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EMPLOYMENT TRIBUNALS

Claimant: Mr Luke Meadows

Respondent: Halfords Ltd

Heard at: Birmingham **On:** 14 -15 August & 30 August 2017
(reserved decision)

Before: Employment Judge Cocks

Representation:

Claimant: Ms J Hughes Counsel
Respondent: Miss N Owen Counsel

JUDGMENT

The reserved judgment of the tribunal is:

The claim for unfair dismissal fails and is dismissed.

REASONS

1 I heard evidence by way of witness statements supplemented orally, from Mrs Louise Hill (Store Manager) and Mr Stephen Gore (Store Manager) for the respondent and from the claimant, I had an agreed bundle of documents (to which page numbers refer), a cast list prepared by the respondent, a chronology on behalf of the respondent and a schedule of the transactions and a schedule of refunds prepared on behalf of the respondent.

2 The Claim is for unfair dismissal. I have a statement of issues. I am not reproducing them - they are standard issues for an unfair dismissal claim and I refer to them in my conclusions. I am dealing with the question of liability only.

This case had been listed for 2 days. There was insufficient time at the end of the second day for me to deliberate and give a Judgment with oral reasons and hence, this reserved Judgment. The claimant alleges that there were substantive defects which rendered the dismissal an unfair one and that there was procedural unfairness.

3 Findings of Fact

3.1 The claimant was employed from 6 June 2014 until his dismissal on the now agreed date of 28 January 2017. Initially the claimant was employed as a Bike Hut Assistant Store Manager at the Southport store but transferred to the Preston store with his line manager, Stuart Dixon, in June 2016. He had a clean disciplinary record and had done the 'Aspire training, with a view to becoming a store manager and area manager eventually.

3.2 It is common ground that the dismissal was by reason of conduct. The respondent's disciplinary procedure is at pages 51 to 57. It is a brief policy and the claimant makes no criticism that the respondent failed to follow it, his criticisms of the process are of more general procedural failings.

3.3 The claimant was informed of his suspension on 29 December 2016. This was confirmed in a letter the following day (98). The investigation into alleged misconduct on the claimant's part began after data mining exercise by a profit protection officer, Mr Dean Carr, had uncovered unusual activity. From a later interview on 28 February (153) with Mr Carr; as at the end of November 2016, Mr Carr was of the view that there was little firm evidence. As a result, he spoke to Stuart Dixon and told him to closely monitor activity. Mr Dixon began an investigation on 16 December and this concluded on 29 December. Mr Dixon was a friend of the claimant's. His investigation report is at pages 95 to 97. There were a number of interviews with the claimant. The claimant is critical of the way this process was conducted, as the interviews took place in the colleagues' room. While Mr Dixon, who did not give evidence, told Mr Gore there were no interruptions, the claimant says there were as this was the only room in which colleagues could eat lunch or leave their belongings. The interviews appear to have been short and were interrupted, either because of work pressures or because Mr Dixon wanted to interview other people following what the claimant was telling him. It would be fair to say that the location for the interviews and the interrupted nature of them was far from ideal. As the claimant points out, his colleagues were fully aware of, and in some instances overheard, what was going on. Furthermore, he had not been suspended at this point and still had to work with those colleagues.

3.4 What came out of the claimant's interviews was that he was aware of the bike care plans (BCP's) and the 'Slime' services benefitting the

store's KPIs (62). Although the claimant accepted knowing what he was doing was overinflating the KPIs he gave the answer: "Yes, I am trying to help the Company benefit by offering the customer products or the services that will put their mind at ease, leave happy and get the benefits of the services we offer. Most customers ask for their money back but I am trying to look at for the Company and keep the customers' loyalty." (63). In other words, the claimant was accepting doing what he had but not for personal gain. Mr Meadows explained how so many bikes had been damaged and but denied reducing the price without the customer knowing and adding the extras instead. He acknowledged putting adult BCPs on a child's bike but said this had been done as the customer wanted more safety protection. He accepted that he had put it through on the wrong procedure but said it was not about KPI manipulation but sorting customer issues out, and managing high levels of damaged bikes. In respect of the refund allegations, the claimant denied taking money out of the till. He understood the process for making refunds but said he was not aware of the code to do so (68). With regard to events on 27/28 November, Mr Dixon pointed out the respondent's position (that they did not have the bike, or the money as the till had been down). The claimant said that the only person who might know where the money may have gone was Jay.

