



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr N Aouragh

**Respondent:** Harrods Ltd

**Heard at:** London Central

**On:** 22 & 23 May 2019

**Before:** Employment Judge Khan

## Representation

Claimant: Z Iqbal, FRU rep

Respondent: C Kelly, Counsel

# RESERVED JUDGMENT

The judgment of the Tribunal is that the Respondent:

- (1) did not unfairly dismiss the Claimant;
- (2) did not wrongfully dismiss him.

These claims are dismissed.

# REASONS

1. By an ET1 presented on 13 December 2018, the Claimant complains that the Respondent unfairly dismissed him.
2. The Claimant applied on the first day of the hearing to add a new complaint of wrongful dismissal. The Respondent resisted this application. I granted this application, having considered the balance of hardship and interests of justice.
3. The Respondent withdrew its application to strike out the Claimant's claims.
4. I agreed to anonymise the names of the Respondent's clients in this judgment.

## **The issues**

5. The issues on liability that I was required to determine (save for 6.1 and 6.2) are set out below:

6. *Unfair dismissal*

- 6.1 Was the reason or the principal reason for the Claimant's dismissal a potentially fair reason, namely, conduct?

The Claimant agreed that the Respondent dismissed him for the potentially fair reason of conduct.

- 6.2 Did the Respondent genuinely believe that the Claimant had committed the gross misconduct in question?

The Claimant also agreed that the Respondent genuinely believed that he had committed the gross misconduct in question.

- 6.3 Did the Respondent have reasonable grounds for that belief?

- 6.4 Did the Respondent undertake a fair investigation, applying the range of reasonable responses test?

- 6.5 Did the Respondent act reasonably in treating the conduct identified as a sufficient reason for the dismissal, applying the range of reasonable responses test?

- 6.6 If there was a procedurally unfair dismissal, would the Claimant have been fairly dismissed in any event?

7. *Wrongful dismissal*

- 7.1 Was the Respondent entitled to dismiss the Claimant without notice?

**The Relevant Legal Principles**

***Unfair dismissal***

8. If the employer is able to show that it had a potentially fair reason for the dismissal the general test for fairness under section 98(4) ERA must then be applied. This provides:

“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.”

9. The test to be applied in a conduct dismissal was articulated by the EAT in **British Home Stores v Burchell [1980] ICR 303** as follows:

“What the tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in question (usually, though not necessarily, dishonest conduct) entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. That is really stating shortly and compendiously what is in fact more than one element. First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case.”

10. The first element of the **Burchell** test is relevant to the requirement under sections 98(1) and (2) ERA for the employer to show that it had a potentially fair reason for the dismissal.
11. In respect of the second and third elements of the **Burchell** test which are relevant to the fairness of the dismissal under section 98(4) ERA, the burden of proof is neutral.
12. As to the standard of proof, the Respondent is not required to show that it had conclusive evidence of the misconduct alleged, it is only required to show that it had formed a reasonable belief on the balance of probabilities, based on a reasonable investigation, when it dismissed the Claimant.
13. Where relevant, the Tribunal must also consider whether the employer had reasonable grounds for concluding that the employee’s conduct amounted to gross misconduct i.e. either deliberate wrongdoing or gross negligence – **Sandwell & West Birmingham Hospitals NHS Trust v Westwood UKEAT/0032/09/LA.**

14. The Tribunal must then go on to consider whether it was reasonable for the employer to have treated the conduct in question as a sufficient reason to dismiss the employee i.e. whether this was within the band of reasonable responses which a reasonable employer might have adopted – **Iceland Frozen Foods v Jones [1982] IRLR 439.**
15. The band of reasonable responses test applies equally to the Tribunal's assessment of the investigation and other procedural steps carried out by the employer to dismiss the employee.
16. The procedure followed by the Respondent must be viewed as a whole, so that any deficiencies in the disciplinary process are capable of remediation by the appeal process.
17. The Tribunal must not substitute its own views and consider whether a lesser sanction would have been reasonable, it must consider whether or not the dismissal was reasonable in the particular circumstances of the case.

