THE EMPLOYMENT TRIBUNALS

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Claimant **Mr A Shonibare**

Represented by **Ms L Robinson, Counsel**

Respondent **National Car Parks Limited**

Represented by **Mr I McGlashan, Consultant**

EMPLOYMENT JUDGE: **Mr J Tayler**

Date: **8-9 December 2016**

Judgment having been promulgated and sent to the parties on 13 December 2016 and reasons having been requested on 14 December 2016 the following reasons are provided.

REASONS

Introduction

1. By a Claim Form received by the Employment Tribunal on 4 August 2016 the Claimant brought claims of unfair and wrongful dismissal.

Issues

2. The parties agreed a list of issues

Unfair Dismissal

2.1 What was the reason for the dismissal? The Respondent avers that the reason for the dismissal was conduct. (by the time of closing submissions the Claimant accepted that was the reason for his dismissal).

2.2 Was the dismissal for a potentially fair reason: section 98(2) ERA 1996. (as it was accepted that the reason for dismissal was conduct there was a potentially fair reason).

2.3 Was the dismissal fair and reasonable in all the circumstances of the case: section 98(2) ERA 1996. Specifically:

2.3.1 Did the Respondent believe in the guilt of the Claimant (by the time of closing submissions it was accepted by the Claimant that was the case)

2.3.2 If so was that belief based on reasonable grounds?

2.3.3 If so was the reasonable belief based on a reasonable investigation

2.4 If the Claimant was unfairly dismissed was there contributory fault?

2.5 If so, should there be a reduction in compensation?

Wrongful dismissal

2.6 Was the Claimant guilty of conduct that entitled the Respondent to dismiss him without notice

Evidence

3. The Claimant gave evidence on his own behalf. The Claimant initially proposed to call Ben Quist. At the commencement of the hearing I asked the Claimant's representative whether it was the Claimant's case, as appeared from the papers, that Mr Quist was guilty of the conduct for which the Claimant was dismissed. I was told that was the case. I stated Mr Quist should be made aware of this, particularly as the conduct alleged against him was potentially criminal. Some time was taken for consideration and I was told that Mr Quist was not to be called. I also asked whether the Claimant had been informed of the risk of self-incrimination in respect of the allegations made against him which potentially involved criminal conduct. I was informed that he had. A witness statement had been produced from at Mr Oguntokun-Williams in respect of the question of whether logins for the computer system operated by the Respondent were shared. The Respondent accepted that they were and, on that basis, Mr Oguntokun-Williams was not called.

4. The Respondents called:

4.1 Carl Peckham, Loss Prevention Manager

4.2 Tristian Arnold, Business Manager, who chaired the disciplinary hearing

4.3 Mark Kraft, Head of Operations, who heard the appeal

5. The witnesses who gave evidence before us did so from written witness statements. They were subject to cross-examination, questioning by the Tribunal and, where appropriate, re-examination.

6. We were provided with an agreed bundle of documents. References to page numbers in this judgement are to the page number in the agreed bundle of documents.

Findings of fact

7. The Respondent is a large national operator of car parks. It operates the car park at St Martins Lane Hotel in Covent Garden on behalf of the hotel owners. It is a cashless site. All payments should be made by debit or credit card. The payments are then passed to the hotel.

8. There were three members of staff who workd regularly at the car park. The Claimant, Mr Quist and Emmanuel Adedapo Segilola, often referred to as Ade. The Claimant was the longest serving member of staff, having commenced work on 9 September 1999. Generally, there was not a manager from the Respondent on the site.

9. The Respondent has a team that deals with loss prevention. This is mainly an auditing function; although on occasion it involves covert operations when car parks are visited and a test parking is carried out. Such a covert operation was conducted by Mr Peckham and Adam Greenslade commencing on 28 April 2015. They arrived at the car park, discussed overnight parking and stated that they were offered a deal by Mr Segilola that by paying £20 cash they would be allowed to park for the evening, whereas the normal price would be £40. The agreed sum was paid but was not accounted for by Mr Segilola. The car park was visited on a number of occasions and similar deals were done.

