



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr B Wright

**Respondent:** Extraction Solutions Limited

**HELD at Sheffield**

**ON: 4 and 5 June 2026**

**BEFORE:** Employment Judge Miller

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Ms Hallam, Solicitor

# JUDGMENT

The complaint of unfair dismissal is not well-founded and is dismissed.

# REASONS

## Introduction

1. The claimant was employed by the respondent as a Duct Fitter/LEV & Service Engineer. His employment ended on 23 June 2025. He undertook early conciliation between 18 August 2025 and 26 August 2026 and he submitted his claim for unfair dismissal to the Employment Tribunal on 28 August 2025.
2. The basis of the claimant's claim for unfair dismissal is that:
  - a. Misconduct was not the real reason - James Parkes wanted him out of the business
  - b. The dismissal was procedurally unfair in any event because (as the claimant confirmed in cross examination):
    - i. He was investigated using unregistered CCTV (by which he means it was not registered with the ICO)

- ii. The respondent started investigating him without telling his actual work manager (his father) who would have been able to tell them where he was at the time of the relevant incidents
  - iii. The process was not impartial because it was two brothers against him
  - iv. The disciplinary process took too long – 3 months – so that the claimant had no opportunity to explain where he was in respect of each incident as it was too long ago to remember
- c. The sanction of dismissal was too harsh overall.
3. The respondent asserts that the claimant was dismissed for a potentially fair reason – namely a reason related to conduct – and the dismissal was procedurally fair.

### **The hearing and procedural matters**

- 4. The claim was listed to be heard initially for one day and that was postponed at the request of the respondent and relisted for two days on 4 and 5 June 2026 in person at Sheffield Employment Tribunal.
- 5. The claimant provided a witness statement and attended and gave evidence. He also provided witness statements from Mark Butterfield, who was his representative and companion at the disciplinary hearing and the appeal, and Cole Barrett a former colleague of his. Both of those witnesses attended and gave evidence.
- 6. The claimant's evidence was paused towards the end of the first day to enable Mr Butterfield and Mr Barrett to be interposed to give their evidence so that they did not have to return the next day and to make most efficient use of the time. I am grateful to the parties for their assistance in agreeing to that.
- 7. The respondent produced witness statements from Luke Parkes and James Parkes, who are directors of the respondent, and Sophie Appleyard, independent HR officer who worked for Alcumus Safe Contractor Limited t/a Safe HR who was appointed to and did conduct the appeal process. All of those witnesses attended and gave evidence.
- 8. There was also a supplementary witness statement from the claimant which was dated 20 May 2026 which was provided after the main exchange of witness statements. The respondent's representative did not object to the inclusion of that. That second statement was in a substantially different style and the claimant explained in the course of the hearing that in fact he had had the assistance of AI to produce that second witness statement.
- 9. There was a bundle of 410 pages which included 10 or 11 additional pages produced by the respondent only on the day before the hearing or very shortly before the hearing. The claimant had seen those but as they dealt only with the length of the claimant's employment which was likely to be relevant only to remedy, I decided to allow those documents in on the basis that if the claimant's claim was successful it was unlikely that remedy would be dealt with in this hearing.
- 10. In the event there was only just enough time to hear the evidence of the parties which included starting at 9.30 on the second day and taking a truncated

lunchbreak and I again express my gratitude to the parties for being flexible in their attendance. It was agreed that further written submissions would be exchanged on 15 June 2026 when they would be sent to the Tribunal and the other side and each of the parties would have the option to produce a short reply to the submissions by sending them to the other side and the Tribunal on 19 July 2026.

11. I have received and considered those submissions. Although the respondent made references to a claim of wrongful dismissal (breach of contract for failure to give notice of dismissal) in their submissions, there is no such claim in the claim form, and I have not considered it.

