



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Gurung

Respondent: Amazon Services UK Ltd

Heard at: Bristol **On:** 3 and 4 August 2026

Before: Employment Judge Beever, sitting alone

Appearances

For the claimant: in person (with assistance of an interpreter, Ms Ranabhat)

For the respondent: Ms Anderson, counsel

FULL WRITTEN REASONS

Introduction

1. The Claimant represented herself with the assistance of an interpreter and, on the final day, with the assistance of her daughter. The Respondent was represented by counsel. The matter was heard in person over 2 days between 3-4 August 2026. The parties concluded their cases and the Tribunal reached a decision and gave an oral judgment and summary reasons on 4 August 2026. The Claimant's claim was not successful and was dismissed.
2. The written judgment dismissing the claim was sent to the parties on 19 August 2026. By a request dated 20 August 2026 the Claimant requested summary alternatively full written reasons.
3. These are full written reasons pursuant to rule 60(4E) of the Employment Tribunal Rules 2024.

The Issues

4. By a claim form dated 5 September 2024, the Claimant complained of unfair dismissal and wrongful dismissal as well as a number of other claims. The claim was the subject of more than one Preliminary Hearing at which the issues were helpfully narrowed. At the outset of the Final hearing, the parties confirmed that the issues that the Tribunal was required to determine were as set out in the CMO of EJ Livesey, 2 September 2025, at [89], and are as follows:

The List of Issues

2 Unfair dismissal

2.1 Was the Claimant dismissed?

2.2 What was the reason for dismissal? The Respondent asserts that it was a reason related to conduct, which is a potentially fair reason for dismissal under s. 98 (2) of the Employment Rights Act 1996.

2.3 Did the Respondent hold a genuine belief in the Claimant's misconduct on reasonable grounds and following as reasonable an investigation as was warranted in the circumstances? The burden of proof is neutral here but it helps to know the Claimant's challenges to the fairness of the dismissal in advance and they are identified as follows;

- 2.3.1 She was not given a proper warning or opportunities to improve her productivity contrary to Amazon UK Services Limited performance management policy.
- 2.3.2 She was not given a performance improvement plan, or formal warnings and the disciplinary process was not followed.
- 2.3.3 She says the right to appeal was not properly explained or offered to her.
- 2.3.4 The claimant raised concerns about behaviour of some of her colleagues and possible discrimination and that after that she was increasingly monitored; given lower ratings and cold treatment;
- 2.3.5 Some of the periods when she was marked as being "off task" were caused by a mechanical fault;
- 2.3.6 She was criticised for using her mobile phone, but she only did this because she had been told to upload a photograph of herself for the purposes of the course of study she was undertaking, and she was taking a selfie;
- 2.3.7 She was wrongly accused of using her mobile phone by her colleagues, when everybody was doing the same;
- 2.3.8 She was unfairly penalised for using her mobile phone because the respondent knew or should have known that many other employees were doing the same but were not subject to disciplinary action

2.4. Was the decision to dismiss a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with these facts?

2.5 Did the Respondent adopt a fair procedure? The Claimant challenges the fairness of the procedure in the following respects;

2.5.1 As above.

2.6 If it did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?

2.7 If the dismissal was unfair, did the Claimant contribute to the dismissal by culpable conduct? This requires the Respondent to prove, on the balance of probabilities, that the claimant actually committed the misconduct alleged.

3 Wrongful dismissal; notice pay

3.1 What was the Claimant's notice period?

3.2 Was the Claimant paid for that notice period?

3.3 If not, was the Claimant guilty of gross misconduct or did she do something so serious that the Respondent was entitled to dismiss without notice?