10. On 11 June 2015 Mr Segilola stated that if he was not working one of his colleagues would be able to offer the same deal.

11. On 18 June 2015 Mr Peckham operating alone visited the St Martins Lane Hotel car park at approximately 8.40. A person approached Mr Peckham. Mr Peckham told the individual that he was a friend of Ade's. The person stated: “Ah yeah, yeah, I know there used to be two of you”. When Mr Peckham asked “A tenner for cash again?” the person said “Yes”, and asked “What time will you leave?”.

12. Mr Peckham was wearing a body camera. While the camera did not capture a picture the individual who offered the deal the microphone of the camera picked up the discussion set out above. Mr Peckham parked his vehicle and went to the customer service office. The individual handed him a handwritten car park ticket which recorded the vehicle registration mark and a time of 11.45. That was the time by which the car should be collected.

13. The Respondent has an automated parking management system called SKIDATA that should be used to generate a ticket. The ticket should be printed and handed to the customer. That was not done. The handwritten ticket was provided. The covert video did not show the individual or any significant detail of that part of the transaction.

14. Mr Peckham returned to the car park at 10.25. He paid £10 in cash. The lowest tariff for parking would be £11.

15. The body camera picked up a fleeting image of the Claimant. The Claimant accepted that he is pictured in the kiosk at that time.

16. On 5 August 2015 the Claimant's home caught fire causing extensive damage. The Claimant was absent from work for a prolonged period. The Respondent invited both the Claimant and Mr Segilola to attend investigatory interviews on 6 August 2015. It is clear that Mr Segilola received the invitation as he attended the interview. The Claimant contends that he made a telephone call to explain about the fire at his home and was not told about an investigatory interview. I have no evidence to counter that assertion, so accept his evidence.

17. On 6 August 2015 Mr Segilola was interviewed and admitted the charge against him. He resigned from his employment. He stated "I am not the only person that works at St Martins that takes money, everyone does it".

18. On 1 September 2015 Mr Quist resigned from the Respondent's employment.

19. Towards the end of February 2016 the Claimant informed Natalie Argent, the customer manager responsible for the site, that he would be returning to work on 1 March 2016.

20. On 29 February 2016 Mr Peckham drafted a detailed statement of his recollection of the events of 18 June 2015. I accept that after leaving the car park on 18 June 2015 he had driven a short distance, stopped and taken a brief note of what had occurred at the car park. He relied on this note and on the documentary evidence, including the video, in writing his statement.

21. Mr Peckham explained that at the time he has been carrying out loss prevention duties for about year. The majority involved audits rather than covert test parking. Mr Peckham stated that he was absolutely certain of the identity of the individual when writing his statement. I accept his evidence. He was well aware of the identity of Mr Segilola, having at visited the car park and done deals with him on numerous occasions. Mr Peckham looked at the passport photograph on the Claimant's file and considered that it was the person with whom he had done the deal. Mr Peckham had previously seen Mr Quist, who has hair, whereas the Claimant is bald. Although there was a substantial gap before the statement was produced I accept that that it was an accurate recollection by Mr Peckham of what had happened.

22. On the Claimant's first day back at work, 1 March 2016, he attended a return to work interview. After the return to work interview he was approached by Mark Squirrell, a loss prevention manager, and told that she was to be interviewed. In his witness statement the Claimant states that he objected to attending the investigatory interview without prior notification as he had just finished the return to work interview. The Claimant states that he pointed out that it was his first day at work after a long absence and said that attending two interviews on his first day would be unfair. The Claimant states that he said that he was still experiencing stress and depression owing to the fire. He alleges he said he had medical evidence. The Claimant claims that he stated clearly that he was not in the right frame of mind to attend the interview, but the Respondent insisted that the investigatory interview be conducted. These

comments are not recorded in the notes of the interview. The notes are clearly not verbatim. However, on balance, I do not accept the Claimant's evidence that he disputed the right of Mr Squirrell to undertake an interview, that he said that he was not fit to attend or that he required representation. The Claimant did not make this contention at the disciplinary hearing. The Claimant signed every page of the investigation notes. I do not accept his evidence that he did not read the notes before signing. Although I accept the Claimant may have been surprised to be interviewed he must have been aware how serious the matter was, particularly as the interview progressed, and the detail of the allegation was explained.

