



EMPLOYMENT TRIBUNALS

Claimant
Mr I Afolabi

Respondent
Serco Limited

v

Heard at: Watford

On: 7 & 8 December 2017

Before: Employment Judge Henry

Appearances

For the Claimant: Mr Remi Oyedola, friend

For the Respondent: Ms Madelaine Stanley, counsel

JUDGMENT

- I. The unanimous decision of the tribunal is that the claimant has not been unfairly dismissed.
- II. The claimant's claim is dismissed

Reasons

1. The claimant by a claim form presented to the tribunal on 14 December 2016, presented a complaint for unfair dismissal and disability discrimination. The claimant's claim for disability discrimination was withdrawn.
2. The claimant commenced employment with the respondent on 8 December 2008. The effective date of termination was 13 September 2016; the claimant then having been employed for seven complete years.

Issues

3. Unfair Dismissal

- 3.1. What was the reason for the dismissal? The respondent maintains that the reason for dismissal was conduct and was a reason that could found a fair dismissal pursuant to section 98 of the Employment Rights Act 1996.
- 3.2. Has a fair procedure been followed?
 - 3.2.1. Did the respondent have a genuine belief in the misconduct of the claimant
 - 3.2.2. Has there been a reasonable investigation?
 - 3.2.3. Following that investigation, did the respondent hold a reasonable belief that the claimant had committed the acts alleged?
- 3.3. Was dismissal within the reasonable bands of sanctions open to the respondent?
- 3.4. Was dismissal reasonable in all the circumstances of the case?

4. Remedy

- 4.1. Has the claimant contributed to his dismissal?
- 4.2. If the dismissal was procedurally unfair, was there a percentage chance that dismissal would have ensued in any event?

Evidence

5. The tribunal received evidence from the claimant and from the following witnesses on his behalf:

Mr Bidemi Raji – Customer Service Officer
Rev. Afolaleye – Minister of the Gospel
Adeniran Adebayo – customer of the car park

And from the following witnesses on behalf of the respondent:

Mr Rasal Dewan – CCTV Service Manager
Kieron Clarke – Performance and Compliance Manager
Terry Prince – Contract Director

6. The witnesses gave their evidence in chief by written statements upon which they were then cross-examined, save for Rev. Afolaleye and Mr Adebayo who did not give oral evidence to the tribunal on there being insufficient time as allocated for cross-examination, their evidence was not contentious.

7. The tribunal had before it a bundle of documents, exhibit R1.
8. From the documents seen and the evidence heard, the tribunal finds the following material facts.

Material facts

9. The respondent operates a number of car parking contracts for local authorities, one of which being the London Borough of Brent.
10. The claimant was employed by the respondent as a Customer Service Advisor, (CSA) which was one of two roles within the respondent's establishment offering services to the London Borough of Brent, in respect of the single car park run by the Local Authority which was manned; Elm Road car park. All other car parks were unmanned - pay and display facilities.
11. Members of the public using the Elm Road car park were able to pay for car parking either by inserting cash into the parking meter obtaining a ticket, which was then to be placed on their dashboard or otherwise using the parking phone facility.
12. The car parks normal operating hours were, Monday to Saturday 8am to 6.30pm, the gates opening at 7.30am and closing at 10.00pm with Sunday free parking, when the gates opened at 10.00am and closed at 5.00pm. On days when events are held at Wembley Stadium, the following operating hours apply: Monday to Saturday 8.00am to midnight, gates opening at 7.30am and closing at midnight, and on Sunday, 10.00am to midnight, gates opening at 10.00am and closing at midnight.
13. As a CSA, it was, inter alia, the claimant's role to patrol the car park identifying cars that were not displaying an appropriate ticket for its being parked, and reporting the same to its control room whereon, a Civil Enforcement Officer (CEO) would attend and issue a parking charge notice (PCN). The claimant was not authorised to issue PCNs. The claimant would also give assistance to customers, the precise nature of which however is not defined. It is also the role of the CSA to report any vehicles remaining in the car park on the car parks closure to the control room, who would then direct a CEO to issue a PCN to the vehicle when the car park opened the following morning.
14. It is here noted that, CEOs are not permitted to accept cash from customers, equally at Elm Road car park, there are no facilities for CSAs to accept or store money or otherwise record the receipt of monies from customers.
15. The fees for parking on non-event days are as follows: for one hour £1.50, two hours £3.50, three hours £5.00, and all-day parking £8.00. Where payment is made via the phone, it is 50p cheaper than the stated sums for the relevant duration. On event days, parking is only permitted for a

maximum of two hours, save for pre-booked bookings being made 48 hours before the parking time. To this extent, on event days the ticket machine will only allow a ticket to be purchased for a maximum of two hours' duration, equally, parking by phone will not allow the purchase of parking beyond two hours on an event day. It is however the case that, successive tickets of two hours' duration can be purchased via the ticket machine enabling a non-pre-booked user of the car park to park in excess of two hours. In this respect, it is noted that CSAs are not tasked with monitoring vehicles on event days being parked for more than two hours where they have an appropriate ticket displayed in their vehicle.

