



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Butt

**Respondent:** EE Limited

**Heard at:** East London Employment Tribunal

**On:** 8 January 2021

**Before:** Employment Judge Keogh

## Representation

Claimant: In person

Respondent: Ms Khatun (paralegal)

# JUDGMENT

1. The Claimant's claim for wrongful dismissal is unsuccessful.

# REASONS

1. This is a claim for wrongful dismissal brought by the Claimant Mr Asif Butt against the Respondent EE Ltd.
2. In a judgment dated 16 December 2019 EJ Cheetham refused an application to amend the claim to add a claim of unfair dismissal following a protected disclosure, and found that there was no jurisdiction to hear a complaint of ordinary unfair dismissal. The Claimant's claim of wrongful dismissal was permitted to proceed to this hearing. On the Claimant's claim form there are ticked boxes for both notice pay and other arrears of pay. No issues relating to arrears of pay were identified in the pleadings or in the Claimant's witness statement. The Claimant confirmed at the outset of this hearing that the only claim pursued by him was wrongful dismissal, i.e. a claim for notice pay. It was agreed between the parties that the appropriate notice period was four weeks.
3. In advance of the hearing I received and reviewed a bundle of documents and witness statements from the Claimant, and from Mr John Roberts and Mr Fred Maisey for the Respondent. In addition to this I received a copy of the Claimant's Schedule of Loss. I heard oral evidence from the Claimant and from Mr Roberts and Mr Maisey.

## **Facts**

4. The Claimant was employed by the Respondent as a customer advisor in its Brixton store from 9 January 2017 to 31 December 2018 when he was summarily dismissed by the Respondent.
5. The store is one of the busiest in London. During his time working at the store the Claimant observed that there was a high number of customer complaints, a lack of staffing and what he considered to be ambitious targets. There were also issues with the tablets used to process sales. New processes were introduced regularly. In particular, a new system called Epos was introduced.
6. The Claimant complains that on 4 September 2018 his manager did not give him a lunch break. He had to visit his GP as a consequence due to the stress caused by this. On 5 October 2018 he wrote to the CEO of the company describing the day to day technical issues he faced and the incident with his manager. On 19 October 2018 he wrote to his regional manager with recommendations on changes which could be made to ease the pressure on front line staff. On 20 October 2018 the Claimant was invited to a meeting with his regional manager. His manager decided to change his work hours from 20 hours over three days to 20 hours over 4 days so that he would not have a lunch break.
7. On 28 November 2018 the Claimant was invited by his manager, Mr Ashraf, to an investigation meeting. The investigation report states that it came to the Mr Ashraf's attention on 7 November 2018 that the Claimant had allegedly sold a Tier 1 device without completing an EIV check (which is an identity check). The device was exchanged with a Sony handset and the after sales compliance form was not completed for the stock to be sent back to the warehouse. On 22 November 2018 the Claimant allegedly connected a Samsung galaxy watch via IVR (which stands for Interactive Voice Response system) which had not been sold via Epos. There was no digital or manual copy of the contract. The manager had become aware of this when he conducted a stock count and started investigating the stock loss. No after sales form was completed and the watch was an active IMEI number.
8. An investigation meeting was held on 3 December 2018. The minutes record the Claimant saying that in relation to the most recent transaction (which was the watch) he connected via IVR and put it through the till. It was put to him that the watch was missing from stock which meant he had failed to put the transaction through the system. The Claimant stated he definitely put the transaction through EPOS, it didn't activate so he called up to get it connected. During this meeting the Claimant requested a copy of CCTV footage of the incidents. He stated he would accept a mistake if he saw the transaction. He did not think he was working on 7 November 2018. Mr Ashraf confirmed that he had worked that day from 1pm to 6pm. The Claimant said he could not recall the transaction or the return. Although these minutes are not signed the Claimant has not asserted that they are inaccurate.

