EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100400/26

Final Hearing Held in Glasgow on 16, 17,18 September 2026

Employment Judge L Doherty

R Clark — **Claimant**
Represented by:-
Ms Clark – lay rep

Speyside Cooperage Limited — **Respondent**
Represented by:-
Mr Gilmour, solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claimant was not unfairly dismissed and the claim is dismissed.

REASONS

1. The claimant presented a claim of unfair dismissal on 26/2/26. The claim was resisted and a three day hearing was fixed. Ms R Clark represented the claimant and Mr Gilmour, solicitor represented the respondents.

2. Due to the pressure of time and the lack of agreement on the quantification of the claim, a decision was taken to split the hearing into Meritas and Remedy. This hearing was therefore confined to the consideration of the Merits , subject to the Tribunal making findings in principle as to whether there should be any deductions form compensation on the grounds of *Polkey* or contributory conduct, or increase on the grounds of failure to comply with the ACAs code.

The Issues

3. The issue are;

- Had the respondents established that misconduct, intentionally 'faking' a cask, was the potentially fair reason for dismissal;
- If so was dismissal for that reason fair under section 98 (4) of the Employment Rights Act 1996 (the ERA).
- In particular did the respondents carry out a reasonable investigation; did the respondents have reasonable grounds to form their belief in the misconduct for which the claimant was dismissed; did the respondents follow a fair procedure; was the sanction of dismissal within the band of reasonable responses or was it disproportionate, including that it amounted to inconsistent treatment.

The Hearing

4. For the respondents evidence was given by ;

   Ian McKnight- (IM) – Manger of the Alloa Site.

   Gill Reid (GR) - Investigation officer

   Malcom Munro - (MM) - Dismissing officer

   Brian Bartlett - (BB) - Appeal officer

5. The claimant gave evidence on his own behalf.

6. The parties lodged a joint bundle of documents.

Findings in Fact

The Respondents

7. The respondents are a company providing cooperage and cask supply to the drinks industry. They have around 80 employees spilt between two their workshop sites A and B in Alloa. Site B' work involves rejuvenating casks used for Burbon in the USA into barrels for the whiskey industry in Scotland.

8. Barrels from the USA have a thin layer of wax is applied to the bottom of the barrel mechanically. Wax is never used by the respondents. Rejuvenation involves removing broken or cracked staves in the barrel and replacing them with staves cannibalised from other barrels. The barrel is then secured by hoops.

9. After the rejuvenation process is completed by the Cooper , the barrel is tested and inspected. The Copper provides a verbal estimate of the number of barrels

he has worked on. When the Cooper completes his work he tickets the barrel. The barrel is tested after this, and the final number which he has competed is calculated after testing is compete. The Cooper is paid on the basis of the number of barrels he has completed which have passed after testing.

10. The respondents have a Company Handbook (the Handbook) which is available to employees.

11. The Handbooks sets out the disciplinary and grievance policies.

12. It contains a non-exhaustive list of offences which will be regarded a gross misconduct. These *include serious or gross negligence* and *theft , dishonesty or fraud*.

13. The respondents have certain standards or work which they require their Coopers to adhere to. An important standard is that casks are not '*faked up'*. Faking up a cask occurs where an employee passes off or attempts to pass off a cask as fit to use, when it has not been properly repaired or rejuvenated. Faking up a cask is a work shortcut.

14. It is a serious matter for the respondents if a faked up cask is passed on to a customer. It could lead to loss of trust and confidence in the product and potentially have a very damaging effect on their business. A faked cask can potentially be dangerous to customers. It could lead to the spillage of very considerable volumes of flammable spirits. In a warehouse situationship where pallets are used it is particularly dangerous as a weak cask could cause a pallet of barrels to collapse.

15. From around October 2024 the respondents posted a notice headed *Coopering Standards/ Requirements* in their workshop notice board which stated, among other things that; *Any cheating or deliberate acts of faking up a cask will not be tolerated and could be liable for disciplinary action to be taken.* This notice was also fixed to some of the workbenches. It was well known within the respondents workplace that faking a cask was prohibited conduct.

The claimant

16. The claimant, whose date of birth is 07/09/2004**,** was employed by the respondents at their Alloa site as a Cooper from the 25/1/21. He was issued with a statement of terms and conditions of employment. The claimant worked at site B. His principle duties were rejuvenating casks or barrels. He had undertaken an apprenticeship with the respondents and had received training in cooperage and had worked as a Cooper for about 4 years.

17. The claimant was spoken to by IM on three occasions, on 26 May and 7 and 14 June 2025 about his performance, including that he had reported having

competed a greater number of barrels than were passed as testing. IM did not form the impression that the claimant's performance improved following these discussions.

