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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002479/2025

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Hearing held in Edinburgh by CVP on 18 and 19 June 2026

Employment Judge R Mackay

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Mr M Street

**Claimant
In Person**

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Faodail Landscapes Ltd

**Respondent
Represented by:
Mr G Dunlop, Counsel**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Employment Tribunal is that the claim of unfair dismissal succeeds, and the respondent shall pay to the claimant a basic award of **£923.07** and a compensatory award of **£2,375.95**. Both sums shall be paid without deduction of income tax or national insurance contributions.

REASONS

Introduction

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1. This is a claim for unfair dismissal. The respondent contends that the dismissal was fair on account of the claimant's gross misconduct.
2. Both parties produced small bundles of documents. Two further pages were added by the claimant on the morning of the hearing. The Tribunal heard from

three witnesses for the respondent, Euan Douglas and Christopher Wright, who are the founding directors of the respondent, and Gregor Windskill, an employee who had worked alongside the claimant. The claimant then gave evidence on his own behalf. Objections were made by Mr Dunlop to aspects of the claimant's evidence which had not been put to the respondent's witnesses. As a result, two witnesses were recalled to give further evidence.

3. Some conflicts in evidence arose, particularly over the content of some conversations and the nature of some interactions. Where material to the outcome, these conflicts are identified and resolved in the Findings in Fact section which follows.

Findings in Fact

4. The respondent is a small landscaping business set up in 2022 by Mr Douglas and Mr Wright. At the time of the claimant's employment it had around five employees. It did not have HR or other administrative support.

5. The claimant commenced employment on 15 August 2022. He was employed as a landscape technician which involved creating masonry, water features and ponds as well as other garden landscaping tasks. He had no previous experience, having previously worked in the music industry. His starting salary was £20,000. It was increased several times, most recently in April 2025, to £32,000. He was provided with a van for the performance of his duties.

6. The claimant was dismissed without notice by letter dated 16 May 2025. The events which precipitated the disciplinary process which led to the dismissal took place on 8 and 9 May 2025.

7. On 8 May, the claimant was working with a colleague at a site of one of the respondent's customers in Cumbernauld. During the course of the day, the colleague exhibited signs of distress. Around 3pm, he became tearful and shaky. The claimant spoke to him and was informed that he was anxious about his mother, who was in hospital, and was feeling fatigued. The claimant suggested to him that he leave work and take time for his mental health. The colleague left around that time. The claimant worked on until 4pm, being the normal finishing time.

8. The claimant called Mr Douglas at 3.25pm and left a message. He spoke to him at 3.27pm. During the course of the call, the claimant explained the position of his colleague. Mr Douglas responded to the effect that he knew the colleague was having issues. A discussion also took place over an aspect of the work being carried out. The claimant and Mr Douglas had exchanged

messages on the subject earlier that day, which concerned the height of a wall being constructed and whether it was higher than designed.

- 5 9. Mr Douglas gave evidence that the claimant deliberately built the wall higher than specification and that he did so knowing it to be wrong. The claimant's evidence was that he knew there was a discrepancy in the build and he was seeking advice about whether or not it was an issue. The Tribunal preferred the evidence of the claimant, which is consistent with what appear to be friendly messages between the two in which Mr Douglas appeared to suggest that the height need not be exact. Following the call, the claimant sent Mr Douglas photographs of the wall. Mr Douglas responded: "*We'll have a look tomorrow*".
10. Later that afternoon, Mr Douglas sent a message to the colleague who had left site. He responded to the effect that he was full of worry, he had stressors that had accumulated, his anxiety was overwhelming and his self belief was rock bottom. He described that day as having been really tough and asked if he could take some time off. Mr Douglas responded: "*That's fine, but please let us know if you decide to leave site. [The claimant] doesn't have the authority to send you away so we'll be having a meeting with him on Monday*". In response, the colleague said that he was sorry, that he really wanted to stay and help finish the day, and that he would not have left without knowing that.
11. The claimant arrived at the Cumbernauld site at around 8am the following day. Mr Douglas arrived around half an hour later. Both described the other as having behaved aggressively, but neither was able to articulate with clarity how that was exhibited. It is accepted, however, that the encounter was tense. Mr Douglas told the claimant that it was not his place to send his colleague home and that doing so undermined his authority. The claimant responded to the effect that he did so for the welfare of the colleague who was overwhelmed and not functioning. Mr Douglas said that he understood and agreed with the decision, but that he should have been called to approve it. The claimant did not react well to the criticism.
12. A discussion also took place about the wall. Mr Douglas's evidence was that he told the claimant to stop building it but that the claimant refused. The claimant disputed that account and said that he left at around 8.45am so did not have time to continue with the work. The Tribunal noted that Mr Douglas accepted the timing of the claimant's departure which tends to support the claimant's position, as does the fact that the letter of dismissal did not include that specific allegation.

