



EMPLOYMENT TRIBUNALS

Claimant: Ms H Lu

Respondent: Herbprime Co Ltd

Heard at: Manchester Employment Tribunal

On: 07, 08, 09 and 10 July 2026

Before: Employment Judge M Butler

Representation

Claimant: Mr J Yin (claimant's son)

Respondent: Ms Y Wang (Solicitor)

JUDGMENT

1. The claimant has been found to be unfairly dismissed.
2. The Tribunal is not applying any Polkey deductions or deductions for contributory fault to any award made to the claimant.
3. The Tribunal is applying a 25% uplift for a failure by the respondent to comply with the relevant ACAS code of practice.
4. The claimant has been found to have been wrongfully dismissed.
5. This case will be listed for a further hearing to determine remedy.

REASONS

INTRODUCTION

1. An oral judgment was handed down to the parties on 10 July 2026. The written judgment was sent to the parties on 20 August 2026. The respondent made a request for written reasons by email dated 27 August. These are the written reasons as requested by the respondent.
2. The claimant worked as a member of the Dispensary team for the Respondent from 06 April 2008 until 14 October 2022. The claimant presented her claim form on 30 January 2023, and this was following ACAS Early Conciliation, which took place between 13 January 2023 and 16 January 2023.
3. The case was considered at a Case Management Preliminary Hearing before Employment Judge Leach on 13 April 2023. Appended to the back of the record of that hearing was the finalized List of Issues for this hearing. The parties confirmed that that list of issues remained accurate, and the Tribunal was satisfied that this accurately represented the claim as brought in the claim form.
4. The respondent informed the Tribunal of its witness running order following being asked by the Tribunal. This ensured that the claimant could organise their cross-examination questions.
5. The Tribunal was provided with several sets of documents in this case, which was not ideal. The Tribunal had access to: a 422-page bundle produced by the respondent, a bundle of 37 pages created by the claimant (the first 9 pages of which were the claimant's witness statement. Pages 1-5 were the English translation of pages 6-9), the claimant's supplemental bundle of 29 pages, a hearsay notice, and 9 pages in an email bundle.
6. The Tribunal was made aware of the claimant's application to strike out the response by email dated 26 June 2026. However, the claimant's lay representative explained that they had read the bundle, had all the claimant's evidence before the Tribunal, witness statements had been finalized and he had read the respondent witness statements. In short, both parties were in a position to have this case heard and both parties could effectively participate. In those circumstances, the response was not struck out.
7. The tribunal heard evidence from the Claimant, who gave evidence on his own behalf. The claimant called no additional witnesses.
8. The Respondent called the following witnesses:
 - a. Ms Amy Tso, Managing Director of the respondent.
 - b. Ms Kar Tchee Tan (also referred to as Jean Tan during these proceedings),
 - c. Ms Amy Feng.

9. Sadly, before this case could be heard, a key witness, namely Mr Sinyung Ip, had passed away. However, the Tribunal benefitted from having sight of a text message that contained the evidence that Mr Ip would have likely given at this Tribunal. The Tribunal attached such weight that it considered appropriate to this evidence.
10. The claimant was assisted by an interpreter in the Mandarin language throughout these proceedings.

LIST OF ISSUES

Unfair Dismissal

11. Has the respondent shown the reason or principal reason for dismissal? The respondent says that the reason was misconduct which is a potentially fair reason under section 98 Employment Rights Act 1996?
12. If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:
 - a. The respondent genuinely believed the claimant had committed misconduct;
 - b. there were reasonable grounds for that belief;
 - c. at the time the belief was formed the respondent had carried out a reasonable investigation;
 - d. the respondent followed a reasonably fair procedure;
 - e. dismissal was within the band of reasonable responses.
13. If the Tribunal finds that the claimant was unfairly dismissed, then it will need to decide remedy.
14. What basic award is payable to the claimant, if any?
15. Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?
16. If there is a compensatory award, how much should it be? The Tribunal will decide:
 - a. What financial losses has the dismissal caused the claimant?
 - b. Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - c. If not, for what period of loss should the claimant be compensated?
 - d. Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
 - e. If so, should the claimant's compensation be reduced? By how much?
 - f. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - g. Did the respondent or the claimant unreasonably fail to comply with it?

