



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Gholami Nick

**Respondent:** Impera Italia Ltd

**Heard at:** Watford **On:** 15 and 16 June 2026

**Before:** Employment Judge Bartlett

## **Representation**

**Claimant:** in person

**Respondent:** Mr Tudor, Peninsula

# JUDGMENT

1. The claimant's claim for unfair dismissal succeeds.
2. The claimant is awarded £2134.61 as the basic unfair dismissal award.
3. The claimant's claim for wrongful dismissal succeeds.
4. The claimant is awarded £2134.62 in respect of notice pay.
5. The claimant is awarded £500 for loss of statutory rights.

# Reasons

## **Background**

1. By a claim form dated 11 June 2025 the claimant made a claim for unfair dismissal contrary to section 94 of the Employment Rights Act 1996.
2. The respondent responded on 18 July 2025 denying there had been an unfair dismissal and setting out that the claimant had been fairly dismissed and there was a fair reason for dismissal namely misconduct.

3. The respondent is a London based company offering a range of Venetian plasters, special effect paints, renders and other decorative wall effects. The claimant was employed as a marketing manager and his employment commenced on 4 April 2022 and was terminated without notice on 10 April 2025.
4. At the hearing Mr Miroslav Balaz appeared as a witness for the respondent and the claimant, the claimant's wife, Mrs Giorgia Rinna and Mr Jeremiah Wellington, a former employee of the respondent whose employment ended some time before the events in question in this case appeared as witnesses for the claimant. All witnesses adopted their witness statements and answered questions in cross-examination.

### **The Law**

5. S98 of the Employment Rights Act 1996 sets out the legal test which must be applied to determine whether or not a dismissal is fair:

*“General.*

*(1)In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*

*(a)the reason (or, if more than one, the principal reason) for the dismissal, and*

*(b)that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

*(2)A reason falls within this subsection if it—*

*(a)relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,*

*(b)relates to the conduct of the employee,*

*(c)is that the employee was redundant, or*

*(d)is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.*

*(3)In subsection (2)(a)—*

*(a)“capability”, in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and*

*(b)“qualifications”, in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.*

*(4) 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."*

6. The case of **British Homes Stores Limited v Burchell [1978] IRLR 379** applies to misconduct dismissal and sets out the three limbed test that I must apply:

- 6.1. Did the employer believe the employee to be guilty of misconduct at the time of dismissal?
- 6.2. Did the employer have in mind reasonable grounds on which to sustain that belief?
- 6.3. When the employer formed that belief had it carried out a reasonable investigation in the circumstances?

#### **The claimant's case**

7. The claimant's case is that there was insufficient evidence against him and that the process of dismissal was unfair. More specifically Setare Ltd (the claimant's company) did not trade and there was no evidence that it did, that neither the website nor social media offered products for sale and the respondent's allegations were unsupported, the allegation he was operating a competing business was unsupported by evidence and the alleged loss by the respondent was unevicenced. The respondent acted unfairly in rejecting his offer to provide a written response and participate in a virtual meeting. The respondent had prejudged the outcome.

#### **The respondent's case**

8. The respondent relies on an implied term of the contract of employment that an employee has a duty of fidelity to the employer, the employee must not compete with the employer and the employee must not misuse the employer's property.
9. The respondent also relies on a confidentiality agreement dated 21 February 2022 signed by the claimant. In relation to the confidentiality agreement the respondent asserts the following:
  - 9.1. art works created by the respondent satisfy the definition of confidential information;
  - 9.2. under clause 2.1 of the confidentiality agreement the claimant was under the obligation to not use or exploit confidential information;
  - 9.3. under clause 5.1.2 of the confidentiality agreement the claimant was prevented from soliciting the custom of the respondent's clients during the period of the agreement and 24 months after the end of the employment.

