



THE EMPLOYMENT TRIBUNALS

Claimant **Mr M Cisse**
Respondent **Laduree Uk Limited**
HELD AT: **London Central**
ON: **27 March to 3 April 2017**

EMPLOYMENT JUDGE: **Mr J Tayler**

Appearances

For Claimant: **Mr T Okunowo, Solicitor**
For Respondent: **Miss E Rowley, Solicitor**

REASONS

Introduction

1. By a Claim Form submitted to the Employment Tribunal on 17 November 2016 the Claimant brought a complaint of unfair dismissal.

Issues

2. The issues for determination were:
 - 2.1 What was the reason for the dismissal of the Claimant? The Respondent relied on conduct (or some other substantial reason through a break down in mutual trust and confidence).
 - 2.2 Did the Respondent have a genuine belief that the Claimant was guilty of the conduct found against him?
 - 2.3 Was any such belief formed on reasonable grounds?
 - 2.4 Did the Respondent conduct a reasonable investigation?
 - 2.5 Was the dismissal of the Claimant fair sanction?

Evidence

3. The Respondents called:
 - 3.1 Edouard Bernier, Purchasing Manager
 - 3.2 Dovydas Olekas, Supervisor
 - 3.3 Geraldine Bourgogne, HR Manager
 - 3.4 Benedict MacDonald, Managing Director
 - 3.5 Pierre Mirepoix, Executive Head Chef
4. The Claimant gave evidence.
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.

Findings of fact

6. The Respondent is a French bakery and sweet maker. It has several premises, including in Covent Garden. The Claimant commenced employment with the Respondent as a Commis Waiter on 8 May 2013.
7. On 31 May 2015 an email was sent to supervisors (P101, P104) attaching a policy dealing with “voids” and for the provision of complimentary items. The Claimant was not at that stage a supervisor but the procedure was put on the message board downstairs outside the kitchen. I accept that the Claimant was aware of it. The void sheet provided for in the procedure was, at least on occasions, signed by individuals, including the Claimant.
8. On 12 February 2016 the Claimant was promoted to be at Restaurant Supervisor. It appears that he carried out his duties well and was highly thought of.
9. On 23 April 2016 a number of incidents occurred to which I will return in more detail later when considering the investigation that the Respondent carried out. What is uncontested is that there a man in a grey tracksuit came to the upstairs bar area of the premises and was escorted, bypassing the queue, to a table. He ordered and drank a cappuccino sitting at table 105. The transaction was voided by the Claimant although the man drank the cappuccino. He did not pay for it. Two women at table 106 ordered two cocktails and French toast. They consumed the items but the transactions were voided by the Claimant so they did not pay them. I accept that there was a process whereby items were put onto a non-existent table, table 1, if they were to be voided. The real issue was whether there was a proper reason for voiding the transactions for these items that had been consumed by the people who ordered them.
10. The Claimant was responsible for cashing up and closing the premises at the end of the service. There was a period during which money was left

unattended by the Claimant on a table in the basement office. The Claimant asked for assistance from Dovydas Olekas, another supervisor. After Mr Olekas had counted the money and agreed the amount with the Claimant he passed it to the Claimant who placed a bag with some money in the safe and closed it. The Claimant returned alone a little later and opened the safe but, did not properly close it.