16. On 23 April 2016, an event day, two customers sought to park their vehicles at the Elm Road car park in excess of the prescribed two hours, not having pre-booked parking. The individuals who were attending the event at Wembley Stadium would not then have been able to return to their vehicles to purchase additional parking tickets.
17. On the customers having sought to park their car, each at different times in the day, on seeing the notice as to the parking terms and conditions for event days, on being approached by the claimant and seeking to park their vehicles for longer than the permitted two hours, they were informed that that was not possible on account of them having failed to pre-book parking 48 hours before the event day. On the customers begging the claimant to allow them to park for a longer duration and having advised the claimant that they had travelled long distances, the claimant undertook to purchase, consecutively, two-hour tickets on their behalf and undertook to place them on their windscreen under their wipers. The claimant was furnished with £25 from one customer and £20 from the other.
18. On the customers asking for a receipt for their monies paid, the claimant advised that they did not have receipts and that the receipts would be their "pay and display" parking ticket.
19. It is the claimant's evidence that, he had informed the customers that they had to collect their vehicles by midnight before the car park closed and that, where cars were left overnight there would be a £30 penalty charge, further advising the customers that they would be able to pick up their change on collecting their vehicles.
20. In the event, the customers did not return to collect their vehicle before the car park closed and for which they received PCNs the following morning.
21. It is here noted that the claimant did not report the vehicles as having been in the car park on its closure.
22. On the vehicle owners having been issued PCNs, they subsequently, by correspondence of 25 April and 28 April, received on 5 May and 11 May respectively, challenged the issuance of the PCNs, and from which complaints, the tribunal notes the following:

“My husband and I were attending the FA Cup semi-final.... and had arrived in the Wembley area early pm on Saturday 23/04/16 to check into our hotel on Elm Road, for a one night stay.

The hotel car park was small and full so we found the Elm Road car park, but when we drove into that car park, we saw signs saying that as it was an “event day”, the maximum parking time allowed was two hours unless we had pre-booked.

A member of staff came out of the office to greet us, and he told us the same.

We asked if we could book there and then, and at first he said no, it was too late, pre-bookings ending 48 hours before “event days.”

But he then said that if we pay £25, we could park through to the next morning, but we would have to come back the next morning after the gates had been unlocked and buy a two hour ticket, and would then have to leave within two hours after buying that ticket.

So we paid him the £25, asked for a receipt, but he said he couldn't give us a receipt because we had not pre-booked.

This seemed a little suspicious, but as we were keen to get checked into our hotel and then get to Wembley Stadium in good time for the match, we went along with it.

We did go back to our car the next morning, and bought a two hour ticket as advised by the member of staff, at 08:18am.....

It was then we found the PCN on the window screen of our car, that had been issued 15 minutes earlier at 08:03am.

Obviously, we cannot prove that we paid £25 to any member of staff at the car park, and I am equally sure that you will not be able to find any record of the payment in your system.

Under the circumstances, we will be grateful if you could reconsider the collection of the PCN charge against us..... and whether you can or cannot, at least you are now aware that you appear to have a dishonest member of staff at that car park.

When we departed from the car park just after 10.00am, we spoke to another driver.... And he had experienced exactly the same as us with the said member of staff.”

23. The second complaint stated:

“.... I was told by your car park attendant on the Saturday afternoon approximately 2.30pm that to stay 24 hours I would have to pay a total sum of £30, when I said the Elm Wembley Hotel said it would be £8, he said to us how much can we pay him, which I replied we'd paid £20 only, he said that will be ok but we must return to the car park at 9.00am on Sunday morning and buy an extra two hour stay at the meter which we did..... This just didn't happen to ourselves, two other couples were told the same procedure by your car park attendant....”

24. The complaints were received by the respondent's back office complaints team, who alerted the management team, who in turn instructed the CCTV Service Manager, Mr Dewan, to conduct an investigation.

25. By correspondence of 13 June 2016, the claimant was invited to an investigation hearing, being advised: to discuss allegations of “*gross misconduct concerning accepting a gift which could be considered as a bribe, mainly, it is alleged that on 23 April 2016 you accepted a sum of £20 and £25 from two different customers and in return allowed their vehicles to be parked in the car park overnight.*” The claimant was further advised that the allegation raised “*are very serious, and if substantiated may lead to disciplinary action.*” The claimant was then advised of his right to representation for the meeting, arranged for 21 June 2016.
26. For completeness, it is here recorded that on 20 June, the claimant was invited to attend a disciplinary hearing in respect of allegations of misconduct concerning unsatisfactory and unacceptable performance of duty, in that he had failed to call in his shift times to the control room. The hearing was scheduled for 27 June 2016, but in the circumstances, this matter was subsequently held in abeyance pending the investigation of the claimant accepting money from customers above referred, and in the course of events, were not further pursued.
27. On 21 June 2016, Mr Dewan held an investigation meeting with the claimant, notes of which are at R1 page 90; the notes identifying “these notes are not verbatim, but are intended to be an accurate reflection of the meeting.”
28. Following the letters of complaints being read to the claimant, and the claimant giving his account of events by which he had received the sums from the customers, the tribunal notes the following exchange:

“RD: On this occasion you accepted £20 from this customer?”