18. On 3 July the claimant attended a disciplinary meeting as a result of performance issues. This was chaired by GR who decided to impose a disciplinary warning, which was valid for 6 months. The letter outlining this sanction bore to be signed by IM as GR believed that the warning was better to come from the claimant's line manager. The claimant did not appeal against the warning at the time.

Dismissal

Incident of 6 October

19. On the morning of 6 October the claimant was spoken to again by IM about his work performance and his workout output which IM considered too low.

20. Later that morning the claimant faked up a cask by putting wax on a broken stave. He had rehooped the barrel and was hammering it down; the barrel was near completion, when IM intervened as he had seen the claimant bend over the barrel for what he thought was an abnormal length of time. He inspected the barrel and found a stave had been waxed. He also found a ball of wax on the claimant's bench; the wax was not clear, but was darker than is usually found on the Bobrun barrels. He asked the claimant if he had waxed the cask to which the claimant responded yes.

21. IM than asked the claimant to wait in the canteen while he went to get a manager, Sandy Langlands (SL).

22. IM held an Investigation meeting with the claimant with SL in attendance. The claimant was offered a witness which he declined. In the course of that meeting the claimant admitted rubbing wax into a stave; he admitted that the wax was his; he admitted that he did this to cover a brake in the stave; he admitted that he knew this was unacceptable and that it could led to disciplinary action. He was asked if he had done this before and replied yes.

23. The claimants signed the handwritten minutes of the meeting. He was also asked to provide a statement confirming all of this. The claimant provided this statement and signed it.

24. The claimant was not suspended, but was moved to the general labouring team.

25. The claimant attended work on the morning of 7 October, but then went off on sick with work related stress, followed by holiday leave.

26. On 9 October GR contacted the claimant to say that she was now his point of contact. The claimant responded to say among other things that he was sure things would be handled fairly now she was involved.

27. On 15 October the claimant received a letter from GR asking him to attend a disciplinary hearing on 22 October. He was advised that the allegation was that he deliberately faked/damaged a cask; that this was viewed as serious misconduct and that as he was still under a written warning, the outcome may be a final written warning or dismissal. He was provided with the minutes of the meeting of 6 October; his signed witness statement; and a copy of the disciplinary policy.

Claimant's grievances

28. The claimant raised a grievance on 21 October, followed by 2 further grievances making complaints, some of which were historic. His grievance included that the investigation of 6 October had not been fair and that he had been forced to give his statement under duress.

29. On 11 November GR confirmed to the claimant that there would be an investigation meeting into the discsipnary allegations, which she would conduct. She advised this was necessary to ensure a fair and impartial process. There were a limited number of managers available to deal with disciplinary and grievance matters.

30. The disciplinary process was paused to allow the grievance to be dealt with. The grievance was dealt with by a manager Mr North. Other than a complaint relating to bonus, it was not upheld. The claimant appealed the outcome. This was dealt with by a different manager. The appeal was not upheld, with the outcome delivered on 10/12/25.

Second Investigation Meeting

31. While at work the claimant was asked to attend an investigation meeting with GR on 12/12. He was not given written notice of this but was asked to attend a meeting at short notice.

32. GR told the claimant the purpose of the meeting was to investigate the events of 6 October 2025 and she asked the claimant give his account of matters.

33. The claimant said that he noticed the defect in the stave when he collected the cask. He said it was never his intention to put the cask out and that he just wanted to see what the crack looked like with the wax on it and he would take the wax off again, but that he did not get the chance to do so.

34. GR asked his to clarify why he did this if he did not intend to put the cask out. The claimant responded that it was to see what it looked like because someone

told him it made it passable. He said he did it *'to see if it would pass, in the event it could be used, although he was not going to.*

35. The claimant accepted he knew the severity of what he admitted to and the companies stance on faking casks.

36. The claimant said he found the wax on his bench; he denied it was his; he said it probably fell off the cask from a previously waxed end. He denied ever having put wax on a cask before and said it was probably a lapse of judgment. GR asked him if there was something causing him to make his decision. He said that he was probably under stress due to being taken into a meeting due to his lack of work that morning. GR asked if it was a shortcut to put more work out. The claimant responded; yes, he was under pressure of work rate. He complained that no one asked him about the reasons why his work rate was down including medical reasons. He complained the respondents should be doing a fact finding.

37. GR asked if there was anything else the claimant wanted to raise. The claimant said that he wanted to raise concerns about the way he was treated in the investigation meeting, and another employee's treatment in similar circumstances. He said the other employee got a written. GR asked who is was and the claimant told her it was JK, and that she had done the investigation. GR told the claimant that they were there to discuss the events of 6 October and he was aware of the grievance procedure and that if he wished to take mattes further she recommended that he raise a grievance.

