



EMPLOYMENT TRIBUNALS

Claimant: Mrs Mahwish Junaid

Respondent: MacIntyre Care Limited

Heard at: Bury St Edmunds

On: 23 & 24 July 2026

Before: Employment Judge Laidler

Representation

Claimant: In person, represented by her husband Mr S Junaid

Interpreter: Mr M Ejaz

Respondent: Mr K Ali, Counsel

RESERVED JUDGMENT

1. The claimant was dismissed by reason of conduct, a potentially fair reason within section 98(2)(b) Employment Rights Act 1996 (ERA).
2. The respondent acted reasonably in all the circumstances in treating that conduct as a sufficient reason for dismissing the claimant within s98(4) ERA.
3. The dismissal was fair, and the claimant's claim of unfair dismissal fails and is dismissed.

FULL REASONS

1. This Hearing was listed for 2 days. The tribunal had a bundle of documents of 537 pages and 4 witness statements. It also had the video of which there was a transcript in the bundle (p464). In the time allocated the tribunal was able to hear the evidence and closing submissions but there was no time remaining in

which to consider the matter and give the decision, which was therefore reserved.

2. The respondent had intended to call only the disciplinary and appeals officers. The claimant was granted an application for a witness order for Nicky Croucher who conducted the initial investigation. She provided a witness statement but as she was called as the claimant's witness her representative was not entitled to challenge her evidence.
3. The claimant had requested an Urdu interpreter who remained throughout. The claimant has a good command of English but was concerned that she might not understand questions put to her in cross examination. She managed well and only needed to call for the interpreter's assistance on a few occasions.
4. The ET1 in this matter was received on the 8 March 2025 following a period of ACAS between the 10 December 2024 – 5 February 2025.
5. The claimant was employed as a care worker at the respondent's specialist residential home which supports vulnerable adults with learning disabilities and autism, who have a variety of needs and all require personal care. In the respondent's documentation it refers to such a resident as a 'person who draws on our support'.
6. On 12 August 2024 a complaint was raised to Charmaine Bayliss, Senior Support Worker by the claimant's colleague Enzo Ramos regarding her conduct towards EK. (Unfortunately referred to interchangeably in the documents as E or EK. The tribunal has tried to use EK unless quoting from a respondent document.)
7. In an email of 13 August 2024 to Charmaine Bayliss (Senior Support Worker) Enzo reported on incident between the claimant and EK on 7 August 2024. He stated that the claimant had continually asked EK to get up from the sofa to get herself weighed but EK was refusing. After 10 minutes EK got up and grabbed the desk the claimant was working at to write up her notes which ended up on the floor. He stated that the claimant 'continuously called EK rude' and continued:

'...Mahwish and EK grabbed a hold of either side of the desks legs and were going back and forth with it until Mahwish took it and put it in the cloakroom. I could see from EK body language that she was becoming agitated as she walked out of the lounge and towards the cloakroom where Mahwish had but the desk. EK tried to open the cloakroom door but was going back and forth again with Mahwish between opening and shutting the door...'
8. Enzo stated he then got up to try and de-escalate the situation. He then witnessed EK 'with not much force' go to hit the claimant but:

‘Mahwish counter blocked this and then proceeded to push EK over with force which made EK stumble backwards and resulted in her hitting her back against the wall but from the angle I was at, I couldn’t tell if she had also hit her head. As EK was on her hand and knees, Mahwish was repeatedly telling her to ‘get up’ which she did so I took EK back to the lounge... just giving her the brown circular desk for her to do her puzzle. After this Mahwish was shouting at EK making it known that she did not like EK and that she was rude... After 20 minutes or so EK had apologised...and Mahwish had apologised too.... I enjoy working with working with Mahwish but she had me in a situation where I had to report what had happened...as I waited for Charmaine to return from her holiday’.

9. The respondent’s disciplinary policy was at p58 of the bundle. Section 3 sets out the process and provides that it ‘may be implemented at any stage if the employee’s conduct warrants this’.
10. The ‘Informal / Investigation stage’, (page 64) is set out as follows:
 - The facts of each case and its circumstances will be established.
 - An initial fact find or preliminary assessment of the available information will be made by a Frontline Manager or above in order to inform any relevant agencies and to determine next steps. This can be done using the First Steps Form – Part 1 (see Appendix 2 – Conducting Disciplinary Investigations Good Practice Guidance).
 - Any further investigation of the facts that is required will be undertaken by a person at Frontline Manager level or above.
 - The investigation may require just the collation of evidence. In some cases, but not always, it may also require the holding of an investigatory meeting with the employee and a written report before reaching a decision as to how to proceed; either informally, or formally to a Disciplinary Hearing.
 - There is no right for employees to be accompanied at an investigation interview.
 - There may be circumstances where precautionary suspension with pay is considered necessary while the investigation is carried out (see section below).
 - Sometimes it may be considered appropriate to support the employee to continue working but with other precautionary temporary measures in place. For example, working at a different place or working a different shift pattern.
 - Where the facts establish that this is a case of minor misconduct or unsatisfactory performance and there is no previous history of poor performance or misconduct then the decision may be taken to deal with matters informally. Informal action may include meeting with the employee in private and could include the development of a

Performance Improvement Plan and / or a letter setting out the concerns with agreed actions to support improvement.

- There is no right of appeal against any informal actions taken.
- More detailed information on the investigation stage can be found in MacIntyre's *Conducting Disciplinary Investigations – Good Practice Guidance*.

11. The 'Precautionary Suspension' entry, (page 64) reads as follows:

Sometimes it may be considered in the best interests of the employee and / or other colleagues, children or adults supported, to place an employee on paid, precautionary, disciplinary suspension. Suspension is not a disciplinary action, it does not imply that there is any assumption of guilt and it is not a penalty. Very careful consideration will be given before imposing a period of suspension.