3.5 Mr Dixon interviewed Jay Curren on 16 December (58-59). At that time, Mr Curren had no recollection of the claimant doing any cancellations of orders on 27 November. The claimant then said that Mr Vickers might know something about it, as there had been 3 key holders on duty that day. The claimant admitted knowing it was a mistake as there was a payment on the bike and he did not sort it out. He confirmed it was his signature on the PD1 form, which is signed when a bike is given to the customer. The bikes appeared to have been given to the customer on 23 November by the claimant, but were not 'collected' through the till. On 27 November, the order was cancelled even though it had been fully paid for. In other words, a refund for £326 was processed but the till was down the next day by that sum (and a further £85). To the respondent, it seemed that the money must have been taken from the till at some point. The claimant accepted Mr Dixon's analysis that this is what must have happened. He pointed out that there was no CCTV coverage showing the money being taken by him. He could not explain why the PD1 was signed for the bike but it had not been 'collected' on the till.

3.6 Mr Dixon spoke to the customer to confirm that she had had the bikes. In respect of the second allegation regarding the 'Williams order', Mr Dixon had spoken to the customer who had had the bikes. He found that the tills were not up and the bikes had gone; with a refund being made 20 minutes later. The claimant recognised: "Yes, looks like I am handing out bikes and then pocketing the money." He did not know why he had cancelled the order. Like the previous incident: the bikes had left the store, they had been handed over without being 'collected' through the till, and then a refund was processed in cash. The tills were not up by the requisite amount in the following reconciliation.

3.7 Mr Meadows denied having taken the cash out of the till. At this stage in the investigation, he suggested that someone else had used his number and he explained he had given it to colleagues in the past but had changed his password in the last few weeks.

3.8 In light of what the claimant had told him, Mr Dixon re-interviewed Mr Vickers and Mr Curren, both on 21 December. Mr Vickers told him that he had never cancelled an order that had money on it, believed he knew the right process and that you had to use a certain code. He was asked about events on Sunday 27 November, but denied being told that there was an issue with the till, and that the till should have been up. He says he knew nothing about it. Mr Curren was also re-interviewed and could not recall Mr Meadows telling him there was a till problem. However, he did now confirm that Mr Meadows had been cancelling uncollected bike orders that day and explained that there had been an issue over new colleagues letting bikes leave the building with payment on, but not registering it as 'collected' on the till.

3.9 Mr Dixon made enquiries of Liam Allen about the CCTV footage. He learnt that Mr Carr had told Mr Allen that the CCTV footage had frozen at the time when Mr Meadows went to the desk and that it was inconclusive about whether Mr Meadows had taken money out of the till. At this point, it is not clear what had happened to the CCTV footage, but later on Mr Gore made further enquiries. The important matter is that, neither Mrs Hill nor Mr Gore had seen any CCTV footage because it was simply not available for them to view it.

3.10 Mr Dixon decided, after taking advice, that there was a case to answer and suspended the claimant. He viewed the refund issues as more serious when he made his decision. On 11 January 2017 the claimant was invited to a disciplinary hearing (99).

3.11 There were two main allegations. The first was about processing fraudulent refunds totalling £1,243.75. This broke down into refunds made on Sunday 27 November, Thursday 8 December and Friday 9 December. The second main allegation was that the claimant manipulated KPIs by giving customer service plans in the place of cash refunds in the first 2 weeks of December, thereby knowingly inflating the KPIs for the store. There is some confusion over what the claimant had admitted to. However, it is clear that he had not accepted knowingly inflating the KPIs for the store. There has been further confusion over how many specific instances of doing so were contained in that allegation. The letter inviting him to the disciplinary hearing stated 15 occasions. However, at the disciplinary hearing Mrs Hill took him through 28 alleged incidents. Some of which had to be discounted as they had either not been done by him or were repeats. Mr Meadows could not have known how many specific transactions were relied on in that allegation.

3.12 The disciplinary hearing was held on 16 January by Mrs Hill. She was another Store Manager who had been asked by Mr Dixon to conduct the disciplinary hearing. The notes of the meeting are at pages 100- 130.

3.13 It has been put to me by the claimant that Mr Dixon had not taken the decision himself to proceed to disciplinary action. Mr Meadows says that Mr Dixon had told the claimant that he did not believe that he had done anything wrong and that the decision had been taken higher up. I have not heard from Mr Dixon about this but it is not relevant for me to determine this point as it is quite clear in the circumstances which the respondent was facing that it was reasonable of them to believe there were allegations which needed to be dealt with through the disciplinary procedure. It appeared from the data and evidence obtained that the claimant may have been deliberately over-inflating the KPIs for the store (and for his own benefit as bonuses depended on the KPIs) and, more seriously, that refunds were being done, ostensibly by the claimant, when a bike had been paid for by the customer, collected by the customer and then a fraudulent refund was being done on that order.

3.14 At the start of the disciplinary hearing the claimant pointed out that there were errors in the disciplinary letter (102). In his interview with Mr Dixon on 8 December he admitted to signing the pre-delivery inspection forms but not cancelling the order as had been written in the notes. Likewise, he had not admitted KPI manipulation as was alleged in the letter.

3.15 Mr Meadows explained the culture in the Preston store to Mrs Hill. He told her that there was limited storage for bikes, a lot of damage occurred to them and that if a product was damaged he believed you got what you could for it. Mrs Hill went through what she believed to be out of ordinary transactions with Mr Meadows.

