



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Janusz Grden

v

Travis Perkins Plc

Heard at: Cambridge

On: 2 July 2020

Before: Employment Judge Ord

Appearances

For the Claimant: Mrs Joanna Grden, Wife

For the Respondent: Ms Lynn Randall, Employee Relations Manager

Interpreter: Mrs Joanna Jones, Polish speaking

RESERVED JUDGMENT

The Claimant's complaint that he was unfairly dismissed is not well founded and his claim is dismissed.

RESERVED REASONS

1. This matter came before me on 2 July 2020. The case was listed for a two day Final Hearing. The commencement of the hearing was delayed because the Tribunal required the assistance of an interpreter. The Claimant's first language is Polish and he did not have sufficient use of English to conduct the hearing in English.
2. The case was therefore postponed until 2:30 pm. With the agreement of both parties, I sat until 4:50 pm on 2 July 2020, by which time we were able to conclude all evidence, take a short break and hear closing submissions.
3. To avoid the need for either party to attend Court on 3 July 2020, I then reserved Judgment.

4. The Claimant was employed by the Respondent as a Distribution Warehouse Assistant at the Respondent's premises at Gowerton Road, Northampton. He was continuously employed from 1 April 2016 to 23 July 2019 when he was dismissed, without notice, on the stated ground of conduct.
5. The only complaint brought by the Claimant was that he was unfairly dismissed. Accordingly, the issues for the Tribunal to determine were:
 - 5.1 What was reason, or if more than one, the principal reason for the Claimant's dismissal?
 - 5.2 Was that a potentially fair reason for dismissal within Section 98(2) of the Employment Rights Act 1996? If not, did it amount to some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held?
 - 5.3 If the dismissal was on the ground of conduct,
 - 5.3.1 did the Respondent have a genuine belief that the Claimant was guilty of the misconduct alleged?
 - 5.3.2 did it have sufficient grounds on which to sustain that belief?
 - 5.3.3 at the time it had formed that belief, did it do so on the basis of a sufficient investigation?
 - 5.3.4 did the Respondent act reasonably within the meaning of s.98(4) of the Employment Rights Act 1996 in treating the conduct found as a sufficient reason for dismissing the employee?

The Hearing

6. The Claimant gave evidence, as did his wife (who was also acting as his advocate). The Respondent called evidence from Mr Robert James Hales, who took the decision to dismiss the Claimant and from Mr Simon Wadsworth, who heard the Claimant's appeal against dismissal. Reference was made to a bundle of documents.

The Law

7. Under Section 94 of the Employment Rights Act 1996 (ERA 1996), every employee has the right not to be unfairly dismissed.
8. Under Section 98(1) of that Act, it is for the employer to show the reason, or if more than one the principal reason for any dismissal and that it is either a reason falling within sub-section (2) of that Section of the Act, or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

9. Under Section 98(2)(b) ERA 1996, a reason is a potentially fair reason if it relates to the conduct of the employee.
10. Under Section 98(4) ERA 1996, if an employer has established that the reason, or if more than one, the principal reason for the dismissal was a potentially fair reason, the question of whether or not the dismissal is fair or unfair, having regard to that reason, depends on whether in the circumstances including the size and administrative resources of the employers undertaking, the employer acted reasonably or unreasonably in treating it as sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case.
11. The paradigm test for determining the fairness or otherwise of a dismissal on the ground of conduct, was laid down in the leading case of British Home Stores v Burchell [1980] ICR 303, which established the issues for the Tribunal to determine which are set out in the list of issues in this case.

The Facts

12. Based on the evidence before me, I find on the facts.
13. The Claimant began work for the Respondent as an agency worker and became a directly employed employee on 1 April 2016. He worked at the Gowerton Road premises throughout the period of his employment, working as a Warehouse Operative.
14. Mr Hales' unchallenged evidence was that in May 2018 a security team employed by the Respondent was investigating stock losses from the Respondent's premises at Gowerton Road. After investigation a number of employees were dismissed for dishonesty on the basis that the losses were caused by theft carried out by employees within the Respondent's undertaking. New security measures were introduced which Mr Hales reported resulted in a substantial reduction in the level of stock losses.
15. The Claimant was not involved in any disciplinary action at that time.
16. On 2 July 2019, the Claimant was called to a meeting with the Respondent's security officers. He was given no notice of this meeting, nor its purpose.
17. Part of the Claimant's complaint relates to the fact that this meeting took place without an interpreter being present. He told me that he thought it would be a quick meeting and that he would go back to work straight afterwards. It is a fact that no interpreter was present and I also find as a fact that the Claimant raised no complaint about that fact at the time. He says he was confused and struggled to understand what was being said, but he did not ask for the meeting to take place with an interpreter.