IA: Yes, for the ticket

RD: How did you purchase the tickets, did you use RingGo?

IA: No, I bought from the machine.

RD: What evidence do you have to prove the money you accepted on this day was used to purchase P&D tickets?

IA: When I bought it I used it to buy P&D and put it on the car. When CEOs came, different ones came, all vehicles had a P&D ticket.

RD: Ok what was the name of or shoulder number of the CEO who came to check P&D tickets on the day then?

IA: I cannot identify them. Some came for break, some went to car park to patrol. If there would be any car which did not have a ticket or RingGo they will get the penalty. That gives me confidence that I pay for the ticket.

RD: In your role are you allowed to accept any money from the customer regardless of the reason?

IA: I cannot say yes or no.

RD: The answer can only be one! Either a yes or no!

IA: No but I was looking after them.

RD: What is your job in the car park?

IA: To go around and check if all vehicles have valid P&D or RingGo if not I need to call control for enforcement.

RD: In your role are you allowed to take cash from the customers for whatever the reason is? Are you allowed to take cash? Does it involve cash handling?

IA: No, but sometimes when they required assistance the money is not going into our pocket but help them. We should help to top up the car ticket. I thought it is obligation, I did not know that it is wrong.

RD: How many times have you accepted money from customers in the car park?

IA: For buying the ticket. This is the first time somebody begged me to help them as they cannot come back.

RD: So why on this occasion you suddenly decided to accept money?

IA: On that day they've pushed me, before they did not. They asked me to help them. I told them that this against me.

RD: So you are always aware that it is not allowed?

IA: I know, I know it is not my role but I did it to help them.....
.....

RD: So, we have established that you have taken money from these customers. How can you now convince me that the money was used to purchase the P&D tickets? Do you have any evidence?

IA: The CEOs which came to the car park could see that all the vehicles had a P&D ticket and RingGo. If I would know it would be like that I would pile them together."

29. There was then discussion in respect of the duration of the cars being parked and the sums of money spent in purchasing tickets. On the claimant calculating the cost of tickets needed to be purchased for the duration that the vehicles had been parked, no greater precision being given, there then followed this exchange:

“RD: What did you do with the change?

IA: I told them I would give them back when they came.

RD: Did the customer return for the change?

IA: No.

RD: Where is the change now?

IA: With me.”

30. There was then an exchange with regard the further sums paid by the second customer for which there then followed the following exchange:

“RD: Given that you state this is the only occasion you have accepted money from a customer should you not be able to tell me the exact amount without any hesitation or do you regularly take money from customers but can’t remember?”

IA: I am able to remember.

RD: So how much did you spend?

IA: Let me calculate.....

RD: If the customer returns today how much in change would you return?

IA: There is £7 left from the £25.

RD: Where is this money now?

IA: In the office, in the shelf. I left it there in case they would come. I expected them to come back at 12.

RD: So the remaining change is in Elm Road car park? Where exactly?

IA: It is in my shirt.

RD: Is it secure and locked?

IA: No, we used paper to close the door of the locker.

RD: Did any of the customers ask you for a receipt?

IA: No, they told me to top up their car and I said the ticket is the receipt.

RD: One of the customers states they asked for a receipt but you said it is not available.

IA: I told them that the P&D ticket is the receipt that is what I told them.

RD: The customer you had taken £20 from states that when they returned to their vehicle the next morning they did not see any P&D ticket on the vehicle.

IA: When did they return, in the morning? I don’t know nothing about next day morning. I know up to midnight. The CEOs know.

RD: But the PCNs were issued in the morning to those vehicles for not displaying a valid P&D ticket.

IA: Yes, I told them the penalty will be issued. I’d been told about the incident from the next day morning which was CEOs incident with the MOP. I asked what had happened. CEO said he wanted to fight him. I explained to CEO that the money was for the P&D ticket not to park overnight.”