23. During the interview the Claimant was asked whether he had ever not given a customer parking ticket from the SKIDATA equipment. He responded “no never”. The Claimant was asked whether customers pay by cash. He responded that he could not remember. The Claimant was asked whether he wished to have a break. He declined. The Claimant was asked if he had ever taken cash from a customer directly. He said “I don't think so, no”. Mr Peckham’s statement was read to the Claimant. The Claimant was then shown the three video clips and asked for his comments. The Claimant said that Mr Segilola had said that his neighbour and a friend would be coming to the car park in a VW Golf. The Claimant said that Mr Segilola had told him that he should let them park and that he, Mr Segilola, would pay the money to the hotel. The Claimant said he did not issue a ticket as there was a problem with the equipment. The Claimant was asked why he had written the time 11.45 on the handwritten parking ticket. He said he could not remember. The Claimant was shown the day shift handover from London control which had no reference to a problem with the SKIDATA equipment. The Claimant was shown the second video clip and accepted that it showed him giving Mr Peckham the handwritten ticket. The Claimant was asked why he agreed to take £10 from this customer when the charge should be £11. He could not explain. The Claimant claimed that the money was to be paid to the hotel. The Claimant was asked if he realised that it was against company policy to take cash at St Martins. He said yes. The Claimant stated that he would like it to be noted that he did not consider that the description of him being tall was correct. In overview, the Claimant accepted the large part of the allegation made against him. His only real issue of dispute was that he said that the money had been paid to the hotel by agreement between himself and Mr Segilola.

24. The Claimant was suspended on 2 March 2016. The Claimant was sent a letter inviting him to a disciplinary hearing on 4 March 2016. The allegation was that the Claimant had misappropriated company money, failed to protect company revenue and failed to comply with company policy for working on a cashless car park. It is clear from the letter that the investigation was not limited to the statement from Mr Peckham and the interview with the Claimant. The Claimant was sent a number of documents including Mr Squirrell’s analysis of the evidence, the conclusions that he had reached, the investigation notes, the witness statement from Mr Peckham, the day shift handover from London Control for 18 June 2015 (which did not show any problem with SKIDATA), a copy of the ticket issued to Mr Peckham, an extract from SKIDATA, the parking tariffs for the St Martins Hotel and a still image taken 10.25 that the Claimant accepted was of him, interview notes with Mr

Segilola and the disciplinary procedure. It was stated that the video extracts would be available at the meeting.

25. The Claimant attended a disciplinary hearing on 14 March 2016. The Claimant was asked whether he was happy to attend alone. He said that he was. The Claimant had telephoned his solicitor and been told that he could defend himself. The Claimant produced a statement. The Claimant had ample time in which to prepare the statement. The Claimant complained that he was interviewed on his first day back at work after having been off sick with stress since August 2015. He said that his house had burnt down and that he and his family were lucky to get out alive. He complained about the delay before the interview. The Claimant stated that he became very stressed due to all that had happened to his and that he could not be expected to remember something that happened in June 2015. The Claimant said he had done some research and was happy to state that he was not on duty at the time of the incident. He suggested that his colleague, Mr Quist, was the tall man that Mr Peckham referred to at page 5 his statement. The Claimant stated that he is 5'6". He said that Me Quist was not given a local SKIDATA login even though he kept asking. The Claimant said that Mr Quist was logged in under the Claimant's details that morning. The Claimant suggested that the matter had been prejudged as he Claimant had already been told that he should not attend NCP premises. The statement is notable for what is absent. The Claimant's evidence to the tribunal was that he had told Mr Squirrell that it would be unfair to require him to attend two interviews on his first day after returning from ill health absence, that he was experiencing stress and depression, that he had medical evidence to support his claim and that he was not in the right frame of mind to attend the interview. That was not in his statement. At this hearing the Claimant contended that much of Mr Squirrell's record of the interview is a fabrication and that he had not accepted most of the allegations made against him. He did not say that in the written statement he provided at the disciplinary hearing.

