



EMPLOYMENT TRIBUNALS

Claimant: Mr Stuart Lambert
Respondent: Roof-Maker Ltd
On: 12 May 2026 (in chambers on 16 June 2026)
Before: Employment Judge Ahmed (sitting alone)
At: Leicester

Representation

Claimant: In person
Respondent: Mr L Wilson of counsel

RESERVED JUDGMENT

The decision of the Tribunal is that the Claimant was unfairly dismissed. The issue of remedy shall be listed for hearing on a date to be fixed.

REASONS

1. In these proceedings, the Claimant brings a complaint of unfair dismissal.
2. The Claimant was employed by the Respondent as a Service Engineer from 3 June 2013 to 26 August 2025 when he was dismissed for gross misconduct.
3. In coming to my decision I have taken into consideration the oral evidence of the witnesses, the documents in the agreed bundle and the closing submissions for which I am grateful.
4. At this hearing the Claimant represented himself and was assisted by his brother, John. The Respondent was represented by Mr Wilson of counsel. The Respondents have been legally represented throughout.
5. Oral evidence at this hearing was given by the following on behalf of the Claimant:
 - 5.1 Mr. Stuart Lambert, the Claimant.
 - 5.2 Ms Emma Steel (formerly Mackay)

6. Evidence on behalf of the Respondent was given by:

6.1 Ms Rachel Owen, Co-Founder of the Company and Director

6.2 Mr. Scott Nicholson, Joint Co-Founder and Director.

7. In addition, the Respondent submitted a witness statement from Mr. Dominic Milford who attended the disciplinary hearing in the capacity of notetaker. Mr. Milford did not attend the hearing as the Respondent made a decision that he was required at work. I have admitted his statement into evidence but attached appropriate weight.

8. Whilst we were able to hear all of the evidence and submission on the one day fixed for the hearing, unfortunately there was insufficient time to begin my deliberations. The decision was therefore reserved to a later date.

THE FACTS

9. The Respondent is a designer and manufacturer of high-performance, contemporary rooflights, skylights and bifold doors. It is based in Leicester and employs approximately 65 people.

10. Ms Owen founded the business in 2001, sold it in 2016 and bought it back in 2023. She was not however actively involved in the management until April 2025.

11. The Claimant's role as a Service Engineer was to visit customer properties to investigate reported faults, repair or replace affected parts, ensure that rooflights were working correctly, and deal with any customer issues. The Claimant lives in Leicester. His work involved travelling throughout the UK.

12. The Claimant's line manager at the time was Ms Mackay (now 'Mrs Steel' but for the sake of convenience I will refer to her as Ms Mackay as that is how she was known at the time of the events) who also managed four other Service Engineers.

13. All Service Engineers were required to complete timesheets for the hours of work they undertook, giving start and finish times. The timesheets would then be approved by Ms Mackay and submitted for payment.

14. From time to time, when the Service Engineers, including the Claimant, worked through their lunch break, they would record their finish time later than when they physically left to take into account the fact that they had worked through their break or breaks. The Claimant did this on a regular basis and no issue was ever raised with him.

15. On 19 August 2025, Miss Owen undertook a random inspection of the Claimant's working hours and timesheets. She noticed some discrepancies and after having spoken to the Claimant, it was discovered that there were discrepancies of approximately 30 minutes claimed on two separate occasions which did not tally with the working hours. There was a discussion and Ms Owen took the view that there had been a genuine mistake.

16. After the wages have been processed for that particular month Ms Owen asked Mr. Milford to check the hours that the Claimant and other fitters were undertaking and to compare them with the vehicle trackers and the CCTV recordings on site. Mr. Milford reported that the discrepancies for the Claimant added up to a little over 10

hours for time which was booked but not worked. Mr. Milford did not discuss the situation with the Claimant.

17. Ms Owen telephoned and spoke to the Claimant about these discrepancies. The Claimant explained that the 'additional' element represented the time he was working through his breaks. The Claimant explained that this practice was either approved or authorised.

