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EMPLOYMENT TRIBUNALS

Claimant: Mr R Seredynski

Respondent: P N Daly Ltd

Heard at: Reading

On: 25, 26 March 2026, 16, 17, 18
and 29 June 2026

Before: Employment Judge Shastri-Hurst

Representation

Claimant: in person

Respondent: Ms Barlay (Litigation Consultant)

Polish interpreter: Ms Jozwiak (25/26 March 2026)

Mr Rozycki (16-18 June 2026)

Ms Piwonska (29 June 2026)

JUDGMENT having been sent to the parties on 17 July 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

Preamble: I apologise for the delay in providing these reasons. The request for written reasons was referred to me on 27 July 2026, during a period of non-working days. I returned to work on 4 September 2026 and have attempted to get these Reasons to the parties as soon as practicable, in light of other judicial commitments. I do not underestimate the effects of delays on the parties, and thank them for their patience.

FULL REASONS

Introduction

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1. The respondent operates as supplier of gas, water, electricity and telecommunication network design, construction, connection, repair maintenance and support services. The claimant was employed by the respondent from 22 February 2021 as a Leakage Technician. On 1 March 2023, the claimant was promoted to Senior Detection/Gang Assist Technician. The claimant continued working for the respondent until his dismissal on 24 April 2024. The respondent says that the claimant was dismissed by reason of conduct.
2. The claimant went through the ACAS early conciliation process from 7 July 2024 to 16 August 2024, and presented his claim form on 17 August 2024. That claim form presented claims of unfair dismissal and wages. There followed in due course a case management preliminary hearing, the record of which is at page 50 of the hearing bundle (denoted as [50] herein). At [55], the List of Issues is set out regarding the two claims: they are repeated below for ease of reference under the heading "Issues".
3. Specifically, in terms of the wages claim, this relates to bonus payments. The claimant alleges that he was entitled to the following bonuses:
4.
 - 4.1. January bonus - £720 (payable in February);
 - 4.2. March bonus – £720 (payable in April);
 - 4.3. Quarterly bonus - £850 (payable in April).
5. This final hearing was originally listed for three days, however the initial listing had to be reduced to two days (25 and 26 March 2026). The first day was spent case managing, and on the second day we moved onto evidence, hearing from one of the respondent's witnesses, Aaron Coey. We then listed a part-heard hearing to continue the matter and I made some case management orders regarding disclosure. Initially we relisted the matter for April, but that date had to be postponed and we completed the hearing in June. At the reconvened hearing in June, the respondent produced more new documents than the ones that I had ordered to be produced at the end of the March hearing.
6. By the end of the final hearing, I had the following documents:
 - 6.1. Main bundle – 1201 pages, pages denoted as [X];
 - 6.2. Supplementary bundle – 446 pages, pages denoted as [SB/X];
 - 6.3. Additional bundle (produced in June by the respondent) - 87 pages, pages denoted as [AB/X];

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- 6.4. Additional timesheets from the respondent – 17 pages which are in fact duplicated at [AB/34-50];
- 6.5. Excel document from the respondent – which is replicated at [AB/54-81];
- 6.6. Five additional documents sent in the day before the reconvened hearing by the respondent:
 - 6.6.1. Doc 1 – Geoff Arblaster (the claimant's field supervisor) call logs from 15 March 2024;
 - 6.6.2. Doc 2 – the claimant's Movement Report from 15 March 24 (this is at [AB/82-87];
 - 6.6.3. Doc 3 – Google Map of distance between where the claimant was on 15 March 2024 and the Gang Assist job;
 - 6.6.4. Doc 4 – letter to the claimant 2 March 2023 promoting him to a Gang Assist Champion;
 - 6.6.5. Doc 5 – Customer job from 15 March 2024 - extract from Thames Water system showing leak raised by the claimant before call from Glenn Few;
- 6.7. Four additional documents sent from the claimant on 17 June 2026 (Day 4):
 - 6.7.1. Doc 6 – email chain between the claimant and Jacklyn Kelly 3 – 7 May 2024;
 - 6.7.2. Doc 7 – Google map;
 - 6.7.3. Doc 8 – Google map;
 - 6.7.4. Doc 9 – Google map;
- 6.8. Two additional documents from the claimant on 18 June 2026 (Day 5):
 - 6.8.1. Doc 10 – table showing a different job on 15 March 2024;
 - 6.8.2. Doc 11 – part of the claimant's appeal transcript – this fits in between [SB/310 and SB/311].
7. We agreed that, as both sides had produced additional documents, I would simply allow all documents to be admitted.
8. As well as the documentation, which became cumbersome due to new documents, incomplete bundles and so on, I also had a witness statement from the claimant and his supporting witness, Josetta Dwinell-Greeve. Mrs Dwinell-Greeve was unable to attend due to a personal and unforeseeable crisis. I have

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read that statement, and give it little weight: the witness did not attend to be cross-examined but, in any event, her relevant evidence amounts to her saying that the claimant complained about bonuses. As such, that evidence does not add much to the case.

9. For the respondent I have witness statements from:

- 9.1. Mr Glen Few ("GF") – witness regarding one of the misconduct allegations (gang assist);
- 9.2. Ms Jacklyn Kelly ("JK") – HR Coordinator;
- 9.3. Mr Andy Hood ("AH") – investigation officer;
- 9.4. Mr Aaron Coey ("AC") – disciplinary officer;
- 9.5. Mr Oliver Williams ("OW") – appeal officer.

10. The respondent's witness statements were poorly prepared. I would not normally record such an issue, however I consider that the deficiencies within the preparation of these statements on this occasion were poor enough to warrant a note within these Reasons. The entirety of AH's statement is copied and pasted from AC's. Many page number references are lacking, meaning I have had to find references in the bundle myself. Some witnesses have obviously not proof-read their statements effectively, as demonstrated by the fact that references in AH's statement to the first person were sometimes in fact reference to AC and, at the end of AH's statement, there are some random bullet points regarding bonuses with no comment to them: they are clearly out of place. In JK's statement, she has included information about bonuses that orally she told me she knew nothing about; clearly those passages in her witness statement should not be there given that information has not come from her. I consider this lack of care in the production of something so fundamental as witness statements, and indeed the lack of care shown in compiling the bundle, demonstrates a discourtesy to the Tribunal and the Tribunal process.

Issues

11. The issues in the case are set out below for ease of reference.

Preliminary issue – time limits

- 1. The ET1 is date stamped as having been received by the Tribunal on 17 August 2024. Early Conciliation commenced on 7 July 2024 and the Certificate was issued on 16 August 2024. Accordingly, were the claims brought within time?

Unfair dismissal

- 2. Was the Claimant dismissed?

