Case No. 6027002/2025

EMPLOYMENT TRIBUNALS

Claimant: Mr Nick Young

Respondent: Wessex Water Services Limited

Heard: via Cloud Video Platform (CVP)

On: 5 and 6 August 2026

Before: Employment Judge Winfield

Representation

Claimant: In person
Respondent: Mr Gareth Graham, Counsel

JUDGMENT

The judgment of the Tribunal is as follows:

1. The Claimant's complaint of unfair dismissal is not well founded and is dismissed.

2. No remedy falls to be determined.

REASONS

Procedure, documents and evidence

1. This was the final hearing of the Claimant's complaint of unfair dismissal. The Claimant, Mr Nick Young, was employed by the Respondent, Wessex Water Services Limited, from 2 April 2002 until his dismissal on 20 March 2025 [ET3, pp.19-30; dismissal letter, pp.163-165].

2. At the outset of the hearing I confirmed with the parties that the complaint before the Tribunal was ordinary unfair dismissal only.

3. The Claimant represented himself. The Respondent was represented by Mr Gareth Graham of Counsel. The Respondent's solicitor, Ms Kirsty Swann, was also present. The Claimant gave evidence on his own behalf. The Respondent called three witnesses: Mr William Willoughby, who

investigated the grievances and disciplinary allegations; Mr James Lovell, who chaired the disciplinary hearing and made the decision to dismiss; and Mr Matthew Young, who heard the disciplinary appeal.

4. I had a joint bundle of 279 pages. References to pages are to that bundle, but each citation below identifies the particular document relied upon. References to paragraphs of a Tribunal witness statement are identified by the witness's name and "WS"; references to evidence given at the hearing are identified as oral evidence. The bundle included the ET1 and ET3 [ET1 and ET3, pp.5-30], the investigation meeting notes [investigation meeting notes, pp.31-66], the disciplinary invitation letter [disciplinary invitation, pp.67-69], the disciplinary evidence [disciplinary evidence, pp.70-114], the Claimant's disciplinary evidence [Claimant's disciplinary evidence, pp.115-140], the disciplinary hearing notes [disciplinary hearing notes, pp.141-162], the dismissal letter [dismissal letter, pp.163-165], the appeal documents [appeal documents, pp.166-183], and additional documents relied upon by the Claimant, including historic job records, bonus material, photographs, further traffic-management documents and remedy documents [additional bundle documents, pp.184-279].

5. The Tribunal proceeded on the basis of the revised joint bundle of 279 pages, which was in excess of the case management directions. I considered the relevance of the additional material, the reason it had not been included earlier, the overall size of the bundle and the prejudice to either party. I confirmed I would accept the revised bundle, on the understanding that the parties would refer me to the specific documents within that bundle on which they wished me to rely.

6. The parties had also prepared witness statements. I had the Claimant's witness statement and the Respondent's witness statements from Mr Willoughby, Mr Lovell and Mr Matthew Young.

7. The issues arising in the proceedings concerned allegations made against the Claimant during a disciplinary process in late 2024 and early 2025. Those allegations included alleged bullying, threatening or intimidating conduct, alleged health and safety failings relating to traffic management and the Respondent's "Take 5 to Check 5" (T5C5) process, and alleged breaches of the Respondent's Respect at Work Policy. The details of those allegations and my findings in relation to them are addressed later in this judgment.

8. In reaching my decision, I considered the pleadings, the witness statements, the oral evidence, the bundle, the documents to which I was taken, and the parties' submissions. I do not set out every point raised in evidence or submissions, but I have taken all of the relevant material before me into account. I have made findings only where necessary to determine the issues before me and to explain the decision reached.

9. Where there were disputes of fact, I have considered the documentary evidence, the witness statements and the oral evidence in order to determine the facts on the balance of probabilities. I have done so insofar as necessary to determine the statutory questions under section 98 of the Employment Rights Act 1996, rather than by substituting my own view for that of the employer.

Claim and issues

10. The Claimant was employed by the Respondent from 2 April 2002 until his summary dismissal on 20 March 2025. At the date of dismissal he was employed as an Assistant Manager in the Respondent's JetVac team. The claim arises out of the Respondent's decision to dismiss him for alleged gross misconduct following health and safety matters, alongside management conduct resulting in grievances raised by Mr Ryan Skuse and Mr Ken Jones.

11. The issues I had to determine were therefore confined to liability for unfair dismissal. Those issues were as follows.

Issues for determination

(i) What was the reason, or principal reason, for the dismissal, and has the Respondent shown that it was a potentially fair reason within sections 98(1) and 98(2)(b) of the Employment Rights Act 1996, namely conduct?
(ii) Did the Respondent genuinely believe that the Claimant had committed the misconduct relied upon?
(iii) Did the Respondent have reasonable grounds for its belief, having regard in particular to the A37 traffic-management and T5C5 evidence, the 10 December meetings, the Co-op car park allegation, the wider management evidence, and the contrary evidence and historic-practice material relied upon by the Claimant?
(iv) Had the Respondent carried out as much investigation as was reasonable in the circumstances before forming its belief, including by giving the Claimant sufficient clarity, disclosure and opportunity to answer the principal concerns?
(v) Was the procedure fair when viewed as a whole, including the disciplinary hearing and appeal, the treatment of Mr Gosney's further evidence obtained after the appeal hearing, and compliance in substance with the ACAS Code of Practice on Disciplinary and Grievance Procedures?
(vi) Did the Respondent act reasonably in treating the misconduct as a sufficient reason for dismissal, including in its assessment of the principal A37 and T5C5 findings, the narrower findings concerning the 10 December meetings, the limited weight attached to the Co-op allegation, the Claimant's mitigation, previous practice, any materially comparable treatment, the availability of lesser sanctions, and whether dismissal fell within the range of reasonable responses?

12. In addressing those questions, the factual allegations relied upon by the Respondent were that the Claimant had engaged in bullying, threatening and intimidating behaviour; had failed to arrange appropriate traffic management for work on the A37, had pressured employees to proceed despite safety concerns and had failed to support their exercise of the Respondent's "Take 5 to Check 5" process; and had breached the Respect at Work Policy by fostering a culture of fear, including through favouritism and marginalisation [disciplinary invitation, pp.67-69].

Findings of fact

13. I have made the following findings of fact on the balance of probabilities having heard the evidence and considered the documents. These findings are limited to those relevant to the issues listed above and necessary to explain the decision reached. Where there is disagreement between the parties on matters of fact, I explain below the evidence I prefer and the reasons for doing so.

14. Some of the documents relied upon by the Respondent were approved investigation interview summaries prepared during the disciplinary process, rather than witness statements made for these Tribunal proceedings or evidence given on oath before me. I have taken that into account when assessing weight. I do not treat those documents as sworn proof of every matter stated within them. Their principal relevance is that they formed part of the material available to the Respondent when it formed and reviewed its belief. I have considered whether it was reasonable for the Respondent to rely on them, having regard to their source, consistency, proximity to events, whether the Claimant was given their substance and an opportunity to respond, and whether there was contemporaneous or contrary material. That approach is consistent with the Tribunal's role under section 98(4), applying *Burchell*, *Hitt* and the need for careful investigation in cases identified in *A v B* (see law section in this Judgment for full citations and summaries).

The Claimant's employment history and relevant workplace context

15. The Respondent is a water utility company. The Claimant was employed from 2 April 2002 until his summary dismissal on 20 March 2025, a period of almost 23 years. He progressed through roles including JetVac Operator, Technical Support Operator and Supervisor before becoming an Assistant Manager in the North JetVac team, reporting to Mr Darren Lyne, Regional JetVac Manager [ET3, pp.19-30; disciplinary invitation dated 6 March 2025, pp.67-69; dismissal letter dated 27 March 2025, pp.163-165; Claimant WS, paras 1-3; Willoughby WS, paras 4, 6-7; approved investigation interview summary of Darren Lyne, pp.79-81]. In summary, his role was to help oversee teams operating high-pressure water jetting and vacuum tanker units to clean, clear and maintain public or commercial drainage and sewer systems.

16. The Claimant's role involved managing employees within the North JetVac team. Those employees most relevant to this case were Mr Ryan Skuse, Mr Mark Wilkinson, Mr Ken Jones and Mr Paul Fews. Mr Skuse and Mr Wilkinson worked together as a crew and were directly involved in the A37 job on 23 November 2024 and the first meeting on 10 December 2024 [approved investigation interview summary of Ryan Skuse, pp.89-91; approved investigation interview summary of Mark Wilkinson, pp.94-95; disciplinary hearing notes, pp.141-162; Willoughby WS, paras 12-15]. Mr Jones was another employee whose work was managed by the Claimant and who was involved in the Co-op car park incident and the second meeting on 10 December 2024 [approved investigation interview summary of Ken Jones, pp.82-83; disciplinary hearing notes, pp.145-149; Willoughby WS, paras 9-10]. Mr Paul Fews was also a member of the team and was called by the Claimant as a witness at the disciplinary hearing [disciplinary hearing notes, pp.143-144; Claimant WS, allegation 3d]. Mr Andrew Gosney and Mr Stuart Maddock were not line-managed by the Claimant. Mr

Gosney was the Western Assistant JetVac Manager and a colleague at the same management level as the Claimant. He provided support on permit and traffic-management matters and attended the two 10 December meetings at the Claimant's request [approved investigation interview summary of Andrew Gosney, pp.84-86; contemporaneous email of Andrew Gosney dated 10 December 2024, p.129; further appeal interview notes of Andrew Gosney dated 8 May 2025, pp.258-261; Matthew Young WS, para 18]. Mr Maddock was another assistant manager and was the duty operations manager contacted by the crew on 23 November 2024 [approved investigation interview summary of Stuart Maddock, pp.87-88; Willoughby WS, para 11].

