# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Raja Minhas

**Respondent:** Sky Retail Stores Limited

**Heard at:** Liverpool (remotely, by CVP) **On:** 2, 3 and 4 March 2021

**Before:** Employment Judge Robinson
(sitting alone)

**REPRESENTATION:**

**Claimant:** Mr McNerney of Counsel
**Respondent:** Mr Leon Solicitor

# JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim for unfair dismissal succeeds.

2. The remedy hearing will take place **by CVP** at **10.00am** on **23 April 2021**.

# REASONS

**Claims and Issues.**

1. The claimant initially claimed unfair dismissal and discrimination on the grounds of religion and belief. However, the claim for religion and belief discrimination was withdrawn and consequently the only issue I had to deal with was the unfair dismissal claim.

**The Relevant Law**

2. I have to identify the reason for dismissal and consider whether it is for one of the potentially fair reasons set out in section 98 of the Employment Rights Act 1996.

3. I have to consider the facts as they stood at the time the decision to dismiss was made in October 2019 and:

(1) Did Mr Armstrong believe the claimant was guilty of misconduct?

(2) Was that belief based on reasonable grounds?

(3) Had the respondent's officers carried out a reasonable investigation in order to come to that belief?

4. I must not substitute my view for the views of both the investigating officer and the dismissing officer.

5. The standard I must consider in all parts of the disciplinary process is that of the reasonable employer.

6. In view of Mr McNerney's submissions, I need to consider whether the conduct complained of does fall into the category of gross misconduct, and in that respect I need to consider the ACAS Code, the employer's policies, and the decided case law.

7. I accept there can never be a definitive list of acts or omissions which amount to gross misconduct and the band of reasonable responses is a wide one. I must consider the overriding principle as to whether, in all the circumstances of the case, including the size and resources of the employer's undertaking, the employer acted reasonably or unreasonably in treating the reason as a sufficient reason for dismissal, and that issue shall be determined in accordance with equity and the substantial merits of the case (section 98(4) of the Employment Rights Act 1996).

8. Furthermore, when considering the case law relating to the conduct cases I have to consider the hypothetical standard of the reasonable employer and not my subjective view.

9. I cannot impermissibly substitute myself into the role of employer, but I can substitute my decision for that of the employer if that decision is unfair.

10. The employer, not the Tribunal, is the proper party to conduct the investigation into the alleged misconduct (**Sainsbury v Hitt**).

11. In that case it was said that the function of the Tribunal is to decide whether the investigation is reasonable in the circumstances, and whether the decision to dismiss, in the light of the results of that investigation, is a reasonable response. Did the outcome fall within the band of reasonable responses test laid down in **Iceland Frozen Foods Limited v Jones**? However, employers are not freed from any requirement to act in a reasonable fashion even if the alleged misconduct is admitted. Section 98(4) suggests, in its text, that there are both substantive and procedural elements to the decision, to both of which the band of reasonable responses test should be applied.

12. In coming to my judgment, I acknowledge that the claimant admitted wrongdoing, but it is the question as to what wrongdoing he admitted that is central to this case. In particular, what were the words used and in what context.

**The Facts**

13. Mr Minhas was employed as a Sky Retails Sales Adviser from 15 May 2017 to his dismissal on 4 October 2019. He was dismissed for gross misconduct.

14. The claimant was dismissed, in broad terms, for violating common decency.

15. The claimant's contract referred him to Human Resources in order to obtain copies of the conduct policy.

16. A list of actions which are deemed to be gross misconduct, according to the respondent, is included in that policy, and violating common decency is the penultimate example in the list.

17. On 6 June 2019, a comment was made during a longer conversation, by the claimant to Ms Klemetti on the Sky stand in a shopping mall in Blackburn. The two employees were there to drum up business for Sky products. No-one else was on the stand except the two of them, and they both wore Sky uniforms which indicated for whom they worked.

