



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100934/2026

Held in Edinburgh on 14, 15 and 16 July 2026

**Employment Judge Porter SIC
Tribunal Member Ms M Watt
Tribunal Member Mr S Cardownie**

Mr R Logan

**Claimant
In Person**

British Gas Trading Ltd

**Respondent
Represented by:
Ms S Cashell -
Barrister**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

It is the unanimous judgement of the Employment Tribunal to dismiss the claimant's claims of unfair dismissal, breach of contract (notice pay), unpaid wages and holiday pay.

REASONS

Introduction

1. The claimant was employed by the respondents as a customer resolution agent between the 25 September 2023 and the 17 November 2025. On the latter date he was dismissed on the grounds of gross misconduct. In these proceedings he claims that he was unfairly dismissed. He also claims breach of contract, being notice pay, and unpaid wages/holiday pay.
2. The claimant's claims are defended and there was a Hearing on the Merits in the case on the 14, 15 and 16 July 2026. At the Hearing on the Merits the claimant represented himself and the respondents were represented by Miss Cashell, barrister. The parties referred to a Joint Bundle of Productions which was numbered **1- 240B**.
3. The Tribunal heard evidence from Neil Miller, the claimant's former line manager who spoke to the issue of the claimant's training whilst with the

respondents and an informal warning given to the claimant; Jamie McLachlan a former line manager who spoke to the investigation into the claimant's conduct and an informal warning given to the claimant; Ben Buckley the Disciplinary Manager, Matthew Hargreaves the Appeal Manager and Gemma Milligan, the claimant's Line Manager at the time of dismissal who spoke to the fairness of the dismissal itself and to the issue of holiday pay. The claimant gave evidence himself and led evidence from Jamie Wright, a former colleague who started at the same time as the claimant and who spoke to whether the NEP system was in use in 2023 and the nature/content of the initial training provided in 2023.

4. At the outset of the Hearing on the Merits it was agreed that the Hearing would be confined to the issue of liability only, reserving the question of remedy to a later hearing.

The issues

5. The parties liaised with one another to produce a Joint List of Issues which is replicated below and accordingly the numbering is that used by the parties.

A. OVERVIEW

The Claimant brings claims of:

- 1.1. *Unfair dismissal pursuant to s.94-98 Employment Rights Act 1996 ("ERA 1996");*
- 1.2. *Wrongful dismissal; and*
- 1.3. *Unauthorised deductions from wages contrary to s.13 ERA 1996 or, alternatively, a breach of contract for holiday pay.*

B. THE CLAIMS

Unfair Dismissal – s94-98 ERA 1996

2. *It is not in dispute that the Claimant was dismissed.*
3. *What was the reason or principal reason for dismissal? The Respondent relies on reason relating to the conduct of the employee, or alternatively, SOSR*
4. *Was it a potentially fair reason?*
5. *In respect of a conduct dismissal, the Tribunal will need to decide whether the Respondent genuinely believed the Claimant had committed misconduct.*

6. *If the reason was misconduct, did the Respondent act reasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the Claimant? The Tribunal will usually decide, in particular, whether:*
 - 6.1. *There were reasonable grounds for that belief;*
 - 6.2. *At the time the belief was formed the Respondent had carried out a reasonable investigation;*
 - 6.3. *The Respondent otherwise acted in a procedurally fair manner; and*
 - 6.4. *Dismissal was within the range of reasonable responses.*

Wrongful dismissal: notice pay

7. *Did the Claimant commit a repudiatory breach of contract such that it entitled the Respondent to dismiss him without notice?*

Unauthorised deduction from wages / breach of contract: holiday pay

8. *Did the Respondent make a deduction from the Claimant's wages by failing to pay 79 hours of accrued but untaken holiday, amounting to £1,166.83?*
9. *Alternatively, was the Claimant entitled under the contract for a payment in respect of an alleged 79 hours of accrued but untaken holiday as at the termination date?*

Findings in fact

6. The Tribunal made the undernoted essential Findings in Fact from the evidence heard by them.
7. The claimant commenced his employment with the respondents as a Customer Resolution Agent (known as a "solver") on the 25 September 2023. The claimant prevaricated in evidence as to whether he was supplied with a Contract of Employment; however the Tribunal found that the respondents provided the claimant with a Contract of Employment which is to be found at **43-59**.
8. The claimant's job description is to be found at **105-106**. The Tribunal found that at all material times the claimant was aware of and had access to his job description. At **106** the claimant's job description states that his team, or "Pod" would be responsible for: *"customer support, gains, losses, debt, back office functions and complaints."* The claimant's job description went on to

state: *“You will have complete ownership for those customers and will ensure that we never hand our customers off to other departments we support them at every stage of their journey with us.”*