- Suspension could be considered appropriate for example, but not limited to, the following situations where:
 - o Relationships have broken down.
 - o There are concerns that evidence could be tampered with.
 - o There are concerns that witnesses may be pressurised before any disciplinary hearing.
 - o There is a potential risk to the employee involved or other people working for or supported by MacIntyre
 - o There is a potential risk to MacIntyre or to third parties in allowing an employee to continue working.

12. 'Safeguarding Allegations', (page 71) are recorded as follows:

- ***Allegations about the safeguarding and protection of adults***

These allegations must be dealt with in accordance with MacIntyre's *Safeguarding Adults at Risk Good Practice Guidance*. The guidance explains that the matter must be referred to the local authority safeguarding team unless it clearly falls below the threshold published by the local authority. The frontline manager MUST consult the Head of Operations before taking a decision NOT to report the allegation to the local authority. An initial fact find or preliminary assessment of the available information will be made by a Frontline Manager or above in order to inform any relevant agencies and to determine next steps in discussion with the Head of Operations.

When referring matters to the local authority safeguarding team it is recommended that you have written down beforehand the facts and information detailed on page 4 and page 5 of this guidance.

The local authority safeguarding team may determine a strategy meeting is appropriate and this may involve the sharing of information with other agencies e.g. social worker and / or police. MacIntyre will not be able to inform the employee of any details of the allegation or conduct a full disciplinary investigation until the local authority and the police (if involved) agree to hand the matter back to MacIntyre to progress through its own internal procedures.

13. **Gross misconduct is defined as:**

...conduct so serious as to destroy the relationship of trust and confidence that must exist between MacIntyre and the employee. Where an employee is found to have committed an act of gross misconduct then MacIntyre is entitled to summarily dismiss the employee and the contract of employment will be terminated without notice or pay in lieu of notice. Matters that MacIntyre considers as amounting to gross misconduct include (but are not limited to) the following:

- Serious breach of trust and/or confidence
- Abuse or exploitation of any person...supported by MacIntyre...
- ...
- Physical violence, menacing or threatening behaviour...
- Behaviour seriously detrimental to the morale and wellbeing of...adults supported.

14. Hazel Fox, Deputy Manager conducted an interview with Enzo (described as witness 1 in the respondent's documents) on the 16 August 2024 (p155). He described what he had set out in his original email. He stated that the claimant had previously said that she did not like EK and did not want to be her link worker. At the end he said that he may have a video or photo of the event and was asked to share it with her.

15. Helen Fox then interviewed Charmaine Bayliss, Senior Support Worker (witness 2) on the same day (P159). She confirmed she had worked for the respondent for 3 years. On 12 August on her return from leave Enzo had approached her and said 'he had information about MJ and he was not sure if he should share it as he likes working with her.' As he had questioned Charmaine about the use of self-defence she said he should let her know what it was about. He then explained what he had seen and she asked him to put it in an email to her 'so I could take it further'.

Nicky Croucher Informal investigation

16. On her return from leave on 19 August 2024 Nicky Croucher, Service Manager for the location where the incident had occurred, was asked by Jo Ellis, Head

of Accommodation – based Support to carry out an investigation into the incident and she conducted an informal interview with the claimant on 20 August 2024 with Kate Baldwin, Head of Administration (P163). Nicky Croucher said that she understood there was an incident between the claimant and EK regarding a table and asked her to talk her through what happened. The claimant's response was 'it was nothing'. She said that EK had wanted the table and 'she got it back'. When it was put to her that EK became quite upset and for the claimant to talk through what happened she replied again 'nothing very special'. The claimant denied putting the table in the cloakroom.

17. The claimant denied that EK fell to the floor and arguing with her.
18. The claimant admitted that 'yes I was angry' but not arguing stating 'I can't argue with her'. She stated that she took her things and went and sat in the dining room. She said again 'I was so angry with her' and 'I was pissed off'. She was angry as she was in the middle of writing her notes and using an ink pen which EK tried to take.
19. The claimant denied that EK went to hit her. In relation to the handover the claimant did not write anything in the day book because 'it is normal behaviour for EK. She is so rude'. When she had started as her link worker she had found her to be 'a difficult person'.
20. Describing her working relationship with Enzo the claimant said 'he is a very nice boy. We have no problems...'
21. The claimant was advised at the meeting that she was being put on 'precautionary suspension' so the matter could be investigated. Whilst the claimant questioned why this was necessary she stated, 'I am so sorry that after 2 years' service this has happened.'
22. The claimant contacted her husband to come and collect her and he wanted to speak with Ms Croucher. She refused to do so as he was not an employee of the respondent.
23. By letter of the 21 August 2024 Nicky Croucher confirmed the claimant's precautionary suspension. The letter made clear that the specific allegations were:
 - That on 7 August 2024 you argued with and shouted at a person who draws on our support, E,
 - That on 7 August 2024 you pushed a person who draws on our support, E, so that she fell back onto a wall and subsequently onto the floor.
24. It is not therefore correct, as has been asserted on behalf of the claimant, that she did not know what the allegations were.