18. Farhan Qudeer joined them at the stand whilst they were in the middle of an argument. Mr Qudeer was not in work that day but was passing by. He did not hear the full argument but the two employees (Ms Klemetti and the claimant) described what they were arguing about to him. It was he who ultimately made the complaint to Mr Brian Waite, who was the claimant's line manager, and he passed it on to other managers to deal with.

19. On 25 June 2019, nearly three weeks after the incident, Ms Klemetti was interviewed by a female manager, Razwana Nahid, after Mr Waite referred Mr Qudeer's complaint to her.

20. Ms Klemetti, at the time, did not think the matter serious nor that the matter would reach the stage it had reached at that point. She however described the incident with the claimant in these terms:

> "There were two young girls, about 15 or 16, and the claimant said, 'girls in general who wear skirts like that and then get raped it's their own fault'."

21. She indicated that she was not sure of the exact words but she said that it was something like that to Ms Nahid.

22. Ms Klemetti responded to her interviewer that she believed a woman should be able to wear what she wanted, and that no-one should be talking about rape on the basis that it is someone's fault because of what they wear. She accepted that the discussion between the claimant and herself became heated, and she also confirmed it had upset her. However, she said that the claimant was not a bad guy and he was entitled to his opinion. She added that the claimant would not touch a girl.

23. Furthermore, Ms Klemetti confirmed that she was still comfortable working with the claimant and indeed continued to do so for a period of six weeks or so

before moving on to another stand in Bolton. The fact that she moved stands had nothing to do with the claimant's comments or behaviour.

24. When Mr Qudeer arrived and they had their discussion with him, the two of them agreed to leave the issue and move on and the claimant confirmed to Ms Klemetti that he was not someone who supported rape.

25. Ms Klemetti went on to say to Ms Nahid that it was a serious comment but she had never heard the claimant say anything like that previously.

26. Ms Klemetti explained to Ms Nahid that the claimant's comment would affect the way she dressed in the future if she were to go out and the claimant was in her company. She suggested he may say something similar in the future.

27. However, Ms Klemetti made it clear that the girls in question did not hear the comment and that when Mr Qudeer joined the conversation he simply said to the claimant and Ms Klemetti that they should stop the conversation because clearly they had different opinions.

28. Ms Klemetti was not uncomfortable in the claimant's presence that day, but she did get upset during the conversation because of the claimant's views about dress. She was happy to continue working with him.

29. On 31 July 2019, some seven weeks after the incident, having been asked to investigate the matter by Mr Waite, Mr Mohammed Altaf met with the claimant. Mr Altaf suggested to this Tribunal that the meeting was informal, and he started asking the claimant, at the beginning of the meeting, what behaviour generally did he [the claimant] demonstrate at work. This led to a discussion about what topics were discussed during working hours and whether non-work issues were discussed.

30. The claimant was asked his opinion of individuals who liked to express freedom of choice in what they wear. The claimant answered that people could wear what they like. The claimant was asked by Mr Altaf, "When you see females in small skirts can this cause you to make remarks?".

31. The claimant was open with Mr Altaf and said that he felt that some customers in the shopping centre dress inappropriately, but also confirmed that he had no right to make any remarks about their dress. The claimant repeated that he did not judge others.

32. What was recorded by Mr Altaf in the notes is this comment by the claimant:

> "I was working with Ms Klemetti, I saw two girls walking past, both girls were dressed inappropriate. You could see the outline of their bodies. I mentioned that if this were Pakistan people would be looking and it's like an open invitation to be getting raped. Then Mia [Ms Klemetti] said, 'that's not true, it's not the girls' fault, they can dress how they want to dress, it's the individual's choice, good or bad'. In my opinion if they wear that type of clothing some sick minded people around could take advantage of this inappropriate dress attire." [sic].

33. That is different from how Ms Klemetti described it to Ms Nahid.

34. The claimant felt that the conversation with Ms Klemetti was simply a conversation between two colleagues, regretted upsetting a colleague and assured Mr Altaf it would not occur again.