38. The claimant signed minutes of the meeting as being true and accurate.

39. Following that meeting GR obtained a witness statement from IM. She did this by emailing him a series of questions which he answered. IM recollected the incident but he also had looked at the CCTV footage of the incident which mis recorded the time of the incident and this error appeared in his statement.

40. IM statement said that as he was walking through the workshop he saw the claimant bend over the cask for an usually ling time. When he approached the claimant to investigate he continued to hammer the hoops of down. On inspection IM found one of the staves of the cask had wax rubbed into it. He asked the claimant if he had done this and the claimant admitted he had.

41. IM then said he lifted the wax from the claimants workbench and it wax that had been collected and squeezed together as wax did not come in that form. He said the claimant admitted the wax was his. He confirmed the claimant had not proffered the explanation that he just wanted to see what the wax looked like and had no intention of putting the cask out.

42. GR decided to refer the matter for disciplinary action.

43. The claimant was invited to attend a disciplinary hearing by letter and email dated 15 December 2025, signed by a Mr Tom Young. He was provided with the minutes from the investigation meeting of 12 December and IM's statement and the disciplinary policy. The letter advised that the allegation was that he deliberately faked/damaged a cask and this was viewed as gross misconduct and outcome may be dismissal without notice.

44. The claimant queried it there were further witness statements. Mr Young responded no and that the only other evidence on the day would be physical and would be the wax and the cask where it was used.

45. The claimant confirmed he would attend the meeting accompanied by a colleague.

Disciplinary Meeting

46. The meeting took place on 18 December and was chaired by MM. A Burgess took notes and Andy Murry (AM) and the claimant attended.

47. MM asked the claimant to take him through the events of 6 October. The claimant admitted putting the wax on the cask, saying he had never denied it. He said he severely regretted it. He said he just wanted to see what it looked like and it was a lapse of judgment. MM said he did not understand that as the claimant was wasting his own and the company's time. The claimant responded that he regretted his decision but that he had complaints about the conduct of the investigation. He accepted that he knew the consequences of faking a cask both to himself and to the business and that it could led to his dismissal and other job losses.

48. MM put to the claimant that he had admitted to IM that he had done this before. The claimant said that statement was made under duress and he had raised a grievance about it. MM told him he was not there to discuss the grievance.

49. MM had a short adjournment so that he could examine the cask. He did not explicitly invite the claimant to inspect it but the claimant could have accompanied him had he chosen. AM also inspected the cask. The cask had been retained in a 'quarantined' area. When he inspected the cask MM saw the hoops were on it and formed the view that the work on it had been completed. The wax was not available for inspection.

50. On resumption of the meeting MM asked the claimant why, if he was told he was not doing enough work, he would put wax on the cask. The claimant again said it was not a good decision and he regretted it. MM put to him that if someone was doing this they were looking for shortcuts. The claimant agreed that he understood this, but he was under pressure from his earlier conversation with management.

51. MM asked where the wax came from to which the claimant responded there was nothing to prove the wax is what was used on the cask.

52. The claimant however accepted that the wax came from the end of a bourbon barrel; he waxed a stave; and the colour of the wax was the same colour as the stave. He also accepted that the position was that he had been called to a meeting that morning about his work output and he came back to work and put wax on a cask out of curiosity, wasting more company time.

53. MM put to the claimant that all the hoops were on the cask. The claimant responded that he it was after he rehooped the cask that he noticed the brake in the stave.

54. The claimant at no point raised JK's circumstances. Towards the conclusion of the meeting, when asked if he was happy that everything had been discussed the claimant said he wanted MM to read through his complaint and put a Polly pocket of papers on the table. MM said he would but read this, but that this needed to be treated as a separate action.

55. MM then left the room; when he returned the Poly pocket had gone, and he assumed the claimant had taken it away.

56. MM considered matters overnight and decided to dismiss the claimant. He conveyed his decision at a meeting the following morning and he wrote to the claimant setting out his reason for dismissal.

57. MM did not believe the claimant's explanation that he put wax on the cask just to see what it looked like. He considered this made no sense. In rejecting the claimant's account took into account that when he inspected the cask it was in a finished state and ready to move onto the next stage. This led him to believe the claimant intended to present the cask to the next stage.

58. In reaching his view MM took into account that there was an inconsistency in the claimant's position as to when he first noticed the broken stave, saying he saw it when he collected the cask and later saying he did not notice it till after he rehooped the cask. He considered that had the claimant had just been experimenting he would have been unlikely to complete the repair of the cask. The fact that the claimant was found waxing the cask shortly after he had been spoken to about his work output lead MM to conclude that the claimant had seen the brake in the stave when he collected the cask, deliberately applied the wax with the intention of faking the cask and passing it out, and that he did so as a work shortcut.