13. A conflict in evidence arose as to what was subsequently said. Mr Douglas's evidence was that the claimant swore at him and asked if he wanted him to resign and that Mr Douglas said yes. The claimant denied swearing and said that he asked if Mr Douglas wanted him to leave the site – not resign – and that Mr Douglas said yes. What is not in dispute is that the claimant did leave the site following a terse exchange, and the Tribunal accepted that the claimant spoke in a way that was disrespectful to his superior. It accepted Mr Douglas's evidence that he had never personally had an interaction like that with claimant before. Although there is ambiguity as to whether what was said amounted to authorisation to leave the site, Mr Douglas did not seek to prevent the claimant from doing so.
14. In relation to the swearing, the Tribunal preferred the claimant's evidence. No reference is made to swearing in a follow up message to the claimant later that day, or in the dismissal letter, in contrast to an earlier incident referred to from 2024 where there was such mention and the claimant apologised. In relation to the question as to whether the claimant mentioned resignation, there was clearly an ambiguity in what was said and this is reflected in the follow up message where Mr Douglas refers to the claimant having brought up handing in his notice. He concludes by saying: *"If you are handing in your notice, please do so. If not, we're scheduling a disciplinary meeting for Monday 12th of May...to discuss next steps"*. The claimant was advised that if he was unable to attend the meeting would be rescheduled.
15. On the morning of the 12th, the claimant messaged Mr Douglas to say: *"Unwell, will not be coming in today. Will reschedule meeting to address factual inconsistencies at a later date."* Mr Douglas responded initially to ask the claimant to leave his van at the yard as soon as he was able. He sent a further message rescheduling the meeting for 14th May. He noted that the claimant was *"fully entitled"* to be accompanied at the meeting, and that if he was unable to attend, he should consider sending someone on his behalf. It was also suggested that the meeting could be heard remotely. He concluded: *"If failure to attend on Wednesday occurs, we will reschedule for a final date. If you do not attend this third meeting then the meeting will be conducted in your absence, in all fairness and with readily available evidence and a fair outcome will be decided"*.
16. The respondent sent an email to the claimant on 12 May relating to the meeting proposed as follows:
- "I am writing to inform you that you are required to attend a disciplinary hearing to discuss concerns regarding your conduct/performance. You refused to attend the first meeting due to illness set down for Monday 12th*

May 2025, so a second meeting has been set for Wednesday 14th May at your own convenience time and location within the hours of the working day.

Reason for the hearing –

Serious and continued misconduct

5 *If we do not hear from you, and failure to attend occurs, a final third meeting will be set for Friday the 16th of May 2025.*

If you do not attend this final meeting, a decision will be made in your absence regarding your contract with [the respondent]."

10 17. Having not heard from the claimant in relation to the van, the respondent collected it later on 12 May from outside the claimant's house where it was parked in a restricted bay.

15 18. The claimant was assessed by his GP on 13 May and was assessed as unfit to work due to workplace stress and anxiety. He did not submit the fit note to the respondent until after his dismissal. He did not respond to the messages about the reconvened meetings. He did not feel well enough to do so. He was uncertain what the meeting was to cover but assumed it related to the events of 8 and 9 May. He was uncertain what the outcome might be but did not feel his job was in jeopardy.

20 19. Mr Douglas and his fellow director Mr Wright met on 16 May and jointly decided the outcome in the absence of the claimant. They concluded that the claimant should be dismissed without notice. This was confirmed in an email sent to the claimant that day. He was offered a right of appeal to be requested within five days.

25 20. In the email to the claimant, they set out a range of topics which were said to be the reasons for the decision.

30 21. First, what they termed "*Continued Poor Performance*". They suggested that there had been little or no improvement in the claimant's work since the start of the year. In support of this, they referred to the issue with the wall at the Cumbernauld project, and another similar issue at a different project. In his evidence, the claimant rejected this analysis, pointing to the fact that he had received a pay increase the month before and that he had never previously been accused of underperformance. The Tribunal accepted the claimant's account.

35 22. Secondly, under a heading "*Failure to Follow Company Procedures*" they referred to the claimant having sent his colleague away from site on the 8th

of May and another occasion on which the claimant had sent a colleague to a different site without authority in the summer of 2024. In his evidence, the claimant's position was that there was a legitimate operational reason to do so in the latter case. The findings of the Tribunal relating to the events of 8 May are set out above.