Further investigation

Enzo

25. Nicky Croucher and Kate Baldwin met with Enzo again on 21 August 2024 specifically to deal with the photograph he had mentioned which Charmaine had understood had been deleted from his phone. He stated he could not retrieve it but explained that it showed EK on 'hands and knees' and that she fell backwards against the wall and then went to the side to get up. Nicky Croucher confirmed she had seen the video Enzo had taken. She asked Enzo to take her through the event again.
26. Enzo again explained that the claimant had wanted to weigh EK 'but because of the tone of voice she was using to ask E to get up with, shouting and stuff, I think E chose to ignore it'. He explained how EK had scratched another support worker in the face and the claimant had been very 'wary' of EK.
27. Enzo described how the claimant was doing her end of day notes 'on the desk' and Nicky Croucher sought to clarify whether this was a desk or the table that EK used to do her puzzles on. He confirmed it was and that the claimant hadn't asked to use it. EK had got up and grabbed one side of the table and all the books the claimant was working on fell off. In response the claimant had said to EK 'I was using that. You are such a rude lady. I was using that. You are very selfish'. He described how they now each had a leg of the table and were 'both going back and forth with it'. The claimant ended up with the table and took it to the cloakroom.
28. Enzo then explained that this was where his video came in. EK was trying to open the door to the cloakroom and the claimant was closing it and again they were going back and forth. EK went round the claimant and tried to do what he called a 'soft hit', the claimant counter blocked this and 'then out of nowhere, and I thought it was kind of unnecessary, it was out of the blue, she just pushed her'. This was with force and EK started stumbling back and falling at the same time. Her back hit the wall and not her head. She fell to the side and was on hands and knees trying to get up when the claimant kept saying 'get up get up'. To stop the whole thing Enzo gave EK a little round table and she sat down and relaxed at her puzzle. The claimant said to EK 'this is why you are very rude, this is why I don't like you'.
29. Enzo explained he had deleted the photo because of some training received.
30. He said that the claimant is 'nice. I have no problems with her, which is why that took me by surprise.'
31. Enzo was asked why he had not reported this to Hazel and he said he knew he should but 'I just didn't know how to tell someone' and that the claimant would know it was him and he was new which is why he told Charmaine who is his age which made it easier.

Charmaine

32. Nicky Croucher and Kate Baldwin met with Charmaine again on 21 August 2024 (p177) specifically to discuss the photograph Enzo had shown her. She explained that it looked as if it had been taken from the living room, pointing towards the doorway and 'E was in hallway just outside the living room crawling on hands and knees. It looks like she was trying to get up. She was kind of by the cloakroom...'. She confirmed that the claimant was not in the photo.
33. She confirmed that Enzo had been nervous reporting it to her. She thought he and the claimant got along well, saying that 'they seem to work really well together'.
34. The claimant had asked in supervision before to swap EK because she said EK is aggressive and she doesn't like key working her and 'I don't think they have the best relationship'.

Witness 3 – Support Worker (p179)

35. This person had been a support worker for 4 months. They vaguely remembered a day when the claimant had said 'E was a bit off and wouldn't do things and she found her more aggressive.' They weren't sure but thought that EK was in the lounge doing a puzzle and the claimant wanted her to do something else. They thought the table was very important for EK to do her puzzles on but had not seen her show aggression. They then recalled that the claimant was writing up her books on the table and 'E likes the table and wouldn't let her have it and 'there was an argument about it'.

Witness 4 – Support Worker (p182)

36. This person had been support worker for 6 ½ years. The only thing they could remember was that the claimant 'wanted to use the table and E didn't want her to and grabbed hold of her table to get it back'. E had the table near her as long as Worker 4 been working there. They would ask if they needed to borrow it but give it back if E wanted it. They recalled E's support plan as advising to step back if she gets upset. To give her space and let her calm down and added 'you certainly don't carry on being persistent because that is when she will really get het up and angry'.

Witness 5 – Support Worker (p186)

37. This support worker had been with the respondent for 5 ½ years and was the worker whose face was scratched by EK. They didn't think it was a deliberate act but that EK 'came round to take the puzzle and she caught my face'. She was not aggressive and was very apologetic afterwards. They considered her very protective of the table.

38. Since the time of the scratch, they thought the claimant had been 'very funny with E'. She would step back from her. They would describe the relationship as 'difficult' and that 'E sort of backs away' from the claimant sometimes. If the claimant goes to help E wants someone else. This worker felt that the claimant 'seems very abrupt with the lot of them' and it was 'the way she comes over'.

External agencies involvement

39. The respondent sent a safeguarding referral to the local Safeguarding Team on the 16 August 2023, as it was obliged to do. On 22 August 2024 (p193) a senior social worker from the team wrote to the respondent stating they would be completing the s42 (Care Act 2014) and asking that the respondent refrain from completing any further enquiries 'as the police are lead agency in the 1st instance and you may compromise any police enquiry'.
40. On 27 August 2024 (p196) the claimant requested an update. Nicky Croucher replied on the 29 August explaining that once the matter had been reported to the local safeguarding team, they requested the respondent refrain from completing any further enquiries pending their own investigation under s42 of the Care Act 2014.
41. On 16 September 2024 Nicky Croucher wrote again to the claimant explaining the delay. As they had not been able to ascertain what was happening the matter had been escalated to Jo Ellis to follow up with the safeguarding team.
42. On the 20 September 2024 Nicky Croucher advised colleagues by email that she had been unable to meet with the safeguarding officer as the police were taking the lead and it was not advisable for the officer to meet without the police outcome.
43. The police contacted Nicky Croucher on 22 September and confirmed their position in an email of 23rd. They would be conducting a full investigation and asked for a copy of the video.
44. Being concerned with the passage of time and as she had already interviewed witnesses before being asked to pause their investigation Nicky Croucher completed her investigation report on 8 October 2024 (p203). She set out her findings on the two allegations set out in the suspension letter and found that there was a case to answer and further consideration should be given in line with the respondent's disciplinary policy.
45. By letter of the 11 October 2024 (p211) the claimant was informed that it had been recommended that there be a disciplinary hearing, however 'due to the matter involving the local safeguarding team, there may be a delay before the hearing can be arranged, we will let you know'.
46. On 16 October 2024 Nicky Croucher wrote to the police:

“I would like to inform you that given that the investigation of matters by MacIntyre has already been completed and relevant information shared with the police, then we now intend to proceed with the disciplinary hearing. We do not feel it is appropriate to delay matters further with the employee on suspension and with no clear understanding of when the police investigation may be concluded. We would of course be happy to share the outcome of any hearing held with you if you submit a further request in this respect and do not therefore feel that the hearing or any employment decision made should impact on your own investigation of matters.

Please can you and the safeguarding team let me know if you are happy for MacIntyre to proceed but if you feel we shouldn't proceed please could you explain the reasoning. I look forward to hearing from you.”

47. On 18 October 2024 the police informed the respondent that they were happy for the respondent to complete its disciplinary proceedings. Unfortunately, he could not give a timescale within which the police investigation would be completed.