## Findings of fact

12. I make the following findings of fact. Where matters have been disputed, I have made the decision on the balance of probabilities. Just because I did not refer to a particular piece of evidence does not mean that I have not taken it into account.
13. The respondent is a family firm. The owners of the firm are the claimant's father Mr Nick Wright (hereafter referred to as Nick) and Theresa Parkes. Theresa Parkes (Theresa) is the mother of Luke Parkes (Luke) and James Parkes (James) who are the directors, Nick being the other director. There were at the relevant time a total of 6 employees. Aside from Nick, James and Luke, there were no employees with any management responsibilities.
14. Until 2024 there were two owners and directors being Nick and Neil Parkes (Neil). Neil was the father of James and Luke and sadly he passed away in 2024. On 20 December 2024 Luke and James were appointed as directors after the shares were passed to Theresa. The claimant was not a director nor a shareholder and it is relevant context to which I will come that part of the claimant's case related to this arrangement.
15. The respondent was in the business of commercial wood waste extraction. I did not hear any detail about what this involved and it is not relevant to the case. However, it does appear to require numerous site visits and engagements with customers and the claimant's role included a requirement to attend site to undertake assessments, planning, engineering and similar matters. The detail is not relevant to the issues in this case, but the fact that he needed to attend customer sites is.
16. The claimant was based at one office, and the directors were based at another office in Huddersfield. The claimant predominantly worked with his father, Nick, and another person in the workshop when not on site.
17. As far as the chronology is relevant to the matters that I have to decide, an issue came to James' attention on 1 March 2025. James said in his witness statement, and I accept his unchallenged evidence, that  
"on 1 March 2025 the claimant's colleague went to a site to complete a Service/LEV. Later that week the customer called me to question if all the work could have been completed satisfactorily in 2 hours. Having reviewed the timesheet both the claimant and his colleague had claimed a full day's hours. I called both the claimant and his colleague to discuss this, and both stated they believe they had been on site for longer than 2 hours, perhaps around four hours, and said they got caught in traffic on the way back".

18. A further issue arose on 19 March 2025 when James was in conversation on a call with the claimant during which he confirmed that he had been to a site that day to meet with a crane company. James said that he was aware that the requisite site visit had already taken place for that particular job and given historic issues with the claimant's claimed whereabouts including the issue on 1 March he decided to check with the supplier during the call he was having with them if the claimant had been to the site with them that day.
19. The reference to historic issues is a reference to matters that James said he raised in 2023.
20. I find that he did raise matters about the claimant previously, although not with the claimant directly. He raised with the directors that he was concerned that the claimant was not working properly and was unreliable in his time recording.
21. It is relevant to state at this point that the respondent had a mobile phone app called Evalu8 which is used for recording time. The employees could tap on a button to clock in and then tap on another button to clock out. It was not disputed that the practice was that employees would clock in when they arrived at the workshop and clock out when they left the workshop if they were working at the workshop. However, if they were working on site they could clock in from home if they were going straight to the site from home and they could clock out from home if they returned from site directly to home. If on the other hand they needed to go to the workshop before going to the site or before going home that they needed to clock in and out at the times they arrived at and left the workshop.
22. Returning to the conversation with the supplier and James on 19 March 2025, the supplier told James that the claimant had not been to the site since visiting with his father some weeks earlier. James then undertook a further check by contacting the site directly. The person James spoke to at the site said that they had not met with anyone from the company.
23. James decided that he needed to investigate this potential difference between the hours the claimant was working and the hours he was claiming and sought HR advice about the best way to progress his concerns. He decided to undertake an initial investigation. It was the claimant's case that rather than going straight to a detailed investigation James should have just sat him down and had a chat with him about it or in fact that he ought to have spoken to his father who the claimant said was his line manager and discuss that with him. It was agreed that his father was away at that time. It was disputed that the claimant's father was his line manager. I prefer the respondent's evidence that in a small company comprising between 7 and 10 employees including the directors there was no formal line management structure.
24. The claimant did not appear to take issue with the fact that there was an investigation per se. The claimant's main concern was that the investigation had started without discussions with his father. He was also concerned that the respondent had waited a long time before putting the allegations to him rather than contacting him directly about that.
25. James and Luke's evidence was really that they were unsure of the best way to do this so they took HR advice who advised on a formal investigation and that is what it did. I prefer their evidence that they considered the claimant's potential misconduct to be serious in light of the two potential issues in quick

succession and the earlier issues in 2023 and that is the reason they decided to conduct a formal investigation. I find that the reasons they did not speak to Nick was because (1) he was away at the time of the alleged or potential incidents so that he would not have been able to offer any additional information (2) he was not formally the claimant's line manager.

