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# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs K Sesay  
**Respondent:** Barclays Bank Plc  
**Heard at:** East London Hearing Centre  
**On:** 30 August 2016; 18 January 2017  
**Before:** Employment Judge Houghton

## Representation

**Claimant:** In person  
**Respondent:** Mr W Dobson, Counsel

## RESERVED JUDGMENT

UPON HEARING the Claimant in person and Mr W Dobson of Counsel on behalf of the Respondent the JUDGMENT OF THE TRIBUNAL is that the Claimant was not unfairly dismissed by the Respondent.

## REASONS

- 1 By a Claim Form received by the Tribunal on 10 March 2016 the Claimant, Mrs Khadijatu Sesay, claimed that she had been unfairly dismissed from her employment as a cashier by the Respondent, Barclays Bank Plc. The Claimant's employment by the Respondent commenced on 29 October 2007 and terminated on 23 October 2015 when the Claimant had been in continuous employment for seven complete years. The Claimant was born on 20 January 1961 and was aged 54 on the effective date of termination of her employment.

- 2 The Tribunal heard evidence from the Claimant on her own behalf. On behalf of the Respondent the Tribunal heard evidence from Ms Claire Dalton (Assistant Branch Manager), Ms Karren Ladbury (the Claimant's Line Manager) and from Ms Catherine Gunnell (Kingsland High Street Branch Manager). I also had before me exhibit R1 (general bundle of documents running to almost 400 pages) to which additional documents were introduced during the course of the hearing. From the evidence I heard and the documents before me I made the following findings of fact.

### **The facts**

- 3 The Claimant commenced working as a cashier at the Respondent's Poplar Branch (now called the All Saints Branch) in 2007. She had latterly been working on the business till (till number 44) which involves receiving from customers a higher proportion of cash in the form of coins. There is a maximum amount of cash which any till can retain at any one time so that bags of cash are regularly removed from the till, placed on a trolley and eventually moved into what is called "Reserve" awaiting collection. The procedure involves the coins being placed into appropriate bags and then into a larger bag (of which examples have been provided to me) which, when the correct amount of money appropriate to that bag has been reached, are sealed and the bag stamped with the till stamp and initialled by the cashiers who have counted and sealed it. This process must be carried out under the Respondent's "dual control" procedures by two cashiers. The relevant form (for example R1, page 131) should then be initialled in the box headed "checked & sealed by" printed on the plastic bag.
- 4 Ms Karren Ladbury joined the All Saints Branch on 17 May 2015 as Branch Manager. Ms Ladbury considered the Claimant to be very experienced compared with some of the other employees at the branch. She also noticed that the Claimant would usually work on the business till (till 44). There is no suggestion that the Claimant directly opted to work on till 44 but equally there is no suggestion that she objected to it. In her first week at the All Saints Branch Ms Ladbury was told that the losses at the branch were high. At £8,000 that was considerably higher than the most recent 2016 losses which were running at less than £800 by May 2016. Ms Ladbury considered that the branch would benefit from a greater organisation and lifting of staff morale. She set about highlighting the bank's control procedures, stressing that they must be followed at all times. If she observed matters of concern she addressed them immediately, challenging straight away any actions she considered inconsistent with the bank's processes and procedures. Specifically, she made it clear that there would be no exceptions to the "dual control" process which had to be followed strictly.
- 5 Early in June 2015 the Respondent's special investigation team was notified of discrepancies in respect of coin remittances from the All Saints Branch to the cash centre (also known as "Bullion"). These losses amounted to over £4,000 during the period from 1 January to 2 June 2015. There is an issue as to whether the Claimant was present at a morning "huddle" at which the discrepancies had been raised. I cannot see there is much mileage in this point because even if, as the

Claimant contends, she was unaware of the discrepancies there can be no question that the Claimant was aware of the Respondent's cash handling procedures, particularly in relation to the requirement for "dual control" (R1, pages 291S – 291T).