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3. What was the reason or principal reason for dismissal? The Respondent says the reason was conduct. The Tribunal will need to decide whether the Respondent genuinely believed the Claimant had committed misconduct.
4. Was the Claimant dismissed for a potentially fair reason pursuant to section 98(1)(b) of the Employment Rights Act 1996 (ERA)?
5. Was the dismissal of the Claimant fair in all the circumstances? In particular, was the dismissal within the band of reasonable responses available to the Respondent? The Tribunal will usually decide, in particular, whether:
 - a) there were reasonable grounds for that belief;
 - b) at the time the belief was formed the respondent had carried out a reasonable investigation;
 - c) the respondent otherwise acted in a procedurally fair manner;
 - d) dismissal was within the range of reasonable responses.
6. Did the Respondent follow a fair procedure when dismissing the Claimant? Did the Respondent follow the ACAS Code of Practice?
7. If the Claimant's dismissal is found to be unfair, did the Claimant's conduct cause or substantially contribute to his dismissal?
8. If the Respondent failed to follow a fair procedure, can the Respondent show that following a fair procedure would have made no difference to the decision to dismiss?
9. If the Respondent failed to comply with the ACAS Code of Practice, was its failure reasonable?
10. Has the Claimant complied with the ACAS Code of Practice?

Remedy – unfair dismissal

11. If the Claimant's claims are upheld, the Claimant seeks: compensation only.
12. What financial loss, if any, has the Claimant suffered as a result of any unfair dismissal?
13. If the Claimant has suffered financial loss, what financial compensation is appropriate in all of the circumstances? In assessing this:
 - a) Should any compensation awarded be reduced in terms of Polkey v AE Dayton Services Ltd [1987] ICR 142 and, if so, what reduction is appropriate?
 - b) Should any compensation awarded be reduced on the grounds that the Claimant's actions caused or contributed to his dismissal and, if so, what reduction is appropriate?

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- c) Should any compensation awarded be increased on the grounds that the Respondent unreasonably failed to comply with the ACAS Code of Practice, and, if so, what increase is appropriate?
- d) Should any compensation awarded be reduced to take into account the Claimant's unreasonable failure to comply with the ACAS Code, and, if so, what reduction is appropriate?
- e) Has the Claimant mitigated his loss? Should any compensation awarded be reduced on the grounds that the Claimant has failed to mitigate his losses and, if so, what reduction is appropriate?

Arrears of pay

- 14. Was the Claimant entitled to a bonus?
- 15. Were all outstanding bonus payments made to him upon dismissal?
- 16. If not, how much is outstanding?

Findings of fact

Gang Assist

- 12. The respondent operates over four main areas:
 - 12.1. Oxford;
 - 12.2. Aylesbury to Slough;
 - 12.3. Reading; and
 - 12.4. Swindon/Newbury/Didcot ("S/N/D").
- 13. The claimant was Gang Assist Champion for S/N/D and was therefore expected to attend any gang assist jobs in that area. There is however a certain amount of flex to be expected regarding each Champion's "territory". It is not set in stone that one only covers one's assigned area as a Champion: where there is a business need, a Champion from one area may be asked to move out to cover a gang assist job in a neighbouring area.
- 14. A "gang assist" is a particular type of job that arises as follows. The usual process is that the respondent will identify a leak to be repaired at a site, following which Thames Water will send a dig team to excavate the relevant area. If no leak is found upon excavation, Thames Water telephones the respondent to seek the attendance of a Senior Gang Assist Technician (or Champion). The Technician's task on attendance is to identify in what direction the Thames Water dig team should extend its excavation, so that the leak can be located and repaired. Part of the respondent's Key Performance Indicators

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("KPIs") with Thames Water is that, following a call for a Gang Assist Technician, the respondent must attend site within 60 minutes of that call. There could be commercial penalties if the KPIs are not met.

Bonus scheme

15. Under the claimant's contract of employment at [171-177], there is nothing in the terms and conditions that makes payment of a bonus contractual.
16. A memo was sent to all staff on Thames Water Contracts (which included the claimant) on 20 November 2023 - [313]. That memo alerted employees to the change in focus for bonus payments, which was to focus on bringing District Metered Areas ("DMA") leakage down. Specifically, it raised that there would be a new bonus scheme in force from 25 November 2023 - [314]. It was therefore this new arrangement that was in place for the relevant dates of the claimant's claim (first quarter of 2024).
17. A bonus memo dated 22 January 2024 at [315] reflected the change in focus to be on how effective the respondent is in actual leakage reduction. Each technician was allocated a volume of leakage that they needed to find per month and per quarter, then the bonus was to be paid on the basis of the actual leakage reduction achieved (in litres per second). The technicians had to achieve at least 70% of their reduction target to be eligible for the bonus.
18. For January, February and March 2024, the target of leakage reduction was 2.25 lps, 2.15lps, 2.05lps respectively for day technicians like the claimant - [315]. Although there were two other matrices (Dry Hole Rate and Attrition), they did not trigger the bonus. The sole trigger for the bonus was the leakage reduction; the other two matrices could increase or decrease the bonus, but without the leakage reduction, there would be no bonus payment. This much is clear to me on the documents.
19. The new memo set out within the "Bonus Mechanism – More Detail" section on [316] the mechanics for achieving a quarterly bonus. At paragraphs 5 and 6, the memo reads:
 5. There will also be an additional bonus that will be paid every 3 months. Quarters will be Jan-March, April-June, July-Sept, Oct-Dec.
 6. If in a month less than 70% of the technician's target is achieved, but at the end of that quarter more than 70% of the full three-month target is achieved, any missed months in that quarter will become payable. However, a minimum of 50% of the target must be made in the month in order for this to apply...

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20. I turn then to consider the specific bonuses that form the basis of this claim, and the documentation relevant to each bonus.

January bonus

21. The claimant's case on the leakage is that he says he reached his target. He told me his target was in fact less than 2.25l/s given his holiday (the target should be pro-rated for holidays). However, the claimant was not able to clarify what he thought his pro-rated target should have been. In any event, the evidence shows that his reduction rate was either 0.04l/s or 0.19l/s for January 2024 - [810] and [353] respectively. The rate of 0.9l/s is confirmed in AC's witness statement paragraph 8.

22. In terms of the January bonus, the claimant alleges that someone else might have got his bonus for work he did on the job coded ZFLAXL01. The graph for this job is at [1199]: the other employee who worked on this job was Thomas Wardlaw ("TW"). The claimant's case at its highest was that TW "might have" got his bonus for that work. There is no supporting evidence to corroborate that assertion, and I reject it.

23. The bonus statement for January 2024 showed the claimant had failed to achieve the qualifying measures – AC/8 and [353]. The claimant is recorded as achieving only 0.19l/s as opposed to 2.25l/s. He hit the other two targets of dry holes and attrition.

24. On 23 February 2024, the claimant emailed AC, saying at [395]:

I demand a full explanation of this [January] bonus statement ASAP. Where is January DMA ZFLAXL01, ZBLUNS14, ZCIREN01 on this statement. Why on this statement is Nov DMA ZPENHL03. I demand full explanation of this 13% dry holes.

