EMPLOYMENT TRIBUNALS

Claimant:	**Mr J Rogan**
Respondent:	**MG Solutions (UK) Ltd**
Heard at:	Tribunals Hearing Centre, 50 Carrington Street, Nottingham, NG1 7FG
On:	24 August 2026
Before:	Employment Judge Adkinson sitting alone
Appearances	
For the claimant:	No attendance
For the respondent:	Ms S Gittins, Counsel

JUDGMENT

UPON the claimant not attending but asking that the Tribunal proceed in his absence and consider the evidence he has presented

AND UPON hearing Counsel for the respondent

AND for the reasons set out below IT IS THE TRIBUNAL'S JUDGMENT THAT

1. The respondent fairly dismissed the claimant. The claimant's claim for unfair dismissal fails and is dismissed.
2. The claimant committed an act of gross misconduct and so his claim for breach of contract (notice pay) fails and is dismissed.
3. The claimant's claim for unauthorised deductions of wages fails and is dismissed.

REASONS

Introduction

1. I refer to Mr James Rogan as the claimant, and MG Solutions (UK) Ltd as the respondent.
2. The claimant claims wrongful dismissal (i.e. notice pay), unfair dismissal and unauthorised deductions from pay. The respondent says the claimant is not owed anything because he was fairly dismissed for, and was guilty

of, gross misconduct, and avers that it does not owe him any money. The respondent is correct.

The hearing

3. Mr Gittins, Counsel instructed by Knights Solicitors, represented the respondent. The claimant did not attend. I discuss this below.

4. The respondent adduced oral evidence from Mr Luke Tompkins and Mr Mark Groombridge. The claimant relied on his own statement which I treat as hearsay. There was an agreed bundle of 432 pages. The respondent made oral closing submissions. I treated the claimant's statement, claim form and grounds of complaint as his closing statement.

5. The reason the hearing proceeded in the claimant's absence is as follows. On 21 August 2026 the claimant emailed the Tribunal. He said he was experiencing worsening anxiety, aggravated by the imminence of this hearing. He wrote:

   "Unfortunately, my current symptoms are such that I do not feel able to attend the hearing either in person or remotely. I do not wish to delay the proceedings unnecessarily and, if at all possible, I would prefer the hearing to continue rather than be postponed."

   He asked that the hearing proceed in his absence taking into account his statement and documents. He posited that if the Tribunal felt his attendance was essential for a fair hearing, then he invited the Tribunal to adjourn the case.

6. He attached a letter from his general practitioner that confirmed his symptoms were disabling and distressing and asked the Tribunal to make adjustments if possible, but his general practitioner also wrote:

   "I have said that I can't say that he is not fit to attend (as this may be legally required)"

7. I decided to proceed. The respondent did not object. I made this decision for the following reasons.

   7.1. The claimant's primary request was to proceed in his absence.

   7.2. He was fit to attend the hearing according to his doctor. He had therefore decided not to do so which is a decision he has capacity and freedom to make.

   7.3. He had not invited the Tribunal to consider adjustments that would enable him to attend.

   7.4. The Tribunal's procedure is flexible enough to allow me to proceed this way (see for example rule 42 that contemplates a situation where a party decides not to attend).

   7.5. It is a matter for the claimant to decide whether to attend. A fair hearing has been possible because he has had the choice to attend and freely decided not to. That is a matter for him. It is not for me to dictate what decision to make in these circumstances.

   7.6. A postponement would seem pointless since it the hearing itself which is problematic. A postponement does not address that. It simply prolongs the case to another hearing. There is no evidence postponing the hearing will make his attendance more likely. In any case he has asked for that not to happen.

7.7. I believe to proceed furthered the overriding objective of avoiding delay, saving expense, promoting flexibility and has afforded the claimant a chance to take part. In addition postponement would use up a disproportionate amount of the Tribunal's resources.

8. Because of the claimant's absence I reserved my decision. This is that decision. They are the full reasons.

The witnesses

9. I firstly address the witnesses.

10. The respondent's witnesses were not cross-examined and there is nothing about their oral evidence to suggest they are not credible. In addition their evidence is supported by the documentation. I accept what they say.