9. The claimant explained under cross examination that his role involved speaking to customers who have pre paid meters which included supporting vulnerable customers together with dealing with meter faults and customer complaints. The Tribunal accepted the evidence of Gemma Milligan who explained the vulnerable customers can include those who need power supply for medical equipment but have been cut off.
10. The Tribunal found that at all material times the claimant had access to a document named “Our Code” to be found at **60-90**. In paragraph 10 the principle of *“treating customers fairly and delivering excellent customer service”* is enshrined. The importance of “Our Code” is to be found in the respondents’ Disciplinary Policy (**91-104**) which states: *“Gross Misconduct The following are examples of matters that are normally regarded as gross misconduct: 1 Serious or repeated breaches of your contract, Our Code, our policies or procedures 8 Bringing or risking bringing the organisation into serious disrepute.”* **104**. The Tribunal found that at all times the claimant had access to the respondents’ Disciplinary Policy.
11. In September 2024 New Energy Platform (“NEP”) training took place within the respondents. Solvers such as the claimant received training on the new NEP system. The Tribunal accepted the evidence of Neil Miller that the claimant had the same training on the new NEP system as other solvers had received. Certainly, it was not in dispute that by April 2025 the claimant was conversant with the new NEP system and was hitting his targets (**240B**). Indeed, Neil Miller asked the claimant to ‘floorwalk’ - a system whereby a more experienced solver ‘floorwalks’ to provide help and assistance to those who have just completed their NEP training.
12. In or around August 2025 Jamie McLachlan became the claimant’s line manager when Neil Miller moved to another role. The Tribunal accepted the evidence of Jamie McLachlan that the claimant did not at any point raise with him any issue of lack of training on the NEP systems. Jamie McLachlan also asked the claimant to ‘floorwalk’ on one occasion and the claimant did so without hesitation.
13. The claimant was on the ‘Aspire’ programme with the respondents. The ‘Aspire’ programme was designed for individuals within the respondents who seek to progress to promoted and management roles. Notwithstanding this, in December 2024 he received an informal warning from his line manager (then Neil Miller) in respect of putting customers on hold multiple times and making a comment about a vulnerable customer whilst she was on hold (**107-**

- 108).** In August 2025 he received another informal warning from his line manager (then Jamie McLachlan) in respect of going offline to deal with personal issues with his landlord. The claimant's evidence was that he was offline because he was taking his child to hospital; however, the Tribunal preferred the evidence of Jamie McLachlan on this issue, verified by the contemporaneous notes of his meeting with the claimant at **109-110**.
14. In September 2025 Jamie McLachlan's manager told him during a performance meeting that there had been an increase in solvers transferring calls. Jamie McLachlan's manager asked him to carry out inquiries as to why that increase was happening. Jamie McLachlan proceeded to check the call reports for his Team which reports are prepared and retained by the respondents for use where there are any performance issues. The report for his Team showed that the claimant's rate of transferring calls was greater than the other Team Members.
15. The Tribunal believed the evidence of Jamie McLachlan that there were no issues with the calls taken by other solvers within his team. The Tribunal considered the documentation provided in respect of another solver, namely Hope Zvakayi, but accepted the evidence of Jamie McLachlan that this documentation related to a quality review and was not comparable to the claimant's situation.
16. Jamie McLachlan then listened into two calls taken by the claimant on the 22 September 2025. Details of these calls are to be found at **111-112**. The calls demonstrated that the claimant had put customers on hold then transferred them to the automated payment line which was, in both cases, irrelevant to their queries. In these circumstances Jamie McLachlan concluded there had been call avoidance- in other words, the claimant had taken deliberate actions not to support the customers by dealing with their queries himself. The Tribunal accepted the evidence of the respondents' witnesses that call avoidance could amount to a breach of "Our Code".
17. Jamie McLachlan contacted Employee Relations as he was concerned by the content of the two calls he listed to (**111-112**). He was advised by Employee Relations to investigate into the claimant's calls further to see whether the two calls could be said to be a 'one off' or whether there was a pattern on behaviour in call avoidance on the part of the claimant.
18. In these circumstances Jamie McLachlan collated a report covering the time period 8-17 September 2025 detailing 17 calls showing call avoidance on the part of the claimant (**111-114**) The document was passed to Employee Relations who decided that there should be an investigatory meeting into the claimant's conduct based on the contents of the document **111-114**. Emma Davies, Team Leader was appointed to carry out the investigatory meeting.

