EMPLOYMENT TRIBUNALS

Claimant: Mr S Wells

Respondent: GR & MM Blackledge PLC

Heard at: Manchester **On:** 6 November 2018

Before: Employment Judge Franey
(sitting alone)

REPRESENTATION:

Claimant: In person
Respondent: Mr A Moore, Solicitor

JUDGMENT

1. By consent the title of the respondent in these proceedings is amended to GR & MM Blackledge PLC.

2. The complaint of unfair dismissal fails and is dismissed.

REASONS

Introduction

1. By a claim form presented on 23 May 2018 the claimant complained that he had been unfairly dismissed from his position as a warehouse operative in April 2018 following a finding of gross misconduct. He said that the allegation he had behaved in an unsafe manner was a false allegation made by his manager, and that discrepancies in the times of the alleged incident had not been properly investigated.

2. By its response form of 3 July 2018 the respondent resisted the proceedings on the basis it had been a fair gross misconduct dismissal.

3. At the start of the hearing the claimant confirmed his agreement to amend the title of the respondent to reflect its proper corporate title. He also confirmed that the sole complaint pursued was unfair dismissal. The issue to be determined was therefore whether the dismissal was fair or unfair applying the test of fairness in section 98(4) of the Employment Rights Act 1996.

4. To help me decide this I heard oral evidence from two witnesses for the respondent. Daniel Blackledge was a Director of the company who dismissed the claimant, and Roy McFarlane, another Director who rejected the appeal against dismissal.

5. The claimant was the only witness on his side, although the bundle of documents included some emails from former colleagues which he obtained in June 2018. He had not prepared a witness statement save for a brief email, but at the start of his oral evidence he confirmed the truth of the contents of his claim form and of some other documents in the bundle recording his version of events.

6. The agreed bundle of documents ran to just over 150 pages. Page 67a was inserted by agreement at the start of the hearing. Any references to pages in these Reasons is a reference to that bundle.

Relevant Legal Principles

Unfair Dismissal

7. The unfair dismissal claim was brought under Part X of the Employment Rights Act 1996.

8. The primary provision is section 98. If the respondent shows that is dismissed the claimant for a reason relating to his conduct, section 98(4) applies:

> **"(4) Where the employer has fulfilled the requirements of sub-section (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".**

9. In a misconduct case the correct approach to fairness was helpfully summarised by Elias LJ in **Turner v East Midlands Trains Limited [2013] ICR 525** in paragraphs 16-22. Conduct dismissals can be analysed using the test which originated in **British Home Stores v Burchell [1980] ICR 303**, a decision of the Employment Appeal Tribunal which was subsequently approved in a number of decisions of the Court of Appeal.

10. The "**Burchell** test" involves a consideration of three aspects of the employer's conduct. Firstly, did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case? Secondly, did the

employer believe that the employee was guilty of the misconduct complained of? Thirdly, did the employer have reasonable grounds for that belief?

11. Since **Burchell** was decided the burden on the employer to show fairness has been removed by legislation. There is now no burden on either party to prove fairness or unfairness respectively.

12. A fair investigation requires the employer to follow a reasonably fair procedure. By section 207(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 Tribunals must take into account any relevant parts of the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015.

13. The appeal is to be treated as part and parcel of the dismissal process: **Taylor v OCS Group Ltd [2006] IRLR 613.**

14. If the three parts of the **Burchell** test are met, the Employment Tribunal must then go on to decide whether the decision to dismiss the employee was within the band of reasonable responses, or whether that band fell short of encompassing termination of employment.

15. It is important that in carrying out this exercise the Tribunal must not substitute its own decision for that of the employer. The band of reasonable responses test applies to all aspects of the dismissal process including the procedure adopted and whether the investigation was fair and appropriate: **Sainsburys Supermarkets Ltd v Hitt [2003] IRLR 23.** The focus must be on the fairness of the investigation, dismissal and appeal, and not on whether the employee has suffered an injustice.

Relevant Findings of Fact

16. Having heard the evidence, I found the relevant facts to be as follows on the balance of probabilities.

Background

17. The respondent is a retail business selling hair, beauty, makeup and toiletry products. It employs approximately 1,500 staff. There is a distribution centre/warehouse in Leyland where approximately 50 staff work.