11. The claimant's evidence is hearsay. While the act does not apply in the Employment Tribunal because the strict rules of evidence do not apply, I have derived assistance from the **Civil Evidence Act 1995 section 4** as guide of what might be relevant when considering how much weight to attach to hearsay evidence. I come to the following conclusions.

11.1. I understand why the claimant chose not to attend. However he was fit to attend according to his doctor. He did not invite the Tribunal to adjust the process to facilitate his attendance. In my view his non-attendance undermines the credibility of his evidence because I do not consider there to be a good reason for non-attendance in the circumstances.

11.2. His statement is not contemporaneous.

11.3. Although I have detected nothing in his statement to suggest he is deliberately seeking to misrepresent or to conceal matters. I have no reason to believe that the claimant does not honestly believe what he has written, his non-attendance means that I have not had the benefit of hearing his evidence or answers to questions from the respondent on the key issues in dispute. I have not been able to evaluate his demeanour to assist in assessing credibility. I have not been able to assess the credibility of his case on what happened for example.

11.4. When I weigh up the above, I come to conclusion I should attach little weight to his evidence. Where therefore there is a dispute, I prefer the evidence of the respondent.

The facts

12. I make the following findings of facts on the balance of probabilities. I cannot deal with every possible point – it would be disproportionate. I therefore only address those necessary to understand my decision.

13. The respondent is a self-described "provider of innovative solutions for enhancing the durability and performance of concrete structures." It is a

small family-run company with 3 directors. There is no suggestion that otherwise its size and administrative resources have any particular impact on how it deals with disciplinary matters.

14. The respondent employed the claimant from 14 June 2023 as a project manager. There is no challenge to how the claimant described his role, so I quote it from his statement paragraph 1.2-1.3.

"1.2 My role was Project Manager. My responsibilities included project delivery, management of operatives and subcontractors, procurement of materials, preparation of [risk assessment and method statements], budget management, client liaison, site supervision and ensuring compliance with health and safety requirements.

"1.3 Throughout my employment I was entrusted with significant responsibility. I regularly travelled throughout the United Kingdom in support of the Respondent's projects and also travelled overseas on the Respondent's behalf."

15. He was based at the respondent's Derby site and worked there most of the time.

16. On 2 October 2025 Mr Tompkins, the respondent's Chief Operating Officer and the claimant's line manager, issued the claimant with a final written warning. The disciplinary offences were driven by very difficult personal circumstances that I need not detail but which affected his mental health adversely. The claimant admitted the disciplinary offences. Mr Tompkins had declined the claimant's offer to resign. The final warning cited the following misconduct as justifying the warning:

"• You logged on for work and subsequently went AWOL [absent without leave] without notifying anyone on Sunday 21st September and Monday 22nd September

"• Misuse of company credit card for personal purchases

"• Repeated speeding and unsafe driving behaviour in a company vehicle"

17. The warning contained the following additional note:

"This will remain on your personnel file for 6 months from the date of this letter and will therefore expire on 2nd April 2026. If any further disciplinary issues arise within this period, whether of a similar nature or not, you will be subject to further disciplinary action which may lead to your dismissal."

18. The claimant did not appeal the decision though aware from the written warning of his right to do so.

19. Mr Tompkins and the claimant agreed to reduce the amount of time that the claimant would work away from home to reflect his personal circumstances. They agreed he could travel to locations in working hours, and the claimant agreed would work on one project where he would have to stay away a few nights. They agreed he would not be required to work weekends or to undertake early starts.

20. The respondent operates a rule that it must authorise weekend work before it is undertaken. Normally weekend would require Ms Tompkins' agreement.

21. Mr Tompkins returned to work on Tuesday 4 November 2025 from leave commencing 31 October. On his return he telephoned the claimant. The claimant said that he had worked during the weekend on 1 – 2 November 2025 and made significant progress on one of the sites he was managing. The claimant had not sought or obtained Mr Tompkins prior authorisation.

