EMPLOYMENT TRIBUNALS

Claimant: **Jason Ellis**

Respondent: **HW Martin Waste Limited**

Heard at: **Bury St. Edmunds Hearing Centre (in public; by video)**

On: **27 and 28 October 2026**

Before: **Employment Judge Illing**

Representation
Claimant: Mrs N Ellis (Claimant's mother)
Respondent: Ms L Kaye (Counsel)

RESERVED JUDGMENT

1. The Claimant's claim for unfair dismissal is not well-founded and is dismissed.

REASONS

Procedural history

1. Early conciliation for this claim began on 27 May 2025 and ended on 30 June 2025

2. This claim was issued on 28 July 2025 and is a claim for unfair dismissal.

3. This claim was originally listed for hearing on 06 and 07 January 2027. Following an application by the Respondent, the hearing was brought forward and re-listed for 04 and 05 June 2026. This June hearing was adjourned at late notice because of the lack of judicial availability.

4. The claim was relisted for 27 and 28 October 2026. On 21 October 2026 the Respondent wrote to the Tribunal requesting a postponement. The reason for this was because a witness had only just informed them that he would not be in the Country for the hearing and intended on attending by video from Spain. The Respondent had made enquiries of the FDCO, which had confirmed that there was no permission for a witness to give evidence from Spain and specific permission would be required. It would also take 2-6 months to obtain that permission.

5. The application for adjournment was considered by REJ Foxwell on 26 October 2026 and refused.

6. At the outset of the hearing, the Parties were instructed to focus on liability. A bundle of 169-pages had been provided by the Respondent.

7. Witness statement evidence was provided by:

   7.1. Mr Jason Ellis

   7.2. Mr Barry Ellis

   7.3. Mr Mark Hobbs

   7.4. Ms Susan Miller

   7.5. Ms Nicola Ellis

   7.6. Mr Sam Gadeke

   7.7. Mr Wayne Harrold

   7.8. Mr Gavin Peace

Conduct of the Hearing

8. At the outset of the hearing, the list of issues as prepared by the Respondent's Counsel were discussed. The principles of unfair dismissal were explained to the Claimant's representative and having worked through the list, the draft list was agreed without any changes.

9. Prior to the hearing, the Claimant had made an application for specific disclosure. This included the following documents:

   9.1. Documentation in relation to Mr. B Ellis's (the Claimant's father) drug test in November 2025.

   9.2. A master list of all drug tests carried out.

   9.3. Photographic evidence in relation to the vials containing the Claimant's sample.

10. Having read the written submissions and considered the oral decisions, I

determined that the documents were either not relevant to the issues to be determined or had already been disclosed, albeit with names redacted. There was also photographic evidence within the bundle, which the Respondent asserted was the documentation being sought. I determined that further disclosure would be disproportionate, not only to the impact specific disclosure would have on this hearing, but also in relation to the disclosure of the names of those employees. It is not proportional, or in keeping with the overriding objective to require further disclosure.

Findings of fact for unfair dismissal

Background

11. I make my findings of fact on the balance of probabilities taking into account all of the evidence, both documentary and oral, which was admitted at the hearing. I do not set out in this judgement all of the evidence which I heard but only my principal findings of fact, those necessary to enable me to reach conclusions on the remaining issues. Where it was necessary to resolve conflicting factual accounts, I have done so by making a judgment about the credibility or otherwise of the witnesses we have heard based upon their overall consistency and the consistency of accounts given on different occasions when set against contemporaneous documents where they exist.

12. The Respondent manages a variety of waste and recyclable materials for households and businesses. It is part of a Group of Companies operating across the UK.

13. The Claimant was employed by the Respondent as a Site Manager at a household waste recycling centre at the Respondent's site in New Bradwell, Milton Keynes. The Claimant's commencement date was 27 April 2015 and he transferred to the Respondent by way of TUPE transfer on 01 September 2023.

14. In evidence the Claimant confirmed that his role and responsibilities included the following:

    14.1. That he was COTC qualified, in that he held a Certificate of Technical Competence. This was a qualification, with assessments every 2 or 3 years and, the Claimant explained, this qualified him to work at a recycling centre. Being qualified indicated that the Claimant had an understanding of the legal requirements at a recycling centre in addition to the environmental permits required.

    14.2. That he was the site manager and had responsibility for a number of employees and that a requirement of his role was to lead by example.

    14.3. That his duties were not just managerial but also practical. This included operating the following:

        14.3.1. JCBs

14.3.2. Forklift Trucks

14.3.3. Waste Excavators, which are large machines that compact waste known locally as “rubber ducks”.

14.3.4. Banksman duties, which is where the Claimant would control and direct the movement of vehicles on and across the site.

14.3.5. The Claimant was also responsible for the safe and efficient operation of the recycling centre day to day.

15. The Claimant accepted that he was in a safety critical role and that if not performed properly, there was the serious risk of injury to himself, a colleague or a member of the public.

16. The Respondent stated, and the Claimant accepted, that in accordance with its Drug and Alcohol Policy, it operates a zero-tolerance approach to drugs and alcohol. In evidence, the Claimant accepted that if an employee returns a non-negative result the Respondent would consider that the employee was under the influence of that substance.

