



EMPLOYMENT TRIBUNALS

Claimant: Mr M Ali

Respondent: Lidl Great Britain Limited

Heard at: Manchester

On: 26 September 2019

Before: Employment Judge Leach

REPRESENTATION:

Claimant: In person

Respondent: Mr J Boyd (Counsel)

JUDGMENT

The judgment of the Tribunal is that the Claimant's dismissal was not unfair.

REASONS

Introduction

1. This case is about the claimant's dismissal by the respondent and particularly whether it was fair or unfair in accordance with s98 of the Employment Rights Act 1996 ("ERA").
2. The claimant represented himself at the hearing on 26 September 2019. The respondent was represented by Mr J Boyd of counsel.
3. The Tribunal heard evidence from the following witnesses for the respondent:
 - (1) Mr Lillis – Mr Lillis was the claimant's line manager and also undertook the investigation into allegations of misconduct against the claimant.
 - (2) Mr C Marshall – Mr Marshall is the line manager of Mr Lillis and chaired the disciplinary hearing, taking the decision to dismiss the claimant.

- (3) Mrs McIntyre – Mrs McIntyre is an Employment Law Consultant with the respondent and heard and decided on the appeal against dismissal.
4. The Tribunal also heard evidence from the claimant.
5. The Tribunal was provided with a bundle of documents as well as an amended index and small supplemental bundle that the claimant had provided.
6. Each witness was asked questions by way of cross examination with further questions from the Tribunal.

The Issues

7. At the start of the hearing the following issues were identified:
 - (1) Whether the claimant was dismissed for a potentially fair reason under section 98(1) ERA. The respondent's position is that it dismissed the claimant for reasons of misconduct.
 - (2) Whether the respondent honestly and reasonably believed that the claimant had carried out the misconduct alleged and carried out a sufficient investigation.
 - (3) Whether the respondent's reason for dismissal was a sufficient reason for dismissal.
 - (4) Whether, if the claimant was unfairly dismissed, his conduct contributed to his dismissal.
 - (5) Whether any deduction to any award made should be made in accordance with the principle established in **Polkey v A E Dayton Services Limited 1988 A.C 344 ("Polkey")**

Findings of fact.

8. This section sets out the relevant facts as the Tribunal found them.
9. The respondent operates supermarkets throughout Great Britain. Its operation is divided into regions and each region is then divided into areas.
10. The claimant was employed by the respondent as an Area Manager. He started work for the respondent on 15 March 2015. As at the date of his dismissal, the claimant was responsible for an area which comprised 5 stores, including 2 in Preston and one in Leyland. The regional base was at an administration and distribution centre based at Runcorn.
11. In November 2016 John Lillis became the claimant's line manager.

12. In January 2018 the claimant was required to attend a disciplinary hearing because of allegations of misconduct had been made against him. The allegations were as follows:

“Failure to adhere to reported movements;

Lying to your line manager about visiting Store 504, Leyland.”

13. The claimant received a first written warning, although this was overturned on appeal in February 2018. This is mentioned because it becomes relevant during the later disciplinary process which led to the claimant's dismissal.

14. On 20 November 2018 the claimant visited one of the stores for which he was responsible, which is in Leyland. During that day, and particularly in the afternoon of that day, events occur which led to the claimant's suspension.

15. On 30 November 2018 the claimant was suspended. The suspension was carried out by Mr Lillis, the claimant's line manager.

Events leading up to the claimant's suspension

16. The claimant was suspended because Mr Lillis had received information from two store managers that caused him to have serious concerns about the claimant's conduct. He received this information in a telephone discussion with one of the store managers in the claimant's area, Jason Collins. Mr Collins informed Mr Lillis that he had been speaking with Mike Downes who was the store manager of the respondent's store in Leyland (ie the store that the claimant had visited on 20 November 2018), Mr Collins explained that Mr Downes had informed him that the claimant had asked Mr Downes to lie about the claimant's whereabouts on 20 November and also that Mr Downes had felt uncomfortable with this request.

17. Mr Lillis did not take the information provided at face value. On the same day, he spoke with Mr Downes. There is no note of this discussion. The evidence of Mr Lillis is that Mr Downes informed him that the claimant had instructed him not to answer the store phone if Mr Lillis called and that the claimant was on his way back to the store. The tribunal accepts Mr Lillis's version of events of this discussion as set out at paragraphs 12 and 13 of his statement.

