonable employer would do was explained in the following way:

“The correct test is: Was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair. But if a reasonable employer might reasonably have dismissed him, then the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness, within which one employer might reasonably take one view: another quite reasonably take a different view.”

20. In the case of Iceland Frozen Foods Ltd v Jones 1983 ICR 17, EAT, the law in respect of the band of reasonable responses test was summarised as follows:

“We consider that the authorities establish that in law the correct approach for the... tribunal to adopt in answering the question posed by [S.98(4)] is as follows:

(1)the starting point should always be the words of [S.98(4)] themselves;

(2)in applying the section [a] tribunal must consider the reasonableness of the employer’s conduct, not simply whether they (the members of the... tribunal) consider the dismissal to be fair;

(3)in judging the reasonableness of the employer’s conduct [a] tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;

(4)in many (though not all) cases there is a band of reasonable responses to the employee’s conduct within which one employer might reasonably take one view, another quite reasonably take another;

(5)the function of the... tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.”

Findings

21. The claimant was first employed by the respondent as an assistant teacher on 2 November 2020. He completed his teacher training in July 2023 and from 1 September 2023 was employed as a full-time teacher of film. He was later appointed as a Sixth Form House leader. This meant he had pastoral care duties for members of the Sixth Form in his house in addition to teaching film. This amount of responsibility was unusual for an Early Career Teacher (ECT). The claimant was well regarded by his colleagues and had been nominated by his colleagues for a Teacher of the Year Award which was signed off by Dr Fitter. That is a National Award.
22. It is accepted by both parties that the claimant spent a significant amount of time interacting and communicating with a Year 10 student who has been referred to as Student 1. She was a student in his film class. This is

well documented in the bundle. Student 1 sought out the claimant when she had panic attacks. They communicated by email as well as, on one document occasion, by a message on the school's social media account (Instagram). Student 1 had, at one point, followed the claimant on Twitter. At one point it was alleged, by other students, that Student 1 and the claimant had exchanged private messages on Twitter. This was not substantiated, and the student who had raised concern later said that there had not been any Twitter messages. The communication included the use of what has been called a code in these proceedings. That is the use of “..” to indicate that student 1 wanted to meet the claimant for support. This was suggested by student 1, because she wanted a way to communicate that could not be understood by her friends. There is evidence that student 1 sometimes struggled with her friendships and had made reports of bullying. The tribunal accepts the claimant's evidence that, in hindsight, he should not have agreed to the use of the “..” system to communicate with student 1. He was transparent about his regret which is to his credit.

23. The respondent was aware that the claimant had been providing pastoral support for Student 1, and her parents were also aware. This support included a large number of emails. However, the evidence of the claimant was that this included emails that were to do with film class and not any form of support. This was a normal way for teachers and students to communicate. There was no evidence before us of any sort of analysis to say what proportion of the emails went beyond normal communication between teacher and student.
24. There is a record on MyConcern of the claimant recording concerns about student 1 on 11 and 15 March 2024. See pages 252 and 256 in the bundle.
25. On 20 March 2024, a trainee teacher at the school emailed Mr Bastable raising concern about a conversation she had had with her cousin (student 2) who was worried about the relationship between the claimant and student 1.
26. Mr Bastable reported the concerns to the Local Authority Designated Officer on 22 March 2024. The LADO advised that the claimant should be suspended. Ultimately, the issue of suspension was a decision for Dr Fitter. The claimant was suspended by Dr Fitter on 25 March 2024 on an interim basis whilst an investigation took place.
27. Dr Fitter asked Mr Bastable to conduct an investigation into what happened. The investigation commenced shortly after a multi-agency meeting with the LADO and police on 25 March. Dr Fitter directed that Mr Bastable was to look into the allegations that the claimant had developed an unhealthy and unprofessional relationship with Student 1.
28. Mr Bastable submitted an Investigation Report (dated 3 May 2024) to Dr Fitter. The outcome of the investigation was that there was evidence of gross misconduct which should be the subject of a disciplinary hearing with a chair of governors, as set out in the school's disciplinary policy.
29. A disciplinary hearing took place on 14 June 2024. During the hearing,

the panel heard from Mr Bastable who presented the investigation outcome, and the claimant and the governors were able to ask questions about the case. The claimant then presented his case, which included the evidence of Alison Lane as a witness. At the end of the hearing, the governors asked Dr Fitter for his opinion. Dr Fitter said that he recommended dismissal.

30. On 19 June 2024, the disciplinary panel sent an outcome letter to the claimant. It had concluded that there had been several breaches of school policies which, taken cumulatively, amounted to gross misconduct. The breaches in question were:
 - a. The claimant had communicated with Student 1 via a private message using the school's Instagram account;
 - b. On 20 March 2024, the claimant had met with Student 1 in a room with no windows and had closed the door whilst Student 1 was having a panic attack, and had not reported this on MyConcern or to the student's parents;
 - c. That the claimant had not reported a student WhatsApp message about him on MyConcern;
 - d. Despite being aware of concerns about his interactions with Student 1, the claimant continued to meet her on a one-to-one basis without reporting them;
 - e. That the claimant agreed to communicate by email with the student using a code (two dots) when she wanted to meet.
31. The evidence of Mrs Hutchinson was that the panel decided these breached school policies and safeguarding procedures, including the requirements of Keeping Children Safe in Education. In her oral evidence, she said that one of the factors that led to the finding of gross misconduct, rather than treating the matter as of low-level concern, was that harm had been caused to Student 1. This was assessed on the basis that Student 1 had less panic attacks when she was unable to meet with the claimant. There was no evidence before the tribunal to substantiate how this conclusion had been ascertained.
32. Mrs Hutchinson's evidence was that the panel did not take into account decisions made in other cases. This was because she only had knowledge of cases that she had been involved in. It was not common practice for panels to know what decisions were made by other panels.
33. The claimant appealed the decision. The appeal was heard by a different panel of three governors. The appeal was dismissed and the original decision upheld.