22. On the morning of 5 November 2025 the claimant and Mr Tompkins again spoke by phone.

23. However that afternoon Mr Tompkins tried repeatedly to contact the claimant by phone. He could not reach him. The claimant's wife also called the respondent and left messages for Mr Tompkins. She reported she too could not reach the claimant and that she was worried for him.

24. Mr Tompkins called the claimant at about 17:25 and the claimant answered this time. The claimant reported that informed me that he had

    "been grafting all day"

    and that his phone had died. He did not tell Mr Tompkins that he had felt unwell physically or mentally. He said that Mr Tompkins was not to worry that the claimant's wife was calling, despite the earlier incidence of being AWOL and poor mental health.

25. Mr Tompkins tried to call the claimant's mobile on the morning of 6 November 2025, but it was turned off. He messaged the claimant through WhatsApp and tried to call him a few more times that morning but could not reach him. The claimant did not read the messages.

26. An employee phoned Mr Tompkins that day (certainly by 14:40). He told Mr Tompkins that while personally was on site, the claimant was not and had not been seen on site all week (save for a short time each morning as confirmed only by a subcontractor). He also confirmed that no repair works (for which the claimant was responsible) had been carried out and that the respondent was now behind on the project because of this.

27. The WhatsApp messages I referred to above were as follows (taken from the log of messages):

    "[06/11/2025, 09:01:35] Luke Tompkins: Mate your phones off again is everything ok??

    "[06/11/2025, 14:40:08] Luke Tompkins: Hi James, Matt attended a site visit to Bewley today where you were not on site. Please come back to the office tomorrow morning for a meeting to discuss. <This message was edited>"

28. In summary Mr Tompkins did not know where the claimant was. He did not know why works the claimant was managing were not on track. As Mr Tompkins told me in evidence, he had only the claimant's assurance from the previous day. The absence had not been approved. The claimant had not contacted the respondent to suggest his health was deteriorating. That is why the second message required the claimant to attend a meeting the next day (7 November 2025).

29. In addition the claimant's wife had repeatedly called Mr Tompkins and sent him WhatsApp messages saying she could not reach the claimant and asking if he knew his whereabouts. This influenced Mr Tompkins decision there had to be a meeting.

30. Later, the following exchange took place.

"[06/11/2025, 15:40:25] James Wife: Ive just got home. He's here. He said he paid for his own digs as the credit card wouldn't work

"[06/11/2025, 15:41:39] Luke Tompkins: Can you ask him to ring me asap please

"[06/11/2025, 16:11:47] James Wife: I will do

"[06/11/2025, 16:16:12] Luke Tompkins: Can you please ensure he comes in tomorrow for a meeting. I've called him a few times but can't get through. I've messaged but he's not read it

"[06/11/2025, 16:22:22] James Wife: I will do, I've told him to call you, we're just sorting things out, so he will probably call you later.

"[06/11/2025, 16:23:00] Luke Tompkins: It's fine he doesn't need to call just come to office tomorrow for a site meeting

"[06/11/2025, 16:23:09] James Wife: Ok

31. The meeting on 7 November was due to start at 1300. In a message sent at 1240 the claimant said he was going to be 45 minutes late. By 1400 he had not arrived. In a phone call the claimant told Mr Tompkins he was trying to work things out with his wife and that coming to the office was not a priority. He agreed to an investigation meeting proceeding in his absence. He also agreed that the respondent could collect the tools from the company vehicle.

32. Mr Cox and Mr Tompkins collected tools from the claimant's works vehicle that day. The tools had become stuck to the vehicle floor because of a resin spill. They were urgently needed. Therefore the respondent took the vehicle itself.

33. Mr Tompkins carried out an investigation. I accept his evidence that he also discovered the following in addition to what he knew from his own experiences above.

    33.1. The claimant had logged into his computer device at 7:40am on 6 November 2025. However the device remained offline from 07:41 until 16:25.