- h. If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- i. If the claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?
- j. If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
- k. Does the statutory cap apply?

Wrongful dismissal/Notice pay

- 17. What was the claimant's notice period?
- 18. Was the claimant paid for that notice period?
- 19. If not, can the respondent prove that the claimant was guilty of gross misconduct which meant that the respondent was entitled to dismiss without notice?

THE LEGAL FRAMEWORK

Unfair dismissal

- 20. The burden of proof rests on the employer to establish that the claimant was dismissed for a potentially fair reason, in this case the respondent says it was for misconduct.
- 21. When considering the reason for the dismissal, the Tribunal reminded itself of the words of Cairns LJ in **Abernethy v Mott Hay and Anderson [1974] IRLR 213**, namely that:

“A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee.”

- 22. A Tribunal must not take account of events occurring subsequent to the conclusion of the dismissal process; the focus is on events which predated the dismissal and which were known by the employer at the time (**W Devis & Sons Ltd v Atkins [1977] AC 931**). Although there is an exception to this insofar as an employer should take account of evidence which emerges in the course of an internal appeal (**West Midlands Co-operative Society Ltd v Tipton [1986] 1 All ER 513**).
- 23. Where the employer satisfies this burden in respect of establishing a potentially fair reason, the tribunal must then apply the statutory test contained within s.98(4) so as to consider whether the dismissal was fair or unfair, which is expressed in the following way:
 - (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the

size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

24. This statutory test requires a broad assessment of all the circumstances. The test is whether a reasonable employer could have acted as the employer did.

25. Where a dismissal is on the grounds of conduct, the EAT in **British Home Stores Ltd v Burchell [1978] IRLR 379** provides guidance as to what is required by an employer in establishing whether an employee has committed the misconduct in question:

"What the tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in question (usually, though not necessarily, dishonest conduct) entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct... First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. It is the employer who manages to discharge the onus of demonstrating those three matters, we think, who must not be examined further."

26. The burden of proving the first three limbs of the **Burchell** test falls upon the employer.

27. The principles in **Burchell** were upheld by the Court of Appeal in **Graham v Secretary of State for Work and Pensions (Jobcentre Plus) [2012] EWCA Civ 903** at [35]-[36]. If the answer to each of those questions is in the affirmative, then the ET must decide on the reasonableness of the decision to dismiss by considering the objective standards of the hypothetical reasonable employer rather than by reference to the ET's subjective views i.e. whether R acted within the range of reasonable responses test.

28. The Tribunal must then ask whether in all the circumstances the employer acted reasonably in treating that reason as a sufficient reason for dismissing the employee. The onus of proof is no longer on the employer at this stage. This matter is determined by the Tribunal through applying section 98(4).

29. Each case must turn on its own facts. The Tribunal must not substitute its view for that of the employer (**Iceland Frozen Foods Ltd v Jones [1982] IRLR 439** and **Foley v Post Office and HSBC Bank v Madden [2000] ICR 1283**). The question is whether the dismissal fell within the band of

reasonable responses which a reasonable employer might have adopted in response to the employee's conduct, not whether the Tribunal itself would have dismissed in these circumstances.

30. For the avoidance of doubt, the Tribunal applies the band of reasonable responses approach to all aspects of the case, including the investigation, the grounds for belief, the sanction and the procedure followed.

Wrongful Dismissal

31. An Employment Tribunal has jurisdiction to consider a common law breach of contract claim pursuant to the Employment Tribunals Act 1996 and the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.
32. In the context of this claim, the breach of contract claimed is that the Claimant was not provided with the contractual notice that he was entitled to. It was agreed between the parties that the Claimant had been dismissed summarily, and this would only be lawful if he had committed gross misconduct.
33. Gross misconduct, in this context is 'conduct which so undermines the relationship of trust and confidence that the employer should no longer be required to retain the employee in his employment, see **Neary v Dean of Westminster [1999] IRLR 288**. Such behaviour must be a deliberate breach of the employee's duty, **West London Mental Health NHS Trust v Chhabra [2014] IRLR 227**.