Conclusions

34. The main point of dispute in this case is the sanction imposed. The claimant accepted in his evidence and submissions that it was right an investigation took place when student 2 raised her concerns. He also accepts that his conduct fell short on occasion and that some sort of sanction was appropriate. However, he does not accept that the investigation was fair or that the cumulative effect of his conduct amounted to gross misconduct.

35. We find that there were failings in the investigation that filtered into the outcome for the claimant. Mr Bastable's investigation which led to the decision of Dr Fitter to refer the matter to the disciplinary panel as part of was not as balanced as it should have been. Mr Bastable should have interviewed Student 1's mother to obtain her view on what had happened and whether there was a detrimental impact on Student 1 stemming from any interaction with the claimant. Some of the interviews were very short and by email. The tone of the emails between Mr Bastable and the LADO do suggest that a finding of gross misconduct was assumed before his investigation was complete.
36. We are also satisfied there is procedural unfairness identified by the claimant in respect of the disciplinary hearing. Mrs Hutchinson was the chair of the panel of governors at the disciplinary hearing. She did not disclose or take any external advice about the fact that she was friends with the mother of the student who initially raised concerns to Mr Bastable. Whether or not the relationship was one whereby they went out for dinner, it was clearly close enough that Mrs Hutchinson decided to avoid the other parent so that she would not hear information relevant to the case outside of the hearing. This alone should have been sufficient to consider in more detail whether there was a conflict of interest. It is entirely understandable that the claimant formed the view that there was, at the very least, the appearance of bias. There were clearly other governors available who would not have had to avoid the parent of a child who had raised concerns about the claimant. The distinction between a concern and a complaint is simply not relevant for these purposes. Indeed, we note that to start with it was called a complaint within the paperwork (see the letter from Mr Bastable to the claimant at page 400 in the bundle).
37. It is impossible to say whether the decision taken in the claimant's case by the respondent was in line with decisions in other, similar cases. This is because no account was taken of other cases. There appears to be no mechanism for the individual panels to access such information. This means that school governors are only aware of cases they have previously been involved in. This is contrary to the school's disciplinary policy (see page 516 in the bundle).
38. We do not think that dismissal for gross misconduct was a decision that fell within the range of reasonable responses that a reasonable employer might have adopted in the overall circumstances. Taking into account the positive character references and the regard in which the claimant was clearly held as a teacher, the early stage in his teaching career and the level of responsibility placed on him as an ECT for the pastoral care of the sixth form it was clear that this was a teacher who had become overwhelmed and should have been better supported. This is particularly so when considering what the misconduct actually was in the case. Whilst it is correct that the social media policy was breached, it was on one occasion and involved a private message from a school Instagram account which other staff members could access. It did not involve the claimant's personal account and was not an inappropriate message. In addition, the claimant accepted he did not log all relevant interactions with student 1 on MyConcern. However, it was clear

in the evidence that the respondent could not say with any certainty what action followed the concerns he did log. There was no evidence before the tribunal of any action taken by the respondent other than the allocation of a case handler. The tribunal found this aspect of the respondent's case to be vague and unconvincing in that it should have been simple to set out what steps had been taken in respect to the entries the claimant had made. It is relevant to the overall equity of the situation that unfolded.

39. It is clear that the Claimant was trying his best to support Student 1 in very difficult circumstances, with no identifiable support from the respondent in what was an overwhelming situation for an ECT to handle.
40. In addition, the respondent appears to have assumed harm was caused to student 1. The evidence given to the tribunal was that Student 1 had less panic attacks following the claimant's suspension. However, there was no evidential link between these two points and nothing to substantiate this assumption. There is no basis in evidence to say that anything the claimant did caused harm to Student 1, or indeed any other student.
41. Taking everything into account, the conduct of the respondent during the investigation and disciplinary hearing was not reasonable. The evidence suggests that it was decided from the outset that gross misconduct had occurred and that the finding of gross misconduct and dismissal was inevitable. The tribunal is satisfied that dismissal was not within the range of sanctions that a reasonable employer would have adopted. The complaint of unfair dismissal is therefore well-founded and succeeds.
42. The claimant did not commit a repudiatory breach of contract. He should not have been dismissed without notice because the finding of gross misconduct was not supported by evidence. The tribunal was told that the conduct was considered gross due to harm caused, but there was not compelling evidence of harm produced. The claimant did not receive any notice pay. The complaint of wrongful dismissal is therefore well-founded and succeeds.

Approved by:

Employment Judge Freshwater
11 June 2026

JUDGMENT SENT TO THE PARTIES
ON 12 June 2026

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge.

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www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/