17. The Claimant had almost 23 years' service and had progressed internally to the role of Assistant Manager. His bonus records showed that he continued to receive bonus payments during the period preceding the disciplinary process [bonus material, pp.201-208; Claimant WS, paras 1-3]. There was no evidence that he was subject to a current disciplinary warning or formal performance-improvement process when the matters in issue arose. The oral evidence clarified the limits of the bonus material. Mr Lovell's evidence was that the bonus scheme was not a direct assessment of people-management conduct or "good behaviour" and that its criteria did not answer the specific disciplinary allegations [oral evidence]. I therefore treat the bonus records as relevant to context and mitigation, but not as demonstrating that the Claimant's management conduct could not reasonably be criticised. The relevance of those matters to the disciplinary decision and sanction is considered later.

18. JetVac work included planned sewer cleaning and maintenance that required traffic management. Jobs were managed through a platform known as "My Maintenance", alongside scheduling spreadsheets and permit arrangements. The evidence was that traffic-management and permit issues involved schedulers and assistant managers, and that Mr Gosney was someone to whom managers could turn for practical assistance on traffic-management requirements [approved investigation interview summary of Stuart Maddock, pp.87-88; further appeal interview notes of Andrew Gosney dated 8 May 2025, pp.258-261]. Mr Maddock's evidence was that assigning traffic-management permits for JetVac jobs was generally managed by Mr Gosney because he understood the requirements, but responsibility for determining whether traffic management was needed fell to assistant managers, including himself and the Claimant [approved investigation interview summary of Stuart Maddock, pp.87-88]. Mr Lyne similarly stated that, where traffic management was necessary and had been used in the past, the scheduler could change the date on an existing permit application, but it was not the scheduler's responsibility to decide whether traffic management was needed; that responsibility fell to the person booking the job [approved investigation interview summary of Darren Lyne, pp.79-80]. I therefore find that an assistant manager who scheduled or caused a job to be scheduled had practical responsibility to recognise the need for traffic management and to ensure, directly or through the scheduler or Mr Gosney, that the necessary arrangements were in place.

19. The Respondent's "Take 5 to Check 5" (T5C5) process formed an important part of its safety culture. It required employees to consider the task,

resources, hazards and controls, to stop if they did not consider it safe to proceed, and to raise the concern with a supervisor or line manager. Mr Willoughby described it as a cultural health and safety tool designed to empower individuals to stop work if anything was deemed unsafe, and said employees were expected to be supported in that decision. In oral evidence, which I accept, he described T5C5 as sitting at the centre of the Respondent's health and safety culture, not as a tick-box exercise [oral evidence]. The Claimant did not disagree in cross-examination and accepted that employees could stop work if they felt unsafe [oral evidence]. It was accepted by all parties that a T5C5 concern needed to be supported until the risk had been adequately mitigated [T5C5 material, pp.108-114; disciplinary hearing notes, pp.141-162; Matthew Young WS, paras 9-10].

20. The Respondent's Respect at Work Policy required employees to treat colleagues with dignity and respect and to communicate appropriately when addressing difficult matters. It distinguished bullying or harassment from legitimate, reasonable and constructive management of performance or conduct [Respect at Work Policy, pp.96-99]. That distinction is relevant to the events below.

Matters in November and December 2024

21. By late 2024 there were tensions in the North JetVac team about performance, night working and overtime, start and finish times, completion of work and bonus deductions. Those matters formed the background to the specific incidents later relied upon in the disciplinary process.

22. The first relevant event chronologically was what was labelled "A37 Farrington Gurney job" on 23 November 2024, job reference 9000128. The activity report described a job on Bristol Road, Farrington Gurney, to clean foul sewer using a JetVac tanker from one manhole. It recorded traffic management as "Stop/Go Boards", traffic impact as high, and the road as traffic sensitive. The same document recorded permit conditions, including restrictions about when works were to take place [A37 activity report, pp.72-77].

23. I first address the disputed evidence about 17 and 18 November 2024 because it concerns the same A37 Farrington Gurney job, reference 9000128. Mr Skuse's approved investigation interview summary recorded that he and Mr Wilkinson attended the same job on Sunday 17 November, updated the job notes to state that traffic management was needed, and then spoke to the Claimant on Monday 18 November, when the Claimant said words to the effect of "leave it to me, I'll sort it with AG" [approved investigation interview summary of Ryan Skuse, p.89]. The Claimant disputed that account. I do not make a decisive finding that the 17 or 18 November conversation occurred exactly as Mr Skuse described. I record it because it explains the crew's evidence that, by 23 November, they regarded traffic management for that same job as an already identified issue.

24. The scheduling record shows that the A37 job was added to or amended on the schedule at 16:32 on Friday 22 November 2024, for work the following day [A37 scheduling record, p.70]. The related My Maintenance records appear in the bundle [My Maintenance records, pp.71-77 and 120-

128]. During the disciplinary hearing the Claimant accepted that he appeared to have put the job on the system and said, "I'll take responsibility for it" [disciplinary hearing notes, pp.150-154], although before the Tribunal he was less certain about the precise amendment. On the balance of probabilities, having heard evidence from both Claimant and Respondent in some detail at the hearing on this point also, I find that the Claimant placed, or caused to be placed, the A37 job on the schedule for 23 November 2024. The significance of the timing is that it was late on Friday afternoon and, on the evidence before the Respondent, left no realistic opportunity to arrange traffic management for the following morning if it was required.

25. The documentary and management evidence established that traffic management was required for the job as scheduled. The activity report specified Stop/Go boards, high traffic impact and a traffic-sensitive road [A37 activity report, pp.72-77]. Mr Lyne said there was "no way" the job should have been undertaken without traffic management [approved investigation interview summary of Darren Lyne, pp.79-80]; Mr Maddock confirmed that the crew contacted him on 23 November because of that concern [approved investigation interview summary of Stuart Maddock, pp.87-88]; and Mr Gosney later said that the location was traffic sensitive at all times and required a permit [further appeal interview notes of Andrew Gosney dated 8 May 2025, pp.258-261]. I accept that evidence. The Claimant's case was not that the documents were irrelevant, but that historic practice and early-morning conditions meant the work could nevertheless be done safely without traffic management.

26. In that regard, the Claimant produced records and photographs indicating that the A37 work, or work he regarded as comparable, had previously been undertaken without traffic management, including by the same crew on 21 July 2024 [Claimant's email dated 14 March 2025, p.115; My Maintenance job history, p.128; photographs of A37 work, pp.229-230]. I accept that this evidence formed part of his understanding of operational practice and was relevant to his state of mind and culpability. It did not establish that the job scheduled for 23 November 2024 was safe without traffic management or displace the requirements recorded for that job. I therefore treat the July 2024 material as previous-practice evidence, not as evidence of what was safe or reasonable on 23 November 2024.

27. On 23 November 2024 the crew attended the A37 job and did not complete it. Their position was that there was no traffic management in place and they considered it unsafe to proceed. They contacted Mr Maddock, the duty operations manager, who told them to conduct a risk assessment and not to proceed if they assessed the situation as unsafe [approved investigation interview summary of Stuart Maddock, pp.87-88]. There was then a telephone call between the Claimant and Mr Skuse. Mr Skuse said that when he told the Claimant it was unsafe to proceed without traffic management, the Claimant responded in a way that felt threatening. His approved investigation interview summary recorded the Claimant stating, *"It's a 10-minute job. Do you want to play it that way do you? If you want to play by the book, I've got things I can take to HR*" [approved investigation interview summary of Ryan Skuse, p.89]. Mr Wilkinson stated that he was in the van, heard the call on speakerphone, and heard the Claimant say that the job needed to be done and that there would be consequences or HR involvement if it was not [approved investigation interview summary of Mark

Wilkinson, p.94]. The Claimant denied saying those words and said that, rather than being critical or angry, he was confused and frustrated about why the job could previously be done but not on that occasion [disciplinary hearing notes, pp.151-154; appeal hearing notes dated 2 May 2025, pp.174-178; oral evidence].

28. I do not find specifically that the Claimant stated the exact words Mr Skuse alleges; however, I find that the Claimant responded critically when the safety concern was raised and that Mr Skuse and Mr Wilkinson felt pressured to complete the job. The accounts were materially consistent between Mr Wilkinson and Mr Skuse and Mr Maddock's evidence supports the fact that the crew raised the traffic-management concern externally on the day. By the Claimant's own admission he was frustrated because he believed the job could be done early, as it had been previously [approved investigation interview summaries of Stuart Maddock and Ryan Skuse, pp.87-89; approved investigation interview summary of Mark Wilkinson, p.94; disciplinary hearing notes, pp.151-154]. I find that the Claimant questioned why the work had not been done and was critical of the team's decision not to proceed for health and safety reasons. I do not, however, find that he expressly directed the crew to proceed after their T5C5 assessment, as there is simply not enough evidence before me to make any finding on this basis. Viewed objectively, his response conveyed criticism of their refusal and did not affirm their decision to stop; they experienced pressure to proceed as a result. His reliance on previous practice explains his frustration but does not alter that finding.

29. The next December event was the Co-op car park incident on 6 December 2024. Mr Jones was on his lunch break. The Claimant attended the car park while visiting staff working nearby. It is common ground that the Claimant spoke to Mr Jones there. It is also common ground that the Claimant's vehicle was, at least briefly, positioned in front of or near Mr Jones' vehicle before the Claimant moved it when asked to do so [approved investigation interview summary of Ken Jones, pp.82-83; disciplinary hearing notes, pp.145-147; Tribunal hearing notes, lines 735-759].

30. Mr Jones said in his approved investigation interview summary that the Claimant arrived unexpectedly, parked in front of his vehicle, repeatedly asked whether he had "something to say", referred to "walking on eggshells", declined to explain the remark when asked about it and then told him to think about it over the weekend [approved investigation interview summary of Ken Jones, pp.82-83]. The Claimant's position, clarified in oral evidence, is that he was visiting all staff – not just Mr Jones - as part of his ordinary management duties. He denied acting aggressively or using those words in the threatening sense alleged and relied on a history of performance concerns about Mr Jones [disciplinary hearing notes, pp.145-147; Tribunal hearing notes, lines 735-759].