18. The warehouse receives goods and products for distribution to the various stores. The products are stored on shelves in narrow aisles. The shelves can be as high as 60 feet. As well as conventional fork lift trucks, the respondent has a number of “Man-Up Fork Lifts” which operate so as to raise the driver up into the air before the forks are extended to retrieve the pallet from the shelves. Operating at height creates an obvious health and safety risk, and drivers are given training on such matters.

19. The claimant was employed as a fork lift driver in February 2015. He signed his contract of employment at pages 27-31. The contract referred to the health and safety policy (pages 39-54) and to the disciplinary procedure (pages 33-37). The disciplinary procedure gave an example of the types of conduct which would be regarded as gross misconduct, and that included:

"Serious persistent or deliberate breach of health and safety rules or procedures."

20. The claimant was one of six fork lift drivers in the warehouse who were supervised by Mr Walsh. He reported to the two Warehouse Managers, Paul Dennick and Geoff Rushton. They reported to Daniel Blackledge, the Director with responsibility for operations.

21. The claimant attended a two-day training course on using the Man-Up Fork Lift in June 2015, and attended refresher training in January 2017.

October 2017

22. There was tension between the claimant and Mr Rushton. On 5 October 2017 Mr Rushton alleged that the claimant had sworn at him. The claimant was invited to an investigatory meeting (page 61). After learning of that he submitted a letter (page 66) making a complaint of harassment by Mr Rushton. He said it had been going on for some time. Mr Rushton had been asking him personal questions about his family. He said that the allegation of swearing was false.

23. Matters were discussed at an investigatory meeting on 9 October (pages 52-65). The claimant explained that he did not want to deal with Mr Rushton on personal matters, only on a professional basis. He denied having sworn at Mr Rushton.

24. The matter was resolved informally: the outcome letter at page 67 from the Training and Human Resources Manager, Sarah Blackledge, recorded that the claimant understood why a manager might ask about his health, but that Mr Rushton had been asked to speak to the claimant only on a purely professional basis.

25. There was no record of any further issue between the claimant and Mr Rushton until the events of April 2018.

February 2018

26. In February 2018 an incident occurred where the claimant and a supervisor moved from one Man-Up Fork Lift to another across the shelving. This was an unwise and dangerous operation. It resulted in all staff being briefed on proper procedures when it was necessary to escape from a broken Man-Up Fork Lift, and staff had to sign a written notice which appeared at pages 67a. Any deviation from the escape procedure would be regarded as gross misconduct.

Allegation 5 April 2018

27. On 5 April 2018 Mr Rushton approached Daniel Blackledge at around 12.15pm as Mr Blackledge was leaving the office. He reported that he had seen the claimant 60 feet in the air using a Man-Up Fork Lift, standing with the left-hand side door open, one foot on a pallet on the shelving and the other on the edge of the truck with no safety harness to prevent him from falling. He said he had spoken to the claimant about it.

28. Mr Blackledge told Mr Rushton to report that to Sarah Blackledge, which he did.

29. About an hour later the claimant was handed a letter inviting him to an investigatory meeting on 9 April. The letter appeared at pages 70-71. The letter referred to the document from February 2018 and warned the claimant that it could be gross misconduct.

30. After being handed the letter the claimant carried on working but he had a disagreement with Mr Rushton later than afternoon. It resulted in him being suspended.

31. That same day Mr Rushton signed a short statement about the matter which appeared at page 68. It did not say when during the day the incident had happened but explained in detail what he had observed. It also said that when he spoke to the claimant about the matter the claimant threatened him by saying he would get Mr Rushton sacked if it was reported.

Claimant Grievances

32. Whilst he was suspended the claimant wrote a series of letters which appeared at pages 100-110. They were addressed to Sarah Blackledge. Collectively they constituted a series of grievance letters.

33. In the first he made a number of allegations about inappropriate behaviour by Mr Rushton at work, including smoking and drinking on site, using his mobile phone and harassing the claimant. In the second he made a number of allegations about Mr Dennick. In the third he gave his account of the disagreement with Mr Rushton on the afternoon of 5 April, and in the fifth he asked that statements be taken from a number of witnesses to the afternoon altercation and to misbehaviour by Mr Rushton on other occasions. In another grievance letter he asked why Geoff Rushton had not been suspended.