25. The chain of emails continued between the two parties. Of note are the following communications.

26. On [403/404] I have seen AC's first email of 27 February 2024 (1333hrs) in which the claimant is told

...you did not achieve the target in January so that's why you did not achieve a bonus payment and even if the dry holes were at 0% this will not change...your saving only got us back to where we started therefore no saving – I hope that makes sense.

27. On the same day at 1458hrs, AC wrote - [392]:

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ZFLAX01 does not count. This is how Thames Water are measuring us nothing to do with [the respondent] respecting anybody.

28. On the same day at 1702hrs, AC emailed the claimant providing a further explanation regarding ZFLAX01 – [391]:

...This DMA just returned to where it was! So it hasn't actually dropped, therefore no leakage saving for TW or [the respondent] and to be honest I think that's fair.

29. At [400], on 28 February 2024, the claimant explained that he was given the DMA job coded ZFLAXL01 on 2 January 2024, attended the following day, raised the job on 5 January 2024 and fixed it over the weekend. After this, the claimant says that the DMA dropped 2.2l/s. The claimant was then taken off that job on 8 January 2024. By reply, the claimant was told by the respondent that Thames Water had rejected the claim on DMA ZFLAXL01 - [400]:

...there is simply no leakage saving in this DMA for us to claim”.

30. The respondent explained after further emails from the claimant, on 18 March 2024 at [398] that the two other jobs the claimant had queried, coded ZBLUNS14 and ZCIREN01, closed in February not January (and so would not be in the January bonus payment). It set out that ZFLAX01 had already been explained.

31. I find that the respondent had answered the claimant's enquiries in relation to the three jobs he had queried.

32. The respondent's case that the target on ZFLAX01 was not met is corroborated by Paul Blonden of Thames Water ("PB") on 19 March 2024 at [1074]. That email explains that the target from Thames Water was 3l/s and the job fell short of that target, having found 0.04l/s, and needing to find a further 2.96 l/s.

33. At [SB/172-174] we have further communication from Thames Water (Colin Cox ("CC"), Principal Leakage Consultant). This sets out that there was confusion about the target, but ultimately the target was not reached. CC reflected the previous reference from PB to 0.04l/s. AC confirmed in cross-examination that this DMA was ineffective.

34. On the balance of probabilities, in light of the above evidence, including the corroborating evidence from Thames Water, I find that the claimant had not reached his target in January 2024.

March bonus

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35. In relation to this bonus payment, the claimant did not ask anything of AC in his cross-examination on this issue. Furthermore, there is nothing in AC's witness statement covering this particular bonus payment, other than a blanket denial at paragraphs 57/58.
36. I have been taken to the spreadsheet for the March bonus at [355]. All the jobs and associated figures listed for this month are cut and pasted from the January bonus spreadsheet. The figures and jobs for March can therefore not be right. The "L/S achieved" figure is 0.11 which does differ from the previous two spreadsheets (January and February). The "L/S target" is recorded as being 2.25 but on [315] the March target is 2.05l/s. I consider this document at [355] to be wholly unreliable.
37. I have however seen OW's response regarding the March bonus, provided on 21 June 2024 - [569]. This sets out a response to the claimant's complaint that job coded PENH04 was not included in his March figures, and explains why the claimant was not eligible for a bonus. The respondent set out that the leakage in question was not repaired in March. The claimant disagreed with this analysis but there is no evidence to support the claimant's position on this point.
38. OW's email at [569] explained that the job the claimant was arguing about for March in fact was completed in April and was allocated to April, but was still only a 60% reduction. This corroborates the data on [356] for April: the claimant's figure for "L/S achieved" was 1.25 and the "L/S target" was 2.05. Those figures show that the achievement was 60% of the target. Given that the jobs and figures in this spreadsheet are not cut and pasted from earlier spreadsheets, and that the target matches the March target at [315], I accept the figures therein as accurate.
39. Weighing up the parties' evidence on this point, I accept that the respondent has provided sufficient evidence to satisfy me that the claimant had not reached his target for March 2025.

Quarterly bonus

40. To calculate whether a quarterly bonus is to be payable, the respondent takes an average of the employee's achieved leakage reductions over the three months in that quarter as set out above at paragraph 19.
41. I have not been taken to any particular paperwork on the quarterly bonus, other than the memo referenced above. None of the witnesses have provided any substantive evidence on whether the claimant is entitled to the quarterly bonus for the first quarter of 2024. Again, AC's statement just sets out a blanket denial.

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42. I understand that the claimant was paid a February bonus - [705]. The spreadsheet covering the February bonus at [354] is as unreliable as the March spreadsheet: its jobs and figures are again copied from the January spreadsheet. The figures must be inaccurate as they would demonstrate that the claimant had not achieved the necessary reduction for a bonus and so they must be wrong.
43. I accept that the claimant met his target for leakage reduction in February 2024. However, I have found that he underachieved in January and March. Therefore, he only achieved his target in one out of three months. I therefore find it more likely than not that he did not achieve the required average target or above when his achieved leakage reduction is averaged out over the three months.
44. I also note that the claimant accepted in cross-examination that, whenever he hit the target, he was paid his bonus. His bonus payments can be seen at [576].

15 March 2024

45. On 15 March 2024, the claimant worked as per the timesheet found at [AB/82-87]. There, his location can be seen at all times of his shift during the course of that day, from 0642hrs to 1649hrs.
46. The account in the next paragraph is from the statement given by GF: I accept this evidence to the extent that it is a first-hand account from GF: the claimant is not in a position to argue with these facts, given he was not party to any calls with GF at the relevant time on 15 March 2024. The one part that the claimant disputes is the conversation that was regaled to GF by Geoff Arblaster ("GA"), the claimant's field supervisor: this is hearsay evidence and I have not heard from GA.
47. I accept the following from GF's statement which was prepared for the internal process and copied for the Tribunal process – [448]. At 1243hrs, GF (as Gang Assist Supervisor) received a call from a Lee Deacon, the Gang Assist Supervisor employed by Thames Water, requesting attendance for a gang assist in Bodicote. GF called Ian Wilson ("IW") (supervisor for the Oxford area) to see whether one of the technicians for whom IW was responsible may be free to attend the gang assist. IW conveyed that no-one on his team was available. GF then checked the Inseego electronic system to see who else may be able to assist. This system indicates where technicians are working. GF could see that the claimant was working in or around Bourton on the Hill: on GF's calculation, this was about 40 minutes from the Gang Assist. As an aside, [AB/85] shows that the claimant was in Temple Guiting in Cheltenham, which

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is in the same locale as Bourton on the Hill. GF therefore called GA to see whether the claimant would be able to attend. At around 1400hrs, GA sent GF a message saying "[the claimant] has refused to attend as it would mean a 1.5 hr journey home". GF therefore had to return the call to Lee Deacon and inform him that the respondent could not find a technician to attend the gang assist.