59. MM took onto account the potential adverse consequences of a faked cask being supplied to customers and the fact that the claimant was aware of the severity of the offence of faking a cask. MM also took onto account that the

claimant had admitted to having faked casks before at the fist investigation meeting. MM was unaware that that the claimant had a disciplinary warning on his record. He decided however that the severity of the offence merited the sanction of dismissal.

60. MM's letter of dismissal did not reference the fact that the claimant had earlier indicated that he had faked casks previously.

Appeal against Dismissal

61. The claimant was advised of his right to appeal to BB, the Managing Director, which he exercised. His appeal letter of 5 January 2026 set out 6 points of appeal. He complained that his dismissal was predetermined and based assumptions rather than fact.

62. The appeal took place on 8 January. Ms Coyle took notes and AM was also in attendance. After the appeal hearing BB carried out further enquiries with GR and AM. He then responded on the 22 January to the claimants appeal letter dealing with all 6 points.

63. By the time the appeal was conducted the cask was no longer available for inspection. BB interviewed AM who confirmed that in his opinion the cask had been prepared for testing. He said that the stave had wax applied and that 1/4 bilge hoops had been taken off and put back on; all that remained was for the 2nd end hoops to be put back on. He said to get to the stage of repair that the cask was in it would take 10/15 minutes, and it would only take a couple of minutes to finish from there.

1st appeal point

64. The fist point was that IM's statement had the timing of the incident wrong by 1 hour. This was said that this raised concerns over the accuracy and truth of the other elements of IM's statement.

65. BB responded confirming that the inaccuracy in the time was due to an error in the CCTV footage as a result of the 1 hour time change and that due to the delay in the investigation IM had relied on the CCTV rather than memory.

66. BB did not consider anything turned on the time difference identified by the claimant, given the claimant had accepted waxing the cask.

2nd appeal point

67. The second point was that no statement was taken from IM on the day of the incident. This omission undermined reliability and credibility.

68. BB found that according to ACAS if a manager sees wrongdoing they are entitled to intervene and that was what IM had done. The company had investigated only after the conclusion of the claimant's grievance about the initial fact finding meeting. The reason for the delay in the investigation was that it was paused to allow the grievance to be completed. Each stage of the process was carried out by a different mamager.BB found no evidence to suggest any impact on the credibility of the decision making which followed.

3rd appeal point

69. The third point was that both investigations were unfair and impartial and contrary to the ACAS code. The claimant had no advance warning of the investigation meeting on 12 December and no time to prepare.

70. BB found that there had been no failure to comply with the ACAS code. There was no requirement to provide advance notice of the investigation meeting. The claimant had confirmed earlier that he was happy that GR was involved and he was aware that the investigation would restart on the conclusion of the grievance.

4th Appeal point

71. The 4th point was that another colleague, JK, was in a similar situation with regard to misconduct and was treated differently during the investigation and disciplinary process.

72. BB had some personal knowledge of this and he also interviewed GR about it as. She had dealt with the disciplinary proceedings against JK and was of the view that it was not premeditated behaviour on his part. BB was satisfied that the circumstances were not the same as those of the claimant. The claimant had introduced wax to fake up the cask and pass it off, while JK had deliberately damaged a stave with his hammer after the cask he worked on had failed testing had been sent back to him. He did this in order to avoid repairing the cask ;the cask would not then be sent on to a customer; and he would not be paid for it.

73. BB confirmed that he did not uphold this point as there were no instances of gross misconduct of a similar nature to be referred to. No further detail was provided to maintain data protection.

5th Appeal point

74. The 5th appeal point was that the claimant had received an earlier written warning where IM had acted as accuser, investigator and disciplinary officer.

75. BB investigated this and was satisfied that GR had conducted the disciplinary meeting and imposed the sanction but had issued the sanction in IM's name, as she thought it would be better coming from the claimant's line manager. BB did not think this was a good practice and explained this in his outcome letter. He did not conclude however that it had any impact on the result of the process and the sanction was not appealed at the time.

76. BB did not take the claimant's warning into account in his consideration of whether to uphold the appeal.

6 Appeal point

77. The 6th appeal point was that despite notifying the respondents of his health condition there was a delay in requesting his medical records; this suggested that the dismissal was predetermined.