11. The next morning the safe was opened and I accept the Respondent found that that £220 was missing from the cash in the bag that the Claimant had placed in the safe.
12. In the Claim Form there is reference to Lucas Gonzalez, the Claimant's line manager, having accused the Claimant having taken his headphones, earlier that day. However, that allegation was not dealt with in evidence and I make no finding in respect of it.
13. On 24 April 2016 video footage from the Respondent CCTV system having been viewed in the office, where it could be seen, but not with the clarity that it subsequently been seen when downloaded as a computer file, the Claimant was called to Mr Gonzalez's offices. Mr Gonzalez initially questioned the Claimant about why the cocktails had been voided. Subsequently, Mr Gonzales said that £220 was missing from the safe. There are disputes about what was said by the Claimant and Mr Gonzales. Mr Gonzales was not called as a witness. However, there are contemporaneous witness statements from him and another members of staff about what happened. I have taken into account the fact that Mr Gonzalez was not available to be cross examined.
14. After Mr Gonzales raised the issue of the missing money the Claimant left the Respondent's premises and shortly thereafter returned with £220 in cash. It was given by the Claimant to Mr Gonzales. The Claimant contends that Mr Gonzales told him to go and get the money. However, the witness statements taken at the time suggests that was not the case. On balance, I accept that the Respondent was entitled to concluded on the evidence that the Claimant was not told to get the money, but chose to get it himself.
15. On 25 April 2016 the Claimant was asked to go to the office by Mr Gonzales. Mr Gonzales told the Claimant that the Managing Director, Benedict MacDonald wanted him to at resign. I accept that Mr MacDonald was a very troubled by the information that he had received that suggested that the Claimant had taken money from the Respondent's safe, but wished the Claimant to resign rather than be dismissed, and was prepared for the Claimant to be paid notice monies. because he thought that the Claimant been an extremely good member of staff and he did not wish him to leave the Respondent's business under the shadow of a finding of theft. While he strongly put forward his view that the Claimant should resign and swore at the Claimant on a number of occasions I do accept that he genuinely thought that he was offering the Claimant a way out of the very serious situation in which he found himself. I consider it is likely that Mr MacDonald thought it was possible that the Claimant had taken money with the intention of paying it back. Mr Gonzalez suggested the Claimant should return with a resignation letter the next day.

16. On 26 April 2016 the Claimant attended the office and stated that he was not willing to resign. Mr Gonzales told the Claimant that Mr MacDonald would be visiting the branch. The Claimant contends that Mr Gonzalez told him that it was all a joke and that no money was missing. I do not accept this evidence. The contemporaneous evidence makes it clear that money was missing from the safe in the sum of £220.
17. On the 27 or possibly 28 of April 2016 the Claimant was asked to come into the Respondent's premises. Mr McDonald's swore at the Claimant and suggested that he should admit that he had borrowed the money to go out clubbing. Mr Gonzales invited the Claimant into the office where there was an altercation. Mr McDonald said that he felt that the Claimant should resign and suggested that he might call the police. A note was taken of the meeting. While it does not record everything that was said it is consistent with statements taken from other members of staff. I accept it is reasonably accurate. The Claimant said words to the effect that a customer was rolling a cigarette and asked him if he wanted to have one. The Claimant said that after smoking he felt unwell. He said that when he went to do the closing up he put the money in the safe but might have miscounted it and unfortunately did not lock the safe properly.
18. In the Claim Form this is reference to an occasion on which the Claimant alleges that Mr Gonzales followed him to the toilet. That issue was not raised in the evidence and I make no finding about it.
19. On 1 May 2016 the Claimant was unwell. He sent a text message stating that he would not be attending work (P233).
20. An investigation was commenced by Geraldine Bourgoigne, the HR manager. She took a number of statements on 7 May 2016. Mr Olekas stated (P91).

“When I arrived Mamadou was counting the money, and was quite stressed out because he thought that that he was missing money.

He didn't look on his usual temper and was quite not himself.

He requested me to recount money (it was quite messy as the cash was spread all around the office)

I recounted and for me we were not missing money so we count the final drawer account.

On the next day Lucas and Stefan asked me how many notes of 20 I counted. I was positive on the number 106.

Lucas stated they recount with Stefan and only counted 96”
21. Karim Hamadi gave a brief statement about attending the office on 24 April 2016 and finding that the safe was unlocked (P92)
22. Mr Gonzalez gave a statement (P93) in which he stated:

“On the 24th Mamadou was supposed to be on site at 12. But only showed up at 3PM, he came not very well rested and with quite reddish eyes, he mentioned that he spends the night in prison and that is why he was late.

He mentioned as well that a customer offered him to smoke something on the balcony during the service and that after that he doesn't recall anything of the closing time.

When I mentioned to him that we were missing £220 on the envelope, he asked to go out and came back with £220 that he withdrew from his bank...