18. Mr Lillis then arranged to speak with the Claimant. He was not satisfied with the information the Claimant provided in that discussion and on the basis of the information he had at that stage, the claimant was suspended. This was confirmed in a letter of 30 November 2018, which is at page 52J. No notes were made of the discussion during which the claimant's suspension took place.

The Investigation

19. A number of witnesses were then seen by Mr Lillis including Mr Downes and Mr Collins and, at the direction of Mr Marshall, the other Store Managers in the area managed by the claimant.

20. Mr Marshall is a regional director with the respondent, with responsibility for the Runcon region. He is Mr Lillis's line manager.

21. These interviews were arranged and carried out quite quickly so that the respondent was in a position to write to the claimant on 6 December asking that he attend a disciplinary hearing on 12 December 2018. That letter is at pages 53-54 of the bundle and lists out the information that accompanied the letter.

22. Other concerns about the claimant's conduct arose from some of the interviews. These concerns formed part of the allegations of misconduct that were considered at the disciplinary hearings which followed. The additional concerns which arose were as follows:-

- a. Mr Downes informed Mr Lillis that the claimant returned to the store, stayed for a further period of about 45 minutes and then, as he left, instructed Mr Downes as follows:- "if anyone else calls, tell them I left 5 mins before they called." This is noted at the bottom of page 57.
- b. Mr Downes also noted that he would have preferred the claimant to do a "walk round" of the store with him and that he did not. Further comment about the issue of the walk round is provided below.
- c. Mr Collins informed Mr Lillis that the claimant had also asked him to lie in the course of his work. Mr Collins provided a text message to support this allegation. The text message is at page 64. It is a text from the claimant to Mr Collins which reads "*Remember if Andy auditor turns up this morning before me, when checked fresh areas last night for counts before it was filled.*" The message is then signed off with a laughing emoji. It was accepted by both parties at the hearing that the word "when" appeared to be a typing error and should have been "we". Mr Collins informed Mr Lillis that they had not checked the fresh areas for counts the previous night and this was an instruction from the claimant to Mr Collins asking him to lie to an auditor. This account is noted at the bottom of page 61.
- d. Mr Foggan, another store manager, informed Mr Lillis that the claimant had asked him to pretend that he had carried out store walks with Mr Foggan in a certain way when he hadn't.
- e. A range of concerns raised about a lack of support from the claimant. Each store manager interviewed raised this type of concern. However, Mr Marshall's evidence is that these additional concerns did not form part of the reason for dismissal.

23. As for the initial concern on 20 November, this was discussed with Mr Downes. The note of Mr Lillis's interview with Mr Downes (at pages 56-59) record this. Much of the version of events of 20 November 2018 as recorded in this note is not in dispute. However, an important area of dispute is what the claimant said to Mr Downes when the claimant called him. It is not in dispute that the claimant did call Mr Downes and instruct him as to what to do in the event that Mr Lillis called the store. There is however a dispute about what the claimant told Mr Downes to do:-

- a. The claimant is clear that he instructed Mr Downes to inform Mr Lillis that the claimant would be back in the store in a few minutes.
- b. The notes at pages 56 to 59 show a different version of events provided by Mr Downes. They show that Mr Downes said that the claimant had told him that if Mr Lillis called the store, that he should not answer and that he (the claimant) was on his way back.

24. The notes also show that a discussion took place in the course of this interview about the fact that the store phone did not have caller ID and the instruction from the claimant had confused Mr Downes. There is also a note (at the bottom of page 57) about the fact that the store phone had been left to ring until the claimant (as the note records) came running through the store to pick up the phone.

25. The tribunal finds that Mr Downes did provide the explanation as set out at pages 56 to 59. It was not an inaccurate note. Had this version of events not been provided by Mr Downes then there would have been no need for the further comments/discussions about caller ID.

First Disciplinary hearing

26. The disciplinary hearing was scheduled to take place on 12 December 2018. The hearing was chaired by Mr Marshall.

27. The claimant was not accompanied although he had been provided with a right to be accompanied by a colleague or trade union representative (confirmed in the invitation letter of 6 December at page 53-4)

28. A note taker (Mr D Morris) also attended the hearing. Notes of the hearing are at pages 80 to 98.

29. The allegations to be considered were set out in the letter of 6 December 2018 inviting the claimant to the hearing. This is at pages 53 and 54.