17. The Respondent stated, and the Claimant accepted, that testing occurred in the following circumstances:

17.1. Pre-employment;

17.2. Unannounced random testing;

17.3. Post incident;

17.4. For cause, such as following a collision; and

17.5. Third party testing.

18. The Claimant confirmed in evidence that he had been tested approximately four times previously.

19. I find that the Respondent considered the Claimant to be in a safety critical role and required him to undertake drug and alcohol screening during his employment.

Contract of Employment

20. The Claimant signed a contract of employment with the Respondent and is dated 18 August 2023 and signed by the Claimant on 03 October 2023.

21. The contract contains the following:

14 Termination without notice

14.1 The Company may also terminate your employment with immediate effect without notice and with no liability to make any further payment to you (other than in respect of amounts accrued due at the date of termination) if you:

a. are guilty of any gross misconduct affecting the business of the Company or any Group Company:

23 Health and Safety

23.1 The Company will take all reasonably practicable steps to ensure your health, safety and welfare whilst you are at work. You must familiarise yourself with the Company's health and safety rules and fire rules and procedures. It is also your legal duty to take care for your own health and safety and that of your colleagues.

22. In evidence the Claimant accepted that he was aware of these clauses. He also accepted that a copy of the disciplinary policy is sent to all employees prior to their annual review.

Health and Safety Policy

23. The Respondent operates a Group Health and Safety Policy. The Policy, which was reviewed in June 2023 states as follows:

At page 16 of the policy:

Alcohol and Drugs

Group procedure: GRP-H&S-PRO0303005 Drugs and Alcohol

It is a condition of employment for all employees that no person reports to work under the influence of alcohol or drugs, consumes alcohol or drugs during working hours or is in the possession of alcohol or drugs during working hours.

At page 17 of the policy:

Prescribed and over the counter medications can have a range of adverse effects, such as impairing balance, judgment, alertness or causing a positive test result for drugs. Employees who purchase over the counter medicine or are prescribed medication by their GP or other medical professional must inform their supervisor or line manager so that a judgment can be made regarding their ability to carry out their normal duties.

24. The Claimant accepted in evidence that he was aware of this policy prior to his dismissal. He also accepted that by giving a non-negative test result, this would mean that that person was under the influence of that substance. He also accepted that a copy of this policy is sent to all employees prior to their annual review.

Drugs and Alcohol Policy – dated 23 July 2023

25. The Respondent operates a Drugs and Alcohol Policy, which I will refer to as D&A Policy. This states the following:

1. Purpose

……..Alcohol, drugs and other substances can have a strong negative effect on the brain and the body, impairing judgement and concentration and putting people at risk. Staff who misuse drugs or alcohol are more likely to take time off, display poor performance and increase the risk of accidents.

26. The Claimant accepted in evidence that he was aware of the D&A Policy before his dismissal.

27. The Policy specifically addresses CBD Oil and states:

6.1 CBD Oil

……

It's likely most of these products – even those called CBD oils – will be illegal to possess or supply. There is a good chance they will contain THC and may not be safe to use. THC is the main psychoactive component and the part that causes the "high" in recreational cannabis.

Health stores sell certain types of CBD. However, there's no guarantee these products will be of good quality.

Workers who take CBD oil must notify their line manager, who in turn should notify the company H&S Manager using form GRP-H&S-FOR-3-3-07b. Safety Critical workers who are subject to regular D&A screen must be aware that, if they use CBD Oil, that they may fail the D&A test and will be subject to the usual company disciplinary process.

28. I find that the policy warning concerning CBD products demonstrates the Respondent's wider concern regarding cannabis derivatives producing positive THC tests.

29. The Claimant stated in evidence that he was not aware of this clause or the requirement to disclose use of CBD Oil prior to his dismissal. I find that this clause formed part of a policy made available to the Claimant and which it was his responsibility to read.

30. The Policy further states:

7.2 In-House Testing Equipment and External Analysis

Drug testing will be undertaken using approved urine test kits in accordance with the manufacturer's instructions and training provided.

…

The kits will have the capability to test for ten drug types (as below) and to test the sample temperature to prevent the use of synthetic urine:

• Amphetamines

• Benzodiazepines

• Cannabis

• Cocaine •

Ketamine

• Opiates/Morphine

• Methadone

• MDMA (Ecstasy)

• Methamphetamines

• Tramadol

….

The test will be considered non-negative if it does not produce an indication line against one or more of the indicated drugs. Negative tests will produce an indication line against each of the indicated drugs.

…

D&A testers will use the Chain of Custody apparatus to send urine samples that have produced a non negative test to an approved independent laboratory for further analysis. Laboratories must be accredited to ISO/EIC 17025.

7.3 Non-negative test results

Companies should establish protocols for dealing with staff who have provided samples (urine or breath) that produced a non-negative result. This may involve suspension (pending laboratory confirmation of a test result), removal from site, redeployment and/or the instigation of disciplinary proceedings (refer to policy HWM-HR-POL-002 Group Disciplinary Policy and Procedure).

31. The Claimant confirmed in evidence that he was aware that a test could be required at any time. He also confirmed that the sample pots contained indicator strips within them and it was these strips that would change during the drug test. He also accepted that a copy of this policy is sent to all employees prior to their annual review. I find that the Respondent had made the Claimant aware of this policy.

Disciplinary Policy and Procedure

32. The Respondent operates a Disciplinary Policy and Procedure. The Claimant accepted in evidence that this document was sent to him prior to each annual review.