The Evidence

5. Both parties were diligent in assisting the Tribunal to manage this Hearing in accordance with a hearing timetable so that the Hearing could be concluded within the allotted time and a decision provided to the parties.
6. The Tribunal heard oral evidence from the Respondent's witnesses: Alan D'Costa (investigating officer) and Jack Saitch-Smith (dismissing officer) and both were cross-examined. Also Maria Acero and Michael Kinsella provided witness statements and were available for cross examination although in the event the Claimant did not wish to ask any questions of them. The Claimant provided two witness statements (19 January 2026 and 25 January 2026) and gave oral evidence and was cross examined.
7. Both parties provided helpful oral closing submissions which the Tribunal has taken account of.
8. There was an electronic bundle of documents numbered to 297 pages which was placed before the Tribunal, as well as a useful cast list and chronology which assisted the Tribunal to understand the case.
9. The Tribunal made its findings of fact having regard to all of the evidence and did so on a balance of probabilities. These findings focus on matters relevant for the purpose of deciding the issues set out in the List of Issues.
10. In assessing evidence relating to this claim, we have borne in mind the guidance given in Gestmin SGPS v Credit Suisse (UK) Ltd [2013] EWHC 3560; that research shows that human memories are fallible and memories are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember something clearly. Most of us are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. The process of going through tribunal proceedings can create biases in memories. The judge in Gestmin said, "above all it is important to avoid the fallacy of supposing that because a witness has confidence in her or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth".

The Facts

Background

11. The Claimant was employed by the Respondent from 13 June 2021 (following an earlier period of work as an agency worker) as a Fulfilment Centre (FC) Associate.
12. Between November 2022 and January 2024, the Claimant was the subject of escalating performance management meetings. That evidence was not disputed. Those meetings and concerns were fully documented and the Claimant received performance warnings in accordance with the Respondent's Performance Improvement Process (PIP). This was the evidence of Maria Acero, which was not disputed by the Claimant and which in any event the Tribunal accepted.
13. The performance warnings escalated to a final performance warning in January 2024. The Claimant's job was evidently at risk as a result. The Claimant was fully aware of the performance expectations of her employer. The Claimant in her witness statement stated that she was not aware of performance concerns raised against her. In this respect, the Claimant is plainly wrong. However, in the event the issues relating to the Claimant's involvement in the PIP did not gain greater significance in this case because the Respondent's case was that the PIP process did not form any part of the dismissal process or of the decision to dismiss.
14. The Respondent operated an Associate Development and Performance Tracking (ADAPT) system which was a tool for internal reporting and enabled the Respondent to track and maintain an employee's performance and quality of work as well as conduct or safety issues which may arise. This was very much to the fore in respect of the management of the Claimant's performance, and in respect of which the Tribunal found that the Respondent operated a staged approach, as per the PIP, and as expressed by Ms Acero in her witness statement. Mr D'Costa was familiar with the ADAPT process.

The Disciplinary Process

15. On 27 April 2024, a Team Leader informed Mr D'Costa that the Claimant had been taking selfies whilst refilling buffer storage bins in a working area of the Respondent's warehouse. This, like the other matters referred to in these reasons, was the subject of an ADAPT record [191].
16. The Claimant was subject to a disciplinary process on grounds of her alleged misconduct. On 3 May 2024 (wrongly dated as 3 April 2024), the Claimant was invited to an investigatory meeting to take place on 4 May 2024. The letter outlined 3 allegations of alleged misconduct.
17. The Claimant accepted in evidence that she did get the covering email, at [177] and she attended the meeting. She said at that meeting that she did not want a companion and was content to proceed. At no stage did the Claimant say that she was unhappy to proceed or that she was not able to understand the proceedings.
18. The invitation had identified 3 allegations of misconduct [178]. The first related to "Idle time" and the second and third related to Mobile Phone Use.