## Findings of fact

10. In this section I have set out my findings of fact.
11. On 4 April 2025 Mr Balaz met with the claimant and informed him of the allegations which were that:
  - 11.1. Setare Ltd was a company of the claimant's and that its website setareproduction.co.uk was selling production products;
  - 11.2. the claimant had a profile on Instagram and Facebook that marketed "Setare Production"
  - 11.3. the website and social media had 27 images on there that were from the respondent
  - 11.4. this website was in direct competition with the respondent.
12. Mr Balaz's evidence was at first the claimant said that he did not know about the company. Then Mr Balaz laid out pictures from the website. At this point the claimant said that Setare Production was his wife's website and he denied the allegations.
13. I accepted Mr Balaz's evidence above was an accurate summary of what happened up to that point. Mr Balaz's evidence was clear and consistent, he had a good recall and his answers were internally consistent. Further, the claimant did not deny that this is what took place.
14. The claimant's evidence is that at this meeting Mr Balaz grabbed his neck, threatened him with a pen and demanded that the claimant sign a resignation letter which he refused to do and left immediately. The claimant says that he reported this to the police and photographs of his injuries were taken.
15. Mr Balaz denied this is what happened.
16. The claimant's witness Mr Wellington set out in his witness statement that Mr Balaz had said he "didn't belong in this country" but in his oral evidence he indicated that he raised that somebody else had said this to him with Mr Balaz. I was not satisfied that Mr Wellington had a good recall of events and this is not surprising given that his employment ended in October 2023 which is over 2.5 years ago. Mr Wellington also said that Mr Balaz had grabbed his shoulder and made him feel uncomfortable. I have decided to give little weight to Mr Wellington's evidence, I do not consider that he has a good recall of events and I do not consider that his evidence provides assistance to the issues that I need to decide in this case.
17. There is a record of a police crime number in the bundle but there is no record of photos despite the claimant saying these were taken. It is not clear to me what, if anything happened, in relation to the police report. It appears that nothing did indeed happen. Further, there is no record of what the police report was.
18. I accept that there was some sort of incident between the claimant and Mr Balaz which made the claimant feel threatened. Mr Balaz was not questioned on the incident but he denied it in his witness statement. The claimant was upset when he gave his evidence about this to the tribunal and therefore I accept that an incident happened which made the claimant feel threatened but I am not prepared to accept

that there was physical violence given the lack of supporting evidence and the very general account of events in the claimant's witness statement.

19. It is agreed that the claimant was sent home and there was an exchange of emails.

20. An email from Mr Balaz at 12:56 on 4 April 2025 referred to the investigation meeting taking place earlier that day and setting out allegations which were as follows:

- Setting up Facebook profile leading to selling Setare production products for last 11 month
- Setting up Instagram profile leading to selling Setare production products for last 11 month
- Setting up [Setareproduction.co.uk](https://www.setareproduction.co.uk) website leading to selling Setare production products
- Using at least 27 artwork from Impera Italia database without permission

21. This email also set out: *"I would like to hear from you any clear evidence of your noninvolvement 8th of April 2025 by email"*

22. On 7 April 2025 at 11:39 the claimant responded via email which included the following *"I will provide a full response once I have had the opportunity to review the matter with legal counsel"*. At no time did the claimant set out any further information about his response to the allegations and he did not ask for more time.

23. On 7 April 2025 at 14:11 the respondent responded via email which said amongst other things *"I would like to invite you for disciplinary hearing tomorrow 8th of April 2025 at 4:30 PM at Impera Italia premises hearing is run by Sebastian Mejia"*. The email did contain some emotive language but there were no threats.

24. On 8 April 2025 at 07:57 the claimant responded via email setting out:

Due to the serious incident that occurred during our meeting on 4th April — where I was physically intimidated and assaulted — I do not consider it safe or appropriate to return to the company premises.

Given the absence of an independent HR process, and the seriousness of the situation, I will not be attending the hearing. Please direct any further communication in writing.

25. On 8 April 2025 at 18:51 by cover of email Mr Balaz sent a letter requiring the appellant to attend a "second and final disciplinary hearing" which was scheduled for 10 April 2025. This letter set out the following matters of concern:

1. Setting up Facebook profile leading to selling Setare production products for last 11 month
2. Setting up Instagram profile leading to selling Setare production products for last 11 month
3. Setting up [Setareproduction.co.uk](https://www.setareproduction.co.uk) website leading to selling Setare production products
4. Using at least 27 artwork from Impera Italia database without permission
5. Using opportunity working from home for your own benefits
6. Constantly creating conflicts with most of colleague employees

26. It also stated that the allegations would be regarded as serious misconduct if they were substantiated, that intellectual properties were taken without authority or

reasonable excuse, taking part in the activities caused the company loss of £10,000, that the claimant could be accompanied by an employee and that if matters were substantiated his employment may be terminated. It also set out that the hearing will be conducted by Sebastian Mejia and Olivia Biesiaga as a notetaker.

27. On the day of the rescheduled disciplinary hearing, 10 April 2025 at 07:25 the claimant responded and said that he was “*fully committed to addressing and responding to the allegations made against me*” and

Given the current circumstances, I am unable to attend an in-person hearing. However, I am prepared to provide a comprehensive written response to the allegations or participate in a virtual meeting, should that be deemed appropriate. I believe this approach would ensure that the disciplinary process remains fair and that I am afforded the opportunity to present my case adequately.