18. At that meeting, the Claimant was suspended from work on the basis of an allegation of gross misconduct, it being alleged that he had removed goods from site and had sold them on for personal gain.
19. The Claimant received a letter of that date from his shift leader, Dan Robinson, stating that he had taken the decision to suspend the Claimant with immediate effect whilst further investigation was carried out into the allegations.
20. The basis of the investigation was that goods which had been identified as potentially been from Travis Perkins Plc, were sold on an eBay account registered to the home address of the Claimant, namely Flat 36, The Print Works, 95 Stimpson Avenue, Northampton.
21. These goods had been offered for sale on an eBay account prior to and up to 17 May 2018, through an eBay account in the name of "*Cleopatra83*". Registered to Joanna Grden, the Claimant's wife.
22. The security team had identified goods being sold through that account consisting of:
 - 22.1 Honeywell Hot Water Kit;
 - 22.2 Nest Thermostat;
 - 22.3 3 x Makita 18v batteries;
 - 22.4 a further single Makita 18v battery;
 - 22.5 Worcester Bosch Wave Smart control; and
 - 22.6 Nest Outdoor Security Camera.
23. All of these items were offered for sale at a price below normal list price.
24. The interview on 2 July 2019 had been conducted by Mr Tommy Robertson, Security Investigator. In his Security Investigation Report of 4 July 2019, he confirmed that the Claimant advised that his wife sold items from an eBay account at their home address and that after initially denying that anything had been sold on eBay by her which might be the same as that stocked by Travis Perkins Plc, he subsequently advised that she may have sold a Makita battery that he had purchased at a car boot sale; in respect of which he could not provide any further information. After a break in the interview, the Claimant is reported to have advised that his wife had sold four Makita batteries through her eBay account, the Claimant again stating the goods had been purchased at a car boot sale. The Claimant denied having removed any goods from the Respondent's premises.
25. In his Security Investigation Report of 4 July 2019, Mr Robertson recommended that there was a case to answer, specifically that the Claimant removed and sold for profit online, as identified in the Report, goods belonging to the Respondent.

26. Mr Robertson conducted an investigation interview with the Claimant on 9 July 2019. Mr Jankowski attended as a translator to assist the Claimant with his English.
27. At that investigation hearing, the Claimant told Mr Robertson that he had not purchased or removed any products from the Respondent for sale and did not have an eBay account. He said that he no longer lived at the address Flat 36, The Print Works, 95 Stimpson Avenue, Northampton and had moved out at least 18 months previously. He provided Mr Robertson with a copy of a Court Order dated 1 February 2018 which recorded that the Claimant had moved out of the property Flat 36, The Print Works, 95 Stimpson Avenue, Northampton approximately one week earlier and was renting a room in a shared house, but that Mrs Grden, the Applicant, sought an Order that the Claimant should not return to and / or attempt to enter those premises in case he did return. She was previously seeking, but no longer sought, a Non-Molestation Order.
28. The Court Order made by Lay Justices in the Family Court at Northampton on 1 February 2018, Ordered the Claimant not to return to, enter, or attempt to enter Flat 36, The Print Works, 95 Stimpson Avenue, Northampton. The Order was to last until 31 July 2018.
29. Neither at any stage during the disciplinary process, nor before me, has any document been produced to indicate that that Court Order has been extended or renewed.
30. The Claimant said that his wife sold items on eBay purchased at car boot sales. He said that he had only attended the car boot sale once, which he said on 9 July 2019 was *"a couple of years ago"*. He said, however, that the items bought at car boot sales were *"some items... new with a box and some have no box"*.
31. The Claimant denied supplying goods for sale by his wife on her eBay account and said that his wife would most likely not have any proof of purchase.
32. The Claimant also produced a Court Order placing his daughter on a child protection plan. This had been terminated on 25 April 2018 whereafter the Claimant said that he was allowed regular visits with his daughter, but not at the home address.
33. The Claimant was asked to comment on the fact that after the events of May 2018, no more specialist items were sold on his wife's eBay account. The Claimant said he could not explain this but it might be coincidence.