Polkey and Contributory Fault

34. Where a dismissal is found procedurally unfair, the Tribunal may nonetheless reduce or extinguish the compensatory award where a fair process would, on the balance of probabilities, have led to dismissal in any event or within a shorter period: **Polkey v A E Dayton Services Ltd [1987] UKHL 8**; **Software 2000 Ltd v Andrews [2007] IRLR 568** (the exercise necessarily involves an element of speculation, which is not itself a reason to decline to undertake it: **Hill v Governing Body of Great Tey Primary School [2013] IRLR 274**).
35. Separately, the Tribunal may reduce the basic award (s.122(2) ERA 1996) and/or the compensatory award (s.123(6) ERA 1996) where the Claimant's own culpable and blameworthy conduct caused or contributed to the dismissal: **Nelson v British Broadcasting Corporation (No.2) [1980] ICR 110** (applied in **Westerton (UK) Ltd v Keith Armstrong UKEATS/0016/17AT** at para. 80); **W Devis & Sons Ltd v Atkins [1977] AC 931**. The two exercises are analytically distinct but should not result in double counting of the same conduct without justification: **Rao v Civil Aviation Authority [1994] IRLR 240** (applied in **Adeloye v (1) Royal Mail Group Ltd (2) Angard Staffing Solutions Ltd 3307745/2023** at para.20).

CLOSING SUBMISSIONS

36. The Tribunal received a written skeleton argument on behalf of the respondent and heard oral submissions on behalf of both the respondent and the claimant. These are not repeated here, however, have been considered in making this decision.

FINDINGS OF FACT

The Tribunal makes the following findings of fact based on the balance of probability from the evidence it has read, seen, and heard. Where there is reference to certain aspects of the evidence that have assisted the Tribunal in making its findings of fact this is not indicative that no other evidence has been considered. The Tribunal's findings are based on all of the evidence and these are merely indicators of some of the evidence considered in order to try to assist the parties understand why the Tribunal made the findings that we did.

The Tribunal does not make findings in relation to all matters in dispute but only on matters that it considered relevant to deciding on the issues currently before it.

37. The claimant was employed by the respondent in their dispensary team from 06 April 2008.

Has the respondent satisfied the Tribunal that the reason for dismissal was for the potentially fair reason of misconduct?

38. The respondent had a practice as far back as 2019 whereby it would dismiss any employee where they were engaged in a 'quarrel or impoliteness (rudeness)' during working hours. This was the evidence of Ms Tso and supported by the documents at pp.124 and 125. For the avoidance of doubt, the date at the bottom of each document, 06 March 2023, is not referring to the date of the meetings. This cannot be the case as the claimant is recorded as being present on p.125, and she had been dismissed by this date. Rather, the date in the title of the meeting is the date it took place. Reference to 06 March 2023 appears to be the date that the document was created. The Tribunal finds that the claimant was present at the meeting on 11 July 2022. The Tribunal was not satisfied with the claimant's reply to this question. It was somewhat evasive. She did not answer directly whether she was present but rather pointed to her not having signed the document. However, she could not sign the document given the date of its creation.

39. During work hours on 14 October 2022, there was a disagreement between the claimant and Mr Ip. The claimant said some words to Mr Ip, and Mr Ip responded. There was a disagreement between the two, resulting in Mr Ip resigning and the claimant's husband, who was present, pushing Mr Ip, with the push taking place in the neck area. In making this finding, the Tribunal has seen the CCTV footage of this, some still images from the CCTV footage (pp.126-132), Wieming Xie's statement made on 27 October 2022 (p.139), Mr Ip's statement made on 06 March 2023 (pp.137-138), and the meeting notes of the meeting that took place on 01 December 2022 between the claimant and Ms Tan and Ms Feng.