Investigation Interview 9 April 2018

34. The investigation interview was conducted by Sarah Blackledge on 9 April 2018. The claimant was accompanied by a colleague, Mr Kehoe. The notes appeared at pages 73-79.

35. The claimant denied having been in the air with the side door open or with his foot on a pallet. He said there had been no conversation with Mr Rushton about any such incident in the morning. Ms Blackledge said she would investigate the grievances that had arrived. The claimant asked her to get clarification from Mr Rushton of the times of the alleged incident.

Sarah Blackledge Investigation

36. After this interview Ms Blackledge interviewed Paul Dennick. The notes appeared at pages 80 and 81. He was asked about the allegations against him made in one of the grievance letters. He denied those allegations. He had not witnessed anything that happened on 5 April. He suggested that the claimant was lying.

37. Mr Rushton was also interviewed by Ms Blackledge. The notes appeared at pages 82-84. He denied the allegations about misbehaviour on his part made by the claimant. Ms Blackledge said the claimant wanted to know the exact time of the

alleged incident. Mr Rushton said that the incident had happened between 2.30pm and 3.00pm when he went for his afternoon break.

38. Ms Blackledge knew that that time could not be correct because Mr Rushton had contacted Mr Blackledge before 12.15pm. She had not pressed Mr Rushton on this point in the investigation meeting, but she emailed the claimant on 9 April (page 87) to say:

> **"The incident involving yourself and the Man-Up occurred at approximately 12.15pm on Thursday April 5th 2018."**

Disciplinary Charges 9 April 2018

39. The claimant was also issued with a notice requiring him to attend a disciplinary hearing on 16 April 2018. He was to remain suspended. The first allegation was put as follows:

- **"An incident which occurred on Thursday April 5th 2018, where you were seen with the side door open, approximately 60 feet in the air, with one foot in the cab and your other foot on a pallet. You were not wearing a safety harness at the time.**

- **Failure to take reasonable care for the health and safety of yourself and other persons who may be affected by your acts or omissions at work…"**

40. The claimant was warned that this could result in a gross misconduct finding and dismissal.

41. There was another allegation about his behaviour towards Mr Rushton on the afternoon of the alleged incident but in the end this formed no part of the decision to dismiss him.

Response to Charges

42. Having received the email about the time of the incident the claimant responded on the evening of 9 April (page 87). He said that around 12.15pm on 5 April he had been off his truck and transferring toilet rolls from aisle 11 to the bottom of aisle 2. He was passing Mr Rushton and a colleague, Chris Duddle, who were down aisle 3 discussing something else. He sent an email the following morning (page 88) asking Ms Blackledge to take a statement of Chris Duddle about this incident. In further emails that day he said he wanted all named witnesses to be interviewed and he asked for all the relevant documents.

43. Two of the people he identified were interviewed. Mr Taylor signed a statement at page 91 in which he recorded having heard the claimant and Mr Rushton argue on 5 April, and in the course of which the claimant called Mr Rushton "a snitch that goes running to the office over everything". Chris Duddle produced a brief statement (page 92) confirming he saw the claimant and Mr Rushton waving their hands at each other. However, despite the claimant's emails, he was not asked about whether he saw the claimant around 12.15pm that day.

44. On 11 April 2018 Ms Blackledge emailed the claimant copies of all the documents including the statement of Mr Rushton (page 94).

Disciplinary Hearing 16 April 2018

45. The disciplinary hearing before Daniel Blackledge occurred on 16 April. The claimant was again accompanied by Mr Kehoe. The notes appeared at pages 120-124.

46. The claimant made clear that the incident had not happened. They discussed the time discrepancy. Mr Blackledge said it had been reported to him just as he was going on his lunch. The claimant pointed out that Mr Rushton did not know the time it had happened because it was a lie. Mr Blackledge said that it was essentially a question of the claimant's word against that of Mr Rushton, and he would think about it and make a decision.

47. The meeting then moved on to discuss the nine grievance letters. Prior to the meeting a written response to those points had been prepared (pages 111-119). Mr Blackledge went through them with the claimant in notes recorded at pages 125-135. The allegations about misbehaviour by Mr Rushton were rejected. There was no evidence to support some of them, and as a manager he was allowed to use his personal mobile phone at work.