31. There was no contemporaneous note, recording or independent witness to the car park conversation. Mr Gosney's later evidence about the phrase "walking on eggshells", in his view, concerned the subsequent meeting on 10 December, not this encounter. I accept that Mr Jones found the approach uncomfortable and intimidating, but I cannot safely determine the precise words, tone or duration alleged, or that the Claimant deliberately sought to intimidate him. The evidence supports a difficult encounter against the

background of an already strained management relationship, but not every particular of the allegation.

32. On 10 December 2024 the Claimant held an informal meeting with Mr Skuse and Mr Wilkinson and then a separate meeting with Mr Jones. Mr Andrew Gosney attended both at the Claimant's request [approved investigation interview summary of Andrew Gosney, pp.84-86; approved investigation interview summary of Ryan Skuse, pp.89-91; approved investigation interview summary of Mark Wilkinson, pp.94-95]. No formal contemporaneous minutes were produced. Mr Gosney and the Claimant did, however, send emails shortly after the first meeting [contemporaneous emails dated 10 December 2024, pp.129-131].

33. The first meeting concerned general performance management over a recent period, relating to incomplete work, travelling to and from jobs, accident reporting, start and finish times, bonus deductions and the A37 job. Those subjects are identified in the Claimant's contemporaneous email and are reflected, although with different emphases, in the approved investigation interview summaries of Mr Gosney, Mr Skuse and Mr Wilkinson [approved investigation interview summary of Andrew Gosney, pp.84-86; approved investigation interview summary of Ryan Skuse, pp.89-91; approved investigation interview summary of Mark Wilkinson, pp.94-95; Claimant's contemporaneous email dated 10 December 2024, pp.130-131]. They were legitimate management subjects. The issue was the manner and setting in which they were addressed.

34. The most reliable starting point is the two emails written shortly after the first meeting. At 10:39 on 10 December 2024, Mr Gosney recorded that the Claimant had questioned Mr Skuse and Mr Wilkinson about incomplete work, travel and accident reporting; that Mr Skuse was "very negative & forceful"; and that the Claimant ended the meeting when it became heated. He attributed most of the negativity to Mr Skuse and described the position as "Ryan's way or no way" [contemporaneous email of Andrew Gosney dated 10 December 2024, p.129].

35. At 11:11, the Claimant recorded that the meeting covered bonus deductions, the A37 and Yatton jobs, start and finish times, training and job records. He said that Mr Skuse repeatedly talked over him and that he ended the meeting because Mr Skuse's tone was overpowering [Claimant's contemporaneous email dated 10 December 2024, pp.130-131]. The emails therefore materially corroborate each other as to the subjects discussed, Mr Skuse's contribution and the reason the meeting ended.

36. I give those emails some weight because they were written independently, within about an hour of the meeting and before either grievance. Neither records intimidation by the Claimant or repeated references to HR. That silence is not conclusive, as neither was a verbatim account, but it is relevant when assessing the later allegations.

37. I have balanced the contemporaneous emails against the later approved investigation interview summaries. Mr Skuse described the meeting as accusatory, objected to Mr Wilkinson's bonus being discussed in front of others and accepted that he had behaved unprofessionally [approved investigation interview summary of Ryan Skuse, pp.89-91]. Mr Wilkinson

said that the Claimant discussed his bonus in front of others, criticised Mr Skuse's performance and repeatedly referred to HR [approved investigation interview summary of Mark Wilkinson, pp.94-95]. Mr Gosney's approved investigation interview summary criticised the Claimant's handling, although it did not record HR references [approved investigation interview summary of Andrew Gosney, pp.84-86].

38. Those later summaries overlap in describing a confrontational and poorly handled meeting but differ as to particular words and features. They were approved investigation summaries rather than sworn evidence and I do not treat them as proof of every detail. Mr Jones was not present at this meeting [approved investigation interview summaries, pp.82-95]. Mr Gosney's later explanation for the difference between his email and summary is addressed in the appeal section [further appeal interview notes of Andrew Gosney dated 8 May 2025, pp.258-261; Matthew Young WS, paras 18-20].

39. I find that both the Claimant and Mr Skuse contributed to the confrontation. Mr Skuse was forceful, talked over the Claimant and accepted behaving unprofessionally. The Claimant was entitled to raise legitimate management matters, but he combined several individual pay and performance issues in a joint informal meeting and did not handle the resulting conflict appropriately. He ultimately brought the meeting to an end [approved investigation interview summaries of Andrew Gosney, Ryan Skuse and Mark Wilkinson, pp.84-95; contemporaneous emails dated 10 December 2024, pp.129-131; disciplinary hearing notes, pp.147-149].

40. The second meeting on 10 December was with Mr Jones, again in Mr Gosney's presence. Mr Jones said that the Claimant asked whether he had something to say, referred to colleagues "walking on eggshells" around him and to 1-2-1s, but did not explain clearly what he meant [approved investigation interview summary of Ken Jones, pp.82-83]. Mr Gosney said that the expression "walking on eggshells" was raised, that the Claimant was justified as to the subject matter to be discussed, but that the meeting was not professionally conducted and the Claimant's handling and delivery were inappropriate [approved investigation interview summary of Andrew Gosney, pp.84-86]. There was no equivalent contemporaneous email about this second meeting.

41. The Claimant denied bullying or threatening Mr Jones and said that the discussion concerned genuine performance matters [disciplinary hearing notes, pp.145-149]. Mr Gosney's approved investigation interview summary supported the Claimant as to the legitimacy of the subject matter, but also recorded that the meeting was not professionally handled or delivered [approved investigation interview summary of Andrew Gosney, pp.84-86]. Mr Jones described the Claimant's indirect questioning as intimidating; I accept that this was his genuine experience, although Mr Gosney did not independently use that description [approved investigation interview summary of Ken Jones, pp.82-83].

42. My findings on 10 December are therefore limited. In the first meeting, Mr Skuse was forceful, repeatedly talked over the Claimant and contributed materially to the confrontation, as both contemporaneous emails record [contemporaneous email of Andrew Gosney dated 10 December 2024, p.129; Claimant's contemporaneous email dated 10 December 2024,

pp.130-131]. The Claimant nevertheless remained responsible, as the manager conducting the meeting, for addressing legitimate subjects appropriately. By combining individual pay and performance issues in a joint informal meeting, he did not manage or de-escalate the conflict effectively before ending the meeting. That narrower finding is supported by Mr Gosney's approved investigation interview summary, read with his contemporaneous email and later appeal explanation [approved investigation interview summary of Andrew Gosney, pp.84-86; further appeal interview notes of Andrew Gosney dated 8 May 2025, pp.258-261]. In the second meeting, the Claimant again had legitimate matters to raise but addressed them indirectly and handled the discussion unprofessionally [approved investigation interview summaries of Ken Jones and Andrew Gosney, pp.82-86]. It is unnecessary to determine whether he referred to HR during the first meeting, and I place no reliance on that allegation. These findings do not treat the Claimant as solely responsible for the confrontations or depend on the wider management-style allegations.

The grievances

43. Mr Skuse raised a grievance on 17 December 2024 and Mr Jones raised a grievance on 20 December 2024. Mr Willoughby's evidence was that, taken together, they alleged intimidating, threatening or bullying behaviour by the Claimant and raised concerns about his management of staff. The matters included the A37 traffic-management incident and the Claimant's response when safety concerns were raised, the meetings on 10 December, monitoring of staff and the treatment of individual employees [Willoughby WS, paras 3-5; investigation notes, pp.31-49].

44. The original grievances initiated the process; the fuller accounts on which the Respondent later relied emerged through the investigation interviews. Mr Skuse's approved investigation interview summary addressed the A37 job and telephone call, the first meeting on 10 December, bonus deductions and the effect of the Claimant's conduct on him [approved investigation interview summary of Ryan Skuse, pp.89-91]. Mr Jones' approved investigation interview summary addressed the Co-op car park encounter, the second meeting on 10 December and his wider complaint that he had been singled out or treated differently [approved investigation interview summary of Ken Jones, pp.82-83]. I distinguish those later approved interview summaries from the content of the original grievances and do not assume that every detail in the later summaries appeared in the grievances as first submitted.

45. The Claimant's position was that the complaints arose against a background of legitimate performance management and dissatisfaction about night work, overtime, start and finish times, completion of work and bonus decisions. He maintained that he had raised concerns about the performance of members of the team with Mr Lyne but had not received sufficient support. That position was developed during the investigation [investigation meeting notes dated 7 and 28 February 2025, pp.31-66]. I find that it was his genuine explanation and that there were real performance and operational disputes within the team. That background was relevant to motive, context and credibility, but did not determine whether the manner in which he managed those issues was appropriate.

46. Drawing those factual findings together before turning to the investigation, the division of perspective principally concerned the management events, particularly the meetings on 10 December. The Claimant regarded himself as addressing legitimate performance concerns, while the employees regarded his manner as overbearing or intimidating; the evidence required the particular conduct and context of each meeting to be assessed. The health-and-safety evidence was materially different. Although the Claimant relied on previous practice and quieter traffic conditions, the job records and the evidence of Mr Lyne, Mr Maddock and Mr Gosney were consistent that traffic management was required for the A37 job as scheduled, and it was common ground that employees who stopped work under T5C5 were entitled to managerial support. The disputed issues were the Claimant's responsibility for the arrangements and whether his response to the crew's refusal undermined their safety decision.

The investigation

47. The grievances were referred to Mr William Willoughby on or around 23 December 2024. Because of the Christmas period, the first grievance investigation meetings did not take place until January 2025. Mr Willoughby met Mr Skuse and Mr Jones on 13 January 2025 [Willoughby WS, paras 3-5]. He then needed to meet the Claimant. Around 21 January 2025 the Claimant was signed off work and also wished to have union representation [Willoughby WS, para 4]. The first investigation meeting with the Claimant therefore took place on 7 February 2025, with Mr Tony Hulbert, his trade union representative, accompanying him and Ms Steph Norman attending as HR support and note taker [investigation meeting notes dated 7 February 2025, pp.31-49].