33. As examples of Gross Misconduct, within the non-exhaustive list the Respondent includes the following:

> • *Attending work under the influence of alcohol or non-medically prescribed, illegal or synthetic drugs or not informing management of taking prescribed drugs which may affect performance and/or behaviour.*

34. I find that the Respondent operated a detailed and comprehensive set of policies regarding health and safety. It operated its business in an environment where there was risk that an employee, other worker or member of the public could be injured if a safe system of work was not carried out. I find that the Respondent required its employees to comply with a D&A Policy to address that risk.

30 April 2025

35. On 30 April 2025 the Claimant was at the Respondent's New Bradwell site working as the Site Manager.

36. It is not disputed that Mr Joeseph Bunda (Contracts Manager) attended the site with Mr Ged Pearce and spoke to the Claimant, inviting him to take a random drug and alcohol test and the Claimant consented to be tested.

37. The Claimant was required to complete a form prior to giving a urine sample. This document provides consent for the test (Part A), which also allows for the declaration of any medication taken in the last month, the test results (Part B) and a declaration to be signed after completion of the test.

38. Within Part A, the declaration for medication is blank.

39. Within Part B, the test results have indicated the presence of Tramadol and Cannabis.

40. Within Part C the declaration is signed by Mr Bunda (Tester), Mr Pearce (Witness) and the Claimant (Donor). This declaration states:

> ***Part C – Declaration: To be completed on completion of the test and results recorded.***
>
> *All persons present at the time of the test shall sign below to confirm that the test results shown above are an accurate record of the test(s) carried out, the correct sampling process was performed, and any implications have been explained.*

41. The Respondent produced a photograph of sample bottles within a biohazard specimen transport bag, where the Claimant's name can be seen on the enclosed documentation.

42. The Claimant accepted in evidence that his sample tested positive for

cannabis.

43. This sample was sent to Medical Health and Education Limited, an independent laboratory for independent evaluation.

44. The sample was tested at the laboratory by Christopher Evans, the laboratory director (MHE). This was conducted on 01 May 2025 at 1640. This confirmed the following:

Overall Result: POSITIVE	*Refer to Current Service Level Agreement (V3) for Calibration Range, Uncertainty of Measurement Data and Acceptance Criteria for Validity Testing.*			
Drug(s) Tested For:	*Result:*	*Confirmation Cut-off (ng/mL):*	*Confirmation Method:*	*Quantitative Result (ng/mL):*
THC-COOH (Cannabis) (100µl)	*POSITIVE*	*15*	*LC-MS/MS*	*100*
Tramadol (100µl)	*Negative*	*100*	*LC-MS/MS*	

45. It also stated:

MHE Opinions and Result Interpretation: *Sample A and B in secure storage at MHE. The results of this analysis confirms the use of Cannabis, which is a controlled drug. The results of the analysis for Tramadol was NEGATIVE. The donor declared Venlafaxine, which is known to cross-react with the on-site Tramadol test on the urine drug test cups. This could explain the Tramadol reading on-site, which has now tested negative.*

46. This independent result was sent to the Respondent on 01 May 2025 at 1649 by email.

Investigation

47. On 02 May 2025 the Claimant was invited to a meeting with Mr Bunda. This was in relation to the failed drug test.

48. In evidence the Claimant accepted that he told Mr Bunda the following:

48.1. That he agreed that the sample had tested positive for cannabis.

48.2. That in response to the question "*Can you enlighten me how you think THC got into your system*" the Claimant replied:

> "*I was on holiday in Florida from 31st March to the 14th April 2025. The first week we were there we didn't get out because my nephew had chicken pox. The 2nd week we managed to get out and I think it was about 3-days before we flew home. We were walking around the shops, my wife wanted a new vape as she'd lost hers until we got home. We got a new vape and on the counter they had these colourful packs of Gummy Bears ("the Gummies"). We got 1 pack and her vape. I didn't open them until we got back to the villa later at night. I had them at the villa and a few were left. I was having them together with alcohol*."

48.3. The Claimant accepted that he went on as follows in response to a question by Mr Bunda about when he knew that the Gummies contained THC:

> "*the next morning as my wife wanted to have some and mentioned they did not smell right although the smell was not cannabis." He then confirms that the Gummies contained THC Oil and that he continued to eat them as he "assumed I would be alright*."

48.4. In evidence the Claimant accepted that he was aware of the D&A Policy and that he told Mr Bunda this. He also accepts that he understood his responsibilities as the Site Manager and that he is meant to set an example.

48.5. The Claimant confirmed in evidence that he apologised and that he did not plan to buy the Gummies. He stated that he should have stopped when he discovered they contained THC.

49. It is an agreed fact that the Claimant was suspended on full pay.

50. The Claimant confirmed in evidence that he did not raise any procedural issue with Mr Bunda. The Claimant signed the meeting notes.

<u>Disciplinary</u>

51. In evidence the Claimant confirmed that he received a written invitation to a disciplinary meeting. This letter stated the following:

The reasons for the meeting are to discuss allegations of:

• Failing a drug test.

• Putting yourself and others at risks due to you having cannabis in your system whilst at work.

• Breach of mutual trust and confidence

Specifically, the company operate random drug and alcohol tests, which returned a non-negative result when tested for drugs. The sample was then sent to the laboratory for verification. We have now received confirmation that

you had a positive result for cannabis. Being at work with cannabis in your system would have been a danger, not only to yourself but also others. These allegations could be considered, if proven, to be actions of gross misconduct.