26. At the disciplinary hearing before Mr Arnold the Claimant said that he disagreed with the video footage. He suggested that Mr Quist had taken the money. The Claimant stated that he is not tall. The Claimant said that Mr Quist did not have a login. The Claimant Stated that if a search was undertaken it would show no logins from for Mr Quist from June 2014 onwards. The Claimant was shown the footage from 10.25. The Claimant eventually accepted that it showed him rather than Mr Quist.

27. There was an adjournment from 16.17 to 16.42. Mr Arnold spoke with Ms Argent. He checked the rota that did indeed, as the Claimant contested, show that he was due to start work at 11 o'clock. Ms Argent stated that members of staff the site often swapped shift. It also transpired that, as the Claimant suggested, there were no login details for Mr Quist.

28. After the adjournment Mr Arnold called the Claimant back into the meeting. Mr Arnold placed emphasis on the fact that the Claimant had largely admitted the allegations during the investigatory interview with Mr Squirrell and that he accepted that it was him in the video at 10.25 (which the was the time at which the money was handed over). Mr Arnold placed reliance on Mr Peckham's witness statement in which he had stated that he had checked and positively

identified the Claimant as the person that he had interacted with. Mr Arnold also felt that the writing on the parking ticket was similar to that of the Claimant (in particular there was an unusual way of writing the number five which appeared on the handwritten parking ticket, in a section of the Claimant's statement that was handwritten and his email address which he wrote by hand).

29. The Claimant was summarily dismissed by letter dated 18 March 2016. Mr Arnold held that the Claimant had committed an act of gross misconduct when he stole company revenue, failed to protect company revenue, failed to comply with company policy in relation to work in a cashless site which is a serious breach of company policy and procedure. Mr Arnold stated that the Claimant had argued that the allegation did not relate to him as he was not on duty until 11 AM. Mr Arnold stated that he had reviewed the video footage and was satisfied that the employee in the video at approximately 10.25 was the Claimant not Mr Quist. Mr Arnold said that based on the knowledge he had of the car park and staff working at St Martins Lane Hotel he was aware that from time to time they would swap shifts. Mr Arnold sated that the Claimant was provided with a SKIDATA logging pin that was personal to him and that he logged onto the system on 18 June 2015 at 6.58. He did not accept that Mr Quist knew the Claimant’s login. Mr Arnold stated that he was satisfied that the Claimant was the individual who issued a ticket for cash payment. The Claimant was summarily dismissed.

30. The Claimant appealed by letter written by his solicitors on 24 March 2016. In the second paragraph of the appeal the Claimant complained that he was interviewed on the first day after returning to work. However, he did not suggest as he now does that he had specifically stated that he was not ready to be interviewed and that he was suffering from stress. More significantly he did not suggest that a large part of Mr Squirrell’s investigation notes were fabricated. The Claimant went on to complain that he was not given advance notification of the charge against him, that logins were commonly shared between employees, that the CCTV evidence was insufficiently clear and that there had been failure to take account of the Claimant’s length of service.

31. The appeal eventually took place before Mr Kraft on 6 May 2016. The Claimant accepted that it was him in the video at 10.25. He suggested that he got in early for his shift and that was why he was in the kiosk. The Claimant suggested that material was added to the investigation report. This was the first time on which an allegation of tampering with the investigation record was made. While he suggested points were added he did not suggest that there was a large-scale fabrication of the report.

32. There was a delay in the outcome being produced. After the appeal Mr Kraft became unwell. He spoke with human resources and explained that on an overview of the investigation he felt that it had been carried out adequately and that he would dismiss the appeal. The Claimant was sent the appeal outcome 13 July 2016. The letter gave no detailed reasons.

The Law

33. Pursuant to s.94 of the Employment Rights Act 1996 ("ERA") an employee has the right not to be unfairly dismissed. It is for the Respondent to establish a potentially fair reason for dismissal. These include, pursuant to s.98(2)(b) ERA, a reason which relates to the conduct of the employee.