19. The Respondent operated a Mobile Phone Use Policy. See for example at [135] which prohibits using a mobile phone while performing tasks and walking. A serious breach of the Policy was said to be an example of Gross Misconduct.
20. Certain working areas of the Respondent's premises, including in this case, "Pallet land", are designated no-phone areas. This was because employees operated trolleys and scanning pallets to locate specific items. Thus, the use of a mobile phone would be liable to create distractions and impair an employee's ability to operate safely and in turn increase the risk of collisions and injury.
21. Mr D'Costa conducted the investigatory meeting and notes appear at [180]. The Claimant accepted in evidence that she knew that she faced three allegations. It is evident that the Claimant was asked about each allegation. The Claimant did not sign the notes of the meeting; she said in evidence that this was because she did not read them and that she had been otherwise engaged with domestic responsibilities and had no time to do so. The Tribunal accepted Mr D'Costa's evidence that the notes reflected the meeting. There was a separate note taker present for that purpose.
22. In the meeting, the Claimant acknowledged that she had used her phone. She said that it had been while she was pushing a trolley. She said that it was in order to check the time, and she acknowledged that it was an unsafe thing to do.
23. The result of Mr D'Costa's investigation was a report, dated 7 May 2024 [186], in which he found that there was a case to answer in respect of all three allegations. Mr D'Costa outlined in further detail his main findings at paragraph 4.21 of his witness statement.
24. The Claimant in her evidence stated that she forgot whether she had obtained the report prior to the Disciplinary Hearing and now does not know if she did or not. The Tribunal found that she did receive it: it was sent to her on 4 June 2024 as part of a letter [192] inviting the Claimant to a Disciplinary Hearing. The Claimant was able to understand and respond to questions at the Disciplinary hearing on the allegations which strongly suggests that she had prior receipt and understanding of the allegations and the report. The Claimant in her evidence accepted that she knew that she was at risk of dismissal.
25. The Claimant attended a Disciplinary Hearing which was held by Mr Saitch-Smith, in the senior position of Area Manager. The Claimant was asked questions in respect of each of the allegations and the Tribunal accepted that the notes of the Hearing [194] reflect the discussions at the Hearing.
26. The outcome letter is at [204]. Each of the three allegations were upheld. Allegation 1 is the "idle time" allegation. This related to periods of unauthorised or unexplained time off task. Mr Saitch-Smith found that the Claimant had unexplained time off task on 3 separate occasions totalling 3 hr and 57 mins. This was not a single block, but an accumulating total. Mr Saitch-Smith noted that the Claimant had been spoken to on multiple occasions regarding her idle time which did not produce the desired effect. That said, in his evidence to the Tribunal, Mr Saitch-Smith said that he did not

give this allegation substantial weight (and it is not referred to within the process as gross misconduct, it being misconduct only). It was his position, and the position of Ms Anderson in her oral closing submission, that this did not form part of the reason for dismissal.

27. Allegations 2 and 3 both relate to mobile phone use. In each respect, Mr Saitch-Smith reached the conclusion that the allegations had both been made out.
28. Regarding allegation 2, that on 13 April 2024, Mr Saitch-Smith concluded that the Claimant had committed a “serious breach of Amazon’s Mobile Phone Use Policy”, when being observed using her mobile phone when operating machinery. In this instance, the Claimant was performing pallet picking tasks while using a cart in an area in the warehouse known as Pallet Land. The Claimant had explained to Mr Saitch-Smith that she had thought that it was ok as nobody appeared to be around. The Claimant had alleged that she was simply momentarily checking the time; although Mr Saitch-Smith found that the Claimant was fully able to check the time at any time as it is visible on the handheld scanner that was in her possession throughout. The Claimant recognised that this was contrary to the Amazon Mobile Phone Policy.
29. Allegation 3, similarly an allegation of gross misconduct, was that on 25 April 2024, the Claimant was observed taking photographs of herself on her phone whilst working. At the investigatory Hearing, the Claimant explained that she did so as she had intended to update her LinkedIn profile. Inconsistently, at the Disciplinary Hearing, the Claimant accepted that she was taking selfies and was doing so for “for fun” and that “it was not a crime to do so” and further disclosed other occasions when she had done so.
30. The Claimant was summarily dismissed by letter dated 6 June 2024 [203]. The Claimant was offered the opportunity to appeal, but did not do so. She was offered a means to do so, via an email address. The Claimant said that her lack of access to the Respondent’s systems prevented her from doing so; the Tribunal rejected that explanation. The Claimant was afforded a reasonable opportunity to appeal.

