



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE NASH (sitting alone)

BETWEEN:

Claimant

MR KALPAN PATEL

AND

Respondent

ASDA STORES LIMITED

ON: Tuesday, 4 June 2019

APPEARANCES:

For the Claimant: IN PERSON

For the Respondent: MR WALLACE, (COUNSEL)

JUDGMENT

The Judgment of the Employment Tribunal is as follows: -

The Claimant was fairly dismissed.

REASONS

1. Following dismissal on 3 April 2018 and an ACAS Early Conciliation Procedure from 16 to 21 May 2018, the Claimant presented a claim of unfair dismissal to the Employment Tribunal on 23 May 2018. The Respondent provided its grounds of resistance on 24 July 2018.

2. The Tribunal at the hearing heard from the Claimant. The only witness for the Respondent was Mr Kunal Bhica, the Deputy Store Manager, who made the decision to dismiss.
3. The Tribunal had sight of an agreed bundle. On the day of the hearing further documents were added from the Claimant.
4. In addition, the Tribunal had sight of a short, about two-minute long, CCTV video recording. This, it was agreed, was footage taken by the CCTV cameras on the day of the incident that led to the dismissal. The Claimant had sight of the video before the Tribunal and agreed that this was the correct footage. The Tribunal viewed this on the mobile phone of the dismissing officer because there was no other technical facility available.

The Claims

5. The only claim before the Tribunal was for unfair dismissal.
6. At the beginning of the hearing the Claimant stated that he wished to bring a discrimination complaint. Upon checking the ET1 it was established that he had not ticked the box for discrimination and the Tribunal could find no reference to discrimination in his statement of case. Any such claim would be made out of time. The Claimant then agreed that he was pursuing a claim for unfair dismissal only.

The Issues

7. With the parties the Tribunal identified the issues at the beginning of the hearing.
8. It was agreed that the Claimant had been dismissed. The issues were accordingly as follows: -
 - a. What was the reason for dismissal? The Respondent relied upon the potentially fair reason of misconduct.
 - b. Was the dismissal was procedurally fair? The Claimant relied on the following: -
 - i. the decision was pre-judged;
 - ii. there was a failure to inform him in advance of the investigation meeting;
 - iii. there was a delay in taking action;
 - iv. there was no proper warning of a potential risk of dismissal;
 - v. there was a failure to disclose video evidence of the incident;
 - vi. the appeal was unfair including the delay;

- vii. during the hearing it came out that there was an allegation that the Claimant had not been provided with the witness statements prior to the dismissal hearing.
- c. If the Tribunal finds that there was a procedurally unfair dismissal, should there be any so called Polkey deduction, that is had the Respondent carried out a fair procedure, would it and could it have dismissed the Claimant fairly in any event?
- d. Sanction – did the decision to terminate the Claimant's employment come within a range of responses available to a reasonable decision maker in the circumstances?
- e. Contribution. If the dismissal was unfair, to what if any extent had the Claimant contributed to the dismissal?
- f. Should there be any adjustment to any award for a failure of either party to follow the provisions of the ACAS code?

The Facts

- 9. The Respondent is a household name retailer employing about 170,000 staff. The Claimant started work at its Hounslow store as a Pharmacy Assistant on 22 June 2015. He was training to work as a dispenser. His employment appears to have proceeded without incident until 5 February 2018.

The Incident

- 10. On the 5 February 2018 the Claimant was working as usual. The Claimant overheard his manager handing over to the in-coming shift manager and listing errors that she said the Claimant had made during his shift. The Claimant did not accept that these errors were his or that the criticism of him was fair.
- 11. The Claimant then swore at his colleagues including the manager. He threw a pen, kicked a bin (which was already broken) falling over in the process. He then kicked the bin again damaging it further. This was captured on CCTV. It was also seen, at least in part, by at least one customer.
- 12. The Claimant said that the next day he apologised and offered to pay for the bin. This evidence was not challenged and the Tribunal saw no reason not to accept this as the Claimant appeared genuinely contrite after the event.