78. BB intervened GR who explained the delay was on account of her being absent from work ill; the extent of her workload; that the claimant was given full flexibility on terms of his medical condition and that time of year (Christmas shut down). BB did not conclude that given all the circumstances the delay in requesting GP records suggested predestination of the decision to dismiss, however he did consider they should have been sought earlier.

79. BB did not uphold the appeal. He concluded that the evidence confirmed that the claimant had deliberately faked a cask by adding a foreign material to hide a defect. He considered that this action could have caused serious reputational damage to the respondent's business and that dismissal was the appropriate sanction for the misconduct in question.

Other Disciplinary action- JK

80. On 10 July 1025, another Cooper JK, who worked alongside the claimant was given a written warning which lasted 6 months. He had been asked to attend a disciplinary meeting where the allegation put to him was that he had faked a cask by causing deliberate damage to it. He was told this was viewed as misconduct and the outcome may be that he received a warning.

81. The circumstances which led to that were that JK had repaired a cask and sent it to the test. The cask was rejected at the test because of a broken stave and it was returned to him to repair. JK replaced the broken stave with a stave which he had hit with his hammer, in order to try to break the cask so that he would not have to repair it properly. This was picked up by IM on a spot check. At his disciplinary hearing JK accepted that he knew causing deliberate damage to a cask was wrong.

82. JK would not have been paid for a broken barrel; a broken barrel would not be sent out to customers. IM and GR formed the view that JK had acted in frustration at getting the barrel back; he had used one of his Cooperage tools to brake it.

Note on Evidence

Respondents witnesses

83. The Tribunal found all of the respondent's witness in the main to be credible and reliable. It formed the impression that the extent to which any of the respondent's witness could not recollect matters was commensurate with the passage of time. They were able to make appropriate concessions and did not seek to embellish their evidence. These were elements which caused the Tribunal to generally form a favourable view of their credibility. There were also some minor inconsistencies in their accounts which in the tribunal's view enhanced the authenticity of their evidence, supporting the view that there was no collusion between the witness.

84. For example IM accepted without difficulty that he had not seen the claimant apply the wax; he accepted wax was found at the end of the bourbon casks and was therefore in the workshop; GR accepted she had waited till after the new year to request GP records; she said the IM had seen the incident on CCTV when he intervened, however that was not IM's evidence. MM accepted he did not specifically invite the claimant to inspect the cask, although he indicated the claimant would have been free to accompany him had he wished; he accepted he did not see the wax; he accepted he was unaware of the grievance procedure or the claimant's live disciplinary warning; BB accepted that there were what he termed *procedural points* arising from the appeal where he considered the respondents could effectively have done better (the warning letter in IM's name and the delay in requesting GO records) although he did not consider anything turned in this.

85. The claimant sought to suggest that the decision to dismiss him had been predetermined. Ms Clark referred to the fact that GP records had not been requested in December when the claimant provided consent. The Tribunal however drew nothing from this. It was satisfied as to the explanation provided by GR as to why the records not requested, as set out in the appeal outcome letter. Further GR was not a decision maker in the dismissal process.

86. Nor did the Tribunal conclude that the fact that conduct in the invitation letter of 15 October was classified as serious misconduct but in the letter of 15 December was clarified as gross misconduct, gave rise to the inference that the outcome was predetermined. Ther Tribunal accepted GR explanation that

that both letters flagged a serious conduct issue which could led to dismissal. In any event neither GR, nor Tom Young who signed the letter of 15 December, was the decision maker.

The claimant

87. While it did not conclude that the claimant set out to deliberately mislead, the Tribunal formed the view that he was so convinced that he had been wronged by the respondents, that this coloured his perception of events and impacted his credibility.

88. There is not a great deal of material dispute as to what was said in the course of the investigatory and disciplinary meetings, with the exception of the meeting conducted on the 6 October. The claimant said accepted that everything in the minutes and statement he gave was correct, although he said his statement was not in his own words and he had been told what to write. He accepted that he had said he had faked casks before, but that he had only said this under duress. He said that he was subjected to threats and abusive language by IM and SL.

89. IM denied that the claimant was subjected to threats or abusive language. Given its view of IM's credibility generally the Tribunal accepted this. In reaching this conclusion the Tribunal also take into account that there was no need in terms of the disciplinary process for IM to put pressure on the claimant to say he had faked casks before. The single offense of deliberately faking a cask which could be passed on to a customer was the conduct which gave rise disciplinary procedure. Further, the claimant did not explain why he would have made this admission under duress. He accepted that everything else recorded in the meeting was accurate, and on balance the Tribunal was satisfied that he was not put under duress when he had admitted to previously faking casks when asked about this at the investigatory meeting of 6 October.

Submissions

90. Both parties provided oral submissions which Mr Gillespie supplemented with written submissions. In the interests of brevity these are not rehearsed here but are referred to below where relevant.

