EMPLOYMENT TRIBUNALS

Claimant: James Giles

Respondent: EMS-FP&S Ltd

Heard at: Cambridge Employment (by CVP)

On: 8 October 2026

Before: Employment Judge David (sitting alone)

REPRESENTATION:

Claimant: Self-represented

Respondent: Mr. David Smith Group Director for EMS

JUDGMENT

1. The complaint of unfair dismissal succeeds.
2. No Polkey reduction shall be applied.
3. Any compensatory award shall be reduced by 50% to reflect contributory conduct.

SUMMARY REASONS

Introduction

4. The claimant was employed by the respondent until his dismissal on 26 November 2024.

5. Following the commencement of ACAS Early Conciliation on 25 February 2025, an Early Conciliation Certificate was issued on 21 March 2025. The claimant presented his claim to the Tribunal on 21 April 2025.

6. By ET3, the respondent resisted the claim. It contends that the claimant was fairly dismissed for misconduct after driving a company vehicle without wearing a seatbelt and whilst smoking or vaping. The claimant contends that his dismissal was unfair because the disciplinary process lacked independence, relevant matters were not properly investigated, standards were enforced inconsistently and the respondent relied on informal management records that were not disciplinary warnings.

7. Sworn witness evidence was given by the claimant, his witness Mr Brogan Kitze, and the two respondent witnesses, Mr Daniel Raiment and Miss Joey Miller.

Issues

8. The Tribunal was required to determine:

   8.1. whether the claim was presented in time;
   8.2. the reason for dismissal;
   8.3. whether the respondent had:

      8.3.1. a genuine belief in the claimant's misconduct;
      8.3.2. reasonable grounds for that belief; and
      8.3.3. carried out as much investigation as was reasonable in the circumstances;
   8.4. whether the respondent acted reasonably in treating the misconduct as a sufficient reason for dismissal;
   8.5. whether dismissal fell within the range of reasonable responses;
   8.6. whether any Polkey reduction should apply.
   8.7. if unfair, whether any reduction should be made for contributory conduct; and

Preliminary Issue

9. Prior to the commencement of evidence, an issue arose concerning witness statements. The respondent sought to rely upon revised versions of the witness statements of Daniel Rayment and Joey Millar that were in the bundle. The claimant objected and submitted that the originally exchanged statements should be used. I refused the respondent's application to rely upon the amended statements and directed that evidence be given by reference to the witness statements that had been simultaneously exchanged by the parties on 6 October 2026. I refused the application because the amended statements were produced after the exchange deadline, contained amendments, and no satisfactory explanation was provided for the late changes.

10. Copies of those witness statements were sent to the tribunal by email and were used.

11. The respondent confirmed that it did not intend to call Ms Archer (who had been previously identified as a respondent witness) to give evidence or rely upon her statement.

Jurisdiction

12. The respondent initially asserted in its ET3 that the claim had been presented out of time and invited the Tribunal to strike it out. That argument was not pursued at the final hearing.

13. The claimant's employment terminated on 26 November 2024. ACAS Early Conciliation commenced on 25 February 2025 and concluded on 21 March 2025. The ET1 was received on 21 April 2025.

14. I find that the claim was presented in time.

Findings of Fact

<u>The Misconduct Allegation</u>

15. The respondent received evidence from the police, including a Notice of Intended Prosecution and a photograph showing the claimant driving a company vehicle.

16. The claimant accepted that he was the driver shown in the image. He accepted that he had not been wearing a seatbelt and that he had been vaping whilst driving.

17. The respondent regarded those matters as serious misconduct and commenced disciplinary proceedings.

<u>Independence of the Disciplinary Process</u>

18. I accept the claimant's evidence that he genuinely believed that Joey Millar lacked impartiality. Whilst I do not find deliberate bias on the part of Ms Millar, I conclude that her previous involvement in matters concerning the claimant created an appearance of partiality and that a reasonable employer of the respondent's size ought to have appointed an independent manager.

19. I find that the claimant’s belief arose from a number of previous interactions between them, including informal discussions issued in April 2024, a disagreement concerning use of a company vehicle and matters concerning a hospital appointment.

20. With regard to the hospital appointment incident, where the evidence differed, I preferred the claimant's account. Ms Millar was unable to recall the incident. I therefore find that, despite having informed Ms Millar in advance of a hospital oncology appointment, the claimant was subsequently told that he could not attend because of the disciplinary hearing.

21. I find that the respondent was a substantial employer operating multiple sites and employing approximately 150 staff. In those circumstances it would have been reasonably practicable to appoint an independent manager to investigate the allegations and a separate independent manager to determine disciplinary sanction.

Informal Discussions

22. On 24 April 2024 the claimant received two records that were noted on his file described as informal notes. These notes were the record of discussions that were expressly stated not to be disciplinary warnings. Nevertheless, they remained on the claimant's file and were relied upon as part of the background to his dismissal.

23. In evidence Miss Miller said such notes were kept permanently on a person's file, and they were therefore permanent entries on the claimant's personnel record. I find that informal management discussions, despite not being disciplinary sanctions, remained permanently on the claimant's personnel file and were taken into account during the dismissal process.

Health and Safety Concerns

24. I find that genuine health and safety concerns existed within the workplace. I accept the evidence of the claimant and Brogan Kotze that managers operated forklifts without seatbelts, failed to wear PPE and engaged in conduct inconsistent with the standards relied upon by the respondent against the claimant.

25. I also note that Daniel Rayment accepted that there were health and safety concerns requiring attention.

26. Other members of staff were involved in health and safety breaches of comparable seriousness. Whilst not identical comparators, they were capable of providing useful context when considering the consistency of the respondent's approach to health and safety breaches.

27. I find that they and members of management committed significant health and safety breaches. Those breaches largely went unchecked.