26. James then undertook an initial investigation. This comprised of reviewing the claimant's timesheets which were recorded on the Evalu8 app and then seeking to confirm the claimant's attendance in line with timesheets. He then continued to monitor the claimant from 19 March to 1 April. He did this without informing the claimant and the way he did this was by checking his Evalu8 entries and by looking at the CCTV to see if the claimant was at the workshop when he said he was.
27. There are eight incidents of potential wrongdoing which included inaccurate recording of time, claims for mileage for trips that were not taken and other matters which I will come to in due course.
28. In terms of the Evalu8 information, there is evidence in the bundle. which I accept as accurate, of changes to the Evalu8 system made by the claimant.
29. Those changes are to the effect that the claimant initially clocked on at one time – around 10am for example – and then shortly after clocking on went into the system remotely on the computer and changed the log in time to a much earlier time. The system records access and changes and it records it against the username that has been relied upon. There are a number of changes in March 2025 where the claimant is recorded as changing his time.
30. James also reviewed the CCTV evidence and made enquiries of some of the contractors. This was sufficient for him to conclude that there were a number of occasions when the claimant was recording time on his Evalu8 app for which there was no evidence that he was working. He collated that evidence and then on HR advice passed it to Luke to undertake a formal disciplinary hearing.
31. Luke met with the claimant on 24 April and then had a phone call with him on 2 May or possibly the other way round (it is not material) when he went through the allegations.
32. Luke did not inform the claimant in advance what he was meeting him for. He just said he wanted to meet for a chat to catch up about the calendar. To that extent therefore the claimant was taken by surprise.
33. There is a summary note of the content of those two meetings – it is not an attempt at recording questions and answers (whether verbatim or otherwise), and it does not distinguish between the two meetings. The dates when there were alleged discrepancies were put to the claimant and the claimant provided an explanation for each of the occasions when it was said that there was a problem. Except that the notes record that on 19 March the claimant said he was at a site with someone called Lee Wolstenholm and the claimant said he in fact referred to "the crane man", the claimant accepted in his oral evidence that those notes were broadly accurate. The claimant said in evidence that "the crane man" was Danny, not Lee.
34. Luke was not satisfied with the explanations the claimant had given and concluded that there was then a case to answer. He prepared an investigation report together with James and with support from HR dated 19 May 2025.

35. The report sets out details of each alleged incident of misconduct which includes a summary of each allegation, followed by a summary of the evidence, which included what the claimant had said in the fact-finding meetings.
36. The allegations in the report are as follows
  - a. Wednesday 12<sup>th</sup> March – Late arrival, modification of hours, and data removal. This related to the claimant allegedly altering his clocking in time and that there was no CCTV of the claimant being in work when he now says he was.
  - b. Wednesday 19<sup>th</sup> March – Inconsistencies with stated work. This is about the claimant saying he was at Polypipe but the client saying he was not.
  - c. Thursday 20<sup>th</sup> March - Late arrival, modification of hours, data removal, inconsistencies with stated hours, and false expenses claim. This relates to the claimant altering his clocking in time and the apparent deletion of CCTV. The claimant was not seen on CCTV at the times he is said to have amended EValu8 to.
  - d. Friday 21<sup>st</sup> March – False milage and hours claim. This relates to the claimant clocking out after his apparent leaving time and claiming a fuel allowance when using a company van (rather than his own car).
  - e. Sunday 23<sup>rd</sup> March - False mileage and hours claim. This relates to the claimant claiming double time for working on a Sunday and fuel to travel to Penrith where the respondent believed they had evidence he did not visit the relevant contractor on that day.
  - f. Monday 24<sup>th</sup> March - Inconsistencies with stated work. This relates to the claimant clocking on and off from home where he is said to have started work in the workshop and was untraceable for the majority of the day.
  - g. Thursday 27<sup>th</sup> March - Late arrival, modification of hours. This relates to the claimant changing his clocking in time on EValu8 and not being able to account for his whereabouts for a 3 ½ hours.
  - h. Saturday 29<sup>th</sup> March – Time Inconsistencies. The relates to the claimant clocking in from home when he was coming to work at the workshop and then being unable to account for his whereabouts for 3 ½ hours.
37. There is then a set of conclusions about each of the allegations.
38. It is also material to note that in the introduction to the report it says:

“There is a history of similar misconduct concerning timing and whereabouts from around 2022. With a meeting of directors held to discuss a misconduct event in 2023 when Ben was caught lying about finish times by a director”
39. There is no contemporaneous documentary evidence of this and the claimant disputes this.
40. Luke then on 19 May 2025 sent that report together with the accompanying evidence which comprised CCTV footage, mileage claims and information from contractors and sent it to the claimant along with an invitation to a disciplinary hearing. That invitation set out the allegations clearly as
  - Changing of timesheets to show earlier arrival without permission.
  - Leaving work and claiming hours without permission or justification.