Consideration

Unfair Dismissal

91. Section 94 of the ERA established the right not to be unfairly dismissed.

92. Section 98 provides:

> "
>
> *(1) 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.*
>
> *(2) A reason falls within this subsection if it –*
>
> *…..*
>
> *(3) (b) relates to the conduct of the employee,*
>
> *…….*
>
> *(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*
>
> *(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and*
>
> *(b) shall be determined in accordance with equity and the substantial merits of the case.*"

93. The burden rests with the respondents to establish a potentially fair reason for dismissal under section 98 (1) of the ERA.

94. The starting point for consideration of fairness of a dismissal under section 98(4) of the ERA in a conduct dismissal is the guidance given in the well-known case referred to by Mr Gillsepie of *British Home Store v Burchill 980 ICR 303, EAT,* to the effect that:

(1)The employer must believe the employee guilty of misconduct;

(2) That the employer must had in mind reasonable grounds upon which to sustain that belief; and

(3) At the stage at which that belief was formed on those grounds, the employer had carried out as much investigation into the matter as was reasonable in the circumstances.

95. In applying the *Burchill* test the employer has the burden of establishing the reason for dismissal, which is the first limb of the test, and that thereafter in considering the second and third limb of the test the burden of proof is neutral.

96. The Tribunal reminded itself that an objective test of reasonableness, judged against the standards of a reasonable employer applies to the investigation as it does to the substantive aspects of the decision to dismiss. It also reminded itself that it must not substitute its view for that of the employer.

Reason for Dismissal

97. The Tribunal began by considering the reason for dismissal.

98. The burden of proof on employers at this stage is not a heavy one. The employer does not have to prove that the reason actually did justify the dismissal. The fairness of the dismissal for that reason is a matter which is assessed when considering the question of reasonableness.

99. A *'reason for dismissal'* has been described as *"a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss.*"

100. The Tribunal was satisfied that at the point when they took the decision to dismiss, and to upheld that decision, MM and BB both believed that the claimant had intentionally faked up a cask with a view to passing it out. Their grounds for believing this was that the claimant had admitted to applying wax to the cask; the advance state of repair of the cask at the point when IM intervened; and fact that applying wax was a work shortcut, and the claimant accepted this; and the fact claimant had been spoken to earlier on 6 October about his work output.

101. In considering this the Tribunal take into account the claimant's submission that MM believed the cask to be competed while AM confirmed that it was not and the claimant denied having completed the work on the cask. The Tribunal however did not consider anything material turned on this. The claimant accepted he had re-hooped the cask and that it was nearer completion than otherwise. IM said that the claimant was hammering down the hoops when he approached him; AM said the cask was a few minutes work away from completion; and MM said it had been completed. The clear sense of this is that

at the point when the IM intervened the cask was very nearly in its competed state and the fact that MM described it as competed was not a material point.

102. The Tribunal concluded that at the point when the claimant was dismissed these were facts known to MM and BB which caused the dismissal which and that being the case and that the respondents had overcome the burden of establishing a potentially fair conduct reason for dismissal.

Fairness of dismissal under Section 98(4)

103. The Tribunal then went on to consider the 2 and 3 limb of the Burchill test.

104. The Tribunal firstly considered the 3rd limb of the test; whether the respondents had reasonable grounds on which to sustain their belief in the misconduct for which the claimant was dismissed.

105. The Tribunal was satisfied that the there were reasonable grounds upon which the respondents could conclude the claimant had applied the wax to the stave of the cask. The claimant admitted doing so. Ms Clark submitted that this was not in dispute, and that the real dispute was what the claimant intended to do with the cask after that. It was here she submitted that the respondents were unable prove the claimant's intentions. She submitted GR accepted that they could not establish where the wax was collected from, or that the claimant had collected it purposely with a view to applying the wax. There was no evidence that the claimant had collected the wax. There was an important distinction between *premediated* and *deliberate.* There was nothing to prove the claimant's actions were premeditated. She submitted that MM relied on the fact that the claimant said he noticed the defect in the stave when he collected the cask, however the claimant had said at the disciplinary hearing that he noticed the defect when he was close to finishing the cask. Ms Clark submitted even if the respondents had grounds to conclude that the claimant's actions were premediated, they could not prove that he intended to pass the cask out. Ms Clark accepted that there was evidence and that the respondents were entitled to draw inferences but she submitted the inferences they drew were not supported by the evidence.