52. The Claimant confirmed in evidence that the letter provided for the following:

52.1. That the Claimant had the right to be accompanied.

52.2. That the meeting would be chaired by Mr Wayne Harrold (Contract Manager).

52.3. That the Claimant remained suspended until the meeting.

52.4. That the misconduct might amount to gross misconduct.

52.5. That a possible outcome could be dismissal.

53. The Claimant confirmed in evidence the following:

53.1. That he had met with Mr Harrold on the 08 May 2025 via Teams.

53.2. That he had had the opportunity to be accompanied.

53.3. That he had received the laboratory results.

53.4. That he had bought and consumed the Gummies and that he had eaten them like normal sweets.

53.5. That he had known that the Gummies contained cannabis but that he had continued to eat them.

53.6. That he understood the D&A Policy.

53.7. That he was on prescribed medication (Venlafaxine)

53.8. That he said "*I've made my bed. Whatever outcome. Take on the chin. I'm sorry*".

53.9. That he had not raised any procedural issues with the test with Mr. Harrold.

54. The Claimant confirmed in evidence that he had received the letter dated 09 May 2025 from Mr Harrold. This stated:

During the meeting Wayne discussed the circumstances surrounding you testi ng positive for cannabis with you. You explained that during a holiday to Florida which was from the 31 March to the 14 April you had consumed gum mies containing cannabis. You stated that you were not initially aware of this but subsequently did become aware and continued to consume the gummies.

Subsequently you returned to work and did not notify anyone that you had co

nsumed the gummies. Following being elected for a random drugs test on 30 April your sample was analyzed by the laboratory and was found to have a re ading of 100 ng/mL which is significantly in excess of the confirmation cut off. You confirmed that you understood the company policy on the use of drugs, although you did query your declared prescription medication as a potential side effect is that it can cause sleepiness which you felt was like cannabis might. Wayne advised that you had been told not to operate machinery if your declared prescription medication affected you, which is a different situation to cannabis.

You expressed sorrow and stated that you liked your job and had come a long way to manage the site. You admitted that you had made a massive mistake.

55. Taking into account the Claimant's evidence, which is consistent with the written statement of Mr Harrold, I find that Mr Harrold believed that the Claimant had taken Gummies containing cannabis in the knowledge that that is what they contained. That the Claimant was aware of the D&A Policy and that the Claimant did not disclose the consumption of the Gummies before the test was taken. The Claimant did not tell Mr Harrold that he was not aware of the section of the D&A Policy in relation to cannabis oil.

56. Mr Harrold wrote that "*after reflection he confirmed with regret that it was his decision to summarily dismiss you as he found you guilty of the allegations. In accordance with the company disciplinary policy, such offences are deemed gross misconduct, and as you have been found guilty of gross misconduct you forfeit the right to pay in lieu of notice."*

57. The Claimant was given the right to appeal against this decision.

58. Taking into account the previous consistency of evidence, I find that Mr Harrold, on balance, did reflect on the whole circumstances before making a decision, which would also include mitigation.

Appeal

59. By email of 09 May 2025, the Claimant emailed Mr Adam Smith at the Respondent. Within the email the Claimant admits to consuming the Gummies, apologises and offers to be tested on a regular basis at his own expense.

60. In a further email dated 12 May 2025 the Claimant confirms that he wanted to appeal the decision to dismiss. He also stated the following:

60.1. That his only explanation for the failed test for cannabis was due to the Gummies. That this was his only failure in 12-years.

60.2. That he had requested a second test from Mr Bunda, which had been refused.

60.3. That he had conducted an independent test, that was clear.

60.4. That he was very sorry.

60.5. That he was willing to have a regular testing programme at his own cost.

60.6. That this was a silly oversight on his part and would not be repeated.

61. By email of 16 May 2025 Sarah Robson (HR manager) sent an invitation to an appeal meeting to the Claimant. The letter gave the Claimant the right to be accompanied and confirmed that the decision would be final. In evidence, the Claimant confirmed that he had received this invitation.

62. The Respondent appointed Mr Gavin Peace, Group Head of Human Resources to conduct the appeal.

63. Prior to the meeting Mr Peace reviewed the following policies and procedures:

63.1. Company meeting record sheets and process.

63.2. Disciplinary Policy and Procedure

63.3. D&A Policy

64. As part of his investigation prior to meeting the Claimant, Mr Peace states that he spoke to the Claimant's manager, Mr Joe Bunda (Contract Manager). He says that he was told by Mr Bunda that when the random drug testing was carried out the Claimant was the only individual selected. Mr Peace stated that only one operative is selected at a time for testing to ensure that the site remains operational.

65. The Claimant asserts that both he and a colleague, Mr Jorge Ribeiro were selected at the same time for random testing. He states that he and another colleague, Ged Pearce, were told to find Mr Ribeiro to tell him to come forward for testing. The Claimant also asserts that Mr Ribeiro could not provide a sample, i.e. was unable to urinate. In accordance with policy, Mr Ribeiro was asked to drink some water and wait 20-minutes.

66. Whilst waiting, the Claimant says that he was tested. Following his sample of urine testing positive, the Claimant says that Mr Ribeiro was not tested. The Claimant accepted in evidence that he did not raise this circumstance regarding Mr Ribeiro with Mr Peace during the appeal meeting.

