



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs R Ratnasingham

**Respondent:** Tesco Stores Ltd

**Heard at:** London South **On:** 23 April 2018

**Before:** Employment Judge Martin

**Representation**

**Claimant:** Mr T Deal - Counsel

**Respondent:** Mr T Adkin - Counsel

## REASONS FOR JUDGMENT PROMULGATED ON 10 May 2018

1. The Claimant has asked for written reasons of the judgment promulgated on 10 May 2018. Her application was made in time. Full reasons were given at the conclusion of the hearing.
2. This was a preliminary hearing to consider the Respondent's application to strike out the Claimant's claim of unfair dismissal. The Respondent's applications were contained in an email accompanying the ET3 dated 26 January 2018. This application related to jurisdiction issues. On 19 February 2018 an application was made to strike out the Claimant's claims on the basis that they had no reasonable prospect of success or alternatively that the Claimant pay a deposit as a pre-condition of continuing her claims on the basis they had little reasonable prospect of success. At the hearing the Claimant withdrew all claims save for unfair dismissal.
3. The Claimant gave evidence using a Tamil interpreter although she clearly understood what was being said and on occasion answered questions in English without the question being translated. The Claimant, in addition to working for the Respondent works for a nursery looking after young children.

4. The Respondent's submissions: - The Respondent submitted that the claims had very little merit given that three different versions of events were given by the Claimant to explain why she had anti-wrinkle cream in a carrier bag while working at the sorting facility in the Customer Fulfilment Centre. There is a rule that staff do not have carrier bags for personal use whilst working. On 30 July 2017 the Claimant was asked to work on the crisps aisle. She was found with a bottle of anti-wrinkle cream in a carrier bag she had with her on the shop floor. The Claimant gave an explanation at the time it was discovered that it was in her bag as it was a present from home which she had brought in to work for a friend, she also said that the reason for carrying the carrier bag while working was that she would replace products she found on the warehouse floor that had been put in the wrong location by putting them in the carrier bag and taking them to the right location.
5. During the investigation the Claimant said that she had found the item in the incorrect place and was going to take it to the correct place. She later said she forgot it was in her bag and wanted to read the label.
6. It was submitted that there were reasonable grounds to believe the Claimant was guilty at the disciplinary hearing given the three contradictory accounts she had given the Respondent. It was submitted that at the appeal the Claimant nodded in response to being asked if she had stolen the item.
7. It was submitted by the Respondent that this was exactly the type of weak case that the Tribunal should weed out before significant costs were incurred.
8. The Claimant's submissions: - The Claimant opposed the application on the basis that it was draconian. It was submitted that English was not the Claimant's first language, she was of retirement age and was a vulnerable person in many respects.
9. The Claimant accepted that she had put forward different explanations about the incident, but in reality submitted there were only two versions. The first on the day in question when the Claimant was spoken to and she said she had brought it in for a friend. It was submitted she was nervous, panicked and blurted out the first thing that came into her mind. The Second was when she was formally spoken to when she said that she carried a bag to put misplaced items in it to put in the right place later. She says it was usual for her to carry a bag.
10. She submitted she was 'accosted' in the store and had not left it and gave a good explanation. She had not put it in her pocket and would have replaced the items. Her comments were not indicative of guilty conduct. The Claimant does not accept she nodded in the appeal hearing. She maintained she had a bona fide claim.
11. The Claimant says she carried a bag while at work for all 11 years of her employment and was never told she could not use it.
12. The Tribunal's conclusions: - Incoming to my conclusion I considered the following law:

(a) It is for the Respondent to establish a potentially fair reason for dismissal. Here, the reason advanced is conduct. The question is, has the Respondent shown a genuine belief in a set of facts amounting to misconduct by the employee?

(b) Did the Employer act reasonably in treating that reason as a sufficient reason for dismissal (Employment Rights Act 1996 section 98(4)(a))? That question is to be, determined in accordance with equity and the substantial merits of the case (section 98(4)(b)). It is not for the Tribunal to substitute its view of the matter for that of the disciplining officer or appeal panels. Thus the focus is on the dismissing officer's reasons and, applying the *British Home Stores Ltd v Burchell* [1980] ICR 303 test (here, the burden of proof being neutral), whether he had reasonable grounds for his belief following a reasonable investigation.

(c) Procedural fairness is a relevant consideration, applying the range of reasonable responses test (see *Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23).

(d) Did the sanction of dismissal fall within the range of reasonable responses open to the employer? Dismissal will fall within the range rendering the dismissal fair if one body of reasonable employers would dismiss on the facts properly found, even if another group would impose a sanction short of dismissal.

13. The Tribunal is not concerned with whether the Claimant did or did not actually commit the act for which she was dismissed. What it considers is whether the Respondent had reasonable grounds for suspecting that she did. In this case the Claimant accepts she gave different versions on two occasions (the Respondent says three including the appeal). The Claimant says that she has carried a bag for eleven years whilst working for the Respondent.
14. I considered whether the Claimant was disadvantaged as English is not her first language when asked questions by the Respondent without an interpreter. I note that she works at an American School in Streatham in the nursery and speaks English to the children (even though they are very small she would need to speak to them in English) and to other people and that she had worked there for 20 years. I was satisfied from this and also from noting how the Claimant responded to questions not yet translated for her in the hearing that the Claimant had sufficient English to understand questions put to her by the Respondent and understand the answers she was giving.
15. There was no suggestion from the Claimant that there were any procedural irregularities for me to take into account.
16. Theft is by any definition considered to be gross misconduct which if proved (to the standard required in a disciplinary matter i.e. reasonable suspicion) would result in most cases in summary dismissal, especially in the retail sector. A one-off act is sufficient to dismiss in the case of gross misconduct.

17. Given the different versions of events the Claimant admits to giving I find that it is reasonable for the Respondent to conclude that her credibility is weakened and that the Respondent had reasonable suspicion that the Claimant had committed an act of theft.
18. For these reasons I find that there is no reasonable prospect of success and the Claimant's claim is therefore struck out.

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Employment Judge Martin

Date 25 July 2018

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.