28. The respondent proceeded with the meeting in the claimant's absence and did not give him an opportunity to have the meeting remotely or for him to provide written documentation. On 10 April 2025 at 17:20 the claimant was sent a dismissal letter. This refers to a fundamental breach of contractual terms which irrevocably destroys the duty of trust and confidence and it also says that this was gross misconduct and dismissal was with immediate effect.

29. It is important to note that the claimant was not claiming that the respondent had carried out a repudiatory breach of contract and he had resigned. To the contrary, he was stating that he should not have been dismissed.

## **Decision**

30. I have applied the first stage in the **British Homes Stores Limited v Burchell** test. I find that the employer believed the employee to be guilty of misconduct at the time of dismissal.
31. The claimant submitted that he considered that his dismissal was to save costs but I do not consider that this played any part in his dismissal. The respondent has provided considerable evidence about the matters on which it said it relied in dismissing the employee. Therefore, I find that the respondent had a belief that the employee was guilty of misconduct at the time of dismissal.
32. In relation to the second limb of the **British Homes Stores Limited v Burchell** test, Did the employer have in mind reasonable grounds on which to sustain that belief? I make the following decision.
33. The claimant's position was that his website was not set up to take payments and in fact he had not carried out any business or obtained any work through it. His position was that he would be providing a service of carrying out the painting or application of Venetian plastering and that the products and prices were only on the website so that potential customers could understand the cost of these products and how these contributed to the cost of the service price. It was also his intention that he would buy the products from the respondent and so they would not have any loss. The respondent did not offer the service and so they were not competing.

34. While this may have been the claimant's intention, I find that the information available to the respondent did not show what the claimant said it did. Instead, and to the contrary, the website appeared to showcase a competing business selling the same products as the respondent. No discussions had taken place with the respondent about the claimant buying products from the respondent so there would be no reason for the respondent to consider that this was the claimant's plan. Whilst the claimant said that the buying facilities were not set up the website clearly shows products to buy with prices. It was reasonable for the respondent to believe that this was a competing business.
35. There is no disagreement that some of the images on the website use some of the images from the respondent's website. This is because the respondent's website has images of the paint or plaster in situ and these also appear albeit in a different manner on the claimant's website to show similar. I do not consider that those images are a breach of confidential information. The images on the website are public facing and it has not been demonstrated that there is any copyright or anything protecting the confidentiality of those images. The respondent could not reasonably believe that the claimant had breached the confidentiality agreement in this regard.
36. However, I consider that on the face of it the website appears to be a competing business set up by a current employee. Further, I accept the respondent's evidence that there were Facebook and Instagram posts linking through to the website. This is not disputed by the claimant. The claimant also does not dispute that he shut down those accounts and effectively shut down the website immediately after the issues were raised with him.
37. The claimant also does not dispute that he did not initially deny the allegations or that then he said that his wife was responsible in large part for this.
38. The claimant did not provide the information and explanations he gave to the Tribunal to the respondent. He did not engage with the investigation and disciplinary process, he did not put his side of the story.
39. Therefore, on the information that the respondent had available to it I find that the respondent had in mind reasonable grounds for that belief.
40. The claimant submitted that the respondent had prejudged the decision to dismiss as a dismissal letter was dated 8 April 2025 but referred to a meeting on 10 April 2025. The respondent's position was this was a typo. I find this is not material, the claimant failed to provide any evidence to support his case at any time. It is not the case that the claimant submitted information between 8 and 10 April that could and should have been considered by the respondent. Further, as the meeting was originally scheduled for 8 April 2025, I accept that this was a typographical error.
41. For completeness, I do not accept that a reasonable respondent could reasonably believe that the confidentiality agreement at clause 2.1.2 or 5.1.6 were breached. Clause 5.1.6 is not enforceable given that it purports to restrict employees for 24 months after the end of their employment without geographical limit. I do not accept that a reasonable employer could conclude that was a term that could be enforced or that a breach of that term could be enforced.