34. Where the employer establishes a potentially fair reason for dismissal the Tribunal will go on to consider, on a neutral burden of proof, whether the dismissal was fair or unfair having regard to the reason shown by the employer. This 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. This is to be determined in accordance with equity and the substantial merits of the case.

35. In considering dismissal for misconduct the Tribunal is guided by the principles set out in **British Home Stores v Burchell** [1978] IRLR 379, taking into account the neutral burden of proof in considering the fairness of the dismissal. The Tribunal considers whether at the time of the dismissal the Respondent had a genuine belief in the misconduct alleged, whether the Respondent had reasonable grounds for believing the Claimant was guilty of that misconduct and, at the time it held the belief, whether the Respondent had carried out as much investigation as was reasonable in all the circumstances.

36. The Tribunal will go on to consider whether the dismissal fell within the band of reasonable responses: **Iceland Frozen Foods v Jones** [1982] IRLR 439.

37. It is not for the Tribunal to re-try the facts that were considered by the employer or to substitute its decision for that of the employer: **Foley v Post Office, Midland Bank plc v Madden** [2000] IRLR 827.

38. The band of reasonable responses test applies to the decision to dismiss and the investigation that took place: **Sainsbury's Supermarket Ltd v Hitt** [2003] IRLR 23.

39. The Tribunal must consider whether the investigation was reasonable, not whether it itself would have chosen some alternative reasonable methodology to that adopted by the Respondent.

40. The more serious the allegations and more far reaching the effect on the employee of dismissal, the more rigour will be expected of the employer: **A v B** [2003] IRLR 405. It is particularly important that employers take their responsibility seriously where dismissal is likely to have a serious effect on the employee's reputation or ability to work in his or her chosen field: **Crawford & another v Suffolk Mental Health Partnership NHS Trust** [2012] IRLR 402.

41. When considering fairness of procedures, the Tribunal considers the overall process including any appeal: **Taylor v OCS Group Ltd** [2006] ICR 1602. The Tribunal should not limit the possibilities of an appeal remedying defects in earlier stages of a disciplinary process to circumstances in which the appeal is a re-hearing. Drawing a sharp distinction between a review and a re-hearing

is not helpful. Often appeal processes have elements of review and re-hearing. The essential question is whether, when looked at overall, the process was fair.

42. Where a Contract of Employment includes a term as to notice to dismiss, without giving that notice is a breach of contract unless the employee was guilty of conduct that gives rise to a fundamental breach of the contract of employment such as permits the employer to accept the breach and bring the contract to an immediate end. The Employment Tribunal's jurisdiction to consider a complaint of wrongful dismissal arises under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.

Analysis

43. It is accepted by the Claimant that the Respondent formed a genuine view that the Claimant was guilty of the conduct alleged against him. The challenge is to the investigation and the reasonableness of the conclusion that was reached based on that investigation. I accept that there are some valid points of criticism about the investigation. However, even when considering so serious a charge, it is not every failure in an investigation that will render it unfair. One must consider the totality of the evidence and whether in the light of it further investigation was required. One has to consider with some care what the prima facie evidences at the time of the disciplinary hearing. Mr Argent had before him notes of the interview that Mr Squirrell undertook with the Claimant in which the Claimant largely accepted the allegations made against him, save that he did not accept that he had personally taken the £10 note. The Claimant had signed every single page of those interview notes and had not made his current allegation that large parts of them were fabricated. Mr Arnold was entitled to take them at face value. The case against the Claimant was already strong. In addition, the video evidence showed the Claimant in the kiosk at the time at that Mr Peckham said the payment was made. Again, that was very strong evidence. There was no reason for Mr Peckham to approach the kiosk but to make the payment. Though fleetingly, the Claimant was clearly seen at the kiosk. The most significant element of the misconduct was the acceptance of the cash payment. There was strong evidence to support it. Mr Arnold was entitled to accept that, although there had been a delay in Mr Peckham producing his statement he had confirmed the identity of the Claimant. In addition Mr Peckham would obviously know the identity of Mr Segilola as he had interacted with him on a number of occasions when the original transactions had taken place. Mr Quist was much taller than the Claimant and had hair. While Mr Arnold is not a handwriting expert he was entitled to consider that the writing on the handwritten ticket appeared to be like that of the Claimant. While that might not provided very strong evidence against the Claimant, if the writing been very different it might have suggested that it was not that of the Claimant. Overall, I consider that there was sufficient evidence before at Mr Arnold for him to reasonably conclude on reasonable grounds that the Claimant was the person who had set up the transaction and then taken the cash.