23. The third reason given was the claimant's having left the site on 9 May without authorisation (the Tribunal's findings on this are again referred to above).

24. The fourth reason given was headed "*Lack of Communication*". This was said to create a difficult working environment between the claimant and colleagues by virtue of the claimant's refusing to speak to colleagues or acknowledge them. Reference was made to complaints made by other team members. The seventh reason given was related – "*Refusal to Work Cohesively with Team Members*" - and referred to a consistent pattern of poor relationships between the claimant and colleagues resulting to tension on job sites and a negative impact on team morale. In his evidence, the claimant accepted that he was a quiet person and that he was not always a perfect employee. He works hard and has high standards and sometimes projects his work ethic on other people which they do not always appreciate.

25. The evidence of Mr Windskill is relevant in this regard. He joined the respondent in June 2024 and worked alongside the claimant on a number of projects. Initially he described a very friendly relationship; the two had common interests and shared music suggestions. He described the relationship as having changed after he arrived late for work on one occasion. Thereafter he described the relationship as much less friendly. He accepted in cross examination, however, that text messages exchanged beyond that time were still friendly. He did not raise the issue with the respondent. On one occasion when one of the directors spoke to him in what he described as a chat, he mentioned that the claimant could be difficult. Mr Douglas said that he should speak to him again if there was a problem. He did not do so and felt that the issue had been dealt with. As such, Mr Windskill's evidence is more supportive of the claimant's account than that of the respondent, which went beyond personality issues and suggested bullying and aggression..

26. The fifth reason given for the dismissal was headed "*Inappropriate Conduct Towards a Director*". This relates to the issue referred to a paragraph 14 above. Around October 2024, it was suggested that the claimant had raised his voice and used inappropriate language towards Mr Wright. In his evidence, Mr. Wright could not remember what was said but described being taken aback. The Tribunal did not understand the claimant to dispute that he had used inappropriate language on that occasion and that he had

apologised. He was concerned that he was being asked to do something which was unlawful. In the letter, the respondent refers to the claimant having been given a *"final verbal warning"*. This was not in writing and did not follow a formal disciplinary process. Mr Wright's evidence was that the next stage would be to take action under the disciplinary procedure. The claimant's position was that the warning was not disciplinary in nature and was simply an informal conversation. The Tribunal was satisfied that the claimant was entitled to view it in that way. The same is true for other verbal warnings said to have been issued by the respondent (see paragraph 29).

27. The final reason for termination given was *"Misuse of Company Vehicle"*. The specification given was that the claimant had left his company van parked in a restricted bay outside his house despite *"being repeatedly instructed to return all vehicles to the company yard at the end of the day"*. Although it is accepted that the claimant did not return the vehicle when asked to do so by 12 May, and did not respond to the request, the respondent collected the vehicle itself on that day. Otherwise, the evidence was clear that the claimant had the van for his own use and that it was the accepted practice that he would park it near his home. That is at odds with the reference to repeated instructions to do otherwise. It was not disputed, however, that he had parked it in a restricted bay.

28. The evidence of the respondent's witnesses before the Tribunal was not wholly aligned on the question of the reason for dismissal. In his evidence, Mr Douglas said that the nub of the reason for dismissal was an overall feeling that the business was becoming impossible to run given requests from three or four employees that they should not be placed with the claimant on work projects. On being questioned about alternative sanctions, he responded that he was not sure of what other sanctions were available. Mr Wright's evidence was that the main issue for him was a reduction in the claimant's performance which he described as having dropped off significantly in the last three months of employment. On being asked about considering alternatives to dismissal, he stated that they tried to send the claimant to sites where he would be able to work independently.

29. As noted above, the respondent relied on a series of earlier verbal warnings as part of the dismissal process. The first, in February 2023, related to alleged aggressive behaviour by the claimant towards a colleague who found it difficult working with him. The second in the summer of 2023, related to an argument between the claimant and another colleague. In a document prepared for this hearing, the respondent had included an allegation that that employee had accused the claimant of being racist towards him. Before the Tribunal, they did not seek to maintain that allegation which was never

investigated (and disputed by the claimant in his evidence). The third, in January to March 2024, concerned a hostile atmosphere between the claimant and another colleague. The fourth, from the summer of 2024 concerned alleged bullying of Mr Windskill (see paragraph 25) and sending an employee to another project without authority.

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30. In common with the verbal warning referred to at paragraph 26 above, none of these warnings was issued in the context of a disciplinary process and none was reduced to writing. None was said to remain for a specified period. The claimant saw them as informal discussions rather than disciplinary warnings and it was reasonable for him to do so in the circumstances. On being questioned as to what he saw as being the next step from these verbal warnings, Mr Wright's evidence was that he envisaged starting a process under the disciplinary procedure, itself indicative of the earlier warnings being outside of it.