48. At the investigation meeting on 7 February 2025, the Claimant was told that two grievances had been raised. Mr Hulbert queried the clarity of the invitation and said that the Claimant did not know the allegations he was required to answer. Ms Norman acknowledged that the invitation used standard wording and had not identified the allegations with sufficient clarity [investigation meeting notes dated 7 February 2025, p.31]. Mr Willoughby then questioned the Claimant about the A37 job, the 10 December meeting, the alleged sharing of medical information, bonus deductions, Mr Jones, tracker usage, 1-2-1s and T5C5 [investigation meeting notes dated 7 February 2025, pp.31-49]. The Claimant denied the central allegations and repeatedly explained matters by reference to operational practice, performance management and the responsibilities of others, including schedulers, Mr Lyne and Mr Gosney [investigation meeting notes dated 7 February 2025, pp.32-49].

49. I find that the 7 February meeting was investigatory and that no disciplinary decision was taken at that stage. The Claimant was represented and was able to answer questions. I also find, as a matter of factual background, that the initial framing of that meeting lacked clarity: the Claimant was being asked about serious grievances, but the allegations had not yet been set out with the degree of detail later contained in the disciplinary invitation [compare investigation meeting notes dated 7 February 2025, pp.31-49, with disciplinary invitation dated 6 March 2025, pp.67-69]. I record that as part of the chronology of what occurred in the investigation stage. I deal later with the legal significance, if any, of that point.

50. The further investigation meeting took place on 28 February 2025 [investigation meeting notes dated 28 February 2025, pp.50-66]. By then, the Claimant understood the substance of the principal concerns and gave detailed answers about responsibility for scheduling the A37 job, the requirement for traffic management, previous practice, the crew's T5C5 decision, the alleged telephone remarks, the 10 December meetings, bonus deductions, tracker use, Mr Jones, favouritism and wider management concerns [investigation meeting notes dated 28 February 2025, pp.50-65]. Although the allegations had not yet been particularised in the structured form later used in the disciplinary invitation, the factual matters requiring an answer were clear to him.

51. Mr Willoughby obtained accounts from the complainants, the directly involved employees and managers, and the Claimant's line manager, together with the A37 scheduling and job records, the relevant policies and the Claimant's historic-practice material [approved investigation interview summaries, pp.79-95; A37 scheduling record, My Maintenance records and activity report, pp.70-78 and 115-128; Respect at Work Policy, Disciplinary Procedure and T5C5 material, pp.96-114]. Their evidence and its limitations are addressed in my findings above [paragraphs 22-46].

52. The material supported concerns about the Claimant's responsibility for the A37 arrangements, his response to the crew's safety stop and his handling of staff. It was not all adverse: it also disclosed genuine performance disputes, previous A37 work without traffic management in particular conditions, Mr Skuse's material contribution to the first 10 December confrontation, and a favourable general perspective from Mr Fews [see paragraphs 22-46; contemporaneous emails dated 10 December 2024, pp.129-131; disciplinary hearing notes, pp.143-144]. Much of the wider management-style evidence was impressionistic rather than incident-specific, and Ms Kurzman's historic account was not relied upon in the dismissal decision [approved investigation interview summaries, pp.79-95; appeal outcome letter, p.183].

53. Mr Lyne's approved investigation interview summary supported the A37 safety concern and referred to inconsistent management, selective use of the vehicle tracker and perceived favouritism. It did not determine the separate question whether he had previously given the Claimant adequate guidance or support [approved investigation interview summary of Darren Lyne, pp.79-81].

54. Mr Willoughby's Tribunal statement describes the witness interviews as taking place around the period after the initial grievance meetings and before the disciplinary hearing. The individual approved summaries in the bundle are not all separately dated. I therefore do not find that all approved summaries existed or had been disclosed to the Claimant by the second investigation meeting on 28 February 2025 [Willoughby WS, paras 6 and 17; investigation meeting notes dated 28 February 2025, pp.50-66; disciplinary invitation dated 6 March 2025, pp.67-69; approved investigation interview summaries, pp.79-95].

55. His central explanations were that historic practice and traffic conditions affected whether the A37 work required traffic management; employees

were entitled not to proceed if they considered work unsafe; and the management complaints arose from legitimate performance management for which he had received insufficient support. He denied threats, bullying and creating a culture of fear [investigation meeting notes dated 28 February 2025, pp.50-65].

56. The absence of all approved summaries at that stage limited the Claimant's ability during the investigation to address the precise later accounts. It did not prevent him from answering the substance of the concerns, as the 28 February notes demonstrate [investigation meeting notes dated 28 February 2025, pp.50-65].

57. The limitation did not persist. The disciplinary invitation dated 6 March 2025 particularised the allegations and supplied the approved investigation interview summaries before the disciplinary hearing [disciplinary invitation dated 6 March 2025, pp.67-69; approved investigation interview summaries, pp.79-95]. The fairness of that sequence is addressed in the application section.

58. At the end of the 28 February meeting, Mr Willoughby adjourned, reconvened and told the Claimant that there was sufficient cause to proceed to a disciplinary hearing. He suspended the Claimant on full pay. The concerns then identified were alleged bullying of Mr Skuse and Mr Jones and disregard for health and safety through the response to an unsafe-work concern [investigation meeting notes dated 28 February 2025, pp.65-66].

59. There was sufficient material to justify that referral. The Claimant had been interviewed twice; the A37 records and direct accounts raised issues about scheduling, traffic management and his response to the crew's safety concern; and the grievances raised serious concerns about his handling of Mr Skuse and Mr Jones. The competing evidence identified above was for evaluation at the disciplinary hearing, not a reason to prevent one [investigation meeting notes dated 7 and 28 February 2025, pp.31-66; A37 scheduling record, activity report and approved investigation interview summaries, pp.70-95].

60. Mr Willoughby did not conduct a technical inspection of the A37 location. That was a limitation, but it did not make referral unreasonable. The documentary and management evidence addressed the required controls for the job as scheduled. The disciplinary issues were whether the Claimant bore responsibility for scheduling, or causing the job to be scheduled, without the recorded traffic-management arrangements and whether his response when the crew invoked T5C5 and declined to proceed undermined their safety decision. The issue was not whether the location could ever be worked without traffic management.

The disciplinary hearing stage

61. By letter dated 6 March 2025, the Respondent invited the Claimant to a disciplinary hearing initially listed for 13 March 2025 [disciplinary invitation dated 6 March 2025, pp.67-69]. The letter stated that the Claimant remained suspended on full pay pending the hearing. It identified Mr James Lovell, Director of Bioresources, as the disciplinary chair and Ms Norman as HR support and note taker [disciplinary invitation dated 6 March 2025, pp.67-

69]. It set out the allegations in detail and enclosed or identified the documents on which the Respondent relied, including the investigation notes, the approved investigation interview summaries, the A37 job documents, the Respect at Work Policy, the Disciplinary Procedure and the T5C5 policy [disciplinary invitation dated 6 March 2025, pp.67-69]. I find that the letter gave the Claimant clear notice of the allegations, the documents relied upon and the potential seriousness of the process, including the possibility of dismissal without notice if gross misconduct was found [disciplinary invitation dated 6 March 2025, p.69].

62. In oral evidence before the Tribunal, the Claimant accepted that by the disciplinary stage the allegations were clear, that he understood the evidence against him, that the seriousness of the allegations was apparent, and that he was accompanied [oral evidence]. That evidence supports my finding that any lack of clarity at the initial investigatory meeting was cured by the later disciplinary process.

63. The allegations were grouped under three headings. First, the Respondent alleged bullying, threatening and intimidating behaviour, including the Co-op car park incident, the 10 December meetings and alleged excessive tracker monitoring [disciplinary invitation dated 6 March 2025, pp.67-68]. Secondly, it alleged wilful, deliberate or negligent acts or carelessness endangering safety, including failure to schedule appropriate traffic management for the A37 job, alleged pressure to proceed with unsafe work, and lack of support for T5C5 [disciplinary invitation dated 6 March 2025, p.68]. Thirdly, it alleged breach of the Respect at Work Policy by fostering a culture of fear, including creating an environment in which employees felt unable to raise concerns, asking employees to photograph colleagues, breaching confidentiality, and favouritism or marginalisation [disciplinary invitation dated 6 March 2025, p.68].

64. The hearing was postponed at the Claimant's request. His email identified union unavailability, a GP appointment due to workplace stress, and the need for more time to respond to additional statements [email chain concerning postponement, pp.116-117]. The Respondent rearranged the hearing for 20 March 2025 [email chain concerning postponement, p.116]. I find that the postponement gave the Claimant additional time to consider the disciplinary pack and to prepare. He attended the hearing on 20 March 2025 with Mr Tony Hulbert as his union representative [disciplinary hearing notes, p.141].

65. Before the hearing, on 14 March 2025, the Claimant emailed documents he wished to rely upon [Claimant's email dated 14 March 2025, pp.115-119]. Those included historic My Maintenance records for the A37 job [My Maintenance records, pp.120-128], the 10 December email from Mr Gosney [contemporaneous email of Andrew Gosney dated 10 December 2024, p.129], the Claimant's own contemporaneous email to Mr Lyne [Claimant's contemporaneous email dated 10 December 2024, pp.130-131], emails about medical information and crew start and finish times [operational emails, pp.132-136], and material showing previous completion of the A37 job without traffic management, including in July 2024 [My Maintenance job history, p.128; photographs of A37 work, pp.229-230]. The Claimant's email expressly said that the same crew had completed the A37 job on 21 July 2024 with no traffic management and no issues [Claimant's email dated 14

March 2025, p.115]. I find that the historic-practice point was therefore clearly raised before the disciplinary hearing and was central to the Claimant's defence.