- 6 On 8 June 2015 the Claimant was working as usual on the business till (No.44). When the time came at the end of the day to balance the till the Claimant discovered that it had £6,292 more cash than was showing on the electronic tally. The usual checklist (R1, pages 177 – 178) does not appear to have identified the reason for the discrepancy. Ms Ladbury heard the Claimant say that till 44 was "over" and that she needed assistance. Ms Ladbury accordingly agreed to assist the Claimant to locate the error. The Claimant also informed Ms Ladbury that she had "decreased" her till during the day which it is necessary to do if the amount of cash at any time in the till reaches the maximum. But this process makes it necessary to count and bag the excess cash, seal it to avoid tampering and stamp the bag with the date and the till number with the initials of the two cashiers who have carried out the process under the dual control system.
- 7 Given the size of the error on the Claimant's till on 8 June 2015 it was necessary for all of the coin bags to be opened, counted and checked. Ms Ladbury asked another cashier (Ms Begum) to assist her to count the coin bags (under the dual control system). There is a dispute as to whether or not Ms Ladbury found the bags on the trolley or whether, as the Claimant contends, they had been left on the floor for later transfer to the trolley. I cannot accept that there is enormous significance to this dispute because the crucial point is that the bags (as the Claimant accepts) had been sealed and stamped. The best explanation the Claimant can offer (wherever the bags were physically located) for them having been stamped and sealed is that she may have done it in error on account of the pressure of work on that till.
- 8 Having opened and counted the bags of coins, four of them were found to contain less than they should, amounting to a shortfall totalling £108. It was also observed that the bags had not been conventionally stamped and initialled. The stamps on the relevant four bags (R1, pages 119 – 122) were not positioned where they should have been and many were smudged. Furthermore, the till number shown on either side of the date had been scribbled over with illegible initials which did not correspond to any of the bank's cashiers' initials. With the exception of one bag (where an initial appears in the wrong box) there were no identifiable initials present on the sealed bags and none whatsoever in the correct location *viz* in the box headed "checked and sealed by".
- 9 Ms Ladbury and Ms Begum requested the Claimant to provide the £108 shortfall from her till so that the difference could be made up and the coin bags containing the accurate amounts were sent to "Bullion". The result of this was that the amount by which the till was originally "over" on the electronic tally (£6,400) was reduced by the amount of the shortfall in the bag to £6,292. But till 44 remained over by that amount.

- 10 The next day it was discovered that the reason for the original discrepancy which had triggered the audit described above was that the Claimant had mistakenly entered a cash deposit of £6,400 as a cheque deposit. But even with that error now identified the Claimant's till was now "under" by the £108 which had been removed from it to make up the four sealed bags to their proper value.
- 11 The next day, 9 June 2015, Ms Ladbury decided to do a full cash check at the branch which involved counting every penny within the branch from every till; cash bags; reserve cash; cash waiting to go to Bullion and the cash in the ATM machines. Ms Ladbury conducted that check under dual control with Irram Ahmed. During that cash check Ms Ladbury located a further 14 additional coin bags which were short to the tune of £565 in total and which had been completed in a manner strikingly similar to the bags which had been checked the previous day from the Claimant's till (R1, pages 123 – 136). They, too, had stamps in the wrong place, were smudged and had the till number obscured by small scribbles.
- 12 It needs to be pointed out in the interest of clarity that when £565 in coins was identified as missing, it did not necessarily follow that if the money had been taken by somebody, it had been taken in coins. This is because if the electronic tally had stated, for example, that a bag containing £500 had been removed from the till, whereas in fact the bag contained only £450, the actual contents of the till would exceed the electronic tally by the sum of £50. It would therefore be possible to remove £50 in notes from the till leaving the actual till contents matching that of the electronic tally. The till would therefore be in balance.
- 13 Ms Ladbury first contacted Ms Alison Coplestone, the Regional Operational Manager, about the missing money later on 9 June 2015. That led to Mr Dave Marchington, the Investigations and Whistleblowing Manager, attended the branch on 9 June to discuss her concern. After the meeting Mr Marchington suspended the Claimant pending further investigation. The first paragraph of the suspension letter handed to the Claimant (R1 page 80):
- I hereby advise you of a decision to suspend you on full pay from this date pending completion of a current investigation concerning Bullion coin remittance shorts at Poplar branch. Your suspension is precautionary, and is standard Barclays practice in circumstances in order to allow the investigation to progress as smoothly as possible. It is not a disciplinary sanction.**
- 14 On 11 June 2015 Ms Ladbury received a medical certificate in relation to the Claimant stating that the Claimant was unfit for work due to work related stress. Further sick notes were to follow (R1, pages 53 – 58).
- 15 On 16 June 2015 Mr Marchington conducted investigatory interviews with Ms Begum, Ms Laura Pryce and Irram Ahmed (R1, pages 140 – 154). Mr Marchington attempted to secure the Claimant's attendance at an investigatory meeting around the same time but it appears that the Claimant declined on account of ill health. She eventually attended an investigatory meeting on