19. The claimant was absent on sick leave between the 26 September 2025 and the 28 October 2025 due to work related stress. During this period of time the claimant had an absence meeting with his line manager Jamie Mclachlan in the course of which he informed the claimant that he was being investigated for call avoidance and the investigating officer would contact him in due course. The Tribunal accepted the evidence of Jamie Mclachlan that this was a passing comment and drew no adverse conclusions from the comment itself.
20. The Tribunal accepted the evidence of Gemma Milligan that the respondents tried to avoid suspension in disciplinary matters. Accordingly, following a business decision being taken, the claimant was placed on 'complaints' rather 'calls' on his return to work. Gemma Milligan explained that the difference was that there was no opportunity for call avoidance for solvers placed on 'complaints'. The Tribunal also accepted the evidence of Gemma Milligan that the claimant was incorrectly put on calls on the 10 November 2025 but was put back on complaints once the mistake was realised. The evidence of Gemma Milligan was accepted that on reviewing the claimant's calls of the 10 November call avoidance by the claimant was again identified (**165-167**).
21. There was an Investigation Meeting into the claimant's conduct on the 27 October 2025. Notes of the investigation Meeting are to be found at **131-137**. Present at the investigation Meeting were Emma Davies, Team Leader and the Investigating Manager, Scott Weston, Team Leader and Notetaker, the claimant and his union representative Kristopher Reid of Unison. The Notes of the Investigation Meeting demonstrate that the details of the 17 calls showing call avoidance (as prepared by Jamie Mclachlan) were screenshared with the claimant (**132**).
22. Emma Davies produced an Investigation Report on the 29 October 2025. The Investigation Report (**139-146**) concluded that a disciplinary hearing should be convened. The reasons why this conclusion was reached were that the claimant had demonstrated clear call avoidance and accordingly his behaviour fell beneath required standards and expectations and was contrary to the standards to be found in 'Our Code' (**143**).
23. The claimant was invited to a Disciplinary Hearing which took place on Teams on 17 November 2025 at 9am before Ben Buckley, a Continuous Improvement Control Analyst who had no previous dealings with the claimant. The claimant accepted in evidence that in advance of the disciplinary hearing he was informed of the allegations, the potential breaches of the respondents' policies and the fact that they could amount to gross misconduct. Present at the Disciplinary Meeting were the claimant, his trade union representative Kristopher Reid, Ben Buckley, the Disciplinary Officer, and Lee Beresford, Continuous Improvement Control Analyst as Note Taker. Notes of the

Disciplinary Hearing are to be found at **170-175**. The Tribunal accepted the evidence of Ben Buckley that these Notes are an accurate record of the Disciplinary Hearing.

24. The Tribunal accepted the evidence of Ben Buckley that prior to the Disciplinary Hearing he spoke with Emma Davies and Jamie Mclachlan and reviewed the report by Jamie Mclachlan of the 17 calls (**111-114**). He did not listen to the calls himself, as he considered that the report provided a full and accurate record of what had transpired.
25. At the Disciplinary Hearing Ben Buckley checked with the claimant that he was aware of the correct processes in his role as a solver. Ben Buckley satisfied himself that the claimant was so aware. He noted the claimant's position on lack of training and on the fact that he felt his mental health had affected his judgment. The claimant's representative Kristopher Reid also spoke on his behalf in the course of the Disciplinary Hearing. At no point during the Disciplinary Hearing did the claimant or his representative question the veracity of the report of the 17 calls prepared by Jamie Mclachlan which formed the basis of the Investigation Report.
26. At the end of the hearing, Ben Buckley advised the claimant that he would take all issues into account in making his decision and that he would be ready to let the claimant know his decision early the following week. In conclusion, Ben Buckley asked the claimant if there was anything else he would like to say, to which the claimant replied no, and that he was just anxious (**175**).
27. The Disciplinary Hearing was reconvened on the 17 November 2025 and took place on Teams. Notes of the reconvened Disciplinary Hearing are to be found at **176-179**. At the reconvened Disciplinary Hearing the claimant was advised that he was being summarily dismissed for gross misconduct, being 17 occasions of call avoidance in September 2025. In dismissing the claimant Ben Buckley relied upon the terms of Our Code (and in particular paragraph 10 of Our Code) together with the respondents' Disciplinary Policy (**176**).
28. The Tribunal accepted the evidence of Ben Buckley that in determining that the sanction of dismissal was appropriate he considered there had been a serious breach of Our Code in circumstances where the claimant was aware of the correct processes which should be followed. In deliberating on whether the claimant had had sufficient training Ben Buckley noted that at the Disciplinary Hearing it was clear that the claimant was fully aware of the processes which should be followed in taking calls in his role as a solver.
29. Ben Buckley considered both the claimant's mental health and the claimant's allegations of lack of training but, on balance, concluded that there had been 17 instances of what he considered were repeated and serious breaches of