35. He said that, in essence, his comment was a momentary lapse of judgment which would not be repeated and which he regretted. However, he told Mr Altaf that he thought that if girls dress like that sick people might take advantage, but he was not condoning such thoughts.

36. The claimant said that Mr Qudeer defused the situation by suggesting he, Mr Qudeer, could see both points of view. The claimant also confirmed that he did not have the right to dictate what people wore.

37. The claimant accepted that non-work conversations should not take place, especially if they relate to sensitive topics.

38. The claimant wanted the opportunity to apologise to Ms Klemetti and the claimant was contrite, apologetic, and showed remorse.

39. At the end of the meeting the claimant was suspended by Mr Altaf in order (according to Mr Altaf) to protect the claimant and the business.

40. The claimant's suspension was confirmed in writing and Mr Altaf prepared a written summary of the investigation, which includes the allegation that the claimant made the inappropriate remarks **to** the passing females. That was wrong and had never been discussed by Mr Altaf with the claimant.

41. Mr Altaf made a number of other errors in his summary, including the suggestion that the remarks of the claimant caused 'alarm and distress' to Ms Klemetti and a great deal of discomfort to her when working alongside the claimant, and also included the suggestion that Ms Klemetti had made the complaint. In his summary Mr Altaf recommends that the claimant should be taken through a disciplinary hearing for making the comment.

42. When cross examined, Mr Altaf confirmed that he was personally offended by the claimant's comments and the fact that he did not show remorse. When it was put to him that the claimant showed remorse on a number of occasions in the conversation with Mr Altaf, Mr Altaf then said that he only showed remorse when he, the claimant, was prompted. The notes do not show that to be the case.

43. Mr Altaf did not interview Farhan Qudeer and said in cross examination that there was no need to interview him. When it was put to Mr Altaf that he got it wrong and that the claimant did not say the words to the young women, Mr Altaf said that Mr McNerney was twisting his words and he stuck by what he said.

44. Throughout his cross examination Mr Altaf insisted that the process he went through with the claimant was informal but agreed that at the end of the meeting he suspended the claimant and then recommended disciplinary procedure.

45. Finally Mr Altaf insisted that the complaint was made by Ms Klemetti and that she was affected by his comments, and that ultimately it was her choice or not if she wanted to work with the claimant.

46. The allegation in Mr Altaf's summary to Mr Armstrong, the dismissing officer, was that the comment of the claimant was:

> "If this was Pakistan people would be looking and it's like an open invitation to get raped."

47. The initial letter to the claimant taking him to the conduct meeting on 19 August 2019 confirmed that the claimant's offence was that he made inappropriate remarks to passing females. The claimant was warned that the allegation, if proven, would constitute gross misconduct.

48. The claimant immediately wrote to Mr Armstrong, pointing out the error Mr Altaf had made in his summary and in the letter.

49. In that letter he made it clear to Mr Armstrong that, since the incident, he and Ms Klemetti had worked together without any problems. The claimant also assumed that Ms Klemetti was the person who had made the complaint and not Mr Qudeer. He suggests that Mr Altaf had imposed his views on the investigatory summary rather than simply reporting the facts to the disciplinary officer.

50. The claimant was suspended by a letter of 1 August, and the suspension was extended on 12 August for a further two weeks and continued thereafter.

51. The claimant complained about the delay. Mr Altaf said that the delay was due to the complaint being made to Brian Waite ten days after the incident on 6 June, that the line manager wanted a female to talk to Ms Klemetti and that female manager was not available immediately, and that he himself (Mr Altaf) had commitments.

52. When asked, Mr Altaf confirmed that he thought the claimant's behaviour risked tarnishing the Sky brand but did not make it clear to Mr Armstrong that it was a private conversation and that no other parties heard the conversation between the claimant and Ms Klemetti.

53. The claimant told Mr Armstrong that he had never suggested that women deserved to be raped for wearing revealing clothing. What he said was that he knew that other men reacted when seeing women dressed in a certain way. He acknowledged that he should keep his opinions to himself in the future.