The Investigation

13. The Respondent appointed Mr Amrat Patel, a member of the Leadership Team, to investigate. He interviewed witnesses, two of the Claimant's colleagues and the in-coming and out-going shift managers. He took their statements. He also viewed the CCTV footage of the incident.
14. On 13 February 2018 Mr Amrat Patel called the Claimant into an investigatory meeting with the Claimant. He gave the Claimant little warning of this meeting, which was whilst the Claimant was on his meal break. The Claimant was offered a representative at this meeting and / or an adjournment but agreed to go on.
15. The Claimant was not provided with the witness statements at the meeting. The Claimant told the investigating officer, that he had had an early doctor's appointment on the morning of the incident and had missed out on sleep before he started his shift at 16:00 hours. The investigating officer, it was agreed, accurately recounted what was shown on the CCTV footage to the Claimant but did not show the footage to the Claimant. The Claimant said that he did not accept that his behaviour was not acceptable.
16. The investigating officer challenged the Claimant several times on the basis that he did not believe that lack of sleep was the explanation for the Claimant's conduct. The Claimant then said that his manager and the in-coming shift manager were in the habit of blaming him for mistakes that he did not make. He did not give examples save to say that this happened a lot. He said he did not have an issue with these two managers as people but he could not work with them. The Claimant told the Tribunal that he did not feel able to be more openly critical of these managers as he was still working with them.

The Dismissal

17. There was then a pause in the Respondent's proceedings during which the Claimant continued to work in the pharmacy without incident.
18. The Respondent invited the Claimant by way of a letter dated 20 March 2018 to a disciplinary hearing on 3 April 2018 before the deputy store manager, Mr Kunal Bhica, with the people trading manager taking the notes. The letter could have said in somewhat clearer terms, in the Tribunal's view, that the Claimant was at risk of dismissal. Nevertheless, the Claimant confirmed to the Tribunal that at the time he had understood that there was a risk of dismissal from the letter.
19. The Claimant told the Tribunal that his two managers then told him that he was not at risk of dismissal and would receive, at worst, a warning. The Tribunal did not accept this evidence or that, if he was genuinely told

this, it would have sufficiently reassured him not to be concerned for his job. The reasons for this finding were as follows. The Claimant's evidence was that the two managers had a long-standing tendency to wrongly blame him for errors, and that they were extremely difficult to work with. Even if he might have been unwilling to say this to the Respondent at that time because he had to maintain the working relationship, his evidence was that this is what he thought. Accordingly, there was little reason for him to put his faith in any reassurance that they might give. In any event, there was no suggestion that Mr Bhica was aware of any such assurance given by the two managers.

20. The Tribunal then considered what if any documents were sent with the letter inviting the Claimant to the disciplinary hearing. There was a significant conflict of evidence over this. The Claimant denied that this letter contained the witness statements and the investigatory documents setting out the investigating officer's thinking. The respondent contended that it did contain these documents.
21. The letter of invitation did not refer to such documents being enclosed. At page 64 of the bundle the Tribunal saw that the Respondent's procedure required that documents should be sent to the employee at that stage. There was nothing in the minutes of the disciplinary meeting to suggest either that the Claimant was or was not given these documents prior to the disciplinary hearing. There was nothing in the dismissing officer's witness statement about the Claimant being sent the documents.
22. During cross-examination every time Counsel for the Respondent introduced one of the witness statements, he asked the Claimant if he had received the witness statement prior to the hearing. The Claimant agreed that he had. The Claimant was not, at this point, taken to the invitation letter at page 95 which did not note that the documents were enclosed. Then the Claimant was challenged that he had also received the respondent's summary of evidence prior to the dismissal hearing. He then said that he had not received any documents from the investigation until after the termination including the statements.
23. Mr Bhica was taken to parts of the minutes of the disciplinary meeting where he was discussing the Claimant's alleged errors and there was no reference to any statements. Mr Bhica in terms relied on the statements when making his decision. Mr Bhica's evidence about what had happened was not clear. Mr Bhica thought the Claimant did have the statements prior to the meeting but his evidence was very much in terms of 'I would have done this' not 'I did do this'. The Tribunal felt it was too long ago to give weight to Mr Bhica's evidence in light of the passage of time since the meeting. Mr Bhica had taken no part in sending the invitation letter.