40. The claimant's evidence at this Tribunal was that she did not say anything to Mr Ip to cause the disagreement, she gave this evidence orally, and her

witness statement implies this too (paragraph 4 of the claimant's witness statement). The Tribunal rejects this evidence. First, the claimant accepted that words were exchanged in the meeting of 01 December 2022 (p.172 and p.175) and the claimant has never doubted the accuracy of this record. Secondly, the accounts of Mr Ip in his statement (pp.137-138), and Weiming Xie's statement (p.139) and the statement of Lucy Ho (I may have that name wrong (p.418)) are all consistent with the evidence of Ms Tan and Ms Feng.

41. The Tribunal on balance finds that Ms Lu likely said something, and this was after Ms Lu had told Mr Ip not to leave the room they were in until the matter was resolved, as required by Ms Tso on the phone. Ms Lu was then more likely than not have said words to the effect that "Today, with so many orders, where haven't we helped you? Part of it is prepared by us. Can't you do it yourself?". This then likely led to the following exchange: Mr Ip likely said words to the effect of I wasn't talking about these two days; I understand that you're busy these two days, but I mean when you're not busy, can you help me? Don't just say you're busy today." Mrs. Lu then likely said, "If one person can't do it, how many people do you need to ask for help? Former colleagues didn't need help either."
42. Mr Ip then exclaimed that he was quitting and that Mr Lu could do this work herself. This was said in Cantonese, and the claimant did not understand these words.
43. After this exchange, Mr Ip went downstairs to clock out and get changed in line with his intention to quit and leave. When he was downstairs, he likely heard the claimant say to somebody else that they were very busy downstairs and that Mr Ip had likely gone downstairs to complain. This is consistent with the claimant's oral evidence; the claimant gave evidence that she was speaking to somebody else when Mr Ip was downstairs.
44. This resulted in Mr Ip, when he came back upstairs to point at the claimant and swear in Cantonese. The claimant did not say anything more to Mr Ip when he came upstairs. This is the claimant's evidence, which is consistent with Mr Ip's statement and with that observed on the CCTV footage.
45. Dr Yin, the claimant's husband, responded to this action by Mr Ip, by stepping forward and pushing Mr Ip back forcefully. The claimant does not find that Dr Yin grabbed Mr Ip by the neck, but did push him back in the neck area.
46. This incident was relayed back to Ms Tso by Ms Tan and Ms Feng in two separate phone calls. This in turn led to the meeting at which the claimant was dismissed. The claimant's dismissal letter is consistent with this (p.85).

Conclusion

47. The Tribunal finds that the respondent has satisfied this burden that rests on it in establishing that the claimant was dismissed for a potentially fair reason. The Tribunal considers that the findings above satisfy it that the claimant was dismissed for the potentially fair reason of misconduct. This is the clear thread in the evidence. The Tribunal does not accept that the reason behind the claimant's dismissal was connected to TCM Limited as

per the claimant's para 14 and 15. This is referring to 2019 and was some time ago. And there is no evidence presented on this and nor did the claimant pursue this in cross-examining the respondent witnesses.

Was the decision to dismiss the claimant fair?