31. There was then discussion about one of the customers stating that there had been other drivers who had experienced the same; the claimant being questioned whether it was only two customers that he had accepted money from. The claimant was thereon questioned as to how he had put the tickets on the windscreen, the claimant stating that he had placed them under the wipers.
32. The meeting concluded with the claimant being informed that, based on the discussion had, he was being suspended on full pay pending further investigations. The claimant thereon advised *"this is just the first time over the eight years I am working in the car park. Because of my attitude, behaviour and hardworking I am in this. I would like you to look at all this and take into account and be lenient."* The claimant was thereon advised that the investigation hearing was in respect of an allegation of gross misconduct which was very serious and that it was Mr Dewan's role to assess the evidence and make a decision on whether there was a case for disciplinary action.
33. The claimant's suspension was confirmed by correspondence of 22 June 2016, enclosing the minutes from the investigation meeting together with a copy of the Apcoa parking colleague's handbook, further being advised that the investigation would be completed as quickly as possible.
34. As a result of the claimant being at the investigation meeting, he had not then attended his shift, for which his colleague Mr Raji phoned him, the claimant then in the meeting with Mr Dewan, to find out why he had not attended work. Mr Raji, in a statement provided the following day, recorded his conversation with the claimant, that the claimant had stated, *"he won't be able to make it to work due to an emergency and also asked me to please help him remove some money he left in one of the drawers to another explaining furthermore that some person(s) would come by the next day requesting for saying they are from him (sic) and I should hand the money over to them."*
35. On 13 July 2016, Mr Dewan held a fact-finding meeting with Mr Raji, notes of which are at R1 page 99.
36. After clarifying the parking tariff for the car park and of CSAs being paid directly by customers, Mr Raji was asked questions as to the events of the 23 April, from which the following exchange is noted:

“RD: Are you aware if your colleague Isaac Afolabi has ever taken any cash payment from customers?”

BR: Not that I am aware of, I called him that day as I didn't see him start his shift at 1:30, he told me to give customers some change and when they come back, he said something happened and he couldn't meet him.

RD: So, you have never witnessed him taking any money from customers?

BR: No.

RD: Has he ever mentioned to you taking money from two different customers on 23/04/16.

BR: He just mentioned that if he doesn't come back, I should give customer the change, he didn't mention anything else.

RD: I have a statement from you dated 22/06/16 that I had asked you to provide after I had visited the car park on the day and you were on duty, I noticed some cash in the office, when I asked you, you said it is your colleague Isaac's money and you took it out from his locker at his request over a telephone conversation, correct?

BR: Yes.

RD: Can you tell me a bit more about this conversation you had with him over the phone?

BR: He just told me that if the customer comes back for change I should give it, I took money from his locker and put it in the drawer.

RD: How much cash was there?

BR: £12.....

RD: Did Isaac call you on 21/06?

BR: No, I called him at 1.30 to see where he was as he was not at work. He said it was emergency and he is not in and something had happened. He told me to take the money out of the locker in case the customer returns for his change.

RD: Did you ask him further questions on the phone. Where did the money come from, who is the customer etc.?

BR: No, I didn't understand as he told me to keep it out, he didn't explain to me anything more...."

37. By correspondence of 14 July 2016, the claimant was invited to a further investigation meeting in similar terms to that of his earlier invite, the hearing to be held on 19 July. (Notes of the hearing are at R1 page 103).

38. Mr Dewan addressed with the claimant the money found in the office when he visited on 22 June, and his discussions with Mr Raji, from which the following discourse is noted:

“IA: ...It's not a bribe or a gift as I used it to buy a ticket for the driver and gave him the change so that if the customer comes back it can be given to him.

RD: So, you physically handed the change over to your colleague?

IA: Yes, so that it can be collected when I am not there.

RD: Did you receive a copy of investigation notes?

IA: Yes, I got.

RD: In the initial investigation you state that the change was in your locker?

IA: Yes, but I handed it over so that it can be given if I am not there.

RD: I also interviewed Bidemi Raji and have a written statement from him, and he states that you had a telephone conversation with him on 21st?

IA: Yes, he called me because I know I am not allowed to talk to anyone after my suspension.

RD: He states that you asked him to take out the change from your locker on 21st?

IA: I did not contact him, but he called me asking “where you are”?

RD: What was the conversation that took place between the both of you?

IA: I was with Ras. Nothing more.

RD: But he states that you asked him to take money out of your locker?

IA: I told him in case the money is lost in case I did not hand over to them so please give it to the customer if they come in.

RD: Right, earlier you told me that you physically handed over the money to Bidemi so why are you changing your story now?

IA: I told him where the money is. Not that I handed it over to him.

RD: How much money was there in your locker?

IA: £12.”

39. There was then a discussion concerning the exact sums of money, and on Mr Dewan then asking questions as to why the claimant thought the customers would have complained that he had taken money to allow them to park their vehicles, the following discourse was had:

“IA: This is planned. This money is not a gift or bribe for me. It is their money for parking. I asked them if they park after 12:00, they will get penalty of £30, so they asked me to help.

RD: Why did you take money from the customers? Does your role involve cash handling?

IA: I am not. I just wanted to help customers they told that they came from outside of London. They came to watch a game. So, I told them that I will help them. That’s not a gift.

RD: You work for eight years in the busy car park and have manned the car park during many event days, why did you suddenly decide to accept money on that day?

IA: They contacted me for help and so I helped.

RD: Regardless of the reason you accepted the money, the question is why did you accept money from customers when your role does not permit you to handle any cash?

IA: They came from far and they did not have a place to park long hours. Then they asked me for help and I helped them. But there may be some plan in their side. It will be clear if they are also present.

...