Invite to Disciplinary Hearing

48. By letter of the 21 October 2024 (p217) the claimant was invited to a disciplinary hearing to be held on the 25 October 2024. The letter was sent by Jo Ellis, Head of Accommodation – based Support who would chair the disciplinary hearing. The letter set out the allegations as follows:

“The allegations which will be examined at the Hearing are as follows:

1. That on 7 August 2024 you argued with and shouted at a person who draws on our support.
2. That on 7 August 2024 you pushed a person who draws on our support, E, so that they fell back onto a wall and subsequently onto the floor.

If founded these allegations could constitute misconduct:

- Failure to work or perform efficiently or to the standards required.
- Behaviour detrimental to the morale and wellbeing of adults supported and which disregards MacIntyre's values as a charitable organisation.

...

If you are unable to attend the Disciplinary Hearing then you must let me know as soon as possible why you are unable to attend. If your chosen

companion is not available then you may request another meeting date up to five working days later.

... ”

49. Again, the claimant had details of the allegations. The claimant was sent the investigation report and told of the video. She was asked to contact Jo Ellis to arrange to view it as it could not be shared outside the respondent. She did contact her and viewed it in Jo Ellis' presence. She was advised that the allegations may constitute gross misconduct and of her right to be accompanied by a work colleague or trade union official.
50. By email of 18 October 2024 (p220) the claimant advised the respondent that she had been contacted by the police that day and called for interview on 24 October 2024. The claimant suggested that she had not had any details of the allegations, but she had these in the suspension letter and the invite to the disciplinary hearing. In evidence she accepted that she was sent all the evidence and the investigation report. The claimant did not ask for the hearing to be postponed in view of her police interview or because she had been unable to find anyone to accompany her.

Disciplinary hearing

51. The claimant attended the disciplinary hearing with TH.
52. The day before the disciplinary hearing the claimant sent a personal statement to Jo Ellis which was 12 pages plus appendices (pages 227 – 248). She confirmed in evidence that it was written in conjunction with her husband. Jo Ellis did not require her to read it out having already read it as part of her preparation.
53. The claimant explained in her personal statement that she was writing up reports at the table when EK started asking her repeatedly to give her the table and that 'she started repeating the same and started getting loud and aggressive which started getting me little frustrated.' The claimant referred to previous issues with EK. She stated that she got up with her stuff and 'told her in a strong and rather loud voice 'you're so rude and so mean' but left the table for her. The claimant accepted that she could have kept her voice down stating it had 'left me a bit unnerved.' There was no 'tug of war type of thing' with the table.
54. The claimant's version of events was that she went to the cloakroom to brush her hair and freshen up. When she came out EK was there and tried to get in. The notes record that the claimant said, 'I am not sure why that was the case but this is not unusual'. The claimant said she told EK several times not to go inside and had to call Witness 1 for help. He took her to the living room and the claimant then completed her reports in the dining room.

55. The claimant denied that EK tried to hit her or that she went to hit her or that EK fell to the ground. She would not class it as an altercation.
56. At the disciplinary hearing the claimant was encouraged to tell Jo Ellis what had happened that day as her personal statement had been read. She described it as a 'normal day'. She explained she had wanted to write up her reports in front of the fan and asked EK for the table but did not 'want to come near to her because I am already afraid of her'. The claimant said that as she was writing her reports EK kept asking for the table. The claimant then got up and took her books and left but did accept that she told EK 'you are so rude and mean'. The claimant stated she went to the cloakroom and when she came out EK was trying to get in. She called for someone else to come as EK was not listening. She denied that she and EK ever touched each other stating 'whenever she is near, I put my hands up like this...because I am very careful with her'. The claimant asserted that there had been three previous incidents when EK had hit members of staff, the last being a scratch on the face.
57. Jo Ellis asked the claimant why she had not mentioned the cloakroom in her initial interview with Nicky Croucher and the claimant's response was that she hadn't remembered it at that time and didn't consider it an incident.
58. The claimant denied putting the table in the cloakroom; EK just wanted to get in there. Nothing had happened and no one tried to hit anyone and she certainly didn't fall to the ground. There was nothing that could have been interpreted as a push or hit.
59. There was discussion at the disciplinary hearing of what could be seen in the video. Jo Ellis put it to the claimant that it showed her outside the cloakroom with EK but not the table. The claimant stated that EK had taken it back to the other side of the room. When asked why Enzo then had to calm EK down by offering her his table the claimant's response was 'to divert her attention'. Jo Ellis is noted as stating she did not understand why EK was looking for her table in the cloakroom if the claimant had already given it to her. The claimant's response was 'it's a divert of attention. Because the table I already gave her'. Jo Ellis also questioned the claimant about the diagram attached to her personal statement showing where she said she had left the table and her books but that in the video the table wasn't there and the books are on the sofa where Enzo was sitting not the one the claimant said she was sitting on. The claimant said that EK must have moved the table after the claimant left the room.
60. There was discussion about the handover that day. TH, who accompanied the claimant, had been present at it and she confirmed that nothing had been discussed specifically about a table just that it had been a bad shift and 'she had been rude to staff, which isn't unusual'. She would describe her as 'persistent and forceful' until she might get what she is going on about.

61. Jo Ellis asked the claimant about her working relationship with Enzo which she described as good. Regarding the photograph that Enzo said he had taken and had shown to Charmaine the claimant asserted that they had fabricated this. It was entirely made up. She questioned why Enzo had not said anything at the time and waited until Charmaine came back from leave.
62. The claimant was asked about her allegation in her personal statement that she had been 'constantly harassed' by Charmaine. She answered that she was constantly questioning her and had accused her of having an affair with another member of staff. She said that Charmaine changed menus that she had prepared. TH added there was 'a lot of undermining going on'. TH confirmed she had supported the claimant when she had been told she could come across as 'abrupt' although she hadn't seen a problem.