### ***Wrongful dismissal***

18. The reasonableness of the employer's decision to dismiss the employee is not a relevant consideration. The Tribunal must consider, on the balance of probabilities, whether the employee's conduct was so serious as to amount to a repudiation of their contract of employment entitling the employer to terminate the contract without notice.

### **The Evidence**

19. The Respondent called the following witnesses: Jaz Mandair, Senior Operations Manager; Rosie Cunningham, Employee Relations Specialist (now Associate HR Business Partner); and Niklas Moller, General Sales Manager, Fashion Accessories.
20. The Claimant gave evidence himself.
21. I allowed into evidence a statement, on behalf of the Claimant, from Xin Wang, formerly a VIP Client Manager, who is now based in China and was unable to attend the hearing or participate via video link. The Respondent was permitted to put supplemental questions to its witnesses in relation to this evidence. As the Respondent challenged his evidence but was unable to cross examine Mr Wang I placed little weight on his statement.
22. The hearing bundle exceeded 700 pages. I read the pages in this bundle to which I was referred.
23. I also considered written submissions from both parties.
24. The Claimant was fasting during the hearing and he was allowed to take regular breaks to assist his concentration during cross-examination.

**The Facts**

25. Having considered all the evidence, I make the following findings of fact on the balance of probabilities. These findings are limited to points that are relevant to the legal issues.
26. The Claimant commenced employment with the Respondent on 17 December 2013 and transferred to the Fine Watches Department (“FWD”) on 5 May 2016 where he was based in the Rolex boutique. He was employed as a Sales Associate.

***Relevant policies and procedures***

27. The Claimant accepted that the value of Rolex watches made them a target for fraudulent activity, including re-selling on the grey market. He signed the Rolex (and Tudor) Terms and Agreements (“the Rolex terms”) on 7 December 2017 which included the following:

“3) Rolex (and Tudor) watches should not be knowingly sold to non-approved distributors, wholesalers, central purchasing agents, buying groups or any customer that has the intention to re-sell the piece

4) Rolex (and Tudor) watches should only be sold to a client in person within the Harrods store and should not be dispatched or exported under any circumstances. Customer not present transactions are not permitted on Rolex (or Tudor) watches.”

28. The Respondent has a loyalty programme whereby customers earn rewards points by using a rewards card on qualifying purchases. Points are converted into a cash-equivalent at the end of each year. The Respondent’s Rewards Terms and Conditions (“the Rewards terms”) provide that:

“Rewards Cards are limited to one per person and are for personal use by the registered cardholder only. Rewards cannot be shared or distributed or used for commercial purposes...Members must present the Rewards Card at the time of payment in order to collect Harrods Rewards Points”.

These terms are printed on the reverse of the rewards card application form available in store. The Claimant had his own rewards card.

29. Certain Rolex watches are made available exclusively to specific clients and known as allocation pieces. This is designed to reward VIP clients and minimise the risks of re-selling sought-after watches. The process is initiated by sales staff who identify suitable clients and complete an application form which is then authorised by a manager. The Claimant was familiar with this process and completed several applications.
30. The Respondent’s Behaviour Policy enumerates the standards of conduct, behaviour, discipline and professionalism required of its employees. A failure to comply with this policy may result in action including dismissal.
31. The Respondent’s Ethics in Business Policy sets out guidelines designed to ensure that employees “never put themselves or the Company in a

position that would undermine or compromise business integrity". A breach of this policy may be treated as gross misconduct and lead to dismissal.

32. The Respondent's People Management Policy and Procedure sets out the procedure for conducting investigations, suspension and taking disciplinary action. It includes a non-exhaustive list of examples of gross misconduct which include: "serious breach of cash handling procedures...serious negligence causing actual loss...or risk of loss...and dishonesty".
33. These policies emphasised, amongst other things, the responsibility of sales staff when processing transactions, to protect the reputation and business integrity of the Respondent and of the brands sold in store. This was especially important in the FWD where the Claimant and his colleagues sold high value and sought-after watches, and the risk of fraudulent activity was significant.