On Monday 23rd I have met Mamadou to try and understand what happened but unfortunately he didn't recover the memory.”

23. Madara Sprudzane same gave statement (P94). When dealing with 24 April 2016 she said:

“When I came around 3 PM Mamadou just came in, he mentioned that he spend the night in prison and that he that is why he got late too work. Lucas mentioned that he was missing to £220 in the safe, Mamadou went out the store and brought back the money saying that he was in charge and that he is taking responsibility for the money. Lucas sent him home as he was not in shape to work which was a reasonable decision. He mentioned that a customer on the balcony gave him something to smoke and that after that he doesn't remember what happened. ...

I want to state that on all viewing we have done, I cannot see Mamadou take taking any money”

24. At that time the CCTV footage had only been viewed on the monitor in the office which did not allow it to be seen in slow motion.

25. Stefan Gadei gave a statement (P95). He stated that when the money was counted it was found that they were short by £220. He stated:

“Mamadou was supposed to start 12 but did not show up until 3PM. When he came he was quite unrest stated that he did not remember anything. Lucas explain him that we were missing £220, Mamadou went out and brought back £220 that he stated to have withdraw from the bank.”

26. In an undated statement Diana Zimanova referred to the use of table 1 as a wastage table (P96).

27. On 11 May 2016 Mr McDonald accused the Claimant failing to attend work on 1 May. On 12 May 2016 Mr McDonald swore at the Claimant and accused him of not picking up calls from Mr Gonzales. He suggested that this was a reason why the Claimant should and leave the Respondent's employment. I accept that he did this I because he still felt it would be better for the Claimant to

resign than face the consequences of being taken through a disciplinary process.

28. On 13 May 2016 the Claimant was called to a meeting with Geraldine Bourgogne ,the HR manager. Mrs Bourgogne said that she wished to fix up a meeting at which she could take an investigation statement from the Claimant. Mr McDonald rang into the meeting and insisted on talking to the Claimant. He again suggested that the Claimant had two choices either resign or be dismissed. Notwithstanding what Mr McDonald said, I accept thereafter that there was an independent disciplinary and appeal process. It was not put to either the discipline manager or appeal manager that they were told what to do by Mr McDonald. I accept that they formed their own opinion on the evidence before them.

29. On 19 May 2016 Mrs Bourgogne held a meeting with the Claimant and took note of his version of events. Surprisingly, the notes were not provided to the disciplinary manager.

30. On 26 May 2016 (P106) an email was sent by John Caisaido who stated:

“On that night, I was closing with Mamadou. One guy went in and had a seat table 105. He was dark and had short curly hair. I remember serving him a coffee. However, I didn't take his order. There were two ladies next to him on106. They had to Berry Mule cocktails and a French Toast Rose Raspberry. ...

I saw Mamadou speaking to the guy that was sitting on table 105. ...

I had a bit of a chat with him. I asked him whether he knew Mamadou he said not for long”

31. On 9 June 2016 Mr Caisaido an email stating:

“I confirm that they ordered two Berry Mule cocktails and a French Toast Rose and Raspberries and saw them finish the French Toast and the cocktails.”

32. On 26 May 2016 Mr Olekas produced an updated statement. By this time the CCTV files had been downloaded and could be watched in slow motion. He stated (P100):

“After checking the CCTV footage with the presence of my General Manager Lucas Gonzalez, I can confirm that I have gave the money to Mamadou by batches. On the last batch give at 00.08.40, at the moment I am leaving the room and turning my back Mamadou stands, puts the envelope with batches on the office, but the last batch is still in his right hand is on the CCTV footage that he folds it and inserts it into his right pocket. On that moment as I was turning I could not see it but the footage helped me to understand it as I am sure I have counted 106 notes of £20 not 96 notes of £20.”