48. As above, the part of this account that the claimant disputes is GA's account that he refused to attend the gang assist. He also refutes that he said it would mean a 1.5 hr journey home.

49. It is common ground that the claimant did not attend the gang assist. GF told me that there was some reputational damage to the respondent in not being able to attend the gang assist job within the requisite 60-minute window. In the event, GF attended the job himself. He also explained to me that a failure to attend a gang assist within the 60-minute target was "very rare" and he could not "think of an occasion at this point".

50. The claimant in cross-examination of GF highlighted various factors that he argued meant he should not have been asked to attend the gang assist, such as:

- 50.1. The claimant had worked for six hours without a break;
- 50.2. It would have taken the claimant over an hour to get to the gang assist site;
- 50.3. If the claimant had attended, he would be working past the end of his shift.

51. GF clarified to me that none of these factors would have affected his decision to ask the claimant to take on the gang assist job. He explained in relation to the last point, that if someone runs over their shift time on a gang assist, either they balance it out by working a shorter shift or they hand the job over to a night shift worker if they need to leave on time.

Disciplinary process

52. On 19 March 2024, AH emailed the claimant requiring him to attend an investigation meeting the following day at 1400hrs - [1120]. The email explained that the investigation related to the failure to attend a gang assist call out on 15 March 2024 and not attending two pre-arranged meetings to discuss concerns raised by the claimant.

53. The investigation meeting notes are found at [429]. I note that, at the top of those notes, the date is marked as Wednesday 21 March 2024. That

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Wednesday was in fact 20 March 2024: this is a clerical error that does not affect any of my findings, it is simply noted.

54. This was the only investigation meeting that was ever undertaken into any of the eventual allegations for which the claimant was disciplined and ultimately dismissed.

55. Following that investigation, on 27 March 2024, the claimant was invited to a disciplinary hearing on 9 April 2024 - [437]. The allegations of misconduct in that invitation were recorded as follows:

- 55.1. Refusal to attend gang assist;
- 55.2. Refusal to submit timesheet when requested and also given a management instruction to provide timesheet on time however still refused to submit;
- 55.3. Sending inappropriate communications via email and on regional WhatsApp; and
- 55.4. Being difficult when given an instruction by management.

56. It was clarified for me in evidence by OW that the fourth point was really a summary of the above three points and did not contain any further factual allegations.

57. This invitation also included the following warnings:

You may be given a warning, or final written warning if deemed appropriate, in accordance with our disciplinary procedure.

...

If you do not attend the disciplinary hearing without giving advance notification or good reason, we will treat your non-attendance as a separate issue of misconduct.

58. This disciplinary invitation letter is said to have been sent by email (although I have not seen the covering email, despite its absence being pointed out to me and the respondent).

59. The claimant did not attend the disciplinary hearing on 9 April 2024. An email chain between the claimant and AC sheds light on the reason. In an email chain originating in a complaint raised by the claimant, AC replied on 4 April 2024 at [457], stating:

We can have this meeting after your disciplinary hearing on 09/04/24.

60. The claimant replied on 9 April 2024 stating at [456]:

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Unfortunately, I don't know nothing about any disciplinary hearing! Can you be so kind and gave [sic] me more details please.

61. Pausing there and dealing with the issue of whether or not the claimant received the invitation allegedly sent on 27 March 2024. I find that the claimant had either not seen or not checked his email inbox. From his evidence, I consider that he expected any such official invitation letter to be sent to his home in hardcopy. I accept that he had not seen the letter. The claimant alleges that the email supposedly attaching this letter was either not sent at all or was deleted from his work email account by someone. I note that AC in his email of 9 April 2024 to the claimant at [455] says he got a delivery receipt showing that the letter and enclosed docs were delivered to the claimant (see citation below). I accept that the documents were sent and delivered to the claimant's inbox.

62. I am not satisfied, given the lack of any corroborating evidence, that the claimant's emails were deleted by someone, or that the respondent has lied about sending the email and about receiving a delivery receipt.

63. Even if I am wrong on that, in any event, the claimant had notice of the disciplinary hearing at the latest on the morning of 9 April 2024, as he responded to AC's email of 4 April referencing the disciplinary hearing. He acknowledged that email prior to the set time for the disciplinary and refused to attend.

64. By reply on 9 April 2024, AC stated at [455]:

It was sent by email to this email address and I also got a delivery receipt so that is strange that even though the email was delivered you haven't seen it? In addition to this myself and Jaclyn have also sent you separate emails informing you of the disciplinary hearing but you have waited until this morning to raise this, however I will simply move the meeting to Thursday at 15:00 at Kidlington depot.

65. The Thursday that week was 11 April 2024: I find that this was to be the date of the rescheduled meeting. The claimant responded at [455]:

I can't attendance for any disciplinary meeting before I receive information about my January Bonus from UK Operations Manager – Water Richard Brennan.

66. That sentiment was repeated by the claimant ten minutes later by email again at [455].

67. Also on 9 April 2024, GA attempted to hand the claimant a hardcopy of papers for the disciplinary – see [AC/36]. GA told the claimant who the information was from, but the claimant refused to accept the documentation. The claimant

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accepted this and explained to me that this was because the envelope was not addressed and it was not clear who the letter was from or indeed who it was intended for. The claimant also said that the envelope was open and so he did not trust the contents. He told me he was concerned he would be framed for something if he accepted the documents.

68. I consider that this was not a reasonable refusal to accept the documents, and not a reasonable interpretation to take from the situation. There was no good reason for the claimant to think there was anything suspicious about the documentation. I find he unreasonably refused to accept the envelope, and that the respondent had reasonably attempted to deliver it.
69. On 10 April 2024, AC sent the claimant an email at [463] stating (again) that the disciplinary meeting had been rescheduled to 11 April 2024 at 1500hrs. The claimant was warned that if he failed to attend without notification or good reason, it would be treated as a separate conduct issue.
70. On the same day, on [462], the claimant set out (again) that he would not be attending a disciplinary meeting until his meeting about his employment had occurred and he had all the information regarding his January bonus.
71. On 12 April 2024 at [465], by which stage the claimant had missed the rescheduled disciplinary hearing, AC sent another invitation letter by email for a disciplinary meeting on 16 April 2024 at 1500hrs. This letter also set out that the claimant had failed to attend meetings on 9 and 11 April 2024, and that the claimant's reason was not a good reason, as he had had answers to his complaints around bonuses and, in any event, the disciplinary was a separate matter.
72. Although I have not seen the cover email to the letter on [465], I have seen an email from AC to the claimant setting out that the hearing was rescheduled for 16 April 2024 - [461]. I accept that the letter invitation was sent also by email to the claimant. The claimant did not raise that this letter at [465] had not been received by him. That letter set out clearly that the claimant had received a final written warning for his failure to attend so far, and would be dismissed if he failed to attend the meeting on 16 April 2024;
73. By an email of 15 April, the claimant refused to attend the disciplinary meeting the following day. His reasons were that the respondent had not resolved his outstanding issues and he had not received any documentation regarding the disciplinary – [461].