### ***Investigation***

34. An investigation was conducted by Faye Turner, Sales Manager, FWD, into four transactions processed by the Claimant in May and June 2018. This investigation was instigated following a review by the Security Investigations Team into suspicious recent transactions.

35. The Claimant was interviewed by Ms Turner on 13 July 2018.

35.1 He was questioned about a transaction on "around" 11 May 2018, when a client, Mr H, used his own rewards card and a payment card belonging to another client, Miss L, to purchase a Rolex allocation piece:

- a. the Claimant said that he only recommended clients for an allocation piece once he had got to know them, however, he was unable to confirm any personal details about Mr H, other than that he had a son;
- b. he agreed that it was "mandatory" for a client to try on a watch before completing such a purchase, however, the CCTV footage showed that Mr H had not done this;
- c. he agreed that "there should always be checks" but he agreed that he had not carried out any because "I didn't want to offend the customer".

35.2 He was questioned about a second transaction also on "around" 11 May 2018, when Miss L's payment card was used by another client, Mr G, to purchase a watch. He was unable to confirm any personal details about Mr G.

35.3 He said he had not had any card fraud training.

- 35.4 He was also questioned about a third transaction on 2 June 2018, when a client used multiple cards to complete a transaction that was declined three times. He explained that he had not suspected any fraudulent activity because he knew that banks placed limits on overseas transactions.
- 35.5 He was questioned about a fourth undated transaction completed by a male client with his own payment card and gift card, and using a rewards card belonging to another client, Miss D. He said that Miss D had arranged for a third party to collect the watch on her behalf, and he provided evidence of their communications.
36. The Claimant was suspended on full pay pending the completion of this investigation. This was confirmed in writing by Ms Turner, when she listed the following allegations of potential gross misconduct under investigation:
- 36.1 that on 25 and 30 May 2018 he served two male clients who used the same payment card in the name of Miss L (“Allegation One”).
- 36.2 that on 2 June 2018 he processed a transaction using multiple credit cards for one client that were declined on three attempts (“Allegation Two”).
- 36.3 that on 11 June 2018 he processed a transaction using rewards card details saved on a client’s phone and without the physical card being present, and despite the rewards card belonging to a different client (“Allegation Three”).
37. The Claimant was told that the Respondent would write to confirm the outcome of this investigation and he would be invited to a disciplinary meeting if there was “evidence to support formal disciplinary action”.
38. HR instigated disciplinary proceedings. I was not taken to an investigation report. However, as Ms Turner’s interview demonstrated, the Respondent had reasonable grounds for initiating a disciplinary process. The Claimant had processed four suspicious transactions, the last of which was confirmed as fraudulent, he had failed to carry out the required security checks and he lacked credibility.
39. Ms Mandair was appointed to chair the disciplinary hearing. She reviewed the record of the Claimant’s investigatory interview, point of sale (“POS”) records and CCTV footage. She wrote to the Claimant on 26 July 2018 to invite him to a disciplinary hearing to be held under Part A of the People Management Policy and Procedure. The same three allegations were repeated with the following additional information: Allegation One was deemed to be alleged fraud, Allegation Two now included an assertion that the Claimant had failed to show “good judgement in this instance by [not] following the correct security checks following multiple declines” and Allegation Three was confirmed as a fraudulent transaction.
40. He was advised that a potential outcome was summary dismissal, with reference to the Behaviour and Ethics in Business policies.

***Disciplinary hearing***

41. The disciplinary hearing took place on 31 July 2018 when the Claimant was accompanied by David McKnight, Sales Consultant in Fine Watches.