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31. In terms of the severity of the claimant's conduct, the Tribunal accepted that the claimant was challenging to work with at times and that he preferred to work alone, but the characterisation of his conduct as bullying or aggressive was an exaggeration. Had there been such conduct, it is unlikely that the respondent would have dealt with the issues so informally, or reward the claimant with several increases in pay.

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32. The claimant did not appeal the decision to dismiss. He did not consider it worthwhile given that the two most senior people in the company had already taken the decision to dismiss.

33. Following his dismissal, the claimant was unemployed for six weeks and three days before commencing alternative employment. The remuneration and benefits in his new employment are comparable to those he had with the respondent.

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Relevant Law

Unfair Dismissal

34. The law relating to unfair dismissal is set out in the Employment Rights Act 1996 ("ERA"). Section 98(1) states:

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"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

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(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.

Section 98(2) sets out that a reason falls within this subsection if (inter alia) it-

(b) relates to the conduct of the employee

35. Section 98(4) states:

[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.

36. This determination includes a consideration of the procedure carried out prior to the dismissal and an assessment as to whether or not that procedure was fair.

37. In circumstances where the reason for dismissal is conduct in terms of Section 98(2)(b), what has to be assessed is whether the employer acted reasonably in treating the misconduct that he believed to have taken place as a reason for dismissal.

38. **British Home Stores v Burchell [1978] IRLR 379**, sets out the questions to be addressed by the Tribunal when considering reasonableness as follows:

i. whether the respondent genuinely believed the individual to be guilty of misconduct;

ii. whether the respondent had reasonable grounds for believing the individual was guilty of that misconduct; and

iii. whether, when it formed that belief on those grounds, it had carried out as much investigation as was reasonable in the circumstances.

39. Tribunals must not substitute their own view for the view of the employer (**Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23** and **London**

Ambulance Service NHS Trust v Small [2009] IRLR 563) and must not consider an employer to have acted unreasonably merely because the Tribunal would not have acted in the same way.

- 5 40. Gross misconduct is conduct such as to undermine the relationship of trust and confidence between employer and employee (**Neary v Dean of Westminster [1999] IRLR 288**). In **Sandwell & West Birmingham Hospitals NHS Trust v Westwood UKEAT/0032/09**, the EAT held that the Tribunal must consider both the character of the conduct and whether it was reasonable for the employer to regard that conduct as gross misconduct on
10 the facts of the case.
41. Following **Iceland Frozen Foods Ltd v Jones 1983 ICR 17** the Tribunal should consider the “band of reasonable responses” to a situation and consider whether the Respondent’s decision to dismiss, including any procedure prior to the dismissal, falls within the band of reasonable responses
15 for an employer to make. The importance of the band of reasonable responses was emphasised in **Post Office v Foley [2000] IRLR 827**.

Submissions

- 20 42. Counsel for the respondent produced a written submission to which he spoke and expanded orally. In summary, his position was that the dismissal was fair (he did not have instructions to concede that it was procedurally unfair). He referred to the following passage from **Mbubaegbu v Homerton University Hospital NHS Foundation Trust UKEAT/0218/17**: “It is quite possible for a series of acts demonstrating a pattern of conduct to be of sufficient seriousness to undermine the relationship of trust and confidence
25 between employer and employee. That may be so even if the employer is unable to point to any particular act and identify that alone as amounting to gross misconduct. There is no authority to suggest that there must be a single act amounting to gross misconduct before summary dismissal would be justifiable or that it is impermissible to rely upon a series of acts, none of which would, by themselves, justify summary dismissal”.
- 30 43. In the alternative, counsel argued that compensation should be reduced to nil with reference to **Polkey** and the claimant’s conduct.
44. The claimant invited the Tribunal to find in his favour and award compensation.
- 35 45. Both asked for account to be had to breaches of the ACAS code (respectively a reduction and an increase to any compensatory award).