24 August 2015 (R1, pages 155 – 173). During the course of the investigatory meeting the Claimant informed Mr Marchington that no one checked the coin bags because “we don’t have scales here for years” (R1, page 159). Later in the investigatory meeting the Claimant stated that there had been a meeting earlier in the year when staff had been told that processes had not been carried out correctly and that double checking was necessary but that she had been unaware of that meeting and “never signed anything” (R1, pages 169 – 170). When asked about the four bags found on 8 June 2015 the Claimant accepted that she had stamped them but denied that any initials (or scribbles) were her initials. The Claimant also accepted during the investigatory meeting that she had sealed the six bags (although only four of them turned out to be short of the correct number of coins). On 2 September 2015 Mr Marchington completed and submitted his investigation report (R1, pages 64 – 248).

- 16 Mr Marchington’s investigatory report appears to have been forwarded to the “DCG” manager. A decision was taken (it is not entirely clear by whom) that disciplinary action should be taken against the Claimant. Accordingly around 7 September 2015 Mr Marchington approached Ms Claire Dalton (Assistant Branch Manager, Newham Branch) asking her to conduct the disciplinary hearing. Ms Dalton duly wrote to the Claimant on 11 September 2015 (R1, pages 249 – 250) inviting her to a disciplinary hearing to be held on 18 September 2015 to consider disciplinary charges of theft and breach of the Barclays code of conduct. The letter reminded the Claimant of her entitlement to be accompanied and warned that the outcome of the disciplinary meeting could be her dismissal.
- 17 The date of the disciplinary meeting was subsequently amended to 23 September 2015 (R1, pages 253 – 254). Around 18 September 2015 the Claimant telephoned Ms Dalton to inform her that her trade union representative was unable to attend a meeting on 23 September 2015. A discussion followed as to the most suitable alternative date and the Claimant proposed 10.00am on 8 October 2015. A further letter dated 21 September 2015 confirmed that arrangement (R1, pages 257 – 258). The Claimant did not attend the 8 October 2015 disciplinary hearing, informing Ms Dalton that she was unwell.
- 18 Accordingly on 8 October 2015 Ms Dalton prepared yet a further disciplinary letter (R1, pages 265 – 266) fixing the disciplinary hearing for 14 October 2015. But just before that letter was posted the Claimant telephoned Ms Dalton to inform her that her representative could not attend the meeting before 22 October 2015. Accordingly, Ms Dalton agreed to postpone the meeting again at the Claimant’s request to 22 October 2013 at 10.00am.
- 19 Under the Respondent’s disciplinary policy (R1, page 48) it is permissible to hold a disciplinary hearing in the absence of an employee and make a decision on the evidence available where an employee “is persistently unable or unwilling to attend a disciplinary meeting without good cause”. On 20 October 2015 the Claimant left a voicemail message for Ms Dalton stating that she could not, after all, attend the latest meeting scheduled for 22 October 2015. On 21 October Ms Dalton spoke to the Claimant who said that her union representative was unable

to make the hearing the following day on account of an emergency. Ms Dalton decided to contact the Claimant's representative (Ms Gendora Ryan) directly. When she did so the next day Ms Ryan informed Ms Dalton that she had only been notified of the disciplinary hearing scheduled for 22 October two days earlier. This surprised Ms Dalton, who had been informed by the Claimant on 8 October 2015 that her representative would not be available until 22 October 2015 and had been informed the previous day by the Claimant that Ms Ryan had an emergency on 22 October 2015.