Our Code. In concluding that summary dismissal was appropriate Ben Buckley took into account the claimant's clean disciplinary record. He did not take into account the claimant's informal warnings (which he was unaware of) or the claimant's calls of 10 November which he was aware of but which did not form part of the investigation against the claimant.

30. In challenging the evidence of Ben Buckley, it was put to him that on only one instance was there evidence that a customer had to call back due to the actions of the claimant. The Tribunal accepted the evidence of Ben Buckley, however, that there were 16 other instances where there was clear evidence of the claimant putting customers on hold then transferring them to other lines which would not resolve their queries and that this, in itself, was a breach of Our Code.
31. Following Ben Buckley's intimation that the appropriate sanction was that of dismissal, the claimant's representative proceeded to challenge him on the fact that he had not asked questions about the content of the 17 calls in question (177).
32. A dismissal letter was sent to the claimant on 18 November 2025 (182-184). The letter stated:

"Before arriving at my decision, I took into account all the evidence presented and the points you raised.

- *Struggles with your mental health. During the meeting on the 14/11/2025 you confirmed you were aware of the support available to you by the business, but you chose not to engage with them. You did not reach out to your Team Leader following any of the 17 calls to make them aware you were struggling.*
- *Not having the full training. It has been confirmed that although there was a delay in your training due to your annual leave, you did receive the correct training. You failed to raise any concerns regarding your competency or confident to deal with customer enquiries. Quality checks were carried out, and no performance issues were flagged. You were given the responsibility of floor walker. At no point did you raise any concerns regarding your ability to support other colleagues due to any lack of training or knowledge of the role.*

Taking this into consideration I believe you knew how to deal with the calls correctly and chose not to do so on the 17 occasions identified, resulting in the customers queries not being resolved.

This was a serious breach of your obligations, which warrants summary dismissal without notice. I concluded it was not appropriate to impose a lesser sanction, and you were dismissed without notice.”

33. The claimant appealed the decision to dismiss him in terms of a letter dated 5 December 2025 (**188**). The letter of appeal stated:

“I would like to appeal my dismissal on the 17 November 2025 in line with Centrica Group Policy. The Grounds I wish to appeal on are as follows:

- *The disciplinary hearing against me was bias, unfair, not impartial and in breach of ACAS code of practice*
- *My mental health had not been taken into consideration and instead due to me seeking help from a trained doctor and not the business this has been used against me as a point for dismissal which may potentially be discriminatory.”*

34. The claimant’s appeal took place on the 19 December 2025 on Teams before Matthew Hargreaves, a Business Improvement Manager based in Leeds. Matthew Hargreaves had no prior knowledge of the claimant. Also present at the meeting were Neil Tomany, the claimant’s Trade Union Representative and Steve Pattinson, Business Improvement Analyst as a Notetaker. The Tribunal accepted the evidence of Matthew Hargreaves that the Notes of the Meeting (**192-197**) are an accurate reflection of what transpired during the Appeal Hearing.

35. It was not in dispute that at the Appeal Hearing Mr Tomany read out a statement on behalf of the claimant. This statement is to be found at **198-200**. At 198 it is stated: *“He acknowledges the seriousness of call avoidance and the negative impact this can have on business operations and customer satisfaction. Ryan has accepted responsibility for his actions, expressed genuine remorse, and assured management that it would not happen again. He feels he has done all that could reasonably be expected to make amends for his actions and should have been given the opportunity to correct his behaviour rather than being summarily dismissed.”*

36. In evidence, the claimant sought to distance himself from the statement prepared and delivered by Mr Tomany on his behalf. To this end he stated that he had not been sent the prepared statement before the Appeal Hearing; however, he did not seek to argue that Mr Tomany acted outwith his remit. On balance, the Tribunal disbelieved the claimant’s evidence when he said that he had not seen or authorised the content of the prepared statement to be found at **198-200**.