18. On the same day, Miss Owen sent the Claimant a letter headed 'Invitation to Discipline Hearing' to attend a meeting on 26 August 2025. Ms Owen was to chair the meeting. The letter said that Mr. Milford would be there as notetaker. The allegation set out in the letter was that the Claimant had falsified his timesheets and claimed payment for hours not worked. He was advised of his right to be accompanied.

19. The letter went on to say:

"Copies of any documents, referred to or utilised in the investigatory meeting, and those which were which will be (sic) considered at the hearing will be presented to you in the meeting to review and give an explanation to. These may include the following: copies of relevant timesheets, data from vehicle trackers, evidence from CCTV footage."

20. The investigatory meeting referred to was intended to be the investigation that Ms Owen was going to conduct. There had not been any prior investigation. None of the documents mentioned, nor any recording of the CCTV footage, was provided to the Claimant in advance of the disciplinary hearing.

21. The Claimant attended the disciplinary hearing unaccompanied. He was surprised to discover that in addition to Mr. Milford, the meeting was also attended by Mr. Andy Jones who was said to be the RM 'representative'. It is not clear what role Mr. Jones played.

22. The disciplinary meeting was audio recorded but the recording has subsequently been lost by the Respondent. The notes of the meeting appear in the bundle. They are not signed by the Claimant. He does not accept that they are an accurate record.

23. On 27 August 2025 Ms Owen wrote to the Claimant with her decision. The material part of her letter said:

"I am writing to confirm the outcome of the disciplinary hearing held on 26 August at which you were given the opportunity to respond to the allegation that you falsified timesheets and claimed for hours not worked."

Evidence was shared with you at the hearing and you were given an opportunity to respond to the allegation. Having carefully considered, the evidence presented on your responses I have concluded that the allegation is upheld. This conduct is considered to be gross misconduct under the company's discipline procedure ("fraud, forgery, or other dishonest, including fabrication of expense claims and timesheets"). The outcome is that your employment with the companies terminated with immediate effect by reason of summary dismissal."

24. The letter did not give any reason as to why Ms Owen reached the conclusion that she did. The nearest one gets to her reasoning is set out in the disciplinary hearing notes where Ms Owen is recorded as saying to the Claimant:

"We cannot have people work for us that defraud the company, given the seriousness of the transgression, fraud and misconduct we will have to let you go."

25. Following the dismissal the Claimant sent Ms Owen some screenshots of WhatsApp messages with Ms Mackay in an effort to establish that the practice he was following was approved. They were not of the dates that Ms Owen had considered but she did decide to speak to Ms Mackay. She asked her if Ms Mackay had authorised the Claimant's timesheets. Ms Owen's said that she had not. Ms Mackay's evidence at this hearing was different. She agrees that she did indeed have a meeting with Ms Owen on that day but she explained that delivery drivers (and for these purposes the Claimant) regularly worked through their breaks and added the time to their recorded hours. She said this had been done for as long as she had been employed by the business. Ms Mackay's evidence, which I accept, is that later in the same day she was approached by Ms Owen and Mr Nicholson to say she might also be dismissed for signing off the timesheets though no action was taken. Ms Mackay subsequently left her employment. The Respondent says that it had begun an investigation but there is no evidence of any investigation and nothing to suggest that Ms Mackay was at risk of being dismissed. I therefore reject the implication that Ms Mackay jumped before she was pushed.

26. The Claimant appealed against the decision to dismiss. The appeal meeting took place before Mr. Nicholson on 10 September 2025. There are no notes of the appeal meeting.

27. Mr. Nicholson went through the principal issue with the Claimant, which was that engineers regularly worked through breaks and that this time was permissibly added to the working day.

28. Prior to the appeal hearing Mr. Nicholson had a telephone conversation with the Company's Operation Director, Mr. David Ashton, who at the time was off sick recovering from illness. Mr. Ashton apparently told Mr. Nicholson that there had never been any instruction for Engineers to work through lunch breaks nor was this practice approved. There is no note of the discussion with Mr. Ashton nor was the content of that discussion shared with the Claimant. It appears only in the witness statement for these proceedings.