- 20 In a final attempt to proceed with the 22 October meeting Ms Dalton agreed to move the meeting either earlier or later in the day to fit Ms Ryan's commitments (R1, page 311). Ms Ryan agreed to attend a 9.00am meeting and appears to have rearranged her other commitment in order to accommodate the Claimant. Ms Dalton also explained to Ms Ryan that if the Claimant chose not to attend the 22 October meeting she could provide written representations but made it clear that she was not prepared to postpone the meeting on any further occasion. Later on 21 October 2015 Ms Dalton received a voicemail from the Claimant saying that she would not attend the meeting at 9.00am the next day as she had not arranged childcare and that her child's school was closed. The Claimant was unable satisfactorily to explain to me during the course of her evidence why a school closure affecting her ability to attend a meeting which she had been proposing to attend had occurred at such short notice, other than to say that it was an "inset day".
- 21 Ms Dalton had made it very clear to the Claimant that the disciplinary meeting would not be postponed on a further occasion. Ms Ryan had also informed Ms Dalton that she had emphasised to the Claimant that if she was unable to attend the meeting would proceed in her absence. On 22 October 2015 the Claimant telephoned Ms Dalton a little before 10.00am informing her that she would not be attending as she had cancelled her childcare arrangements because she was no longer in work. Ms Dalton explained that as she was suspended on full pay she was required to be available to attend work and suggested a delayed start of the meeting to 10.30am to allow the Claimant the time, even at this late stage, to attend her disciplinary hearing. The Claimant refused but Ms Dalton waited a further 30 minutes anyway until 11.00am but the Claimant did not materialise. Ms Dalton informed Ms Ryan that the meeting was accordingly going to proceed in the Claimant's absence. Having read through the investigatory documents Ms Dalton concluded that the disciplinary allegations had been established but not before considering in detail whether anyone else could have had the opportunity to remove cash from the four bags which had been short or from till 44 itself. She went on further to conclude that the shortages identified on 9 June 2015 were as a result of the Claimant's action. Ms Dalton found the decision to uphold allegations of theft to be a very difficult one but decided that there was sufficient evidence that the Claimant had indeed taken the missing cash and that dismissal without notice was the appropriate sanction. On 5 November 2015 Ms Dalton wrote to the Claimant (R1, pages 275 – 176) confirming her decision to terminate the Claimant's employment without notice for gross misconduct.

22 On 9 November 2015 the Claimant wrote to Ms Dalton exercising her right of appeal against the dismissal decision (R1, pages 278 – 279). That letter identifies three main grounds of appeal:

- (i) the decision to terminate was unfair because the Claimant was not given the opportunity to defend herself during the hearing which she was unable to attend due to unforeseen circumstances;**
- (ii) the Claimant had been discriminated against and victimised throughout the whole process; and**
- (iii) the Claimant was suspended without explanation and also the investigation had not been conducted fairly. The Claimant requested a proper hearing where she “would be able to defend myself.**

23 Having been asked to deal with the Claimant’s appeal and having read the relevant paperwork Ms Catherine Gunnell concluded that it was appropriate to provide the Claimant a full opportunity to present her case at the appeal hearing. The Claimant was unable to attend Ms Gunnell’s suggested meetings on 2 or 10 December 2015. As she was on leave from 17 December 2015 Ms Gunnell wanted to hold the meeting either on 15 or 16 December, but the Claimant was unable to accommodate those dates either. Ms Gunnell offered to pass the Claimant’s appeal to another manager in the light of her upcoming absence on leave, but the Claimant declined, saying that she preferred to wait until 8 January 2016 after Ms Gunnell’s return from annual leave.