Further investigation by Jo Ellis

63. As the claimant had referred in her personal statement to five colleagues, she asked the respondent to contact 'to showcase my behaviour and gather more information on same', Jo Ellis contacted them after the disciplinary hearing and three replied. TH stated she was not on shift with the claimant on 7 August 2024 but arrived for her late shift soon after the incident but was only made aware of it when interviewed by Nicky Croucher. She had not seen the claimant behave any differently towards EK than she did to others in their care. She was aware that the claimant had asked to change her link duties to another individual.
64. CB replied that she was off sick on 7 August and was not aware of the incident. She had become aware of conflict between the claimant and Charmaine and knew the claimant did not like working shifts with Charmaine but had a good relationship with other colleagues. The claimant is professional but 'her tone can appear abrupt and bossy at time...not to the extent to raise any alarm'.
65. SN was not on shift on the 7 August. She found the claimant a 'supportive and friendly team member who works well with everyone'. She was aware of conflict between the claimant and Charmaine.
66. On the 31 October 2024 Jo Ellis had a follow up telephone call with Charmaine (p272) in which she confirmed she had seen the photo taken by Enzo. EK could be seen on the floor in the hallway on her hands and knees and appeared to be moving away from the cloakroom. Neither the claimant nor the cloakroom door could be seen in the photo. The person taking the photo seemed to be in the lounge. A few days later when she asked Enzo to send her the photo he told her he had deleted it after training he had attended. In a further call on the same day Jo Ellis put to Charmaine that the claimant believed the suggestion of a photo had been fabricated. Charmaine still confirmed she had seen it.
67. Also on 31 October Jo Ellis was contacted by Enzo who confirmed he took the video right after the photo. Having reviewed it before calling he said that EK

could be seen clutching the wall at the start and this is when she was getting back up after falling to the floor following the push.

Further interview with Enzo – 31 October 2024 (p273 – wrongly dated 1 November)

68. Jo Ellis asked that Enzo take her through what had happened again. He was consistent in describing how the claimant wanted EK to be weighed but she was refusing. The claimant was writing up notes at what he described as EK's desk and had her books and folders on it. EK got up and picked up the table making the claimant's papers fall to the floor. This is when the claimant had told EK she was so rude. They then both had a leg of the table each. The claimant took the table and put it in the cloakroom/cupboard. EK went to the cloakroom to get the table back and she and the claimant were then 'going back and forth opening and shutting the door'. He demonstrated a flapping his hands gesture which is what EK did and explained that the claimant had been 'weird' with EK since the incident with the other member of staff. The claimant had flapped her hands too and then 'from nowhere [she] just went bam and pushed her like literally hands on chest...[EK] lost her balance and fell backwards and hit her back against the wall.' The claimant had told EK to 'get up' and then left. Enzo checked EK's back and she was alright and went and sat down. He said he would bring her the table when she had calmed. The claimant then came back in the room and continued to call EK rude and then both she and the claimant had apologised. It was he who gave EK another table to do her puzzle on.
69. Enzo also explained that he had taken the video so it was not just one person's word against another but deleted the photo after attending training that had emphasised you should not take pictures of service users. He had deleted both but had been able to retrieve the video but not the photo. The training he had gone on was on the 14 August 2024.
70. In describing how the claimant behaved with EK he stated 'if you asked any of the staff in the house they would tell you that the way she talks to [her] is a bit off and she even admits to not liking her, she was say I don't like you, I don't like you, I don't want to be your link worker...'. Regarding his working relationship with the claimant he felt she had put him in an awkward situation.

Disciplinary outcome (p286)

71. By email dated 4 November 2024 Jo Ellis notified the claimant of her decision to dismiss the claimant for gross misconduct. She set out in detail her reasons which can be summarised as follows:
- 71.1. The video evidence was compelling
 - 71.2. That the claimant had confirmed a verbal altercation
 - 71.3. When originally interviewed the claimant had denied any incident but after viewing the video had admitted preventing EK from accessing the cloakroom.

- 71.4. That the video showed EK to be upset and confirmed that she was trying to get her table back.
 - 71.5. Both Enzo and Charmaine confirmed the photo had shown EK on the floor and that Enzo was clear this was a result of the claimant pushing her.
 - 71.6. That EK was on the floor had never been recorded or reported by the claimant.
 - 71.7. Enzo had confirmed that the photo was taken before he started the video recording and the video showed EK holding a doorway consistent with pulling themselves up to their feet after a fall.
 - 71.8. She had considered the three statements from colleagues.
- 72. Jo Ellis confirmed in evidence that the cloakroom was used by residents and not just staff so it was not the case that EK had no right to go in there. It was also in her view significant that the video showed EK was only persuaded to come away from there when Enzo offered her another table for her puzzle. This gave further credibility to the incident as he had described.
 - 73. Whilst the claimant had said she had issues with Charmaine, Jo Ellis did not find it feasible that Charmaine and Enzo had conspired to raise the matter and that there had been a photograph of EK on her hands and knees. Charmaine was corroborating the existence of the photograph, nothing more.
 - 74. Even if Enzo had been uncertain as to the order of the photograph and video he was consistent about the nature of the incident.
 - 75. Jo Ellis explained how she had considered a lesser sanction to dismissal but had decided that if the claimant were to remain employed but at a different place of work 'there is too great a risk of your harmful behaviour transferring to other vulnerable adults'.
 - 76. The claimant was reminded of the respondent's obligation to refer the details to the Disclosure and Barring Service (DBS). She was also advised of her right of appeal within 5 working days.

Claimant's appeal – 7 November 2024 (p301)

- 77. The claimant submitted an 8-page appeal document. This covered the following issues:
 - 77.1. Discrepancies with the investigation process:
 - 77.1.1. Lack of due process
 - 77.1.2. Partial investigation
 - 77.1.3. Lack of tangible physical evidence and reliance on non – available evidence

- 77.1.4. Lack of account of previous incidents of harassment and discrimination against myself.
- 77.1.5. Lack of accuracy of video transcript
- 77.1.6. Lack of account for my previous personal record and positive comments.