67. I find that at the appeal, Mr Peace believed that only one operative would be tested at one time as this was the information he had been given by Mr Bunda and the Claimant had not said anything to require Mr Peace to make any further enquiries.

68. In considering the Claimant's assertions regarding Mr Ribeiro, even if the claimant's account regarding Mr Ribeiro is accepted, it would not materially affect the reasonableness of the employer's decision concerning the claimant's own positive laboratory-confirmed result.

69. As part of the meeting the Claimant stated "*I asked for a second test, Been tested quite a lot. Tramadol never came up*"

70. In evidence, the Claimant confirmed his admission to Mr Peace.

71. During the appeal meeting, the Claimant stated that the test might be wrong. Mr Peace asked for him to clarify and the Claimant confirmed that this was about the Tramadol reading.

72. In evidence Mr Peace confirmed that Tramadol was not the issue as this had been confirmed as a negative test by the laboratory, with a further explanation being due to a false reading because of the Claimant's prescribed medication. Mr Peace confirmed that the issue was with the cannabis result not the Tramadol and discussed the lab report with the Claimant.

73. Mr Peace also explained that the sample had had a second test, in that it had been tested at an independent laboratory and those were the results that were being discussed.

74. I accept that Mr Peace did not include the Tramadol reading as part of his decision. I find that Mr Peace believed that the sample had had a second test, which had confirmed the positive cannabis reading and the negative Tramadol reading.

75. I also find that the Claimant had told him that he was aware of the D&A Policy and that he was in a position of responsibility. I also find that the Claimant had told Mr Peace that he had continued to take the Gummies even after he discovered that they contained cannabis.

76. The Claimant did not tell Mr Peace that he was not aware of the section of the D&A Policy in relation to cannabis oil.

77. Mr Peace did not make a decision during the meeting. He stated in evidence that "*he wasn't looking for a reason to uphold the decision, he was looking to overturn it.*" He stated that he "*considered everything and when I looked at everything, the admissions, the consequences, I didn't think the mitigation was enough to overturn."*

78. I find that Mr Peace took everything the Claimant told him into account before making his decision.

79. The appeal outcome was sent to the Claimant in writing on 21 May 2025. This stated the following:

> The appeal hearing was regarding the dismissal, taken by the company on 08 May 2025 for:
>
> - *Failing a drug test.*
> - *Putting yourself and others at risks due to you having cannabis in your system whilst at work.*
> - *Breach of mutual trust and confidence*

Specifically, the company operate random drug and alcohol tests, which returned a non-negative result when you were tested for drugs; following which you were suspended on full pay. The sample was then sent to the laboratory for verification and following receipt of the results confirmation was received that you had a positive result for cannabis.

You did not have any specific grounds for your appeal, other than you were sorry and wanted to be given a second chance.

However, you did question the test, saying it was 'wrong' as you had also tested positive for Tramadol during the test too, but had not taken any. I read the laboratory report to you which explained:

"The results of the analysis for Tramadol was NEGATIVE. The donor declared Venlafaxine, which is known to cross-react with the on-site Tramadol test on the urine drug test cups. This could explain the Tramadol reading on-site, which has now tested negative".

On your own evidence, you had purchased Cannabis infused gummies whilst you were on holiday in Florida between the dates of 31 March and 14 April 2025. You were then tested two weeks after your return to work and still had a high level of cannabis in your system.

I noted to you that I had researched cannabis in Florida and explained that although several states within the US have legalized the use of cannabis, Florida is not one of them.

You claim in your appeal letter that you did not feel any effects from the gummies and thought they might just be a placebo. Clearly that wasn't the case, and further, you confirmed that the gummies stated that they contained cannabis, so it is reasonable to conclude that it was your intention to take the drug infused gummies.

You have asked for a second chance, but I am unable to overturn the dismissal. As you know, we have a zero tolerance towards taking controlled and illegal substances and should we start and make exceptions then it doesn't make the approach a zero tolerance one.

Procedural allegations

80. In evidence the Claimant stated that there were issues with the sample testing. These are within the list of issues:

80.1. That the sample had been contaminated as the Respondent processes some waste from a cannabis environment. In oral evidence, the Claimant explained that this was the risk of contamination by cannabis oil on his hands from the toilet, which was public and not cleaned. He also accepted that his hands had not contaminated the sample. The Claimant did not raise this as an issue during the investigation, disciplinary or appeal.

80.2. That the sample test was not witnessed by anyone other than Joeseph Bunda. I have considered the declaration on the consent form and find that this was a declaration by the tester, the witness and the donor that the proper procedure had been followed. The Claimant did not raise this as an issue during the investigation, disciplinary or the appeal.

80.3. That the Claimant had not seen his sample being disposed of. Again, I have considered the declaration on the consent form and find that this was a declaration by the tester, the witness and the donor that the proper procedure had been followed. The Claimant did not raise this as an issue during the investigation, disciplinary or the appeal.

80.4. That Joseph Bunda showed the results to Jorge and said the Claimant had failed the test which breached confidentiality. It was the Claimant's own evidence that Mr Rebeiro was present when the test result was revealed.

81. The Claimant has asserted in his claim that on the day he returned his keys (01 May 2025) to Mr Bunda, he asked for a second test, which was refused. The Claimant accepted in evidence that he did not tell Mr Harrold this. The Claimant confirmed in evidence that when a second test was discussed with Mr Peace, this was because of the positive initial test for Tramadol.