54. Mr Armstrong corrected the error in the letter, inviting the claimant to a conduct hearing, by confirming that the comment was not made to the two passing females.

55. The meeting with Mr Armstrong was arranged for 5 September and the claimant, at that point, could not remember the incident clearly. For example he could not remember what the two young girls were wearing, nor what words he used. There was a dispute over the exact words used.

56. At that point Mr Armstrong compounded the error of Mr Altaf by suggesting that it was Ms Klemetti who had made the complaint. One of the claimant's objections to the process was that the misconduct hearing was set up by Mr Waite, his line manager, as the two men did not get on. There is no evidence that Mr Waite

influenced any of the decisions taken by Mr Altaf or Mr Armstrong, or indeed the appeals officer, Ms Beard.

57. The claimant told Mr Armstrong that it was a private conversation with Ms Klemetti and no member of the public heard it and consequently it could not be brand damaging. The claimant confirmed to Mr Armstrong that he respects everyone.

58. The meeting on 5 September, which was the first meeting that Mr Armstrong had with the claimant, was short because Mr Armstrong accepted that he needed to make more enquiries and the next meeting was rearranged for 26 September. The next meeting did not take place until 4 October, some four months after the events in question. Between the two meetings the claimant was sent notes of the meeting Mr Armstrong had with Ms Klemetti on 13 September and Farhan Qudeer on the same date, and the notes of Razwana Nahid and Mr Altaf taken on 23 September.

59. When Mr Armstrong interviewed Ms Klemetti she confirmed that what the claimant said was not appropriate, that she was upset at the time, that the claimant could not see anybody else's opinion and that the claimant knew that she was upset. She said that the conversation went on for 15 minutes but that when Mr Qudeer arrived the claimant apologised and both Ms Klemetti and the claimant agreed to put it behind them. She also confirmed that she would not wear a short skirt in front of the claimant and that the conversation was not loud enough for anybody to hear. She did not confirm that Farhan Qudeer was offended. She confirmed to Mr Armstrong that she made no complaint, but Farhan Qudeer had raised it with Brian Waite. She said that she did not think that the claimant's comment was right but she felt that the claimant had never meant that it was "ok to rape".

60. When Mr Qudeer was interviewed he confirmed to Mr Armstrong that he did not hear the conversation, but that Ms Klemetti seemed upset and red faced, with tears in her eyes. That was never put to Ms Klemetti and at this hearing Ms Klemetti denied that she was flushed or tearful. Mr Qudeer told Mr Armstrong, that Ms Klemetti said to him:

> "That fucking Raja, there was a young girl walking past and he was on about raping her because of the way she was dressed."

61. There was never any suggestion by Ms Klemetti that she used those words. Mr Qudeer suggests that the claimant actually acknowledged that the claimant had used those words. He did not.

62. Mr Qudeer confirmed to Mr Armstrong that he was angry with the claimant and felt he needed to apologise to Ms Klemetti because it gave (in his words) "Pakistanis a bad name". He told Mr Armstrong that despite not hearing the comment, he said that such comments were not acceptable and he did not know whether the claimant would make such comments in the future. He suggested that if he were asked to speculate as to what would happen to Sky's reputation if such comments were overheard, he thought it would have a "massive impact and brand damaging".

63. It was explained to Mr Armstrong that when Farahan Qudeer returned from holiday it was he who told Brian Waite of the incident because he felt that Ms Klemetti would be too timid to do so.

64. When Mr Armstrong interviewed Ms Nahid, she confirmed that Ms Klemetti did not know why she was meeting with her and she did not know how the issue had got that far. Ms Klemetti explained that both she and the claimant had relayed the conversation to Mr Qudeer. Ms Nahid confirmed that Ms Klemetti was not one to get anyone in trouble and that the inappropriate comment had had an effect on her.

65. Mr Altaf, when interviewed, suggested to Mr Armstrong that he did not need to speak to Ms Klemetti or Mr Qudeer because the interview notes with the claimant were so conclusive. He confirmed to Mr Armstrong that the claimant was not remorseful.