48. After the hearing Mr Blackledge spoke to Mr Walsh, the claimant's supervisor. He told Mr Blackledge that Mr Rushton had not been allocating the claimant unfavourable duties. That was an allegation made in the claimant's grievance letters.

Dismissal

49. Mr Blackledge confirmed his decision in a letter of 17 April 2018 at pages 136-138. He recorded the claimant's case that Mr Rushton and Mr Dennick wanted him out of the business because he knew what they had been up to, and that this was a false allegation. The letter said he had found no evidence that they wanted the claimant out of the business.

50. It also said:

> **"Further, I considered that Geoff [**Rushton**] has been employed by the company for nearly 25 years, the majority of time he has been employed by the company he has fulfilled a managerial role, currently the warehouse manager and before that the supervisor for Goods In. I have no reason to doubt Geoff's credibility and cannot understand why he would lie in the circumstances, especially given the effect it would have on his employment with the company if it was discovered he was not telling the truth.**
>
> **In the circumstances and for the reasons I have explained above, I preferred Geoff's version of events and conclude that on Thursday April 5th 2018, you did open the side door, approximately 60 feet in the air and had one foot in the cab and the other foot on a pallet. You were not wearing a safety harness at the time."**

51. The letter went on to say that this was gross misconduct, particularly given the discussion about safety in February 2018. Despite the claimant's length of service, no sanction lesser than dismissal was appropriate. Given the claimant's denial that he had acted in that way, Mr Blackledge had no confidence he would not do it again. Therefore others were at risk. The claimant was dismissed with immediate effect.

Appeal

52. The claimant exercised his right of appeal in a letter of 24 April at pages 139-140. He made some brief points. He emphasised the discrepancy in the timings as to when Mr Rushton said the incident had occurred. There was nothing in writing from Mr Rushton confirming the time.

53. The appeal was to be dealt with by Mr McFarlane. By a letter of 30 April (page 141) he invited the claimant to an appeal meeting on 9 May.

54. In the meantime Mr Blackledge responded to the appeal letter. His letter was dated 1 May (page 142). The point of the letter was to say that the precise time of the incident did not matter: he was satisfied it had occurred.

55. The appeal hearing before Mr McFarlane took place on 9 May. The claimant was accompanied again by Mr Kehoe. The notes appeared at pages 143-145. The claimant explained that there had been a breakdown in the relationship between himself and Mr Rushton which went back a long way. He did not think the allegation had been properly investigated. Mr McFarlane said it had been investigated but there was no CCTV available. He said he would reinvestigate the incident and contact the claimant.

56. By "reinvestigate" Mr McFarlane meant that he would consider all the documents again. He did so, but by letter of 14 May 2018 at page 146 he confirmed that the decision to dismiss the claimant was upheld. He made the point that no video evidence existed to support the assertions of either side.

Submissions

57. At the conclusion of the oral evidence each side summarised its case.

Respondent's Submission

58. For the respondent Mr Moore pointed out that the claimant had acknowledged in cross examination that if he had acted as alleged, dismissal would be appropriate. The real issue was whether there was a reasonable investigation of the allegation and reasonable grounds for the belief the claimant was guilty of it.

59. He submitted that both tests were met. The claimant had never put forward any concrete reason for Mr Rushton to lie; Mr Rushton was a manager with a clean record who had been with the company for over 25 years. There was no reason he would fabricate an allegation when to do so would expose him to the risk of losing his own job. Further, the issue of the timing discrepancy had been adequately addressed. The precise time of the incident was not material. Mr Blackledge knew that it could not have occurred in the afternoon because he had been told about it before he went on his lunch break. It was reasonable not to pursue this enquiry any further given the credence which the managers were entitled to place in the word of Mr Rushton. The warehouse was a fast-moving busy environment and it was not always possible to identify precisely the time at which certain things occurred.

60. As to procedure, although the dismissing and appeal managers knew Mr Rushton and had worked with him for many years, that was true of all the directors in

this company and therefore there was no-one else who could have taken the decision without that knowledge of Mr Rushton and his reputation.

61. Finally, if I were to find the dismissal unfair he submitted that there should be a 100% reduction because of contributory fault, and that any flaw in the procedure would not have avoided a fair dismissal.