24. The Respondent had sent the invitation letter by recorded delivery and it was recorded that the package weighed 0.4kg, nearly 1lb. This suggested to the Tribunal that what had been sent to the Claimant was more than one piece of paper.
25. The Tribunal was also influenced by the fact that the Claimant did not raise this point himself until late in the day. There was no reference to his not receiving the witness statements in his two letters of appeal, in the ET1, and in his reply to the grounds of resistance all of which were written reasonably soon after the event. The point was not raised until his witness statement, which was drafted later when the quality of his recollection of what documents were received when might be likely to have degraded. In contrast, he did mention earlier in terms that he did not receive the CCTV footage. The Tribunal thought it more likely that if the Claimant had not received the statements, he would have referred to this when he referred to not receiving the CCTV footage. The Tribunal found on the balance of probabilities the Claimant received the witness statements but not the CCTV prior to the dismissal meeting.
26. Nevertheless, in the view of the Tribunal, to avoid these issues in future it may be in the Respondent's interest to reconsider its template letters and set out in clear terms what is enclosed.

The Dismissal Meeting

27. At the meeting Mr Bhica took the Claimant through the three errors that his managers had discussed and which had caused the Claimant to lose his temper. The Claimant's explanation was that he was under a lot of pressure, although it was not work related. The Claimant explained why he believed that the errors were not his fault.
28. When the Claimant was asked why he had lost his temper, he repeated his contention that it was lack of sleep - as he had only had two hours. Further, he said that he had been asked to come in on his day off (which he did as a favour) and that he had a doctor's appointment that morning. When he was asked what the appointment was about, the Claimant did not want to discuss it saying that it was a private matter. He said his manager was in a bad mood, and repeated his contention that she might be a nice person, but she was difficult to work with. He told the Tribunal that he was not expecting to be dismissed and did not wish to ruin his relationship with her by telling his true opinion of her.
29. The Claimant then alleged that his manager had, in effect, sabotaged his holiday pay, but said that it was not relevant to the dismissal incident.
30. Mr Bhica adjourned the meeting to make his decision and then came back to read the summary to the Claimant. He found that the Claimant had acted as alleged. The Claimant had sworn, he had thrown a pen, he

had kicked a bin and fallen over. He had then kicked the bin again which broke. This occurred in front of at least one customer.

31. There was a conflict of evidence about what was said next. The Claimant said that after Mr Bhica had dismissed him, he told him not to bother appealing because the manager would never over-rule him (Mr Bhica). Mr Bhica strenuously denied having said this. This statement was not included in the discussion in the minutes (which the Claimant disputed) about the right of appeal.
32. This allegation by the Claimant was not mentioned in either appeal letter. The Claimant agreed that the first time he mentioned this allegation was in his reply to the grounds of resistance (page 42). The Claimant's stated reason for not including this allegation in the appeal letters was that he did not think it was important and it would be hard to prove. However, the Tribunal was of the view that this was a significant point – the Claimant being told that he in effect had no chance of a fair appeal. Further, Mr Bhica was not alone with the Claimant; there was another manager present to take notes. In these circumstances, the Tribunal found on the balance of probabilities that this comment was not made.
33. The Claimant also said that there was a discussion at the dismissal meeting about a conversation over a career break. His case was that his manager was going to offer him a career break but Mr Bhica in effect sabotaged this. However, the Claimant also said that he had asked his manager for a career break only after the decision to dismiss was made. He was not able to satisfactorily explain what he meant by a career break. It appeared to be the Respondent allowing him to resign and then come back to work again later.
34. The Tribunal could not accept the Claimant's evidence as to his request for a career break because it was inconsistent and confused. It was also inconsistent with his evidence as to what he was told by the general manager and what he put in his appeal letter. The Tribunal was of the view that the Claimant, after his dismissal realised that this would be a problem in the future, and wished that he had been able to resign instead.

The Appeal

35. The Claimant, it was agreed, was told send any appeal to the dismissing officers. Instead he attended his store on 7 April to hand deliver his written appeal to his store manager.
36. Before the Tribunal he said that he was "100%" sure that he had addressed the appeal letter both to the manager and the people training manager Ms Arsene. This was consistent with his witness statement. It was also inconsistent with his reply to the grounds of resistance in which

he stated that he gave the letter to the Store Manager only and he did not want to send it to Ms Arsene because he did not trust her or Mr Bhica. The Tribunal found that the copy of the letter was only addressed to the Store Manager because the Claimant's account changed over time and, further, his addressing the letter to Ms Arsene was inconsistent with his statement that he did not trust her.