The Law

31. In relation to unfair dismissal, section 98(1) and (2) of the Employment Rights Act 1996 sets out the potentially fair reasons for dismissal. Section 98(2) states that a reason falls within this subsection, inter alia, if it relates to conduct.
32. When determining the fairness of conduct dismissals, according to the Employment Appeal Tribunal in British Home Stores v Birchell [1980] ICR 303, a tribunal must consider a three-fold test: (i) the employer must show that he believed that the employee was guilty of misconduct, (ii) that he had in his mind reasonable grounds upon which to sustain that belief, (iii) that at the stage at which the employer formed that belief he had carried out as much investigation into the matter as was reasonable in the circumstances.

33. Section 98(4) then sets out what needs to be considered in order to determine whether or not the decision is fair. It states “determination of the question whether dismissal is fair or unfair.... (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”.
34. For the purpose of section 98(1) and 98(2) the burden of proof is on the Respondent. What matters is whether the respondent has established the operative reason for the dismissal: see Brady v ASLEF [2006] IRLR 576. The relevant reason for dismissal relies on a finding as to 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 [1974] ICR 323; Beedell v West Ferry Printers Ltd [2000] IRLR 650. From those “facts” or “beliefs”, a Tribunal can determine whether the Respondent has established the principal “reason” for dismissal: see Kristensen v Portman Healthcare Ltd [2026] EAT 127.
35. For the purpose of section 98(4) the burden of proof is neutral in applying section 98(4). The Tribunal does not stand in the shoes of the employer and decide what it would have done if it were the employer. Rather the Tribunal has to ask whether the decision to dismiss fell within the range of reasonable responses open to the employer judged against the objective standards of a hypothetical and reasonable employer. The case of Sainsbury’s Supermarket Ltd v Hitt [2002] EW CA Civ 1588 makes it clear that the range of reasonable responses applies to all aspects of the dismissal decision. The Tribunal is required to consider whether dismissal fell within the range of reasonable responses: see Iceland Frozen Foods v Jones [1983] ICR. Here the question of whether an employer has acted reasonably in dismissing will depend upon the range of responses of reasonable employers. Some might dismiss others might not.
36. Consistency of treatment may be relevant in terms of fairness in circumstances where there is evidence of decisions being made in truly parallel circumstances: Hadjiioannou v Coral Casinos [1981] IRLR 352.
37. Fairness is a feature of the statutory test in section 98(4). Not infrequently, complaint is made of aspects of the process and/or the decision which amount to a breach of procedure or policy or is otherwise reasonable. The Tribunal falls into error if in considering those deficiencies it fails to consider the statutory test in the round: Westminster City Council v Cabaj [1996] IRLR 339; Taylor v OCS Group [2006] IRLR 613; Reilly v Sandwell Metropolitan Borough Council [2018] IRLR 558 ; Christou v LB Haringey [2013] IRLR 379.
38. Turning to deductions from compensation, the Polkey principle established that if a dismissal is found unfair by reason of procedural defects then the fact that the employer would or might have dismissed the employee anyway goes to the question of remedy and compensation reduced to reflect that fact. Thornett v Scope [2007]

ICR 236 affirmed the obligation on an employment tribunal to consider what the future may hold regarding an employee's ongoing employment.