106. The respondents are entitled to draw reasonable inferences; they do not require to prove beyond reasonable doubt that the claimant was guilty of the misconduct for which he was dismissed, and in this case they did not require to prove beyond reasonable doubt what the claimant intended to do with the cask. The Tribunal considered that there was no material difference in terms of the language of *premediated* and *intentionally* faking up a cask.

107. The respondents are also reasonably entitled to reject an explanation advanced by an employee. MM did not believe the claimant's explanation that

he put wax on the cask just to see what it looked like and the Tribunal was satisfied that applying an objective rest he was reasonably entitled to do so. MM was reasonably entitled to reject the claimant's statement at the disciplinary hearing that he saw the defect in the stave after he re-hooped the cask. This statement was inconsistent with the claimant's earlier statement at the investigatory hearing of 12 December where he said that he noticed the defect in the stave when he collected the cask.

108. MM was reasonable entitled to conclude that the claimant's explanation made no sense; it was reasonable for him to have regard to the fact that the cask was in a finished or nearly finished state when IM had intervened, and that it was illogical for the claimant to have carried out this amount of work on the cask had he just been experimenting with applying wax, as he claimed. Further MM was reasonably entitled to conclude, given the prohibition on applying wax, that it made no sense for the claimant to waste his own and company time by experimenting with the wax in the way he claimed. MM was also reasonably entitled to take into account that applying wax was a work shortcut, which the claimant accepted, and the offense was discovered shortly after the claimant had been spoken to about his work output. The Tribunal was satisfied that MM was reasonably entitled to infer from the circumstances that the claimant intentionally faked up the cask with a view to passing it out. The Tribunal was therefore satisfied that the 3rd limb of the *Burchill* test had been satisfied and at the point when MM formed his belief in the conduct for which the claimant was dismissed he was entitled to do so.

109. The Tribunal then considered the third limb of the *Burchill* test, which was at the point they formed that belief the respondents had the respondents carried out as much investigation as was reasonable in the circumstances.

110. Ms Clark made a number of criticisms of the investigation process. The investigatory meeting of 6 October had been conducted by the IM who was the accuser. SL and IM put the claimant under duress at that meeting. She submitted the second investigation meeting of 12 December was unfair and contrary to the ACAS code; the claimant had no written notice of it and inadequate advance notice. GR should not have conducted it as she had previous involvement; the respondents should have appointed another manager and there was inadequate investigation into why this was not done. By the time of the appeal the cask had been removed from quarantine; BB could not inspect it or the wax; MM did not see the wax; the claimant was not invited to see the cask; the claimant was not provided with the CCTV footage which IM had the benefit if seeing; at the appeal BB did not establish that claimant had not seen the CCTV footage or the cask or the wax.

111. What the Tribunal has to consider is the reasonableness of the investigating which was caried out, not whether a different investigation or an investigation

which the claimant considered was more appropriate could have been conducted.

112. There is no requirement on an employer to be given advance notice or written notice of an investigatory meeting. It was not unreasonable for the respondents to pause the disciplinary proceedings against the claimant pending the completion of his grievances, particularly as he was complaining about his treatment at the initial investigatory meeting.

113. The grievance about the conduct which the claimant alleged took place on about on 6 October was not upheld, and it was not unreasonable for the respondents to restart the investigation. Nor was it unreasonable for them to ask the claimant to attend a meeting on 12 December on short notice. By that time the process had been delayed by some time and the claimant was on notice that the investigation process would resume after the completion of the grievance.

114. It was not unreasonable that GR conducted this investigation. The Tribunal accepted that the respondents had a limited number of employees in suitable management positions to deal with the disciplinary/ grievance process. Further the claimant did not raise any issues about GR dealing with it at the time and there was nothing before the Tribunal to suggest that the extent of her previous involvement rendered it unreasonable for her to carry out the investigation.

115. The claimant accepted that he applied the wax which was the same colour as the cask to the cask. He accepted that he had got to the stage of rehooping the cask. He accepted that he had been spoken to that morning about his work output and that applying wax was a work shortcut. That being the case, the main conduct on which the respondents relied in reaching their conclusions as to the misconduct they found, was admitted. In light of that it could not be said that the fact that the claimant did not examine the cask, or inspect the wax or view the CCTV footage; or that MM did not see the wax; or that BB did not see the cask and the wax and did not check it if the claimant had done so or viewed the CCTV footage rendered the investigation unreasonable.

116. It was not unreasonable for BB to conclude that IM's error as to time of the event in his answered to GR questions was on account of an error in the time on the CCTV footage, but that this did not render his evidence unreliable, given the extent to which the conduct in question was admitted by the claimant.