66. The disciplinary hearing took place on 20 March 2025 [disciplinary hearing notes, pp.141-162]. Mr Lovell introduced the process, confirmed his role as chair, and confirmed that the possible outcomes included no further action, a warning or dismissal [disciplinary hearing notes, p.141]. The Claimant confirmed that he wished to proceed despite being signed off work and having health concerns [disciplinary hearing notes, p.141]. I find that the hearing was lengthy, that there were adjournments, and that the Claimant and Mr Hulbert were able to respond to the allegations, raise points about the evidence and call Mr Paul Fews as a witness [disciplinary hearing notes, pp.141-162].

67. Mr Fews' evidence was mixed and given orally [disciplinary hearing notes, pp.143-144]. On the A37 job he said it depended on the time of arrival; he had done the job both with and without traffic management, usually on a Sunday when it was quieter at around 6.30 or 7.00am, but anything beyond 8.00am was "definitely not" because traffic built up [disciplinary hearing notes, p.143]. He said the road was wide, but the risk increased as traffic increased [disciplinary hearing notes, p.143]. He did not support the allegation that the Claimant pressured employees to proceed with unsafe tasks, lacked support for T5C5, or fostered a culture of fear [disciplinary hearing notes, pp.143-144]. However, when asked about favourites, he said "favourites is a bad word" and explained that the Claimant managed those who self-managed differently from those who did not [disciplinary hearing notes, p.144]. He also said that what might come across as marginalisation was the Claimant's style of management in trying to get people to his standards if they were lagging behind [disciplinary hearing notes, p.144].

68. I find that Mr Fews' evidence was capable of assisting both parties. It assisted the Claimant because it provided a contrary general perspective on allegations of pressure to work unsafely, lack of support for T5C5 and culture of fear, although Mr Fews did not witness the A37 telephone call or the 10 December meetings [disciplinary hearing notes, pp.143-144]. It also supported the Claimant's evidence that there were genuine performance issues with some employees [disciplinary hearing notes, p.144]. It assisted the Respondent because it confirmed that the A37 job could be unsafe depending on timing and because his evidence about different treatment of self-managing and underperforming employees could be understood as supporting a concern about differential management style [disciplinary hearing notes, pp.143-144]. His evidence therefore required balanced assessment and was not simply one way or the other.

69. I also take into account the process by which Mr Fews gave evidence. He was the Claimant's witness. The disciplinary hearing notes and oral evidence indicate that the questions to be asked of him were discussed, and the Claimant left the room so that Mr Fews could answer more comfortably [disciplinary hearing notes, pp.141-144; oral evidence]. I therefore do not treat the fact that Mr Fews gave answers outside the Claimant's immediate presence as a procedural unfairness. The important point is that the substance of his answers was recorded and was then capable of being debated and weighed.

70. The Claimant denied the allegations. On the Co-op car park incident, he said he had attended as part of ordinary management duties, had spoken to other staff as well as Mr Jones, and denied using the alleged words in the threatening sense described [disciplinary hearing notes, pp.145-147]. On the 10 December meetings, he relied on Mr Gosney's contemporaneous email and said Mr Skuse had been confrontational and overpowering [disciplinary hearing notes, pp.147-149]. After an adjournment, he accepted that the meeting had become heated and said it "could have been handled better" and "shouldn't have" felt like an argument [disciplinary hearing notes, p.149]. I find that this was an important factual concession, although the Claimant continued to deny bullying or threatening conduct.

71. On the A37 allegations, the Claimant repeatedly relied on previous completion of the job without traffic management, including by the same crew in July 2024 [disciplinary hearing notes, pp.150-154; Claimant's email dated 14 March 2025, p.115]. He said the job could be done early when traffic was light and that if the crew felt unsafe they did not have to proceed [disciplinary hearing notes, pp.150-154]. He accepted that at about 9.00am he would not expect the job to be done without traffic management [disciplinary hearing notes, pp.151-153]. He also accepted that if the job was put on the system at 16:32 there would not have been time to arrange traffic management for the following morning [disciplinary hearing notes, p.152]. The Claimant said, "I'll take responsibility for it", but continued to maintain that the historic practice and timing of the job were important [disciplinary hearing notes, pp.152-154].

72. The Claimant's oral evidence before the Tribunal was consistent in material respects with the position he had advanced during the disciplinary and appeal process: that the job was better undertaken early because of traffic flow, that traffic management could not realistically have been arranged late on Friday for the following morning, and that he did not consider it necessary when the job was first attended [disciplinary hearing notes, pp.150-154; appeal hearing notes dated 2 May 2025, pp.174-178; oral evidence]. I rely on the disciplinary and appeal records, rather than later Tribunal evidence, when assessing the grounds available to the Respondent at the time. The oral evidence assists only in confirming the nature of the case the Claimant had consistently advanced.

73. On the culture, favouritism and management-style allegations, the Claimant said he managed employees differently because some employees self-managed and others required closer management [disciplinary hearing notes, pp.155-160]. He relied on his long service, bonus evidence and lack of prior formal performance management to say that he had not been told his management style was sufficiently problematic [disciplinary hearing notes, pp.155-161]. He also said he had raised concerns about certain employees and felt unsupported by Mr Lyne [disciplinary hearing notes, pp.155-160]. I find that throughout the hearing the Claimant's explanation was consistent: he regarded himself as managing performance and operational standards, not bullying or marginalising employees.

74. Mr Lovell adjourned and reconvened at about 7.00pm to give his decision [disciplinary hearing notes, pp.160-162]. He upheld allegations concerning the Co-op car park encounter, the 10 December meetings, the A37 traffic-

management and T5C5 matters, culture of fear, and favouritism or marginalisation. He did not uphold excessive tracker monitoring, asking employees to photograph colleagues, or breach of confidentiality [disciplinary hearing notes, pp.161-162]. The fact that some allegations were rejected shows that he differentiated between them rather than accepting the whole case without scrutiny.

75. Mr Lovell gave the principal reasons orally. On the Co-op allegation, he preferred Mr Jones' account on the balance of probabilities. On the 10 December meetings, he relied on the approved investigation interview summaries. On the A37 allegations, he found that the Claimant knew of the safety concern and had not acted appropriately, with potential risk to employees. On culture of fear, he relied on what he regarded as a recurring theme in the summaries. On favouritism or marginalisation, he also referred to Mr Fews' evidence and to the Claimant's lack of recognition that his approach was unacceptable [disciplinary hearing notes, p.161]. Those reasons were concise but identified the evidence and broad reasoning for each upheld group of allegations.

76. Mr Lovell's reasons were concise and did not expressly resolve every material conflict. In particular, they did not explain in detail how he reconciled Mr Gosney's contemporaneous email with the later approved investigation interview summary, what weight he gave the historic A37 practice, or how the Claimant's long service and other mitigation affected sanction. His oral evidence did not satisfy me that he had read and evaluated all of the documents emailed before the hearing: he accepted that he had not looked at some of the Claimant's statements and could not recall precisely what he had reviewed. That was a weakness, especially because the documents were relied upon in support of the Claimant's explanations, credibility challenges and mitigation. It did not mean that the substance of every point was ignored. Mr Lovell heard the Claimant's explanations, received the documentary material, heard Mr Fews and rejected several allegations. Read with the hearing notes and dismissal letter, his reasons identify why he accepted the principal allegations, but not a complete evaluation of the material favourable to the Claimant or of mitigation [Claimant's disciplinary evidence, pp.115-140; disciplinary hearing notes, pp.141-162; dismissal letter dated 27 March 2025, pp.163-165; oral evidence].

77. The outcome was confirmed by letter dated 27 March 2025. Although the ET3 refers to 26 March 2025, the letter in the bundle is dated 27 March 2025 and I have used that date. The upheld A37, T5C5, culture and favouritism or marginalisation allegations were treated as gross misconduct, while the finding concerning the 10 December meetings was characterised as misconduct. Mr Lovell relied on the findings cumulatively, regarded the safety findings as his principal concern, and concluded that their number and seriousness had destroyed trust and confidence [ET3 and Particulars of Response, pp.19-30; dismissal letter dated 27 March 2025, pp.163-165; Lovell WS, paras 16-18].

The appeal stage

78. The Claimant appealed by email dated 6 April 2025 [Claimant's appeal email dated 6 April 2025, pp.166-167]. The grounds included his challenge

to Mr Gosney's approved investigation interview summary when compared with the 10 December email; his contention that the approved investigation interview summaries were inaccurate or appeared to have been produced in a similar form; his reliance on previous completion of the A37 job without traffic management; his objection to Ms Kurzman's historic evidence; and his complaint about the use made of Mr Fews' evidence. I address below the further points developed at the appeal hearing.

79. By letter dated 22 April 2025, the Claimant was invited to an appeal hearing on 2 May 2025 before Mr Matthew Young, Head of Engineering and Technology [appeal invitation dated 22 April 2025, p.168]. The letter treated the appeal email as setting out the grounds but invited any further information and the names of anyone whom the Claimant considered should be interviewed. It confirmed the right to be accompanied [appeal invitation dated 22 April 2025, p.168].

80. The appeal hearing took place on 2 May 2025. The Claimant attended with Mr Hulbert and Ms Norman attended as HR support [appeal hearing notes dated 2 May 2025, pp.169-181]. Mr Matthew Young had received the earlier evidence and worked through the Claimant's grounds. He made clear that he might need to investigate further before deciding the appeal [appeal hearing notes dated 2 May 2025, pp.169-181; Matthew Young WS, paras 5-17]. The appeal was therefore a review of the disciplinary decision with scope for further enquiry.

81. On Mr Gosney's evidence, the Claimant contrasted the contemporaneous email, which attributed most of the negativity to Mr Skuse, with the later approved investigation interview summary, which also criticised the Claimant's handling. Mr Matthew Young decided to speak further to Mr Gosney after the appeal hearing [appeal hearing notes dated 2 May 2025, pp.169-174; Matthew Young WS, paras 6, 17-20]. The question he pursued was why the later summary contained criticism of the Claimant which had not appeared in the 10 December email.