Decision

- 5 46. The Tribunal first considered whether the respondent had shown that the reason or the principal reason for the dismissal was the potentially fair reason of conduct. Although there was some ambiguity over the reason, as reflected at paragraph 28 above, where performance and a breakdown in working relations are mentioned, the Tribunal was satisfied on balance that the claimant's underlying conduct was the principal reason.
- 10 47. It went on to consider whether the respondent genuinely believed the claimant to be guilty of misconduct. Whilst the evidence was not consistent -with reference both to conduct and performance - it was clear that the respondent had concerns over the claimant's behaviour or conduct in a number of respects.
- 15 48. As to whether the respondent had reasonable grounds for holding that belief, it is clear that they did so for some of the grounds, but as reflected at paragraphs 21 to 27 above, some of the reasons put forward were historic and had not been fully canvassed with the claimant, whose evidence before the Tribunal on at least some of the points was preferred. There was also a clear tendency on the part of the respondent to embellish certain of the issues and to give them greater seriousness than was appropriate.
- 20 49. Considering the third limb of the **Burchell** test, the level of investigation by the respondent was materially inadequate. There was a clear dispute about what took place on the morning of 9 May, and Mr Douglas was himself involved. No disciplinary investigation took place into that, or indeed any of the other events put forward as reasons for dismissal. They had been dealt with informally and, as they relate to complaints by other staff, they were not investigated at all. The absence of investigation is rendered even more serious in circumstances where the claimant did not have an opportunity to put his case at the disciplinary hearing itself.
- 25 50. Against that background, the question is whether the respondent acted reasonably in treating the conduct as sufficient for summary dismissal on the grounds of gross misconduct. Considering first the character of the conduct, the Tribunal was satisfied that it was not of the seriousness of gross misconduct – whether looking at the reasons put forward as a whole or otherwise. It follows that it was not reasonable for the respondent to treat the conduct as sufficient to dismiss the claimant. None of the earlier issues had resulted in anything other than verbal conversations, and at the time of inviting the claimant to the disciplinary hearing, the respondent did not even mention the possibility of dismissal.
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51. The procedures applied by the respondent were flawed in a number of other respects. Most importantly, the claimant was not told what the allegations were, so he would not have been able to prepare for the hearing. Moreover, as the claimant submitted, the respondent effectively went back over his time in post to reactivate matters which had been dealt with informally before. Using verbal warnings (even if they had been formal) from over two years before as part of a case for summary dismissal is not a reasonable approach to take. There were other breaches of the ACAS code as reflected in paragraph 58 below, as well as a failure to consider alternatives to dismissal. The Tribunal was mindful of the small scale of the respondent and the lack of administrative support, but even taking that into account, the deficiencies were sufficient in themselves to render the dismissal unfair.
52. The Tribunal had some sympathy for the respondent whose directors were inexperienced in people management and were not motivated by malice. ACAS could have provided a good source of advice in the circumstances.
53. For all of these reasons, the dismissal was both substantively and procedurally unfair.

Remedy

54. Parties helpfully agreed the financial elements of the claim. The basic award is £1230.76. The claimant's net weekly pay was £479.99 and he was unemployed for 6 weeks and 3 days, giving rise to a compensatory award of £3167.93.
55. The Tribunal then considered whether any adjustments should be made to the compensatory award, following the order established by the Court of Appeal in ***Digital Equipment Co Ltd v Clements* [1988] IRLR 134**.
56. It first considered ***Polkey*** but in light of the fact that a fair process could not, on the facts, have resulted in fair dismissal anyway, no reduction was applied. The decision was substantively as well as procedurally unfair. If the respondent had acted procedurally fairly, dismissal for gross misconduct would still have been outside the band of reasonable responses.
57. It then considered the ACAS code and whether there had been unreasonable failures by either party. There were a number of failures by the respondent: there was no separate investigation, there was no written notice of what the allegations were; there was no specification as to venue; no reference to the right to have a union representative; and no reference to gross misconduct or the possibility of dismissal. On the claimant's side, he did not appeal the decision and he could have done more to respond to the messages inviting

him to a hearing, if only to confirm he was unfit or needed more time. Considering the size and resources of the respondent, the Tribunal concluded that the failures were more due to a lack of experience and advice rather than being wilful or unreasonable. Similarly, the Tribunal did not consider the claimant's failures to have been unreasonable given his ill health at the time and his doubts over the worth of an appeal. Balancing the failures on both sides, the Tribunal concluded that there should be no adjustment.

58. On contribution, the Tribunal found that the claimant did contribute to the decision to dismiss by virtue of his conduct on 9 May when he was disrespectful to Mr Douglas leading to him leaving. Whilst these elements of contribution certainly precipitated the disciplinary process, it is clear that those factors were not the sole cause of the dismissal. The Tribunal considered a reduction of 25% to be just and equitable in all the circumstances having regard to the volume of other factors used by the respondent, as well as the fact that the claimant was unwell at the time.

59. Considering the different test which applies to reductions to the basic award, for the reasons set out in the paragraph above, the Tribunal considered it just and equitable to reduce the basic award by the same percentage. The reductions result in a basic award of **£923.07** and a compensatory award of **£2,375.95**.

Date sent to parties

30 July 2026