EMPLOYMENT TRIBUNALS

Claimant: **Miss P Dibble**

Respondent: **Mr R & Mrs S Falzon t/a The Anne Arms**

Heard at: **Sheffield** **On: 5 December 2018**

Before: **Employment Judge Rostant**

Representation

Claimant: Mr Robinson of Counsel acting as a Free Representation Unit Volunteer
Respondent: Mr Weiss of Counsel

RESERVED JUDGMENT

The claim fails and is dismissed.

REASONS

1. This claim was first heard in the Employment Tribunal before Employment Judge Keevash on 29 November 2016. The claim failed and the claimant appealed to the Employment Appeal Tribunal. The matter came before the EAT only on 20 June 2018 and was heard by Honourable Mrs Justice Slade DBE, sitting alone. The EAT upheld the appeal and remitted the case for hearing. The matter was then listed for this hearing.
2. In accordance with case management orders made for the original hearing and later orders made simply for this hearing, I had the benefit of a file of documents, called "the original file" numbering some 70 pages and a supplemental file numbering a further 16 pages. All of the witnesses who attended the original hearing attended again for this hearing and I heard from the claimant, who relied not on her original witness statement but on an updated supplemental witness statement exchanged before the hearing. For the respondent I heard Mr R Falzon, Mrs S Falzon, Mrs M Whyte and Miss S-J Falzon. Also present was Mrs S Colarieti who was present to give evidence for the respondent and who had, in common with all of the other respondent's witnesses, produced witness statement. Mr Robinson indicated however that he did not challenge Mrs Colareti's evidence and she was not therefore

required to take an oath. I treated the evidence in her witness statement as, in effect, agreed.

3. The issue before the Employment Tribunal was whether or not the claimant's dismissal was unfair. At the outset of the hearing I sought to establish with Mr Robinson whether the claimant's case was that the respondent could not show a potentially fair reason for the dismissal or whether it was accepted that the reason for the dismissal was the ostensible reason relied on by the respondent, namely conduct, but that there was a challenge to the fairness of the decision for other reasons. Mr Robinson's case was that such was the unreasonableness of the respondent's alleged conclusion that the claimant was guilty of theft that it must be the case that there was some other reason for the dismissal, although at that stage he did not advance a alternative positive reason. That lack was remedied by the claimant when she gave evidence, a matter to which I shall revert. It was Mr Robinson's case that in any event the evidence did not show that the respondent was reasonable in any belief it might have developed as to the claimant's guilt and that the dismissal was therefore unfair under the provisions of section 98(4) of the Employment Rights Act 1996.

The law

4. This claim is brought pursuant to the provisions of section 94 of the Employment Rights Act 1996 which gives to employees with the requisite service the right to complain of unfair dismissal if dismissed. The question as to whether or not the dismissal was fair was dealt with under the provisions of section 98(1)(2) and (4) of the same Act. Section 98(1) requires the respondent to show a reason for the dismissal and that the reason was one of a limited group of potentially fair reasons. If the respondent discharges the burden upon it to show a potentially fair reason, the Tribunal must decide on a neutral burden of proof, but bearing in mind all of the circumstances of the case, its substantial merits, and the size and administrative resources of the respondent whether the respondent was reasonable in treating that reason as grounds for dismissal.

5. Both parties agreed that the appropriate approach was that which was set out in the case of **BHS v Burchell** [1980] ICR 303. It is for the Tribunal to determine whether or not the respondent had a genuine and honest belief in the guilt of the claimant which was based on reasonable grounds and following such investigation as was reasonable in all of the circumstances.

The agreed facts

1. The claimant commenced employment as a member of bar staff at the Anne Arms on 13 January 2013.
2. The respondents took over the management of that public house and the claimant's employment in or around May of 2015.
3. At the relevant time, the respondent organisation comprised Mr and Mrs Falzon and some six or seven employees including the claimant and their own daughter.
4. On the night of 28 March 2016, the claimant was at work. Present in the bar area was also Mrs Falzon from whom the claimant had taken over the shift behind the bar. Mrs Falzon remained in the bar chatting to customers.