82. On the A37 issue, the Claimant repeated that the same crew had previously completed the work without traffic management, that timing and traffic flow mattered, and that other work, including at Yatton High Street, had been undertaken without comparable arrangements [appeal hearing notes dated 2 May 2025, pp.174-178]. Mr Matthew Young distinguished previous practice from the crew's T5C5 assessment on the occasion in issue and questioned whether responsibility reverted to the Claimant when the job was scheduled after the schedulers had left [appeal hearing notes dated 2 May 2025, pp.174-178; Matthew Young WS, paras 9-13]. The Claimant maintained that arranging traffic management was not his responsibility and that early attendance could make the work practicable without it.

83. The Claimant also argued that the approved investigation interview summaries appeared similar, that Ms Kurzman's evidence was historic, and that Mr Fews' evidence had been used against him although he had called Mr Fews [appeal hearing notes dated 2 May 2025, pp.171-179]. Ms Norman explained that witnesses had been interviewed individually and that summaries were then prepared and sent to each witness for amendment or approval [Matthew Young WS, para 7]. Mr Matthew Young questioned the Claimant about the relevance of Ms Kurzman's and Mr Fews' evidence and

considered those matters further when deciding the appeal [Matthew Young WS, paras 14-17, 23-24]. The Respondent confirmed that Ms Kurzman's evidence was not taken into account in the final decision to dismiss [oral evidence].

84. At the end of the hearing, Mr Matthew Young adjourned because he considered that further investigation was required. He told the Claimant that the decision would be sent in writing unless a further meeting proved necessary [appeal hearing notes dated 2 May 2025, pp.180-181; Matthew Young WS, para 17]. There was no decision at that stage.

85. Mr Matthew Young interviewed Mr Gosney with Ms Norman on 8 May 2025 [further appeal interview notes of Andrew Gosney dated 8 May 2025, pp.258-261; Matthew Young WS, paras 18-19]. The Claimant's case was that a later or final version of Mr Gosney's evidence was dated 12 May 2025 [Claimant WS, paras 6-8], but the further interview on which Mr Matthew Young relied took place on 8 May 2025. Mr Gosney said that he had a longstanding working relationship and work friendship with the Claimant and that this had affected the account he gave in his initial email. He continued to describe both the Claimant and Mr Skuse as "standoffish" but said that the Claimant's conduct was wrong because he was the more senior person within the meeting. Mr Gosney also referred to his own position at the same management level as the Claimant when explaining his initial reluctance to criticise him [Matthew Young WS, para 18].

86. The further interview also addressed the A37 evidence. Mr Gosney said that no permit was required for every job, but that there was no dispensation for this A37 job and traffic management was required unless it was an emergency, which it was not. He said that the Claimant would have been aware of the job for weeks and could have arranged the correct scheduling [further appeal interview notes of Andrew Gosney dated 8 May 2025, pp.258-261; Matthew Young WS, para 19]. Mr Matthew Young's witness statement records his later investigation and conclusion concerning Yatton separately [Matthew Young WS, para 22].

87. The 8 May interview therefore produced an explanation for the difference between Mr Gosney's contemporaneous email and approved investigation interview summary, and further evidence about the A37 requirement, the emergency exception and the time available to arrange scheduling. Mr Gosney had already criticised the Claimant's handling in his approved investigation interview summary, and the requirement for traffic management, responsibility for arranging it and previous practice were already disputed. The interview did not introduce a new allegation, but it added material on credibility and operational detail which Mr Matthew Young took into account when deciding the appeal [further appeal interview notes of Andrew Gosney dated 8 May 2025, pp.258-261; appeal outcome letter, pp.182-183; Matthew Young WS, paras 18-22].

88. The appeal was not reconvened and the further interview notes were not sent to the Claimant before the outcome. The Claimant had raised the asserted inconsistency in Mr Gosney's accounts and had addressed the A37 and Yatton matters in writing and at the appeal hearing. He did not, however, have an opportunity before the outcome to comment on Mr

Gosney's explanation for the email or on the further operational answers obtained on 8 May. I consider the legal significance of that omission below.

89. The written appeal outcome upheld the dismissal [appeal outcome letter, pp.182-183]. Mr Matthew Young accepted Mr Gosney's explanation that the later approved investigation interview summary elaborated upon rather than contradicted his contemporaneous email; rejected the contention that the other summaries were dishonest; concluded that traffic management was required for the A37 job and that previous non-compliant practice did not justify its repetition; rejected the Yatton comparison because it did not involve the same permit requirement; and confirmed that Ms Kurzman's evidence had not been relied upon and that Mr Fews' answers could properly be considered [appeal outcome letter, pp.182-183; Matthew Young WS, paras 7, 20-24]. The letter communicated the principal conclusions but did not reproduce the 8 May interview or record that the Claimant had not been invited to comment on it. The legal significance of that omission is addressed below.

Submissions of the parties

90. The Claimant submitted that the dismissal was unfair because he had been undertaking legitimate performance management in a difficult team, the employee accounts were unreliable or insufficiently tested, and the Respondent had not properly considered evidence favourable to him. He relied in particular on previous A37 work without traffic management, Mr Gosney's contemporaneous email and later changes of emphasis, Mr Fews' evidence, performance concerns about the complainants, and the lack of opportunity to comment on the 8 May appeal material.

91. He further submitted that the process did not engage adequately with historic practice, his documents or mitigation. He relied on almost 23 years' service, bonus history, the absence of a current warning or formal performance management, lack of actual harm and the availability of warning, training, transfer, demotion or removal of line-management responsibility. He maintained that the procedural shortcomings and severity of sanction placed dismissal outside the range of reasonable responses.

92. The Respondent submitted that conduct was the principal reason and that the investigation, disciplinary hearing and appeal fell within the reasonable range. It relied principally on the A37 records, responsibility for the traffic-management arrangements, the crew's accounts and the Claimant's response to the T5C5 stop, with the 10 December and wider management evidence providing further support. It submitted that previous non-compliant practice did not make the scheduled work safe or excuse an unsupportive response to a safety concern.

93. The Respondent submitted that the Claimant had clear notice, disclosure, representation and full opportunities to answer the case; that Mr Lovell's rejection of some allegations showed a differentiated assessment; and that the appeal properly examined the grounds raised. It characterised the further interview with Mr Gosney as clarification of an issue raised by the Claimant, not a new case. Given the seriousness of the safety findings, the number of allegations upheld and the loss of trust and confidence, it

submitted that dismissal remained within the range of reasonable responses. Polkey and contribution were relied upon only if remedy arose.

The law

94. Section 94 of the Employment Rights Act 1996 gives an employee the right not to be unfairly dismissed. Section 98 contains the statutory framework. Section 98(1) provides:

"In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show— (a) the reason (or, if more than one, the principal reason) for the dismissal, and (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held."

95. Section 98(2)(b) provides that a reason falls within subsection (2) if it *"relates to the conduct of the employee".*

96. Section 98(4) provides:

"Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case."

97. The reason for dismissal is the set of facts known to the employer, or beliefs held by it, which caused it to dismiss the employee: *Abernethy v Mott, Hay and Anderson* [1974] ICR 323. In a conduct case, the Tribunal applies the approach in *British Home Stores Ltd v Burchell* [1980] ICR 303, EAT. The employer must show a genuine belief in the employee's misconduct. Whether that belief was based on reasonable grounds following as much investigation as was reasonable in the circumstances is then assessed under section 98(4) and the range of reasonable responses test. The employer does not have to prove the misconduct to the criminal or civil standard before dismissing, but suspicion alone is insufficient.

98. The range of reasonable responses test applies both to the employer's investigation and to the sanction: *Iceland Frozen Foods Ltd v Jones* [1983] ICR 17 and *Sainsbury's Supermarkets Ltd v Hitt* [2003] ICR 111. The Tribunal must not substitute its own view for that of the employer. It must ask whether the employer's investigation, procedure and decision to dismiss fell within the band of responses open to a reasonable employer.

99. The Tribunal's task is not to decide whether it would itself have found the employee guilty of misconduct or imposed dismissal. It must decide whether the employer's belief, investigation and sanction were within the range of reasonable responses. That principle is reinforced by *Foley v Post Office*

[2000] ICR 1283, CA and *London Ambulance Service NHS Trust v Small* [2009] IRLR 563, CA, which warn against substituting the Tribunal's own assessment of the evidence for that of the reasonable employer.

100. The required investigation is fact-sensitive. In *A v B* [2003] IRLR 405, EAT, the EAT emphasised that the gravity of the allegation and the consequences for the employee may require a particularly careful and even-handed investigation, including consideration of evidence pointing away from guilt. That principle is relevant where allegations are serious, career-affecting or capable of damaging reputation.

101. Fairness is assessed by looking at the disciplinary process as a whole, including any appeal. An appeal may cure earlier defects if it is sufficiently fair and open-minded: *West Midlands Co-operative Society Ltd v Tipton* [1986] ICR 192 and *Taylor v OCS Group Ltd* [2006] ICR 1602. The label attached to the appeal, such as review or rehearing, is not determinative. The question remains whether the overall process fell within the range of reasonable procedures. Serious misconduct may sometimes outweigh procedural imperfections, but borderline misconduct may make procedural fairness more important.

102. Where further adverse material is obtained after a disciplinary or appeal hearing, the Tribunal should consider whether fairness required the employee to be given the substance of that material and an opportunity to respond before the decision was made. The answer depends on the significance, novelty and weight of the material and on the fairness of the procedure viewed as a whole. If the material is relied upon to resolve an important, disputed issue, the employer's failure to seek comment is a relevant procedural weakness, even if the material arose from a matter which the employee had himself raised. In *Polkey v A E Dayton Services Ltd* [1987] UKHL 8; [1988] ICR 142, HL, the House of Lords held that the fairness of a dismissal must be determined by reference to the procedure which the employer actually followed. A procedurally unfair dismissal is not made fair merely because a proper procedure might, or would, have produced the same outcome. If a dismissal is unfair, the prospect that the employee would have been dismissed fairly in any event is relevant to remedy, including any compensatory award, rather than to the prior question of liability.