- Claiming expenses for journeys not undertaken.
  - Claiming expenses for journeys not undertaken in own vehicle.
41. The invitation letter included giving the claimant the right to be accompanied by a work colleague or trade union official and warned the claimant that the outcome of the hearing could be dismissal. The letter also referred to the Disciplinary Procedure which was available on the computer system, and I find as a fact that the claimant had had access to that throughout his employment. The location of the policy was made explicit to the claimant in an email of 4 June 2025 and there is no reason why the claimant could not have accessed it at that point, if not earlier. In fact, in evidence, the claimant said he did not think he would need it, the clear implication being that the claimant did not think he would be dismissed.
42. It was clear from the claimant's oral evidence that he did not believe that dismissal was a real possibility although I heard no evidence to suggest any reasoned basis for that belief.
43. The claimant was initially invited to a disciplinary hearing on 4 June 2025 but at his father's request that was put back to avoid causing disruption to a family holiday.
44. Prior to this invitation there had been a directors' meeting on 6 May 2025 after the investigation but before the invitation to the disciplinary hearing at which Nick was informed of what was going on. It is worth setting out in their entirety the transcript of the part of the conversation (which is between James and Nick) that I have:

"NW – Nick Wright

JP – James Parkes

JP - .. from a service Ben was in the office on his own, he left at 3 or quarter past 3 or whatever it was and then told my dad he'd left at 5 o'clock and then lied to his face and said oh I left at 5 but he didn't, oh what time did you leave, well 5 o'clock, well cctv shows you leaving at 3, ah well well you know then don't you, like it's not erm it's not the first time he's lied about where he is or what he's doing

NW – no

JP – you know and I understand it's not nice, but you know it's not it's not it's clocking out and going home isn't the same as going somewhere and not working and claiming the hours and claiming the expenses

NW – Right well I'll have to have a word with him about it

JP – yeah, well you, do you want to get are you happy for the HR team to chair the meeting seems the most fair way of doing it cos then we're not doing it, you're not doing it, it's just impartial for them to come in and sort it out

NW – yeah what they coming in to do like

JP – chair the disciplinary

NW – right, for a verbal warning

JP – no it's you know it's gross misconduct

NW – right

JP – you know they'll advise on what we're going to do ... but you know it's stealing time and money you know, I know it's fucking hard"

45. I make the following findings about this meeting:
- a. Nick agrees, in this meeting, that this was not the first time that the claimant had lied about where he is or what he is doing. On the balance of probabilities the respondent had had concerns about the claimant accurately recording his work previously.
  - b. Nick did not disagree that formal action needed to be taken.
  - c. James was informing Nick of the impending disciplinary allegations and that he was proposing to deal with it in as fair a way as possible. I find that by referring to gross misconduct he was not predetermined. This is a perfectly realistic way of discussing a potential outcome from the allegations.
  - d. The reason that Nick was kept out of the process was because there was an obvious and apparent conflict of interest arising from Nick being involved because he was the claimant's father.
46. Initially, the respondent wanted to appoint an HR company to make the decision whether to dismiss the claimant or not. However, the HR company said they would not do that, but they would give advice and so Luke was then appointed to hear the disciplinary hearing and that led to the letter of 19 May 2025.
47. There was then a disciplinary hearing on 5 June 2025. This was conducted by Luke, and James attended as a note taker. I prefer Luke and James' evidence that it was in fact Luke who chaired and conducted the meeting and James who attended as a note taker. Tanya May, an HR advisor, was there as support and the claimant attended and was accompanied by his uncle – Mark Butterfield – who does not work for the company but was allowed to attend as an adjustment outside the usual rules about being allowed to have a trade union representative or a work colleague attend.
48. At that hearing the claimant was asked questions about each one of the eight allegations against him. The claimant responded to each of those and he gave an explanation. I find that the explanations he gave were not always consistent with the explanation that was given at the fact-finding hearing meetings on 24 April and 2 May. The claimant made the following specific points:
- a. That he understood how to use Evalu8 but could not explain why the times had been changed
  - b. He did not know that he was supposed to ask Luke if hours on Evalu8 needed to be changed – he said he thought it was not policy but an informal arrangement
  - c. His account about 19 March (when he was alleged to have recorded time for a visit to Polypipe that did not happen) changed from the fact finding. He had said he was there, and at the disciplinary hearing said that he must have arranged the meeting then cancelled it. He said he did not know why he would have said he was at Polypipe originally.