    33.2. The claimant was absent from site on 6 November his whereabouts was unknown.

    33.3. Mr Cox had spent 6 November trying to locate the claimant. The result was he lost a day's work on the project.

    33.4. On 1 to 5 November the claimant only attended site for 30 minutes each day before leaving.

34. Mr Tompkins decided there was a disciplinary case to answer of potential gross misconduct. He invited the claimant by email on 7 November to

attend a disciplinary hearing on Tuesday 11 November 2025. The letter made clear the allegations:

"• Logging on for work and subsequently went AWOL without notifying anyone on 6th November. With additional days in question as per next bullet point from reports from our sub-contractor.

"• Claiming to have completed works on site between 01/11/25 – 05/11/25; however, confirmation from the Sub-contractor indicates that your site attendance was limited to a maximum of 30 minutes each morning before leaving. This behaviour constitutes a failure to perform required duties and contributes to project delays, potentially resulting in non-compliance with client deadlines and risking loss of the current contract and future work opportunities."

35. It made clear this could be gross misconduct, that he could be summarily dismissed, he could call witnesses and he had the right to be accompanied. They included a copy of the investigation notes.

36. The meeting took place on 11 November 2025. The claimant attended the disciplinary hearing unaccompanied. Mr Tompkins chaired the meeting because no-one else was available. He provided the claimant with a copy of the investigation notes.

37. There are notes of the meeting. I accept they are a fair and accurate record of the meeting. After some welfare questions, they show the following.

    37.1. The claimant denied turning up for 30 minutes and then leaving site. Rather he said that he had been there all day but sat in the car park opposite.

    37.2. The claimant said the works would have been completed if he had stayed on site and he "held his hands up".

    37.3. The claimant confirmed he did not want an explanation about why company vehicle had not been returned to him.

    37.4. The claimant admitted that he had misled Mr Tompkins about the progress of the works. He did not deny or justify being AWOL. He did not seek to justify misleading the respondent about the progress of the works. He did not suggest he told anyone about his whereabouts. He did not raise any concern he was overworked. The conversation gave him plenty of opportunity to say these things because those potential issues were raised directly with him.

38. Mr Tompkins decided that the claimant was guilty of gross misconduct. I accept his evidence that he believed that the claimant's behaviour, lack of explanation, position as project manager with the authority and trust that goes with that meant the respondent could not rely on him to do the essential element of his job. I accept his evidence that Mr Tompkins concluded that he could not trust the claimant to work independently or manage a team or site safely.

39. I accept Mr Tompkins evidence that he considered all options but concluded summary dismissal was the only realistic option. I accept his evidence that

he believed the events in November were enough to justify summary dismissal, and that the final written warning added nothing to the decision. The letter confirming dismissal was sent 18 November 2025. It sets out the reasons and advises of the right to appeal. It confirms the claimant's employment ended on 11 November 2025.

40. There was an issue with the return of the claimant's company vehicle. In summary the hiree did not allow their electronic return pro-forma that the respondent had to complete to record the reason for dismissal for gross misconduct. Therefore Ms Tompkins selected redundancy but sent a message to explain the real reason. The hiree also recorded the wrong date of dismissal. However a series of emails show that by 24 November, the hiree had recorded the correct date of termination and the correct reasons. I accept there was no malevolence on the respondent's part and conclude they acted reasonably trying to correct the data.

41. The claimant appealed the dismissal on 16 November 2025 (after dismissal but before written confirmation had been sent to him).

42. Mr Groombridge dealt with the appeal. He had no prior involvement and was senior to Mr Tompkins. Mr Groombridge is a director but does not involve himself in day-to-day running of the respondent: rather he focuses on a sister company.

43. One ground of appeal was that Mr Tompkins allegedly breached confidentiality by speaking to a client about the claimant. I accept the evidence that this was merely to say the claimant had left the respondent's employment but did not say why. In any event I cannot see its relevance to the issues before me.

44. The claimant's appeal is curious in that he said he made clear that he did not want to come back to work for the respondent. What he wanted was the finding of gross misconduct to be set aside and instead it to be recorded that either he resigned or there was a mutual agreement to end the employment relationship, and he sought to be paid compensation accordingly.