103. A finding of gross misconduct does not automatically make dismissal fair. Dismissal must still be reasonable in all the circumstances. In *Brito-Babapulle v Ealing Hospital NHS Trust* UKEAT/0358/12/BA, the EAT held that the Tribunal had erred by treating dismissal as automatically reasonable once gross misconduct was established; the assessment must include all relevant mitigation. The Court of Appeal dismissed the employee's further appeal in *Brito-Babapulle v Ealing Hospital NHS Trust* [2014] EWCA Civ 1626, leaving that remittal undisturbed. Relevant mitigation may include length of service, disciplinary record, explanation, remorse, insight, training, previous practice, consistency, health and reasonably available alternatives.

104. In health and safety cases, the seriousness of the safety context is plainly relevant, particularly where the employee has managerial responsibility or where others may be exposed to risk. However, the

statutory question remains that in section 98(4). *Newbound v Thames Water Utilities Ltd* [2015] EWCA Civ 677; [2015] IRLR 734 illustrates the importance of considering whether a rule and the seriousness with which it would be enforced were clearly understood, whether contrary practice had been tolerated, whether there was consistency of treatment, and whether long service and mitigation were properly considered. It does not create a rule that dismissal for a safety breach is unfair; it requires scrutiny of previous practice, knowledge and proportionality.

105. Consistency is relevant, but disparity will normally matter only where a true comparator is shown. In *Hadjioannou v Coral Casinos Ltd* [1981] IRLR 352, EAT, the EAT explained that tribunals should not approach consistency mechanically; they should ask whether other cases are truly comparable and whether any different treatment was rationally explicable. Previous employer tolerance or condonation of a practice may be highly relevant, but it does not prevent an employer from acting where the present facts are materially different or where safety concerns arise.

106. The ACAS Code of Practice on Disciplinary and Grievance Procedures is relevant. Ordinarily, an employer should investigate, tell the employee the allegations and possible consequences, provide the relevant information, hold a meeting, allow accompaniment, give a reasoned decision and offer an appeal. Breach of the Code does not automatically determine liability, but it informs the assessment of fairness under section 98(4). Any adjustment under sections 207 and 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 is a remedy question.

Application of the law to the facts and conclusions

107. **Reason for dismissal.** Applying *Abernethy*, I ask what facts or beliefs operated on the Respondent's mind when it dismissed. Mr Lovell upheld the A37 traffic-management and T5C5 allegations, the management conduct on 10 December, the Co-op car park encounter and aspects of the wider culture, favouritism or marginalisation case. The A37, T5C5, culture and favouritism or marginalisation findings were treated as gross misconduct, while the 10 December finding was characterised as misconduct. Mr Lovell relied on the findings cumulatively, with the safety findings as his principal concern [disciplinary hearing notes and dismissal letter, pp.161-165; Lovell WS, paras 16-18]. The Co-op car park encounter formed part of the employer's reason, although my own factual finding on that allegation is qualified for the reasons given at paragraph 31. There is no evidence that capability, redundancy, ill health or another reason displaced those findings as the operative cause. I therefore find that conduct was the principal reason and was potentially fair under sections 98(1) and 98(2)(b).

108. **Genuine belief.** Under *Burchell*, the first question is whether the Respondent honestly (genuinely) believed the Claimant guilty of the misconduct, not whether the Tribunal would have made every finding itself. Mr Lovell heard the Claimant's denials and central explanations, received his documentary material, heard Mr Fews, rejected several allegations and identified the principal basis for those upheld. The fact that his evidence and reasons do not demonstrate that he read and evaluated every supporting

document is relevant to reasonable grounds, procedure and sanction, but does not show that his belief was not genuine. Mr Matthew Young then reviewed the appeal grounds and made further enquiries. That differentiated process supports, and there is no evidence displacing, a genuine belief by each decision-maker.

109. **Reasonable grounds: A37 scheduling.** Applying the second limb of *Burchell*, the scheduling record, activity report and management evidence provided an objective basis for attributing responsibility to the person booking the job to recognise and secure the recorded controls [A37 scheduling record, activity report and approved investigation interview summaries, pp.70-95]. The Claimant accepted that the late entry left no time to arrange traffic management, that by about 9.00am he would not expect the work to proceed without it, and said, "I'll take responsibility for it" [disciplinary hearing notes, pp.150-154]. Without substituting my own factual assessment, those matters were reasonably capable of supporting Mr Lovell's conclusion that the Claimant bore responsibility for the scheduling failure.

110. **Reasonable grounds: T5C5 response and previous practice.** *Burchell* did not require proof of the exact threatening words alleged or an express direction to continue. The crew's materially consistent accounts, supported by their contact with Mr Maddock, gave reasonable grounds to find that the Claimant responded critically rather than supporting the safety stop [approved investigation interview summaries of Stuart Maddock, Ryan Skuse and Mark Wilkinson, pp.87-95]. The importance of the T5C5 process was clearly articulated and agreed to by all parties. The historic records and Mr Fews' evidence supported the Claimant's genuine belief that the work could sometimes be undertaken early without traffic management and were relevant under *Newbound* to knowledge, previous practice and culpability. They did not require the Respondent to disregard the controls and timing recorded for this job or the managerial obligation to support T5C5 until the risk was resolved.

111. **Reasonable grounds: management conduct.** Applying *Burchell* and the warning against substitution in *Small*, the question is whether the evidence could reasonably support the narrower findings made, not whether every allegation was proved to the Tribunal's satisfaction. The contemporaneous emails showed Mr Skuse's material contribution and the legitimacy of the subjects raised; the approved summaries nevertheless supported findings that the Claimant contributed to the confrontation and handled both meetings inappropriately [approved investigation interview summaries, pp.82-95; contemporaneous emails, pp.129-131]. The Co-op allegation depended principally on Mr Jones and the wider culture evidence was partly impressionistic. Those limitations reduced their permissible weight, but did not make reliance on the narrower 10 December findings unreasonable, particularly as they were not the principal basis for dismissal.

112. **Reasonable investigation: scope and balance.** The third limb of *Burchell*, applied through the range identified in *Hitt*, required an investigation proportionate to the gravity and career consequences of the allegations; *A v B* also required reasonable attention to material pointing away from misconduct. Mr Willoughby interviewed the Claimant twice, the complainants, direct witnesses and relevant managers, and obtained the

job records, policies, historic-practice material and Mr Gosney's contemporaneous email [investigation meeting notes, disciplinary evidence and approved investigation interview summaries, pp.31-140]. A site inspection might have added detail, but the recorded controls, scheduling responsibility and response to T5C5 were reasonably capable of determination from those records and witnesses. The scope and balance of the investigation therefore fell within the reasonable range.

113. **Reasonable investigation: clarity.** The ACAS Code required the substance of the alleged misconduct to be made clear. The 7 February invitation lacked suitable precision, a clear weakness given the potential consequences. Its practical effect was however limited: by 28 February the Claimant had answered in detail on scheduling, traffic management, previous practice, T5C5, the alleged remarks and the management complaints [investigation meeting notes dated 7 and 28 February 2025, pp.31-66]. I therefore find that he understood the substance of the principal concerns before referral with a reasonable level of clarity, although not yet in their final structured form.

114. **Reasonable investigation: disclosure and opportunity to answer.** Not all approved investigation interview summaries existed or had been disclosed by 28 February, so the Claimant could not then address every precise later account. Under *Tipton* and *Taylor*, however, fairness is assessed across the process. Before the disciplinary hearing the 6 March invitation particularised the allegations, disclosed the approved investigation interview summaries and other evidence, warned of possible dismissal and was followed by additional preparation time and a lengthy represented hearing [disciplinary invitation dated 6 March 2025, pp.67-69; approved investigation interview summaries, pp.79-95; disciplinary hearing notes, pp.141-162]. The Claimant accepted that the case was then clear. The earlier limitation was therefore remedied before the dismissal belief was finally formed.

115. **Disciplinary procedure and reasons.** The disciplinary stage contained the principal safeguards required by the ACAS Code. The Claimant received clear notice of the allegations and possible consequences, the evidence relied upon, time to prepare, representation, a hearing and reasons for the decision. The weakness lay in the quality of Mr Lovell's consideration and explanation. His evidence and reasons did not show that he had read and evaluated all of the Claimant's documents. Nor did he explain fully how he resolved the difference between Mr Gosney's contemporaneous email and later summary, what weight he gave the previous A37 practice, or how the Claimant's mitigation affected the choice of sanction [Claimant's disciplinary evidence, pp.115-140; disciplinary hearing notes, pp.141-162; dismissal letter, pp.163-165; oral evidence]. The appeal addressed some, but not all, of those matters. Mr Matthew Young investigated the difference between Mr Gosney's accounts and reconsidered the previous A37 practice and the Yatton comparison [appeal hearing notes and appeal outcome letter, pp.169-183; further appeal interview notes of Andrew Gosney dated 8 May 2025, pp.258-261]. He did not conduct a complete reconsideration of every document, mitigating factor or alternative sanction. The reasons given at the disciplinary and appeal stages were therefore incomplete, but together they identified and addressed the principal evidential issues on which the dismissal was based.

116. **Appeal procedure.** The appeal must be considered as part of the procedure as a whole (*Tipton*; *Taylor*). It was not unfair merely because it took the form of a review rather than a rehearing. Mr Matthew Young considered the written grounds, heard the Claimant with his representative, adjourned to make further enquiries and gave a written outcome. He reconsidered the matters the Claimant had identified as central: the difference between Mr Gosney's accounts, previous A37 practice, the Yatton comparison, Ms Kurzman's evidence and the use made of Mr Fews' evidence [appeal hearing notes and appeal outcome letter, pp.169-183]. Those steps were capable of correcting some of the shortcomings in the disciplinary reasons.