28. There was no evidence that managers received disciplinary sanctions, retained file notes or equivalent documented management action comparable to that imposed upon the claimant.

29. The claimant received documented management action for comparatively minor matters, such as drinking tea and vaping while waiting for items for delivery to arrive, whereas managers committing more serious health and safety breaches received no equivalent sanction.

30. I therefore find that workplace standards were enforced inconsistently.

Handbook and Policies

31. The claimant maintained throughout that he had not received the employee handbook, driver's handbook or relevant workplace policies. I accept that evidence. Whilst the claimant signed employment documentation, I am not satisfied that this demonstrates that he was provided with the handbook itself. I therefore find that the claimant did not receive the staff handbook.

32. However, I also find that the claimant knew, or ought reasonably to have known, that he was required to wear a seatbelt while driving and that smoking or vaping whilst driving a company vehicle was inappropriate.

Relevant Law

33. Pursuant to section 98 Employment Rights Act 1996, the respondent must establish the reason for dismissal and that it was a potentially fair reason. In misconduct cases the Tribunal applies the principles in *Burchell* and considers whether the employer:
    - 33.1. genuinely believed the employee guilty of misconduct;
    - 33.2. had reasonable grounds for that belief; and
    - 33.3. carried out as much investigation as was reasonable in the circumstances.
    - 33.4. The Tribunal must then determine, pursuant to section 98(4) Employment Rights Act 1996, whether dismissal fell within the range of reasonable responses open to a reasonable employer.

Application of the Law to the Facts

Reason for Dismissal

34. I find that the principal reason for dismissal was conduct. In particular, the claimant was dismissed because the respondent believed that he had driven a company vehicle without wearing a seatbelt and whilst smoking or vaping.

Conduct is a potentially fair reason for dismissal within section 98(2)(b) Employment Rights Act 1996.

Genuine Belief

35. I am satisfied that the respondent genuinely believed that the claimant had committed the misconduct alleged. That belief was based on independent police evidence and the claimant's admissions. The first limb of the Burchell test is satisfied.

Reasonable Grounds

36. I am also satisfied that the respondent had reasonable grounds for that belief. The respondent was entitled to rely upon the police photograph and the claimant's admissions. The second limb of Burchell is satisfied.

Investigation

37. I am not satisfied that the respondent carried out as much investigation as was reasonable in the circumstances. Whilst the essential misconduct was admitted, the claimant raised matters capable of affecting sanction and the overall fairness of dismissal, including allegations of inconsistent enforcement of health and safety requirements, differential treatment by managers and concerns regarding the independence of the disciplinary process. Those matters were not investigated adequately.

38. The third limb of Burchell is therefore not satisfied.

Procedural Fairness

39. For the reasons already set out in my findings of fact, I conclude that the disciplinary process lacked sufficient independence.

40. I also conclude that the respondent relied upon informal management records which were not disciplinary warnings, but which effectively remained permanently on the claimant's file.

41. The appeal did not involve any meaningful reconsideration of the claimant's concerns regarding consistency of treatment, the permanence of the informal notes, or the independence of the original process. Therefore, I am not satisfied that the appeal process cured those deficiencies.

42. There is a significant inconsistency between the ET3, which stated that no evidence could be found to support the claimant's concerns, and the evidence of

Daniel Rayment that health and safety concerns did exist. That inconsistency was never satisfactorily explained.

43. I therefore find that the appeal did not rectify the procedural shortcomings present in the disciplinary process.

Range of Reasonable Responses

44. Differential treatment is not a standalone cause of action, but it is relevant to the question of fairness. I have found that workplace standards were not applied consistently and that managers who committed significant health and safety breaches were not shown to have received comparable sanctions. That inconsistency is a significant factor when assessing the reasonableness of dismissal.

45. I accept that the claimant's misconduct was serious. He was driving a company-branded vehicle, failed to wear a seatbelt and admitted the misconduct.

46. However, I also have regard to the following factors:
    46.1. the claimant had approximately two years' service;
    46.2. he had no formal disciplinary warnings;
    46.3. he had not received the handbook relied upon by the respondent;
    46.4. the investigation was inadequate;
    46.5. the disciplinary process lacked independence;
    46.6. reliance was placed on informal records which were not disciplinary sanctions; and
    46.7. workplace standards were enforced inconsistently.

47. Taking those matters together, I conclude that dismissal fell outside the range of reasonable responses open to a reasonable employer.

48. The dismissal was unfair.

Conclusion on Liability

49. The complaint of unfair dismissal succeeds.

Polkey

50. I am not persuaded that dismissal would probably have occurred had a fair procedure been followed. A reasonable employer conducting a genuinely independent disciplinary process, investigating the claimant's concerns about inconsistent enforcement of workplace standards and taking account of his disciplinary record, particularly given the absence of formal warnings, could

reasonably have concluded that a final written warning, rather than dismissal, was appropriate. I am therefore unable to identify a percentage chance that dismissal would have occurred in any event.

51. Accordingly, I make no Polkey reduction.

Contributory Conduct

52. The claimant was guilty of culpable conduct.

53. He drove a company vehicle without wearing a seatbelt and vaped or smoked whilst driving.

54. That conduct materially contributed to his dismissal.

55. I consider a reduction of 50% to be just and equitable.

Judgment

56. The complaint of unfair dismissal succeeds.

57. Any compensatory award shall be reduced by 50% to reflect contributory conduct.

58. No Polkey reduction shall be applied.

Approved by:
Employment Judge David
16 October 2026

Judgment sent to the parties on:
29 October 2026
For the Tribunal:

Note
Reasons for the judgment were given orally at the hearing. Written reasons will not be provided unless a party asked for them at the hearing or a party makes a written request within 14 days of the sending of this written record of the decision

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