EMPLOYMENT TRIBUNALS

Claimant **Mrs R Brydon**

Respondent **Co-operative Group Limited**

REASONS OF THE EMPLOYMENT TRIBUNAL

Heard at North Shields On 6th & 7th March 2017
Before: Employment Judge Garnon (sitting alone)

Appearances
For the Claimant: Ms J Stockton, Solicitor
For the Respondent: Ms L Gould of Counsel

REASONS(bold print is my emphasis)

1. Introduction and Issues

1.1 By a claim form presented on 28th September 2016 the claimant brought complaints of unfair dismissal and breach of contract. She was born 13th July 1960 , and employed , latterly as a Store Team Manager of a food store in Heaton Newcastle, from 2nd March 1987. Her employment was terminated without notice on 1st July 2016 for reasons the respondent says related to her conduct. She denies key aspects of the misconduct alleged and challenges the procedural fairness of the investigative and disciplinary process. She avers the decision to dismiss fell outside the range of reasonable responses and could not justify summary dismissal.

1.2. The issues are:

1.2.1. What were the facts known to, or beliefs held by, the employer which constituted the reason, or if more than one the principal reason, for dismissal?

1.2.2. Were they, as the respondent alleges, related to the employee's conduct?

1.2.3. Having regard to that reason, did the employer act reasonably in all the circumstances of the case:
(a) in having reasonable grounds after a reasonable investigation for its beliefs
(b) in following a fair procedure
(c) in treating that reason as sufficient to warrant dismissal ?

1.2.4 If it acted fairly substantively but not procedurally, what are the chances it would still have dismissed the employee if a fair procedure had been followed?

1.2.5. If dismissal was unfair, has the employee caused or contributed to the dismissal by culpable and blameworthy conduct ?

1.2.6. In the wrongful dismissal claim, the issue is whether she was in fact guilty of gross misconduct

2. The Relevant Law

2.1. Section 98 of the Employment Rights Act 1996 ("the Act") provides:

"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair it is for the employer to show –
(a) the reason (or if more than one the principal reason) for dismissal
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it relates to ..... the conduct of the employee."

The Reason
2.2. In Abernethy v Mott Hay & Anderson, Cairns L.J. said the reason for dismissal in any case is a set of facts known to the employer or may be beliefs held by him which cause him to dismiss the employee. The reason for dismissal must be established as at the time of the initial decision to dismiss and at the conclusion of any appeal. Although it is an error of law to over minutely dissect the reason for dismissal, it is essential to determine the constituent parts of the reason.

2.3. Misconduct and incapability are sometimes hard to differentiate. Sutton and Gates (Luton) Ltd -v- Boxall held a reason relates to capability if the claimant is trying her best but failing and relates to conduct if she is failing to exercise to the full such talents as she possesses.

Fairness
2.4 Section 98(4) of the Act says:
"Where an 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 all 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
(b) shall be determined in accordance with equity and the substantial merits of the case."

Reasonable belief and investigation
2.5. An employer does not have to prove, even on a balance of probabilities, the misconduct it believes took place actually did take place, it simply has to show a genuine belief. The Tribunal must determine, with a neutral burden of proof, whether

the employer had reasonable grounds for that belief and conducted as much investigation in the circumstances as was reasonable (see British Home Stores v Burchell as qualified in Boys & Girls Welfare Society v McDonald.)

2.6. Serious allegations, if disputed, must always be the subject of careful and conscientious investigation and the investigator carrying out the enquiry should focus no less on evidence which may exculpate or point towards the innocence of the employer as on evidence directed to prove the charges see A v B [2003] IRLR 405. This is very important where there are disputed allegations of dishonesty .

2.7. The Court of Appeal in Orr-v-Milton Keynes Council said *it would be contrary to the language of the statute to hold that the employer had acted unreasonably and unfairly* ***if in fact he had done all that could reasonably be expected of him and had made a decision that was reasonable in all the circumstances.*** *That is why it is important to identify whose state of mind is intended to count as that of the employer for this purpose. … The obligation to carry out a reasonable investigation as the basis of providing satisfactory grounds for thinking that there has been conduct justifying dismissal necessarily directs attention to the quality of the investigation and the resulting state of mind of the person who represents the employer for that purpose****. If the investigation was as thorough as could reasonably have been expected, it will support a reasonable belief in the findings, whether or not some piece of information has fallen through the net. There is no justification for imputing to that person knowledge that he did not have and which (ex hypothesi) he could not reasonably have obtained****.*