37. After an adjournment, Matthew Hargreaves intimated the outcome of the Appeal Hearing verbally on the 19 December 2025 (**195-197**). His reasons for refusing the claimant's Appeal were replicated in the outcome letter of the 22 December 2025. (**207-209**). In refusing the claimant's appeal Matthew Hargreaves considered the claimant's position in respect of his lack of training, the fact he maintained that no customer detriment arose from his actions, his mental health and the fact that he was not suspended during the disciplinary process. Matthew Hargreaves also considered the claimant's good service record.
38. The Tribunal accepted the evidence of Gemma Milligan that although a restructure was taking place that would not have affected the claimant's position. The Tribunal also accepted the evidence of Gemma Milligan that esto any data breach on her part was witnessed by the claimant this played no part in the dismissal of the claimant.
39. The Tribunal accepted the evidence of Gemma Milligan, with reference to the documents **185,186,187, 230** and **231** that the claimant is not due holiday pay from the respondents. The claimant provided no cogent evidence to refute her evidence given with reference to these documents.

Observations on the evidence

40. The Tribunal observed firstly that evidence was not heard from the Investigating Officer, Emma Davies in circumstances where the fairness of the investigation was an issue. The Tribunal considered this but concluded that the omission in evidence of Emma Davies was not fatal in circumstances where the entirety of the investigation was contained in the report of the 17 calls prepared by Jamie McLachlan.
41. The Tribunal found the respondents' witnesses generally to be credible and reliable. Of particular note were the witnesses Jamie McLachlan and Gemma Milligan whose evidence was delivered in an exceptionally straightforward and honest manner and therefore was of particular cogency. The Tribunal found no evidence whatsoever of a vendetta by Jamie McLachlan against the claimant in selecting him for scrutiny.
42. The Tribunal took into account the fact that the claimant was, understandably, nervous when giving evidence. Notwithstanding this the Tribunal found the claimant's evidence overall to be contradictory, confusing and ultimately lacking in credibility. Examples of this are the claimant's contradictory evidence on whether he received his Contract of Employment from the respondents and the claimant's evidence on whether his Trade Union Representative Neil Tomany acted on his instructions in reading out a statement at the Disciplinary Appeal Hearing.

The law

43. Where the employer has shown that the reason for dismissal is related to the employee's conduct, whether it is a fair or unfair dismissal will then turn on the tribunal's application of **section 98(4) of Employment Rights Act 1996**. That sub-section provides: *"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."*
44. **British Home Stores v Burchell [1980] ICR 303** indicates that, in a conduct case, two of the questions that the tribunal should consider are whether the employer had reasonable grounds to sustain its belief in the misconduct in question and whether it *"had carried out as much investigation into the matter as was reasonable in all the circumstances of the case"*. Other decisions, such as **Sainsbury's Supermarkets Ltd v Hitt (2002) WCA Civ 1588; (2003) ICR 111**, make clear that the tribunal should apply a *"band of reasonable responses"* approach when considering the process followed by the employer, as well as the decision to impose the sanction of dismissal.
45. In **Taylor v OCS Group Limited [2006] EWCA Civ 702; [2006] ICR 1602** the Court of Appeal held at (43) that the tribunal *"must focus on the statutory test and ... in considering whether the dismissal was fair, they must look at the substance of what had happened throughout the disciplinary process"* including at the appeal stage. Further, when considering issues of procedural fairness, the tribunal should do so having regard to the nature of the conduct that it has found was the reason for dismissal, as section 98(4) requires it to consider whether the employer acted reasonably in treating that reason as a sufficient reason to dismiss: see **Taylor at (48)**.
46. The Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer (**Foley v Post Office, (2000) ICR 1283**)
47. **Boys and Girls Welfare Society v Macdonald (1997) ICR 693** is authority for the propositions that (i) when considering the issue of fairness there is no burden of proof on either party; and (ii) little purpose is served for an investigation where misconduct is admitted.