34. After a short adjournment, the Claimant asked how and where the Respondent had obtained the list of products sold on his wife's eBay account, which was demonstrated on a Smart Phone.
35. The Claimant had also been asked in reply to a comment of his, that some of the batteries purchased from a car boot sale did not work and were sold for £8 each, why the eBay account showed 4 batteries being sold for £45 each which the Claimant could not explain.
36. The Security Investigation Report was submitted to Mr Hales, who on 11 July 2019 wrote to the Claimant to invite him to attend a disciplinary hearing on 16 July 2019 at 8pm at the Gowerton Road premises. The disciplinary hearing was to consider an allegation of gross misconduct that the Claimant removed goods from site and sold them on for personal gain. The Claimant was reminded that under Section 9.3.2 of the Colleague Handbook, 'theft of property belonging to the Respondent, by a colleague or customer, or any other theft carried out whilst on Company business, was an allegation of gross misconduct'.
37. At the disciplinary hearing, Mr Jankowski again attended as witness and interpreter as required. Mr Hales, for the purpose of the hearing and the roles of those attending including a note taker (Cam Kooner). At that point the Claimant handed a written grievance from himself and a witness statement from his wife.
38. The Claimant expressed disappointment at being suspended and Mr Hales explained that suspension was not a sanction but to allow for a proper investigation. The Claimant said that he did not have an eBay account, that his English was not good enough to operate an eBay account and that his wife had an account buying and selling goods which she bought from car boot sales and charity shops and that he did not know what she sold.
39. When asked why the Claimant had not updated his address within the Company, the Claimant said he did not want to speak to the investigator about his personal issues and did not want to tell anyone, but did not explain why a simple change of personal address was not lodged.
40. The Claimant asked how the Respondent had obtained details of what was sold on the eBay account, which Mr Hales could not explain because the Security Team had conducted the initial investigation. The Claimant's response was that the account must have been hacked and that he did not know why goods which had been sold more than a year earlier were only now being looked into. He said that if the investigation had been done earlier, he could have brought in the lady from the car boot sale.
41. Mr Hales explained to the Claimant that he would make his decision based on the balance of probabilities. The Claimant said that he had had no

contact with his wife for 3 months due to the Court Order dated 1 February 2018. When asked whether the Claimant and his wife were back together and whether he was talking to his wife by June 2018, the Claimant said he had had one day with her that month for a visit to a pet store.

42. The Claimant said he did not know how his wife had sold items which could have come from Travis Perkins Plc. He said that he might have bought goods which his wife sold, but he did not know his wife's log in details for her eBay account.
43. The Claimant was specifically asked about a Worcester Bosch Wave Smart Control, Travis Perkins Plc price £377.69. Mr Hales said he did not understand how that could be sold at a car boot sale so cheaply, that it could be resold to make a profit when on the eBay account it had been sold for £139. The Claimant's response was that his wife and her brother buy many items in bulk to reduce the price.
44. The Claimant added that his wife would not sell things after people got sacked at Travis Perkins Plc and that he did overtime to buy a better car, but in the car park there were some nice cars but not all the drivers did overtime. Prior to an adjournment, the Claimant said that he came to work for work, not to steal and that he did not know what his wife was selling on eBay.
45. Mr Hales contacted the Employee Relations team to take advice on the grievance letter that the Claimant had submitted. He was advised that the grievance points were all mitigation points which could be raised within the disciplinary hearing. Mr Hales informed the Claimant of this and invited him to the reconvened disciplinary hearing which took place on 22 July 2019 with the same people present as on 16 July 2019.
46. Mr Hales reviewed the points from the first meeting. He confirmed that there was no CCTV evidence, but said this was not determinative of the issue. The Claimant had produced a report showing that there was an Order preventing him from living with his wife due to domestic violence which was said to have stemmed from arguments due to the Claimant's gambling and drug use. He was asked what he was doing to get money, Mr Hales saying people might make mistakes when they were struggling. The Claimant admitted to spending money on bets, but said that he did not spend £600 or £700 as his family comes first.
47. The matter was adjourned further to the next day for a decision.
48. At that further meeting Mr Hales said to the Claimant that he had a reasonable belief that the Claimant had taken items from the workplace and sold them for personal gain. As this was an act of gross misconduct, his

decision was to dismiss the Claimant with immediate effect. He explained the right to appeal and said that the decision would be confirmed in writing.