- d. In respect of the CCTV footage relied on to show the claimant's attendance or otherwise at the workshop, he said he didn't have access to the CCTV except on his phone.
  - e. In respect of a claim for hours on a Sunday (23 March 2025) he said that he had been told to keep the day free in case he was needed at the site in Penrith and instead decided to drive there to be available. In the fact find he had said that he was in fact on site in Penrith. He confirms that he was not actually needed on site so did some shopping had lunch and went home. He then clocked out when he got home.
  - f. Broadly, he could not remember or explain why he had claimed to have worked or for mileage when there was evidence that he had not done the work or the miles.
49. The claimant was given an opportunity to answer questions about all the allegations. He was given an opportunity to present extra evidence, and he did not do so. I find that prior to the hearing he had had the detail of the allegations; he had been provided with the evidence the respondent relied on, and he had been told (even if he did not believe it) that dismissal was a possible outcome.
50. At the end of the hearing the claimant was given a further opportunity to produce any additional evidence that he might have to support any of his claims in relation to the allegations.
51. I prefer James' evidence that in circumstances where an employee in the claimant's position undertakes a site visit it is extremely likely that there will be documentary evidence showing that they attended at that sight. For example, photographs of work undertaken, texts with contractors and so forth. The claimant did not produce any. The only evidence that the claimant subsequently produced was a photograph of his van at Penrith which he says he had taken as evidence related to a scratch to his van. This relates to 23 March 2025 about which I heard a lot of evidence.
52. As mentioned above in the discussion about the disciplinary hearing, this was a Sunday and it was the claimant's case that he was told that he would have to make himself available in case a particular contractor wanted assistance on a job in Penrith. The claimant then clocked on in the morning, drove to Penrith to be available in case the contractor did want to see him and then drove home again around 2pm clocked out at around 5pm and claimed a full day's wages. As it was Sunday that was at double time. The respondent had evidence from the relevant contractor. It was their belief that the contractor had said that they had phoned the claimant at 10.30 in the morning and said that he was not required. It was not accepted that the claimant was asked to be on standby or on call and so was entitled to claim a full day's wages. The respondent's view was that the claimant had gone to Penrith but had not been to the contractors and there was no need to go to Penrith.
53. I find that the respondent took account of the inconsistencies between accounts in the fact-finding meeting and the disciplinary hearing and the absence of any reasonable explanation from the claimant for the absences. The evidence of the claimant being in Penrith did not assist his case. The respondent's view was that regardless of everything else even if it was the case, which they did not accept, that the claimant was on call, that obligation to be on call ended after the contractor had told the claimant at 10.30 in the morning that he was no

longer required on site. At best therefore the claimant should have clocked off at 12.30 or 1pm having returned home from Penrith. Instead, the claimant agreed that he spent the day in Penrith shopping having some lunch and return home later. The claimant's view was that he was on call for the whole day.

54. Although it is not my job to make findings about whether the particular allegations occurred or not, I do observe that the claimant's account of this made almost no sense. If he was on call in case the contractor needed him there was no good reason why he would need to remain on call once the contractor had confirmed that he did not need him.
55. Having received no substantial useful relevant evidence afterwards Luke then made a decision and dismissed the claimant. All but one of the allegations was upheld.
56. He sent the claimant a very detailed 10-page letter dated 23 June 2025 in which he sets out the findings from the fact finding, what was said at the disciplinary hearing and his conclusion on each of those allegations. It is a thorough decision letter, and I find as a fact that it reflects the real reason for the decision to dismiss the claimant.
57. In oral evidence, James said that had the claimant been able to establish any problems with the Evalu8 system that were relevant to his issues or produced evidence to contradict even some of the alleged incidents, he would have given the claimant the benefit of the doubt. Luke's evidence, which I accept, was that he did not want to undertake this exercise at all and was not happy to dismiss the claimant.
58. I find that both Luke and James approached the decision with an open mind and would quite possibly have come to a different decision had there been any evidence to support the claimant's case.
59. The claimant then immediately submitted an appeal on 24 June 2025, and he set out his grounds for appeal. The headings in the claimant's appeal were:
  - a. Lack of credible evidence and over-reliance on flawed information. This was effectively a challenge to the evidence the respondent relied on
  - b. Unlawful and Abused CCTV Evidence: A foundation of illegality. This queries whether the respondent's CCTV was registered with the Information Commissioners Office (it is not disputed that it was not at the time) and improper monitoring of employees by the directors;
  - c. Targeting, bullying and the erosion of trust. This related to the claimant saying the respondent had created a hostile workplace by monitoring him; that evidence had been fabricated (this related to an implication that the claimant had altered CCTV footage); that there was a breakdown of trust.
  - d. Lack of Mental Health Wellbeing and Support: Breach of duty of care. The claimant asserted that the respondent had not offered him any support.
  - e. Employment Record and disproportionate response. This is effectively saying the claimant had a previous clean record and dismissal was disproportionate.
  - f. Request for fair process and Reinstatement. This effectively summarised the previous areas of appeal.