Fair procedure

2.8. In Polkey v AE Dayton Lord Bridge of Harwich said : *the employer will normally not act reasonably unless he investigates the complaint of misconduct fully and fairly and* ***hears whatever the employee wishes to say in his defence or an explanation or mitigation;*** *…* Khanum v Mid Glamorgan Area Health Authority explained the requirements of natural justice which have to be complied with during a disciplinary enquiry are : firstly, the person should know the nature of the accusation against her; secondly, should be given **an opportunity to state her case; and thirdly, the dismissing officer should act in good faith**. Strouthos v London Underground held the employee should only be found guilty of disciplinary offences with which she has been charged. If she is found guilty of and sentenced for something that had not been charged she will not have received fair treatment.

.

Fair Sanction

2.9. Ladbroke Racing v Arnott held rule which specifically states that certain breaches will result in dismissal cannot meet the requirements of section 98(4) in itself. The statutory test of fairness is superimposed upon the employer's disciplinary rules which carry the penalty of dismissal. But rules are not irrelevant. Employees are entitled to place weight on matters important **to them.** In Meyer Dunmore International v Rodgers, , where the charge was of fighting, Phillips P put it thus:

"Employers may wish to have a rule that employees engaged in, what could properly and sensibly be called fighting are going to be summarily dismissed. As far as we can see there is no reason why they should not have a rule, provided – and this is important – that it is plainly adopted, that it is plainly and clearly set out, and that

great publicity is given to it so that every employee knows beyond any doubt whatever that if he gets involved in fighting in that sense, he will be dismissed.

2.10. When considering sanction, a previous good employment record is always a relevant mitigating factor, but if the offence is serious dismissal may still be fair . It may be unfair to dismiss an employee for doing what others do without being dismissed see Post Office-v-Fennell and Hadjioannou-v-Coral Casinos . The latter case approved by the Court of Appeal in Paul-v-East Surrey District Health Authority, held an argument that one employee received a greater sanction than others is relevant where
(a) there is evidence employees have been led to believe certain conduct will be overlooked or dealt with by a sanction less than dismissal
(b) where other evidence shows the purported reason for dismissal is not the genuine principal reason
(c) where , in truly parallel circumstances it was not reasonable to visit the particular employee's conduct with as severe a sanction as dismissal.

2.11 British Leyland –v-Swift held an employer in deciding sanction can take into account the conduct of the employee during the investigative and disciplinary process, so if she appears " economical with the truth" not only may she be disbelieved but also no longer trusted to act as an employee should .

Appeals
2.12 Taylor-v-OCS Group 2006 IRLR 613 held that whether an internal appeal is a re-hearing of a review, the question is whether the procedure as a whole was fair. If an early stage was unfair, the Tribunal must examine the later stages " *with particular care… to determine whether, due to the fairness or unfairness of the procedures adopted, the thoroughness or lack of it of the process and the open mindedness (or not) of the decision maker , the overall process was fair notwithstanding deficiencies at the early stage* " (per Smith L.J.)

Band of Reasonableness
2.13. In all aspects substantive and procedural Iceland Frozen Foods v Jones (approved in HSBC v Madden and Sainsburys v Hitt,) held I must not substitute my view for that of the employer unless its view falls outside the band of reasonableness

Wrongful Dismissal
2.14. At common law, a contract of employment may be brought to an end only by reasonable notice unless the claimant is guilty of "gross misconduct" defined in Laws v London Chronicle (Indicator Newspapers) as conduct which shows the employee is fundamentally breaching the employer/employee contract and relationship. Dishonesty towards the employer is the paradigm example of gross misconduct. Another is **wilful** failure to obey lawful and reasonable instructions. The requirement for wilful disobedience was affirmed by the Supreme Court in West London Mental Health NHS Trust-v-Chhabra. There is a difference between " wilful" and ill intentioned. A clarification of this area of law is to be found in the judgment of Lord Justice Elias in a case heard on 13th December 2016 of Adesokan –v- Sainsbury's Supermarkets Ltd Elias L J added " *the parameters available to a judge in a case of this kind are limited; it ought not readily to be found that a failure to act where there*

was no intentional decision to act contrary to or undermine the employer's policies constitutes such a grave act of misconduct as to justify summary dismissal."