66. Mr Altaf said to the claimant that if the claimant would not use those words in front of his family "why did he feel it was appropriate to use them with Ms Klemetti in front of customers when on duty?". Mr Altaf felt that if no action were taken the claimant would do it again. He makes his own personal comment to Mr Armstrong that "to be honest I feel Raja [the claimant] does not display the appropriate behaviour for the role".

67. Mr Armstrong then met the claimant and there was some discussion about an email the claimant had sent to Mr Armstrong, part of which is in Arabic which in effect says, "what goes round comes round", and later suggests that Mr Armstrong was biased against the claimant. I find no evidence that Mr Armstrong was biased.

68. At this second meeting the principles of the claimant are discussed. For example what was the claimant's opinion of freedom of expression and did he make remarks when he sees females in what he assumes is inappropriate attire.

69. The claimant made it clear that it was a private conversation and that he did not impose his views on Ms Klemetti. He accepts that the conversation was heated.

70. Mr Armstrong introduced the concept of sexual harassment into the meeting which was something that the claimant had never been accused of before. That matter is not taken any further.

71. Mr Armstrong does not go back to Mr Qudeer and challenge the comment that is allegedly made by Ms Klemetti - "Fucking Raja, there was a young girl passing and he was on about raping her".

72. What the claimant admits to saying to Mr Altaf, but not to Ms Klemetti, is that "if this was Pakistan people would be looking and it can be an open invitation to get raped".

73. The claimant is dismissed and he appeals on 22 October. The appeal hearing is not a re-hearing. The claimant points out to Ms Beard that his point of view was that certain dress could bring unwanted attention. He confirms to Ms Beard that he did not say to Ms Klemetti that "if this was Pakistan women looking like this would have the right to be raped", which is what Ms Beard suggests he said. What he tells her is that the "Pakistani" comment was an off-the-cuff remark to Mr Altaf during,

what the claimant is told and believes is, an informal meeting. He repeats to Ms Beard that all he said was “if this were Pakistan people would be looking and it is an open invitation to get raped.

74. Ms Beard accepts that the claimant’s ground of appeal is that the claimant did not believe anyone had the right to rape anyone else. Ms Beard tells the claimant that she has given him enough evidence in the pack that contradicts that position of the claimant.

75. When Ms Beard and the claimant discussed the issue as to how long the whole process has taken she tells the claimant that he must consider the nature of what was said to Ms Klemetti, therefore it may take time for her to have the confidence to speak out. The point missed by Ms Beard is that Ms Klemetti did not make the complaint. Nor was she critical of the time it took both Mr Altaf and Mr Armstrong to complete their parts in the process.

76. Ms Beard goes on to say that things sometimes take time because the claimant is not privy to things that go on behind the scenes. I saw no cogent evidence to suggest there were special problems which the respondent’s officers had to overcome before they could deal with the disciplinary process.

77. The appeal was unsuccessful and the claimant's dismissal was confirmed for conduct.

78. Those are the facts.

**Conclusion**

79. Applying the law to the facts of this case, and I include below further facts for ease of presentation, I concluded as follows.

80. The claimant made a foolish remark in the context of a discussion with Ms Klemetti about people’s dress generally. The claimant had strong views about the issue and he expressed them in forceful terms to his work colleague and she vociferously opposed them. The conversation was ten to fifteen minutes long and became heated. He came to regret it when he realised that the matter was being taken seriously by Mr Altaf. He only realised that at the very end of the investigatory hearing. Up to that point he thought, as Mr Altaf himself suggested, that he was having an informal chat, which would be taken no further. The claimant was, in effect, ambushed by Mr Altaf. The notes reflect that this was a very casual conversation between the two men, which, out of the blue, ended in a suspension.

81. The dismissal was unfair for the following reasons.

82. The claimant and Ms Klemetti were talking to each other during the incident on 6 June 2019 and not to any member of the public or indeed any other Sky employee.