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74. On the same day, AC pointed out to the claimant that all information had been emailed to the claimant and GA had handed (or attempted to hand) the documentation to the claimant. The claimant was also reminded to check his emails and was told that it was in his interest to attend the disciplinary hearing - [460].

75. In response, the claimant asked AC to send all the documents to his home address for the disciplinary; he did not consider that the documents had been "served" - [460]. In reply, AC said at [459]:

...it was sent on 9 April 2024 please be so kind at to check your emails, I have a delivery receipt so I know you have it, I have also resent it.

76. I am not sure if the reference to 9 April 2024 is correct or whether AC meant to write the date as 27 March 2024. In any event, I have found that the claimant was sent the invitation and documentation on 27 March 2024 (and resent prior to 15 April 2024 as set out on [459]). I am also satisfied that he was aware of each disciplinary meeting and the consequences of not attending certainly the last two hearings on 11 and 16 April 2024.

77. The claimant was asked in cross-examination why he did not attend the 16 April meeting. He answered as follows:

Because to attend the meeting I need to prepare and know the details.

78. I then asked the claimant why, when faced with the threat of dismissal within the invitation letter at [465], he did not just go along to the meeting and say to them that he was not able to take part without preparation and knowledge of the details. The claimant did not really provide a clear answer to this, stating:

The first disciplinary, I did not know about, no outcome was provided by AH. Also, I think AH provided information about this meeting, but I think everyone who took part in this meeting should confirm that everything documented was said in this meeting. AH said yesterday that Ewelina was a translator. She was not; she was my witness.

79. The disciplinary hearing went ahead on 16 April 2024 in the claimant's absence, and the outcome letter was sent to the claimant on 18 April 2024, conveying the decision to dismiss the claimant – [481]. The disciplinary letter primarily focused on the claimant's failure to attend the disciplinary hearings. It does not explore the initial four allegations, other than by repeating them at the start of the letter.

80. The letter stated the following:

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I also explained in this third letter that this was your final warning and if you failed to attend for a second time, we would terminate your employment.

...

Having carefully reviewed the circumstances, including the fact that you are already on a Final Written Warning for conduct issued to you on 12th April 2024, I have decided that your employment should be terminated.

81. The claimant appealed his dismissal on 25 April 2024 at [525/483], stating primarily (in summary):

- 81.1. He did not refuse gang assist;
- 81.2. He always submitted his timesheets on time;
- 81.3. He cannot agree that his communications were inappropriate;
- 81.4. He cannot agree that he is difficult when given a management instruction; and,
- 81.5. He was given a final written warning regarding attendance at the disciplinary hearing, despite not knowing about any disciplinary hearing.

82. The appeal hearing took place with OW on 20 May 2024, the notes are at [535]. The appeal outcome letter, rejecting the appeal, is at [549].

Reason for dismissal

83. The respondent says the reason for dismissal was broadly conduct. The claimant suggested in his cross-examination of AC that in fact the claimant was called to a disciplinary because he had raised a complaint about AC. AC denies this.

84. I am not satisfied that there is good evidence from which I could draw an inference that AC dismissed the claimant because he had raised a complaint against him. I remind myself that AC in fact said that he was not aware of any complaint against him by the claimant at the time of the invitation to disciplinary being sent out.

85. The relevant question for me is "which individual or combination of allegations was "the reason or principal reason" for dismissal?". I look back at the contemporaneous documents.

86. The invitation to disciplinary sets out four reasons – [437]:

- 86.1. Refusal to attend gang assist;

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- 86.2. Refusal to submit timesheets when requested and also given a management instruction to provide timesheets on time however still refused to submit;
 - 86.3. Sending inappropriate communications via email and on regional WhatsApp;
 - 86.4. Being difficult when given an instruction by management (AC explained to me that this was a summary of all the other matters, and so is the umbrella term rather than a fourth allegation).
87. The invitation to the rescheduled disciplinary is at [465]. This adds to the list the claimant's failure to attend the last disciplinary hearing without good reason, which was to be considered as a separate issue of misconduct at the disciplinary hearing.
88. This letter says "if you fail to attend this rescheduled hearing without notification or good reason, this will be treated as a second act of misconduct and your employment will be terminated". AC confirmed to me that this letter was to be read as if termination would be automatic if the claimant did not attend the rescheduled disciplinary hearing.
89. Then we have the disciplinary outcome letter on [481]. In terms of the claimant's failure to attend, this was marked down as a failure to obey the respondent's reasonable instructions and was considered "a further act of misconduct". As to other reasons, I have set out the letters' contents at paragraph 79 above.
90. At appeal stage, the claimant argued against the allegations on the basis of their facts - [483]. The appeal outcome letter at [545] addressed each of the claimant's appeal points, and upheld the dismissal.
91. I then consider what the two decision-makers (AC and OW) told me in evidence. AC told me that the reason for dismissal was the non-attendance and "the four factors were included in my reasoning". I asked what weight he gave to each to which AC gave the following answer:
- 91.1. The Gang Assist was a fundamental part of the claimant's role and was important;
 - 91.2. The timesheets "seemed quite a serious matter";
 - 91.3. "inappropriate comments were very serious to me too"; and
 - 91.4. "Refusing to come to disciplinary hearing" was also "very important".
92. I asked OW what he understood AC's reasons for dismissal to be. He told me:

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- 92.1. gang gssist “and an accumulation of other events – being awkward, the forum of WhatsApp group – the four that were listed [in the invitation letter]”; and,
- 92.2. “The main [reason] was gang assist – but other ones did play in as well”.

93. Taking all of that evidence into account, I find that the reason for dismissal was a composite reason covering four factual matters:

- 93.1. The failure to attend the gang assist on 15 March 2024;
- 93.2. The refusal to provide timesheets;
- 93.3. The language on email and WhatsApp;
- 93.4. The failure to attend the disciplinary.

94. I will turn now to consider the investigation that was done into each of these four aspects of the respondent’s reason for dismissal.