45. He also submitted various extra emails over time to support his appeal. They concerned:

    45.1. Correspondence from the vehicle hiree about the vehicle,

    45.2. Adding a point about premature removal of the vehicle,

    45.3. Medical evidence to be considered relating to mental health, and

    45.4. Allegations of unauthorised deductions.

46. In total there were by my reckoning about 15 grounds of appeal, plus medical evidence.

47. With the claimant's informed agreement, the respondent dealt with the appeal without a hearing on 3 December. The claimant then submitted another 120-odd pages of documents before that date.

48. Mr Groombridge identified the following points as the grounds of appeal:

"a/ Excessive working hours, working away without notice, mental health deterioration and no welfare checks made by the respondent.

"b/ Factual inaccuracy around events between 1-5 November and the allegations that the Claimant was AWOL.

"c/ 26 September final written warning procedurally invalid and change to meeting on 7 November to be a disciplinary hearing.

"d/ Breach of confidentiality that a Markham Line manager had disclosed to a client the reason for James' dismissal.

"e/ Failure to support wellbeing.

"f/ Contradictory termination information provided to Octopus.

"g/ Immediate removal of work assets and premature removal of company car.

"h/ Unlawful deduction of wages and unpaid weekend work on 1 -2 November 2025.

"i/ Mishandling of personal tools and failure to return property."

I have considered the documents. I agree the list is accurate.

49. Mr Groombridge noted correctly that items "b/" and "g/" were considered at the disciplinary hearing, but the others were not because the claimant did not raise them.

50. Therefore he conducted his own investigation. He sought and obtained information from Mr Tompkins, Mr Cox and Mr Carl Groombridge (his fellow director who runs the respondent day-to-day) by email correspondence. I have looked at the information requested and provided. It would be disproportionate to quote it. However it is apparent that Mr Groombridge asked each of them pertinent questions about events, focused on the grounds of appeal and that each person provided a detailed reply to the questions posed. There is nothing that suggests they answers are superficial or that the authors are setting out anything other than what they believe to be true. The replies are open and they make concessions about records that do not exist, about what they were told and what they knew and provide detailed accounts where they are able to do so. There are no gaps in the evidence that give rise to suspicions their evidence is not reliable or is not complete. Mr Groombridge wanted more information from Mr Tompkins and so sought it, and it was provided.

51. Mr Groombridge dispensed with approaching the appeal as a rehearing because the claimant did not want his job back.

52. On 23 December 2025 Mr Groombridge sent to the claimant the outcome of the appeal. The letter had an annexe to it of 9 pages that detailed Mr Groombridge's conclusions and reasons. It is thorough, considered and cross-referenced to the evidence available to him.

53. It would be disproportionate to quote it all. In summary he concluded as follows.

53.1. Being AWOL: he noted that the claimant sought to suggest now that he was suffering excessive workload which caused his mental health to deteriorate. Mr Groombridge noted the claimant could have raised these in the disciplinary hearing but chose not to, he had opted out of the Working Time Regulations, his work had been adjusted by agreement and as project manager he had significant autonomy to manage his own diary. He also found that Mr Tompkins had tried to find the claimant when he was absent. He noted the claimant in his appeal had said that both the respondent had not checked on his welfare but also that managers had done that. He found also that the claimant had reported feeling better after the incident in September.

53.2. Misleading Mr Tompkins about the progress of works: Mr Groombridge concluded from the witness evidence of Mr Cox that in fact the claimant had been absent and that had led to delays – no works had progressed. This was supported by a lack of quality assurance records.

53.3. Not being paid for 1 and 2 November 2025. Mr Groombridge had checked the “Team Movements WhatsApp” (A WhatsApp chat used to share who is working where). The claimant had not sent his movements to that chat. Nonetheless Mr Groombridge accepted evidence from the claimant and a subcontractor that the claimant had attended the site on 1 November. However there was no evidence to show presence on Sunday 2 November 2025. Sunday is a non-working day. Mr Groombridge also noted there was no evidence that the claimant had undertaken any work that day. Mr Groombridge concluded that the respondent should pay the claimant for 1 November 2025 only. The claimant did not provide any

53.4. Mr Groombridge considered the final written warning. He noted that the claimant had admitted his misconduct and that the AWOL element of that incident bore a similarity to the most recent incident. He noted also however that even without the final written warning he considered the claimant’s misconduct was serious enough to warrant summary dismissal. He considered a fair process had been followed.