83. Ms Klemetti did not complain and, when giving evidence to this Tribunal, explained that she did not believe it would go as far as it did. She told the investigator that as well.

84. The investigation got off on the wrong foot because, at various times, both Mr Altaf and Mr. Armstrong thought the claimant made his comment **to** two young girls passing in the mall and that Ms Klemetti was the complainant.

85. Although those mistakes were ultimately put right by Mr. Armstrong, the seriousness of the allegation, initially, seemed far higher than it actually was and, at the outset of Mr Armstrong's involvement, was already pushing him towards a serious sanction rather than a warning. Although Mr Armstrong suggested he did consider other sanctions, there was no evidence of a consideration as to whether a warning, properly administered, would solve the issue. Mr Armstrong was, after all, faced with an employee who was willing to apologise and was, himself, upset that he had caused distress to the Ms Klemetti.

86. When Ms Klemetti gave evidence she confirmed that she had been happy to continue working with the claimant, that she was annoyed at his comment and the position he was taking with regard to what women wore, but she did not feel that it warranted dismissal. Although Mr Qudeer thought that Ms Klemetti was too quiet to come forward and make a complaint, this did not come across when she gave evidence to the Tribunal. Indeed, she impressed as someone who would hold her own in a discussion and who would not be afraid of making a complaint if she felt she needed to. Furthermore there was no suggestion that her attitude would have been any different in 2019 as the notes of the investigation show.

87. The actual wording that was allegedly used by Mr Minhas was never pinned down and changed over the period of the investigation and the disciplinary process. The respondent had delayed the disciplinary process and a considerable amount of time had elapsed since the incident. Even the claimant could not remember some of the details of the discussion. That cannot be fair. It is an important tenet of a fair process that matters are dealt with in a matter of weeks. That is especially so when the accusation relates to words spoken and their context. This was not a complicated issue such as a fraud or a criminal offence where time needs to be taken. This was a simple allegation of misconduct.

88. Both Mr Qudeer and Mr Altaf were clearly upset, as men of Pakistani heritage, that another Pakistani man had made such controversial comments. That was the catalyst for Mr Qudeer making the complaint and tainted the way Mr Altaf dealt with the investigation of the incident.

89. The comment made by the claimant to Ms Klemetti was part of a general discussion about clothing. The claimant, as already set out above, had strong views as to what people should wear and do. For example he felt that women should not breast feed in public. But he also made it abundantly clear that these were simply his views and he had no issue with other people having a different point of view. He accepted, throughout the investigation and the disciplinary process, that he was sorry that he had upset a colleague and was anxious to apologise to her. Mr Altaf could not bring himself, before this Tribunal, to accept he had got a number of matters wrong even when faced with clear evidence that he had. For example, that he believed the claimant had made the offending comments to the two young girls.

90. Mr Altaf was not the dismissing officer but the way in which he conducted the investigation and the conclusions he came to, based on a wrong premise led him to

decide to send the matter to a disciplinary hearing. That in itself was unfair to Mr Minhas. If Mr Altaf had carried out a fair investigation the matter may not have needed to have gone further. Mr Altaf's poor and inaccurate summary must have affected the way that Mr. Armstrong dealt with the matter.

91. The claimant was guilty of some misconduct because Ms Klemetti did feel that she would not dress in a certain way in front of the claimant. This was a heated argument between two people who had two different views of how people should dress in public. The incident did not require the claimant to be dismissed and such a sanction in all the circumstances of this case is outside the band of reasonable responses. Mr Minhas never condoned rape. He had a view as to how a certain kind of dress might effect the way some men may behave.

92. Much was made by the respondent witnesses about the possibility that Sky's brand would be damaged. That was an improbable outcome. The discussion between the claimant and Ms Klemetti was a private one. No member of the public heard it. Indeed, Mr Qudeer only knew of some of its content because both the claimant and Ms Klemetti told him what they had been arguing about. Mr Minhas never tried to hide the content of the conversation. He was criticised for that by both Mr Qudeer and Mr Altaf who both thought the claimant too strident and outspoken on a number of issues. There was a sense that both men were happy to see the back of the claimant. Mr Qudeer made much of the conversation when he had not heard the whole of it and could not put it properly into context and Mr Altaf brought his own personal views of the claimant and the situation to bear during his investigation. He was not impartial.