37. On the Claimant's account there was a discussion on 7 April between him and the store manager. However, his account of this varied. He said at various times that the Store Manager had told him that he would be reinstated within two weeks. On 26 July he emailed the Respondent to state that he had agreed a career break with the Store Manager. In his reply to the grounds of resistance he said that the Store Manager promised he would get his job back as soon as possible and could 'at least put me on a career break'. He said that the Store Manager said he would put the Claimant on a career break for twelve months and they shook hands on this.
38. However, when the Claimant wrote to the Respondent to chase up his appeal on 5 June 2018 he did not mention that the Store Manager had promised him a career break or agreed to give his job back. In his witness statement he stated that he had suggested a career break, and did not refer to any promise of a career break or an appeal by the Store Manager.
39. The Tribunal took into account that the Store Manager was not here to give his version of events. Nevertheless, the Claimant's account of this meeting changed a number of times. The Tribunal did not find the Claimant's account of this discussion inherently credible. In the view of the Tribunal it was at least unlikely that a Store Manager would openly over-ride his subordinate's decision in front of the person appealing against that decision and before the appeal was heard. Accordingly, the Tribunal found that the Store Manager made no promises about reinstatement or a career break.
40. After the Claimant delivered his appeal, he heard nothing from the Respondent. On 5 June 2018 the Claimant sent a complaint to the Respondent's Head Office. On 3 July the Respondent wrote to the Claimant informing him that it had never received his appeal and asked him to re-send it within a week. The Claimant duly resent his appeal the next day.
41. The Respondent offered the Claimant an appeal meeting on 20 July with a manager who had not been previously involved. However, the Claimant did not attend this appeal. By this time he had lost a new job because of problems with a reference from the Respondent. The Claimant said that he sent an email replying to the offer of an appeal but he did not have a copy. The Tribunal found on the balance of

probabilities that the Claimant simply let the appeal lapse as he was genuinely upset at the Respondent at this point.

The Applicable Law

42. This is found at Section 98 of The Employments Rights Act 1996: -

98 General.

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

...

(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.

Submissions

43. The Tribunal heard brief oral submissions from both parties.

Applying the law to the facts.

44. The first issue was whether there was a potentially fair reason for the dismissal. The respondent relied on misconduct.

45. Mr Bhica had sight of CCTV footage that clearly showed the incident. All the witnesses gave consistent accounts of the incident that were

consistent with the CCTV recording. The Claimant admitted what had happened, save that he said that he did not remember swearing, although he did not deny it.

46. The Claimant's case as to there being another reason for his dismissal was inconsistent and he gave a variety of alternative reasons for his dismissal. He said that Mr Bhica wanted to, in his words, 'show off' to those below him. He said in his reply to the grounds of resistance that the pharmacy managers wanted him dismissed in order to intimidate other staff. He also said in his reply that the pharmacy managers wanted to dismiss him because they knew he was leaving to study a non-pharmacy course. He said that managers were in general biased against him. He said that the pharmacy manager resented him because he spoke better English than her, and she shared ethnic and religious origins with a senior employee and so could act with impunity.
47. He alleged in his witness statement that he was discriminated against and harassed by his pharmacy manager because he was not a Muslim. He stated that the pharmacy manager were Muslim and to some extent were biased against him because of their religion. However, there was no evidence of any such preference or bias. The investigating officer, the dismissing officer and the dismissal note-taker were not Muslim. He chose to deliver his appeal to his store manager, who was Muslim, rather than the correct person according to the procedure, who was not. Further, the Claimant never raised any such discrimination at the time. The Tribunal accordingly found that there was no bias against the Claimant because he was not Muslim.
48. Based on this evidence, the Tribunal found that the reason in the dismissing officer's mind was misconduct, a potentially fair reason and the Tribunal went on to consider reasonableness.
49. When considering whether a dismissal is procedurally fair in a misconduct case, the Tribunal must firstly apply the test set out in *British Home Stores Ltd v Burchell* [1978] ICR 303, with the caveat that the burden of proof is now neutral. A Tribunal must consider whether an employer carried out a reasonable investigation leading to a reasonable and genuine belief in an employee's culpability. When a Tribunal considers whether an investigation is reasonable, this is subject to the range of reasonably responses test. This means that the Tribunal may not substitute what it considers to be a reasonable investigation for that of the employer. The question for the Tribunal is whether the investigation carried out by the employer came within a range of investigations available to a reasonable employer in the circumstances.
50. In this case, the Claimant was not warned in advance of the investigatory meeting. In the view of the Tribunal, it is not best practice to fail to advise employees in advance that they are going to be called into an