117. **Further evidence obtained on appeal.** The potential difficulty is that, after the appeal hearing, Mr Matthew Young obtained further answers from Mr Gosney which were adverse to the Claimant [further appeal interview notes of Andrew Gosney dated 8 May 2025, pp.258-261]. Those answers explained the difference between Mr Gosney's earlier accounts and added detail about the A37 arrangements. They did not introduce a new allegation, witness or incident, but they strengthened the Respondent's case on disputed issues of credibility and operational responsibility. Because Mr Matthew Young relied on them, fairness required the Claimant to be given their substance and an opportunity to comment before the appeal was decided. He was not given that opportunity. That was a procedural defect, not merely a departure from best practice.

118. **Effect of that defect.** The next question is whether the failure to seek the Claimant's comments made the procedure as a whole unreasonable. I conclude that it did not. The Claimant had already challenged Mr Gosney's credibility and had addressed the underlying A37 issues—scheduling responsibility, previous practice, timing, traffic management and Yatton—in writing and at the appeal hearing. The 8 May answers strengthened the Respondent's existing case, but did not change the case the Claimant had to address. Further, the principal A37 findings did not depend on those answers. They were already supported by the job records, the Claimant's concessions at the disciplinary hearing and the accounts of the crew and managers. The failure to invite comment was therefore material, but its practical effect on the Claimant's ability to answer the principal case was limited.

119. **Procedure viewed as a whole.** Section 98(4) requires an assessment of the procedure that actually occurred. A defect cannot be disregarded simply because the same outcome might otherwise have been reached (*Polkey*). There were four weaknesses. First, the invitation to the initial investigation meeting did not identify the allegations clearly. Secondly, not all approved witness summaries had been disclosed by the second investigation meeting. Thirdly, Mr Lovell did not demonstrate full consideration of the Claimant's documents, mitigation and possible alternatives to dismissal. Fourthly, the Claimant was not invited to comment on Mr Gosney's further answers of 8 May 2025. The first two weaknesses were remedied before dismissal. The letter of 6 March 2025 set out the allegations, disclosed the evidence, warned that dismissal was possible and was followed by additional preparation time and a lengthy represented hearing. The Claimant therefore knew the case he had to answer and had

a proper opportunity to answer it. The third weakness was partly remedied on appeal. Mr Matthew Young reconsidered the principal evidential issues, although he did not undertake a complete review of every document, mitigating factor or alternative sanction. The fourth weakness was not remedied, but for the reasons in paragraph 118 its practical effect was limited. I have weighed those defects against the safeguards provided. Before dismissal, the Claimant received clear notice, disclosure, additional preparation time, representation and a full opportunity to give his account and produce documents. He received reasons and a substantive appeal. Several allegations were rejected, showing that the Respondent did not accept the evidence uncritically. The defects did not prevent the Claimant from understanding or answering the case on which the principal safety findings were based. I therefore conclude that the procedure was imperfect, but viewed as a whole remained within the range of procedures open to a reasonable employer and complied in substance with the ACAS Code.

120. **Sanction: mitigation and alternatives.** I turn separately to whether dismissal was a reasonable sanction. Gross misconduct did not make dismissal automatic; the Respondent had to consider the circumstances as a whole (*Brito-Babapulle*). The mitigation was substantial. The Claimant had almost 23 years' service, no current warning, a record of internal progression and a bonus history. There were genuine performance problems within the team. No unsafe work was completed. The Respondent did not establish that the Claimant expressly instructed the crew to proceed after the T5C5 stop. Previous A37 practice also explained his belief that the job could sometimes be completed safely without traffic management and reduced his culpability. A warning, training, transfer, demotion or removal of line-management responsibility were all possible alternatives. The legal question, however, is not whether one of those alternatives would also have been reasonable or preferable. It is whether dismissal itself remained within the range of reasonable responses (*Iceland Frozen Foods*).

121. **Sanction: range of reasonable responses.** Applying *Newbound*, I have scrutinised the clarity of the safety requirement, previous practice, culpability and mitigation. The recorded controls, management evidence and the Claimant's concessions gave the Respondent a substantial basis for treating the A37 scheduling failure and his critical rather than supportive response to the crew's T5C5 stop as serious managerial misconduct [A37 scheduling record and activity report, pp.70-78; approved investigation interview summaries, pp.79-95; disciplinary hearing notes, pp.150-154; dismissal letter dated 27 March 2025, pp.163-165]. Previous completion of the work without traffic management reduced culpability and explained the Claimant's belief. Applying *Hadjioannou*, however, it did not establish a true disciplinary comparator because the same controls, timing, traffic conditions, prior safety concern and managerial response were not shown [Claimant's email and My Maintenance records, pp.115-128; photographs of A37 work, pp.229-230; disciplinary hearing notes, pp.143-144 and 150-154]. The Claimant's almost 23 years' service, absence of a current warning, internal progression, bonus history, genuine performance concerns and the availability of lesser sanctions were substantial mitigation [ET3, pp.19-30; bonus material, pp.201-208; disciplinary hearing notes, pp.155-161]. Against that, the Respondent was entitled to attach particular weight to the safety responsibilities of an experienced manager and was not required to wait for actual harm. The qualified findings concerning the 10

December meetings added some cumulative support, while the Co-op allegation and broader culture evidence carried limited weight and would not alone have justified dismissal [approved investigation interview summaries, pp.82-95; contemporaneous emails dated 10 December 2024, pp.129-131]. Weighing those matters under section 98(4), and avoiding substitution as required by *Foley* and *Small*, I conclude that dismissal was a severe response and that another reasonable employer might have imposed a lesser sanction, but it remained within the range open to a reasonable employer.

Conclusions

1. Issue (i), reason for dismissal: I conclude that the Respondent has shown that the reason, or principal reason, for dismissal was conduct. The conduct relied upon concerned the A37 traffic-management and T5C5 allegations, the 10 December meetings, the Co-op car park incident and the Respondent's concerns about the Claimant's management style, culture of fear, favouritism and marginalisation. Conduct is a potentially fair reason for dismissal under section 98(2)(b) of the Employment Rights Act 1996.

2. Issue (ii), genuine belief: I conclude that the Respondent, through Mr Lovell as disciplinary decision-maker, genuinely believed that the Claimant had committed the misconduct relied upon. Mr Lovell considered the disciplinary evidence, heard from the Claimant and Mr Fews, and differentiated between the allegations by rejecting some and upholding others. Mr Matthew Young genuinely believed on appeal that the disciplinary outcome should be upheld.

3. Issue (iii), reasonable grounds: I conclude that the Respondent had reasonable grounds for its belief. The A37 scheduling and activity records, the evidence concerning responsibility for traffic-management arrangements, the crew's direct accounts and the Claimant's concessions during the disciplinary process provided substantial grounds for the principal safety findings. The evidence concerning the 10 December meetings permitted the narrower conclusion that the Claimant's handling was inappropriate, while recognising Mr Skuse's material contribution to the first confrontation and the legitimacy of the subjects raised. The Co-op allegation and broader management evidence were less specific and carried less weight, but were capable of providing cumulative support. The contrary evidence and historic-practice material required consideration but did not make the Respondent's belief unreasonable.

4. Issue (iv), reasonable investigation: I conclude that the Respondent carried out as much investigation as was reasonable in the circumstances. It interviewed the Claimant twice, obtained accounts from the relevant employees and managers, and gathered the A37 records, policies and material pointing both towards and away from misconduct. The first meeting lacked clarity and not all approved investigation interview summaries existed or had been disclosed by 28 February. By then, however, the Claimant understood and answered the substance of the principal concerns. Before the disciplinary hearing he received the particularised allegations, the approved summaries and the other evidence, with additional time to prepare. The absence of a technical site inspection did not render the investigation unreasonable because the required controls for the scheduled job and the Claimant's operational responsibility were addressed by the documentary and management evidence.

5. Issue (v), procedural fairness: I conclude that the procedure, viewed as a whole, fell within the range of reasonable responses and complied in substance with the ACAS Code. The Claimant received detailed notice of the allegations and possible consequences, the relevant material, time to prepare, representation, a full disciplinary hearing, reasons and a substantive appeal. Mr Matthew Young should have invited the Claimant to comment on Mr Gosney's further answers of 8 May because they bore on credibility and the A37 issue. The omission was not immaterial, but it did not introduce a new allegation, change the case to be answered or deprive the Claimant of the opportunity to address the underlying issues, on which he had already made detailed written and oral submissions. In the context of the procedure as a whole, it did not render the dismissal unfair.

6. Issue (vi), sanction: I conclude that the Respondent acted reasonably in treating the misconduct as a sufficient reason for dismissal. The principal basis was the combined A37/T5C5 finding: responsibility for scheduling or permitting the job to be scheduled without the recorded traffic-management arrangements, followed by a critical rather than supportive response when the crew stopped for safety reasons. The Respondent was entitled to treat that as serious managerial misconduct. It was required to consider, and did not have to treat as determinative, the Claimant's long service, record, historic practice, absence of actual harm and the availability of lesser sanctions. Historic practice did not establish a true disciplinary comparator or displace the requirements for this job. The narrower findings about the handling of the 10 December meetings provided cumulative support, without reliance on any alleged reference to HR; the Co-op allegation carried limited weight. Another reasonable employer may have decided not to dismiss the Claimant and instead awarded some other sanction. However, not substituting my own view of sanction, I conclude that dismissal remained within the range of reasonable responses.

7. For those reasons, the Claimant's complaint of unfair dismissal is not well founded and is dismissed.

Approved by
Employment Judge Winfield
14 October 2026

Sent to the parties on
26 October 2026

Case No. 6027002/2025

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