EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000043/2026

Hearing held in Edinburgh by CVP on 15 September 2026

Employment Judge R Mackay

Ms I Gabrysiak — **Claimant**
In Person

Simply Solutions (Europe) Ltd — **Respondent**
Represented by:
Ms Z Sajjad,
Tribunal Paralegal

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The claimant's claim for wrongful dismissal succeeds and the respondent shall pay to the claimant the sum of **THREE HUNDRED AND TWENTY THREE POUNDS AND EIGHT PENCE (£323.08)**. This is the net sum which the claimant is entitled to receive. The respondent shall be liable for any income tax or national insurance contributions which may be due on the payment.

2. The claimant's claim for a failure by the respondent to provide a statement of particulars succeeds and the respondent shall pay to the claimant the sum of **ONE THOUSAND EIGHT HUNDRED AND FORTY SIX POUNDS AND SIXTEEN PENCE (£1,846.16)**. This sum is payable to the claimant without deduction of income tax or national insurance contributions.

REASONS

Introduction

1. The claimant initially brought a claim for unfair dismissal. It was agreed, however, that she did not have the necessary service in order to bring such a claim. That claim was, accordingly, dismissed.

2. The remaining claims are for breach of contract (notice pay) and a failure to provide a statement of particulars in accordance with Section 1 of the Employment Rights Act 1996 (**"ERA"**).

3. For the breach of contract claim, it is accepted that no notice was paid to the claimant on her dismissal. The respondent's position is that, having been dismissed for gross misconduct, the claimant was not entitled to notice.

4. The respondent produced a bundle of documents, not all of which were referred to at the hearing. Evidence for the respondent was taken from the claimant's line manager, Ms Stacey Kerr, and her second line manager, Mr Mark McPhillips.

5. The claimant gave evidence on her own behalf.

6. Where disputes in evidence arose, which are relevant to the Tribunal's determination, these are identified and resolved in the Findings in Fact section which follows.

Findings in Fact

7. The respondent is a facilities maintenance company. It provides maintenance services to a range of clients including residential care homes and children's care facilities. It engages sub-contractors to whom it passes repair and maintenance work as appropriate. Its services are operated on a 24-hour basis.

8. The claimant was employed for approximately 18 months before her dismissal. Her role was Out of Hours Helpdesk Administrator. She worked from home and her role was to be available for emergency calls and, where appropriate, arrange attendance of contractors to carry out works, track ongoing jobs and maintain records of them. When on duty, she was the sole person in the respondent performing the function.

9. On commencement of employment, the claimant had a period of training during the dayshift. Thereafter, she operated largely on her own. During the period of her employment, she had a number of different line managers. On more than one occasion, she requested additional training but this was not provided.

10. Prior to the events leading to her dismissal, she received no criticisms of her performance or conduct.

11. Where an emergency call arose, the claimant's obligation was to log the job on the computer system. Different clients have different service level agreements in terms of the speed of response.

12. Once a job is logged, if it is an emergency, the claimant had responsibility for dealing with it. If a contractor was required, it was her responsibility to identify an appropriate one and keep the client informed.

13. Ms Stacey Kerr took over as the claimant's line manager in March 2025. She worked on the day shift. From the start of her employment until 30 April 2025, she did not have any contact with the claimant.

14. The first interaction between the claimant and Ms Kerr was a request by the claimant for a day's holiday. Ms Kerr responded to say that she could not approve it. The claimant questioned this and asked to be provided with a contract as she wanted to understand the basis on which holidays would be approved. A meeting took place in May during which the issue was discussed. A dispute in the evidence arose as to what happened in relation to the contract. The respondent's witnesses' position was that a contract was provided to the claimant. The claimant disputed this. The claimant's evidence is preferred. As late as the appeal stage against her dismissal (see below) she is still recorded as complaining about not having been provided with a contract or statement of particulars.

15. On the morning of 24 September, Ms Kerr listened to a recording of an emergency call from the previous evening when the claimant was on duty. The client had reported a break-in and requested assistance. The claimant had logged the call and contacted an engineer. The engineer had not responded. The matter was passed to the dayshift to deal with. Ms Kerr's evidence was that she felt the claimant should have done more to chase the engineer and if the first one contacted was not responding, she should have contacted another.

16. Although Ms Kerr's position was that a vulnerable client was left on the street, the Tribunal preferred the evidence of the claimant that the client was inside the premises and was secure pending the attendance of an engineer.

17. The client did not complain about the incident. The respondent did not follow up with the client to offer any apology for any failure on its part.