82. Further allegations were raised during the course of the hearing and in submissions, but these were outside of the pleaded allegations and the agreed list of issues. These included:

82.1. That the Claimant had asked for a second test, but that Mr Bunda had refused this despite others being allowed a second test.

82.2. That the Claimant was being treated differently to others, specifically Jorge Ribeiro and Barry Ellis.

82.3. That Jorge Ribeiro had been asked to have a test at the same time. As he was unable to produce a sample, Mr Ribeiro was required to drink a glass of water and wait 20-minutes. The Claimant was then tested in the intervening period and when his test was positive, Mr Ribeiro was then not tested.

82.4. That Mr Ellis had a positive Tramadol test but was not suspended or dismissed in November 2025. The Claimant confirmed in evidence that Mr Ellis has a prescription for Tramadol and that this had been declared to the respondent in accordance with the D&A Policy.

82.5. That the Claimant had not signed the sample seal and that there are no photographs of the sample vial.

82.6. That the Claimant had not completed the donor consent form, although he accepted that he had signed the declaration.

82.7. That the test form was not completed accurately, in that the Part A regarding medications had not been completed properly.

82.8. That the timing of the tests and the signatures showed that the test had not been completed properly.

82.9. That the master list of tests provided by the respondent was incomplete and contained errors.

83. In evidence, the Claimant accepted that he had not raised any of these alleged procedural issues at the investigation, disciplinary or appeal. Decision makers cannot reasonably be criticised for failing to investigate matters that had not been raised with them.

84. The Claimant accepted that the issue that was raised was that the preliminary cup recorded that there was Tramadol present in the Claimant's sample and that this was raised in the appeal with Mr Peace.

85. I find that with the exception of the request for the second test and the Tramadol reading, the Respondent did not know of these assertions from the Claimant prior to the decision to dismiss.

Findings of fact on contribution and Polkey

86. The Claimant was not paid for his notice period and there is no claim for wrongful dismissal.

87. In considering contribution and Polkey, the findings of fact set out below are the Tribunal's own, reached on the balance of probabilities, relevant to the issues of whether the Claimant contributed to his dismissal by his own blameworthy conduct (contribution) and whether, if the dismissal was tainted by unfairness, there was a chance that the respondent would have fairly dismissed him in any event (Polkey). There is considerable overlap between the factual issues relating to these questions.

88. Having heard the evidence and reviewed the documentation and witness statements I am satisfied of the following:

88.1. The Claimant was aware of the Respondent's policies and procedures including Health and Safety and the D&A Policy.

88.2. The clause regarding Cannabis Oil formed part of the policy made available to the Claimant and which it was his responsibility to read. Additionally, he did not raise any lack of awareness of that provision during the investigation, disciplinary or appeal process.

88.3. That the Claimant was in a safety critical role and responsible for the health and safety of himself, other employees and members of the public.

88.4. The Claimant was on holiday in Florida when he purchased some cannabis Gummies. Even once he was aware that they contained THC he continued to consume them. This was the Claimant's consistent position throughout.

88.5. I am satisfied that over 2-weeks following his return, his urine sample still tested positive for cannabis. The Claimant does not deny that his sample tested positive for cannabis.

88.6. I am satisfied that the Respondent conducted a random drug test in

accordance with its policies and procedures and sent the sample for a second independent test. This confirmed the positive test for cannabis. No action was taken on the false reading for Tramadol.

88.7. I am satisfied that the Claimant was given the opportunity to put forward an explanation for the failed test and did so, consistently.

88.8. I am satisfied that the Respondent followed the correct disciplinary and appeal procedure and that all the Claimant's circumstances were taken into account.

88.9. I am satisfied that in the circumstances in which the Respondent operates, it is fair and reasonable to operate strict zero-tolerance policies in relation to health and safety, and this includes drugs and alcohol.

88.10. But for the consumption of the Gummies, I have no reason to believe that the Claimant would have failed the drugs test. The fault for the failed test rests solely with the Claimant.

88.11. I have found that with regards to Polkey, I am satisfied that the procedure was in accordance with policy and therefore there was no failure in the procedure that might otherwise have to be taken into consideration.

Evidence

89. In ***Matondo v Kingsland Nursery Ltd*** *[2024] EAT 123* the EAT allowed the appeal where the ET had required the claimant's oral evidence, based on her recollection, to be corroborated by other evidence such as independent documentary records. There is no such rule of evidence. The EAT summarised that the ET should have appraised all of the different sources of evidence, as to their reliability and credibility, including the Claimant's oral testimony, contemporary (though not independent) communications reflecting what was said during employment, work records as relied on by the respondent and the respondent's evidence. The findings of fact should be determined based on the overall picture.

90. In this case there was testimony, particularly from the Claimant, that had not been pleaded previously and was absent from the claim and statements. That being the case, I have considered evidence based on the overall picture, including contemporaneous documents.

91. Mr Harrold was unable to give evidence as he was in Spain and therefore not permitted to give witness evidence without the appropriate permissions. The application to adjourn this hearing to allow time to seek that permission had been refused due to previous adjournments. As this witness could not be cross examined, I have placed appropriate weight to the statement and considered alternative oral and written contemporaneous evidence, if available, before accepting any of its content.

92. With regards to Mr Barry Ellis, Mr Mark Hobbs and Mr Sam Gadeke, these

witnesses attended the hearing in support of the Claimant. The Respondent's representative did not accept the statements in their entirety but had no questions that were relevant to the issues to be addressed by the Tribunal.