39. Section 122(2) ERA provides that where a tribunal finds that any conduct of a claimant before the dismissal was such that it would be just and equitable to reduce the amount of the Basic Award, the tribunal must reduce that amount accordingly. Section 123(6) ERA provides that where a tribunal finds that the dismissal was to any extent caused or contributed to by any action of the claimant, it must reduce the amount of the compensatory award by such proportion as it considers just and equitable. Before any such deduction, a tribunal must make three findings (in accordance with Nelson v BBC (no2) [1979] IRLR 346): (i) that there was conduct which was culpable or blameworthy; (ii) that the dismissal was contributed to some extent at least by the claimant's culpable or blameworthy action, (iii) that it is just and equitable to reduce the assessment of the claimant's loss to a specified extent.
40. In relation to wrongful dismissal, a different test applies. It is necessary for the tribunal to reach a finding of fact as to whether the claimant had in fact committed a breach of her contract that was sufficiently serious that it amounted to a repudiatory breach which entitled her contract to be terminated without notice. If not, then a breach of contract occurs when the Respondent terminates without notice, and the usual measure of damages is the contractual notice period to which the claimant was entitled.
41. In a wrongful dismissal case, questions of reasonableness do not arise, and the issue is whether the employee was guilty of conduct so serious as to amount to a repudiation breach of the contract of employment entitling the employer to summarily terminate contract: Enable Care and Home Support Ltd v Pearson EAT/0366/09. In Palmeri v Charles Stanley [2021] IRLR 563, the test was described as, "whether objectively and from the perspective of a reasonable person in the position of the employer, the employee had clearly shown an intention to abandon and altogether refused to perform the contract".

Discussion and Conclusions

42. In determining the unfair dismissal claim, the Tribunal has had regard to the two statutory questions posed by section 98(1) and 98(4) of ERA.
43. Turning first to the reason for dismissal, the Tribunal noted that the outcome letter [205] contained detailed reasons, which were entirely consistent with both the Disciplinary Hearing and the Investigation Report.
44. The Tribunal found that Mr Saitch-Smith was the decision maker. The Hearing and the Outcome Letter represent the best evidence of the reason relied on by the Respondent. Mr Saitch-Smith asserted in evidence that the facts in his mind when he dismissed the Claimant were those relating to the two allegations of mobile phone misuse. The Claimant has never suggested that there is another reason. Specifically, although the performance matters featured heavily in the documentation, neither the

Claimant nor the Respondent contended that the PIP and the performance warnings did in fact feature in the decision to dismiss.

45. The Respondent has satisfied the burden under section 98 of ERA to establish the reason for dismissal and that it was a potentially fair reason, namely misconduct.
46. Specifically, the misconduct relied on by the Respondent related to the Claimant's mobile phone use. Mr Saitch-Smith had confirmed in his evidence that he did not give substantial weight to the "idle time" allegation and that this did not feature in his decision.
47. The Tribunal is satisfied that Mr Saitch-Smith had a genuine belief as to the misconduct of the Claimant regarding the mobile phone. The Claimant did not suggest otherwise. Moreover, Mr Saitch-Smith's detailed discussion with the Claimant in the course of the Disciplinary Hearing ties in entirely with the contents of his witness statement and clearly shows his full understanding of the allegations relating to mobile phone use and that the Claimant's use had constituted a breach of the Respondent's Mobile Phone Use Policy.
48. Did Mr Saitch-Smith hold such a belief on reasonable grounds and following as reasonable an investigation as was warranted in the circumstances?
49. The Respondent had made extensive use of its ADAPT process, which were contemporaneous documents and which also involved the oversight and approval of the Respondent's HR facility before being delivered to the Claimant. Each of the allegations the subject of the disciplinary process had been the subject of the ADAPT process and thus relevant in terms of reasonable grounds. The Claimant said in her evidence that she had not signed, or does not recall signing, the ADAPT forms, but the Tribunal is satisfied that the ADAPT forms fairly reflect events at the time and also that they were again provided to the Claimant in the course of the disciplinary process. They were discussed both in the investigatory interview and were also attached as appendices to the investigation report.
50. The Claimant was asked about each ADAPT in some detail by Mr D'Costa. Again, the Tribunal took account of the fact that the Claimant said she did not sign them. However, the Tribunal finds that the Claimant simply does not recall; and has since conflated them in her mind the fact that she does not agree with the allegations themselves. The Tribunal also found that the Claimant was wrong in her evidence when she said that she did not sign the notes of the investigatory meeting. They plainly were signed and it was Mr D'Costa's evidence that the Claimant had signed them.
51. The Claimant had also been asked in detail about each by Mr Saitch-Smith in the course of the Disciplinary Hearing. Again, the Tribunal found that the Claimant was wrong when she said in her verbal evidence that she did not sign the notes of the Disciplinary Hearing. The Claimant provided detailed descriptions and answers regarding her use of her mobile phone and Mr Saitch-Smith was entitled, as he did in fact do so, to take into account what she had said in response.