30. The letter does not set out the concerns in detail or with particular precision. However, the notes of the interviews were enclosed with this letter, there was no concern raised by the claimant that he did not understand the allegations against him and it is clear from the notes of the meeting that he understood and responded to each allegation.

31. The claimant provided explanations to the various concerns raised. No arrangements had been made for witnesses to attend the disciplinary hearing itself. Mr Marshall decided that he wanted to carry out some more investigation including speaking with the store managers himself. He therefore closed the meeting and informed the claimant that he would be contacted once the further investigations had been carried out. This also provided the claimant with an opportunity to provide items of additional information that he had said he could provide, particularly phone records (pages 99 to 108).

Further investigation.

32. In addition to obtaining the information provided by the Claimant, Mr Marshall interviewed Mr Foggan, Mr Unwin and Mr Downes. Notes of these interviews are at 109 to 121.

33. At these interviews Mr Marshall put to the store managers the alternative explanations provided by the Claimant and tested their evidence himself.

34. The claimant was provided with copies of the notes of these further interviews. The respondent wrote to the claimant by letter dated 20 December 2018 (page 122/3) to invite him to the second or reconvened disciplinary hearing.

Second disciplinary hearing.

35. This took place on 7 January 2019. Notes of the hearing are at pages 126 onwards. It is apparent from the notes of this hearing that Mr Marshall questioned and tested the claimant's version of events.

Dismissal

36. Mr Marshall sets out his reasons for dismissal in his letter to the claimant of 7 January 2019 at pages 133 to 136. His witness statement (paragraphs 37 to 40) summarises these reasons.

"Mike Downes had said that he had been told by the claimant not to answer the store phone and that if anyone called, he was to say that he had left 5 minutes ago. I confirmed that with Mike Downes and was satisfied that he was telling the truth. I did not accept that he was lying as part of a conspiracy claimant had said had been instigated against him by Jason Collins. I was also satisfied that he had not misunderstood what the claimant had said."

The claimant's version of what had happened on the 20 November in the store car park and why he said he had telephoned the store makes no sense. I did not find the claimant's account credible for the reasons set out within my outcome letter. If the claimant contends that he had finished at the store early, he would have said that Jim Lillis when he telephoned.

The claimant claimed that Jim Lillis, Mike Downes, Chris Unwin, Jason Collins, Chris Johnson and John Foggan all lied and that he was telling the truth. He suggested a conspiracy instigated by Jason Collins. Having spoken personally to the store managers, I was satisfied that there was no hidden agenda and that Jason Collins had not influenced or told them what to say.

At the heart of the issue was whether the claimant had asked colleagues to lie. I considered whether the claimant's version of events was more likely compared to the versions of the others. I considered the credibility of the claimant's version and what I had been told and what had been written in statements. I concluded that claimant did lie to his manager when he told him he was simply getting something from his car and in other ways such as carrying out shopfloor walks with his store managers and asked others to lie on his behalf to include Mike Downes, Jason Collins and John Foggan. This in my judgement was a serious breach of trust which I concluded amounted to gross misconduct and justify summary dismissal."

37. The Tribunal finds as a fact that this was Mr Marshall's honest belief and that the reasons summarised above were the true reasons for the claimant's dismissal.

Appeal.

38. The claimant appeals against the dismissal and an appeal hearing takes place on 21 January 2019.

39. Mrs McIntyre, an employment law consultant employed by the respondent, heard and decided on the appeal against dismissal. Ms McIntyre reviewed the decision to dismiss and the particularly a number of points raised by the claimant.

40. The appeal was unsuccessful and the claimant is informed of this on 8 February 2019.

Submissions

41. Mr Boyd agreed that he would, on behalf of the respondent, provide closing submissions first so that the claimant would have an opportunity of considering these and responding as well as putting forward his own submissions.

The respondent's submissions.

42. In summary, Mr Boyd directed the tribunal to the tests which it is required to follow in unfair dismissal cases and as set out below under the heading of "the law".

43. Mr Boyd specifically referred to the case of *Sainsburys Supermarkets Limited v, Hitt 2003 IRLR 23 CA* (the "Sainsbury case") reminding the tribunal that the range of reasonable responses test applies to the respondents investigation and other relevant aspects of procedure as well as to the decision to dismiss itself. He specifically referred to 2 issues:-

- a. The fact that the claimant was not interviewed as part of the investigation process
- b. The fact that the respondent had not viewed the cctv recording that the claimant had requested.