5. The claimant did not work the following day but was next at work on 31 March. On that day there was a disagreement between the claimant and the respondent about whether or not the claimant had undercharged a customer who was attempting to pay off his "tab" on the night of the 28th.
6. The disagreement spilled over to the following day and involved the respondent's daughter Miss Falzon. At the end of the shift, Miss Falzon mentioned the matter to Mr Falzon and a decision was made to view the CCTV footage from the night in question.
7. In the process of viewing the footage, it was observed that the claimant had removed from the till two five pound notes and six one pound coins and shortly after placed the money in her apron pocket. There was no footage that showed what had become of that money. It appeared to Mr and Miss Falzon that there was no immediate explanation for the removal of that money.
8. The claimant attended work on 7 April and she was interviewed by Mr and Mrs Falzon. In the course of that interview she was handed a letter of suspension (see page 38 of the file). The suspension letter informed the claimant that she would be invited to a meeting, in company with a member of staff of her choice, to explain her actions on CCTV. The claimant asked that the matter be dealt with there and then and Mr and Mrs Falzon agreed. The only person available to act as the claimant's witness was the pub's cleaner Mrs Michelle Whyte. The claimant made no objection to the presence of Mrs Whyte who was friendly with the claimant.
9. By the time of the meeting all that remained of the CCTV footage was a clip taken by Mr Falzon on his phone when he realised the full footage would be automatically erased before it could be shown to the claimant. That clip showed the brief period before during and after the removal of the money from the till.
10. The claimant was shown the footage and invited to explain her actions. She advanced more than on possible scenario and was invited, in the light of that, to go home and give the matter thought and return the following day. A note of that meeting was taken and is at page 40.
11. The claimant returned on 8 April and there was a further meeting which ended abruptly following a disagreement between the claimant and Mrs Falzon.
12. The claimant was invited to a disciplinary hearing on 18 April. In advance of that disciplinary hearing the claimant provided a statement. That is at page 45 of the hearing. In that statement she gave an account of her movements at the relevant time.
13. In the course of the meeting of 18 April, which was chaired by Mr Falzon and the claimant again attended with Mrs Whyte, notes were taken by Mrs Colarieti. The notes of that meeting were signed as an accurate record by the claimant and Mrs Whyte.
14. Those notes and a typescript of those notes appear at pages 47 and 48 of the bundle respectively.
15. Following the meeting, in a letter dated the same day, the claimant was informed of her dismissal. In brief, Mr Falzon's decision was based on the fact that the claimant had advanced an explanation for two five pound notes which was that Mrs Falzon had given her a ten pound note and asked her to

change it but that that explanation was rejected by Mrs Falzon as untrue. Furthermore, Mrs Falzon observed that the CCTV footage did not support the claimant's account of the movements of herself and Mrs Falzon and in particular did not support the suggestion that during the relevant period Mrs Falzon had left the bar to go to the toilet. Finally, the letter refers to the fact that the till for the relevant night was £30 down.

16. The claimant appealed on the grounds that the respondent had not followed the ACAS code of practice, that the decision was based on insufficient evidence and that she had an exemplary work record.

17. The claimant attended an appeal meeting at which she declined to expand upon her reasons and which was abandoned at an early stage because the claimant felt that Mrs Falzon, whom she by now distrusted, was listening into the hearing from another room.

My conclusions including conclusions on disputed areas of fact

1. Having heard the evidence I had the benefit of closing submissions from Mr Robinson (supported by a written submission) and Mr Weiss. My conclusions set out below refer where appropriate and necessary to those submissions.

2. The case put forward to the Tribunal by the claimant is that as a matter of fact she is not guilty of taking £16 in the form of two five pound notes and six one pound coins from the till on the relevant occasion. Her case is that that money was taken out of the till at Mrs Falzon's behest. Mrs Falzon asked the claimant to change a ten pound note into two five pound notes and to extract six one pound coins from the till for some other reason. The claimant accepts that having extracted that money, for a period of time it rested in her apron pocket, but asserts that at the end of her shift she handed the money over to Mrs Falzon in an area slightly away from the bar.

3. With regards to the evidence against her, the claimant makes a number of observations. First, and perhaps most starkly, the claimant asserts that the clip taken from the CCTV camera which was shown at the original hearing before Judge Keevash and again before me today is not that which was shown to her during the disciplinary proceedings. It is, instead, an edited version, reduced by more than half, during which four separate episodes have been subtracted, with the resulting footage being sliced together to give the appearance of a continuous film. The claimant asserts that the motivation behind this action is to give a false impression of how much time she had on her hands behind the bar having extracted the money from the till. This is relevant because the claimant's case is that part of the explanation for her not handing over the money immediately to Mrs Falzon was that she was required to serve other customers. She also asserts that during the relevant period Mrs Falzon left the bar and for another part of the time Mrs Falzon was talking to a customer and the claimant did not wish to interrupt. It is the claimant's case that that falsified evidence is part of a wider conspiracy.

4. The claimant asserts in evidence for the first time at this hearing that there was an ulterior motive for her dismissal. Indeed, the claimant advances four possible ulterior motives. One of those, the fact that the minimum wage was about to go up, appeared in her witness statement for this hearing. Three others emerged during cross-examination. They were that Mr and Mrs Falzon

had been told by the stock taker to reduce staff costs, that there was a desire by Mr and Mrs Falzon to turn the business into a strictly family business, and that Miss Falzon wanted to work one of Miss Dibble's day shifts and Miss Dibble was not content to agree with that swap.

5. For the claimant's case to be correct, not only must Mr Falzon have engaged in a deliberate attempt to tamper with the evidence but also Mrs Falzon must have started lying about the incident on 26 March as early as the disciplinary hearing, and perhaps even earlier, since she was recorded in the dismissal letter as denying having asked the claimant for change. Furthermore, Mr and Miss Falzon must be lying about what the CCTV footage longer available for viewing showed. Both of them assert that having viewed the entire footage at no point after the claimant extracted the money from the till did Mrs Falzon leave the bar. That, of course is indirect contradiction to the claimant's evidence about the matter now and indeed at the time of the disciplinary hearing. Finally, Mrs Whyte, attending on behalf of the claimant at the investigatory and disciplinary meetings and friendly with the claimant, must also be lying when she now says that the claimant first advanced the explanation in relation to the two five pound notes at the meeting of 8 April only to have it refuted by Mrs Falzon and when she also says that at no point either during the investigatory or the disciplinary hearings did the claimant advance an explanation for the missing one pound coins.

6. It is a trite observation to say that such a large conspiracy suffers from problems of inherent implausibility. There are however other reasons which I will detail below for finding that the claimant cannot satisfy me that those are the true facts of the matter.

7. Before I deal with the reasons relied on by the respondent for concluding that the claimant was guilty of theft, I must deal with the matters relied on by Mrs Robinson as amounting to evidence substantially challenging the credibility of the respondent's witnesses.

8. The first of those is the question of the involvement of the police. It is the evidence of Mr Falzon, Mrs Falzon and Miss Falzon that police officers visited the Anne Arms on 3 April in connection with an entirely separate matter not directly concerning the pub. The purpose of their visit was to view the pub's CCTV footage. It is also the evidence of Mr Falzon and Mrs Falzon that whilst there they were asked for advice concerning the possibility that the claimant was revealed as stealing from the bar and that in response to that there was a further visit by a female officer who advised that the claimant be invited to come in to work and provide an explanation. It is the evidence of the Falzons that only after that advice and having contacted their advisors at the British Institute of Innkeeper's was the suspension letter drafted. It is certainly the case that Mr Falzon can produce no incident number or crime report number to substantiate his case that the police visited and that advice was taken from them. Mr Robinson's cross-examination was on the lines that was because it was a fabrication that the police had visited. Mr Falzon provided an explanation by saying that no crime number was allocated and Mr Weiss submitted that that was not unlikely given the fact that the total sum of money was £16 and that the police were likely to want to treat the matter as a civil issue rather than a criminal matter and that advice had been issued as to how to deal with it on that basis. I accept Mr Falzon's evidence. Not least that is because there seems to be no reason why Mr Falzon would want to make up

the involvement of the police. Their involvement adds little or nothing to the relevant matters that the Tribunal has to determine and in particular it adds nothing to the fact that the CCTV footage showed what it showed and that the claimant was invited to provide an explanation. At best, the involvement of the police explains the slight delay between the incident and the fact that the claimant was to be suspended for it.

9. The other matter where Mr Robinson stressed there was grave reason to doubt the credibility of the respondent's witness concerns Mrs Falzon's statement, contained in the file of documents at page 41 and dated 7 April 2016. The claimant did not see this until after the disciplinary hearing on the 18th April. Mrs Falzon accepted in evidence that she could not have written that statement until she had seen the statement produced by the claimant for the disciplinary hearing on 18th. It follows therefore that the date on that statement of 7 April 2016 must be inaccurate. Mrs Falzon frankly accepted that that must be the case and could not supply an explanation for that inaccuracy. That inaccuracy was sufficient to allow Mr Robinson to put to Mrs Falzon the fact that she had made up the contents of that statement which in effect amounted to Mrs Falzon denying that she had asked Miss Dibble to change the ten pound note into two five pound notes. I do not accept that that is the case. Whilst it is obviously the case that the date on the statement is wrong, the assertion contained in it, which is the vital one as far as the claimant is concerned and is to the effect that there was no request by Mrs Falzon for a changing of a ten pound note, is one which I find had been made as early as the meeting of 8 April. I set out my reasons for that finding at a later point.

10. It follows therefore that I do not accept that there are substantial grounds for doubting the credibility of either Mr or Mrs Falzon.

11. I turn now to the reasons relied upon by the respondent in reaching its conclusion that the claimant was guilty of theft. The first of those is the lack of plausibility or consistency of the explanations advanced by the claimant for her having taken the money from the till.

12. Those explanations fall into two parts. That is to say the explanation in relation to the five pound note and the explanation in relation to the one pound coins. They fall into two parts simply because it is the respondent's case that no explanation for the one pound coins was ever offered at all and that told against the claimant.

13. I find that that is indeed the case. The claimant's case is that at no point before 18th did she provide a full explanation for the money being removed from the till but that she did provide that full explanation on that date. The claimant's case is that on 8 April she asserted that she had taken the money at Mrs Falzon's behest but had not gone into any detail. She asserted that that had been responded to by Mrs Falzon's stony silence accompanied by a panicked look at her husband. That evidence is not supported by Mrs Falzon, Mr Falzon or Mrs Whyte. Mrs Whyte's evidence is telling here since she is, although still employed by the respondent, the nearest thing there is to an independent witness in these proceedings. Mrs Whyte's recollection is clear that the claimant advanced an explanation for the two five pound notes, only to have it refuted by Mrs Falzon and it was that refutation that caused the breakup of the meeting and acrimony. I accept that evidence and it follows

that at that opportunity the claimant did not supply an explanation for the six one pound coins. It also follows that Mrs Falzon first denied the claimant's version of events as early as 8 April (see above).

14. The claimant asserts that on the meeting of the 7th the possibility of changing a ten pound note was not one of the scenarios that she raised as a possibility. I do not accept that evidence either. The note of that meeting, unchallenged as to its accuracy at any point during these proceedings and attested to as accurate by Mrs Whyte, reads as follows as far is relevant:

    "Money in her pocket to give to Miss Falzon".

    That at least points to the claimant having supplied an explanation that the money had been removed at Mrs Falzon's behest and runs counter to the claimant's evidence. In the light of a contemporaneous document unchallenged by the claimant or her representative I do not accept the claimant's evidence that she did not advance any explanation in relation to Mrs Falzon requesting the money. Mrs Whyte moreover puts flesh on the bones in paragraph 8 of her witness statement when she says that the claimant advanced as a fourth explanation that she may have changed a ten pound note for two five pound notes for Mrs Falzon. Again for reasons already given I accept that evidence. Once again what is notable is an absence of an explanation for the six one pound coins.

15. That leaves us only with the hearing on the 18th. The claimant once again asserts that during that hearing she advanced a full explanation, the explanation given to the first Tribunal hearing and this one, and one that encompassed the six pound coins. That evidence simply does not square with the written note of that meeting which reads as far as is relevant:

    "Miss Dibble took two five pound notes from the till and as Mrs Falzon was still absent she waited for her return. Miss Dibble cannot remember why she took the coins".

    I have already set out earlier on in this Judgment the provenance of that note and the fact that the claimant and Mrs Whyte were invited to sign it for accuracy. The claimant's gloss, seeking to explain that, is that what she was simply saying was that she was not given an explanation by Mrs Falzon as to why she should want the coins at all. I do not accept that gloss and it is an improbable one given the fact that Mrs Colarieti was recording what the claimant said and would doubtless have recorded the claimant saying that the one pound coins were requested by Mrs Falzon although Mrs Falzon had not given a reason for that request.

16. In addition to those difficulties, the claimant faced a further evidential difficulty in relation to explaining why she had not handed the money over. It is her case that a combination of factors intervened to prevent her from handing the money over. Leaving aside for one moment whether or not the CCTV footage has been doctored (a matter to which I shall return), there is the fact that both Miss Falzon and Mr Falzon viewed the entire footage and did not observe Mrs Falzon leave the area of the bar until the end of the shift. They could not be expected to put that matter out of their minds when listening to the claimant's explanation. I have had no reason shown to me why Miss Falzon would be lying other than the unspoken implication that she is lying to support her parents. She was barely challenged on that part of her evidence. I have

already set out my view on the one significant challenge to Mr Falzon's credibility. Their evidence therefore stands in contrast to the claimant's evidence where there are a number of reasons for doubting her credibility on the matters already set out and others to follow. For those reasons I find that Mr Falzon was entitled to take into account what he saw as a significant discrepancy between the claimant's version of events, as recorded on CCTV, and what he himself saw.

17. Finally, there was the fact that Mrs Falzon not only denied consistently having asked for the money, either the five pound notes or the one pound coins, but also denied, contrary to the claimant's evidence, being given the money by the claimant at the end of the shift. There were no reasons to doubt Mrs Falzon's evidence other than the possibility that she was part of the conspiracy that I have described above and Mr Falzon was entitled to take that into account.

18. For all of those reasons, provided I conclude that there was a reasonable investigation, I find that Mr Falzon was entitled to the view that the claimant's explanation for taking the money from the till was unreliable.

The issue of the CCTV footage

19. The claimant asserted in evidence that the footage that I saw today had been doctored for the reasons already given. Mr Robinson submitted In the claimant's case that was important because the investigation had before it different footage to that which I was being shown and moreover that extra footage called into question the thoroughness of the investigation and the reasonableness of the conclusions.

20. Understanding the general nature of the challenge to the probity of that footage I viewed the footage watching for evidence of doctoring as well as to understand what it is that Mr Falzon said he saw. Mr Weiss' submission on this point is one that I accept. That is this. The footage, if edited, is edited so skilfully as to show a continuous flow of movement on the part of the claimant who is the principal object of the CCTV cameras' scrutiny. Furthermore, the footage has attached to it a timer. That timer ticks up the 51 seconds continuously without break. Any tampering with the footage by cutting and splicing would have had to have dealt with that timer as well.

21. Furthermore, it strikes me that the allegation is inherently improbable and Mr Falzon never had put to him any proposed manner by which he could have achieved what it is alleged that he achieved. I do not doubt that it may be technically possible to tamper with the footage taken on a digital CCTV camera but cogent evidence as to how that could come about and cogent evidence as to the fact that that was what was done would be needed to support a contention that Mr Falzon had deliberately set out to tamper with evidence which might ultimately become part of legal proceedings either criminal or civil.

22. What is certainly the case is that, contrary to the claimant's evidence and assuming that that footage is continuous, which I do, there is no evidence that during the relevant 51 seconds and in particular at any point immediately after the claimant has removed the money from the till, to explain why the claimant did not hand the money over to Mrs Falzon immediately. Mrs Falzon remains at the bar for the relevant period and the claimant is not fully occupied in

dealing with customers. Indeed, at one point it is evident that she is wiping down the bar quite close to Mrs Falzon.

The question of whether the till was in credit or in debit

23. During the course of the last hearing, the claimant advanced evidence to suggest that the respondent's reliance on the till being down by £30 on the relevant night was misplaced. Indeed, the claimant in an annexe to her witness statement produced workings, based on raw figures disclosed by the respondent, which purported to show that the till was in fact five pounds up.

24. On this point I much prefer the respondent's evidence. In the first place, during the course of cross-examination the claimant was forced to accept that her calculations were hopelessly array. That was because she had double counted the £100 float, effectively inflating the correct figure for cash takings by £100 and, in addition, had failed to take into account sums owed by customers in the form of credit and also the value of a receipt for goods purchased for the pub from cash taken from the till.

25. A further dispute between the parties was whether or not the claimant had relied on the correct figure from the correct source to establish how much money had been taken from card receipts. Although for the purposes of this Judgment it is not strictly necessary for me to make a finding on that fact, if I were required to do so I would prefer the respondent's evidence as appearing to me to be significantly more plausible and moreover supported by voluminous documentary evidence contained in the supplementary bundle which appeared to show that the respondent always relied upon the reading for card taken from the credit card machine itself rather than from the till.

26. The subject of the till readings is the main thrust of Mr Robinson's challenge to the reasonableness of the respondent's investigation. It was Mr Robinson's submission based on the decisions of the EAT in **Henderson v Granville Tours Limited** 1982 IRLR 494 and **A v B** 2003 IRLR 405 that the respondent was under an obligation to carry out a very full and careful investigation. That was because there was an accusation of criminality which might have a substantial bearing upon the claimant's ability to work in the future. Mr Robinson acknowledged that the respondent was a small organisation with limited administrative resources but asserted that that did not exempt the respondent from carrying out a proper and full investigation. As far as it goes I entirely accept that the respondent was under an obligation to carry out as full an investigation as falls within the reasonable range of responses (see **J Sainsbury plc v Hitt** 2003 ICR 111) and that that range of reasonable responses falls in different places depending on the nature of the misconduct alleged. Mr Robinson's submission on that issue reads in full as follows:

"Looking at both documents (the respondent's own cashing up records for 26 March and the claimant's rival calculation) it is clear that on cash the two documents were in full agreement, which is that with the float of £100 plus £373.58 in takings there is total cash in the till, including the deposit, of £473.58. The z report at page 58 in the bundle shows that the machine was expecting £560.25 in cash including the credit card payments. Mr Falzon and the claimant differ only in the PDQ or credit card amounts and this has no relevance to the case as it is cash that the claimant was dismissed for, nothing to do with credit card transactions, this was not mentioned in the dismissal

letter or in the ET3. Therefore, the respondent's position is simply not tenable as on cash their position is the same".

27. I am afraid I regard that submission as misconceived. In the first case, as I have already pointed out, the respondent and the claimant's positions on cash are not identical. The claimant has miscalculated the cash position hopelessly because of her mistakes in relation to the float and the credit owed to the till. Furthermore, that submission fails to acknowledge the cogent evidence given by the respondent about why, when checking the amount received on card transactions, the respondent does not rely on the card reading from the till but on the card reading from the PDQ machine used for card transactions. Mr Falzon's evidence was that the buttons for cash and card transactions on the till are close to each other and that it is possible to key in the amount received under the wrong heading, a matter with which the claimant agreed. Furthermore, the number of cash transactions would be affected by the fact that sums of money might be handed over as cashback which would not show as a sale. In the circumstances, there is obvious sense in treating the separate figures given by the z readings for cash and cards as unreliable as a breakdown of how the money actually came in. In the circumstances, the respondent was fully entitled to take the overall figure which, was to say whether or not the till was up or down in its totality, as a proper indicator of whether it was possible that money was missing. In this regard, the respondent established with a fair degree of certainty that the till really was down by £30.

My overall conclusion

28. Having decided those matters it then falls for me to explain my overall conclusion. I am satisfied that the respondent has established that the reason for the claimant's dismissal was theft. That was the thrust of the investigation and discipline process. No other plausible motivation was properly advance or put to Mr Falzon and the suggestion that the respondent would engage in the elaborate conspiracy required by the claimant's case merely to avoid paying the minimum wage increase is a fanciful one. There is no evidence that any other staff were dismissed at this time. That is a reason relating to conduct and is a potentially fair one.

29. I am satisfied that the respondent carried out an adequate investigation in all the circumstances. The CCTV footage was viewed exhaustively. The claimant was given a full opportunity to provide an explanation for what, everybody agrees, was clear evidence of her removing the money from the till and pocketing it. That explanation was implausible for all of the reasons given above. Furthermore, the till was short on the relevant night.

30. Since the respondent was fully entitled to both of those conclusions I take the view that the respondent was reasonably entitled to the conclusion that the claimant was guilty of the misconduct charged against her.

31. There was no challenge in this case as to the reasonableness of the sanction and in any case it is my view that such a challenge would have been doomed to failure. The respondent concluded the claimant had stolen. The claimant was a member of bar staff with ample opportunity to take money without being easily spotted. Indeed had it not been for the dispute in relation to the potential undercharging of a customer, this theft might well never have come

to light since the fact that the till was cashed up £30 short does not appear to have caused in itself any particular anxiety on the part of the respondent.

32. Since I have found no procedural failings I need not consider the question of Polkey and it is pointless for me to speculate what I would have found had I been required to do so because that speculation would involve a different approach depending on where I might have found a procedural deficiency.

33. Finally, I was invited by Mr Weiss to deal with the question of contribution based on fault on the part of the claimant the fault being her placing the money in her pockets and not being able to supply a proper explanation for doing so. Once again on the basis of my decision set above that finding is unnecessary and it is sufficient for me to say that the claimant certainly put herself in a position of risk by placing money from the till in her own pocket and not handing it over immediately and heightened that risk by a failure to provide a plausible explanation for her failure to do so and that certainly would have resulted in some finding of contribution.

34. For all of the reasons outlined above this claim fails.

Employment Judge Rostant

Date 21 December 2018