3.16 Mrs Hill knew that one of the KPIs was BCP sales. Stores are encouraged to sell as many BCPs as possible to meet their KPIs. Mr Meadows told Mrs Hill that he had used the BCPs because the Company 10% discount for damaged goods was not a great deal. He explained the BCP is more for the customer but cost the Company less (104).

3.17 There is some dispute about what was discussed about the 10% issue at the meeting. Mr Meadows says that the note taker and his colleague confirmed to Mrs Hill that it had not always been the case that 10% was the Company norm. Mrs Hill cannot recall this being said and the notes do not reflect such a discussion. I see that these notes had been signed by 4 people on each page. Whilst accepting that the claimant may well have been under stress and did not read each page, it is significant that neither the note taker, nor his colleague, noticed that an important element of the discussion was missing.

3.18 Mrs Hill took the claimant through each of the transactions. I have seen the schedule of them, which has not been disputed by the claimant. As the schedule shows, many of the discounts or reductions were considerably more than 10%. Transaction 8 (180-181) shows a £70 bike was discounted by £60. There was no cash refund but 2 adult BCP'S at £25 each and £10 of accessories were given to the customer. It is a pattern repeated throughout the transactions. What Mrs Hill saw was that within a short period of time, less than a week, there were a lot of large discounts, BCPs and SLIME services being given to customers instead of a cash refund.

3.19 She went through all of the transactions with the claimant. He was frequently unable to explain why he had done what it appeared he had done. In respect of transaction 8, he said someone else must have had his till code (109). He told Mrs Hill that giving the till code to colleagues when they were busy was part of the Halford's culture. When it was pointed out to her that 2 of the transactions were clearly done by other people, Mrs Hill took this into account and took these 2 transactions out.

3.20 Mrs Hill's analysis was that the claimant was giving larger discounts than was acceptable; he was not giving cash refunds to the customer but extras and BCPs instead, and that Mr Meadows could not remember why he had done so in a lot of the transactions put to him. He explained to her that under the 'Early Bird' offer he could not give accessories because customers did not want them (as they had a coupon for them already), that 40 bikes were being sold per day and a lot of them had been damaged. He told her that he hadn't discussed it with Mr Dixon as he was trusted to make decisions. When he asked for an explanation to explain the pattern, Mr Meadows reply was that the customer would have had the money, he did not force them to have a BCP, and what he had done was in the best interests of the customer and the Company. In his view, it cost the company less than giving a cash refund. Mr Meadows acknowledged that it looked bad and his inability to remember incriminated him (114).

3.21 Mrs Hill struggled to understand how the claimant could not remember the majority the transactions, when he had given such large discounts and given away so many BCPs. The claimant denied doing it to improve KPIs at the Store but felt he needed to clear the damaged bikes and to help the customers.

3.22 In relation to the second set of allegations regarding the refund process, the claimant confirmed that he always did a return card payment on the card used for purchase. It was pointed out that one transaction had been returned to a different card and one to cash when a card had been used. He had been cancelling orders before opening time on a Sunday with no customer present, when refunds should be done with the customer there. Mr Meadows explained cancelling orders was his normal practice on a Sunday morning. Mrs Hill knew that this could be done but not for those with payments on them. The system was that if a payment had

been made, you were to call the customer and ask them to come in for a refund. If the customer could not be contacted, when the cancellation was done the money was put under an unclaimed deposit code.

3.23 The first allegation related to the “Hellcat” Order on 27 November 2016. It appeared that a fully paid order had been cancelled by the claimant. The system then put the money (£326) back into the till when the Order was cancelled. The result of this was that the till should have been up by £326. The reconciliation for that Sunday showed the till was down by £85. Mr Meadows had not checked to see if the bike was in the Store Room. Although the order was cancelled on 27 November it appeared from the PDI Form that he had given the bike to the customer on 23 December. Mr Meadows explained that he had told Jay and Stephen about the money in the till. Mr Meadows made an allegation that Mr Vickers had been investigated for taking money in previous jobs as well at the Preston Store. He also alleged that Mr Vickers had taken bikes to customers’ homes which had not been paid for (119).

3.24 In respect of the second allegation on 8 December 2016 (the “Apollo Cup Cake” order – page 224), 2 bikes had been handed over to the customer on 8 December, but the Order was cancelled 20 minutes later. When he was asked why the Order was cancelled when the bikes were collected, Mr Meadows was unable to explain but believes someone else might have done it. He was 100 per cent sure he had not done this cancellation (122). No collection process had been followed. The bikes had been handed to the customer with no collection receipt issued. Someone went back into the system and cancelled the order which had a full payment on it which should have resulted in the till sharing that amount over. That was not the case. With regard to the final cancelled order, Mr Meadows was unable to explain it. He pointed out to Mrs Hill that he was trying to take the money he would not have left a paper trail. He said that other people used his code and there was nothing to say as he said he had nothing to do with the cancellation of the Order.