Investigation into gang assist

95. In relation to gang assist, the following investigation had been done:

- 95.1. The claimant had been interviewed in an investigation meeting – [429]. The claimant’s position in that meeting was: the job was not in his area; it would take too long to get there; he would not be able to get home; he was following up on a leak;
- 95.2. The respondent had GF’s statement, as requested by AH – [415]. I have set out GF’s account at paragraphs 46-47 above.
- 95.3. The claimant said at appeal that he did not refuse to attend the gang assist – [539]. In his appeal letter at [525], he said that he did not refuse, but that he had a very important leak; he disputed that the reason he gave was that it was too far from home;
- 95.4. OW said in the appeal at [540] of the notes; “regardless of something which you may consider very important, if your manager or supervisor requests you to stop doing what you are doing and go to another task then you should do it. It is for them to decide what is most important”. This position was supported by what GF told me in his evidence;

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- 95.5. The claimant stated on [541] - "in the end my supervisor was happy for me not to attend. I was not instructed to go. If I had been instructed to go then I would have left and gone" - [541];
- 95.6. OW clarified this, stating "so you are saying your supervisor never actually told you to go to the gang assist? You weren't told to drop everything and go?". The claimant replied in the affirmative.
96. A similar exchange is recorded in the claimant's transcript of the appeal hearing, which I have read in full, along with the additional pages at Document 11. In those notes, the exchange was as follows - [SB/322]:
- "Claimant: I didn't get a direct instruction - "right, you've got to leave everything and go". I explained the reasons and it wasn't clear to me that I had to still leave that client and go because I would have, you know, if I knew I had [to]".
97. OW did not take this point back to GA to see what he had to say to this, and to clarify whether he had in fact instructed the claimant to go as opposed to enquiring about whether he could attend. I can see from the documents that GA was in the initial investigation meeting, but it does not appear from the note of that meeting [429] that he was asked anything at that stage either.
98. At the Tribunal hearing, the claimant told me that "after having this conversation, I asked GA if he still wanted me to go and he said no". This is the first time this evidence, that GA expressly said "no (you don't have to go)" had been raised in these proceedings. Importantly, it was not stated in this way during the internal disciplinary/appeal process from the evidence I have heard and seen. The highest the claimant put it during the internal process was that he was not (positively) instructed to go, and he would have gone if he absolutely had to.
99. Although at the Tribunal I had the claimant's tracker information, maps and call logs that were said to be relevant to this allegation, I am not satisfied that any of that evidence was looked at by either AC or OW at the time of the disciplinary or appeal hearings. Certainly, neither of them mentions that data in their statements. Although there is reference to "info relating to refusal to attend gang assist" in the disciplinary invitation letter at [437] it is by no means clear to me what that information was.
100. I consider that OW could have gone back to GA to ask him about the claimant's evidence that GA did not officially instruct the claimant to go to the Gang Assist. I will return to this in my conclusions.

Investigation into timesheets

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101. In terms of the documentary evidence that AC had before him at the disciplinary, he had the following:

101.1. Emails between the claimant and AH on 20 March on [434], in which the claimant refused to send timesheets in line with management's request;

101.2. Emails between the claimant and JK on 20 March at [426-427]. Again, this shows the claimant refusing to send time sheets in line with a management request;

101.3. WhatsApp messages between the claimant to GA on 27 March;

GA: Please can you send over timesheet ASAP

Claimant: Hi, I can't. I can't give opportunity to one person in office to cheat me on my BONUS. I will send my timesheet tomorrow after my work finished. That means 4.00pm. Regards, Radomir

GA: Ok well timesheets need to be sent today by 10am due to easter weekend if not submitted then this may result in you not being paid. Entirely up to you!!!!

Claimant: Ok I understand. Please stop doing financial aggression to my person.

101.4. Email from AH to AC regarding the claimant's timesheets at [435], stating that the claimant had refused, both at the investigation meeting on 21 March and on 27 March, to provide timesheets as per the management request (although I note that this was not in fact discussed at the investigation meeting, looking at the notes at [429-430]).

102. I have also seen an email of 20 March 2024 at [441] in which AC explained that the claimant's timesheet is already late and that if he does not submit it, he will not be paid on time. It is not clear to me whether this was before the disciplinary panel officially, however the author of this email was the disciplinary officer and so he would have had first-hand knowledge of that email.

103. In terms of the initial instruction to send timesheets early, I have seen copied and pasted email contents that I am told were sent by JK to supervisors to disseminate amongst their teams. The claimant says that this was not done and he did not receive the initial instruction regarding early delivery of timesheets.

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104. The messages sent out to supervisors are at [445]: one sent on 27 February and a reminder was sent on 25 March. The 27 February email gave the following deadlines for submission of timesheets - [445]

- 104.1. Week ending ("w/e") 15.03.24 - due 13.03.24 before 10am;
- 104.2. w/e 22.03.24 - due 20.03.24 before 10am;
- 104.3. w/e 29.03.24 - due 27.03.24 before 10am;
- 104.4. w/e 05.04.24 - due 05.04.24 before 10am.

105. On this point, I am not satisfied that the supervisor in question failed to disseminate this message out to the claimant as the claimant suggests. However, if I am wrong on that, the point still remains that the claimant had individual emails and messages pointing out that his timesheets were late (see above references). In his responses, he did not sound surprised by the request for early timesheets. I find he was aware of the instruction for early timesheets, whether from a supervisor email, or from individual emails to him making specific requests.

106. JK also says she sent an email out to all staff via the WhatsApp group at [445], saying "Don't forget time sheets need to be in today!!". JK told me in her statement that this was sent at 0637hrs on 20 March 2024. I accept that this message was sent to the all-staff WhatsApp group: this is more plausible than the alternative, which is that JK has fabricated this evidence.

107. In fact, the claimant sent his timesheets as follows:

- 107.1. w/e 15.03.24 - sent 13.03.24 0829hrs - [AB/16] - this was sent in time;
- 107.2. w/e 22.03.24 - sent on 22.03.24 1512hrs - [AB/18] - this was therefore late;
- 107.3. w/e 29.03.24 - sent 27.03.24 1320hrs, and again at 1509, and again on 28.03.24 at 15.31 - [AB/20-24] - this was therefore late;
- 107.4. w/e 05.04.24 - sent 05.04.24 1529hrs [AB/26] – this was therefore late too.

108. However, none of the correspondence I have cited above, in which the claimant sent his timesheets, was before the decision makers. The respondent's case on this was that they had never received these emails.

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109. I find it highly unlikely (without any supportive, corroborative evidence such as metadata) that the claimant has manufactured these documents following the event, specifically for the purpose of advancing his case. This appeared to be the inference the respondent was inviting me to draw. There is no good reason either to think that the respondent did not receive those emails. For example, I note that they have been properly addressed to the correct email addresses.
110. I accept that the documents at [AB/16-26] were sent by the claimant to the respondent at their respective times.
111. At appeal, OW concluded that the claimant had managed to comply with early requests for timesheets previously. Indeed, this can be seen in that the claimant sent the 15 March 2024 timesheet in at the requested time. OW's conclusion was that the claimant had refused to submit timesheets on time: I find that this is factually correct, in light of the correspondence I have seen.