49. That same day, 23 July 2019, Mr Hales confirmed the decision in writing setting out his reasons as follows:
 - 49.1 That the eBay was close enough connected to the Claimant for him to reasonably believe that he personally gained from the sales;
 - 49.2 That all the items were sold more than 12 months ago with the exception of the Nest Security Camera sold on 17 May 2018. Mr Hales concluding that he believed the products were sold in a period in which he was still able to live in the property;
 - 49.3 Some of the items sold were expensive specialist items which he did not believe would be sourced from a car boot sale, based on his own experience of visiting car boot sales. He did not believe that would be sold at a low enough price for a person to be able to make a profit on a sale and referred to the Honeywell Hot Water Kit being sold for approximately 50% of list price;
 - 49.4 That the history of sales from the eBay account shows sales of Travis Perkins Plc range stock stopping in May 2018 which coincided with the "*clamp down*" at the Gowerton Road premises resulting in investigations into stolen goods which led to a number of colleagues being dismissed and new security measures implemented. Mr Hales commented that the implementation of the security measures reduced the impact of stock loss at the premises and he therefore found it reasonable to conclude that the eBay account ceased sales of stock available at Gowerton Road due to enhanced security measures and other colleagues being caught for dishonesty. There was no other Gowerton range stock sold between May 2018 and May 2019 when information on the account was gathered.
50. For those reasons Mr Hales concluded that it was reasonable to believe that he had removed goods from the site which had been sold for personal gain. The Claimant was summarily dismissed.
51. On 29 July 2019, the Claimant submitted a written appeal against dismissal:
 - 51.1 He said that dismissal was too harsh a penalty given his working history. He denied stealing any items, referred to the lack of witnesses or CCTV evidence of his theft and referred to the delay between the alleged incidents and the action being taken against him.

- 51.2 The Claimant further said that the account was not his but his wife's and because of data protection he should be informed about the fact that the Respondent wished to access private data, particularly when it was not his own account.
- 51.3 The Claimant alleged that he was being victimised for something and that there was a target to get rid of him from the company, but he did not know why. He did not understand how the Respondent had been "*so well informed*" and how it had identified his wife's eBay account. He asked whether every employees' family members accounts were being checked. He asked how the Respondent was aware of his wife's user ID, how it belonged to a specific person and was registered to the address given (eBay would not give that information to a third party in his view) and how the history of sales was known when that information was not accessible for users, only 60 days history.
- 51.4 The Claimant said that his wife had been advised to report these matters to the Police as a breach of confidentiality and said that the suggestion that information can be shown on a smart phone was illegal because that information cannot be accessed that way.
- 51.5 The Claimant said there was insufficient consideration of his explanation and that the decision to dismiss had been predetermined. He questioned why the decision to deal with his grievance was as part of the disciplinary hearing and he said that he had not had an official outcome from it.
- 51.6 The Claimant also complained that he did not have access to the goods sold through his wife's eBay account, as his working place was the yard and CCTV cameras would show the aisles where expensive goods were located so that it could be seen whether he was walking around that area. He questioned why he was not one of the people questioned in 2018 and he was being questioned about matters 15 months later.
- 51.7 The Claimant also referred to his family issues at the time, so that "*the last thing in my head was to steal and give the goods to my wife asking her to sell it and give me the money*".
- 51.8 The Claimant referred to the situation having a serious influence on his family life, that it was affecting his wife who had become very stressed and was not sleeping, or eating and was taking time off work.
- 51.9 He asked for correspondence to be sent to the address as stated on that letter (39 King Edward Road). He referred to the other address

as his wife's address and said that she was flying back to Poland with her daughter and if any letters went to that address he would not be able to receive it.