60. The respondent decided to allocate this appeal to an independent HR company. It was the same company who had advise don the disciplinary process but a different person, and I find as a fact that Sophie Appleyard (Sophie) who was appointed to hear the appeal was independent and had no involvement with the disciplinary proceedings before meeting the claimant beyond administrative arrangements for setting up the appeal. There were no notes of the appeal hearing and I accept Ms Appleyard's evidence that the reason for that was that MS Teams failed to record and transcribe the meeting as she anticipated that it would do.
61. There is little to no evidence in her witness statement about what was said at the appeal hearing. I do prefer Sophie's oral evidence, however, that the claimant's main focus in the appeal was about the CCTV and, particularly, its lack of registration. She said, and I accept her evidence, that she did not consider that relevant to the decision she had to make.
62. The claimant also said that Sophie should contact his father after the appeal. She did not do so, and I accept her evidence that the reason she did not was that she considered that Nick would have no additional information to give. However I also accept the claimant's point that while Nick would not have been able as the claimant agreed to confirm the claimant's whereabouts at the relevant times because he was on holiday abroad, he may well have been able to give relevant context or information about the company's practices, procedures and general custom in respect of these kind of issues.
63. The claimant was given an opportunity to present further evidence and information after the appeal hearing. There was some communication, including from solicitors advising the claimant, but no further substantive evidence or witnesses.
64. The claimant did not raise any substantive complaints at the tribunal hearing about anything that was or was not said in the appeal hearing. His primary focus was about whether Sophie had been previously involved in the case, thereby making her undertaking of the appeal unfair. I have already made findings about that.
65. The appeal was not upheld.
66. Other relevant findings of fact are as follows.
67. I find that the claimant knew there was CCTV because he had access to it on his phone, he had been involved in its installation, and the CCTV monitor was in the office for everyone to see.
68. The claimant said that he had never had concerns raised with him previously about whether he was where he was supposed to be, or whether he was working adequately.
69. He said that James had a problem with him, but he was not able to be specific. As far as I can understand, he had heard rumours that James was, effectively, bad mouthing him to other employees about his standard of work. This is consistent with evidence I have seen that James raise concerns on 19 July 2022 about the claimant's performance/conduct with the directors (who included the claimant's father) but not with the claimant. This email also raised concerns about Nick and apparent relationship difficulties between the directors at the time.

70. I find that James did have a problem with the claimant prior to this process, but that was related solely to his perception of the claimant's willingness or ability to do his job. Not for any other nefarious reasons. The claimant asserted that James had made this up because he wanted him out of the business. I simply do not accept this. In that email James sets out a detailed set of concerns and is obviously seeking a resolution to them. However, given the context of the message it is entirely possible that Nick did not in fact raise James' concerns with the claimant. I do not need to make a finding about whether he did or did not because it has no bearing on my decision.
71. Cole Barrett went with the claimant to a visit or visits where the claimant was alleged to have claimed the wrong time. Cole Barrett put in a claim for the same time.
72. I prefer the respondent's evidence that there was an investigation into Cole Barrett's conduct and that they only found that he mis-claimed his time on the two occasions that he was with the claimant. He was therefore given a letter of concern which fell some way below four more disciplinary action.
73. Another relevant piece of evidence is that Nick purported to undertake the appeal process for the claimant after putting in his appeal and made the decision to reinstate the claimant. This was, I find, contrary to the wishes of the board of directors and it seems unlikely that he had authority to do that. On every occasion when the claimant attempted to come in and work in accordance with the purported reinstatement, James made it clear that the claimant no longer worked for him.
74. There was also a dispute about whether the claimant was expected to be appointed as a director on the death of his father. A document was produced which I find on the balance of probabilities was written by the claimant purporting to be from Nick stating that it was expected that the claimant would be appointed as the director in succession to his father. The more contemporaneous evidence is a transcript of a board meeting on 22 December 2025 in which Nick is recorded as saying that he had never said that he had any intention for the claimant to be appointed as a director. Either the claimant has made up the letter, altered it after his father wrote it, or in some way misrepresented his father's intentions in respect of the difference between leaving shares or appointing him as a director.
75. Similarly, there is a statement in the bundle purportedly from Nick who did not attend to give evidence. This was created with the assistance of AI. The reason that Nick did not attend the hearing to give evidence, the claimant said, was because he is again abroad on holiday. There is some further context to this in that the board had intimated that they may take some kind of action against Nick if he acted in breach of his fiduciary duties as a director by acting in favour of his son rather than in the interest of the company: for example as he might have done when he purported to reappoint him and allowing his appeal without authority.
76. I give that statement purportedly from Nick no weight at all. I do not have sufficient evidence to find that it is fabricated but in light of my observations about the letter and the absence of the claimant's father on holiday when the claimant has had long notice of this hearing, I conclude that I cannot reliably

conclude that any document produced by the claimant and purportedly written by Nick is in fact an accurate reflection of Nick's views.