52. In the course of the investigatory meeting, when asked about the allegation of 13 April 2024, the Claimant said that she was checking the time on the phone and it was whilst pushing the trolley. The Claimant agreed that “it was not safe; not right” and that “it was a habit to check the time on her phone”. Later, at the Disciplinary hearing,, the Claimant said, “checking time; accidentally TL [Team Leader] saw her”. When asked why she would not have “both hands on the trolley”, the Claimant’s response was that there was “no one else around....”.
53. In the course of the investigatory meeting, when asked about the allegation of 25 April 2024, the Claimant firstly said that she had not taken a selfie, but when Mr D’ Costa pressed her, the Claimant did acknowledge that it was a selfie, and when asked why, that it was for her profile on LinkedIn. Further, the Claimant acknowledged her use and said that she would use it when “bored” and that there had been at least one further time when she had done so.
54. The Tribunal is satisfied that Mr Saitch-Smith had reasonable grounds for his belief that the conduct had occurred as alleged and that it was the product of a reasonable investigation. Mr Saitch-Smith had taken time to ensure that the Claimant understood the Respondent’s “no phone policy” and that the Claimant’s actions amounted to breach of the Mobile Phone Use Policy. The Claimant’s response [201], which Mr Saitch-Smith was reasonably entitled to take account of, was that, yes, she understood there was a no phone policy, and “its policy, but we are ignoring the policy, there are too many”.
55. English is not the Claimant’s first language. The Tribunal has taken full account of that. Mr Saitch-Smith was able to conduct the Hearing in a reasonable manner and discuss the allegations with the Claimant. At no point did the Claimant say or intimate that she did not understand or needed assistance to understand. There was no indication that might have put the Respondent or Mr Saitch-Smith on notice that the Claimant did not understand the allegations or what she was saying in response. The Claimant had operated for a length of time in the workplace, including numerous ADAPT conversations, and later in detailed meetings with both Mr D’Costa and Mr Saitch-Smith. The Claimant did not raise in any of them, any difficulties with understanding and the Tribunal found that she was able to provide explanations. The Claimant did not in this Hearing suggest to any witness that they had been unfair toward her on account of English not being her first language.
56. There was a no-phone rule at the Respondent when working on task. This was emphasised by the Respondent’s Mobile Phone Use Policy which itself identified that a serious breach of the Policy was an example of gross misconduct. The Claimant was aware of the rule and the Policy and she chose to ignore it. The Tribunal found that Mr Saitch-Smith had following a reasonable investigation reasonable grounds for his belief that the two allegations mobile phone misuse were acts of misconduct by the Claimant.
57. The Claimant has raised specific challenges to fairness (and see paragraph 2.3.1-2.3.8 of the List of Issues):
58. The Claimant complains (2.3.1) that, *“she was not given a proper warning or opportunities to improve her productivity contrary to Amazon UK Services Limited*

performance management policy”: this is not a relevant feature of the case given the Respondent’s position, which the Tribunal accepted and which the Claimant did not in fact dispute, that the Claimant’s productivity did not form part of the reason to dismiss. Specifically also, the “idle time” allegation did not form part of the reason to dismiss.