9. The Claimant was invited to a disciplinary hearing on 31 December 2018 which was chaired by Mr John Roberts. Minutes were taken by Mr Tamid Rahman. Mr Roberts explained that these were taken manually and recorded verbatim what was said in the meeting. A typed version has been provided in the bundle. The minutes are not signed and the Claimant disagrees with the contents.
10. The minutes record that the Claimant was asked about the first incident, and stated he did make a mistake and had a conversation with his manager and didn't press activate. When asked why he connected a Tier 1 handset without completing EIV he said he could not answer this without seeing CCTV. He wanted CCTV to see if he had done the refund or his assistant manager. When the Claimant was asked whether he was up to date with his training and followed the Respondent's guidelines he confirmed that he was always up to date. When asked again whether he carried out the transaction he said that he had. He did not know what had been done with the return. When asked about the Samsung Galaxy watch the Claimant said he could not remember why this had not been put through EPOS. He did remember the transaction however. He wanted CCTV. He knew he had done the contract but could not remember anything else.
11. In the hearing today the Claimant was adamant that these minutes were incorrect, and that he had not admitted that he had carried out the transactions alleged, but had asked for CCTV. I prefer the evidence of Mr Roberts that the minutes are an accurate record of what was said. It is not in dispute that the minutes were sent to the Claimant at some point after the hearing. Even though there was a delay in sending them there was no evidence before me today that the Claimant challenged the minutes after he received them. This did not form part of his grounds of appeal. The minutes are detailed and it has not been suggested that the content has been deliberately fabricated. In the circumstances I find that the Claimant did confirm at the disciplinary hearing that he had carried out both transactions, albeit it he could not recall why the required processes had not been completed.
12. Mr Roberts took time to consider the matter and reconvened the hearing later the same day. He went back over the notes of the meeting. He describes in his witness statement the concern he had that there were serious breaches in process and that the stock concerned was missing. The Claimant had accepted that he had conducted the transactions and had been unable to give any explanation for what had happened or why the breaches in process had occurred. He did not consider it plausible that another person had used the Claimant's login or for another advisor to secure the stock in the Claimant's name. In relation to the watch, he did not consider another person would have been able to call up IVR and impersonate the Claimant to get the device connected through the wrong account. He noted that there had been past issues with the Claimant in relation to compliance and process. (I have seen hand written notes confirming past issues.) Mr Roberts did consider whether CCTV was needed but concluded that it was not as the documentary evidence was already clear. He also considered that Brixton had a bag check process, however this was a spot check process and not routine. He concluded that the Claimant was guilty of gross misconduct and decided to dismiss him. Mr Roberts was not challenged today as to the reasons why he decided to

dismiss. In particular it was not suggested, as it had been at the appeal hearing and in the Claimant's witness statement, that the decision to dismiss was pre-meditated, nor was any evidence presented to show that this might be the case.

13. The Claimant was told orally on 31 December 2018 that he was summarily dismissed without notice. The decision was confirmed in writing by letter dated 24 January 2019.
14. The Claimant appealed the decision to dismiss him. He was invited to an appeal hearing on 19 February 2019 which was heard by Mr Fred Maisey. There were three grounds of appeal, namely that the outcome had been pre-meditated, there had been a failure to obtain CCTV footage, and that the Claimant had been stressed at the time of the incidents. He provided a letter from his GP to that effect. Mr Maisey considered the appeal and upheld the decision to dismiss. He confirmed this by letter dated 1 March 2019.

### **The issues**

15. A claim for wrongful dismissal is a claim for breach of contract. It is for the Claimant to show on a balance of probabilities that the Respondent breached his contract of employment by dismissing him summarily without notice. The Respondent contends that it was entitled to dismiss without notice by reason of the Claimant's gross misconduct. I must therefore consider what occurred and whether there was in fact gross misconduct justifying dismissal without notice.

### **Conclusions**

16. For the following reasons I find that there was gross misconduct in this case justifying dismissal without notice. I have already found that the minutes of the disciplinary hearing on 31 December 2018 were an accurate record of what was said in that hearing. The Claimant accepted that he had conducted both transactions. I note that in the investigation meeting it was accepted that the transaction with the watch was conducted by the Claimant. He states today that he does not recall the transactions. I find that he did recall the transactions when asked about them at the disciplinary hearing and did confirm that he conducted both transactions. I also accept the Respondent's evidence that it would be difficult for someone else to conclude the transactions using the Claimant's login details. In particular this would require someone to impersonate the Claimant when connecting the watch via IVR. In the circumstances I conclude that the Claimant did conduct both of the disputed transactions using his own login.
17. The Claimant does not dispute that the Respondent's processes were not concluded properly. He has provided no evidence or explanation why this was the case if he completed the transactions himself. I have considered carefully whether CCTV evidence ought to have been obtained and, if so, whether it would have exonerated the Claimant. I accept the explanation given by Mr Roberts that the documentary evidence was clear and, the Claimant having accepted that he had conducted both transactions, it was not necessary to obtain CCTV footage. Neither does the Claimant positively assert that the CCTV footage would clear him. Rather his position at its

highest is that he cannot say whether he conducted the transactions or not, but would accept a mistake if there was one. He has not at any time provided the name of anyone it is suggested may have conducted the transactions using his login details. In the circumstances I conclude that the Claimant failed to complete the Respondent's processes with the result that paperwork was not correctly concluded and both items were missing from stock.

18. I agree with Mr Roberts that these breaches are sufficiently serious to amount to gross misconduct and justified summary dismissal. This is particularly so where the Claimant had received previous warnings in relation to process issues. I do not therefore need to consider whether the devices were in fact stolen by the Claimant, or whether a breach in relation to passing on login details would have been sufficient to amount to gross misconduct.
19. I therefore find that the Claimant has not shown that there was a wrongful dismissal in breach of contract. The claim for wrongful dismissal is unsuccessful and is dismissed.

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Employment Judge Keogh

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Dated: 8 January 2021