3.25 There was a discussion around the claimant’s code being used by others or someone changing his code, but he did point out that this was rare as he normally did the refunds. Again the claimant refers to Mr Vickers as: “Don’t like saying it but there is something with him that needs looking into” (127). The claimant also referred to the CCTV being lost. Mrs Hill did consider it but felt the paper evidence was enough.

3.26 Although the claimant has said that he was treated inconsistently with other people who did not follow Company procedure, this inconsistency point has not been pursued except in relation to Mr Vickers. Mrs Hill adjourned the Hearing to speak to Mr Vickers. In the event she was on leave and Mr Dixon spoke to Mr Vickers on 21 January (131-133) to investigate what Mr Meadows had said about Mr Vickers having access to his log in details. Mr Vickers denied it. He didn’t have a password and said his own number enabled him to do price changes so he would not

need Luke's password. He also told Mr Dixon that he did not know how to change a password he only knew how to do it when the system prompted him. Mr Meadows makes criticism of this interview with Mr Vickers. He says that Mr Vickers was not rigorously questioned about this, he already knew what Mr Meadows was being investigated for and accordingly his evidence could not be relied on.

3.27 Mrs Hill's decision outcome letter is at pages 134 to 135. She did not tell Mr Meadows in person about her findings and reasoning as to why she had found him guilty of gross misconduct. Indeed, in her letter, her conclusions appear to be the same as the allegations which were set out in the disciplinary hearing invitation letter. They had been drafted by Mr Dixon. It is a woefully inadequate letter in terms of setting out her findings of fact about the allegations and her conclusions as to why Mr Meadows' actions amounted to gross misconduct. The effect of this is that Mr Meadows could not then challenge the findings and the conclusions at an appeal stage, simply because he did not know what the findings were. As Mr Meadows explained he only found out why Mrs Hill decided as she did when she gave her evidence to the tribunal.

3.28 Mrs Hill decided that the claimant was guilty of acts of gross misconduct. In her evidence she said that Mr Meadows had been unable to explain why he acted in the way he had, nor why orders had been cancelled after people had collected bikes, nor where the missing money had gone to. She did not accept he had not been properly trained as a reason for giving BCPs rather than cash refunds. She believed he had had sufficient training as he had attended the Aspire training and the Basic Gears training. She did not believe he had genuine reasons for his behaviour. She made no enquiries into the training which Mr Meadows had had but relied on her knowledge as a manager of that training.

3.29 When she came to make her decision, Mrs Hill had the transaction documents, the investigation report from Mr Dixon, the interviews, (including the second one with Mr Vickers) and the signed notes of the disciplinary hearing. During which she herself had asked a significant number of questions of the claimant around each of the transactions in the allegations. She could not understand why he could not remember many of the transactions in allegation 1, when he had given such large discounts and so many BCPs. Mr Meadows' explanation had been that he was trying to keep the customer happy and acting in the best interests of the Company. Mrs Hill did not see it in the same way as the discounts had been so large and the BCPs were still a cost to the respondent. He did not accept that he had felt under pressure to increase KPIs, had noticed they were improved but said his motivation was to deal with the damaged bike situation.

3.30 Miss Hill upheld the allegations and decided that as they were gross misconduct she had to dismiss the claimant. In evidence to the tribunal, she said that what had influenced her on the BCP/discount matter

were the number of transactions in one week, the size of the discounts and the number of BCPs, accessories and SLIME services given in place of a cash refund. She did not accept the claimant's explanations that he did not know that 10 per cent was the norm, he was acting in the customers' and the Company's best interests and wanted to deal with the damaged bike problem in the store. When asked by the tribunal why she felt it was fraudulent or dishonest, she said because of the scale of what was being done - it had happened so often: 15 in one week was excessive. She was also aware from her personal knowledge that there was a lot of pressure on stores to meet their KPIs and that a certain amount of disciplinary action had taken place elsewhere around this issue. She considered the refund matter to be dishonest as the claimant had said that the money was in the till but it never showed up. In the first example, the till had been £85 down when it should have been £329 up. The receipts and all the transactions documents were in the claimant's name and he had clearly not followed the correct procedures for cancelling orders and doing refunds.

3.31 Mr Meadows appealed the decision to dismiss him. His grounds for appeal are set out at pages 136 to 137. He makes little complaint about the process carried out by Mr Gore. Of particular relevance to his dismissal, he was saying to Mr Gore that the system allows any user with key holder status to change any colleagues' password on the system at any time. Colleagues' user codes are clearly listed under each colleague's name on the schedule placed on the wall in public view. At the appeal meeting with Mr Gore on 10 February 2017 (140-149), the claimant wanted to be reinstated and said that he believed that another colleague had used his code. Mr More asked Mr Meadows about each of the grounds for appeal in some detail. Mr Meadows brought up that he believed had colleague had changed his password and blamed Mr Vickers. Each of the issues raised in his letter of appeal were discussed with him by Mr Gore.