53.5. In relation to the company vehicle Mr Groombridge rejected the suggestion this showed the outcome was a foregone conclusion. It was done because the respondent required the tools. The claimant had spilt resin so they could not be removed. Taking the vehicle was the only practical solution. He noted the claimant raised no contemporary concerns.

53.6. Mr Groombridge concluded the data provided to the vehicle hiree was an administrative error.

54. Other matters related to post-termination events, and Mr Groombridge concluded that they shed no light on the correctness of the dismissal. There is nothing in them that in my view sheds light on whether there was gross misconduct. I therefore put them to one side.

55. Mr Groombridge concluded that the claimant was guilty of gross misconduct and that the summary dismissal was correct. He rejected the appeal.

56. Early conciliation occurred between 27 December and 12 February 2026. The claimant presented his claim on 14 February 2026.

57. Payslips show the claimant earned £65,000 gross per year. There is no evidence the respondent paid guaranteed or regular overtime to the claimant. His contract of employment makes no mention of a right to overtime at all.

The law

58. The **Employment Rights Act 1996 section 98** provides it is for the respondent to prove the potentially fair reason for dismissal. Misconduct is one of those reasons. When it comes to reasonableness the burden of proof is neutral. The tribunal should consider all the circumstances including the employer's size and administrative resources.

59. The tribunal has had regard to **British Home Stores Ltd v Burchell [1980] ICR 303 EAT; Iceland Frozen Foods Ltd v Jones [1993] ICR 17 EAT; Foley v Post Office [2000] IRLR 82 CA** and **Sainsbury's Supermarkets Limited v Hitt [2003] IRLR 23 CA**.

60. The tribunal understands of the effect of these cases is as follows:

    60.1. Was there a reasonable basis for the respondent's belief?

    60.2. Was that based upon a reasonable investigation?

    60.3. Was the procedure that the employer followed within the "range of reasonable responses" open to the employer?

    60.4. Was the decision to dismiss summarily within the "range of reasonable responses" open to the employer?

61. The range of reasonable responses is not infinitely wide however: **Newbound v Thames Water Utilities [2015] IRLR 734 CA**.

62. The Tribunal is not entitled to substitute its own view for that of the employer.

63. The **ACAS Code of Practice on Disciplinary and Grievance Procedures** sets out the basic requirements for fairness applicable in most conduct cases. The **Trade Union and Labour Relations (Consolidation) Act 1992 section 207A** requires a Tribunal to have regard to the code.

64. The code identifies the following key steps in any disciplinary procedure:

    64.1. carry out an investigation to establish the facts of each case;

    64.2. inform the employee of the problem;

    64.3. hold a meeting with the employee to discuss the problem;

    64.4. allow the employee to be accompanied at the meeting;

    64.5. decide on appropriate action; and

    64.6. provide employees with an opportunity to appeal.

65. Despite the code of practice and guidelines in the cases, ultimately each case must turn on its own facts and be broadly assessed in accordance with the equity and substantial merits: **Jefferson (Commercial) LLP v Westgate UKEAT/0128/12 EAT; Bailey v BP Oil Kent Refinery [1980] ICR 642 CA**.

66. Dismissal without notice (or with inadequate notice) is wrongful unless the employer can show that summary dismissal was justified because of the employee's repudiatory breach of contract, or that it had a contractual right to make a payment in lieu of notice.

67. Gross misconduct is conduct that:

    'must so undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in his employment'. See **Briscoe v Lubrizol Ltd [2002] IRLR 607 CA**. Put another way, the employee's behaviour must disclose a deliberate intention to disregard the essential requirements of the contract: **Laws v London Chronicle (Indicator Newspapers) Ltd [1959] 1 WLR 698 CA**.