29. On 10 September 2025 Mr. Nicholson wrote to the Claimant confirming that the appeal was dismissed.

30. The Claimant began ACAS early conciliation on 19 September 2025. The ACAS early conciliation certificate was issued on 31st October 2025. The Claimant presented his claim to the Tribunal on 25th of November 2025.

31. It is accepted that all four Service Engineers were dismissed at more or less the same time and for the same reason, that is dishonesty or fraudulent claiming for work not undertaken. They were not replaced. Mr Lambert argues that the real reason was not misconduct but either cost-cutting or a redundancy situation. The Respondent disputes that cost was any part of the reason but does not challenge that all four of the Service Engineers were dismissed for the same or similar reasons as the Claimant and that they were not replaced. They say that whilst it was inconvenient to lose them the business was able to cope using third party contractors and re-scheduling some of the jobs.

THE LAW

32. Sections 98(1)(2) and (4) of the Employment Rights Act 1996 ("ERA 1996") state:

"(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—

- (a) [not relevant]
- (b) relates to the conduct of the employee,

.....

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case."

33. In applying section 98(4) ERA 1996 I have borne in mind the guidance in **HSBC Bank plc v Madden** [2000] ICR 1283. In that case the Court of Appeal re-affirmed the guidance for tribunals originally set out in **Iceland Frozen Foods Limited v Jones** [1982] IRLR 439, namely that:-

"(1) The starting point should always be the words of section [98(4) ERA 1996] themselves.

(2) In applying the above section the Tribunal must consider the reasonableness of the employer's conduct, not simply whether the Tribunal would have done the same thing.

(3) The Tribunal must not substitute its decision as to what was the right course to adopt.

(4) In many cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view another employer quite reasonably take another.

(5) The function of the Employment 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."

34. The Court of Appeal in **London Ambulance Service NHS Trust v Small** [2009] EWCA Civ 220 reminded tribunals of the importance of not substituting their views for that of the employer. I have been conscious of the importance of not doing so.

35. It is now well-established that the band of reasonable responses test applies equally to the investigation as it does to the decision to dismiss (see **Sainsbury's Supermarket Ltd v Hitt** [2003] IRLR 23).

36. In **British Home Stores v Burchell** [1980] ICR 383, the Court of Appeal set out the criteria to be applied by tribunals in cases of dismissal by reason of misconduct. Firstly, the Tribunal should decide whether the employer had an honest and genuine belief that the employee was guilty of the dishonesty or misconduct in question.

Secondly, the tribunal has to consider whether the employer had reasonable grounds upon which to sustain that belief. Thirdly, at the stage at which the employer formed its belief it must consider whether the employer had carried out as much as investigation of the matter as was reasonable in all of the circumstances. Although **Burchell** was decided before changes were made to the burden of proof, the three-step process is still helpful in determining cases involving dismissal for misconduct.

37. In **Spink v Express Foods Limited** [1990] IRLR 320, the Employment Appeal Tribunal (Wood J, President, presiding) said:

"It is a fundamental part of a fair disciplinary procedure that an employee knows the case against him. Fairness requires that someone accused should know the case to be met; should hear or be told the important parts of the evidence in support of that case; should have an opportunity to criticise or dispute that evidence and to adduce his own evidence and argue his case."

38. The ACAS Code of Practice on Disciplinary and Grievance Procedures (2015) at paragraphs 6 and 9 states:

Paragraph 6: In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing.

Paragraph 9: If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification.

THE ISSUES

39. The issues are as follows:

39.1 What was the reason for the dismissal? The Respondent submits that it was 'conduct'.

39.2 Does the reason fall within one of the potentially fair reasons under section 98(2) ERA 1996 or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held under section 98(1)(b) ERA 1996?

39.3 Did the employer act reasonably or unreasonably in treating the reason as sufficient to dismiss the employee? In other words, was the dismissal unfair in all of the circumstances?