48. The decision maker was Ms Tso. That is not in dispute between the parties. It was Ms Tso that made the decision to dismiss the claimant.
49. Ms Tan and Ms Feng were present during the incident in question on 14 October 2022.
50. Ms Tso was informed of the incident of 14 October 2022 first by Ms Tan. This was over the telephone. However, she could not provide much detail, save for there being a disagreement between the claimant and Mr Ip, and that there was a physical altercation between Mr Ip and the claimant's husband following from this.
51. Ms Tso then spoke to Ms Feng, who provided further details of the incident. Ms Tso was seeking confirmation whether the issue could simply be resolved in some way (paragraph 7 of Ms Tso's Witness Statement). Ms Feng informed Ms Tso that that would not be possible, as the matter had escalated to a physical altercation.
52. Ms Tso decided to return to the workplace in light of what she was told (paragraph 8 of Ms Tso WS). Ms Tso was due to fly to Stockholm that day and therefore her time was limited.
53. The Tribunal finds that Ms Tso, when she returned to the workplace did not discuss this matter with other staff members nor did she view the CCTV footage at this stage. There was no investigation beyond the discussion that Ms Tso had had with Ms Tan and Ms Feng.
 - a. With regards to the CCTV evidence, the Tribunal heard the oral evidence of Ms Tso and Ms Tan on this. And this was that in advance of the meeting with the claimant, Ms Tso was provided the CCTV footage of the incident by Ms Tan and she watched it. The Tribunal rejects that oral evidence. The Tribunal rejects this evidence for six reasons: (i) none of the respondent witnesses mention CCTV at any point in relation to the meeting of 14 October 2022 in their witness evidence. If this was viewed and discussed in that meeting, or in advance of that meeting, then this without doubt would have been included in the witness statement. As this appears to be, according to Ms Tso, a central piece of evidence. Neither Ms Tso who is the dismissing officer, or Ms Tan who is said to have gotten the CCTV footage for Ms Tso make any reference to this in their statement; (ii) there is no evidence before this Tribunal to show that such evidence was retrieved and viewed at the time; (iii) there is no reference to such evidence being supportive of dismissal in the dismissal letter nor that this was viewed; (iv) much of the investigation into matters that is documented took place some time after dismissal (Mr Ip statement was 06 March 2023 and Weiming Xie statement is 27 October 2022), from which the Tribunal infers that this was also likely

with observing CCTV footage; (v) there is no reference to viewing the CCTV in the grounds of resistance in advance of the meeting, despite its existence having been identified (would have expected it in para 13 or 14, p.25) (vi) the first reference to CCTV footage is in the meeting of 01 December 2022.

- b. With regards to discussing with other staff members, again Ms Tso does not say this in her statement. And provided very little detail on what was discussed/explained to her under cross examination, leading the Tribunal again to rejecting this evidence. There are no notes of any kind on such meetings or discussions, which is surprising had this taken place, especially given the potentially consequence of dismissal. And again there is no reference to such having happened in the Grounds of Resistance. At its height, there is reference to accounts being given by Ms Tan and Ms Feng (paragraph 12 of Grounds of Resistance, p.25) but nothing more; which is consistent with the witness evidence before the Tribunal.
- c. Also supporting the Tribunal's finding as to the breadth of any such investigation is Ms Feng's paragraph 10 of her WS – where she describes that events happened so quickly- with Ms Tso returning to the office, and then immediately dismissed those involved, including the claimant.

54. Ms Tso, when she arrived at the office, instructed Ms Tan to arrange an immediate meeting with the claimant and her husband, Dr Yin. Neither were told of the nature of the meeting, nor were given advance warning that dismissal was a possibility. The meeting was arranged to take place in the Conference Room immediately.

55. Ms Feng brought the claimant and Dr Yin to the conference room.

56. At that meeting, Ms Tso more likely than not, based on the evidence before the Tribunal, simply dismissed the claimant and handed her a dismissal letter. The Tribunal was faced with two different accounts:

- a. The claimant's account was that when she entered the room with Dr Yin, they were both handed a dismissal letter and told to leave the company immediately. The claimant then says that she tried to explain to Ms Tso what happened that morning, but Ms Tso refused to communicate on the matter (paragraph 6 of C's WS).
- b. The respondent's pleaded case and that in the witness evidence are not consistent. The pleaded case is that Ms Feng and Ms Tan attended as witnesses of the event and to present their evidence. The claimant was permitted to be accompanied by her husband. At the hearing, the claimant was able to state her case, ask questions and present evidence (para 14 GofR, p.25).
- c. Contrasting the respondent's pleaded case to the evidence of the witnesses that it called: Ms Tso makes no reference to Ms Feng and Ms Tan providing their account of what happened, and nor was this evidence given by either when cross-examined. There is no mention

of Dr Yin being present. Ms Tso gives an account of her explaining failings of the claimant and that the claimant was 'crying hysterically and defending herself', before dismissal took place (paras 10 and 11 Ms Tso evidence). Ms Tan's evidence simply records that she was present at the meeting. And gives no detail (para 17). Ms Feng's evidence is simply that at the meeting Ms Tso 'immediately dismissed those who were involved in the incident'.