77. It is also relevant to say that there is a dispute as to whether the claimant had initially been dismissed in 2020 by his father and then reappointed. The dismissal, if there was one, appears to have taken place in February 2020 and the claimant was then potentially reinstated in September or October 2020. This would be relevant to any remedy and that relates to the document that was disputed at the beginning of the hearing. The claimant's evidence was that his employment, if it had ended - and the claimant is unclear about that - was as a result of a dispute with his father about a matter unrelated to work. There was no direct evidence saying that it was related to his conduct.

## Law

78. A person has the right not to be unfairly dismissed. Section 98 Employment Rights Act 1996 provides (as far as is relevant) that
- (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)
    - (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.
79. In deciding whether the reason for dismissal was a potentially fair reason: "A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee". *Abernethy v Mott Hay and Anderson* [1974] IRLR 213, [1974] ICR 323:
80. In terms of reasonableness, *British Home Stores Ltd v Burchell* [1978] IRLR 379, [1980] ICR 303, provides valuable and regularly used guidelines:
- "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 (usually, though not necessarily, dishonest conduct) 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". (Our emphasis).*

81. It is trite law that the tribunal must not substitute its own decision as to whether the decision of the employer to dismiss the employee was fair but must decide whether the actions of the employer in dismissing the employee were within the range of reasonable responses of a reasonable employer. That question applies to each stage of the process (*Sainsbury's v Hitt* [2003] IRLR 23).
82. I refer also the Acas Code of Practice on disciplinary and grievance procedures which says at paragraphs 5 and 6
  5. It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing.
  6. In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing.

## Conclusions

83. I consider first the reason for the dismissal. It was the claimant's case that the whole dismissal was a sham - a predetermined effort to remove him from the business once James and Luke acquired the power to do so.
84. The claimant has produced no compelling evidence to support this assertion. In fact, the claimant has proven himself to be an unreliable litigant. The documents he produced purportedly from his father which might have supported such a proposition are wholly unreliable for the reasons I have set out.
85. The test for the reason for the dismissal is low threshold, and it really is just about the knowledge or beliefs of the dismissing officer. The dismissing letter dismissing the claimant is lengthy and detailed. I found Luke to be a plausible witness and in my judgment, he honestly believed that the claimant was guilty of misconduct and that was the reason for dismissing him.
86. Further, in my judgment the reason that James had an issue with the claimant was solely related to his performance. That can be seen from his communications with the directors in 2022 where he set out his frustrations about the claimant.
87. However, in my judgment, the real question is answered by considering Luke and his actions and I have no hesitation in concluding that he genuinely believed that the claimant was guilty of the alleged conduct and that was the reason for dismissing him.

88. The next question is that under section 98(4) of the Employment Rights Act 1996: 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
89. The claimant made four specific points about reasonableness.
90. He said that the dismissal was unfair because he was investigated using unregistered CCTV. He had initially said it was covert CCTV surveillance, but sensibly abandoned that assertion.
91. It was not disputed that the CCTV was not registered with the Information Commissioner at the time that the CCTV was used. It was the claimant's case that the CCTV was to be used for the protection of the premises not for monitoring employees. However, in my judgment it is entirely reasonable in these circumstances to rely on CCTV which the claimant knew full well was there and covering his working areas to double check timesheets against the claimant's actual attendance. The respondent was thorough in its checking of the CCTV against the claimant's timesheets. It was certainly not outside the range of reasonable acts of a reasonable employer to check CCTV to see if the claimants clocking in times were accurate where information about the claimant's attendance at a site had inadvertently come to their attention.
92. I have heard no evidence or argument about what it is about not being registered with the ICO makes the use of the CCTV unfair.
93. The second way in which the claimant says his dismissal was unreasonable was that the respondent started the investigation without informing his line manager who was also his father. I have made findings of fact about that. The reasons they did not inform Nick were because they believed that firstly he was not actually the claimant's line manager and secondly, he would have nothing to contribute as he had been away at the time of the relevant incidents.
94. It is also likely in my view that there was an undercurrent of concern that Nick would be conflicted and would seek to disrupt the proceedings. In fact, James' evidence was that he would seek to disrupt the proceedings. Having had regard to the overall history of this case and the somewhat fractious relationship in terms of the working environment between the claimant and his father, it seems highly likely to me that this was a very realistic possibility. At the very least, there is obviously a potential conflict of interest in asking a director to fairly consider dismissing his own son.
95. It certainly was not outside the band of reasonable responses to keep Nick out of the picture at the initial stages of the investigation. They did, in any event, inform him on 6 May that the investigation would be going forward and he did not in any meaningful sense object to that.
96. The claimant's next concern was that the investigation was not impartial as there were just two brothers against him. I have some sympathy with this allegation. The overlap between the investigation and the disciplinary hearing was confusing and could be perceived as oppressive. It was unclear who was conducting the investigation. James did the first part and then Luke did the second part. Luke was then conducting the investigation and hearing the disciplinary hearing. James attended the disciplinary hearing ostensibly to take

notes but then did contribute to the discussion where there was a disputed version of events.