48. In a case where the dismissal was for a reason relating to the conduct of the employee, the effect of **section 207(3) Trade Union and Labour Relations (Consolidation) Act 1992** is to require the tribunal to take into account the provisions of the ACAS Code of Practice on Disciplinary and Grievance Procedures (2015) where they appear relevant to any question relating to fairness.

Submissions

49. The parties both provided summaries of their submissions in their own words which are replicated below.

The respondents

Issues 3-4: what was the reason for dismissal and was it a potentially fair reason?

- Ben Buckley dismissed C due to 17 acts of call avoidance which he considered to: (i) be a deliberate neglect of performance of duties; (ii) did/risked bringing R into serious disrepute; and (iii) repeatedly breached C's contract or R's Our Code (to treat customers fairly).
- The suggestion dismissal was because C was a witness to a data protection breach/to reduce headcount due to redundancy are unsupported by evidence: Ben Buckley was unaware of these.
- The reason related to the conduct of C (or alternatively, SOSR). This is a potentially fair reason.

Issues 5-6: did R act reasonably in treating this as a reason to dismiss (incl. procedure)?

- Ben Buckley genuinely believed that the Claimant had committed misconduct – he was satisfied that C committed call avoidance, and his actions fell within prohibited conduct of R's policy.
- There were reasonable grounds for this belief: he considered evidence from the investigation (incl. the findings), what C's duties were, the disciplinary policy, and what C said in the hearing.
- There had been as much investigation as reasonable in the circumstances: an investigation took place (Ms Davies listened to calls, read Jamie McLachlan's notes, spoke with C and determined there'd been call avoidance); C had opportunity to speak on issues at all stages.
- The process was fair: C was not targeted by Jamie McLachlan; C was made aware of the allegations; he was provided with sufficient information; he had

an opportunity to make representations during the investigation, disciplinary and appeal; he had union representation.

- The decision to dismiss (and procedure adopted) was within the range of reasonable responses:

Issue 7: did C commit a repudiatory (fundamental) breach of contract?

- In September 2025, C committed 17 acts of call avoidance [111 – 114]. He deliberately (and repeatedly) transferred calls, or disconnected, when he could deal with them. He admitted this conduct at the time in the appeal, but seeks to state now that it was not call avoidance.
- Given C's duties (at [105]), his acts of call avoidance: (i) deliberately neglected the performance of his duties; (ii) brought/risked bringing R into serious disrepute (one customer had to call back, and witnesses explained how failing to provide satisfactory customer services risks R's reputation); (iii) repeatedly breached his contract / R's code (treat customers fairly).
- Call avoidance is treated as a very serious issue by R. It so undermined the trust & confidence inherent in the contract of employment and therefore was a repudiatory breach of contract.

Issues 8-9: Did R make a deduction from C's wages / breach his contract re pay?

- C had 25 days of holiday (excl. Bank Holidays) [47], which, given his 37 hour working week amounted to 185 hours entitlement. As shown at [230], C's holiday was subsequently deducted from this entitlement, as well as a deduction due to him leaving before the end of the holiday year. His total was 20:04hrs holiday and 1hr TOIL, which has been paid to him [218].
- C is not legally entitled to 79 hours of holiday; there's been no deduction or breach of contract.

The claimant

Issues 3–4: The reason for dismissal.

The Claimant accepts that, across the approximately 350–500 calls handled each month, there may have been occasions where his judgement could have been better. However, he denies deliberately committing 17 acts of call avoidance amounting to gross misconduct. Prior to these allegations, the Claimant had no formal disciplinary warnings, had never been placed on a Personal Improvement Plan, had been selected for the Aspire management programme, had undertaken floor-walking responsibilities and was regarded as a trusted adviser. His employment record did not support the conclusion that he was deliberately avoiding his duties.

Issues 5–6: Whether the Respondent acted reasonably.

The Claimant submits that the Respondent did not carry out a reasonable investigation before dismissing him. Emma Davies' investigation notes record that calls were "screen shared", but there is no clear evidence that the recordings were listened to in full. Ben Buckley accepted that he did not listen to the recordings before dismissing the Claimant, and Matthew Hargreaves accepted that he did not listen to them before determining the appeal. Instead, both relied on summaries and transcripts, despite those documents containing spelling, grammatical and transcription errors.