77.2. Discrepancies with the Disciplinary Hearing decision.

- 77.2.1. Lack of due process
- 77.2.2. Lack of adequate preparation time
- 77.2.3. Lack of consideration for personal statement and hearing process
- 77.2.4. Lack of consideration for investigation process and how it was conducted
- 77.2.5. Lack of consideration for to discrimination / harassment against myself
- 77.2.6. Lack of consideration for investigation officer objectivity and biasness
- 77.2.7. Lack of consideration of EKs difficult behaviour
- 77.2.8. Lack of consideration for missing tangible and objective evidence
- 77.2.9. Lack of consideration for human behaviour in aggressive situations
- 77.2.10. Inadequate witness consultation.

- 78. By letter of the 11 November 2024 the claimant was advised that the appeal would be heard by Sara Parkinson, Head of Business Development. She confirmed by letter of 18 November that the hearing would be held on 22 November 2024. The claimant was reminded of her right to be accompanied and that the appeal would not be a re-hearing but to give the claimant opportunity to explain her appeal.
- 79. The claimant sent Sara Parkinson a further document of 16 pages dated the 19 November 2026 (page 315). At page 331 of the bundle could be seen a version of this document annotated by Sara Parkinson with questions added in red. In an email of 2 November 2024 she asked Nicky Croucher and Jo Ellis if they were able to answer her queries.

Appeal Hearing – 22 November 2024 (p352)

- 80. Notes of the appeal hearing were seen in the bundle. The claimant was accompanied by a support worker BH. Sara Parkinson confirmed she had been through the documentation the claimant had submitted and pulled together questions she wished to put to her. It was made clear that the police had given the respondent the authorisation to proceed on the 18 October 2024.
- 81. The meeting proceeded to go through 17 points that Sara Parkinson had highlighted in the claimant's appeal documents and the claimant was given the opportunity to clarify all of those. The claimant sent in some further

observations (p379 – 382) following the appeal and these were reviewed by Sara Parkinson during her consideration.

82. After the appeal Sara Parkinson followed up some points with Nicky Croucher and Jo Ellis (pages 485 & 486). She concluded that the dismissal had been justified and set out the reasons for her decision in an 11 page letter to the claimant (pages 383 – 393) dated 9 December 2024. She found no procedural unfairness or reason to overturn the decision which she found had been based on credible evidence after a fair process.
83. Sara Parkinson reviewed the interviews with Enzo and found that he was consistent with the timeline of what had transpired. She concluded that the photograph had been taken before the video and found no contradictions between his statements given on 21 August and 31 October. Both confirmed this.

Submissions

Respondent

84. The tribunal cannot substitute its view for that of the employer who has a range of options. This does not require forensic procedures. The claimant produced a 27 page document for the appeal. If every point is not addressed that does not necessarily make it unfair.
85. The reason for dismissal was clearly misconduct and the process followed was within a reasonable range and was entirely compliant with the ACAS Code.
86. There was fact finding, a disciplinary hearing and an appeal. The claimant was provided with all the evidence and accompanied. She exercised her right of appeal.
87. The claimant was kept notified of what was happening and why there were delays. The only real challenge of process was that 4 days to prepare for the disciplinary hearing was not enough. It was enough. The claimant was able to produce a very detailed statement and if she hadn't had enough time she wouldn't have been able to do that. She could have asked for more time but didn't.
88. To suggest that the outcome was predetermined as the claimant was not on the rota is farfetched. Charmaine did the rota locally. If the claimant was suspended for a long time it would have been odd to put her on rota.
89. The respondent had a genuine and reasonably held belief in the misconduct. On the main allegation Enzo remained consistent. This is in writing four times. The claimant had been rude to and been argumentative with EK, had pushed her and caused her to fall. Enzo had no axe to grind. They all said they got on well. He had no reason to make this up. Unless something unusual had happened, it would have been odd to record it. Something must have happened. The video does offer some support

to Enzo's narrative. At the start EK is seen clutching the door frame. There was argument outside the cloakroom. There is no table in the lounge. The claimant is calling EK rude.

90. The photo showed EK on her hands and knees. Charmaine also saw the photo. Both confirmed they had seen it. There is an explanation as to why Enzo deleted it because of the training course. They both knew that this was being investigated as a safeguarding and police issue so it is unlikely that they colluded and made it up.
91. There are small differences between Enzo and Charmaine at p272 about the video. That is reassuring in that they hadn't colluded. If they had done there wouldn't be minor differences.
92. The claimant on her own account was very angry that day and described it as a very bad experience. That was inconsistent with saying nothing had happened. It is more likely that she momentarily lost her cool and pushed EK.
93. The claimant's credibility was also undermined as at the investigation meeting she said nothing happened at the cloakroom and then when she saw the video footage she changed her mind. There is no reason why she couldn't have said that at the investigatory meeting. The video shows her blocking access to the cloakroom, raising voice and referring to EK as a rude person.
94. All these points entirely justified the genuine and reasonable belief held by the respondent in the claimant's misconduct.
95. Dismissal was clearly within the range of reasonable responses. This was in a social care setting which is highly regulated. There is nothing more serious than physical assault. But there was also psychological abuse of EK. There was no compelling mitigation. It was not appropriate to give a lesser sanction. The claimant agreed that 'if' it happened it was appropriate to dismiss.
96. If it were found to be an unfair dismissal the tribunal must consider where there should be any deductions on the grounds that dismissal would still have occurred or for contributory fault. The claimant made the concession that she referred to EK as rude and being abrupt and angry with her. Any procedural failings, which are not accepted, would not have made any difference.
97. Regarding the police and safeguarding investigations, the respondent acted entirely in line with their policy which states that they shouldn't proceed to a full disciplinary. When it is read with the 1st bullet point a preliminary investigation is not prohibited. Even if that interpretation were wrong how has it caused the process to be unfair? If anything a wait would have caused difficulties with recollections. The tribunal has seen the emails where they say it is unfair to keep the claimant waiting. There was more chance of unfairness if they waited any longer.

