

# Procedurally imperfect but fair: the EAT's judgment in [Lamb v Teva UK Ltd \[2026\] EAT 8](#)

---

By [Daniel Brown](#)

3PB Barristers

[ ] paragraph number of EAT's judgment

1. This case involved a claim of unfair dismissal. The ET rejected the claim. The Claimant appealed. He argued that no reasonable ET could have dismissed his claim (that the judgment was perverse) because:
  - a. the person charged with conducting the investigation (Mr Lillington) was also a witness;
  - b. the note taker during the investigation (Ms Clark) was also a witness;
  - c. the Claimant was provided with material evidence less than 24 hours before the disciplinary hearing; and/or
  - d. the ET had found that either Mr Lillington, Ms Clark or another employee (Mr Cockcroft) had made a comment along the lines of 'I don't think the Claimant is going to be back at the business' or 'the Claimant is done at the business' prior to the disciplinary hearing
2. The above factual assertions made by the Claimant (which reflect the substance of the four grounds of appeal considered by the EAT) were broadly correct. But the EAT concluded that these matters did not mean the ET was bound to find the dismissal unfair. The ET's judgment was not perverse. The appeal therefore failed.
3. The EAT's judgment provides a useful reminder that the question of whether a dismissal was fair or unfair cannot be answered by working through a procedural checklist. Procedural imperfections do not mean that a dismissal will necessarily be unfair.

## The facts

4. The Claimant was employed as an Engineering Supervisor. He was electrically trained. The events giving rise to the dismissal concerned a faulty forklift truck battery charger.
5. On 21 June 2022, the Claimant and a colleague became aware that the charger cable had been damaged.
6. On 12 July 2022, the Claimant signed a work permit stating that the area was safe, clean and tidy. The electrical fault with the charger had not been remedied at this time.
7. On 17 July 2022, a worker in the warehouse suffered an electric shock as a result of the electrical fault. The incident was categorised as a potential fatality.
8. Also on 17 July 2022 (and at a morning meeting on 18 July 2022), the Claimant told Ms Clark (Senior Warehouse Manager) that he was not aware of the electrical fault.
9. On 18 July 2022, Mr Cockcroft asked Mr Lillington to carry out an investigation. Ms Clark and Mr Lillington met with the Claimant on 18 July 2022 to explain that Mr Lillington would be undertaking an investigation and that Ms Clark would be taking notes.
10. Mr Lillington produced a witness statement setting out that he had heard a discussion between the Claimant and a warehouse operative (Mr Rees) on 21 June 2022. Mr Lillington's statement was to the effect that Mr Rees had informed the Claimant of the fault and that the Claimant went to investigate the issue. This witness statement was only provided to the Claimant when he was invited to attend a disciplinary hearing.
11. Mr Lillington reviewed CCTV footage recorded on 21 June 2022. The footage showed the Claimant and a junior colleague inspecting the cable connected to the faulty charger. Mr Lillington wrote a summary of the 21 June 2022 CCTV. He concluded that there was a question about whether the Claimant complied with the relevant policy, the 'Lock Out, Tag Out' ('LOTO') policy. LOTO required a padlock and label to be attached to damaged equipment to prevent its use until such time as it is repaired.
12. During the investigation, Mr Lillington also obtained a statement from Mr Rees and met with the Claimant. The junior technician present on the 21 June 2022 CCTV footage was also interviewed.
13. In light of the above, Mr Lillington was a witness because of the discussion he claimed to have heard on 21 June 2022 between the Claimant and Mr Rees. And Ms Clark was

- a witness by virtue of the comments made by the Claimant to her on 17 and 18 July 2022.
14. Following the investigation, the Claimant was invited to a disciplinary hearing on 26 July 2022. The hearing was to take place on 2 August 2022.
  15. On 19 July 2022, Mr Lillington carried out a review of CCTV footage on 12 July 2022. This was the day on which the Claimant signed the work permit form. Mr Lillington produced a written summary, which was sent to the Claimant on 1 August 2022 (less than 24 hours before the disciplinary hearing).
  16. The Claimant was dismissed at the disciplinary hearing on 2 August 2022. The decision was made by Mr Dobinson (Facilities Manager). The Claimant appealed against his dismissal. The appeal was heard by Mr Cartwright (Senior Director Finance). The appeal was unsuccessful.
  17. In its judgment, the ET found that a comment along the lines of 'I don't think he is going to be back in the business' or 'he's done at the business' was made either by Mr Lillington, Ms Clark or Mr Cockcroft. The ET held that the remark was unwise but, crucially, it found that none of the three individuals in question took the decision to dismiss the Claimant and nor did any of them influence Mr Dobinson's decision to dismiss the Claimant.