42. In addition to what he said at the investigation, the Claimant said the following.

42.1 In relation to Allegation One:

- a. He agreed that he did not scrutinise chip and pin cards. He said that he had been advised by members of the Undercover Team that chip and pin transactions did not require security checks and this was common practice in the store. He said it might cause “an uproar” if he analysed a client’s payment card.
- b. He agreed that he was required to check that the payment card was “appropriate to the customer” and that it corresponded with the rewards card before the client inserted the card into the reader. He said that this was his usual practice but he had had “a lapse in concentration”.
- c. He agreed that he completed allocation applications for both clients. He said that he had served both clients before without any problems. He was unable to recall their names.
- d. He reiterated that he had not received any card fraud training.

42.2 In relation to Allegation Two:

- a. He agreed that he allowed the client to make several attempts with the same payment card because the card was old and he thought there might have been a technical issue with it, and also because she was an overseas client, and it was likely that her transactions were restricted.
- b. He said he had advised the client to contact her bank to request a new card. When the first payment card was declined he asked the client for another payment method. He said that the client was embarrassed and was on her phone, and he understood that she was trying to transfer funds.
- c. He used the till in the back office to process this transaction. He said that he did not take the payment card out of the client’s sight. When he was shown CCTV footage that contradicted this, he agreed that he had done this.

42.3 In relation to Allegation Three:

- a. Miss D contacted the Claimant on 8 June 2018 via WhatsApp to reserve a watch. She then telephoned him to say that a third party might come in to purchase the watch on her behalf using her rewards card.



- b. A male client approached him on 11 June 2018 and said that he wanted to buy the watch on Miss D's behalf. He paid for the watch using his own payment card. The Claimant processed this transaction using Miss D's rewards card details saved as a photo on the client's phone.
- c. The Claimant agreed that he was aware of the Rolex terms which stipulated that Rolex watches must only be sold to end users. He believed that Miss D was the end user for this purchase.
- d. He agreed that he did not take any identification from this client.

***Dismissal decision***

43. Following an adjournment of almost one hour, Ms Mandair summarily dismissed the Claimant concluding that his actions had breached the Behaviour and Ethics in Business policies, and amounted to gross misconduct. When the Claimant complained that he had never received any training on card fraud, Ms Mandair told him "There is no specific training for card fraud. It's about your using your judgement and sense checking things". He was advised of his right of appeal.

44. This decision was confirmed in writing by Ms Mandair.

44.1 In relation to Allegation One, she concluded:

- a. The Claimant admitted to a lapse of judgement in failing to check the payment cards on both occasions. This led to two clients purchasing Rolex watches using the same payment card in the name of Miss L.
- b. He had not exercised the due diligence expected to prevent alleged fraudulent activity.
- c. He had breached the following provisions of the Behaviour Policy:
  - i. "conduct yourself and behave in keeping with the interests and standards of the Company, to ensure that the Company's reputation is not brought into disrepute"
  - ii. "whilst at work devote your full attention to your duties and in so doing act with responsibility and judgement"
  - iii. "observe the Company's rules, regulations and instructions, however they are conveyed or intimated".
- d. He had also breached the Ethics in Business Policy, in particular the requirement that "good, ethical business conduct should clearly display the values of honesty, reliability, trust and fairness".