117. MM did not investigate the circumstances which the claimant alluded to involving JK in the course of this investigatory meeting with GR. The claimant did not specifically raise this at the disciplinary hearing with MM, and there was no clear evidence as to what was contained in the Polly pocket which the claimant provided to MM. In any event to the extent that MM acted

unreasonably in failing to address this, was remedied at appeal by BB. He took account of the claimant's position regarding JK's circumstances and how he was treated in comparison to the claimant in considering the fairness of the decision to dismiss at the appeal stage. BB had some personal knowledge of what had occurred with JK; it was reasonable for him to take this into account; and it was also reasonable for him to ask GR about it as she had dealt with the JK's disciplinary hearing.

118. The Tribunal was satisfied that both GR and BB gave a truthful account of what they understood JK to have done, which was to deliberately damage a stave in a cask, after the cask had been sent back to him for failing to pass, and that he did this so that the cask would be destroyed and he would avoid having to do the work needed to repair it properly, thus avoiding work. The Tribunal is supported in this conclusion in that it was also IM's evidence that this is what had occurred.

119. The Tribunal was satisfied that at the point when the respondents formed their belief in the conduct for which they dismissed the claimant the had carried out an investigation which was reasonable in all the circumstances.

Sanction of Dismissal

120. Having reached thus conclusion the Tribunal went on to consider the reasonableness of the sanction of dismissal. In doing so it reminded itself of the guidance given in case of ***I*celand Frozen Foods Ltd v Jones 1983 ICR 17, EAT**. What was said in that case was that:

'We consider that the authorities establish that in law the correct approach for the… tribunal to adopt in answering the question posed by [S.98(4)] is as follows:

(1) the starting point should always be the words of [S.98(4)] themselves;

(2) in applying the section [a] tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the… tribunal) consider the dismissal to be fair;

(3) in judging the reasonableness of the employer's conduct [a] tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;

(4) in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another;

> *(5) the function of the… tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.'*

121. The first matter which the Tribunal considered was the claimant's submission that in dismissing him the respondents treated him inconsistently with JK who had been guilty of the same misconduct.

122. The Tribunal considered whether the respondents decisions in the claimants and JK's case were made in truly parallel circumstances.

123. The Tribunal concluded that the respondents found that both the claimant and JK had *faked* a cask. There were however differences in the actual conduct they found each employee guilty of and the consequences of that conduct.

124. It was found that the claimant faked a cask in order to make it look as if he had repaired it; this was with a view to passing it on, with the consequence that the claimant could be paid and for this and the cask could be passed on to a customer, which potentially had adverse and serious consequences for the respondent's and the customers business.

125. This was in contrast to JK was found to had damaged the cask in order that he could avoid repairing it; that meant he would not be paid for the cask and there was not the same potential for damage to a customer's or the respondents business as a result of his actions. KJ received a warning.

126. The Tribunal was satisfied that although the term *faking a cask* was used in both sets of disciplinary proceedings, these differences meant that the circumstances of the claimant and JK were not truly parallel. The claimant stood to gain from his actions while JK did not. There was a potential for serious adverse consequences for the respondents from the claimants action which did not exist as a consequence of JK's actions. In these circumstances the fact that the claimant and JK were subjected to different disciplinary sanctions did not render the decision to dismiss one which fell outside the band of reasonable responses.

127. The Tribunal considered the factors which MM took into account in deciding to dismiss. These included that that the claimant had admitted to having faked casks before at the first investigation meeting. The claimant had in fact made this admission ; he had been provided with a copy of his statement admitting this and the notes of the minutes of the 6 October meeting on the 7th of October. He had not however been provided with these documents specifically in advance of the disciplinary hearing which MM conducted.

128. It was the claimant's position that he had made this admission under duress, however this was not explored in the course of the MM's disciplinary hearing and MM was unaware of the claimant's grievances or that his complaint about this alleged conduct had been rejected.

129. To the extent that it was unreasonable for MM to have regard to the claimant's admission that he had previously faked casks, this was remedied at appeal. MM's letter of dismissal made no reference to the fact that he had taken the claimant's admission into account in deciding to dismiss. It was this dismissal letter which set out his reasons for the dismissal and it was these reasons which BB considered at the appeal. BB therefore did not take into account the claimant's earlier admission about faking casks previously in considering the fairness of the sanction of dismissal.

130. MM and BB were reasonably entitled to have regard to the nature of the conduct found on the part of the claimant; that the claimant knew that faking a cask was a serious matter and was misconduct; and that the claimant's actions could potentially have had very damaging consequences for their business. Having regard to these factors it could not be said that the decision to dismiss the claimant was one which fell out with the band of reasonable responses.

131. The Tribunal concluded that the dismissal was not unfair in terms of the ERA and the claim is dismissed.

Date sent to parties 05 October 2026