59. The Claimant complains (2.3.2) that, “*She was not given a performance improvement plan, or formal warnings and the disciplinary process was not followed*”: the Claimant was not dismissed in respect of her PIP or her productivity. The Claimant faced allegations of misconduct; the Claimant was, on her own acknowledgment, aware of the allegations, was able to respond to them and was aware of the risk of dismissal. The Claimant had sought to say that that she was not aware that she might be dismissed but she was wrong about that: the Claimant had been clearly forewarned that an outcome of the process might be dismissal. The Claimant has failed to show in what respects the disciplinary process was not followed.
60. The Claimant complains (2.3.3) that, “*the right to appeal was not properly explained or offered to her*”: the Tribunal rejected that. The Claimant was given a verbal explanation at the Disciplinary hearing and it was confirmed to her in writing in the outcome letter. She had the ability to correspond with the nominated appeal email point of contact and any restriction of access to the Respondent’s operating system did not hinder that. The Claimant may well have thought that she did no longer trust the Respondent but even then it is the whole point of an appeal process that there was an opportunity for a fresh pair of eyes at a more senior level.
61. The Claimant complains (2.3.4) that, “*the claimant raised concerns about behaviour of some of her colleagues and possible discrimination and that after that she was increasingly monitored; given lower ratings and cold treatment*”: the Claimant gave no evidence to the Tribunal of complaints or concerns about colleagues and no evidence at all of any elements of discrimination. The Tribunal confirmed this with the Claimant during the course of the Hearing and the Claimant acknowledged that there was no evidence before the Tribunal of such concerns about others or of any discrimination. There are no facts to support this assertion.
62. The Claimant complains (2.3.5) that, “*some of the periods when she was marked as being “off task” were caused by a mechanical fault*”: the Claimant gave no evidence to the Tribunal about mechanical faults; nor did the discussion in the course of the investigatory and Disciplinary meetings include any material reference to mechanical faults. The Tribunal would not have found that the Claimant had made out this assertion. In the event however, in the light of the finding that the “idle time” did not form part of the Respondent’s reason for dismissal, the Tribunal found that this was not relevant to the claim.
63. The Claimant complains (2.3.6) that, “*She was criticised for using her mobile phone, but she only did this because she had been told to upload a photograph of herself for the purposes of the course of study she was undertaking, and she was taking a selfie*”: the evidence for this was unclear. The Claimant did say at the Disciplinary Hearing that taking a selfie was for her LinkedIn profile but at no stage did she say or suggest that she was told, or instructed, or by whom, that it needed to be done in

the workplace or that it should be done when the Claimant was working. It provided little if any reasonable explanation and in any event the Tribunal was satisfied that Mr Saitch-Smith took account of what the Claimant did say in the course of the Disciplinary Hearing.

64. The Claimant complains (2.3.7) that, “*she was wrongly accused of using her mobile phone by her colleagues, when everybody was doing the same*” and (2.3.8) that, “*she was unfairly penalised for using her mobile phone because the respondent knew or should have known that many other employees were doing the same but were not subject to disciplinary action*”: taking these two assertions together, the Tribunal found that the Claimant had admitted to using her mobile phone when working so the Claimant was not wrongly accused. The Tribunal also found that the Respondent’s disciplinary process enabled the Claimant to provide her version of events and to offer explanation. The Tribunal took into account her evidence that others would use their phones. There was no evidence from the Claimant as to any specific use by other individuals or of any different treatment of other individuals by the Respondent. It was also Mr Saitch-Smith’s evidence that there were others who faced their own disciplinary processes. The Tribunal was satisfied that Mr Saitch-Smith fairly considered the Claimant’s case on its own merits and took account of the Claimant’s generalised assertion that others would use their phones and reflected that the Respondent applied its processes to others in such circumstances.
65. The Tribunal turned next to the question of: whether the decision to dismiss was a fair sanction, whether it was within the range of reasonable responses open to a reasonable employer when faced with these facts? The Claimant has characterised the circumstances as, “a small thing that didn’t deserve a big punishment”. The Tribunal’s task is not to decide what it would have done in the same situation; not to step into the shoes of the Respondent.
66. This employer was entitled to take into account, as Mr Saitch-Smith did (and also see paragraph 5.20 of his witness statement):
- 66.1. a serious breach of the Respondent’s Mobile Phone Use Policy is an example of Gross Misconduct and that taking photographs when working is itself identified as an act of potential gross misconduct
- 66.2. Mr Saitch-Smith took care to make sure that the Claimant understood that the Respondent operated a Mobile Phone Use Policy and that she understood she was in breach of it,
- 66.3. Mr Saitch-Smith concluded that the Claimant’s non-compliance was deliberate (see paragraph 5.20(c) of his statement and he confirmed this in his verbal evidence) and a dismissive attitude towards the Respondent’s Mobile Phone Use policy, which itself was aimed at ensuring the safety of all employees
- 66.4. Mr Saitch-Smith was also entitled to take into account that it was not simply a one-off but that the more serious “photograph” incident occurred within a week or so of the prior event in which the Claimant was knowingly in breach of the requirement that employees should only use a phone in a designated area
- 66.5. Mr Saitch-Smith was entitled to conclude, as he did (see paragraph 5.20(d) of his statement and he confirmed this in his verbal evidence), that the Claimant was not likely to comply in the future.