- d. The Tribunal considers that the consistency between the claimant's evidence and that of Ms Feng, is likely to be most accurate. This is also given that the respondent's case developed further at this hearing in a manner inconsistent with the pleaded case. In the pleaded case, at paragraph 15, it is recorded that the respondent wrote to the claimant confirming the dismissal that same day. At this hearing, this changed to there being a break in the hearing, Ms Feng being instructed to write a letter of dismissal, which was then handed to the claimant after a 20-minute break in the hearing.

- 57. There were some post-dismissal investigations. Mr Ip was provided a statement on 06 March 2023 (p.134). Wieming Xie provided a statement on 27 Oct 2022 (p.139). It is unknown when the statement at p.418 was provided. These were not considered at the point of dismissal as they were created after the event.
- 58. The claimant was given no right to appeal the decision to dismiss her and no appeal hearing took place. Rather there were various meetings that took place after the claimant's dismissal, including between the claimant and Ms Cheng in November 2022. This discussion solely related to trying to agree a severance package and arrangements in relation to TCM Limited (para 9 of C's WS, confirmed by Ms Tso).
- 59. A further meeting took place between the claimant and Ms Tan and Ms Feng took place on 01 December 2022. The purpose of this was to discuss the dismissal of the claimant. Neither Ms Tan nor Ms Feng had the authority to overturn the dismissal- that was their evidence before this Tribunal. Ms Wang did not seek to persuade the Tribunal that this was an appeal in any guise and that was a sensible decision.
- 60. The Tribunal finds that the claimant had not been subject to 5 informal warnings at her conduct over the previous 3 years. This is the respondent's pleaded case (para 5 Grounds of Resistance, p.23). The respondent says that Ms Tso spoke to the claimant on 5 separate occasions relating to her behaviour. This included relying on others to do her work, failing to give assistance to others, pretending to be busy, and giving incorrect instructions to junior members of staff. First, there is no evidence of any such warnings in the bundle. Second, there is no evidence of any complaints from staff before this Tribunal. Thirdly, save for a general assertion at para 19 of Ms Tso's Witness Statement, there is no detail of any such warnings. In those circumstances, the Tribunal, on balance, prefers the claimant's evidence that there had not been any such warnings previously.
- 61. Ms Tso did not consider alternatives to dismissal, as dismissing was in line with company practice which she accepted.

62. There is no evidence of the claimant having bullied anybody in the workplace, and the Tribunal makes the finding in those circumstances that she did not.

Conclusion

63. The claimant was dismissed on 14 October 2022. Ms Tso was the dismissing officer. The Tribunal accepts that she honestly believed that this was for misconduct reasons. The Tribunal accepts that. However, this honest belief was based solely on an account provided to her first by Ms Tan and then by Ms Feng, and no more. Having received this account, Ms Tso decided to dismiss those involved, in line with a company practice that was in place since 2019. Ms Tso made no attempt to view CCTV footage at this stage, nor did she investigate with others who were present and nor did she ask questions of the claimant herself.
64. There was no further investigation. There was no opportunity for the claimant to interrogate the evidence at the meeting of 14 October 2022, despite that being pleaded. The decision had been made by Ms Tso before entering that meeting on 14 October 2022 that the claimant would be dismissed.
65. In those circumstances, the Tribunal does not accept that Ms Tso had reasonable grounds to hold the belief that she did, as it was limited to the perceptions of Ms Tan and Ms Feng. And it certainly was not underpinned by sufficient investigations. There was no consideration of alternatives to dismissal. There was no consideration given to the claimant's long service for the respondent. The approach adopted does not fall in the band of reasonable responses. And therefore, the dismissal must be found to be substantively unfair. The Tribunal has been careful to ensure that it has not substituted its decision in this case, as it is not for the Tribunal to decide whether it would have dismissed in the circumstances.
66. Further, the evidence received after the event, particularly by Mr Ip is quite important. Mr Ip identifies words that he says that Ms Lu used, which the Tribunal has found were used. And even had these been known at the time of dismissal following an adequate investigation, the Tribunal still would have decided that dismissing the claimant for using them would not fall within the band of reasonable responses. Again, the Tribunal is careful not to substitute its decision. But had there being sufficient investigation before the decision, Ms Tso would have known of the precise words alleged to have been used. And the context of those words. Dismissing the claimant for responding in the way that she did to a request by Mr Ip for help and then passing comment about Mr Ip going downstairs to complain, with no other warnings evident about prior conduct, is not a dismissal that falls within the band of reasonable responses in the judgment of this Tribunal.
67. The Tribunal notes that the respondent conceded that the dismissal was procedurally unfair during this hearing. And this was a sensible concession made by Mr Wang on behalf of the respondent. As the evidence clearly supports that the claimant had no indication of the meeting in advance but rather it was arranged to take place immediately. The claimant was not