44. In relation to these issues he noted that some employers may have taken one or other of the steps but the fact that the respondent did not undertake these steps did not make the dismissal unfair.

45. Mr Boyd also put forward arguments in accordance with Polkey, that any procedural unfairness would have made no difference to the outcome of dismissal.

46. Finally Mr Boyd made submissions in relation to contributory conduct, stating that an appropriate deduction for the conduct of the claimant would be 100%.

The Claimant's submissions.

47. The claimant made a number of points in his submissions. These are noted below.

- a. It was unfair that no notes were taken of the initial discussions on 30 November 2018.
- b. The claimant was not interviewed as part of the investigation process.
- c. Others were interviewed beyond the initial subject matter of the investigation this indicated that the main aim was to find further issues against the claimant
- d. The claimant's managers showed resentment about the fact that the previous disciplinary action had been overturned on appeal.
- e. The previous disciplinary action had resulted in a warning. There was inconsistency of treatment.
- f. The claimant was suspended for 5 weeks which is contrary to ACAS guidance
- g. Mr Marshall acted as both investigating officer and juror
- h. It was unfair that 2 key witnesses were not interviewed being Jim Lillis and (until much later) Andrew Lock. By the time Andrew Lock was interviewed his memory will have faded.
- i. It was unfair that the claimant had asked for CCTV footage to be viewed and it was not.
- j. The phone records provided with the appeal letter were not considered.
- k. At no point did Lidl show any compassion particularly in relation to the circumstances of his father in law's serious illness.
- l. The claimant's version of events was a possible explanation on the facts and yet the respondent did not consider it.
- m. There was exaggeration in relation to the number of store managers who the respondent said were lying.

48. The submissions of both parties are referred to below under the heading *Analysis*.

The Law

49. The respondent bears the burden of proving, on the balance of probabilities, that the claimant was dismissed for misconduct; see section 98 (1) ERA. If the respondent fails to persuade the tribunal that it had a genuine belief in the claimant's misconduct and that it dismissed him for that reason, the dismissal will be unfair. If the respondent does persuade us that it held that genuine belief and that it did dismiss the claimant for that reason, the dismissal is only potentially fair. Consideration must then be given to the general reasonableness of that dismissal under section 98 (4) ERA.

50. Section 98 (4) ERA provides that the determination of the question of whether a dismissal is fair or unfair depends upon whether in the circumstances (including the respondent's size and administrative resources) the respondent acted reasonably or unreasonably in treating misconduct as a sufficient reason for dismissing him. This should be determined in accordance with equity and the substantial merits of the case.

51. In considering the question of reasonableness, the Tribunal should have regard to the decisions in *British Home Stores v. Burchell* [1980] ICR 303 EAT; *Iceland Frozen Foods Limited v. Jones* [1993] ICR 17 EAT; *Foley v. Post Office and Midland Bank plc v. Madden* [2000] IRLR 82 CA as well as the Sainsbury case.

52. In summary, these decisions require that the Tribunal focuses on whether the respondent held an honest belief that the claimant had carried out the acts of misconduct alleged and whether it had a reasonable basis for that belief. The Tribunal should not however put itself in the position of the respondent and decide the fairness of the dismissal on the what the tribunal itself would have done. It is not for the Tribunal to weigh up the evidence and substitute its own conclusion as if the tribunal was conducting the process afresh. The function of the Tribunal is to determine whether, in the circumstances, the respondent's decision to dismiss the claimant fell within the band of reasonable responses. As Mr Boyd noted in his submissions, this band applies not only to the decision to dismiss but also to the procedure by which that decision was reached.

Analysis

An honest belief

53. As noted already, the Tribunal has decided that Mr Marshall honestly believed that the Claimant had carried out the following acts of misconduct and dismissed him for these reasons:-

- a. That on 20 November 2018, the claimant:-
 - i. had told Mr Downes not to answer the store phone if Mr Lillis called