Claimant's Submission

62. The claimant made clear that his primary case was that the matter had not been properly investigated. The discrepancy between the time he reported it and the time Mr Rushton said it had happened showed that Mr Rushton was making it up. Management had refused to consider this possibility.

63. Had they done so they would have gone back to Mr Rushton to clarify this, and also questioned Mr Duddle about what the claimant was doing shortly before 12.15pm on that day. Neither of these steps were taken. That was because there was no impartiality: Mr Blackledge and Mr McFarlane simply accepted Mr Rushton's word on the matter. The claimant had been let down by those managers and had had to gather information himself from the other witnesses, such as Alison Devlin. It was unfair.

64. There should be no reduction for contributory fault because he had not acted as Mr Rushton alleged.

Discussion and Conclusions

The Law

65. It was accepted that this was a misconduct dismissal. The only issue was whether it was fair or unfair. That required me to apply the general test of fairness in section 98(4) of the Employment Rights Act 1996.

66. That is a broad test which required me to take into account the size and resources of the employer, and also equity and the substantial merits of the case. The respondent was a significant employer with about 1500 employees, although it is relevant that its four directors were either related family members or very long-serving.

67. Importantly, on all aspects of the test of fairness the Tribunal must not substitute its own view for that of the employer as to what has happened, but rather decide whether the employer's conduct fell within the band of reasonable responses. In considering fairness I was not asking myself whether the claimant was guilty of the allegation for which he was dismissed. The question was whether the respondent's conclusion that he was guilty was a reasonable one reached in accordance with the requirements of fairness.

68. The most common approach to the test of fairness is found in the **Burchell** case. That has three elements. The Tribunal must also consider procedural fairness, and whether the decision to dismiss rather than impose a lesser sanction was reasonable. I considered those various elements of the general test of fairness.

Genuine Belief

69. Although the claimant made clear his case that Mr Rushton had an agenda against him, he did not suggest that either Mr Blackledge or Mr McFarlane were party to that. He did not dispute that the decision makers genuinely believed he was guilty of the allegation.

Reasonable Grounds

70. Was that belief based on reasonable grounds? There was a clear written allegation from a manager and nothing to contradict it save for the claimant's denial that he acted as alleged. In the absence of corroboration of either side it is generally reasonable to go either way in those matters. I concluded it was within the band of reasonable responses to accept the word of Mr Rushton. It would have been equally reasonable to have accepted that the claimant was telling the truth and had not behaved as alleged, but that does not assist him.

Sanction

71. To his credit the claimant accepted in cross examination that even with a clean disciplinary record, behaviour of the kind alleged could reasonably have resulted in dismissal, particularly where he denied it and therefore the respondent could reasonably take the view that there was a risk of repetition. That was a sensible concession given the issue which occurred in February 2018 and the wording of the examples of gross misconduct in the disciplinary procedure. It followed that there was no dispute in this case about the reasonableness of the decision to dismiss the claimant, if the conclusion that he was guilty of the allegation was well-founded.

Procedure

72. There was no real issue about procedure in this case. The claimant knew the case against him. He had the witness statements and the information on which it was based prior to the hearing. He was given the right to be accompanied at all three meetings and had his say, and he was given a reasoned outcome both at the dismissal and the appeal stages.

73. His complaints about lack of impartiality were more conveniently addressed as part of considering whether the respondent carried out a reasonable investigation.

Reasonable Investigation

74. In truth, therefore, this case boiled down to one dispute about the application of the **Burchell** test, which was whether the respondent had carried out such investigation as was reasonable in all the circumstances.

75. The respondent said it had done a reasonable investigation. The claimant disputed this. He supported his argument by referring to what he saw as a lack of impartiality, which meant that Mr Rushton's allegations against him were accepted at face value and no real credence was given to his denial that those allegations were true. That manifested itself in the respondent choosing to ignore a discrepancy in the times at which the incident was said to have happened.

76. In considering this point I reminded myself that the test is not what level of investigation I would have carried out had I been the employer, but rather whether this employer acted reasonably in the extent of its investigation.