68. Unlike unfair dismissal, the Tribunal must be satisfied that there is actual gross misconduct, and can take into account all the evidence available, including that which comes to light after dismissal: **Williams v Leeds United Football Club [2015] IRLR 383, QBD, Boston Deep Sea Fishing and Ice Co v Ansell (1888) 39 ChD 339, CA.** The employee's conduct must be viewed objectively, so he might commit gross misconduct even without an intention to do so: **Briscoe v Lubrizol Ltd 2002 IRLR 607 CA**.

69. A party can recover an unauthorised deductions for sums that have become properly payable. That means there must have arisen a legal entitlement to the money: **New Century Cleaning Co v Church [2000] IRLR 27 CA.**

Conclusions on the issues I have to decide

70. I turn now to the issues I must decide and the conclusions I have reached.

Unfair dismissal

71. I deal with unfair dismissal first.

    71.1. The first issue is whether the respondent (in this case Mr Tompkins specifically) honestly believed that the claimant was guilty of gross misconduct?

    I conclude that he did. It tallies with his evidence. It is credible that he honestly held this opinion when one considers the information available to him about the claimant's conduct and his apparent absences in November.

    71.2. Was there a reasonable basis for the respondent's belief?

    The answer is yes. Mr Tompkins had from the investigation (see paragraphs 21 to 33 above) reliable evidence that showed

    71.2.1. the claimant had been AWOL,

71.2.2. he had not been seen on site all week because he had been reported to attend site for 30 minutes only at the start of most days,

71.2.3. He was AWOL on 6 November 2025,

71.2.4. Mr Tompkins could not contacted him,

71.2.5. He did not reply to Mr Tompkins' messages,

71.2.6. He had logged into his computer device of 6 November but then went offline for the day,

71.2.7. Repair works which the claimant was responsible had not been carried out and the respondent was now behind schedule,

71.2.8. The claimant admitted that the work would have been completed if he had stayed on site,

71.2.9. The claimant did not justify or deny being AWOL,

71.2.10. The claimant did not cite any concerns about his mental health or work-related issues to explain his behaviour, and

71.2.11. The claimant misled Mr Tompkins about the work he had done.

There was enough to enable a reasonable employer to conclude that the claimant was guilty of gross misconduct.

71.3. Was that based upon a reasonable investigation?

The answer is yes. I refer above to the information that Mr Tompkins had obtained in the investigation (in summary the AWOLs, that he could not contacted, that he logged on then went offline, that the work was behind schedule because repair works had not been done, that he attended site for 30 minutes or so then left). This investigation involved Mr Tompkins relying on his own observations and from others. He also gave the claimant a fair opportunity to be involved in the investigation, but the claimant chose not to be involved. He had nonetheless a fair opportunity to address these matters at the disciplinary hearing.

71.4. Was the procedure that the employer followed within the "range of reasonable responses" open to the employer?

Yes, it was.

71.4.1. I consider that it was reasonable for Mr Tompkins to conduct the disciplinary hearing. I accept that he had also done the investigation. However I see no evidence that this made him pre-disposed to dismiss the claimant. I do not accept that in and of itself it renders the procedure unfair.

71.4.2. He offered to meet the claimant, but he declined.

71.4.3. There is nothing in the disciplinary hearing notes that suggests any unfairness in the proceedings. I note the claimant admitted a lot of the allegations against him.

71.4.4. I do not accept the claimant's suggestion that the removal of the company vehicle showed a pre-determination. Rather than was necessitated by the tools the respondent needed being stuck to the vehicle with resin. Likewise the erroneous exchange with the vehicle hiree: it was an administrative error and no more. The respondent's conduct is consistent with that of a reasonable employer.

71.4.5. The appeal was fair.

71.4.5.1. If the claimant did not want his job back but merely wanted it recategorised so he was seen as blameless and might get compensation, conducting the case without a hearing was reasonable. I note the claimant freely agreed to the process too.

71.4.5.2. Given he did not want his job back, it was reasonable to approach this as a review rather than a rehearing.

71.4.5.3. The appeal was not superficial. It involved a thorough investigation of all the points raised – many of which were not raised before Mr Tompkins.