Investigation into inappropriate comments

112. The allegation regarding inappropriate comments relates (looking at AC's witness statement) to the following comments:
- 112.1. "I'm not your slave remember" - in an email from C to AC on 16.02.24 - [379];
- 112.2. In the all-staff WhatsApp Group at [601] - "Unfortunately I don't believe on [sic] a single word what you raised. This is only Broker letter" - this was in reply to AC;
- 112.3. Email to AC on 23.02.24 - [406] - "I demand a full explanation on of this... I demand full explanation on of this 13 % DRY HOLES";
- 112.4. [402] - email on 27.02.24 - "Like I said many times I'm nobody [sic] slave" to AC;
- 112.5. [433] - email on 22.03.24 from the claimant to AC - "I have enough ignorance one Manager PN Daly" and "One manager will be not manipulating with evidence and facts".
113. In response to various of these emails, the claimant was reminded to respect others, for example:

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- 113.1. 16.02.24 - [379] - "Communications of this nature are not acceptable";
- 113.2. On 20.02.24 - [601] - the claimant was told on the staff WhatsApp group to "please stop making outrageous accusations it is quite simply not acceptable";
- 113.3. On 23.02.24 - [405] - AC told the claimant "I suggest you rewrite your previous email and try and be a bit more courteous this time";
- 113.4. On 27.02.24 - [401] - the claimant was told by AC "I have no idea where all of this resentment is coming from?";
- 113.5. on 22.03.24 on [432] - "I have also warned you several times to respect other members of staff, again I am informing you that insulting people is not acceptable in the workplace".
114. The point the claimant raised on appeal was a matter of mitigation. He stated that AC had written on the WhatsApp group things that were not true. He does not set out any other mitigation or explanation for his language in WhatsApp messages or emails to AC. OW responded to this point by saying that the claimant in fact sent numerous inappropriately worded messages on the WhatsApp group.

Investigation into failure to attend disciplinary hearings

115. My findings of fact on this allegation are at paragraphs [55-79] above. I find that the claimant knowingly missed three disciplinary meetings, in full knowledge of the possible consequences of missing those hearings.
116. In his appeal, the claimant raised at [484] that "I didn't even know about the disciplinary" and complained that nothing was sent to his home address. He accused an unknown person in Head Office of getting "unauthorised entry" to his emails and doing unauthorised things to or on his email. I am not satisfied that this was the case. I have seen and heard no corroborative evidence to support that assertion. I find it innately implausible given it is a baseless assertion. OW in his outcome letter sets out broadly the timeline and narrative regarding invitation letters and disciplinary meetings that I have set out above.

Procedural fairness

117. The main point taken by the claimant as to procedural fairness was the lack of interpreter at the investigation meeting. There clearly was no such

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interpreter. Although the claimant was supported by a colleague, Ms Ewelina Swideska, it is the claimant's case that she was not there as a translator, and in any event was unable to stay throughout the entire meeting. The notes of this meeting are a summary, and not verbatim, and do not show the detail of what, if anything, Ms Swideska said. I accept the claimant's evidence that Ms Swideska had to leave prematurely from the investigation meeting.

118. In any event, an interpreter did attend the entirety of the appeal meeting, as is clear from the claimant's transcript of the appeal meeting - [SB/286]. I find that, at the appeal meeting, the claimant had the opportunity to ask for any clarification from the initial investigation meeting and had every opportunity to say what he wanted at the appeal, through an interpreter.

Law – unfair dismissal

Reason for dismissal

119. The reason for dismissal is the “set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee” - Abernethy v Mott, Hay and Anderson 1974 ICR 323, CA.
120. The burden of proof falls to the respondent but is not onerous – Gilham and ors v Kent County Council (No2) 1985 ICR 233 CA.
121. In a case in which there are multiple reasons for dismissal, the ERA requires the respondent to demonstrate the principal reason for dismissal. The following cases are relevant:
- 121.1. Smith v Glasgow City District Council 1987 ICR 796, HL – in that case, four reasons were set out for the dismissal. The Tribunal held that the respondent had not established the second charge, which was a particularly serious matter, and indicated that the fourth charge was less serious than the other matters. Despite this, the Tribunal and Employment Appeal Tribunal held that the dismissal was fair. The House of Lords, upholding the Court of Session, held that the second charge had not been established as a fact, nor had it been established to be true on reasonable grounds. The respondent had failed to show the principal reason for dismissal, and specifically had failed to show that the second ground was not that reason. Given that an important part of the reason to dismiss was not established, the dismissal should have been unfair.
- 121.2. Smith tells us that the Tribunal must examine all the complaints that make up the reasons for dismissal, as together they comprise “The

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Reason” under s98. Then the Tribunal needs to assess the reasonableness of that composite reason.

121.3. The important point is how the respondent puts its case: is it saying that it dismissed the claimant for all the reasons, or does it say each ground justified dismissal independently, in which case it will be sufficient if at least one of the grounds is established – Carlin v St Cuthbert's Co-operative Association Ltd 1974 IRLR 188 NIRC.

Reasonableness of dismissal

122. The test as to whether an employer acted reasonably in treating conduct as a fair reason to dismiss is an objective test, judged by the way in which a reasonable employer would have behaved – NC Watling and Co Ltd v Richardson 1978 ICR 1049 EAT.

123. The Tribunal must not substitute its own view to consider how it would have dealt with the conduct – Iceland Frozen Foods Ltd v Jones 1983 ICR 17. This also means that the Tribunal must confine its consideration of the facts to those found by the respondent at the time of the dismissal.

124. In terms of every stage of the unfair dismissal legal test, once the reason for dismissal has been established, the correct test is to consider whether what the respondent did fell within the range of reasonable responses available to a reasonable employer. In the words of Lord Denning MR in British Leyland (UK) Ltd v Swift 1981 IRLR 91, CA:

“[t]he correct test is: Was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair. But if a reasonable employer might reasonably have dismissed him, then the dismissal was fair”.

125. The Tribunal must only take account of the facts or beliefs that were known to the decision makers (after reasonable investigation) at the time of the dismissal. This includes matters known in an internal appeal, as the disciplinary and appeal stages are taken as an overall process of dismissal – West Midlands Co-operative Society Ltd v Tipton 1986 ICR 192, HL

Reasonable investigation

126. In ILEA v Gravett 1988 IRLR 497, EAT, Mr Justice Wood held:

“at one extreme there will be cases where the employee is virtually caught in the act and at the other there will be situations where the issue is one of pure inference. As the

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scale moves towards the latter end, so the amount of inquiry and investigation which may be required, including questioning of the employee, is likely to increase”.

127. It is not a pre-requisite that an investigation meeting occurs, it depends on the facts of the case. The ACAS guide “Discipline and grievances at work” sets out that the more serious the allegation(s), the more thorough the investigation(s) should be.

128. An investigation should be carried out wherever there is a factual dispute that needs to be determined. However, where there is no dispute on the facts, or the misconduct is accepted, it may not be necessary to do a full investigation.