77. The claimant's argument was broadly as follows. Although his continuous employment was relatively short, these were serious allegations of gross misconduct and therefore had to be taken seriously. He had also made clear his history of conflict with Mr Rushton and indeed had complained about six months earlier of being harassed by Mr Rushton. There was a clear discrepancy in timings. Mr Rushton reported the alleged incident to Mr Blackledge at around 12.15pm, but four days later when interviewed by Sarah Blackledge he said it happened between 2.30pm and 3.00pm. The claimant said this showed that Mr Rushton was making it up. Had it really happened he would have been in no doubt about the time because it was quite a striking incident. As a result, a reasonable and impartial employer would have made further enquiries into this timing discrepancy. It would have asked Mr Rushton about that discrepancy and asked him to explain it. A reasonable employer would also have interviewed Mr Duddle, as the claimant asked, about what the claimant was doing around 12.15pm; Mr Duddle would have confirmed that the claimant was not operating the Man-Up Fork Lift at that stage.

78. However, in response to this Mr Moore argued that the extent of investigation was still reasonable. The respondent knew that Mr Rushton was wrong about timings when he said it happened in the afternoon because he had reported it before lunch on the day in question, and it also knew that the working environment in the warehouse was such that events were not always accurately timed. It was a busy working environment without precise timings for each and every thing that happened. The respondent also knew that Mr Rushton was a long-serving manager. There were no reasons to doubt his honesty. The claimant never substantiated his allegation that Mr Rushton was out to get him dismissed by fabricating the allegation. On that view of events the evidence Mr Duddle might have provided was not particularly important, because no-one was saying the incident happened exactly at 12.15pm. All that could be said was that at around 12.15pm Mr Rushton reported it to Mr Blackledge. That explained why Sarah Blackledge put it in her email to the claimant as being "approximately" 12.15pm. No precise timing was possible and therefore given the nature of the working environment it was inherently extremely unlikely the claimant could prove he was somewhere else at the relevant time even if a precise time could be identified.

79. Those arguments on this key issue in my judgment were finely balanced. The respondent did seem to have been quick to treat the time discrepancy as a simple error on Mr Rushton's part without even asking him about it. There seemed to have been a presumption that he could not put a precise time on it if he were asked, and therefore the view formed that there was no point interviewing witnesses about particular moments during the day. I understood fully the claimant's argument that where it is one person's word against another, a little issue like a time discrepancy could be the thing which tips the balance in one direction or the other.

80. However, with some hesitation I concluded that the respondent was still within the band of reasonable responses in not pursuing this point further, and that to conclude otherwise would be the substitution of my own view for that of the respondent.

81. In particular, it seemed to me reasonable to give significant credence to a clear written allegation made by a long-serving and trustworthy manager. It was also reasonable for the managers to take account of their knowledge of the working environment and to have reached the conclusion that Mr Rushton could not put a precise time on it if they went back to him. Sarah Blackledge had asked him what time it happened and he could not give a specific time. In those circumstances I was satisfied it was reasonable to take the view that further investigation of the timing was not necessary.

82. I accepted the claimant's argument that this approach was inevitably coloured by the fact that these directors knew Mr Rushton well and had worked with him for many years. However, in my judgment given the size of this employer and its resources it was reasonable to have the dismissal decision and the appeal dealt with by directors, even though they knew and trusted Mr Rushton in a way that was not true of their relationship with the claimant. Realistically there was no-one else available to deal with it.

83. I was also satisfied that the managers concerned, particularly Mr Blackledge, dealt with the claimant's allegations and engaged with them. They were not simply dismissed out of hand. Mr Blackledge's reasoning was explained in his dismissal letter. He checked one aspect with Mr Walsh before he made his decision. He considered the implications if the claimant was right that this was a fabricated allegation by Mr Rushton. It was not a situation where his defence to the allegations was not even considered because of partiality or bias.

84. Overall I was satisfied it was within the band of reasonable responses to treat the discrepancy about timings as a relatively minor matter and not investigate that further. The respondent had carried out such investigation into the matter as was reasonable.

85. It followed that this was a fair dismissal. The claim failed and was dismissed.

Contributory Fault

86. Had I decided that dismissal was unfair I would not have made any reduction for contributory fault. The claimant, in my judgment, was a credible and honest witness. He conceded where he had behaved wrongly, namely in relation to the incident which gave rise to the February reminder about health and safety issues. The respondent failed to prove that the claimant had behaved as alleged. Of course, I did not hear evidence from Mr Rushton and this point was academic.

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Employment Judge Franey

14 November 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

15 November 2018

FOR THE TRIBUNAL OFFICE

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