93. With regards to Ms Susan Miller, Ms Miller did not attend. The Claimant's representative accepted that this witness was a character witness and as such, she did not take the time offered to try to locate this witness.

94. With regards to Mr Jorge Ribeiro; there is a statement from Mr Ribeiro within the bundle of documents dated 20 November 2025. Within the ET1 the Claimant states:

Jorge was prepared to give a statement confirming the errors, but has since changed his recollection to being told my results' at the end of the day' by both Ged and Joe which was still breaching confidentiality.

95. When asked about this evidence, whether it was the original or the amended, the Claimant replied "*no, that was the original, yes*". The Claimant confirmed in evidence that a second statement had not been produced by Mr Ribeiro.

96. I find that this statement was the original statement from Mr Ribeiro, but that the Claimant has confirmed that this evidence has been changed. The Tribunal has not been provided with the second statement. The Claimant asserted that Mr Ribeiro did not want to attend the Tribunal for fear of his job, but this has not been pleaded previously. This witness did not attend and therefore as this witness could not be cross examined, I have placed appropriate weight to the statement and considered alternative oral and written contemporaneous evidence, if available, before accepting any of its content.

The law

Unfair Dismissal

97. An employee has the right not to be unfairly dismissed, s. 94(1) of the Employment Rights Act 1996 (ERA). The relevant provisions are sections 98(1), 98(2) and 98(4) ERA 1996. This states:

98 General

(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—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

…

(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.

…..

98. The question of fairness in a conduct dismissal is ***British Home Stores Ltd v Burchell*** [1980] ICR 303 (EAT) which held that a dismissal on the grounds of conduct will be fair where, at the time of dismissal, a) that the employer must have a genuine belief in the misconduct; b) reasonable grounds for that belief; and c) the employer carried out as much investigation as was reasonable in the circumstances. I remind myself that I can only take account of those facts or beliefs that were known to those who took the actual decision to dismiss at the time of dismissal.

99. The principles relating to the band of reasonable responses are summarised within the judgment of Brown-Wilkinson J in ***Iceland Frozen Foods Ltd v Jones*** [1983] ICR 17, which states:

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

99.2. 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;

99.3. 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;

99.4. 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;

99.5. 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."

100. In considering the "band of reasonable responses" I also direct myself to consider the question as to whether the respondent has acted reasonably or unreasonably in deciding to dismiss in accordance with equity and the substantial merits of the case, s.98(4) ERA. ***Newbound v Thames Water Utilities Limited*** [2015] I.R.I.R. 734.

Submissions

101. Both representatives provided an agreed list of issues and submissions. All of which have been taken into consideration.

Conclusions

102. I now set out my conclusions on the issues, applying the law as set out above to the facts which I have found. I do not repeat all of the facts here since that would add unnecessarily to the length of the judgment, but I have them all in mind in reaching those conclusions.

103. In reaching my conclusions, I will answer the questions raised in the agreed list of issues. This list has been prepared on the principles identified in ***BHS v Burchell***.

104. I remind myself that I can only take account of those facts or beliefs that were known to those who took the actual decision to dismiss at the time of dismissal.

105. What was the reason for the dismissal?

106. It is agreed that the reason for the dismissal was conduct. Conduct is a potentially fair reason for dismissal (s.98(2)(b) ERA 96)

107. In accordance with the equity and substantial merits of the case did the Respondent act reasonably in all of the circumstances in treating this as sufficient reason for dismissing the claimant?

108. In considering this question, the decision as to whether the dismissal was fair, requires the consideration of four further questions:

108.1. Did the respondent have a genuine and honestly held belief in the misconduct?

108.2. Had the employer reached this belief on reasonable grounds?

108.3. Was the belief reached following a reasonable investigation?

108.4. Was the dismissal within the range of reasonable responses?

109. My starting point to consider this question is s.98(4) and I remind myself that this question is in relation to the reasonableness of the respondent's conduct and not what I consider to be fair. Additionally, I may not substitute the employer's decision with my decision as to what was the right course of action to adopt. I am to consider whether, in all of the circumstances, a reasonable employer would consider that the actions of the claimant were sufficient to warrant a dismissal.

110. I first consider the circumstances of this case. Further to the findings of fact in relation to unfair dismissal, the relevant circumstances are:

110.1. That the Claimant had over 12-years of service and had undertaken at least 4 previous random tests and had not failed any.

110.2. That the Claimant and the Respondent believe that the Claimant is in a position of responsibility and is required to act as an example to others.

110.3. That the Claimant has a managerial and safety responsibility to himself, other employees and members of the public who attend the respondent's site.

110.4. That the Claimant operates large machinery and fulfils the role of banksman.

110.5. That the Claimant's role and responsibilities are safety critical.

110.6. That the Claimant is aware that the Respondent operates a D&A policy and that he told the Respondent that he was aware of this.

110.7. That the policy is sent to employees every year with the annual appraisal.

110.8. The Claimant accepts that the sample taken on the 30 April 2025 tested positive for cannabis.

110.9. The Claimant admitted that he had taken Gummies whilst on holiday in Florida 2 – 3 weeks beforehand.

110.10. The Claimant admitted that after he became aware that the Gummies contained cannabis, he continued to consume them.