52. On 5 August 2019, Mr Wadsworth wrote to the Claimant inviting him to attend an appeal meeting on 13 August 2019. This was postponed to 19 August 2019 to enable the Claimant to have a representative present.
53. Mr Wadsworth prepared a hearing plan ahead of the appeal hearing which included questions he wished to ask the Claimant, leaving space in the hearing plan for the Claimant's answers to be written by the note taker, Mr Spencer. Those notes of the appeal hearing are presented as part of the bundle and a typed version was also available.
54. Mr Wadsworth checked the Claimant's points of appeal which he agreed with,
 - 54.1 The Claimant said that the penalty was harsh because he had not stolen anything.
 - 54.2 The Claimant was asked to explain his point regarding data protection, which he explained by saying that the eBay account had nothing to do with him and that he did not know that his wife was selling anything on eBay at the time.
 - 54.3 When it was put to him by Mr Wadsworth that it appeared to be a coincidence that goods sold on eBay were stocked by Travis Perkins Plc and that there were stock losses recorded against all of the products listed. The Claimant said that his wife used car boot sales and he could not explain what she did.
 - 54.4 The Claimant was asked whether in his view it was reasonable to believe that an eBay account in his wife's name could be linked to him. His reply was that it would be stupid to get involved with stealing goods and passing them on to a family member.
 - 54.5 When asked about the price at which goods were sold on the eBay account (thus must have been purchased at any car boot sale for a lower price than that) the Claimant explained that his wife was very good at car boot sales.
 - 54.6 The Claimant said that the information used to dismiss him had been obtained from eBay illegally. When asked why he felt he had been victimised, he said people were talking about him and had heard things before the disciplinary. He said that this happened whilst he

was suspended and that he had heard it from someone who was around Mr Owens, but he would not identify that person other than saying that it was another Polish person who no longer worked with the Respondent.

- 54.7 When asked why the Claimant thought the decision had been prejudged, the Claimant said that the Respondent had been "*stuck on the point*" that his wife was selling things.
- 54.8 Mr Wadsworth explained that the grievance was not dealt with separately because the points raised were considered to be explanations for the disciplinary allegations. The Claimant said that he had met people from work who told him that Mr Owens was saying that the Claimant would not be coming back, but again did not identify who said this.
- 54.9 The Claimant asked why he was not dismissed in 2018 and said that he and his wife had separated just before Christmas 2017. He said that he wanted the appeal process to clear his name.
- 54.10 Mr Wadsworth adjourned the hearing to speak to the relevant security officer and to Mr Owens.
- 54.11 Mr Owens denied having any contact with the Claimant or discussing his situation with other colleagues. He said that people had asked what was happening to the Claimant when he was on suspension and Mr Owen said that he could not discuss it because it was confidential and that he, in any event, did not know.
- 54.12 Mr Robertson, the Security Investigator, reported that during the interview which he had conducted, the Claimant had said that he lived with his wife and daughter and that he was aware that his wife regularly sold items via eBay. Copies of two audio recordings taken during that conversation were provided and were listened to by Mr Wadsworth.
- 54.13 Those audio recordings were not available to the Tribunal, did not form part of the bundle and were not transcribed for the benefit of the Tribunal. The Claimant had copies, Mrs Grden had a copy of the audio file on her mobile telephone, but neither party submitted this in evidence and there were no facilities on the day to listen to, or to have transcribed the relevant interview.
55. On 12 September 2019, Mr Wadsworth submitted his outcome letter from the Claimant's appeal. In relation to the appeal findings, he reached the following conclusions:

- 55.1 There was an error in the date of the letter giving him the outcome of the disciplinary hearing, incorrectly stating the date of suspension. Mr Wadsworth concluded this was a clerical error and not significant in the outcome of his disciplinary hearing. He concluded that dismissal was not too harsh a sanction for the conduct found. He listened to the recording of the interview with Mr Robertson when the Claimant said that he did live at the same address as his wife and that she regularly sold items via eBay, which said specifically two Makita batteries being sold via the eBay account without prompting. Mr Wadsworth concluded that it was reasonable to believe that the Claimant was in contact with his wife and was aware of the items being sold on her eBay account.
- 55.2 In relation to the point that the eBay account was in his wife's name and not his own and that he should have been informed that the company wanted to access her and his private data, Mr Wadsworth concluded that as the Claimant had accepted during his interview with Mr Robertson that he knew about his wife's eBay account and at least some of the items sold on it, he did not accept the Claimant's submission that he was unaware of items sold on that account. He advised the Claimant that information regarding sales on that account came to the attention of the Travis Perkins Plc security team and companies such as eBay provide information to companies such as Travis Perkins Plc to prevent fraud.
- 55.3 In relation to the allegation of victimisation, a lack of understanding about the company having some information regarding the Claimant's wife's eBay account including access to the user name and the relevant address which the Claimant believes must have been accrued illegally, Mr Wadsworth advised that he had spoken to Mr Owens who advised that several colleagues on shift had tried to discuss the Claimant's suspension with him. However, Mr Owens was unable to discuss it. Mr Owens had not been involved in any part of the investigation or disciplinary process and the Claimant had been unwilling to say which colleagues had provided this information to him. Mr Wadsworth also advised that Mr Robertson had told him that the Travis Perkins Plc security team were linked to fraud prevention organisations to which eBay provide sales information. Mr Wadsworth was therefore satisfied that the information had been collated appropriately.
- 55.4 The Claimant's further ground of appeal was that not enough consideration had been given to his explanation and that the decision to dismiss had already been made. Further, his grievance had not been responded to.