2.15 Lawful instructions may be in the form standing orders made known clearly as essential for employees to follow. The main differences between unfair and wrongful dismissal are that in the latter I may substitute my view for the employer and take into account matters the employer did not know about at the time (see Boston Deep Sea Fishing Co –v-Ansell) Unless the respondent shows on balance of probability gross misconduct has occurred, the dismissal is wrongful and damages are the net pay for the notice period less any sums earned in mitigation of loss. The statutory minimum periods of notice, set out in Section 86 of the Act, in this case is 12 weeks . The parties agreed the amount of net pay for that period .

3. Findings of Fact

3.1. I heard Mr, Michael " Mick " Edington, Store Manager and Investigating officer , Mr Norman Finlay, the disciplinary decision maker . Mr Ross Milner appeal manager and the claimant .. I had an agreed bundle of documents running to over 300 pages much of which consisted of "policies" and training material. The findings relevant to the issues will be much more succinct than the volume of evidence.

3.2. Both sides made the common mistake of assuming an " outsider" knows what certain terminology means and normal procedures are . After an exemplary 29 years of service the respondent's decision, that on balance of probability the claimant **deliberately falsified** records **dishonestly,** devastated her and she said today she is here mainly to "clear her name ". .

3.3. The respondent has a policy for ensuring health and safety (H&S) compliance in its stores known as "Safe and Secure". It includes that a member of the management team must do " HHT (" hand held terminal") checks ". Eight are done daily before a store opens for trading . Eighteen are done weekly and twenty one four weekly. The ones which carry most risk are called " critical reds". All involve physically doing checks on a list of items shown on the HHT and answering "yes" " no" or "skip" to each . The four weekly checks appear on the HHT and require the manager on duty to check back to the date of the last check . They have a week in which to do so from the date the request "comes in ". The time the answer is input is recorded on the computer system linked to the HHT. Mr Edington, the claimant and three other team managers are authorised to do HHT checks. They share one hand held terminal.

3.4. For compliance with rules about asbestos, a "critical red" , the check was four weekly and meant checking every non-customer visitor to the store, all of whom sign in a " visitor's book" (VB) at the counter on which the tills are mounted, who is a contractor to do work to the fabric of the store, also signs an " asbestos acknowledgment sheet" (AAS) to certify he has been informed of the locations of asbestos in the premises in case he disturbs such material . Each contractor should have the locations on an "app" sent electronically in advance , but the purpose of the AAS is to show the contractor has had and read it . Whoever is on the tills should alert a duty manager when a contractor arrives.

3.5. The claimant was absent from work on sick between the 1st August 2014 and 6th April 2015. Mr Edington started in March 2015 having come from a store where HHT's had not been used . While the claimant was on sick leave. the AAS's which had been kept in the Health and Safety Manual in the office, which meant a manager would have to take the contractor to the office to sign the AAS were moved to the tills and now kept with the VB . The claimant told Mr Edington this was not a good idea as whoever was working on the till may omit to get contractors to sign the AAS . He said this was the instruction from head office and they had to get on with it, so she did. The claimant suggested a method of physically doing the checks by using a highlighter pen to mark the VB to show which visitors had signed the AAS . In my opinion this was the wrong way around, in that the checker would have to look at the whole VB for gaps in the highlighting which contained a contractor**.** Both sheets are in manuscript and I had difficulty reading some entries on the copies. One has to guess from the name of the company against the name of each visitor who is a contractor as opposed to , for example, a sales representative or some other visitor who would never disturb any asbestos. It would have been better to highlight in the VB all contractors and then check the AAS corresponded . However , the claimant's suggestion was adopted by Mr Edington and the others.

3.6. The claimant knew the importance of HHT checks and had done them since they came in years earlier. In 2015/2016 no changes to HHT checks as such were made. The respondent has always emphasised they must be done, but not spelled out in detail **how** they should be done. When on early shift the claimant starts at 6 am for the shop to open at 7am. In that hour she does " GAP" inspection to see if there are gaps in the stock on display and completes the "Fit for 7" inspections , some of which are H&S related . She makes a mental note of matters which regularly appear on the HHT as she is doing so , then goes to the office and answers whatever questions appear on the HHT .If there is something she does not know to be a "yes" from her earlier " floor walk" she will go to check it , usually taking the HHT with her. Her method is to " multi task" on doing the same checks for different purposes.