71.4.5.4. The decision on appeal was one open to Mr Groombridge. His appeal outcome is one that is capable of being supported by the evidence available to him. A reasonable employer could have concluded that this evidence did not support the claimant attended work on the Sunday because there is nothing to show he had, that the claimant had been AWOL and that the respondent had sought to address any mental health concerns by altering his work so he was more local and trying to find him when he was absent. The reasonable employer was entitled to take account of the fact the claimant never raised any of those concerns at the disciplinary hearing when he had had a chance to do so.

71.4.6. The previous written warning was not relied on by the respondent in its decision and so is an irrelevance.

71.4.7. The reasonable employer was entitled dismiss the claimant's allegation that he was overworked or that his welfare was suffering. The claimant did not raise this at the disciplinary hearing. He did not raise it at any time during the November incident. He managed his own diary. He had opted out of the worktime time regulations. The claimant provided no evidence he had raised this issue with the respondent. The claimant provided no evidence that this was credible.

71.5. I also consider the procedure followed implemented the one set out in Acas's Code of Practice.

71.6. Was the decision to dismiss within the "range of reasonable responses" open to the employer?

Yes, it was. The respondent was entitled to regard the evidence had shown that the claimant was guilty of misconduct by misleading the respondent as to the state of the project and being AWOL.

The respondent was entitled to regard summary dismissal as an appropriate sanction because a reasonable employer could conclude the misconduct was so serious that summary dismissal was justified or, that trust and confidence had collapsed so it could no longer trust the claimant.

Breach of contract (notice pay)

72. I turn now to gross misconduct. The question is whether the claimant has acted in a way that so undermines the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in his employment.

73. The answer is yes: The claimant is guilty of gross misconduct. I find for the following reasons.

73.1. The claimant says he attended work on Saturday 1 and Sunday 2 November 2025. There is scant evidence he attended on Saturday though I note the respondent on appeal accepted he did, so focus on the Sunday only.

I find on balance of probabilities he did not attend work on the Sunday. Non-attendance fits with the general pattern of being AWOL generally about this time. In addition

73.1.1. It was a rest day.

73.1.2. There was no reason for him to be there.

73.1.3. He had not sought or obtained prior authorisation.

73.1.4. He had not mentioned it on the Team Movements WhatsApp chat that he was there.

73.1.5. No-one saw him there on the Sunday.

73.2. The claimant was AWOL from the afternoon of 5 November 2025 and on 6 November. He did not keep the respondent informed of his absence or answer calls or messages seeking to locate him.

73.3. The claimant logged into his computer on 6 November but was offline for effectively the whole day. I conclude on balance he was not working. It is consistent with being non-contactable and being offline.

73.4. He admitted that he had not stayed on site, and this meant work had not progressed, when he said in the disciplinary hearing that the work would have been completed if he had stayed.

73.5. Repair work for which he was responsible had not been done and as a result the project was behind schedule.

73.6. The claimant has admitted that he had misled Mr Tompkins about the progress of the works. This is again dishonesty.

73.7. The claimant had in October gone AWOL, misused the company credit card and driven dangerously in a company vehicle. He admitted this. The fact he offered to resign shows that he acknowledged the seriousness of it.

73.8. Claiming to be at work when absent, logging in and then going offline and misleading Mr Tompkins are all examples of dishonesty. I find he knew the true state of affairs and a reasonable person would call that dishonest.

74. The totality of the claimant's conduct shows that a reasonable person would conclude the claimant has acted in a way that so undermined the trust and confidence the respondent had in him, it amounted to a repudiatory breach of contract. They were no longer required to employ him and could dismiss him summarily.

75. There is no argument they affirmed the contact. In any case the respondent's conduct shows they did not.

Unauthorised deductions from wages.

76. Finally I turn to the claim for unauthorised deduction from wages. The schedule of loss shows it relates to working on Sunday 2 November. He did not work that day. Therefore no wages are properly owing for that day.

Approved by:

Employment Judge Adkinson

Dated: 25 August 2026

Sent to the parties on

...13 September 2026...........

For the Employment Tribunal

...Elliot Barker........................

Notes

The above are the full reasons. No further reasons will be provided.

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