- 55.5 Mr Wadsworth set out that the grievance was not heard separately as the points it consisted of were considered to be explanations for the disciplinary allegations which were discussed as part of the disciplinary process. The Claimant had alleged that colleagues had advised him that Mr Owens was stating that he would not be returning to work and Mr Wadsworth repeated that Mr Owens had denied saying this and further investigation was not possible as the Claimant had not advised the identity of any of those colleagues.
- 55.6 The final point of appeal was that the Claimant did not have access to the goods in question and that there was an operation in early 2018 to catch anyone that had committed theft, leading to several people being dismissed. Further, that at the time when those thefts had been committed, the Claimant and his wife were not on good terms and social services were involved with his family life so it would not make sense for him to be stealing goods for his wife to sell on.
- 55.7 Mr Wadsworth referred to his interview with Mr Robertson. Mr Robertson had confirmed that during the initial security investigation interview, the Claimant had advised that he did live with his wife at the address to which the eBay account was registered. This was confirmed at the audio recording. He concluded that at the time the goods were sold, therefore, the Claimant was in contact with his wife.
- 55.8 For those reasons, Mr Wadsworth rejected the Claimant's appeal.
56. The evidence before me from the Claimant was effectively a repetition of those matters which had been put before the disciplinary hearing. He complained about the lack of a witness or interpreter at the initial meeting on 2 July 2019, but accepted that he had not asked for an interpreter, or for an adjournment to obtain assistance with language.
57. The Claimant says that he did not receive a full copy of the investigation report dated 4 July 2019. His evidence in his witness statement dated 3 April 2020, was that he had *"just realised recently that one page was missing so I didn't get a full report"*. This was not raised at any point previously and if there was a missing page, it was not brought to the attention of the Respondent. The allegedly missing page was one that specifically set out the Claimant's address, the person to whom the relevant eBay account was registered, the goods sold through that account and the fact that when the Claimant was interviewed by Mr Robertson, he declined a copy of the relevant interview with the next paragraph being numbered 2.7. In so far as it is necessary to do so, I find as a fact that the complete report was provided to the Claimant. If it was not, he would have raised this as part of the disciplinary or appeal process.

58. In his evidence before me, the Claimant said that he was victimised “*for something*” but did not say what and said that the audio record was not added to the relevant documents by the Respondent but insisted that it should be taken into consideration. As I have said, neither party sought to include this document and there was no evidence before me of any demand by the Claimant for it to be added to the bundle.
59. Mrs Grden’s evidence related to the family circumstances. When she was cross examined about the limited number of items which could have come from Travis Perkins Plc, which she sold through her eBay account, the fact that they were not sold after, or substantially after, the “*clamp down*” in 2018 and that those items were very different from the other items which she sold on her account (exclusively fashion, fashion accessories and perfume), she said that these were matters of coincidence and she, perhaps, had not been able to obtain any more goods of that type at the car boot sales.
60. It is against that evidential and factual background that the Claimant says that he was unfairly dismissed.

Conclusions

61. Applying the facts found to the relevant Law, I have reached the following conclusions:
 - 61.1 There is no evidence to suggest that the Respondent, or any agency acting on its behalf, acted improperly, unfairly or illegally in obtaining the information which it did regarding the sale of goods through the Claimant’s wife’s eBay account.
 - 61.2 At no stage during the course of the disciplinary process, and not before me, has it been denied that the items in question were items of the type sold by the Respondent, nor has it been suggested that these items were not sold through Mrs Grden’s eBay account;
 - 61.3 Mrs Grden did not deny, indeed accepted, that the eBay account was hers.
 - 61.4 The primary response on behalf of the Claimant, from both he and his wife, related to his being unable to be present at Flat 36, The Print Works in early 2018. The only Order produced is dated 1 February 2018 and expired on 31 July 2018. The first time the Claimant told the Respondent of any new address was in his letter of appeal dated 29 July 2019 and he offered no explanation as to why he had not advised the Respondent of a change of address before that date. On his behalf, Mrs Grden questioned whether it was necessary to give personal details about their family situation to the Respondent, but

no such details need be given if an employee is simply advising his employer of a change of address.