110.11. The Claimant was consistent with his explanation to the Respondent throughout including Mr Bunda, Mr Harrold and Mr Peace.

110.12. That Mr Bunda, Mr Harrold and Mr Peace all believed that the Claimant's sample was positive for cannabis and that the Claimant had taken the Gummies in the knowledge of what they contained. Additionally, that the Claimant had attended work and not declared the

consumption of the Gummies.

110.13. That the Respondent's D&A Policy provides that a non negative test is regarded as the individual being under the influence of that substance.

111. I also take into account the circumstances specifically raised by the Claimant within the list of issues as follows:

111.1. With regards to whether the Respondent should have conducted a second test? There is no policy requirement for a second test. I have found that Mr Peace discussed a further test with the Claimant and that this was in relation to Tramadol. I have found that Mr Peace was satisfied that a second test was carried out by the independent laboratory. The Claimant confirmed that this was not raised with Mr Harrold prior to the decision to dismiss and therefore could not have been taken into account.

111.2. Additionally, with regard to the request for a second test; the managers reasonably believed the following:

111.2.1. the sample was independently analysed;

111.2.2. laboratory confirmation is more reliable than repeat cup testing;

111.2.3. the decision-makers reasonably regarded laboratory confirmation as conclusive.

111.3. Whether taking Gummies should have been discounted because of the Claimant's stress; no evidence of stress has been produced. Nor was any raised with the Respondent's managers during the investigation, disciplinary or appeal. It could not therefore be taken into account.

112. Taking into account all of the circumstances of the case as detailed above. I have considered the investigation, the disciplinary and the appeal and the actions by each manager at each stage. The Claimant was consistent with the circumstances as detailed above and he did not raise further issues of procedure with the Respondent, other than the question of whether a second test should be offered and the incorrect reading for Tramadol.

113. I am satisfied that the Respondent's managers believed that the Claimant had tested non negative for cannabis. I am also satisfied that the sample was tested for a second time at the independent laboratory and that this test ruled out the presence of Tramadol. I conclude therefore that the Respondent's managers had a genuine and reasonable belief that the Claimant had acted in the manner alleged.

114. The misconduct alleged was not impairment at work but attending work after knowingly consuming a substance which produced a laboratory-confirmed positive cannabis result in circumstances governed by the Respondent's zero-tolerance policy. Whether the gummies were legally purchased in Florida was not material to the Respondent's decision or to my conclusions.

115. In considering the “band of reasonable responses” I also direct myself to consider the question as to whether the respondent has acted reasonably or unreasonably in deciding to dismiss in accordance with equity and the substantial merits of the case.

116. Equity refers to fairness and justice and the question is whether the sanction by the respondent was fair and just in all of the circumstances. The conduct relied upon by the Respondent was evidenced by an onsite urine test and a laboratory confirmation of the results. I have found that the respondent reasonably and genuinely believed that the tests were correct and there was no contemporaneous contention at the time of the test that the equipment was faulty or that the testing procedure had been improperly followed.

117. In considering equity, I have asked whether the disciplinary process included a degree of common sense? I find that it did, in that the respondent undertook a very strict and serious approach towards health and safety and its obligations towards employees and members of the public. It considered the possibility that Tramadol may have been a false positive and the Claimant accepted those test results at the time of the actual test and when the laboratory report was reviewed with him.

118. In considering the substantial merits of the case, this case is about the strict adherence to policy and procedures pertaining to the use of drugs by the respondent’s employees. The respondent operates in a high-risk sector and it is imperative that all employees adhere to the strict drug and alcohol limits as provided by the D&A policy. In forwarding copies of the relevant policies to employees on a yearly basis, this indicates a proactive approach to this strict requirement. The Claimant did not complain of procedural issues at the time but was apologetic and accepting in that he had tested non negative for cannabis.

119. I am satisfied that in all of the circumstances the Respondent’s managers, specifically Mr Harrold and Mr Peace, took into account all of the circumstances above, including those of mitigation. They could not be reasonably criticised for failing to investigate matters never raised with them.

120. I understand that the Claimant asserts that the decision was harsh. The question is not the outcome I would have reached but whether the dismissal fell within the band of reasonable responses. The question to be answered is whether, in the circumstances above, with the knowledge the respondent had at the time, would dismissal of the Claimant fall within the band of reasonable responses from a reasonable employer? I am satisfied that it would.

121. The Claimant has also raised matters of procedural fairness as I have detailed above in the section headed Procedural Allegations. I have found that but for the second test and the Tramadol points, the other allegations were not raised to the respondent during the course of the investigation, disciplinary or appeal. Therefore, these could not have been taken into account or further enquiries made into them.

122. The Tribunal's function is not to determine whether the claimant was actually impaired at work, nor whether dismissal was the sanction the Tribunal

would have imposed. The question is whether the Respondent reasonably believed the claimant had committed the misconduct alleged, following a reasonable investigation, and whether dismissal fell within the range of reasonable responses. For the reasons set out above, I am satisfied that it did.

123. In light of my conclusion that the dismissal was fair, contribution and Polkey did not arise for determination. Had they done so, I am satisfied that the Claimant was solely responsible for the non negative sample test and that the dismissal was the result of a fair procedure.

124. I conclude that the Claimant's dismissal was fair in all of the circumstances.

Approved by:

Employment Judge Illing

29 October 2026

SENT TO THE PARTIES ON
9 November 2026

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written full reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here: www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/