18. Ms Kerr's evidence was that she then looked back over previous evenings to listen to other calls where the claimant had been on duty. She described having identified other deficiencies. Ms Kerr identified another incident where she felt the claimant had not complied with procedures. A care home contacted the claimant out of hours to report raw sewage in its kitchen. The claimant logged the call. She contacted an engineer who attended and resolved the problem. He advised that further work would be required in due course. The claimant logged that to be actioned subsequently. The following day the issue re-emerged and had to be dealt with again. The criticism of the claimant by Ms Kerr was that she had failed to call the client to check that the matter had been resolved rather than simply taking the word of the engineer.

19. Although Ms Kerr's evidence was that the care home incident pre-dated the the break-in incident, she accepted under cross-examination that she was wrong and that the care home incident took place on 27 September 2025 and the break-in incident took place on 23 September.

20. Ms Kerr produced an investigation report which outlined the two issues referred to above as well as a number of other suggested deficiencies in the service provided by the claimant. She did not in her evidence rely on any of the other issues.

21. By letter dated 1 October 2025, the claimant was invited to a disciplinary hearing by Ms Kerr. The allegations against her were as follows:

    - Work avoidance: repeated failure to perform assigned duties, avoidance of core responsibilities, and lack of engagement with essential tasks, despite clear expectations.

    - Damage to business brand: conduct or communications that have negatively impacted the company's reputation, including not tracking emergency jobs appropriately due to the time the jobs have came [sic] in. Not ensuring emergency jobs are attended to & clients updated due to the time the jobs have came [sic] in causing massive client complaints due to the service they have received.

22. The claimant was informed of her entitlement to be accompanied by a work colleague or trade union representative. She was informed that the allegations were classed as gross misconduct.

23. A disciplinary hearing took place on 3 October 2025. This was chaired by Ms Kerr. The claimant chose not to be accompanied.

24. In relation to the two principal incidents (the care home and the break-in), the claimant did not accept that she had been at fault. In relation to some of the other issues raised by Ms Kerr, she confirmed that she may have made mistakes and she apologised for that. She indicated a desire to improve and for further training. She highlighted the fact that there had been no previous issues with her work. She sought confirmation as to whether there had been any complaints. Ms Kerr was not able to answer that question.

25. By letter dated 7 October 2025 from Ms Kerr to the claimant, the termination of the claimant's employment was confirmed.

26. The allegations of work avoidance and brand damage were said to have been substantiated and to amount to gross misconduct. The decision to dismiss with immediate effect was communicated.

27. The claimant was given the right to appeal against the decision to Mr Mark McPhillips, her second line manager. By email later that day, she did so, setting out in a separate document a number of grounds of appeal.

28. The first ground of appeal was that the claimant had not been provided with a signed contract or written terms of employment which she described as a statutory requirement under ERA. She said that this lack of clarity on her rights and obligations had placed her at a disadvantage throughout her employment and the disciplinary process.

29. By letter dated 10 October 2025, the claimant was invited to an appeal hearing by Mr McPhillips. A hearing took place on 14 October 2025.

30. In response to the claimant's complaint about not having a contract of employment, he referred to one having been provided to her. He was not able to explain why, had that happened, the claimant was still referring to the absence of a contract at the appeal stage.

31. In his evidence, Mr McPhillips gave differing accounts from both Ms Kerr and the claimant as to what happened in the two principal incidents. In the incident concerning the break-in, he described the claimant as having done nothing at all. When it was put to him that even on Ms Kerr's evidence, the claimant had complied with some of the required procedural steps, he responded to say that he could not recall the specifics.

32. In relation to the care home incident, his evidence was again that the claimant had materially failed in her duties, leaving the client with an unresolved sewage problem. When it was put to him that on Ms Kerr's evidence she had in fact done everything other than make a courtesy call to the client, he was not able to offer an explanation for his evidence.

33. When it was put to him that the recurrence of the problem did not come up until the following day, he said that he was not in a position to answer.

34. In response to a question as to what evidence on reputational damage existed, Mr McPhillips was not able to point to anything concrete.

35. In response to questions from the claimant about the lack of support and training given to her, Mr McPhillips stated that he could not answer.

36. He did not uphold her appeal and confirmed that in writing.

Relevant Law

Wrongful Dismissal

37. For a breach of contract claim, the Tribunal must consider, on the balance of probabilities, whether there was an actual repudiation of the contract by the

employee. It is not enough for an employer to prove that it had a reasonable belief that the employee was guilty of gross misconduct to defeat such a claim.