investigatory meeting. However, the Tribunal could not find that this failing took the investigation outside of the reasonable range. In the view of the Tribunal, the Respondent may wish to reconsider its practice or policy. Employees who believe a procedure is fair and reasonable may be less likely to feel aggrieved.

51. The investigating officer looked at the CCTV footage of the incident and interviewed witnesses. There was no evidence that there was impropriety in the taking of the statements. The investigating officer interviewed the Claimant gave him a chance to give his version of events including any mitigation. The officer took action within a week of the incident, before memories might fade. The Tribunal found that his failure to show the CCTV footage to the Claimant was not best practice, however, the Claimant accepted that the account he received in the investigation meeting of the footage was accurate. The dismissing officer, Mr Bhica also read the witness statements and saw the CCTV. The Tribunal accordingly found that this investigation did not fall outside a reasonable range of investigations available to the employer in the circumstances.
52. The Tribunal went on to consider if Mr Bhica's belief in the Claimant's culpability was reasonable and genuine. The misconduct was clear from the witness statements and the CCTV footage. The Claimant's behaviour was not in dispute, save for the swearing. However, the witnesses all said that the Claimant had sworn and the Claimant said he could not remember doing so, rather than denying it. Further, swearing was not inconsistent with the Claimant's behaviour – he was so angry that he kicked a bin and fell over. In these circumstances the Tribunal found that Mr Bhica's belief in the Claimant's culpability was genuine and reasonable.
53. Thus, the Tribunal found that the Respondent had a reasonable and genuine belief in the Claimant's culpability following a reasonable investigation. The Tribunal went on to consider the fairness of the procedure more generally, including the grounds on which the Claimant relied as to procedural unfairness not already covered.
54. The procedural fairness of a dismissal is also subject to the range of reasonable responses test. This means that a Tribunal may not substitute what it considers to be a reasonable procedure for that of the employer. The question for the Tribunal is whether the procedure carried out by the employer came within a range of reasonable procedure available to the employer in the circumstances.
55. The fact that there was a delay in taking action did not suggest that the Respondent viewed the misconduct as extremely serious at the time. However, the delay, although regrettable, was not enough to take the procedure outside the reasonable range in these circumstances. The

delay caused no material prejudice to the Claimant. Statements were taken promptly and CCTV footage was obtained and stored. Apart from the swearing, the facts were not in dispute.

56. There was a failure to disclose the CCTV footage of the incident before dismissal. Again, in the view of the Tribunal, there was no good reason why this was not provided promptly to the Claimant. However, there was little if any prejudice to the Claimant. The Claimant had the contents fairly and accurately summarised to him. There was no audio on the footage would have gone to the only point potentially in dispute or contested – whether the Claimant swore. Further, it may have been somewhat distressing or embarrassing for the Claimant to watch the footage, as he acknowledged at the hearing.
57. The Claimant argued that the respondent had failed to make him aware that his job was at risk prior to the dismissal; if he had known of the risk of dismissal he might have obtained a trade union representative who would have made representations on his behalf and perhaps brokered a settlement. However, before the Tribunal the Claimant accepted that he was aware of the risk of dismissal before the dismissal meeting. Nevertheless, he did not seek to engage a trade union representative.
58. The final procedural issue was the appeal. Again, the delay was not best practice. However, the Claimant had not followed the appeal procedure. The Tribunal had found that he had delivered his appeal to the wrong person. Once the Claimant raised the issue, the Respondent offered an appeal promptly but the Claimant chose not to take it up. This does not take procedure the procedure outside of a range of reasonable procedures in the circumstances.
59. Accordingly, although the Tribunal found that although there were some concerns with the Respondent's procedure, which in the view of the Tribunal it would be well advised to review, these were not sufficient to take it outside of the reasonable range.
60. The dismissal was procedurally fair and thus there is no need to consider Polkey.
61. The Tribunal went on to consider sanction. The question for a Tribunal is not whether it would have, in the circumstances, dismissed the Claimant. The question is did the decision to dismiss come within a range of decisions available to a reasonable employer in the circumstances. The Tribunal again may not substitute its own view for that of the employer.
62. The Claimant's case was primarily that the dismissal decision was pre-judged and the Tribunal had not accepted this. The reasons were as set out above and that the Claimant's allegation of prejudice was