44. In carefully pleaded Claim Form there are a number of allegations that are said to have rendered the dismissal unfair. The criticisms are principally of the procedure. It is alleged that the Claimant was interviewed without warning on

his first day back at work following a lengthy sickness absence. While that is true I do not accept that the Claimant stated that he was not feeling well enough to undertake the interview or that he wished to it to be delayed. The interview was conducted carefully and the Claimant was given ample opportunity to answer the allegations against him. The point might be stronger if the Claimant's response had been that he simply could not remember what had occurred. However, the Claimant largely accepted the evidence that was put to him. The Claimant did not make this allegation at the disciplinary hearing. I do not consider that the Respondent acted unfairly.

45. It is alleged there was no attempt to ascertain whether the Claimant was well enough to undergo investigatory interview. The Claimant did not say that he was not. He had returned to work which implicitly suggested that he was fit for duty. I do not consider it was unreasonable for him to be interviewed on that day. The Claimant did not make this allegation at the disciplinary hearing.

46. The Claimant alleges that he was not told prior to the investigatory interview what he had been accused of. While that is correct; the allegation was set out in very clear terms during the interview. I do not accept that a failure to inform him of the specific allegation prior to the investigatory interview rendered the process unfair.

47. It is alleged that there was no access to a colleague or trade union representative. It is suggested that given the Claimant’s mental state that would have been appropriate. I accept that the Respondent's procedures do suggest the possibility of an individual being accompanied at an investigation meeting. However, I do not accept there was anything to suggested that the Claimant’s mental state was such that he required representation. He did not ask for a colleague or representation. I do not consider it was unreasonable proceed with the meeting.

48. It is alleged that the Claimant was not interviewed again following his suspension to answer the allegations against him. I do not accept there was a requirement that he should be interviewed again. The allegations had been put clearly to him. In large part, he had accepted them, save that he denied that he intended to keep the money.

49. It is said that the CCTV evidence was unclear and did not show Claimant. The CCT evidence was of relatively limited value but must be taken in context of it being supportive evidence to Mr Peckham statement. In many situations, there might well have been no video evidence. That would not prevent a statement from a loss prevention manager being relied upon. The CCTV evidence provided some corroboration in that it established that the alleged conversations took place and it showed that the Claimant was in the kiosk at 10.25 which was the time when the cash was handed over. The Claimant accepted this in the disciplinary hearing.

50. It is alleged that the statement from the loss prevention manager was written 8 1/2 months after he witnessed the incident. I accept that it is regrettable that there was such a delay. A statement was not take during the Claimant's absence. However, I accept that there was a brief written note and that Mr Peckham was entitled to look at the surrounding documentation. I also

consider the Respondent was entitled to accept Mr Peckham's evidence that he had a very clear recollection of what had occurred and could clearly identify the Claimant.

51. It is alleged that the loss prevention manager asserted, but that it was not ascertained, that the transaction was with the Claimant. While it would have been better to explained how the identity was ascertained, I accept that Mr Peckham did shortly after the incident look at the Claimants file and identify him from his passport photograph. He explained that in the disciplinary process.

52. It is alleged that there was no investigation into whether the person interacted with was 6 foot 6. He was described as a tall black male. Mr Peckham was aware of the identity of Mr Segilola. He also knew Mr Quist who was unusually tall and had hair while the Claimant is bald. Mr Peckham was in error when he referred to the Claimant as tall. However, the transactions started when Mr Peckham was sitting in his car and when he approached the Claimant in the kiosk the Claimant was sitting down. The Respondent was entitled to conclude that this error did not invalidate Mr Peckham's evidence.