24 The appeal hearing duly took place on 8 January 2015. The Claimant was accompanied by Ms Ryan (Unite representative) and the meeting notes were taken by Ms Vikki May (R1, pages 282A – 282M). Ms Gunnell was unconvinced by the Claimant’s explanation that she had sealed the coin bag which was short because she had “forgotten”. Ms Gunnell also could not accept that someone of the Claimant’s experience should need to be told when the operation of dual control was necessary. Ms Gunnell also rejected the Claimant’s suggestion that she had been discriminated against because she had not been informed about the branch shortages identified in 2015 and which had been brought to the special investigation team’s attention.

25 After the appeal meeting Ms Gunnell took time to digest what the Claimant had said and re-read the investigation report. She looked again at the photocopies of the coin bag and considered that the initials were very similar to those on the bags discovered to be short during the weeks leading up to 9 June 2015 (R1, pages 123 – 139). A number of those bags also clearly showed till 44 on which the Claimant had been working. Ms Gunnell also consulted the TAB (Till Allowance Book) and wanted to confirm with the Claimant when she had been working on till 44 and therefore had been responsible for it. She therefore scheduled a further appeal meeting with the Claimant held on 21 January 2016, again in the presence of Ms Glendora Ryan (R1, pages 283 – 287). As a result of that meeting Ms Gunnell became satisfied that the Claimant had been responsible for till 44 on a

regular basis and had been responsible for it on the relevant days. Ms Gunnell also explored the Claimant's explanation that she would place bags on the floor if she ran out of space and that this was not done under dual control. A discussion took place as to whether the till stamp left the Claimant's possession and she concluded that while it might have rarely been taken by a manager (for example to certify a statement for customers), there was nothing to suggest that the till stamp was regularly removed from till 44.

26 On 29 January 2016 Ms Gunnell wrote to the Claimant (R1, pages 288 – 290) informing her that although she was upholding an aspect of her appeal in relation to the disciplinary hearing conducted in her absence, her overall conclusion was that the decision to dismiss her was upheld. I consider the appeal outcome letter worth reproducing in full:

**29<sup>th</sup> January 2016**

**Dear Khadijatu,**

**Outcome of your appeal**

**Following the disciplinary appeal meeting that you attended on 8<sup>th</sup> January 2016 and 21<sup>st</sup> January 2016 at Newham branch to discuss your dismissal and how you felt you were not treated fairly I write to confirm my decision.**

**Having carefully considered all points raised I have conclude that your appeal should be upheld in some, but not all aspects and so I regret to say your appeal will not be upheld.**

**You appealed against the decision to dismiss you on the following grounds**

- ***Process was unfair, you was not given the opportunity to defend yourself***
- ***Discriminated against, victimised throughout the whole process***
- ***Suspended without explanation, investigation was not conducted fairly***

**Process was unfair; you were not given the opportunity to defend yourself**

**I refer to our meeting of 8<sup>th</sup> January 2016 when you explained why you felt the process was unfair as the case was heard in your absence. The first meeting arranged you were unable to attend due to the union representative being unavailable that day. The second meeting date arranged unfortunately you were unwell and the third meeting you accept fault in giving too short notice to your union representative to attend. When Claire re-scheduled the meeting at very short notice for you both to attend, however due to your child's sudden school closure on the day which I accept is out of your control and you had no child care the meeting went**



ahead in your absence. I accept we did not give you the opportunity to defend yourself on that day. When you explained in our meeting of 8<sup>th</sup> January 2016 I then gave the opportunity to present your case.

Based on considerations and findings on the 8<sup>th</sup> January 2016 I uphold this element of your appeal.

Discriminated against, victimised throughout the whole process.