39.4 Was a reasonable procedure followed?

39.5 Did the Respondent follow the ACAS Code on Disciplinary and Grievance Procedures?

CONCLUSIONS

40. I begin with the reason for dismissal. The Claimant challenges conduct as the real reason for dismissal and argues it was a cost-saving measure to dismiss all four Service Engineers.

41. Whilst it does seem surprising that the business was able to discharge its obligations to customers without any of the Service Engineers, and without replacing them at what is regarded as the busiest time of the year, it seems to me there is insufficient evidence that redundancy was the real reason for dismissal. There is no evidence that there was a diminution in the work requirement and there were no closures of any part of the business. I am therefore satisfied that the Respondent

has discharged its burden in demonstrating that the real reason for dismissal was 'conduct' which is a potentially fair reason for dismissal.

42. I have gone on to consider reasonableness under section 98(4) ERA 1996. In doing so, I have been mindful of the guidance in **Madden** and **Burchell**.

43. Did the Respondent have an honest and genuine belief in misconduct? There is no real challenge to this element of the case. I am satisfied that Ms Owen genuinely believed that the Claimant was falsely claiming for work he had not undertaken.

44. Was the belief based on reasonable grounds? I am satisfied that Ms Mackay explained to Ms Owen the practice of adding time in lieu of breaks in the timesheets and that it had gone on for some time. Given that this is something that all Service Engineers were doing, and their line manager had approved their timesheets, I do not find that Ms Owen had reasonable grounds for believing that Mr Lambert was defrauding the company. Her belief was honestly held but it was not reasonable given the circumstances where this was going on with all of the Service Engineers. There were reasonable grounds for supposing that this practice had become the norm and that it had management approval. None of the Directors or senior managers had instructed Ms Mackay that this practice was wrong or that it must cease. I do not accept that all of the Service Engineers were acting dishonestly. They were doing what they believed was acceptable.

45. Whilst I accept that at the time the decision to dismiss was made Ms Owen had not spoken to Ms Mackay, I do not accept that this leads to a reasonable belief. The reasonable belief has to be formed at the stage after a reasonable investigation has been done.

46. I am satisfied that there was a failure to carry out a reasonable investigation. Ms Owen failed to interview or investigate the matter with Ms Mackay prior to the decision to dismiss. That discussion was central to the question of whether the practice was approved or authorised by immediate line management. I am therefore satisfied that the dismissal was unfair.

47. The dismissal was also procedurally unfair for the following reasons:

47.1 The Claimant was not permitted to see relevant documents before the disciplinary hearing. The Respondent relied on CCTV footage which was not disclosed. A fair procedure required that all relevant material was sent to the Claimant in advance not simply shown to him at the disciplinary hearing. It was also a breach of paragraph 9 of the ACAS Code;

47.2 Ms Owen was both investigator and dismissing officer. That was a breach of paragraph 6 of the ACAS Code. The business is large enough for those functions to have been undertaken by different people;

47.3 There was no investigation, or any proper investigation, into the Claimant's explanation that working through breaks was common and that it was authorised by Ms Mackay prior to dismissal.

47.4 There was a failure to give reasons for dismissal in the letter from Ms Owen. An employee is entitled to know why they have been dismissed;

47.5 By conducting the disciplinary hearing, Ms Owen effectively deprived the Claimant of a more senior person to determine the appeal;

47.6 In coming to his decision Mr Nicholson relied on a conversation with Mr Ashton. This discussion was not disclosed to the Claimant at the time. If Mr Ashton had anything useful to say it is something that Ms Owen should have investigated

earlier but even if that was not possible Mr Nicholson should at least have disclosed that to the Claimant for his comment and reply.

48. I therefore find that the procedural deficiencies also render the dismissal unfair.

49. The issues of Polkey, contributory conduct and whether any uplift for failure to comply with the ACAS Code should be applied will be considered at the remedy hearing which will be listed in due course.

Approved by:

Employment Judge Ahmed

Dated: 17 June 2026

Sent to the parties on

...20 June 2026.....

For the Employment Tribunal

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