33. I accept that this statement is genuine although when the Claimant asked Mr Olekas about it he denied having made the statement. Mr Olekas did this because he was embarrassed to be accusing the Claimant of stealing. I accept the evidence that Mr Olekas gave was a genuine having seen the CCTV footage in slow motion.
34. Stefan Gadei gave a statement on 7 June 2016. When referring to the meeting on 24 April 2016 he stated (P103):
- “During the meeting we tried to find out exactly what happened one night before in closing time but Mr Lucas Gonzalez, our General Manager didn't force anytime Mr Mamadolamin to bring back the missing money, he said by himself he is going to take the money out from the cash machine to complete the missing money.”
35. On 10 June 2016 and the Respondent wrote to the Claimant and stated that he had been suspended with effect from 12 May 2016. I accept that when the Claimant was asked to go home that day it may have not have been made clear to him that he was being suspended.
36. On 14 June 2016 the Claimant was invited to a disciplinary hearing (P144). The allegations were put against him as follows:
- “Alleged misappropriation of company funds, further particulars being that it is alleged that on the 23rd/24th of April 2016 you took £220 of company money for your personal use, instead placing it in the safe.
- Alleged gross professional negligence, further particulars being that it is alleged that you, possibly deliberately, left the company safe unlocked and therefore unsecure with (amount) of cash in there, during the night of the 23rd 24th of April 2016. As part of your duties in your position as supervisor you are entrusted with the code of the safe to be able to place and secure monies therein
- Alleged voiding of 2 cocktails and one cappuccino coffee and one raspy French toast on 23rd of April 2016 which had been served by you and drunk by customers, but then voided, which it alleged constituted theft of company property
- Alleged breach of the drug and alcohol policy, where it is alleged that you were smoking cannabis during working hours on 23rd of April 2016”
37. The disciplinary hearing was held by the Purchasing Manager, Mr Bernier, on 16 June 2016 (P146). The Claimant was shown the video evidence. Mr Bernier considered it carefully with the Claimant. The Claimant had an opportunity to comment upon it in detail. The relevant clips are as follows: In Clip Meet0000 a person in a grey tracksuit arrives. He walks upstairs. The Claimant takes him past the line of people waiting for a table straight to a table. In Clip Smoke0000 the person in the grey tracksuit is seen outside the back door of the premises. He is smoking something and exhales very thick smoke. I accept Mr Bernier reasonably concluded it was cannabis smoke. The person then passes the “joint” to the Claimant. The Claimant can be seen

exhaling thick smoke. I accept that Mr Bernier reasonably concluded that it was cannabis. In Clip Roll0000 the Claimant is seen counting money and while the money is on the table the Claimant is seen leaving the safe unattended. In Pock0000 Mr Olekas counts the money and passes it to the Claimant. While the Claimant has his back to the camera he puts some of the money into a bag and the bag appears on the table. There is a moment when the Claimant appears to be putting something into his pocket. I accept that Mr Bernier reasonably concluded the Claimant was putting the remaining £220 into his pocket. The Claimant turns while he appears to be putting something in his pocket and looks at Mr Mr Olekas who turned at that moment and looks surprised. In Clip Safe0000 the Claimant goes into the office opens the safe and puts something into it. I accept Mr Bernier reasonably concluded that the Claimant does not fully close the safe as one can see a little of the inside of the safe door. In Clip 0942 Sekou Tounkara, a sous chef, realises that the safe is open. I accept Mr Bernier reasonably concluded that he is surprised. When Mr Tounkara pushes the door of the safe it immediately locks. I accept that the CCTV footage was shown to the Claimant by Mr Bernier.