You explained you felt this was as the other members of your team were not interviewed and they cannot pin point his on one person being you. You did not make mistakes in the past when you were blamed for mistakes and you do not recall a huddle about coins going missing and colleagues were not following procedure. I refer to the investigation and summary notes and can confirm the Branch Manager, Assistant Manager, Operation Banker and Moment Banker were interviewed between 9<sup>th</sup> June 2015 to 16<sup>th</sup> June 2015 however there is no evidence of any Essential Bankers were interviewed. I agree the investigation should of included interviewing your colleagues in particular the cashiers who were also operating the till that day which we failed to do. By interviewing the other Essential Bankers we would have a clearer understanding from the wider team of what processes were not in place if this was the case. However, by reviewing the case notes, the sealed bags, the TAB Book and interviewing yourself it does not change the fact that the 4 out of 6 sealed bulk coin bags which formed part of your till that day were short various amounts totalling £100 stamped with the till stamp T44 which you agree was your initial in the TAB and only you operated the till that day as you sealed and unsealed the till bag. Even though you stated the till stamp may not have been in your possession at all times when operating your till does come under your sole responsibility. When you initialled the TAB on 8<sup>th</sup> June 2015 and any other day you are initialling to take full responsibility for the contents of the till. Therefore you are accountable for this. You are also confirmed on 24<sup>th</sup> August 2015 the 6 bags were sealed by you in whom 4 bags were short and even if you do not recognise the initial the fact is the coin bags were sealed bags came from your till, stamped by your till and you confirmed sealing these bags. You did however say they may not have been complete as you could have made a mistake due to the nature of the busy day but then the coin and the difference was found with a mixed credit not being processed by yourself so accept mistakes can happen however this is left a difference of £108 short. There were no further claims made which could counteract this difference and the coin was checked under dual control therefore I have come to the conclusion that your till stamp was visible on the coin bags that day, they were under your control, sealed and stamped by you, they belonged to your till. You do not recognise the initial on the bag but the fact is they were sealed and stamped by you and short £100 under your control. You said you operated a busy till taking in large amount of coin and during the week up to 8<sup>th</sup> June 2015 there was only 1 bag awaiting in the bearer for collection of bullion bore your initial. Also having closely reviewed the other 14 sealed Bullion coin bags on 27/5/2015, 29/5/2015 they were visibly stamped from T44 to which you agreed was your initial in the TAB on that particular day in question.

With regards to you being victimised, you felt you were blamed previously for making mistakes that you had not made. You also said that Leadership did not apologise on an occasion for this. As mentioned above I believe the investigation should have interviewed other Essential Bankers at Poplar branch to establish processes followed however you are responsible and overall accountable for the till you take over.

Based on further questioning and reviewing of the TAB book, Coin bags, Interview notes available to me I do not uphold this element of the appeal.

In relation to a huddle being delivered around missing bullion coin, you did not recall this happening, I have looked further into this and have no evidence to confirm whether this took place or not as colleagues interviewed were unsure also Essential Bankers were not interviewed. Therefore I cannot clarify this, however it does not change the fact that coin was missing which was part of your till and sealed bullion bags and processes were not followed by yourself. A huddle would have been a way of reminding colleagues of their roles responsibilities and processes that should be adhered to at all times. You have been a cashier since 2007 and you are fully aware of the processes to follow but did not do so in this case.

With evidence available to me I uphold certain points of this element of your appeal, namely during the investigation we did not interview any other Essential Bankers however I do not uphold the element of discriminated, victimised throughout the whole process.

Suspended without explanation investigation was not conducted fairly.

On Tuesday 9<sup>th</sup> June 2015 you were handed a letter of suspension confirming this was precautionary and is concerning Bullion coin remittance shorts in Poplar branch. You were advised to be available during working hours whilst the further investigations took place. Numerous attempts were made by the Branch Manager, Karren Ladbury to discuss this further however you were unavailable due to ill health. Unfortunately it delayed the process in being able to talk to you in more detail to further explain the reason why. The earliest agreed date of 24<sup>th</sup> August 2015 was when a more in depth conversation took place. I agree as mentioned in point 2 the investigation should of included interviewing your impact of not doing this does not change the fact that you're till is under your control and you have sole responsibility of this.

Based on consideration of the evidence and the findings I have outlined above I do not uphold this element of the appeal.

I have considered all the evidence available to me and with further clarification with you to when you operated your till as well as your appeal points and I have decided to uphold the original decision to dismiss you as set out in the letter dated 2<sup>nd</sup> November 2015.

The decision is final and concludes the disciplinary procedure appeal process.

Copies of the notes from the appeal meeting are enclosed for your records.

If you have any further queries please do not hesitate to contact me on 0777 555 3347 alternatively you can call HR Services on 0800 145 6013 if you have any general questions about this procedure.