RD: Lets talk about this change you state you have had in your possession since April 23rd. Why did you not report to the Supervisor informing her that you are holding some change for customers and they have not returned for this change for the past two months?

IA: I am still waiting for them and collect that money. Any time they come they could have collected so I kept in locker.

RD: One of the customers asked for a receipt, and you advised that the P&D tickets is the receipt.

IA: Yes, I did.

RD: So where are the P&D tickets to prove that you purchased these for the drivers?

IA: I kept changing the tickets as time expired and put new one.

RD: So, if the customer returned for the change and he/she asks to produce a receipt to show how many tickets you purchased, what would you have done then?

IA: The last ticket I showed to them as prove that I bought. The enforcement CEO goes around and gives penalty tickets if a P&D ticket is displayed.

RD: They will only attend to the car park if you call them?

IA: They go and visit frequently. Even after and before lunch. Some CEO visit.
....."

40. The claimant was kept on suspension.
41. Of the £12 change, this consisted of a £10 note and a £2 coin. There were no details therewith as to the particular sums owing to which customers or how the customers could be identified, equally there was no name or car registration of the customers were recorded.
42. By an investigation report dated 1 August 2016, Mr Dewan recommended that the claimant be considered for disciplinary action, there being evidence to suggest that on 23 April 2016, the claimant had accepted the sums of £20 and £25 from two different customers. Mr Dewan found that, there was no evidence to suggest that the money was used to purchase P&D tickets which the claimant claims to have thrown away, which tickets would have indicated the date, time and amount, and on the claimant's count, he had in his possession the alleged change since 23 April, but had not brought this to anyone's attention and that he had not been able to state when he planned to report the fact of his holding a customer's change.

43. By correspondence of 16 August 2016, the claimant was invited to a disciplinary hearing, the purpose of which was identified as:

“to discuss your conduct in relation to allegations of bringing the company into serious disrepute and/or theft or fraud. The allegation relates to an incident on the weekend of 23 and 24 April 2016, where it is alleged that whilst on duty you accepted money to allow vehicles to park within Elm Road car park, contrary to the relevant parking restrictions in force at the time and that you retained the money obtained from the drivers.”

44. The claimant was further advised that, the allegations were very serious and could amount to gross misconduct which, if substantiated, a potential outcome could be dismissal without notice or pay in lieu of notice. The claimant was then advised *“so that you are fully aware of the allegation against you, and to enable you to prepare for the disciplinary meeting, I have attached to this letter the investigation report and associated appendices as listed at the foot of this letter”*. The claimant was furnished with; the final investigation report, the complaint letters from the customers, the investigation hearing minutes of the claimant of 21 June and 19 July 2016, the invite to the investigation meetings, copy of the photo of the cash found, the Apcoa colleague handbook and the fact-finding meeting minutes of Mr Raji.
45. The claimant was thereon advised of his right to representation and asked to furnish any documentary evidence which he wished to raise at the hearing, at least one day prior thereto.
46. The claimant subsequently advised of his calling Mr Raji on his behalf, and of amendments to his investigation meeting minutes of 19 July.
47. The disciplinary hearing was duly heard on 23 August 2016, notes of which, as amended by the claimant, are at R1 page 116.
48. By these notes, the following exchange is noted:

“KC confirmed the allegation related to an incident on the weekend of 23 and 24 April 2016, where two drivers had written in to say they paid an attendant working at Elm Road car park to allow them to park their vehicle. Due to there being an event day the vehicles were only permitted to park for the maximum of two hours unless they had pre-booked event day parking but both vehicles remained in the car park from the afternoon to the following morning (24 April 2016). KC asked IA if the allegations were true.

IA confirmed that he accepted the money as the drivers pleaded with IA to allow them to park and wanted IA to purchase their P&D ticket to cover the vehicles until the end of enforcement.

IA challenged the minutes to say there is a difference between accepting money and drivers giving money to top P&D tickets.

KC asked IA if he had any evidence of this, such as the P&D tickets he purchased.

IA confirmed he did not keep the P&D ticket. IA confirmed that the money he accepted was not a bribe and that he informed the drivers if they fail to collect their vehicles before the car park closed at midnight then they will be issued with a PCN the following

day. IA confirmed that the drivers asked for a receipt, but that IA told them the P&D ticket will be the receipt. IA replied after the minutes was issued to add that CEOs patrolled the car park and didn't issue and that CCTV could also be checked.”