97. This was not perfect – James had come across the allegations, conducted an initial investigation and then handed it to Luke. Luke had conducted a further investigation and then conducted the disciplinary hearing with James there. There is no doubt, in my mind, that this was in reality Luke and James considering whether to dismiss the claimant.
98. I remind myself that the investigation needs to be adequate. The ACAS Code says that “where practicable, different people should carry out the investigation and disciplinary hearing”. In a small employer, that is not always possible. The make up of the respondent was such that there were three directors and everybody else was effectively a worker, so the management was limited to the three directors. Manifestly and obviously, Nick could not take any part of this as already discussed so that left the two brothers.
99. The claimant made a reasonable point that one could have investigated and heard the disciplinary hearing and then the other one undertaken any appeal. That would have been an option. The question is whether the overlapping and confusing involvement of Luke and James from the investigation and the disciplinary hearing and the dismissal was such as to make the decision to dismiss unfair in all the circumstances.
100. I have regard to
  - a. the thorough and detailed way in which the investigation was undertaken by looking at records, speaking to contractors, reviewing CCTV
  - b. presenting that information to Luke who undertook his own separate discussions with the claimant on 24 April 2024 and 2 May 2024;
  - c. then fact that the claimant was not warned in advance of what the meeting in April was about;
  - d. the fact that both brothers remained involved all the way through;
  - e. the attempts to ask an external HR company to make the decision and then retaining their advice when they refused;
  - f. the frankness of the conversation on 6 May 2024 with Nick; and
  - g. the size of the respondent.
101. In my judgment, taking a step back and looking at it as a whole the investigation was, and particularly bearing in mind the small size of the respondent and the relationships between the relevant parties, adequate and was within the band of reasonable responses of a reasonable employer.
102. The final allegation is that the investigation took too long. By the time he was required to account for the allegations the claimant said that he could no longer remember where he had been or what he had been doing. The first allegations related to 7 March and the hearing was on 6 June so that was three months. The claimant first had an opportunity to give his accounts on 24 April which was just over a month after the latest of the allegations.
103. Having considered what James said about the availability of texts with contractors and photographs of work that would provide evidence of work

undertaken, that is not an excessive delay that would reasonably prevent the claimant from being able to account for his whereabouts.

104. I accept the respondent's case that had there been some evidence to support a some of what the claimant was saying, that would have been sufficient to give them cause to doubt the remaining incidents and would likely have resulted in a different outcome. The fact is that in this case the claimant was unable to convincingly account for any of his absences. It is simply not plausible to suggest the reason for that was a delay of what is in reality a few weeks.
105. Considering all of those matters I find that the decision to dismiss the claimant was not unfair in all the circumstances on the basis that the claimant has suggested.
106. In any event, if there were any faults in the process the claimant had the opportunity to remedy them on appeal. He submitted a detailed appeal letter and was at points represented by solicitors instructed by his father. He had the opportunity to attend the appeal meeting, which he did, to make any points he wanted. However, the claimant's main focus was on the CCTV, and I agree with Sophie that that is not relevant to the fairness of the decision to dismiss the claimant.
107. The fact that Sophie did not decide to talk to Nick is not fatal to the fairness of the appeal. It is and always had been agreed that Nick could give no evidence about where the claimant was on any of the relevant days as he was away. The evidence about practices cannot, in my judgment and in the face of the overwhelming evidence against the claimant, have made any difference. It was not *necessary* for Sophie to talk to Nick for her to conduct a fair appeal.
108. Finally, I consider whether the sanction was too harsh. In legal terms, was the overall decision to dismiss the claimant outside the band of reasonable responses of a reasonable employer?
109. In my judgment it was manifestly not. The claimant had been found on reasonable grounds to have (although no one put it this way) effectively defrauded the respondent out of wages and expenses that were not due to him on at least 7 occasions. Some employers might not have dismissed the claimant in these circumstances, but in my view it is not even arguable that dismissal in these circumstances was outside the band of reasonable responses of a reasonable employer.
110. For all these reasons therefore the decision to dismiss the claimant was for the reason of his conduct and was reasonable in all the circumstances and the claimant's claim is not successful and is dismissed.

Approved by:

Employment Judge Miller

Date: 24 June 2026