Yours sincerely

Cathy Gunnell

Branch Manager

- 27 The Claimant's employment accordingly terminated on 23 October 2015. The Claimant's Claim Form commencing these proceedings was received by the Tribunal on 10 March 2016.

### **The law**

- 28 The relevant law in relation to unfair dismissal is contained in section 98 of the Employment Rights Act. So far as material section 98 provides:

**(1) In determining for the purposes of this Part whether the dismissal of an employee was 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 that 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.**

29 If the employer shows a potentially fair reason for dismissal under section 98(1) or (2) it is established law that in applying section 98(4) an employer acts unreasonably only if the decision to dismiss the employee is itself one which no reasonable employer could have taken in the circumstances or where there has been some procedural flaw in the dismissal process which renders the employer's action unreasonable. As with all complaints of unfair dismissal, in cases of dismissal for reasons relating to conduct it is not open to the Tribunal to substitute its view for that of the employer.

### **Conclusions**

30 I find that the reason for the Claimant's dismissal was that the Respondent believed that the Claimant was responsible for the cash which went missing on 8 June 2015 amounting to theft and breach of the Respondent's code of conduct. That is a reason relating to the Claimant's conduct and is accordingly a potentially reason for dismissal under section 98(2) of the Employment Rights Act 1996.

31 The question whether the Claimant's dismissal was fair or unfair therefore turns on whether the Respondent acted reasonably or unreasonably in treating that reason as a sufficient reason for dismissal under section 98(4).

32 The Claimant points to a number of alleged procedural failures which she says rendered the Respondent's actions unreasonable.

33 The Respondent accepted during the appeal process the Claimant's criticism of the decision to proceed in her absence at the disciplinary hearing held on 22 October 2015. I would observe in passing that upholding this element of the Claimant's appeal does not necessarily entail any acceptance that Ms Dalton or the Respondent had acted unreasonably in the statutory sense, it is plain that any such unreasonableness was cured by the full opportunity afforded by Ms Gunnell to the Claimant by to put her case at the appeal hearing. I am therefore unable to accept that the Respondent acted unreasonably in relation to proceeding with the 22 October meeting in the Claimant's absence. Had it been necessary for me to decide the point it would, against the factual background, in my judgment have been straining the legal principles to conclude in any event that no reasonable employer would have proceeded with the disciplinary meeting in the Claimant's absence.

- 34 I reach the same conclusion in respect the Claimant's complaint that other colleagues were not interviewed. This was an issue considered and weighed by Ms Gunnell who explained in the appeal outcome letter precisely why the weight of the other evidence justified a conclusion that the Claimant was responsible for the missing cash. Likewise, Ms Gunnell explained why she rejected the Claimant's allegations of discrimination and victimisation, together with her explanations regarding placing the cash bags on the floor, her knowledge of the proper procedures and the potential for her till stamp to be used by others.
- 35 I explained to the Claimant during the course of the hearing that for the purposes of an unfair dismissal claim the Tribunal's task was not to decide whether it agreed with the Respondent's conclusions that she had been responsible for the missing cash. I have reached the conclusion that the Respondent held its belief in the Claimant's misconduct genuinely, on reasonable grounds and following such investigation as was reasonable in all the circumstances.
- 36 Likewise, I am unable to identify any procedural failures (whether those identified by the Claimant or more generally) which render the Respondent's actions unreasonable under section 98(4) of the 1996 Act.
- 37 As regards the penalty of dismissal, the Respondent concluded that the Claimant had taken the Respondent's cash and did not step back from describing it as "theft". It did not limit the disciplinary charges to "breach of procedures" leaving open the standard arguments as to whether dismissal was justified. The Respondent's expressed belief must have involved a belief in a degree of culpability on the part of the Claimant sufficient for it to conclude that her continued employment was no longer possible. It is impossible for me to conclude that no reasonable employer could have taken the decision to dismiss the Claimant summarily in response to the disciplinary charges it upheld.
- 38 For the above reasons I conclude that the Claimant was not unfairly dismissed by the Respondent.

Employment Judge Houghton

17 May 2017