- 44.2 In relation to Allegation Two, Ms Mandair concluded:
- a. The Claimant had accepted multiple attempts by the client to use the same bank card.
  - b. He had failed to exercise good judgement in line with the Behaviour Policy.
  - c. He changed his evidence in acknowledging that he had taken a payment card into the back of house area, having originally denied this when he saw the CCTV footage showing this. This had brought his integrity and trust into question.
- 44.3 Ms Mandair misunderstood that this allegation was that the same card had been declined three times but this does not alter the central issue which was that the overall transaction pattern was suspicious and should have alerted the Claimant.
- 44.4 The POS evidence showed that the client made several attempts using multiple cards to complete this transaction, three of these attempts were declined, the first two because the PIN was not verified. She then used the same card to pay for half of the transaction verified by signature. She attempted to pay for the remainder with a second card which was declined because the PIN was not verified. She completed the transaction with a third payment card using chip and pin. As two different cards were declined because the PINs were not verified, I find that the Claimant's reasons for not being suspicious were not credible.
- 44.5 In relation to Allegation Three, Ms Mandair concluded:
- a. The Claimant had processed a sale of a watch for a client that had been reserved for Miss D and completed this transaction using her rewards card. He had not taken any ID from this male client.
  - b. He had failed to exercise good judgement in line with the Behaviour Policy.
  - c. He had also breached the Ethics in Business Policy, in particular that "good, ethical business conduct should clearly display the values of honesty, reliability, trust and fairness".
- 44.6 Ms Mandair misunderstood that the client used Miss D's rewards card in part payment for this transaction instead of using it to collect rewards points. I find that this confusion arose from the answers given by the Claimant at the disciplinary hearing. This was not central to the allegation which was that he had processed a transaction, subsequently confirmed as fraudulent, using a rewards card belonging to another client.
- 44.7 In summary, Ms Mandair concluded "you have processed four transactions in the Rolex boutique without using good judgement

and failing to prevent fraudulent activity” in breach of the Ethics in Business Policy and constituting gross misconduct under the People Management Policy.

45. The Claimant emailed colleagues on 31 July 2017 with the subject line “An innocent man got sacked” complaining that he had not received card fraud training and warning colleagues to be careful. This led to the Respondent organising card fraud refresher training for FWD staff in August 2018.

***Appeal***

46. The Claimant appealed against his dismissal.

47. Mr Moller was appointed chair of the appeal panel and he wrote to the Claimant to invite him to an appeal hearing on 24 August 2018.

48. The Claimant was accompanied at this hearing by James Rose, Sales Associate, The Fine Watch Room. Mr Moller was supported by Ms Cunningham. At the end of this hearing, Mr Moller told the Claimant that further investigation was required.

49. Mr Moller then gathered CCTV footage, rewards and payment cards records relating to the four transactions, and reviewed these together with Ms Cunningham and other appeal panel members. Enquiries were also made in relation to training and the allocation process. An appeal outcome letter was drafted on 20 September 2018 and a final version sent to the Claimant on 12 October 2018. In the meantime, the Claimant queried and was updated on the progress of his appeal.

50. Mr Moller upheld Ms Mandair’s decision to dismiss the Claimant.

50.1 In relation to Allegation One, he concluded that the Claimant’s claim that he had previously sold watches to both clients was contradicted by their rewards cards history. His claim that he always took clients through the features and functions of a watch before completing a transaction was also contradicted by CCTV footage of the transaction on 30 May 2018. Further investigation revealed that both these clients were registered at the same address which gave weight to the suspicion that these transactions were fraudulent.

50.2 Similarly, in relation to Allegation Three, the Claimant’s claim that Miss D was a repeat client was contradicted by her rewards card history. Mr Moller clarified that the client had not used Miss D’s rewards card in part payment but this card had been used to collect rewards points on this transaction.

50.3 In relation to training, Mr Moller concluded that the Claimant received card fraud training during his induction in December 2013 which would have “gone through the necessary card checks the business requires of you to perform, what to be alert to...fraudulent transactions, stolen cards, fake cards and habits to be suspicious of”. He also referred to a group training session for the Rolex department delivered by the Security Investigations Team.

**Conclusions**

**UNFAIR DISMISSAL**

**Did the Respondent believe that the Claimant had committed the gross misconduct in question?**

51. Although it is not necessary to make a finding, as the Claimant agrees that the Respondent had a genuine belief, I would have found that the Respondent did believe that his actions amounted to gross misconduct. It was alerted to four potentially fraudulent transactions that he processed between 25 May 2018 and 11 June 2018. Each transaction could reasonably be viewed as suspicious and potentially fraudulent, and the fourth transaction was confirmed to be fraudulent. In processing these transactions, the Claimant had failed to apply policies and procedures designed to prevent fraud. If found to be substantiated, these allegations were capable of amounting to gross misconduct.