49. The tribunal pauses here, as the claimant has raised issue that, having requested of the respondent to view CCTV footage, which would have been exculpatory, in that it would have shown him purchasing the ticket, they had failed to do so, and not considered material evidence. The respondent has given evidence that the CCTV at the Elm Road car park, whilst giving real time coverage, the recording system was not functioning, which fact had been known and reported to the London Borough of Brent from 2015, and accordingly, the CCTV footage was not available. Whilst the claimant challenged this fact, there is no evidence presented to suggest that, that as advanced by the respondent is not true. Beyond the mere assertion of the claimant's representative, the claimant has not given evidence hereon. In these circumstances, the tribunal accepts the respondent's evidence that the CCTV recording facilities did not function, and therefore no CCTV evidence available to furnish to the claimant.
50. On the claimant's evidence at the disciplinary hearing, that this was the first occasion that he had taken money from customers, which he had only then done on being pressed by the customers, and on the claimant acknowledging the incident with the CEO the following morning, on being accosted by a customer for having been issuing a PCN, the tribunal notes the following:

“KC asked IA why, given he was aware of the incident between the driver and the CEO, did he not speak with either his line manager and/or EA to explain what had happened. IA confirmed that he thought EA was aware of the situation and he was waiting for EA to speak to him about it. KC then asked IA if he would have seen RD after the incident and before RD contacted IA once the drivers' complaints were received. IA confirmed he would have seen RD on a number of occasions between the two dates. KC asked why he did not then notify RD about the incident. IA said, as he was aware he wasn't supposed to be accepting cash how could he then inform his line manager about accepting cash.

KC asked again, if IA recorded receiving this money anywhere. IA confirmed he didn't. KC asked if IA recorded any information as part of his role. IA confirmed he does record some information but that he did not write about this money as this was unofficial.

KC asked, why IA did you not tell RD about the incident or about the call IA received on the Sunday morning about the incident between the driver and the CEO? IA said that the caller told him the incident would be reported to the control room and to EA and therefore he was expecting EA to contact him to discuss. KC asked IA why do you think EA would not mention all this in his statement and why in his meeting with RD not mention this call. IA could not explain why EA did not mention it and claims he did not mention it in his investigation interview as RD did not ask about it.

KC stated that, given IA was aware how serious the investigation was why he would not mention this to RD. IA said he told RD about warning the drivers that they would get a PCN if they didn't move their vehicles before midnight, but agreed he had not mentioned the call he received the following morning...”

51. The tribunal further here notes discussion being had in relation to the claimant informing his colleague Mr Raji, as to him having the change for the customer, the claimant stating that, he had informed Mr Raji, which on being challenged by KC that the statement of Mr Raji did not corroborate such account, the claimant suggested that Mr Raji was mistaken.
52. The tribunal again pauses here, as in evidence to the tribunal, Mr Raji, corroborating the claimant's evidence given in oral testimony to the tribunal, albeit not contained in his statement, was questioned as to his evidence presented by his statement and the evidence of the claimant, as to his being informed on 23 April, and subsequently on the 25 April, of his being given the cash, which was subsequently then taken from him by the claimant before again being given to him on the claimant intending to go on holiday in May, which money was then returned to the claimant on the claimant's return from holiday before the telephone conversation recorded in his statement of 22 June, and of the discussion had on the 21 June, for which Mr Raji was unable to give an explanation why such detail had not been given in circumstances where he had specifically been asked whether he had been aware that the claimant had received money from customers.
53. With reference the minutes recorded, the tribunal further notes the following:
 - “KC asked IA when he has been told that he can accept cash from drivers and why, if IA felt it was ok to do what he did why he failed to report the incident for over two months to anyone in a management position. IA repeated that he was afraid to tell a manager as he knew he wasn't supposed to accept cash but that he had reported to BR.
 - KC asked why, if IA knew what he was doing was wrong, he still accepted the cash. IA confirmed he did it to try and help and that it wasn't a bribe. IA said he had not done anything like this before and that was why there was no record of any similar complaint. KC reminded IA that unless the driver had written in on this occasion we would not have known about these two incidents. IA claimed again this was the only time he had accepted cash.

.....

 - KC asked IA if he had anything to add. IA confirmed that he accepted the payment but that it was not a bribe; merely that he was using his initiative to try and help the driver and the Council. IA accepts that he shouldn't have taken the cash and that he was keeping the change until the driver returned – he had not taken it away to spend on himself. IA said that this was the first incident of this type on his record which shows he hadn't done it before...”
54. The minutes of the disciplinary hearing were subsequently furnished to the claimant for him to review and confirm, the claimant forwarding his amendments, which were duly incorporated as above referred.
55. By correspondence of 12 September 2016, the claimant was informed of the outcome of the disciplinary hearing, being to terminate his employment on the grounds of gross misconduct, for reasons that;

“You clearly accept that you accepted cash from the drivers of two vehicles on the weekend of 23 and 24 April 2016 to enable them to park at Elm Road car park.

You accept that at no point had you received a management instruction that you can accept a payment in this manner and that you knew you should have not accepted the money.

You are unable to provide any documentary evidence to support your version of events, for example a copy of the P&D ticket you claimed to have purchased.

You failed to report the incident to any of the management team, even after you became aware that one of the drivers had an altercation with a CEO the following morning.

You failed to log or report any details in relation to this incident and where you claim to have discussed it with your colleague, their statement refutes this claim.

56. Mr Clarke, the hearing officer, concluded that the claimant had:

“brought the company into serious disrepute through accepting cash, contrary to the work practices you detailed and then failed to report the incident to your line manager retaining cash from the drivers within the Elm Road car park offices without formally recording this anywhere.