93. When Ms Beard came to deal with the matter the claimant confirmed to her that he never said that anybody had the right to rape someone, yet her response to that comment was to say there was enough evidence in the pack that contradicts the claimant's position. That was a startling comment to make.

94. The choice of clothing, especially for women, can be an emotive subject and the respondent clearly had to deal with it once the complaint had been made by Mr Qudeer but those managers involved, including Mr. Armstrong, focused on what Mr Minhas did wrong and, at no point during the whole process, did any of the managers seek to find what the claimant did right. For example, Mr Altaf said the claimant was not remorseful. The claimant was. Mr Altaf said, and told Mr. Armstrong, that the claimant was only remorseful after he was pressed. The notes that Mr Altaf produced show something different. Mr Armstrong did not reflect on that and accepted Mr Altaf's view on that important point. No one considered it in the claimant's favour that the claimant was happy to apologise, nor that the matter had taken so long that the actual details of the conversation were difficult to pin down and that Ms Klemetti confirmed, on a number of occasions, that she was happy to work with the claimant. Indeed she continued to work for six weeks with him without difficulty.

95. Any investigation and disciplinary process must be fair in all the circumstances of the case and it is incumbent upon the disciplining officer to seek positive elements of an employee's case especially when the employee's job is on the line.

96. I must not substitute my view for the views of the dismissing officer but Section 98(4) Employment Rights Act 1996 requires me to consider whether the dismissal is fair or unfair having regard to the reason shown by the employer and that decision depends on whether, in all the circumstances, including the size administrative resources of the employer's undertaking, the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employer and that matter shall be determined in accordance with equity and the substantial merits of the case.

97. Considering the size of Sky as a global organisation and the ability of its managers to have support from human resources and a legal team, the Tribunal expects a first rate process. There can be no excuse for this matter to have taken so long to deal with. The claimant was placed at a serious disadvantage by having the process finally dealt with in in September when the incident, which lasted no more than fifteen minutes, occurred in June. The ACAS code demands that both employers and employees should raise issues promptly. Mr Qudeer's complaint was not promptly made, nor did Mr Altaf investigate promptly and Mr Armstrong allowed the matter to drift on into October before a decision was taken. He saw the claimant on 5 September yet did not complete his interviews until 23 September. I noted that the claimant cancelled one meeting with Mr Armstrong, but the main reason the process took so long was because of the manager's inertia. All the while Mr Minhas was on suspension. That was unfair.

98. In short, applying the test in **Birchall** as set out in paragraph 3 above, it is accepted that Mr Armstrong had a genuine belief that Mr Minhas had been guilty of some misconduct, but the degree and level of seriousness of that misconduct was based on a flawed investigation and the sanction was outside the band of reasonable responses. Mr Armstrong attempted to put things right, but the whole process can be likened to a runaway train heading for a destination of dismissal once Mr Altaf dealt with the investigation in the way that he did. No one, especially Mr Armstrong, who had the power to do so, applied the brakes. Furthermore, Mr Armstrong received information piecemeal. He knew there were inconsistencies in what the main protagonists were saying had been said and much was made of the damage to Sky's brand when it was obvious that no member of the public heard the comment. Mr Armstrong gave no leeway to the claimant on either of those two issues. Considering this case in the round the claimant was dealt with unfairly when he lost his job.

99. He has his declaration of unfair dismissal and remedy will be dealt with at the hearing in April.

100. At that hearing, I will hear submissions from both parties with regard to all remedy issues and, in particular, as to whether any compensation, due to the claimant, should be reduced because of the claimant's conduct and how the breach of the ACAS code should be reflected in the amount of compensation.

_____

Employment Judge Robinson

Date: 27 March 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON
1 April 2021

FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**
Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.