**Did the Respondent undertake a fair investigation?**

52. The Claimant does not say that Ms Turner's investigation was unfair. He complains that several matters raised by him at the disciplinary and appeal hearings were not investigated.

53. He complains that the Respondent failed to undertake a reasonable investigation, given its size and administrative resources, that his conduct in relation to the processing of card and rewards transactions was common practice both in the FWD and across the store.

54. The Respondent did not investigate whether the Claimant's conduct was common across the FWD / store but I find that this did not render the investigation unfair.

54.1 The Claimant processed one fraudulent transaction and three potentially fraudulent transactions between 25 May 2018 and 11 June 2018. I do not find that the Claimant's conduct in relation to each transaction and as a pattern across all four transactions can reasonably be said to be the common practice in the FWD / store or if it were that it would be acceptable.

54.2 The Claimant relies on Mr Wang's evidence to contend that his conduct was common in the FWD. I find that this evidence is not of direct relevance to Allegations One and Two. In relation to Allegation Three I accept Ms Mandair's evidence, which was that clients were not permitted to use a rewards card belonging to another client unless they were using an additional linked card, or unless this was authorised by a manager.

55. The Claimant also complains that the Respondent failed to conduct a reasonable investigation into whether he had received the appropriate training. I find that the Respondent did investigate this and concluded reasonably that he had received relevant and appropriate training.

- 55.1 The Respondent was not assisted by the absence of any training records, however, I accept the evidence of its witnesses and find that the Claimant received induction training in late 2013 / early 2014 which included transaction and security training, and that he also received group training in early 2018.
- 55.2 Ms Mandair advised the Claimant that there was no specific card fraud training. Her evidence was that it was her expectation that staff received training during induction on transaction services i.e. cash handling which included fraudulent transaction and security. She referred to the Cash Handling Till Procedures presentation which was in the bundle, although she accepted that the Claimant may not have seen this particular version. She said that he would also have had additional till training and security training because he was in a customer-facing role.
- 55.3 Mr Moller investigated this issue. He concluded that the Claimant had received transaction and security training at induction and as part of his investigation he canvassed Erhan Yildaran, Lead Store Detective, who confirmed that the Security Investigations Team had delivered group training on fraudulent transactions to the Claimant's department in the previous two years. Mr Moller's evidence was that the training was likely to have taken place in January 2018. Ms Cunningham's evidence was that this training took place in January 2018 before the new Rolex boutique opened. Her evidence was also that inductions were mandatory.
56. In any event, the Claimant was an experienced Sales Associate and required to use his judgement when processing high value transactions. As Ms Mandair told him "It's about your using your judgement and sense checking things".
57. The Claimant also complains that Ms Mandair took less than one hour to complete her deliberations, whereas, Mr Moller conducted further investigations over several weeks before he arrived at an outcome. I find that whilst Mr Moller took a more rigorous and forensic approach than Ms Mandair, her investigation was reasonable and his investigation supported her findings, and cured any deficiencies it had: Ms Mandair misunderstood that the same card was declined three times in Allegation Two and that the client used D's rewards cards in part payment in Allegation Three but neither issue was central to the allegations being investigated and they were both corrected at appeal.
58. For these reasons I find that the Respondent's investigation was within the band of reasonable responses.

**Did the Respondent have reasonable grounds for that belief?**

59. I find that the Respondent had reasonable grounds to believe that the Claimant's actions amounted to gross misconduct i.e. gross negligence.
- 59.1 The Respondent had a reasonable suspicion of misconduct when it was alerted by the Security Investigations Team in relation to four

potentially fraudulent transactions processed by the Claimant between 25 May – 11 June 2018.