3.32 After making some further enquiries into what the claimant was saying, Mr Gore upheld that the dismissal date should have been 28 January 2017. His letter (154-157) setting out the outcome of the appeal is clear, detailed and, unlike Mrs Hill's letter, gives Mr Gore's reasons for his conclusions. He did not accept that the interviews with the claimant had been conducted in an inappropriate way as he had been told by Mr Dixon there was a sign on the door to ensure no interruptions. In respect of the claimant's contention that his code and his password could be changed, he accepted that colleagues' managers can change passwords but that if it happened Mr Meadows would know as he would be unable to log in and would need to get a re-set. There was no evidence that the claimant had contacted IT Services to get a re-set. Mr Gore did give some thought to about the possibility of someone using Mr Meadows' number and password, but concluded the evidence was not supportive of this and that the claimant had signed the PD1 Forms, handed over the orders but had not processed the collection correctly through the till. The orders had then been cancelled.

3.33 Mr Gore spoke to Mr Dixon and was told that Mr Vickers had not been in the store for 2 of the days when orders were cancelled and the refunds were made. From this, he discounted that Mr Vickers had had any involvement. However, he did not inform Mr Meadows of this finding before reaching his decision and sending his letter on 28 February 2017.

3.34 A number of points have been made by the claimant to me. He did not tell Mr Dixon or Mrs Hill or Mr Gore that colleagues cannot only change passwords but they can then change them back to the original password. This was simply not a matter before the disciplinary officers at the time. Furthermore, apart from naming Mr Vickers directly in the appeal hearing, Mr Meadows had not named names or given any indication as to whom he thought might have changed his password. Mr Meadows has told the tribunal that just because Mr Vickers was not on the rota on a particular day, it did not mean he was not in the store. It is clear that Mr Gore did a thorough job in relation to the points of appeal put to him. However, some criticism can be made of him for not going back to the claimant to get his views about Mr Vickers not appearing to be at work on the 2 days in question. The claimant has told me that he would have challenged this evidence on the basis that Mr Vickers frequently did overtime and he lived near the Store and often popped in when he was not at work.

4. The Law and submissions

4.1 The tribunal applied s98 (1), (2) and (4) of the Employment Rights Act 1996.

4.2 The tribunal considered the principles set out in the case of *British Home Stores Ltd-v- Burchell (1978) IRLR 379* and I asked myself the following questions:

- (i) Did the employer have a genuine belief in the reason for dismissal?
- (ii) Was that belief held on reasonable grounds?
- (iii) At the final stage at which the belief on those grounds is held had the employer carried out as much investigation into the matter as was reasonable in all the circumstances?

It is not appropriate for me to consider whether I would have shared the view of the employer in the circumstances in question.

4.3 I considered *Sainsburys Supermarkets Limited -v- Hitt (2003) IRLR 23* where it is stated that the purpose of investigating misconduct is not to establish whether or not the claimant is guilty of the alleged misconduct, but whether there are reasonable grounds for the employer's belief that there had been misconduct on the claimant's part to which a reasonable response was the decision to dismiss him. Further, the objective standards of the reasonable employer must be applied to all aspects of the question whether an employee was fairly and

reasonably dismissed. I must also consider whether the employer's decision to dismiss fell within the band of reasonable responses to the employer's conduct which a reasonable employer could adopt (*Iceland Frozen Foods Limited –v- Jones 1982 IRLR 439*).

4.4 I had full oral submissions from both Counsel and written submissions from the respondent. I am not reproducing these submissions in this judgment but have taken them into account and refer to them in my conclusions where appropriate to do so. Counsel referred me to the following case law, which again I have considered and refer to below, where relevant:

Leyland Vehicles Ltd v Wright EAT 712/81 - a case to which the claimant referred me. I was given a copy of the decision of the Industrial Tribunal. Counsel had been unable to obtain a copy of the EAT decision but informed me that the decision of the Industrial Tribunal had been upheld and the decision of the EAT is set out in the IDS Unfair Dismissal Handbook at paragraph 6.7. I have looked it up. It is a case involving two suspects, both of whom were dismissed. I reproduce what the IDS handbook states: "where the EAT held there was 'no reasonable conclusive proof' that one of the two dismissed employees must have been guilty of theft." I do not see how this decision upheld the Industrial Tribunal decision.