98. Regarding the criticism that the claimant was not given the allegations at the initial meeting with Nicky Croucher that is entirely normal and reasonable. Some employers might but others don't. It was fact finding before considering the other evidence. It did not prejudice the process as the claimant was told what allegations were before the disciplinary hearing and was able to challenge it which she did. By taking that position the respondent is more likely to see differences that could go to credibility. There was nothing unfair about it and it was to be expected in something serious like this. It was an assault.

Claimant

99. It was not disputed that conduct was the reason for dismissal and that the respondent was entitled to investigate the allegation which was a serious one. That means there was more necessity that they follow a fair process.
100. There were two distinct allegations. The claimant accepted she was angry and called EK rude for which she apologised. She denied pushing EK and/or hiding the table.
101. The claimant didn't change her story after seeing video. She always said she was angry before she was shown the video and had the allegations.
102. The 21 August allegations did not provide any sequence or the detail.
103. When the claimant saw the video was the first time she was able to identify the interaction and that is why she explained why she had not allowed EK to enter the cloakroom.
104. The video shows Enzo getting up from the sofa and going into the corridor and making the video. It doesn't show a fall or EK getting up. Both Jo Ellis and Sara Parkinson accepted that, but they have made an inference.
105. The transcript shows that the claimant asked Enzo for help and is saying 'please' to EK. No one had asked EK if she had fallen.
106. Jo Ellis has stated that Enzo's statement didn't change completely but that there were some differences. The time sequence changed. It was submitted that the changed sequence makes the 21 August interview 'null and void'.
107. Enzo didn't remember what came first the photo or the video. If it was so important he would have done. This goes to his credibility. Even if the photo showed EK on her hands and knees it doesn't establish when it was taken.
108. There were inconsistencies. Charmaine recounts only what Enzo told her. She was unaware of the video. It was not established independently that there was a photograph.
109. These points were raised by the claimant but were not addressed. The others the respondent interviewed were given the opportunity to change their statements to suit the narrative whereas the claimant was told she was lying.

110. The others on the next shift confirmed there was 'no aftermath', there had been nothing out of ordinary. It was not as adverse as portrayed. They didn't see any impact on EK.
111. The investigation was selective. Whilst accepting that the respondent did not want to tell the claimant the allegations to start with they should have given them to her as she then had no opportunity to change her statement.
112. There were multiple interviews with Enzo and Charmaine enabling them to expand and change their statements. The claimant was only given one interview at the outset and was not given the opportunity to change it.
113. The claimant was not told of further interviews after the disciplinary hearing. The initial emails were not provided to the claimant who was only given selective evidence. Claire Bailey's witness statement was missed out in which she stated that the claimant was compassionate but focused on suggestions that she was frustrated and abrupt.
114. Charmaine's bias was never tested. She was a key witness and spoke of seeing the photo and if they had taken her out of the process it would have weakened Enzo's evidence. Her evidence should have been treated with caution.
115. The claimant has been saying the investigation was biased and explained this at the disciplinary and appeal hearing. She gave specific incidents that Nicky Croucher was also biased.
116. The respondent completed their investigation before the police gave their authority. The fact finding cannot include an analysis and recommendations. The claimant was sent a letter on 11 October stating that she was to be taken to a disciplinary hearing and was only given 4 days to prepare. The respondent should have gone back to the claimant after the police gave authority and given the allegations back to the claimant before they moved forward with recommendations. The claimant was not given the opportunity to address those. She was not given an appropriate opportunity to address them at the disciplinary. Even though the claimant prepared her personal statement does not mean she had sufficient time to prepare.
117. After the disciplinary Jo Ellis continued with interviews that were not put back to the claimant. She accepted that statements had changed as did Sara Parkinson.
118. It surprised the claimant's husband that there was no written evidence of validating any facts/questions but outcomes of the hearings only.
119. All agreed that the video does not show the fall. Jo Ellis' conclusion is 'inference only'.
120. The claimant accepts that high standards were expected. That justified the investigation but not that dismissal was inevitable. The process does allow for other sanctions. There is no evidence that those were checked or

tested. The cloakroom allegation was used to justify the dismissal but that the claimant did not allow EK to go into cloakroom was not part of the allegations.

121. The claimant does not ask the tribunal to find that she behaved perfectly but it must distinguish between the language used and physical abuse. The claimant had 2 ½ years good service. The tribunal should find the dismissal unfair.

Relevant Law

122. There is no dispute that the reason for the claimant's dismissal was conduct, a potentially fair reason falling within section 98(2)(b) Employment Rights Act 1996 ('ERA'). The tribunal is thus required to consider the guidance in British Home Stores Ltd v Burchell [1978] IRLR 379 and decide whether the employer 'entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time'. The court went on to state that this involves three elements:

First, there must be established by the employer the fact of that belief; that the employer did believe it. Second, it must be shown that the employer had in his mind reasonable grounds upon which to sustain that belief. And third, the employer at the stage at which he formed that belief on those grounds, must have carried out as much investigation into the matter as was reasonable in all the circumstances of the case. An employer who discharges the onus of demonstrating these three matters must not be examined further. It is not necessary that the Industrial Tribunal itself would have shared the same view in those circumstances. Nor should the Tribunal examine the quality of material which the employer had before him, for instance to see whether it was the sort of material which, objectively considered, would lead to a certain conclusion on a balance of probabilities, or whether it was the sort of material which would lead to the same conclusion beyond reasonable doubt.

123. It is well established that the investigation to be carried out by the employer is not for the purposes of determining, as one would in a criminal court whether the claimant was guilty of an offence. The purpose of the investigation is to establish whether there were reasonable grounds for the belief that the employer formed of the misconduct, that there had been misconduct on his part, to which a reasonable response was a decision to dismiss.

124. The tribunal must have regard to section 98(4) ERA which provides:

'...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.

125. The tribunal is not to substitute its view but to decide whether dismissal fell within the 'band of reasonable responses' which a reasonable employer might have adopted.