3.7. When Mr Edington did HHT checks, he would take the one HHT "gun", as everyone called it, with him as he walked around doing the checks. He rarely worked for long with the claimant and I accept he did not know how she worked . Her system for daily checks is more risky in that it relies on her memory being accurate .

3.8. The clues to the truth about asbestos checks are in a few sentences of her 77 paragraph witness statement which say she ***"regularly"*** checked the AAS *"when working on the till, and had a free moment, to make sure it was being signed in line with the visitors book . Then every four weeks I would* ***confirm this was being done on the HHT .*** *I understood I was doing the checks correctly. Mick had never said to me I was doing anything incorrect"* and later " *I did my daily checks before the store opening and the four weekly checks I would do* ***whenever I had chance in the four week period and sign them off on the HHT on the date required."*** She did asbestos checks **periodically over** the four week period . She could anticipate from her work diary when the next one was due to come in on the HHT , may check the VB and the AAS a day of two before and on the day the HHT request arrived only glance to ensure no visitor had just come in . This method is also risky because it relies on others having done the highlighting correctly.

3.9. In late 2015 the respondent, in its witnesses words, " *launched* " a "*focus*" on ensuring H&S compliance through " Safe and Secure". A new audit process was introduced to " *support compliance*". A Colleague Guide the claimant never saw used the words " zero tolerance " and said "falsification" of HHT checks would be "viewed as dishonesty". Mr Edington's job was to cascade these messages to his team managers but I find he did so ineffectively. The claimant completed a computer training module and read, probably too superficially, copious written material sent out by head office . She and Mr Edington did not often work together and he did not spell out for her any changes necessary to the way in which she did the checks. The claimant was away when another store manager came in to give some training

3.10. On 12th June 2016 the claimant did an HHT check which included questions
Is the contractors Asbestos Acknowledgement sheet being used ?
Are your colleagues aware of the store asbestos procedure?
She answered "yes" to both which is literally correct , but I accept the respondent's argument it was known to all, including the claimant, the first question really means " *used* ***properly***" .

3.11. On 18th June Mr Colin Jackson, an area manager, came to do an audit. He found two contractors had signed the VB but not the AAS on 12th June but the claimant had put "yes" in answer to both questions. The audit was failed.

3.12. On 20th June Mr Edington told the claimant not to worry about that . He did not suspend her. That decision was wholly reasonable as he had no evidence at that point she had done anything other than make a mistake. The HHT check print out showed only a few seconds between some entries. That is wholly consistent with the claimant working as she now describes. Had she known that was wrong, she would not have advertised the fact in such an obvious way. . Employee Relations Contact Centre (ERCC), which is the respondent's HR department, contacted Mr Edington who , on 24th June .said he had to do an investigation .The claimant who never hid the way she did the checks was puzzled when , as her statement says " *Mick wanted to concentrate on my whereabouts –office or shop floor*"

3.13. Mr Edington's statement includes:

As part of the Safe & Secure checks, Rose would be required to complete daily, weekly and 4 weekly checks which are on a Hand Held Terminal (HHT). ***Once the questions had been viewed on the HHT****, Rose would* ***then*** *be required to physically go and check the item in question.*

For example one question is 'does the fire alarm panel work properly' – this would require Rose to walk over to the fire alarm and check that a green light is visible indicating that the fire alarm was working and she would ***then*** *have to select 'yes' or 'no' on the HHT.*

Another compulsory check is to the emergency lighting. Rose would be required to turn all of the emergency lights on and then to walk around the shop floor and warehouse to confirm that they all work. This cannot be checked from the office.

A further check is ensuring any out of date products have been removed from sale. The store has reduction bay where items are moved to and the price reduced when

they are coming towards their end date. Rose would have been required to go to the reduction bay and check the items. Again, this could not be checked from the office.

3.14. It is obvious he thought the claimant was doing the checks the way he did them not the way she has now described in answer to my questions. He continues

I showed Rose the HHT checks she carried out and drew her attention to the time it took her to carry out those specific checks, to which Rose replied that she would have moved the asbestos book and hung it up. I then showed Rose the CCTV footage which does not show this action at any point at all. I questioned Rose further as to when she carried out her checks to which she replied that she did them when taking the tills down I then showed Rose the CCTV footage again which did not show her doing this. Rose then stated that she was adamant she checked the book and she tried to highlight it with a bad marker. Again the CCTV footage did not show this.