53. Next it said that it was wrongly concluded that the Claimant had swapped shifts. In fact, there was a discussion with Ms Argent who confirmed that that was a common practice. There was evidence on which the Respondent could make its finding, even though Mr Arnold was wrong to conclude that Mr Quist did not use the Claimant's login. I do not think this error undermines his conclusion. The key point was that the Claimant was in the kiosk at the time that the money was taken and was clearly identified throughout by Mr Peckham.

54. Next it is said it was impliedly accepted that the Claimant was not on rota but there was no investigation into when he worked that day. While it is correct that the Claimant was on the rota to attend later that day the evidence was that rotas could be swapped. The Claimant had accepted that the interactions had taken place when interviewed by Mr Squirell. The Respondent was entitled to conclude that he had been at work at the relevant times.

55. It is alleged that there was no investigation as to whether Ben had been using the Claimant's log onto the SKIDATA equipment. There was an investigation which showed that was a possibility. However, the fact that Mr Quist may have on occasions used the Claimant's login did not alter the fact that the Claimant himself would use his logon and was present at the material times.

56. It is alleged that there was no evidence that the handwriting on the ticket was the same as that on the Claimant's statement. It was said to be purely assertion. While Mr Arnold is not a handwriting expert this does not prevent some consideration of the handwriting which looked very similar. Although it was by no means the most significant evidence and there was no investigation of handwriting of Mr Quist there was nothing to suggest the writing was not the Claimant's. The handwriting evidence was of very minor importance. I do not consider it was unreasonable of Mr Arnold have regard to it.

57. It is alleged that there was no investigation interview with Mr Quist. In circumstances in which he had left the Respondent having been alleged to have attended work under the influence of alcohol there was not a realistic prospect of a useful interview being undertaken with him. I do not consider it was unreasonable not to interview

58. While there are a number of minor matters set out above that could have been rather more fully investigated, I consider against the backdrop of the very strong prima facie evidence against the Claimant; being his significant admissions in the interview with Mr Squirrell and the fact that he was shown on video in the kiosk at the time that the money was handed over, and in the light of the statement from Mr Peckham, I consider that there was an adequate investigation that gave reasonable grounds for the dismissal of the Claimant.

59. I accept that the appeal was dealt with briefly. I accept that Mr Kraft took an overview of the evidence and formed the view that there was more than adequate evidence for Mr Arnold to have concluded that the Claimant was guilty of the conduct alleged against him. It would have been better had he set out his reasoning in more detail. That did not take place because of his ill health. While the Claimant alleged there were some additions to the investigation report at the appeal he did not make the allegations of large-scale fabrication of that report that he did at this hearing.

60. In all the circumstances, I consider that the dismissal was fair.

61. As the Claimant has brought a complaint of wrongful dismissal, I am compelled to go on to determine, on balance of probabilities, whether I consider that he was guilty of the conduct alleged against him. I have heard from Mr Peckham who was adamant that his statement is an accurate description of what occurred. He is in no doubt that on all three occasions he was dealing with the same individual and that individual was the Claimant. The Claimant largely admitted the transactions, save that he contended that he was not going to keep £10 for himself. I consider that when the Claimant signed each page of the investigation notes he was doing so having considered them and thereby indicated that he accepted that they were an accurate record of the interview. I found his evidence when seeking to suggest that there was large-scale fabrication of this evidence entirely unconvincing. He was not able to answer clearly what he had said in the investigation meeting or what questions he had been asked. In addition, the video evidence shows him in the kiosk at the time money was handed over. The video evidence comes from Mr Peckham's body camera. The only reason for him to go to the kiosk was to hand over the £10. That is also compelling evidence against the Claimant. In all the circumstances, I consider that on the balance of probabilities the Claimant did agree the transaction and take £10 from Mr Peckham. In those circumstances, he was guilty of gross misconduct which entitled the Respondent to dismiss him without notice.

62. Had I found that any of the shortfalls in the disciplinary or appeal process were such as to render the dismissal unfair, I would have concluded the Claimant had contributed by 100% to his dismissal and that it was not just and equitable that he should receive either a basic award or a compensatory award. In all the circumstances the claims of unfair dismissal and wrongful dismissal fail and are dismissed.

Employment Judge Tayler
21 March 2017