- 66.6. Mr Saitch-Smith considered other sanctions including a final warning. He concluded that there were multiple breaches, added to the admission that it had happened multiple times before, and without improvement, and without confidence that the Claimant's behaviour would be different in the future.
67. Mr Saitch-Smith concluded that dismissal was appropriate. The Tribunal does not find that this decision to dismiss fell outside the band of responses available to a reasonable employer in these circumstances.
68. As to the fairness of the procedure, the Tribunal found that the process was fair in all material respects. The Respondent plainly followed its process in terms of its investigatory meeting and its Disciplinary Hearing. At each stage, the Claimant had relevant documents and was fully and fairly informed of allegations before each meeting. She was informed that it might amount to Gross Misconduct and she was provided with the investigatory report and appendices prior to the Disciplinary Hearing. The Claimant was aware that she was at risk of dismissal.
69. At each stage, the Claimant had a reasonable opportunity to state her case and to defend herself. For example, at the Disciplinary Hearing, Mr Saitch-Smith double checked the Mobile Phone Use Policy with the Claimant who acknowledged the policy, and said, "we are ignoring the policy". She was asked each time, whether there was, "Anything else she wanted to say".
70. The Tribunal took fully into account that English is not the Claimant's first language. The Respondent had not acted unreasonably; or in any way sought to disadvantage her. On both material occasions, the Claimant said she was happy to continue without a companion and did not raise any question or concern about her ability to understand or any wish to have someone assist her.
71. The Claimant's dismissal was fair, substantively and procedurally, and accordingly her claim of unfair dismissal must fail and is dismissed.
72. Turning to the Claimant's wrongful dismissal claim, which is her claim for notice pay. The Tribunal was satisfied, on the Claimant's own comments and acknowledgement at the Disciplinary Hearing that she had accepted her use of her mobile phone and that she understood that the Respondent had a no phone policy which she was in breach of. At the investigatory meeting stage, she accepted and understood that what she had done was not safe. At the Disciplinary Hearing stage, the Claimant simply accepted that she had used her phone and that she had been bored.
73. The Tribunal was satisfied that the Claimant's actions constituted a serious breach of the Respondent's Mobile Phone Use Policy. This constituted Gross Misconduct. In any event, the Tribunal was satisfied that the Claimant's actions amounted to a repudiatory breach of contract and that the Respondent was entitled to dismiss without notice as a result.
74. The Claimant's dismissal was not wrongful. The Respondent was entitled to dismiss without notice, and accordingly her claim of wrongful dismissal must fail and is dismissed.

EMPLOYMENT JUDGE BEEVER

**WRITTEN REASONS SIGNED BY THE
EMPLOYMENT JUDGE ON
8 September 2026**

.....
**SENT TO THE PARTIES ON
29 September 2026**

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