He was looking at CCTV footage only for 12th June at around the time she made the HHT entries . It must have been obvious to the claimant that he did not realise how she worked , but she continued to describe actions she had taken earlier while performing other duties as if she had just done them. She was afforded at the investigation stage , as at the later stages , with every opportunity to give her explanations clearly but , for whatever reason including being nervous, she failed to do so. Her answers reasonably appeared to Mr Edington to be evasive and in part untrue . He adjourned to speak to ERCC who told him to check two other dates . He checked 15th and 22nd June and they reasonably appeared to him to show the same failings in that she was not visibly doing the checks at or shortly before she entered answers on HHT . He suspended her, as told me , because **he concluded she was not doing the checks at all .** I accept that was his genuine and reasonable belief .

3.15. On the topic of the 12th June asbestos checks the claimant says " ***I do even believe*** *I told Mick on the 16th June 2016 that I had done the checks and a couple of signatures did not match*". There is no evidence of her doing this and it was not put to Mr Edington in cross examination. I do accept her statement " *Mick asked if I understood how to do the check. I said yes, although he did not ask me what my understanding was to check it was the same as his*."

3.16. She had problems with her eyes which Occupational Health knew of as did Mr Edington who thought it was **irrelevant,** as was much of her defence. That is because she did not explain how it was relevant , and has not done so to me . It was entirely reasonable for Mr Edington to recommend this went forward to a disciplinary hearing . One was fixed for 1st July and Mr Finlay conducted it

3.17. The claimant was accompanied by a union representative who was not a manager, did not understand HHT checks and said nothing at the meeting. The claimant said it was not fair Mr Edington had investigated but did not explain why. She now says she thinks he made her a scapegoat for his own failings in explaining the changes in the system , but she did not say so at the time . She said she thought what she had done was the right way and maybe her eyes had something to do with it but again did not say how. Mr Finlay focussed on the CCTV . The claimant said she had always done HHT checks partly in the office and partly on the shop floor without the HHT gun. Mr Finlay's statement includes :

I do not think it would be possible to do that accurately without the check sheets.

I asked Rose about the daily checks questions and what they were, she did not even know how many there were. I also reminded her that you can only know what questions are asked by looking at the HHT and that it would be impossible to know what they were without looking at the HHT. I was not satisfied that Rose could possibly have known the answers to these critical questions when she completed the questionnaire.

There were many inconsistencies with Rose's explanation of what happened – first she explained that she wasn't sure if she checked the books because sometimes she thought she checked them when she actually hadn't. Rose would then change her explanation to say that she definitely checked the books. I was concerned with how truthful Rose was being at this point, especially having seen the CCTV footage which contradicted what she says she did.

After seeking advice from the Co-op's HR support at the Employee Relations Contact Centre (ERCC) I concluded that Rose had falsified entries and summarily dismissed Rose. In particular I took into consideration the following:

i There was sufficient evidence to demonstrate that Rose had been trained adequately in this area and that she was fully aware and understood what was required in this regard.

Ii There was CCTV footage which clearly shows that Rose completed the relevant documentation from the back office without physically checking each item – the time stamps in the HHT indicates that the required checks were completed within minutes, this would not have been possible.

Iii The fact that Rose provided no evidence that she physically carried out the checks and the CCTV indicated that she didn't.

Iv The fact that Rose herself understood that it was her duty to carry out these checks.

v The fact that Rose claimed she carried out the checks as she walked through the store but was not able to recall the critical red questions when asked.

vi Rose mentioned that at the time her eyes were bad and that this resulted in her inputting the wrong answer relating to the asbestos acknowledgment sheets. However, I did not accept that this was an entry error. The CCTV footage did not show Rose checking the acknowledgment sheets to ascertain the correct information to input in the first place. The CCTV footage showed Rose carrying out other duties across the store at other times with no apparent issues.

vii The CCTV is evidence which indicated that this was not a one-off incident and that this unacceptable conduct has been carried out on a number of instances.

Viii The fact that the potential Health and Safety risks to colleagues and consumers that Rose created by not actually carrying out the critical checks, were severe.

I considered a range of different options before making the decision to summarily dismiss Rose. In the circumstances and after seeking advice from the ERCC I made the decision to dismiss Rose for gross misconduct. The risks created by the deliberate falsification of HHT risk checks could have a detrimental impact on the business and its consumers.