- 59.2 This triggered an independent and thorough investigation which was reasonable, for the reasons set out above.
- 59.3 I find that the Claimant was aware of the Respondent's policies and procedures which he failed to follow.
- a. He admitted that he was aware of the Rolex terms. He breached these terms.
  - b. He also breached the Rewards terms. He said that he was not aware of these terms. I accept Ms Mandair's evidence which was that he received training on these terms at induction. As a rewards card holder and someone in a client-facing role, he was required to know and apply them. Ms Mandair said that these terms could only be overridden by a manager. The Claimant did not seek such authorisation.
  - c. He admitted that he was required to check the payments card against the rewards card. He failed to do this in relation to Allegations One and Three.
  - d. He admitted that he was required to scan payment cards. He failed to do this in relation to all three allegations.
  - e. He received security and transaction training. He failed to apply this training in relation to all three allegations.
- 59.4 In consequence, he failed to prevent fraudulent and alleged fraudulent activity.
- 59.5 CCTV footage and the Claimant's evidence in the investigation and disciplinary processes showed that his credibility was in issue because:
- a. He initially denied (in relation to Allegation Two) that he had taken the client's payment card out of view, when in fact he had.
  - b. He claimed (in relation to Allegations One and Three) that clients Mr H, Mr G and Miss D had previously completed transactions with him when there was no evidence of this.
  - c. He refuted that he had received any relevant transaction or security training, when the Respondent held a reasonable belief that he had.

**Was the decision to dismiss the Claimant within the band of reasonable responses?**

60. Having found that the Respondent formed a genuine and reasonable belief in the Claimant's gross misconduct, founded on a reasonable

investigation, I also find that the decision to dismiss him because of this conduct was within the band of reasonable responses:

- 60.1 He agreed that the Rolex boutique faced a higher risk of fraud in the store because of the resale value of Rolex watches sold. He said that Rolex watches sold for anything between £3,000 and £180,000. The actual sums involved in the four transactions investigated were £13,110 (Allegation One), £10,350 (Allegation Two) and £18,500 (Allegation Three).
- 60.2 He failed to prevent actual and potentially fraudulent activity.
- 60.3 Overall, his actions demonstrated a lack of judgement and diligence, and he failed to make the required security checks.
- 60.4 He was aware of the policies and procedures that he was required to follow in order to prevent fraud. He disregarded these.
- 60.5 During the course of the investigation and disciplinary process he had shown himself to be unreliable and untruthful.
- 60.6 He therefore breached the Behaviour and Ethics in Business policies.
- 60.7 The Respondent's trust and confidence in him was gone.

## **WRONGFUL DISMISSAL**

### ***Did the Claimant commit gross misconduct?***

- 61. The People Management Policy and Procedure provides for the sanction of dismissal without notice "in the most serious circumstances of gross misconduct".
- 62. I find, for the reasons set out above at paragraph 60, that the Claimant's conduct amounted to gross misconduct.
  - 62.1 Allegation Three amounted to gross misconduct because this transaction was fraudulent and it is reasonably likely that had the Claimant made the required security checks it would have been prevented.
  - 62.2 Taken cumulatively all three allegations amounted to gross misconduct. Allegations One and Two were potentially fraudulent and it is reasonably likely that they would have been prevented had he made the required security checks.
  - 62.3 His actions amounted to the following examples of gross misconduct enumerated in the People Management Policy and Procedure:
    - a. "Serious breach of cash handling procedures"

- b. "Serious negligence causing actual loss...or risk of loss..."
- c. "Dishonesty" because of the Claimant's evidence in the investigation and disciplinary process.

62.4 His actions also amounted to a breach of the Ethics in Business Policy, namely the requirement to "display the values of honesty, reliability, trust..." and to "Act with honesty and integrity".

63. I therefore find that the Claimant's conduct had the effect of repudiating his contract. In relying on this conduct to dismiss him without notice the Respondent did not breach his contract.

Employment Judge Khan

Date 13<sup>th</sup> August 2019

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON  
15/08/2019

.....  
FOR EMPLOYMENT TRIBUNALS