Conclusions

126. The claimant does not dispute that she was dismissed for misconduct.
127. The respondent had a reasonable belief in that misconduct, formed on reasonable grounds after carrying out an investigation which was reasonable in all the circumstances. Unfortunately, the claimant and her husband both in the statements they provided during the disciplinary process and for this hearing have sought to impose on the respondent a burden of proof that would be expected in a criminal court of establishing a matter beyond all reasonable doubt. That is not the standard applied in these cases before the Employment Tribunal where it is looking at the reasonableness of the approach.
128. As soon as Nicky Croucher was aware of the alleged incident she met with the claimant. This was fact finding and she cannot be criticised for not, at that early stage, setting out what the allegations were. It would have been difficult to frame them at that early stage. As soon as she did and in the claimant's suspension letter, they were clearly set out. Much has been made at this Hearing that the claimant did not know what the allegations were but they could not have been clearer in the letter to her of the 21 August 2024, namely that she had argued with and shouted at EK and pushed her so that she fell back onto a wall and subsequently onto the floor.
129. The claimant is critical that Enzo did not report the incident straightaway. The respondent was entitled to take into account his reasoning, that he was new to the organisation and that he reported it to Charmaine on her return from leave. There was less than a week in-between.
130. After meeting with the claimant Nicky Croucher conducted several interviews with not only Enzo and Charmaine but three other members of staff on 21 August 2024.
131. As the matter had to be reported to the Safeguarding Team the respondent was informed on 22 August 2024 that the police would take the lead in the matter. No further interviews were then conducted at that time.
132. When the police gave the go ahead to the respondent that they could proceed the claimant was invited to a disciplinary hearing. The claimant is critical of Nicky Croucher preparing her investigation report before that date. She had a difficult decision to make and it was only reasonable to decide that before too much time had passed since the various interviews she put her report together.
133. The allegations were clearly set out in the letter that invited the claimant to the disciplinary hearing. The claimant was advised of her right to be accompanied (and was) and at no time did she indicate that she had not had adequate time

to prepare. She and her husband had ample time to prepare a very lengthy personal statement. The claimant's evidence that she could only ask for a postponement of the disciplinary hearing if she could not find anyone to accompany her was not credible and contrary to the clear wording of the invite to the disciplinary hearing.

134. The claimant was accompanied to the disciplinary hearing and had ample opportunity to put her case. The notes show that she at times liaised with her representative.
135. The claimant then had and did appeal and again was accompanied and had the opportunity to put her case. Another document was prepared by her for that hearing.
136. The respondent operates in a highly regulated environment and is caring for vulnerable users. The claimant has accepted that high standards are expected of its employees. She also accepted that she had been angry towards EK and called her rude. Something that the respondent was entitled to conclude was not behaviour expected of one of its support workers. The respondent had reasonable grounds after a reasonable investigation for concluding that the claimant had shouted and argued with EK and pushed her causing her to fall back against the wall. It had evidence from both Enzo and Charmaine that the photograph had shown EK on her hands and knees and the video that shows her trying to get into the cloakroom. Jo Ellis was entitled to conclude that there would have been no reason for EK to be trying to get into the cloakroom other than to retrieve the table particularly as Enzo can be heard trying to placate her by offering her another table.
137. It was reasonable for the respondent, through Nicky Croucher to collect evidence from those that had seen the incident or the video/photo. That was necessary as part of its fact finding and might reasonably require more than just one interview with a given individual.
138. The claimant alleges bias against both Nicky Croucher and Charmaine, but neither was the ultimate decision maker. The decision to dismiss was made by Jo Ellis. Whatever issues the claimant had with Charmaine all she was doing was confirming she saw the photograph before it was deleted.
139. Jo Ellis did speak with those the claimant had asked her to. Some could not assist and others knew something, though little of the incident. That some had good things to say about the claimant does not necessarily mean that the incident did not occur. All have accepted that the claimant and Enzo had a good working relationship which makes his evidence even more credible.
140. The claimant and her representative have approached this claim as if it were a forensic exercise. This was particularly evident in closing submissions when it was submitted by Mr Junaid that he was surprised that there was 'no written evidence of validating and facts and/or questions' but just the outcomes of the disciplinary and appeal hearings. That would be imposing too high a bar on the respondent when a very detailed outcome letter was sent following the

disciplinary and appeal hearings. The letters show just how the respondent had in fact weighed up all the evidence it had obtained.

141. It was suggested that the respondent completed its investigation before the police gave authority. The documents show the interviews had been already been completed and Nicky Croucher did then prepare her investigation report before that authority was given. They did not however proceed with the disciplinary until that authority came through. There could equally have been criticism if the respondent had waited too long after it conducted the interviews to prepare the investigation report. It had to weigh up the balance of prejudice to the claimant if there was further delay. When asked in submissions how this made the dismissal unfair the claimant's representative stated that the claimant only had 4 days to prepare for the disciplinary hearing. At no time did she request more time or ask for a new date. She could have done so.
142. It was also suggested that Jo Ellis should have gone back to the claimant with the information she obtained in the additional interviews she conducted. She had done what was requested by the claimant and the tribunal accepts took those interviews into account when reaching her decision. The respondent is required to act reasonably within all the circumstances and there must come a point where it is entitled to conclude it has obtained all the information it needs on which to base its decision.
143. The respondent did consider other lesser sanctions. It had concluded that the claimant's behaviour amounted to gross misconduct and within its environment was entitled to also come to the reasonable conclusion that an alternative role within the organisation was not appropriate. The task of this tribunal is to determine whether that decision was 'within the range of reasonable responses' which it clearly was. It is not for this tribunal to substitute its decision for that of the employer.
144. It follows that the respondent acted fairly in treating the claimant's conduct as a reason for dismissal. The claim of unfair dismissal fails and is dismissed.

Approved by:

Employment Judge Laidler

3 September 2026

JUDGMENT SENT TO THE PARTIES ON
4 September 2026

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written full reasons for judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimant(s) and respondent(s).

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here: