



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Hurford

**Respondent:** B&M Retail Ltd

**HELD AT:** Leeds

**ON:** 4 December 2018 and  
16 January 2019

**BEFORE:** Employment Judge Shulman

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr I Steel, Solicitor

# JUDGMENT

The Claimant's claim for unfair dismissal is dismissed.

# REASONS

## Introduction

1. In this case Mr Hurford, the Claimant, was employed by B&M Retail Ltd, the Respondent, as a store manager, in its Middleton St George store in Leeds, until his dismissal on 12 December 2017. The Claimant complains to this Tribunal that he was unfairly dismissed.

## Issues

2. The issues in this case relate to what was the reason for dismissal and whether the dismissal was fair, including whether fair procedures were followed by the Respondent in dismissing the Claimant. As part of this process the Respondent

must show that it has met the tests in **British Home Stores Ltd v Burchell** [1980] ICR 303 (Burchell). See paragraph 6. below.

### **The law**

3. The Tribunal has to have regard to the following provisions of the Employment Rights Act 1996 in coming to its decision, namely, section 98(1) which requires the employer to show the reason for the dismissal and in this case that it is a reason falling within subsection (2).
4. Section 98(2) - Amongst other reasons, a reason falls within this subsection if it relates to the conduct of the employee.
5. Section 98(4) - Where the employer has fulfilled the requirements of subsection (1) the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer):
  - (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and
  - (b) shall be determined in accordance with equity and the substantial merits of the case.
6. An employer also has to have regard to the tests in Burchell, whereby the Respondent has to show that:
  - It believed the employee was guilty of misconduct;
  - It had in mind reasonable grounds upon which to sustain that belief; and
  - At the stage at which that belief was formed on those grounds, it had carried out as much investigation into the matter as was reasonable in all the circumstances.

### **Facts**

7. The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):
  - 7.1. On 13 November 2017 the Claimant brought into work a steam iron, with which his wife and/or son were having difficulties. It was less than 12 months old and worth £39.99. At that time, the Claimant says that he was under the impression that the iron had been purchased from the Respondent. The Claimant says that he did not carry out any checks as to the place of purchase. This was despite his 30 years' experience in the sale of electrical goods. In fact he said he did not give that matter too much thought. For a return item the Claimant was of the view that the Respondent did not require a receipt. The Claimant was wrong about that because the Respondent's rules did not permit refunds or exchanges without a valid proof of purchase receipt. The Claimant says he did not know that but the Tribunal finds as a fact that an experienced manager such as the Claimant ought reasonably to have known that a receipt was required in such circumstances.
  - 7.2. It was the Claimant's intention not merely to return the iron but to exchange it for another and the Claimant asked Kelly Watson, the cash office

supervisor in the store, to process the returned iron and he told her that he would be exchanging it.

- 7.3. The Claimant then selected a suitable replacement iron at a cost of £25.99 and selected some headphones at a cost of £10.99 as part of the exchange. The Claimant instructed Kelly Watson to complete the exchange, but it was in fact a Tracey Arundell who did it.
- 7.4. The Claimant says that the new or second iron had oil coming out of the base plate, but as part of the investigation the Respondent found, and the Tribunal finds as a fact, that apart from a slightly damaged box there was nothing wrong with the new or second iron. And in any case the Claimant took it home and it was used.
- 7.5. The Claimant did not want to pay for any excess over the value of the first iron on the one hand and that of the second iron and the headphones on the other, so he decided that if he gave himself a 20% discount on the second iron money would not need to change hands. The Respondent's rules for discounting fixed a normal rate of 10%. Although discounted rates could be varied the Tribunal finds that the condition of the second iron was such that it would be inappropriate for the Claimant to discount at greater than 10% and, therefore, the fact that he fixed a rate of 20% for himself was a higher than appropriate level of discount. Further the Claimant did not use his staff discount card to complete the transaction, so that when the transaction was put through there was no record that it was tied to the Claimant. The Claimant said that he did not use his card because he did not wish to gain further financial advantage but again in the Tribunal's view as an experienced manager he knew or ought to have known the rules and he should have adhered to them.
- 7.6. On 18 November 2017 the Claimant told the Tribunal that he received a text from his wife late in the afternoon that she had found instructions for the first iron which showed that it was in fact purchased from Argos and not from the Respondent. The Claimant told us that the text no longer existed and in any case this directly conflicts with the version of discovery that the Claimant told the Respondent about during the investigation when the Claimant said he had a receipt from Argos. At no time during the investigation was the Respondent told about the text and the Tribunal has not seen a copy of a receipt either.
- 7.7. The Claimant reported the matter (and the Claimant told us the text) to Simon Malpas his deputy that he was bringing the second iron and the headphones back to the store. By that time the first iron had been disposed of by the Respondent as part of its procedures. Although he was working on 20 November 2017 the Claimant did not bring the goods back to work then and indeed did not bring them back until the next day, 21 November 2017. The headphones remained in his office but the Claimant put the second iron into stock. It was the Claimant's intention he told us to pay for the goods, that is the second iron and the headphones, buying the second iron that afternoon and the headphones after pay day. The Claimant had opportunities to buy the second iron during that day but never did so before the Respondent launched an investigation into the transactions.
- 7.8. These investigations led to a disciplinary hearing which the Claimant regarded as fair, although he did not feel the same way about the

investigations leading up to the disciplinary hearing. This was principally because of issues relating to witnesses. Kelly Watson and a Victoria Wykeman had either, the Claimant felt, not been interviewed or had not had proper statements taken from them. The Claimant also objected to the fact that Miss Arundell and Mr Malpas had not been interviewed but had written out their own statements. What is a fact is that during the process the Claimant had the opportunity at the least to listen to and/or comment on those statements.

7.9. The disciplinary hearing was held on 4 December 2017 by Nick Leadbetter, a profit protection manager. He concluded that the discovery about the true origin of first iron led to unsatisfactory conduct around the 20% discount, the alleged state of the second iron, the time taken by the Claimant to correct matters, the failure to pay for the goods quickly, returning the second iron to stock, which would have resulted in a right off, the non-return or non-purchase of the headphones, failure to report the Argos mistake to the Claimant's superiors and failure to use the Claimant's staff discount card.

7.10. All this Mr Leadbetter regarded as suspicious and by a letter dated 11 December 2017 the Claimant was dismissed for gross misconduct. Mr Leadbetter set out in the dismissal, which was lengthy, the fact that the Claimant had been unable to provide any satisfactory explanation for a breach of the following gross misconduct rules, which were in the employee handbook, as follows:

- A serious or wilful breach of any of the company's disciplinary and safety rules;
- Failing to follow the correct procedure for the sale or return of goods;
- Theft or misappropriation of money or property whether attempted or actual;
- Fraud or attempted fraud, deliberate falsification of any records, such as clock cards, time sheets, drivers records logs, expenses claims and so on in respect of "yourself" or any fellow colleague.

Importantly the letter emphasised that the gross misconduct led to a loss of trust and confidence in the Claimant and his ability to carry out his role to the standard required by the Respondent and the Claimant was therefore summarily dismissed.

7.11. The Claimant appealed to Karen Mason, another store manager. The appeal was held on 16 January 2017 and was dismissed.

### **Determination of the issues**

8. After listening to the factual and legal submissions made by or on behalf of the respective parties:

8.1. The Tribunal finds that the reason for dismissal related to the belief of the Respondent in the misconduct of the Claimant and in this case gross misconduct.

8.2. The Respondent had reasonable grounds upon which to sustain the belief referred to in paragraph 8.1.

First the Respondent's belief was sustained by, amongst other things, the Claimant's admission that there was a receipt from Argos for the first iron

and the Claimant made that aspect look all the more suspicious by attempts before the Tribunal to rely instead on a text from his wife. Neither the text nor the receipt were available.

Secondly the Claimant tried throughout the transaction to involve other members of his staff and implicate awareness to them and maybe more.

Thirdly once the Claimant says he discovered the origin of the first iron he took too long to bring it in, failed to cover himself by contacting senior staff and by failure to complete the purchase quickly enough.

Fourthly, if the Claimant was going to buy the second iron why put it into stock, which he himself called odd.

Fifth, if he was going to buy the second iron and the headphones why did he deliberately hold back on buying the headphones.

- 8.3. With regard to the investigation the Tribunal accepts that the Claimant is critical of it but that is not the question. The question is had the Respondent carried out as much investigation into the matter as was reasonable in the circumstances and in the Tribunal's view the answer is yes it did.
- 8.4. In all the circumstances the Tribunal finds that the Claimant was fairly dismissed and dismisses the Claimant's claim.

Employment Judge Shulman

Date 1 February 2019