And that whilst he could not find any similar incident recorded on the claimant’s personal file, he further concluded that:

“until the drivers wrote in to complain about the day in question, no one was aware of the incident apart from yourself and you clearly accept that despite having the opportunity to do so, you failed to report the incident to any of the management team. In the disciplinary meeting, you clearly accept that you knew what you were doing was wrong and therefore I would question why you continued to accept the cash. If we were to believe your statements, you had been in similar situations on a number of times previously and not accepted the cash, but then for the first time in eight years, you decide to accept cash from two different drivers on the same afternoon.”

57. Mr Clarke thereon issued the sanction of summary dismissal on grounds of gross misconduct.

58. The claimant was offered a right of appeal.

59. By correspondence of 19 September 2016, the claimant presented an appeal on grounds that; 1. The decision to dismiss was flawed with irregularities and prejudices, 2. The dismissal was based on fabrications and distortions, 3. Enough cognisance was not given to his side of the stories, in that he did not collect money from them to park overnight and that the money they gave to him was to help to buy tickets for their vehicles when they expired. 4. There is no management instruction towards accepting money or not to help customers. 5. Concerning the evidence of the tickets bought, he had informed Mr Dewan that he had used it to replace the new one with the expired one and that there was CCTV to substantiate this. 6. When the incident happened he had called his colleague Mr Raji to tell him what had happened on the Saturday, being told by Mr Raji that he

was on holiday that Sunday and that he had attended the main office expecting to be interrogated as to what had happened, which then did not happen. 7. Although he had not logged the incident he had informed his colleague.

60. The appeal hearing was heard by the Contract Director, Mr Prince, on 6 October 2016, an earlier hearing having been postponed at the claimant's request. Notes of the appeal hearing are at R1 page 130.
61. Mr Prince addressed each of the claimant's grounds of appeal in turn. It was Mr Prince's evidence to the tribunal that, he was of the clear view that the claimant had committed the acts complained of amounting to gross misconduct, and by his actions had caused reputational damage with the customers, to both the London Borough of Brent and the respondent, namely that; he did not believe that the £12 found in the office was change retained by the claimant with a view to returning it to the customer at some point in the future, that whilst the claimant claimed he had never done this before, accepting cash from customers, he had done it twice on the same day, that had the claimant felt pressured and intimidated into accepting the money from the first customer, he would have immediately regretted that decision once the customer had left the car park and would have phoned control for advice, but that he did not believe that the claimant felt pressured, not having taken advice, that he would then have accepted money an hour later from the second customer, concluding that the claimant had committed acts of gross of misconduct by accepting cash from the customers, and that he had left the car park that night knowing that the customers' cars remained in the car park and without warning CEOs who were going to be on duty the following day of what he had done, so that the CEOs were walking into a situation where they would be faced with potentially irate customers and consequently at risk, that CSAs and CEOs are in a unique position of trust for parking revenue for the London Borough of Brent, by which they were not to take cash from customers to maintain the integrity of the parking mechanisms in the borough, determining that he was satisfied that the claimant could no longer be trusted to be working on his own with access to customers and cash, for which dismissal was the appropriate sanction, rejecting the claimant's appeal.
62. The claimant presented his complaint to the tribunal on 14 December 2016.

Submission

63. The tribunal received written submissions from the parties, which submissions have been duly considered.

The Law

64. In an unfair dismissal claim the burden is initially on the employer to identify a potentially fair reason for dismissal, so as to satisfy section 98(1) and (2) of the employment rights act 1996

65. It then falls to be determined whether or not the dismissal was fair. The determination 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 the reason as a sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case. S98(4) of the employment rights act 1996
66. The tribunal must consider whether the employer's conduct fell within the range of reasonable responses of the reasonable employer in all the circumstances of the case, without substituting its own decision as to what was the right course to adopt for that of the employer. The burden is neutral at this stage; the tribunal must make its decision based upon the claimants and the respondent's assertions with neither having the burden of proving reasonableness
67. The tribunal has to decide whether the employer who discharged the employee, on the grounds of the conduct in question, entertained a reasonable suspicion amounting to a belief in the guilt of the employee, of that conduct, at that time. This involves three elements: I) the employer must establish the fact of that belief; II) it must be shown that the employer had reasonable grounds upon which to sustain that belief; and III) the employer at the stage at which he formed that belief on those grounds, must have carried out as much investigation into the matter as was reasonable in all the circumstances of the case
68. The employer does not have to prove beyond a reasonable doubt that the employee was guilty of the misconduct, but merely that they (the employer) acted reasonably in treating the misconduct as sufficient for dismissing the employee in the circumstances known to them at the time. It is not necessary that the tribunal itself would have shared the same view in those circumstances. Furthermore, it does not matter if the employer's view, if reasonable at the time, is subsequently found to have been mistaken.
69. Where there are admissions, the scope for the investigation is limited.
70. Any procedural defect must always be sufficiently serious to render the dismissal unfair. The tribunal must note that the ACAS code is only a guide and is not a mandate to; failure to comply with every detail does not render a dismissal unfair. In considering compliance with the ACAS code the employer's size and resources are to be taken into account.
71. Once Unfair Dismissal is found, where the tribunal considers that any conduct of the claimant before the dismissal was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly (section 122 (2) employment rights act 1996)
72. Where the tribunal finds a dismissal was to any extent caused or contributed to by any action of the complainant that was foolish, perverse or unreasonable, the tribunal will reduce the amount of the compensatory

award by such proportion as it considers just and equitable giving regard to the act of finding (section 123 (6) of the employment rights act 1996. See also Nelson V BBC (No2) 1980 ICR 110)