The Respondent also failed to establish that the Claimant received the same core NEP training as his colleagues. The Respondent's own records show that the Claimant missed the original classroom NEP training whilst on annual leave, completed one week of training in the office, followed by one week working from home due to office training being disrupted by staff illness, and then only three days in Grad Bay before that support ended and was never rescheduled. The Claimant also submits that the investigation should not have commenced in the first place. Mr McLachlan stated that the Claimant had been identified through weekly statistics.

However, the Respondent produced no evidence of any weekly statistics. The evidence before the Tribunal showed that performance was monitored using monthly statistics, and the Claimant's monthly transfer rates remained broadly consistent throughout the relevant year, including under his previous manager, Neil Miller. The Claimant further produced evidence that other advisers were making the same or similar call-handling errors without being investigated for gross misconduct. The Claimant respectfully submits that the Respondent failed to provide a satisfactory explanation as to why he was selected for investigation whilst other advisers were not.

The Claimant was contacted by management late in the evening shortly before commencing GP-certified sickness absence for work-related stress. Occupational Health also identified work-related psychological symptoms. The Claimant submits that this context was not properly considered during the disciplinary process. The Respondent continued to entrust the Claimant with independently managing customer complaints, including inbound and outbound customer contact and ownership of customer journeys, until the date of dismissal. The Claimant submits that this is inconsistent with the Respondent's assertion that trust and confidence had irretrievably broken down. During the Tribunal hearing, Matthew Hargreaves accepted that relevant information considered by the Tribunal had not been available to him when determining the appeal. When questioned, he was unable to say that the additional information would not have affected his decision.

Issue 7: Repudiatory breach.

The Claimant denies committing conduct amounting to a repudiatory breach of contract and submits that deliberate gross misconduct was not established following a reasonable investigation.

Issues 8–9: Holiday pay.

The Claimant relies upon his written submissions and evidence in support of his claims relating to holiday pay and unlawful deductions from wages.

Overall submission

The Claimant respectfully submits that the Respondent has failed to demonstrate that it carried out a reasonable investigation or acted reasonably in treating the alleged conduct as sufficient reason for summary dismissal. The Claimant therefore invites the Tribunal to uphold his claims.

Discussion and decision

50. In their decision, the Tribunal turned to the issues agreed between the parties.
- 51. What was the reason or principal reason for dismissal? Was it a potentially fair reason?**
52. The Tribunal concluded that the respondents have established that the reason for the claimant's dismissal was his conduct, which is a potentially fair reason in terms of s98(2)(b) of the Employment Rights Act 1996. In reaching this conclusion the Tribunal had regard to the fact that throughout the dismissal process they relied on the document collated by Jamie McLachlan to be found at **111-114** which formed the basis of the conclusion that there had been 17 instances of call avoidance on the part of the claimant. The respondents also relied upon the terms of their Code and (in particular para 10 thereof) which provides that customers should be treated fairly. In defining the call avoidance as gross misconduct the respondents referred to their Disciplinary Policy and Procedure and in particular to their section on Gross Misconduct which provides that *"The following are examples of matters that are normally regarded as gross misconduct 1 Serious or repeated breaches of your contract, Our Code, our policies or procedures."* (**104**).
53. The Tribunal found no basis for the claimant's assertions that he could have been dismissed for a restructure or because he witnessed a data breach on the part of Gemma Milligan.
- 54. In respect of a conduct dismissal, the Tribunal will need to decide whether the Respondent genuinely believed the Claimant had**

committed misconduct. If the reason was misconduct, did the Respondent act reasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the Claimant? The Tribunal will usually decide, in particular, whether:

- a. There were reasonable grounds for that belief;**
- b. At the time the belief was formed the Respondent had carried out a reasonable investigation;**
- c. The Respondent otherwise acted in a procedurally fair manner; and**
- d. Dismissal was within the range of reasonable responses.**