Law – wages

129. Under s27(1)(a) ERA, “wages” means any bonus whether payable under the claimant’s contract or otherwise.

130. Under s27(3), the ERA provides:

Where any payment in the nature of a non-contractual bonus is (for any reason) made to a worker by his employer, the amount of the payment shall for the purposes of this Part:

(A) be treated as wages of the worker; and

(B) be treated as payable to him as such on the day on which the payment is made

131. In New Century Cleaning Co Ltd v Church 2000 IRLR 27, CA the Court of Appeal requires there to be some legal (although not necessarily contractual), entitlement to the payment in question.

132. The Employment Appeal Tribunal followed this in Campbell v Union Carbide Ltd EAT 0341/01: the expression “payable under contract or otherwise” requires there to be a legal obligation to make the payment in question.

133. The exception is where a payment of a non-contractual bonus has actually been paid – s27(3).

Conclusions – unfair dismissal

Reason for dismissal

134. I have found that the reason for dismissal was a composite reason of four factual matters:

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- 134.1. The failure to attend the Gang Assist on 15 March 2024;
 - 134.2. The refusal to provide timesheets;
 - 134.3. The language on email and WhatsApp;
 - 134.4. The failure to attend the disciplinary.
135. In light of the decision-makers' evidence on this matter, and my rejection of the claimant's suggestion of AC's ulterior motives, I accept that the respondent had a genuine belief that the claimant was guilty of those aspects of conduct.
136. The overall umbrella reason for dismissal is therefore one of conduct, which is a potentially fair reason for dismissal under s98(2) ERA. I therefore move on to consider the fairness under s98(4) ERA.

Reasonable grounds following a reasonable investigation

137. The only investigation meeting held in the course of the disciplinary process covered one out of the four allegations that were part of the composite reason for dismissal. In other words, only one out of the four factual allegations for which I have found that the claimant was dismissed was ever subject to an investigation meeting.

Gang assist

138. As set out in my findings, I consider that OW could have gone back to GA to ask him about the claimant's evidence that GA did not officially instruct the claimant to go to the gang assist.
139. However, the important factor is whether such enquiries would have made any difference to the outcome. I consider that they would not. What was clear to AC and OW, was that the claimant had not gone to the gang assist when asked by GA, but he had put other matters first before the gang assist. I accept the evidence I heard from GF (compounded by OW's words in the appeal) that, if asked to go on a gang assist, you (to paraphrase) drop everything and go, even if it means you do not arrive within the exact 60 minute window, and even if it means you cannot guarantee you will finish at the scheduled end of your shift. The agreed facts are that the claimant did not attend the gang assist, despite GA calling him to ask him.
140. In other words, I am satisfied that there were reasonable grounds for the respondent's genuine belief that the claimant was guilty of refusing to attend a gang assist.

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Timesheets

141. I have set out at paragraphs 107-108 that none of the correspondence referenced in that paragraph, in which the claimant sent his timesheets, was before the decision makers at the time of deciding to dismiss, and uphold the dismissal. This seems most bizarre as it would appear to be part of a reasonable investigation to do a reasonable search for email exchanges on the topic of timesheets.
142. The respondent's case on this was that they had never received these emails. I have found at paragraph 109 above that the emails were sent to the respondent. I conclude that they therefore should have been part of a reasonable investigation.
143. The question however is whether the production of these documents would have made a difference to the respondent's decision. Given that the respondent had in front of it email chains in which the claimant made it clear he did not intend to comply with a reasonable management request, I consider that the further production of the documents now at [AB/16-26] would have made little if any difference to the outcome.
144. The respondent had sufficient evidence in front of it from which to have reasonable grounds for its belief that the claimant was guilty of refusing to submit timesheets, even when a management instruction was given to that effect. Factually, this is the case: the claimant did refuse to follow a management instruction on this point.

Inappropriate communications

145. AC was a first-hand recipient of the claimant's correspondence forming the basis of this allegation of misconduct. AC was also the individual who had sent the claimant warnings. Therefore, there was no more reasonable investigation that needed to be done. I consider there were reasonable grounds for the respondent's genuine belief that the claimant was guilty of this conduct issue.
146. In terms of OW's belief, as above, the claimant put forward mitigation that OW dismissed in light of the warnings the claimant had been given about the use of his language. I conclude that there was enough evidence before him to have reasonable belief that the claimant was guilty of writing inappropriate communications.

Failure to attend disciplinary hearings

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147. There was no further investigation to be done on this point: the documentation speaks for itself and the claimant gave his account of why he did not attend the meetings.

148. I conclude that there was enough evidence following the respondent's reasonable investigation that the respondent had reasonable grounds for its genuine belief that the claimant was guilty of failing to attend a disciplinary meeting without notification or good reason.

149. I therefore conclude that, although there were areas in which the investigation into the composite reason for dismissal could have been improved, there was nothing lacking in the investigation that would have made such a difference so as to render the investigation unreasonable.

Procedural fairness

150. I set out my findings on procedure at paragraphs 117-118 above. I consider that any procedural failure at investigation stage (regarding attendance of an interpreter) was rectified by the appeal process.

Dismissal within band of reasonable responses

151. The question here is whether dismissal fell within the band of reasonable responses available to a reasonable employer. In other words, whether no reasonable employer would have dismissed the claimant for the composite reason of:

- 151.1. Refusal to attend Gang Assist
- 151.2. Refusal to send in time sheets, therefore refusing a management instruction;
- 151.3. Inappropriate communications;
- 151.4. Failure to attend disciplinary hearings.

152. Taking those four individual reasons as one composite reason, as I have found the respondent did, I am satisfied that dismissal fell within the band of reasonable responses.

153. The claimant by the time the decision was taken had a final written warning due to his lack of attendance at the disciplinary meeting. Two of the four factors also related to failure to follow management instructions (in summary). Looking at the respondent's Disciplinary Policy at [168], there is a non-exhaustive list of examples of misconduct, including "refusal to comply with

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a reasonable request". Furthermore, the Policy outlines the various sanctions available, and under "dismissal" the policy reads as follows:

Employees will be dismissed after due notice has been given if; despite adequate warning according to the procedure above, their conduct or work performance does not meet the required standard.

154. This is not a case in which no reasonable employer would have dismissed the claimant.

Conclusions – wages

January bonus

155. I refer to my findings of fact above at paragraphs [21-34]. The claimant had not reached his target for January 2024 that was required to trigger the bonus payment. As such, I conclude that no bonus was properly payable.

March bonus

156. I refer to my findings of fact above at paragraphs [35-39]. The claimant had not reached his target for March 2024 that was required to trigger the bonus payment. As such, I conclude that no bonus was properly payable.

Quarterly bonus

157. I refer to my findings of fact above at paragraphs [40-44]. The claimant had not reached the requisite average target required to trigger the bonus payment. As such, I conclude that no bonus was properly payable.

158. Therefore, there was no outstanding payment that was properly payable. As such, the claimant's claim for unauthorised deduction of wages fails.

Approved by:

Employment Judge Shastri-Hurst

22 September 2026

JUDGMENT SENT TO THE PARTIES ON

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23 September 2026

FOR THE TRIBUNAL OFFICE

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