38. A number of criticisms were put to Mr Bernier in cross-examination. He was challenged that he had not specifically put it to the Claimant that he believed that he was putting money into his pocket when his hand appeared to go towards his pocket. It was also put to Mr Bernier that he did not ask the Claimant why he had felt unwell after smoking. In his evidence before the tribunal the Claimant contended for the first time, it not having been raised during the disciplinary process, the appeal, in the Claim Form or his witness statement, that he accepts that he is putting something in his pocket, but that it was the supervisor's card for the card reader machine. The Claimant also claimed for the first time at the Employment Tribunal that the reason he felt unwell after smoking the substance was that it was "Arabic" tobacco which he described as "pure nicotine". Notwithstanding this the Claimant also stated that a few days after smoking it he went to Camden Town to purchase some more. There was a suggestion that if Mr Bernier had asked the Claimant direct questions about what was seen on the video the Claimant would have had an opportunity to put forward these explanations.
39. The Claimant raised the question of whether there was a defect with the safe at the hearing before Mr Bernier and pointed out that Mrs Bourgoigne mentioned by email there had in the past been a problem with the door of the safe closing properly. Mr Bernier investigated this. On 17 June 2016 (P108) Mrs Bourgoigne sent an email stating that there had been a problem with door in the past but nothing had been heard about it more recently. I accept that Mr Bernier reasonably concluded there was no fault with the door of the safe. That was consistent with the fact that when the Claimant had originally shut the safe it locked immediately, and when it was found open and closed by Mr Tounkara it locked immediately. Mr Bernier also checked it himself and found no fault.
40. On 27 June 2016 Mr Bernier wrote to the Claimant informing him that he was to be summarily dismissed (P152). Mr Bernier set out the allegations and the Claimant's comments. He set out a very detailed review of the facts. He noted that the Claimant and Mr Mr Olekas had counted the cash together and filled

out the Lloyd's Bank cash book recording the sum of £3,470.56. Mr Bernier noted that Mr Mr Olekas then handed the Claimant the cash. He stated:

“the evidence I have reviewed clearly shows that the cash was handed to you in full, you then placed it in the safe and nobody handled that safe from that point onwards until the matter of concern was discovered. I therefore have no reason to suspect Dovydas of any wrongdoing.

Having reviewed the evidence, I do also believe that you may have placed some amount of cash in your pocket. You did not give me a reasonable, alternative, explanation of the CCTV footage during the disciplinary hearing. It's my view, watching the footage, that you seemed to take advantage of Dovydas walking out and possibly blocking you (or so you hoped) from the CCTV recording to place some money in your pocket.

... You then failed to close the safe as outlined below”

41. Mr Bernier noted that the safe was not touched during the night and that on the next morning £220 was missing. He noted that when the Claimant was questioned about the missing money he left work to get money to repay it.
42. Mr Bernier also concluded that leaving the safe open would amount to gross professional negligence. Mr Bernier concluded that the safe was functioning properly and therefore by failing to close it after cashing up, the Claimant was guilty of gross negligence.
43. Mr Bernier went on to conclude that the Claimant had inappropriately voided transactions for individuals who had consumed items. Mr Bernier concluded that the Claimant knew some of the individuals.
44. Mr Bernier concluded that at the Claimant had been smoking a joint with the man in the grey tracksuit.
45. Mr Bernier's final conclusion was that:

“Overall I have concluded that your actions amount to gross misconduct and a fundamental breach of trust and confidence resulting in the company losing faith in your integrity in your role as Restaurant Supervisor. I believe that you misappropriated company funds and properties, and also failed to lock the safe properly, leaving company funds unsecured overnight. Either of these allegations is sufficient in its own right to justify the termination of your employment. Your actions, either through sheer dishonesty or gross negligence, have fundamentally undermined the trust we need to have in you to retain you in our employment.

As a consequence I have decided you have been summarily dismissed.”
46. The Claimant was informed of his right to appeal. The Claimant appealed on 4 July 2016 (P159). The appeal letter was drafted by the Claimant's solicitors. By that stage the Claimant had Mr Bernier's dismissal letter that set out in very clear terms the conclusions that he had reached and why he had reached them. Most importantly it set out his interpretation of the CCTV evidence and

why it was that he believed that the Claimant put money into his pocket while Mr Olekas was walking out of the office. The Claimant now knew not only the charges against him, but also the rationale for those charges being upheld. Therefore, at the appeal stage had full opportunity to put forward his current version of events; namely, that he was putting a card from the card reader into his pocket and that he smoked some "Arabic" tobacco and that made him feel unwell. Neither of those points were raised in his appeal, or until this hearing.