38. The EAT in ***British Heart Foundation v Roy UKEAT/0049/15*** set out the distinction between a claim of unfair dismissal and wrongful dismissal as follows:

"*Whereas the focus in unfair dismissal is on the employer's reasons for that dismissal and it does not matter what the Employment Tribunal thinks objectively probably occurred, or whether, in fact, the misconduct actually happened, it is different when one turns to the question […] of […] wrongful dismissal. There the question is, indeed, whether the misconduct actually occurred. In a claim for wrongful dismissal the legal question is whether the employer dismissed the Claimant in breach of contract. Dismissal without notice will be such a breach unless the employer is entitled to dismiss summarily. An employer will only be in that position if the employee is herself in breach of contract.*"

39. In considering whether the employee is in breach, the conduct "*must so undermine the trust and confidence which is inherent in the particular contract of employment that the [employer] should no longer be required to retain the [employee] in his employment.*" ***Neary and anor v Dean of Westminster 1999 IRLR 288; Briscoe v Lubrizol Ltd 2002 IRLR 607, CA***.

40. Where there is a failure to provide a statement of particulars in accordance with Section 1 ERA, the Tribunal may make an award of two or four weeks' pay in accordance with Section 38 of the Employment Act 2002.

Submissions

41. The respondent's representative submitted that the Tribunal should find that the claimant was guilty of gross misconduct as advanced by the respondent. She also invited the Tribunal to find that the claimant had been provided with a statement of particulars, thus inviting the Tribunal to dismiss both claims.

42. In relation to the ACAS Code of Practice, she submitted that there had been no breach, the claimant having been informed of the allegations, been provided with evidence, having attended a disciplinary hearing and having been given a right of appeal.

43. For herself, the claimant submitted that nothing she did could in any way amount to gross misconduct. She accepted that she may have made some errors but these were performance issues which were due to a lack of training and supervision and could not amount to gross misconduct.

44. She also invited the Tribunal to accept her evidence that she did not receive an employment contract at any time. She asked the Tribunal to increase the

awards made by virtue of a failure on the part of the respondent to comply with the ACAS Code of Practice.

Decision

45. The Tribunal first considered whether the claimant had, as a matter of fact, been guilty of gross misconduct entitling the respondent to dismiss without notice. It took into account the differing reasons for dismissal given by the respondent. The dismissal letter referred to work avoidance and causing reputational harm. There was no evidence whatsoever of the latter and neither witness meaningfully maintained that position before the Tribunal itself.

46. In relation to work avoidance, leaving aside the question as to whether that could in any event amount to gross misconduct, there is no evidence that the claimant was in fact guilty of work avoidance.

47. In relation to the two key incidents for which the claimant was dismissed, she may have failed in some respects to comply with complete procedural requirements, but this was by reason of her inexperience, lack of supervision, and inadequate training. In relation to the incident at the care home, it is difficult to see any criticism of the claimant's performance or conduct at all.

48. The respondent's witnesses sought to embellish the seriousness of these issues in ways which were not supported by each other or by the evidence of the claimant and the documentary evidence. It was clear to the Tribunal that the respondent was exaggerating both the seriousness and the consequences of the issues. The Tribunal concluded therefore that there was no gross misconduct on the part of the claimant, and nothing to undermine the duty of trust and confidence. The circumstances fall very substantially short of that high bar.

49. As a result, the claimant is entitled to notice. Statutory notice for the claimant given her length of service is one week amounting to the agreed sum of £323.08.

50. The Tribunal went on to consider whether having been successful in her primary claim, she should receive an award for a failure to provide a statement of particulars under Section 1 of ERA. For the reasons set out above, the Tribunal preferred the evidence of the claimant that she did not receive a statement at any time. Her claim, accordingly, succeeds. In determining whether to award two or four weeks' pay, the Tribunal had regard to the fact that the claimant on more than one occasion asked for a contract but was not provided with one. It also had regard to the fact that she found it to her detriment both in relation to holiday procedures and the disciplinary process

itself. For those reasons, the Tribunal decided to award four weeks' pay amounting to £1,846.16.

51. Finally, the Tribunal assessed whether there should be an uplift for a failure to comply with the ACAS Code of Practice. Notwithstanding that the reason for the dismissal fell materially short of gross misconduct, the Tribunal did have regard to the fact that the claimant had less than two years' service and is not entitled to benefit from the protections against ordinary unfair dismissal.

52. The respondent did comply with the core elements of the Code of Practice in carrying out an investigation, putting the investigation report to the claimant, inviting her to a disciplinary hearing, giving her the right to be accompanied, holding the disciplinary hearing, giving her the outcome in writing, offering her an appeal, holding the appeal, and giving the outcome in writing. On that basis, there was no procedural non-compliance and no ACAS uplift is awarded.

Date sent to parties 20 October 2026