Brito-babapulle vv Ealing Hospital NHS Trust [2014] EWCA Civ 1626

Old v Palace Fields Primary School [2014] UKEAT/0085/14

A v B [2002] EAT/1167/01

Hadjioannou v Coral Casinos Ltd [1981] IRLR 352

4.5 I was given a further two case excerpts, entitled 'Case Analysis', by the claimant from Westlaw. They are references to two cases (*Meyer Dunmore International v Rogers* and *Taylor v Parsons Peebles NEI Bruce Peebles Ltd* dating back to 1978 and 1981). I do not see from the limited information provided that they assist me in any way and I have not sought out the full case reports.

5. Conclusions

In reaching my conclusions, and applying the relevant law to my findings of fact, I have largely followed the list of agreed issues.

5.1 **What was the reason for dismissal and has the respondent proved there was a potentially fair reason for the claimant's dismissal?**

It is accepted by the claimant that he was dismissed by reason of misconduct. The respondent does not need to show that it had a potentially fair reason for dismissal.

5.2 **Has the respondent demonstrated that it genuinely believed the claimant to be guilty of the misconduct as alleged?**

5.2.1 If this is challenged by claimants at all, it is usually on the basis that the belief of the dismissing officer was not held in good faith and that there was an undisclosed reason or ulterior motive for dismissal, different to that given. That is not how Miss Hughes is putting her argument on this issue. Her submission is that Mrs Hill and Mr Gore genuinely believed Mr Meadows was guilty but had not turned their minds to what he was actually being accused of, namely: dishonesty and fraudulent activity. She contends that neither could have believed Mr Meadows guilty of dishonesty or fraud on the evidence before them, and they had not properly considered whether he had acted dishonestly and with intent to commit fraud on his employer. She submits that what Mrs Hill dismissed Mr Meadows for was his failure to follow company processes.

5.2.2 But this was not the allegation of misconduct. She says there was a fallacy at the start that the claimant was the suspect, that the investigation was therefore skewed against him and there was a lack of rigour in the investigation. Had this not been the case, Mr Vickers would also have been investigated rather than just being questioned as a witness. By which time he was aware of the investigation into the claimant and what it was about.

5.2.3 Miss Hughes refers me to the case of Wright v Leyland. In effect what she is saying is that the respondent's managers could not have had a genuine belief that the claimant was guilty of fraud or dishonest conduct because, in effect all they had was his name on the till receipts. The starting point of the investigation was that the refunds had been done under Mr Meadows' name and the money had gone missing. What she submits is that whilst Mrs Hill and Mr Gore genuinely believed Mr Meadows were guilty they had not turned their mind to look at dishonesty and fraudulent intent on his behalf. She says that they have to show a genuine belief that the claimant was guilty of what he was being accused of. Mrs Hill accepted dismissing him for not following processes but it is pointed out that breaching policy was not what the allegations were about.

5.2.4 I understand her point about the managers' belief, but consider it is better dealt with under whether there were reasonable grounds for such a belief, rather than saying Mrs Hill's or Mr Gore's belief was not a genuine one. It clearly was a genuinely held one. That does not mean it could not be a mistaken one or one to which no reasonable employer could have come to on the basis of what they knew from the investigation.

5.2.5 In regard to the submission that Mr Meadows was the only suspect in the investigation and that Mr Vickers should also have been investigated, I do not accept that fell outside what a reasonable employer would have done in the circumstances. When the respondent commenced the investigation, all the documentation about the refund transactions was in the claimant's name; there were a high number of large discounts being given by the claimant and BCPs and extras were being given by him rather than smaller cash discounts. It was late in the day when the claimant told the respondent that Mr Vickers could be a suspect. In light of these points, the respondent acted within the band of reasonable responses in only investigating the claimant. There was simply no evidence before or during the investigation which even hinted at Mr Vickers being a potential suspect.

5.3 Were there reasonable grounds for such a belief?

Did the respondent carry out a reasonable investigation?

5.3.1 I consider that these two issues are best dealt with together, as the second informs the first. I reminded myself that the band of reasonable responses test applies to the investigation itself. It is not a case of asking whether the respondent did all that it could have done to investigate. It is not akin to a police investigation. The investigation only needs to be sufficient to found a reasonable belief that the employee is guilty of the misconduct as alleged. On the other hand, where there are serious allegations, such as of dishonesty and fraud, a full and careful investigation should be conducted in view of the potential effect they could have on the employee (*A V B*).

5.3.2 There is no doubt that Mr Dixon carried out a reasonable investigation. It would have been better if the interviews with the claimant had been carried out in a private place and in a less interrupted way, but criticism cannot be made of the thoroughness with which Mr Dixon carried his enquiries out. When Mr Meadows suggested a line of enquiry, he followed it. His report was not entirely correct in that he stated that Mr Meadows had admitted to KPI manipulation (I do not accept Ms Hughes submission that Mr Dixon recorded that the claimant had admitted to the refund fraud. That is not how page 96 reads). This was not the case. However, Mr Meadows challenged this, as it was repeated in the letter informing him of the allegations and calling him to a disciplinary hearing, at the start of the disciplinary hearing. Whatever Mr Dixon had mistakenly put was not taken at face value by Mrs Hill, who took the claimant painstakingly through all 28 alleged incidents.