## Legal principles

18. The EAT's discussion of the test to be applied when deciding if a dismissal is fair or unfair goes right back to basics. The EAT identified three essential stages [29-36]:
  - a. the employer is required to establish the reason (or principal reason) for dismissal. This means the factual reason for dismissal. The ET must identify the set of facts or beliefs which caused the employer to dismiss the employee. If the employer fails to establish a factual reason for dismissal, the claim will succeed;
  - b. the ET must then decide whether the reason for dismissal is a potentially fair reason falling within s.98(2) or 98(1)(b) Employment Rights Act 1996 ('ERA 1996'). Again, if the factual reason is not one of the potentially fair reasons, the claim will succeed; and
  - c. if the employer establishes a potentially fair reason, the ET must then consider whether the dismissal was fair. The burden of proof is neutral at this stage. The

ET must apply s.98(4) ERA 1996.

19. The EAT goes on to discuss the band of reasonable responses test (which ‘applies to all of the steps in determining whether a dismissal is fair, including the investigation into a disciplinary allegation’); the duty of the ET not to substitute its own view; and the well-known guidance in British Home Stores Limited v Burchell [1978] IRLR 379, [37-43].
20. The EAT also refers to the case of Software 2000 Ltd v Andrews and others [2007] ICR 825 [44] but this appears to be an erroneous citation. The text quoted in the judgment is from Taylor v OCS Group Ltd [2006] ICR 1602 (CA). The point made in Taylor v OCS is an important one. There is no rigid distinction between ‘substantive’ and ‘procedural’ fairness. The ET must consider the procedural issues together with the reason for dismissal. These two matters are intertwined. Where the misconduct in question is serious, the ET might well decide that the dismissal was fair, notwithstanding some procedural imperfections. Where the misconduct is less serious, the same procedural deficiencies might lead to the conclusion that the employer did not act reasonably in dismissing the employee.
21. The EAT also summarised the core tenets of natural justice [46-48] and outlined the relevant provisions of the ACAS Code of Practice on disciplinary and grievance procedures [49-60].

## EAT Judgment

22. The EAT’s reasoning in relation to the four grounds of appeal is relatively succinct.
23. Ground 1 concerned Mr Lillington’s dual role as a witness and investigator. The EAT noted that in fact this issue was raised by the ET rather than by the Claimant [68]. During the disciplinary process, the Claimant knew that Mr Lillington had been a witness from the point of receiving his statement, but the Claimant did not make any procedural challenge at the time [72]. There is no absolute rule that someone who has had some involvement in the events cannot undertake an investigation [71]. Mr Lillington provided only a minor part of the evidence [73]. In these circumstances, Mr Lillington’s dual role was not a fundamental breach of natural justice and the ET was entitled to find the process was fair.
24. In respect of Ground 2, the EAT concluded that it was not perverse for the ET to conclude that Ms Clark’s relatively minor dual involvement did not render the dismissal unfair [75-76].

25. The Claimant did not object to the introduction of the evidence in relation to the 12 July 2022 CCTV footage at the time of his disciplinary hearing. The evidence was relevant to the allegations contained in the letter inviting the Claimant to a disciplinary hearing. The determination made at the disciplinary hearing did not materially go beyond the scope of the charge. Ground 3 therefore failed [77]. The ET was entitled to conclude that this issue did not render the dismissal unfair.
26. Finally, in relation to Ground 4, none of the managers alleged to have made the comment(s) in question were involved in the decision to dismiss. The ET was therefore entitled to conclude that the dismissal was fair, notwithstanding the alleged comments [79].
27. It follows that the appeal was dismissed.

## Comments

28. Considering the ‘potential fatality’ incident on 17 July 2022 [7], the conduct in this case was clearly very serious. Accordingly, applying Taylor v OCS, the factual matrix was one in relation to which procedural imperfections may be likely to carry less weight than in other cases.
29. However, it should be kept in mind that this appeal was a perversity challenge to the ET’s judgment. The question was not whether the EAT agreed with the ET’s assessment but whether the ET’s judgment was one which no reasonable ET could have reached. Employers cannot assume that a different Judge would decide in their favour in similar circumstances. Rather, the EAT’s judgment emphasises that in every case, the reason for dismissal and the procedure followed must be viewed broadly and together. The focus should be on the language of s.98(4) ERA 1996.

25 February 2026



**Daniel Brown**

*Barrister*  
*3PB Barristers*

0330 332 2633

[Daniel.brown@3pb.co.uk](mailto:Daniel.brown@3pb.co.uk)

3pb.co.uk

**No liability for the accuracy of the content of this document, or the consequences of relying on it, is assumed by the author. If you seek further information, please contact the 3PB clerking team.**