Conclusion

73. The tribunal is satisfied that the reason for dismissal was conduct, arising from the claimant accepting money from customers, and is a ground upon which a fair dismissal can be found.
74. The tribunal is satisfied that on the respondent receiving written complaints from customers, in circumstances where payments were made to a CSA, where CSAs were not directed to receive monies from customers, there was information then before the respondent warranting an investigation.
75. On Mr Dewan being appointed to conduct an investigation, the tribunal is satisfied that on the information provided by the claimant as to the events and circumstance in which the money was received, the tribunal finds that the lines of enquiry pursued by Mr Dewan were reasonable lines of enquiry which, save for the CCTV footage above referred, and not available, all reasonable lines of enquiry had been pursued.
76. In stating this, the tribunal is conscious of the claimant's submission that on CEOs having attended the car park, and not issued a PCN, this was evidence of the vehicles having a valid ticket displayed for parking. The tribunal however, accepts the respondent's evidence that, such a fact was not determinative, in that it was the role of the CSA to inform the control room as to the cars parked without appropriate tickets being displayed, and on the claimant not having communicated such, where the car park was manned, the mere non issuance of a PCN was not informative, further giving account to the respondent's submission that, it was within the claimant's ability to purchase a ticket and place on a vehicle, on the CEOs attending the car park but before their inspecting parked vehicles.
77. On the information gathered by the investigation, the tribunal finds that there was then evidence to support the allegation that the claimant had received money from customers as a bribe for parking their vehicles outside the terms relevant to event day parking.
78. The tribunal finds that the claimant was thereon fully apprised of the allegations against him and of their seriousness, and that his continued employment was in jeopardy.
79. The tribunal pauses here, as the claimant has submitted that the allegation against him had changed, from that of, "*gross misconduct concerning accepting a gift which could be construed as a bribe*" in respect of his being invited to an investigation meeting, to that of "*conduct in relation to an allegation of bringing the company into serious disrepute and/or theft or fraud*" on being invited to the disciplinary hearing. The tribunal deals with this issue briefly, in that by 16 August 2016, on the claimant being invited to a disciplinary hearing, the allegation which he was being called on to

answer was there set out as being “*conduct in relation to an allegation of bringing the company into serious disrepute and/or theft or fraud*” and of which the claimant would then have been aware, and in a position to fully for, for the purposes of the disciplinary hearing. The tribunal is satisfied that the claimant was thereon fully apprised of the allegations he was to meet going into the disciplinary hearing and of which he was answer. The tribunal finds no basis upon which to challenge that understanding, which was explained to the claimant at the outset of the disciplinary hearing and for which the claimant confirmed that he was aware of the serious nature of the allegations against him.

80. The tribunal finds no merit in the claimant’s submission in this respect.
81. On the claimant attending the disciplinary hearing, it is not in dispute that the claimant was afforded every opportunity to put forward his case in defence, albeit he states that the respondent did not sufficiently take account thereof. The tribunal finds that the claimant was afforded a full opportunity to state that which he wished in defence of the allegations against him, and for which the minutes of the meeting as amended by the claimant, are a true reflection of the discussions had.
82. On the evidence presented at the disciplinary hearing, the tribunal finds that there was then before Mr Clarke, evidence upon which a reasonable employer seized of such information, could reasonably have come to the conclusion that the claimant had committed the acts as alleged, and for which this tribunal cannot say that, the respondent could not then have reasonably concluded as they had.
83. On the respondent determining that the claimant had committed the acts alleged, amounting to gross misconduct, the act of which is not challenged as amounting to gross misconduct, save that the claimant challenges his intent relevant thereto, the tribunal finds that dismissal was a sanction reasonably open to the respondent to impose.
84. On the respondent giving consideration to the claimant’s long and unblemished service, taking into account the nature of the event, and the need for trust amongst CSAs dealing with members of the public, the tribunal finds that the imposition of the sanction of summary dismissal was a sanction that this tribunal cannot say would not have been imposed by a reasonable employer. The tribunal accordingly finds that the claimant’s employment was fairly terminated, and he had not been unfairly dismissed.
85. The claimant’s claims are accordingly dismissed.

Employment Judge Henry

Date: 6 March 2018

Sent to the parties on:

.....
For the Tribunal Office