5.3.3 The disciplinary letter had been poorly drafted, as it referred only to 15 examples of alleged KPI manipulation. There were 28. In fact, after going through them all with the claimant, Mrs Hill discounted a number. However, the number of incidents over a short period did influence her decision that the claimant was deliberately manipulating the KPIs for the store, so the number was important and should have been clearly set out in the disciplinary allegations letter, so that the claimant could have been in no doubt about what he was having to answer. That said, the fact that Mrs Hill went through them all and the claimant answered to them as he best he could indicates that he was not disadvantaged by the letter not being as precise as it should have been. Furthermore, he did not raise this point during the hearing, nor did he ask for an adjournment if he had felt ambushed by the number raised, compared to the disciplinary hearing invitation letter.

5.3.4 Another matter which has been raised by the claimant is that about the CCTV footage. Mr Dixon had spoken to Mr Allen and established that the CCTV footage was inconclusive for 27 November. At the appeal stage, Mr Carr was interviewed and stated that the CCTV was not good enough to see what was happening as there was an intermittent fault on the system. In any event, it formed no part of the investigation and Mrs Hill felt she had enough to decide as she did on the basis of the documentary evidence. In all the circumstances, the respondent acted reasonably into looking into the CCTV issue, and deciding that it could not be used as reliable evidence.

5.3.5 Although the claimant says there are a number of procedural failings in the investigation, the real question for me is whether the investigation and what came out in the disciplinary hearing were enough to provide grounds on which Mrs Hill (in particular) formed her belief in the claimant's guilt in respect of the allegations of fraudulent refunds and KPI manipulation.

5.3.6 I deal with the KPI inflation issue first. Mr Meadows was not saying that he hadn't done most of the acts complained of. His defence was essentially that it was not done to inflate the KPI figure but to deal with the problem of a lot of damaged bikes and to act in the best interests of both the respondent and the customer. Mrs Hill did rely on her own experience as a store manager about how high a discount should be. She knew from the disciplinary hearing that Mr Meadows knew it was usually 10%, even if he hadn't been expressly told that. He had attended training to be a store manager and she knew as an assistant manager, he would be aware of the KPIs. The evidence before her was that on numerous occasions he had given much higher discounts, not in cash but in items which would increase the stores KPIs. In many of the instances she put to him, he was unable to explain why he had given such a high discount and given it by way of BCPs, slime services or accessories. She did not accept his explanations that his motivation was to act in the best interests of the respondent and the customer and to deal with the problem of a large number of damaged bikes. Mrs Hill did not accept the claimant's explanations, where he was able to give them.

5.3.7 Although there was no clearcut conclusive evidence before her that Mr Meadow's motivation was to increase the store's KPI's, her belief that this was the case does not fall outside the band of reasonable responses in the circumstances of this case. In the light of not accepting his explanations, or of him not being able to remember the transaction and give an explanation, this belief is a reasonable one for her to have formed on the basis of the evidence as to the size and frequency of his discounts and them not being made in cash but in other benefits which directly affected the KPIs. It was not in the allegation, nor found by Mrs Hill, that he had done this for personal gain through the bonus system.

5.3.8 I turn now to the fraudulent refund allegations. Mrs Hill had documentary evidence that the customers had paid in full for the bikes and that the claimant had given the bikes to the customers, without a collection receipt being issued. The same orders were then cancelled to cash (rather than following the process when payment had been made by a card) by the claimant. This had the effect, if the customer was not present, of the system putting the money back into the till. When the tills were checked, in all 3 instances, they were not over by the sums involved. The claimant was unable to give explanations for what the paperwork showed, other than to suggest that other people knew and used his code and that someone else might have been acting fraudulently and making it look as though it was him. In particular, Mr Meadows said Mr Vickers had access to his log in details.

5.3.9 It has not been alleged by the respondent that the claimant had taken the money out of the till, just that he had processed fraudulent refunds. That does, however, still allege dishonesty or fraudulent activity by Mr Meadows. What Mrs

Hill had was paperwork which pointed to Mr Meadows being responsible for suspicious conduct. As Mr Meadows himself recognised, it looked like he was “handing out bikes and then pocketing the money” (76). In relation to the first allegation she had been told that he had told people the till would be up. Further investigation did not support this explanation. In relation to the second allegation, when the order was shown as cancelled by the claimant 20 minutes after the bikes were handed over by him, the claimant could not remember the order but denied cancelling it. Mrs Hill recognised that the claimant was suggesting he might have been framed but he was unable to explain how this might have been done within 20 minutes of collection (123). She did not accept this explanation. His explanations then revolved around suggesting that other people had used his code, in particular Mr Vickers, and that Mr Vickers had been investigated in the past. Mrs Hill looked into this but Mr Vickers denied having used the claimant's code.