55. The Tribunal commenced their deliberations on these issues by reminding themselves that it is an error in law to be swayed by sympathy for the claimant and to substitute their own views on what should have happened in the circumstances of this case. The test is one of reasonableness on the part of the employer- in other words, whether the respondents acted within the band of reasonable responses.
56. Looking through this lense, the Tribunal asked itself whether the respondents genuinely believed that the claimant had committed gross misconduct. The burden of proof is neutral in determining this question. To this end the Tribunal accepted the evidence of Ben Buckley that he believed the conclusions of the Investigation Report which relied upon the report prepared by Jamie Mclachlan and the conclusion that the claimant had committed call avoidance on 17 occasions.
57. The Tribunal then questioned whether the respondents had reasonable grounds for the belief that the claimant had committed gross misconduct. In this respect, the Tribunal asked whether it was sufficient for Ben Buckley to have regard to the summary of the 17 calls rather than listening to all the calls himself. The Tribunal concluded that relying on the summary prepared by Jamie Mclachlan was reasonable in circumstances where the claimant did not challenge the content of the report.
58. The Tribunal then considered whether at the time the belief was formed the respondents had carried out a reasonable investigation. The Tribunal did not hear from Emma Davies in evidence; however, they considered that this was not a fatal omission in circumstances where the investigation was based entirely upon the report of the 17 instances of call avoidance prepared by Jamie Mclachlan. In these circumstances the Tribunal concluded from the

evidence of Jamie McLachlan that the investigation fell within the band of reasonable responses open to the respondents.

59. The Tribunal then deliberated on whether the process followed by the respondents fell within the band of reasonable responses open to the respondents. In concluding that it did, the Tribunal noted that the claimant was aware of the allegations being made against him; that dismissal was a potential outcome; was invited to separate investigatory and disciplinary meetings; was given the full opportunity to present his case before a decision was taken; was informed of the right to be accompanied and was accompanied by Trade Union representatives; was provided with all relevant documentation in advance of each hearing and was advised of the right to appeal. Insofar as the appeal process was concerned, the Tribunal concluded that the claimant's Trade Union representative was acting on his behalf when he read out the pre prepared statement in which the claimant accepted responsibility for his actions and acknowledged the seriousness of them. In these circumstances the only issue for Matthew Hargreaves to consider was the imposition of the sanction of dismissal against all the background circumstances and mitigating circumstances.
60. The Tribunal then asked itself whether dismissal was within the range of reasonable responses open to the respondents. Again, the Tribunal reminded itself that it would be an error in law for them to judge the actions of the respondents against what they would do in all the circumstances of this case. In determining that dismissal was within the range of reasonable responses, the Tribunal had regard to the definition of gross misconduct to be found within the respondents' Disciplinary Policy and Procedure (**104**) where the definition of Gross Misconduct includes: *"1 Serious or repeated breaches of your contract, Our Code, our policies or procedures...8 Bringing or risking bringing the organisation into serious dispute."*
61. Against that background the Tribunal considered the belief of Ben Buckley that the claimant had committed 17 instances of call avoidance and concluded that it was a reasonable conclusion that this amounted to *"serious and repeated breaches of Our Code"* under the respondents' Disciplinary Policy and Procedure. In determining that the decision to dismiss fell within the band of reasonable responses open to the respondents the Tribunal noted that Ben Buckley had taken into account the claimant's alleged lack of training, his issues with his mental health and his previous unblemished record.

Wrongful dismissal: notice pay

62. **Did the Claimant commit a repudiatory breach of contract such that it entitled the Respondent to dismiss him without notice?**

63. In considering this issue the Tribunal again turned to the report by Jamie Mclachlan noting 17 instances of call avoidance (**111-114**), the terms of Our Code and in particular paragraph 10 thereof (**82**) and the terms of the respondents' Disciplinary Policy (**91-104**) and in particular the definition of Gross Misconduct to be found in page **104**. In the pre prepared statement that the claimant's Trade Union representative read out at the Appeal the claimant acknowledged the seriousness of call avoidance, that it can lead to dismissal, and the negative impact call avoidance can have on business operations and customer satisfaction (**198**).
64. In all these circumstances it is the unanimous decision of the Tribunal that the claimant committed a repudiatory breach of contract entitling the respondents to dismiss him without notice.

Holiday pay/unpaid wages

65. **Did the Respondent make a deduction from the Claimant's wages by failing to pay 79 hours of accrued but untaken holiday, amounting to £1,166.83?**
66. **Alternatively, was the Claimant entitled under the contract for a payment in respect of an alleged 79 hours of accrued but untaken holiday as at the termination date?**
67. The Tribunal accepted the evidence of Gemma Milligan with reference to documents **185-187** and **230-231** that no holiday pay or unpaid wages are due to the claimant. The claimant did not provide any cogent evidence to refute this. Accordingly it is the decision of the Tribunal that no holiday pay or unpaid wages are due by the respondents to the claimant.
68. **In all of these circumstances it is the unanimous decision of the Tribunal to dismiss all claims brought by the claimant in these proceedings.**