presented with any evidence. The claimant did not have the opportunity to present her side of the story. The claimant was not warned in advance of the risk to her job. The claimant was not given the opportunity to be accompanied, and rather her husband was only present as he was likewise being dismissed and was involved in the incident. The decision to dismiss the claimant was already made before this meeting, in line with a practice adopted by the respondent when there were disagreements during working hours. The Tribunal would have found this to be procedurally unfair in those circumstances.

68. Given the conclusions already given on substantive fairness, the Tribunal rejects the respondent's submissions that a Polkey reduction should be applied to any compensation awarded for unfair dismissal. The Tribunal does not consider that any Polkey reduction should be applied in these circumstances, as the evidence does not support that there was a percentage chance that the claimant would have been dismissed if a fair procedure was followed. And likewise for contributory fault. The claimant cannot be said to have conducted herself in a culpable manner. The Tribunal applies no reductions to compensation either on a Polkey basis or on a contributory fault basis.
69. There has been wholesale failure in respect of procedure in this case, save for there being some meeting, and a dismissal letter. The Tribunal considers that an uplift for failing to comply with the ACAS code of practice should be at its maximum, and therefore applies an uplift of 25%.

Wrongful dismissal

70. Turning to Wrongful Dismissal. The Tribunal has no doubt that there is an implied term in the contract of all employees that they will co-operate with one another and not act in a bullying way; these being the contractual terms the respondent relies on as having been breached to justify summary dismissal.
71. The burden in Wrongful Dismissal rests on the respondent to establish that an employee has been breached their contract in such a way that it is a repudiatory breach of contract.
72. The respondent has not established that the claimant was bullying anybody. The respondent has not adduced sufficient evidence to support that the claimant was constantly passing her work to others, failing to assist others or that she was inciting disagreements in the workplace, such as to be a repudiatory breach of her contract. The respondent has failed to satisfy the Tribunal that the claimant was giving incorrect instruction to others such as to be acting in repudiatory breach of contract. In short, there is a lack of any evidence to support the respondent's contention that the claimant's conduct justified a summary dismissal.
73. At its height, the claimant responded to Mr Ip to say that she was busy. Perhaps Ms Lu could have been more professional in her approach, but her conduct was not such to be anywhere near being a repudiatory breach of contract. The respondent has failed to satisfy the burden of proof that rested on it. The claimant in those circumstances has been found to have been

wrongfully dismissed.

CONCLUSIONS

- 74. The claimant has been found to have been both unfairly and wrongfully dismissed.
- 75. A 25% increase is being applied to the relevant compensation, for a failure to comply with the ACAS code of practice.
- 76. This case will now proceed to a remedy hearing, to determine remedy.

Approved by:

Employment Judge M Butler

Date: 18 September 2026

JUDGMENT SENT TO THE PARTIES ON

21 September 2026

FOR THE TRIBUNAL OFFICE

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>