5.3.10 At this point, I considered whether a reasonable employer, acting within the band of reasonable responses, would have questioned Mr Vickers more thoroughly and not treated him as a witness but as a suspect? The respondent did not do so, as all the paper evidence pointed to the claimant being responsible and the suggestion that Mr Vickers could have been the perpetrator came from the claimant late in the day. Even if criticism can be made of Mrs Hill for not investigating more rigorously what Mr Meadows was saying about Mr Vickers, Mr Gore carried out further investigations and discovered that Mr Vickers had not been in work for two of the incidents. I am aware that Mr Meadows seeks to challenge that. The question then becomes – how far should a respondent be expected to go in terms of investigation? I remind myself that it is not to establish that the claimant was guilty of misconduct but should be sufficient to provide reasonable grounds for the employer's belief that there had been misconduct on the claimant's part.

5.3.11 It is put to me by the claimant that what evidence Mrs Hill had when she made her decision was that the claimant had not followed correct procedures and that this is far from being able to sustain a reasonable belief that the claimant was acting dishonestly by doing fraudulent refunds. Miss Hughes says that all there was that the refunds were done under Mr Meadows' name and the money had gone missing. There was no evidence that the claimant had taken the money out of the till. The difficulty for the claimant is what Mrs Hill, and later Mr Gore knew when they made their decisions based on their belief that the claimant had acted fraudulently. All the paperwork indicated he had cancelled the orders, without the customer present, one shortly after handing over the bike and he was not able to give explanations other than it had not been him, someone must have used his code or someone was framing him. These explanations were looked into and discounted by both managers.

5.3.12 It is not my role to substitute my view of what happened for that of the managers. A decision to find gross misconduct and dismiss might be a harsh one but unless I can say the actions of the respondent fell outside the band of reasonable responses, in relation to each stage of the disciplinary process as well as the decision to dismiss itself, I cannot decide that a dismissal was substantively unfair. At the risk of repeating what I have stated already, the investigation carried out by the respondent pointed to serious wrongdoing by the claimant. His explanations, despite further enquiries, were not accepted as

outweighing the documentary evidence before the dismissing and appeal officers. It is not my place to say they should have gone further and pursued other lines of investigation, for instance into why the CCTV footage was inconclusive and not available or whether Mr Vickers should have been a suspect. The respondent's managers did as much as was reasonable to enable them to hold a reasonable belief that the claimant had been acting in a fraudulent manner which went beyond just failing to follow the respondent's procedures. It is not for the tribunal to say whether it would have found in the same way had it been in the respondent's shoes.

5.3.13 As my findings of fact show, there were failings in the respondent's handling of the disciplinary process. The letter of dismissal should have set out Mrs Hill's findings and reasoning for dismissing Mr Meadows. However, it is clear from his appeal letter and the appeal meeting that Mr Meadows knew why he had been dismissed and the evidence on which that decision had been made. Further, Mr Gore did not just 'rubberstamp' the dismissal decision. In light of what the claimant said to him, he made further enquiries and then gave the claimant a full and reasoned outcome, following those enquiries and consideration of the appeal. Any failing in this respect at the dismissal stage did not adversely affect the claimant's ability to present his appeal and any such failing was put right by the thoroughness of Mr Gore's appeal process.

5.3.14 Limited criticism can also be made of Mr Gore for not telling the claimant what he had found out about Mr Vickers not working on two of the days when refunds were made. But I say limited criticism because an investigation does not have to be an exhaustive one. The respondent had carried out a full investigation into Mr Meadow's actions, it followed up on matters which he raised in the disciplinary process relating to other people being able to use his code and Mr Vickers. It had documentary evidence which both managers felt was sufficient to support a belief that Mr Meadows had been guilty of serious misconduct and nothing came to light to cast doubt on that evidence.

5.4 Did the decision to dismiss fall within the band of reasonable responses?

The claimant has conceded that if the respondent was reasonable in concluding that his conduct was fraudulent then dismissal would be a sanction falling within the band of reasonable responses. As I have found that the respondent's belief that the claimant's conduct was fraudulent was genuinely held on reasonable grounds following a reasonable investigation, then it follows that the decision to dismiss was within the band of reasonable responses. It is hard to see, bearing in mind the seriousness of the misconduct as found, how it could not be a reasonable sanction to impose.

5.5 In the light of my findings and conclusions, the claim for unfair dismissal fails. It is important to state that it is not the tribunal's role, in assessing liability, to determine whether or not the claimant was guilty of the misconduct as alleged. Our role is to assess what the respondent did and decided at the time. It is only if the findings, investigation and decision making was irrational or so flawed that it falls outside the band of reasonable responses open to a reasonable employer in the circumstances the respondent was in, that I can say it was unfair.

Employment Judge Cocks

17 October 2017

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

.19 October 2017

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FOR THE TRIBUNAL OFFICE