In addition, I was particularly concerned with the Rose's inconsistent explanations of the situation which directly contradicted CCTV footage. Therefore I felt as if Rose was not being completely honest and transparent with me and I was then unsure as to what else she may not have been honest about.

In conclusion, I felt that Rose's conduct was such that she could not continue in the role and I had no faith that she would be honest in other regards and I felt that there was a breach of trust.

Whilst the Co-op does understandably have a strict disciplinary framework for breaches of Safe & Secure checks, there are allowances for those that have made genuine mistakes. However in Rose's case the evidence demonstrated that she did not even carry out any of the checks in the first place.

I accept all of the above reasoning as genuine and, in the light of the claimant's poor explanations in response to his questions, find his view was reasonable.

3.18. The meeting lasted about one and a half hours and was not adjourned, as the claimant says " *for a short time*" but between 11:15am – 12:45pm during which Mr Finlay consulted ERCC to ensure consistency. Procedurally, I find no fault with this meeting. On his return he told her she was summarily dismissed. The dismissal letter dated 2nd July 2016 is adequate saying she was dismissed for " falsification", ie answering "yes" when the real answer was " no ", on multiple occasions between 12th and 23rd June". I am wholly satisfied **the claimant knew** the disciplinary offences with which she had been charged in sufficient detail , was given **an opportunity** to state her case**,** and Mr Finlay as dismissing officer acted in good faith.

3.19. She appealed the decision on the 5th July 2016 (page 113). Her appeal grounds were set out at the meeting , where again she had union representation. She could have, but did not, give the explanations she gave to me today . Instead she focussed on two hopeless points that it was unfair for Mr Edington to have been the investigator and she should have been suspended earlier. Mr Ross Milner reviewed all that had gone before , found no fault with it so refused her appeal

3.20. On the point of inconsistency , I accept a Mr David Blades also failed an audit , was not dismissed but given further training. His were more minor errors, made within the " coaching period " and not thought to be due to his not doing checks at all. The increased focus on compliance has found 995 breaches of which 14 have resulted in dismissals . All are distinguished by being cases where it was thought , after investigation, the defaults were deliberate or at least reckless. I pressed all the respondent's witnesses to say what they thought caused the claimant , an employee with a long and impeccable service record , to deliberately falsify the HHT checks .

The first possibility was she " couldn't be bothered" . I rejected that and none of the respondent's witnesses thought it most likely. The second possibility is " assuming " everyone else is doing their job properly , in which case a "double check" was not necessary . I accept that is partly true, not least because in response to one of my questions she expressed reluctance to check on the work of colleagues she had worked with for some time. The third and most likely can be labelled "complacency". She described herself as a" creature of habit" so she followed methods which she believed had worked for many years and which no-one clearly told her to change.

4. CONCLUSIONS

4.1. The beliefs held by the employer which constituted the principal reason for dismissal were that she entered "yes" on the HHT asbestos questions without checking at all. . It also believed she had made similar entries without checking on other occasions and that when questioned her replies were evasive and untrue. It believed those reasons related to her conduct.

4.2. It acted well within the band of reasonableness in having reasonable grounds after a reasonable investigation for its genuine beliefs ,in following a fair procedure and in treating that reason as sufficient to warrant dismissal. The dismissal was fair so the other unfair dismissal issues are otiose.

4.3. In the wrongful dismissal claim the issue is whether she was in fact guilty of gross misconduct. I do not believe the claimant has a dishonest bone in her body or that her failure to obey standing orders was wilful. She was nervous at the various meetings as she was here and explained herself very poorly. I can only answer the obvious question of why I have formed such a different view to the respondent's witnesses by saying I, first as a lawyer in practice and then as a judge, have 40 years experience of listening to and reading accounts by witnesses who express their case poorly, picking up on small clues as to what they really are trying to explain and asking the right questions to elicit that explanation. Having done so in this case, and following Adesokan –v- Sainsbury's, I do not find her actions amounted to gross miscondiuct., so her wrongful dismissal claim succeeds

EMPLOYMENT JUDGE GARNON

REASONS SIGNED BY EMPLOYMENT JUDGE ON 14th March 2017

SENT TO THE PARTIES ON

14 March 2017

G Palmer

FOR THE TRIBUNAL OFFICE