- ii. later that afternoon on leaving the store for the second time that afternoon, he told Mr Downes to inform anyone who called that the claimant had left 5 minutes before the call.
 - b. In providing these instructions to Mr Downes, he was involving Mr Downes, an employee who was junior to the claimant and who reported to him, to mislead others as to the claimant's whereabouts.
 - c. The claimant had intended to leave the Leyland store early on 20 November 2018 on the first occasion of his leaving. He had said goodbye to Mr Downes and was in his car leaving the store with the intention of going home before the end of his working day. It was only on being called by Mr Lillis on his mobile phone that he panicked and suddenly decided to change his plans
 - d. That he sent a text message to Jason Collins which instructed him to lie to the auditor should he attend the store.
 - e. That he instructed John Foggan to inform Mr Lillis, if asked, that store visits were carried out in a certain way when both the claimant and Mr Foggan knew they were not.
54. The Claimant has queried whether this belief might be genuine, citing particularly the previous disciplinary incident which had been overturned on appeal and a concern that he had that Mr Marshall as well as Mr Lillis were "out to get him."
55. The Tribunal did not hear any direct evidence in relation to this. It did hear evidence of frustration particularly on the part of Mr Lillis about the claimant's whereabouts and performance on occasions and also evidence that these issues were being addressed by Mr Lillis in discussions with the claimant.
56. There is no suggestion by the claimant that Mr Lillis called the claimant to try to "catch him out" on 20 November. Mr Lillis explained the reason for his call was operational and the Tribunal accept his explanation. There is no evidence or suggestion that either Mr Lillis or Mr Marshall pressurized any of the witnesses in to providing the information that they did. There is no evidence or suggestion that the witnesses were persuaded by Mr Marshall or Mr Lillis to provide dishonest accounts.
57. In fact the explanation that the claimant puts forward about the evidence from the store managers is that he and Mr Collins do not get on and Mr Collins has managed to have influence over and put pressure on the other store managers to act in the way they had. Mr Marshall considered this explanation and did not accept it. It was within the range of reasonable responses that he did not accept the explanation.

A reasonable belief.

58. The Tribunal has decided that Mr Marshall's honest belief that the claimant had carried out the acts of misconduct noted above, was reasonable.

59. The Tribunal has regard to the following:-

- a. That there were a number of individuals raising complaints against the claimant
- b. That Mr Marshall considered the evidence that Mr Lillis had obtained and then, on this being challenged by the claimant, arranged to meet the relevant individuals himself.
- c. That the only store manager who appeared to hold a dislike of or grudge against the claimant was Jason Collins and his version of events was supported by the text message which he provided.
- d. That Mr Marshall was reasonable in deciding that the text message did support the version of events provided by Jason Collins. It is difficult to see what other explanation for the text there could be other than the one which Jason Collins provided

The sufficiency of the investigation.

60. The issues below in particular were raised by the claimant in relation to the investigation:-

- a. No notes were taken of the initial discussion with Mr Downes on 30 November 2018. The Tribunal's view is that this was an initial discussion, that it caused enough concern to give rise to the claimant's suspension but that it was always clear that a full interview would then take place with Mr Downes. This happened 3 days later and notes of the interview were taken and provided to the claimant.
- b. The claimant was not interviewed himself as part of the investigation. The respondent's own disciplinary procedure states as follows on the point: "*you may be invited to an investigatory meeting but this will not be necessary in all cases.*" (page 49). On appeal, Mrs McIntyre accepted that it would have been better for a fuller investigation meeting to have been held with the claimant (see appeal outcome letter pages 224 to 227

and particularly at page 225B). In the experience of the Tribunal, many employers would have interviewed the claimant as part of an investigative process rather than making the claimant wait until the disciplinary hearing itself to be able to provide his explanation. We agree with Mrs McIntyre, that an investigation meeting would have been preferable and it may have resulted in some of the allegations that were not found (for example the allegation that the claimant was working less than 40 hours a week) to have been abandoned. In this case it is clear that the claimant understood the allegations against him and had the opportunity of responding fully to those allegations and that due regard was had to the claimants responses. The Tribunal does not find that the lack of a full investigation interview with the claimant makes this dismissal unfair.