insufficiently consistent and clear.

63. The Tribunal considered if the Claimant's mitigation took the Respondent's decision outside of the reasonable range. He gave varying reasons for losing his temper and behaving as he did. He said that he lost his temper because of the bullying by managers. He said that it was because of sleep deprivation.
64. The Tribunal firstly considered the reasons relating to the Claimant's working arrangements. The Claimant said that he was subjected, in effect, to long-term harassment, bullying and discrimination by his managers. He had covered for absent colleagues and yet was refused TOIL. His manager was unhelpful and she had refused to sign off his dispensing qualification. Essentially, he said that it was an extremely difficult working environment as the two managers were scheming against each other. One manager was actively seeking to have the other dismissed.
65. Whilst the Tribunal found it plausible that the Claimant might not want to "rock the boat" and make complaints against his immediate managers during the disciplinary process, nevertheless there was no indication that he has raised any such concerns prior to dismissal. In addition, there was no sufficiently consistent and coherent explanation as to why they would want to dismiss him. The Claimant contended that the managers were in effect scheming against each other but also working with each other to have him dismissed.
66. The Tribunal also considered the reasons relating to the Claimant's personal circumstances on the day. He said that he was under severe stress at the time of the incident.
67. The Claimant said that he was sleep deprived because he had a doctor's appointment at 10.00am in the morning. However, he was not due into work until 4.00pm so, without anything further, this does not explain why he would be sleep deprived. Further, the Claimant did not offer, despite being offered the opportunity to do so, any other explanation as to why he had health issues that might deprive him of sleep. Thus, Mr Bhica could not take this into account.
68. The Claimant said that he had other stresses outside work, including minor surgery and an exam. Whilst such events can be very stressful, they are nonetheless common everyday events. Even if it were to be accepted that this had caused him to lose his temper in this way, a failure by the respondent to take this into account cannot take a decision to dismiss outside of the reasonableness range.
69. The Tribunal considered if the managers' conduct had provoked the Claimant. Even if the manager had made entirely unjust allegations

against the Claimant when she was carrying out the hand-over, and did so in an unconfidential manner, the Tribunal could not find that this was enough to take the decision to dismiss outside of the reasonableness range of responses, considering the Claimant's conduct.

70. In the view of the Tribunal the decision to dismiss might be seen as a somewhat harsh. There was no suggestion that this was anything but a one-off incident. There was no suggestion that the Claimant had given the Respondent any material cause for concern before this incident. There was at least some suggestion from Mr Bhica that the manager might have dealt with the alleged errors in a more confidential manner.
71. The Tribunal also bore in mind that the Respondent did not think that this misconduct was serious enough to warrant suspension and was not diligent in taking action. As had been stated, this does not fit well with the contention that the incident amounted to a gross misconduct.
72. However, the question for the Tribunal is not whether this Claimant committed gross misconduct, it is - did the decision to dismiss come within a reasonable range? In the view of the Tribunal, it did. The Claimant overheard managers, in effect, criticising him. The employer formed a reasonable and genuine belief following a reasonable investigation that he swore at them as a result. He did not swear because of anything directed at him; there was no such direct provocation. He overheard something and lost control. He lost his control so that he damaged his employer's property and fell over. This happened in front of customers.
73. In these circumstances a decision to dismiss, although in the view of the Tribunal arguably somewhat harsh in light of his previous good service, could not fall outside of the reasonable range of responses. Accordingly, the Claimant was fairly dismissed.

Employment Judge Nash
Dated: 19 July 2019