- 61.5 Other than to criticise, as I find without foundation, the information gathering process undertaken by the Respondent's security team, the only criticism of process which the Claimant made related to the lack of a translator or interpreter being present at the first interview, conducted by Mr Robertson, on 2 July 2019.
- 61.6 The Claimant's unchallenged evidence was that previous interviews at work had been conducted in the presence of an interpreter. Mr Robertson may or may not have known this, but at no stage did the Claimant ask for an interpreter, explain to Mr Robertson that he did not understand any questions that were being put to him, or ask for a pause in the interview whilst someone who could translate was found. I have considered whether this amounted to a substantial breach of procedure such as to justify rendering the dismissal unfair, but I have concluded that it does not. There is no evidence that Mr Robertson was aware that the Claimant was unable to answer his questions or understand the questions that were being put to him. Indeed, the evidence from the Security Investigation Report, Mr Hales and Mr Wadsworth suggests that the Claimant was fully aware of the questions being asked and was able to answer them properly and cogently.
- 61.7 No other criticism of the procedure is made.
- 61.8 Based on the evidence which was before Mr Hales and then Mr Wadsworth, I am satisfied that:
- 61.8.1 The Respondent held a genuine belief that the Claimant was guilty of the conduct alleged. There was a substantial loss of goods within the Respondent's premises where the Claimant worked, up to and during early 2018. At that point there was a "*clamp down*" including the installation of new security measures and, following investigations at the time, the dismissal of a number of employees. The goods sold through the relevant eBay account included items which were potentially sourced from the Respondent and the Claimant accepted that he had not purchased any such goods.
- 61.8.2 All of the items had been sold prior to May 2018 apart from one item (a Nest Outdoor Security Camera) sold on 17 May 2018 and thus the sale of the goods in question through the relevant eBay account was at or about the time when the

Respondent had carried out its “*clamp down*” and increased its security measures.

- 61.8.3 The Respondent had not been advised of any change of address on behalf of the Claimant until during the disciplinary process and no new address was given until his letter of appeal. The Court Order restraining the Claimant from access to Flat 36 The Print Works that expired on 31 July 2018, had not come into effect until February 2018 and had not, on the basis of any evidence presented to me, been renewed or extended. The Respondent could therefore reasonably conclude as it did that the Claimant had contact with his wife at the relevant time.
- 61.8.4 Further, the Claimant had during the course of the initial interview, confirmed – without prompting or questioning about the particular product – that his wife had sold Makita batteries (first 1 and then 4) through her eBay account but later claimed that he had no knowledge or what goods she sold.
- 61.8.5 Prior to Mr Hales and then Mr Wadsworth forming their belief in the Claimant’s guilt of the misconduct alleged, the Respondent had carried out a proper and sufficient investigation into the matter. I have reflected upon the fact that neither party has put before me the initial interview conducted by Mr Robertson, nor any transcript of it. These matters should have been part of the normal disclosure process as they are clearly relevant to the issues between the parties. But, neither party has put them forward and the only record of what was said at the
time appears in the Security Investigation Report, the notes of the disciplinary appeal interviews and the witness statements of Mr Hales and Mr Wadsworth. Those accounts have not been challenged and I accept them.
- 61.8.6 The Respondent clearly, therefore, had reasonable grounds on which to sustain their belief that the Claimant was guilty of the misconduct alleged.
- 61.8.7 The remaining question is, therefore, whether the Claimant’s dismissal fell within the range of reasonable.
62. The remaining question is, therefore, whether the Claimant’s dismissal fell within the range of reasonable responses as required under Section 98(4) of the Employment Rights Act 1996. I conclude that it does.

63. According to the Investigation Report, the unchallenged value of the goods sold through the relevant eBay account at list price was £1,083.21 and they were sold at a total price of £631 (or less, one item being sold at “£45 or best offer”). The Claimant had been employed for three years and there was no evidence of any previous acts of misconduct, but the theft of goods to that value clearly serve to fundamentally breach the contract of employment between the Claimant and the Respondent to justify not only the dismissal of the Claimant, but his summary dismissal without notice.
64. For those reasons, the Claimant’s complaints are not well founded and his claim is dismissed.

Employment Judge Ord

Date: 27 July 2020

Sent to the parties on: 5 August 2020

S. Bhudia

For the Tribunal Office