42. In relation to the third limb of the **British Homes Stores Limited v Burchell** test, When the employer formed that belief had it carried out a reasonable investigation in the circumstances? I find the following:
43. The claimant's case is that he was denied the opportunity to put his case. The claimant was informed about the allegations against him. They were first put in a meeting on 4 April 2025 about which the claimant had no prior knowledge or what would be discussed. However, after that meeting several emails were sent which set out the allegations against him. Further, the email from the respondent of 4 April 2025 invited the claimant to set out a response to the allegations by email by 8 April 2025. However, at no point did the claimant set out a written response to allegations. Not only did he not do so by 8 April 2025, he did not do so by the time of the rearranged disciplinary meeting on 10 April 2025. I find that the respondent gave the claimant fair opportunity to respond to the allegations in writing and the claimant failed to do this. I find that the claimant was given sufficient time to respond to the allegations in writing and he wholly failed to respond.
44. The situation in relation to the location of the disciplinary meeting is a little more complicated given that the claimant was intimidated at the meeting on 4 April 2025. It is unarguably unreasonable for Mr Balaz to have conducted any further meetings with the claimant in the circumstances but the respondent did not suggest that. Instead, the respondent proposed another individual and another notetaker to carry out the meeting.
45. The claimant's position was that the respondent is a small business with a few employees and in response to my questions he said that he thought Mr Balaz would be around the meeting. He also said that the police had told him not to attend the premises. He had requested that the meeting take place virtually. I accept Mr Balaz's undisputed evidence that the claimant lived very close to the respondent's premises.
46. I have carefully considered if the respondent's refusal to hold the meeting virtually was unfair. I note that the claimant only made one request for the meeting to take place virtually and this was on the morning of 10 April 2025. I have decided in all the circumstances that it was not unfair for the respondent not to agree to a virtual meeting. Even though the claimant was working from home around that time, he has regularly attended the premises and he did not have a wholly remote role. It is reasonable to require an individual to attend a disciplinary meeting on a face-to-face basis in all the circumstances.

#### *Lack of appeal*

47. The ACAS Code of Practice includes the right to appeal as one of the basic elements of fairness. Para 3 of the ACAS Code states that: *'Employment tribunals will take the size and resources of an employer into account when deciding on relevant cases and it may sometimes not be practicable for all employers to take all of the steps set out in this Code.'* I bear in mind that the employer is a small business with few employees and limited resources given its size. It does not have a HR function or significant management.
48. The claimant was not offered the right of appeal and he did not submit an appeal. The respondent made submissions that this was not unfair in all the circumstances

particularly given that the respondent was a small employer. I find that this was unfair, the claimant had not participated in the dismissal process but he had not demonstrated a blanket refusal to do so. Offering him an appeal would have provided the employer with the potential opportunity of acquiring evidence or a response from the claimant.

49. In coming to this decision, I have relied on the Court of Appeal's judgment in **Taylor v OCS Group Ltd 2006 ICR 1602, CA.** in which it was held that the task for an employment tribunal when considering whether the employer acted reasonably in dismissing is to assess the fairness of the disciplinary process *as a whole*. The whole includes the appeal process.

50. I have concluded that the failure to offer an appeal, in the circumstances, means that the dismissal is unfair because the respondent did not act reasonably in dismissing in light of the disciplinary process taken as a whole ie including the appeal element.

### **Conclusion**

51. I have concluded that the dismissal was unfair and therefore the claimant is entitled to a basic award of £2134.61

52. In relation to wrongful dismissal, I must consider if the dismissal was a breach of contract which is that the conduct did not amount to gross misconduct.

53. I have been provided with more evidence than was available to the respondent. In particular, I have been provided with evidence from the claimant himself that the website could not take orders and that he intended to source the products from the respondent and only provide services.

54. I find that the claimant has not breached the confidentiality agreement. As set out above, the non-compete clauses are not valid contractual terms due to their extremely wide scope and duration. I also do not accept that the wall images are confidential information. The claimant has not breached this agreement.

55. I must consider if the claimant has breached the implied duty of fidelity which includes not setting up a competing business or taking substantial preparatory steps to do this. I have given careful consideration to the situation, I consider that the respondent reached a reasonable conclusion on the information available to it but with the further information available to me, I find that, on the balance of probabilities, the claimant was not intending to or setting up a competing business and he did intend to source products from the respondent and only provide services. Therefore, the claimant did not commit gross misconduct or another breach of the employment contract and he was wrongfully dismissed.

56. The claimant is awarded £2134.61 in respect of 3 weeks notice pay.

57. He is also entitled to a payment of £500 in respect of loss of statutory rights.

58. The claimant does not claim a compensatory award as he found a new job immediately.

Approved by:

**Employment Judge Bartlett**

22 June 2026

JUDGMENT SENT TO THE PARTIES ON

23 June 2026

FOR THE TRIBUNAL OFFICE