47. The appeal hearing took place on 12 October 2016. The Claimant had full opportunity to put forward his version of events. He did not give his current explanation. Mr Mirepoix heard the appeal. He concluded that the disciplinary decision was correct and should be upheld. In a detailed letter, he again set out why he believed that the CCTV evidence supported the conclusion the Claimant taken £220 that should have gone into the safe, that he had deliberately failed to close the safe, that he had voided payment for customers who had consumed items, and he was smoking cannabis.

The Law

48. 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.
49. 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.
50. 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.
51. 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.
52. 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.
53. 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.

54. 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.
55. 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.
56. 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.

Analysis

57. I conclude that the Respondent formed a genuine view that the Claimant was guilty of the misconduct alleged against him. While Mr McDonald was extremely unwise, and guilty of inappropriate swearing, when trying to persuade the Claimant that he should resign, I accept that that was done because he felt that it would give the Claimant an opportunity to leave the Respondent's employment without the damage to his reputation that would be caused by being found guilty of taking money from the Respondent. I consider it is likely that Mr McDonald believed that the Claimant had been taken the money as a loan and hoped to repay it. Although I considered that there was unsatisfactory conduct by Mr McDonald I do not consider that infected the disciplinary process that was thereafter undertaken. It was not put to Mr Bernier or to Mr Mirepoix that they were told what to do by Mr McDonald. I accept that they conducted a careful analysis of the evidence.
58. While Mr Bernier could have put in clearer terms to the Claimant what he thought was happening in the video footage his analysis was set out in his decision letter and the Claimant had an ample opportunity to comment upon it at the appeal stage. If he had wished to put forward his current version of events, that he was putting a card into his pocket rather than money, he could have done so. He could have stated that he was smoking at strong "Arabic" tobacco that made him feel unwell. I conclude that there was an adequate investigation when viewed overall.
59. While I appreciate that the more serious an allegation and the greater the consequences for the individual of a finding of guilt the more care needs to be taken in investigation and analysis, the key evidence here was that of the CCTV footage. I consider it gave ample grounds for the Respondent to

conclude that the Claimant had taken the money, whether he was intending to return it or not.

60. There are a number of stark facts that any procedural issues do not affect. The money was countered by Mr Olekas. The Claimant took all the money from Mr Olekasat. Some of it was put into a bag and was sealed. The bag was found unopened the next morning. At that stategie £220 was missing. Mr Olekas was clear in his evidence that he had counted 106 £20 notes not 96. The missing £220 must have gone somewhere.
61. The CC TV footage clearly could properly be analysed by the Respondent as showing that the Claimant put something into his pocket. Indeed, the Claimant now accepts he did so after the blue bag appears on the table in front of him. I consider that the Respondent could reasonably conclude that he was putting money in his pocket.
62. I accept that the Respondent could reasonably conclude that the safe was deliberately left open when the Claimant left for the evening. The safe was found open the next day. £220 was missing. When Mr Tounkara found the safe open he pushed the door. It immediately locks. There is nothing I consider should have caused the Respondent conclude that the safe was malfunctioning.
63. I consider that there was ample evidence for the Respondent to conclude that the Claimant took the money. In any event, there was ample evidence to conclude that the Claimant failed to lock the safe, which itself would be gross misconduct.
64. In addition, I consider that there was sufficient evidence before the Respondent, that the Claimant had an adequate opportunity to answer, that he had smoked cannabis and that he knew the person with whom he smoked cannabis and had allowed him to have a cappuccino without paying for it; and two other individuals to have two cocktails and French toast without paying.
65. In all the circumstances, I conclude that the procedural issues are not such as to render the dismissal unfair. I conclude that the key evidence was put to the Claimant and he had a fair opportunity to answer it. The evidence amply supported the finding of gross misconduct made against the Claimant and dismissal was a fair sanction.

66. Had I concluded that any of the procedural shortcomings rendered the dismissal unfair, I would have concluded that the Claimant would inevitably have been dismissed, in any event, as nothing that put forward at this hearing would have altered the conclusion reasonably reached, based on the evidence before the Respondent, that the Claimant had taken the money from the safe, had smoked cannabis and had decided to allow customers he knew to consume products without paying them. In all the circumstances the claim fails and is dismissed.

Employment Judge Tayler
20 April 2017