- c. No proper consideration of telephone records submitted by the claimant. This was also a point that was made and considered on appeal. The Tribunal agrees with the conclusion of Mrs McIntyre, particularly in relation to the fact that the claimant had a personal mobile phone, that the claimant's evidence is that he was also using that phone at the critical times on 20 November 2018 but that he was unable to provide the respondent with the call records from his personal phone. The Tribunal was also referred to the letter from the school confirming that the claimant's son had extended after school club on 20 November 2018 but this letter does not assist in relation to the timing or sequence of calls on 20 November.
- d. CCTV footage. The claimant had requested the CCTV footage of the store on 20 November 2018. The respondent did not obtain the CCTV footage. Mr Lillis, in his investigations, did not understand the relevance to the allegations being considered.
- e. The CCTV footage would not have been relevant to the allegations themselves. The claimant's issue in relation to the footage is that it would have shown that Mr Downes' evidence was unreliable. It was possible that the footage would have shown Mr Downes and the claimant carrying out an inspection of parts of the store. In his version of events, Mr Downes had stated that he would have benefited from the claimant carrying out a "walk round" of the store with him. The claimant had not done this.
- f. The term "walk round" is one that relevant employees of the respondent understand. It means a detailed tour and review of the store carried out by a store manager with his area manager. Every fixture is looked at. This takes in the region of 2 hours.
- g. There can also be more cursory inspections of parts or all of the store which will be much less detailed and time consuming than a walk round. Had the CCTV footage shown Mr Downes and the

claimant together on the shop floor, that would not have revealed anything. The claimant accepted on being questioned in the Tribunal that he had not undertaken a full walk round with Mr Downes on 20 November 2018.

- h. Mr Marshall should not have carried out the further interviews himself. Paragraph 6 of the ACAS Code of practice on Disciplinary and Grievance Procedures (2015) states “*In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing.*” In this case, Mr Lillis carried out the initial investigation; Mr Marshall chaired a disciplinary hearing and, having heard from the claimant in that hearing, chose to hear from the various witnesses himself.
- i. That is different to Mr Marshall carrying out the investigation itself. The tribunal heard from Mr Marshall and Mr Lillis and find that Mr Lillis carried out the investigation; although Mr Marshall was aware of and had instructed Mr Lillis to do this, he then left Mr Lillis to get on with the investigation. The issues then came before Mr Marshall at the disciplinary hearing and Mr Marshall, as the chair of that hearing, decided that he wanted to hear from certain witnesses himself.
- j. The information provided by those witnesses to Mr Marshall was then shared with the claimant before the hearing was resumed on 6 January 2019. Some employers might have proceeded differently; however the tribunal has no criticism of this chosen process. The interviews which Mr Marshall carried out were part of his decision making process; effectively testing the evidence which had been gathered in the investigation.

61. The decision of the tribunal is that the investigation carried out was sufficient to support the honest and reasonable belief.

Sufficiency of reason.

- 62. The decision of the Tribunal is that respondent was reasonable in treating the claimant’s conduct as a sufficient reason to dismiss him,
- 63. The claimant raised the fact that he had only received a formal warning as a result of a previous disciplinary process when he was disciplined for lying to his manager about where he was on a particular working day.
- 64. The respondent explained the difference on the occasion which led to his dismissal was that he had involved more junior employees of the respondent and those for whom the claimant had managerial responsibility. This is an important part of the decision of Mr Marshall in

the dismissal letter of 7 January 2019 (see particularly the bullet point at the top of page 136.

Other matters.

65. The analysis section above deals with most but not all of the points the claimant raised in his submissions. The other matters mainly relate to the concerns of the claimant that he was effectively being targeted by his managers. What is clear is that there were concerns about the extent to which the claimant was committed to his employment. The evidence of the claimant was that these concerns were misguided and he was able to provide evidence that the performance of the area he managed was the best.
66. As it was, the complaints raised did not come from those managing the claimant but instead came from those he managed. Mr Lillis did not go looking for the concerns raised by Mr Downes and the information about the other concerns all flowed from that. The tribunal did not see the concerns of his managers or the fact that the previous disciplinary warning had been overturned on appeal, as being of any relevance.
67. Finally, in relation to the issues of contributory conduct and a “Polkey” deduction:-
- a. As the tribunal has decided that the dismissal was not unfair there has been no requirement to reach a decision about whether the conduct for which the claimant was dismissed did in fact occur. As explained to the claimant at the beginning of the hearing, it is not for the tribunal to reach its own decision about what the claimant did wrong and whether the Tribunal would have dismissed the claimant. The test applied by the Tribunal is explained above.
 - b. As for the Polkey or “no difference” test, it is clear to the tribunal that had the procedural “gaps” referred to by the claimant been dealt with (particularly obtaining the CCTV, and interviewing the claimant himself as part of the investigation process) they would have made no difference to the outcome.

Employment Judge Leach

Date: 14 October 2019

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

22 October 2019

FOR THE TRIBUNAL OFFICE

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