Case No. 2402404/2020
(CODE V)

EMPLOYMENT TRIBUNALS

Claimant: Mr S Case

Respondent: Beesley & Fildes Limited

Heard at: Liverpool (CVP Remote Hearing) **On:** 18 September 2020

Before: Employment Judge Hill

REPRESENTATION:

Claimant: **Mr Susak - counsel**
Respondent: **Mr Cranshaw - Counsel**

JUDGMENT having been sent to the parties on 30 September 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The Claimant brought a claim of unfair dismissal by way of a claim form (ET1) presented on 24 March 2019. The Respondent resisted the claim by way of a response form (ET3) presented on 24 April 2020.

2. At the beginning of the hearing the Tribunal discussed with Mr. Susak whether the Claimant intended bringing a claim of age discrimination. The box for age discrimination had been ticked on the claim form but nothing had been pleaded. After discussions and taking instructions from the Claimant Mr. Susak confirmed that he was not pursuing an age discrimination claim and the only claim before the Tribunal was a claim for unfair dismissal. The claim form also indicated that the Claimant's employment was continuing but the Claimant confirmed that his employment had terminated on 18 December 2019.

The issues for the Tribunal to Determine

3. At the beginning of the hearing the Tribunal discussed with the parties the issues for the Tribunal to determine. The main issues are:

   3.1. The Respondent relies on conduct as the potentially fair reason for dismissal.

   3.2. Did the respondent act reasonably or unreasonably in dismissing the claimant for the reason given?

   3.3. Did the respondent reasonably believe that the claimant was guilty of misconduct at the time of dismissal.

   3.4. Did the respondent have in mind reasonable grounds to sustain that belief and at the stage the respondent formed that belief, had it carried out as much investigation into the matter as was reasonable in the circumstances.

   3.5. Did the decision to dismiss fall within the range of reasonable responses open to a reasonable employer.

The Evidence

4. The Tribunal was provided with an electronic bundle of documents consisting of 74 pages which included written statements from the Respondent's witnesses; Mr. Kevin Clutterbuck, Branch Manager Widnes branch and dismissing officer; Mr. Karl Devereaux, Branch Manager Huyton branch and Ms. Carol Thomas, HR Manager based at Huyton branch. The Claimant provided a separate written witness statement.

5. The Tribunal heard oral evidence from the claimant, Mr. Clutterbuck and Ms. Thomas. Mr. Devereaux did not attend but his statement was signed and the Tribunal attached appropriate weight to the evidence contain within in as appropriate in the absence of the witness.

Findings of Relevant Facts

6. The Claimant commenced employment with the respondent on 6 September 1999 as a Transport Coordinator and was later promoted to Transport Manager, a position he held until his employment was terminated on the grounds of gross misconduct on 18 December 2019. At the time of his dismissal, the Claimant had a live written warning dated 27 March 2019 for an unrelated conduct issue.

7. The Claimant stated in his ET1 that he had an unblemished record and had never been subject to any previous disciplinary action. The Claimant accepted that this was not the case but could not recall having received a letter confirming the warning. The Claimant agreed that he remembered going to the disciplinary hearing and that he had had an operation and had forgotten. The Tribunal finds that the Claimant was aware that he had received a written warning and knew this at the date he completed his ET1.

8. The Respondent is an independent builder's merchant with around 11 branches across the north West. Throughout his employment the claimant was predominantly based at the Huyton branch although he did on occasions work at other branches including Widnes, as the business required.

9. As a Transport Manager the Claimant was responsible for organising the delivery work of staff with managerial and supervisory responsibilities. At the time of his dismissal the claimant was working at the Widnes branch supporting Mr. Sam Littler who had been newly appointed as a Transport Manager.

10. The Claimant had received a copy of the Company's Employee Handbook. A copy of the receipt acknowledging that he had received a copy of the document and confirming he understood it was his responsibility to read and follow the guidance, was provided at page 38 of the bundle dated 28 February 2017. The Claimant also confirmed during his oral evidence that he had received the document and was aware of the policies in respect of the clocking in and out procedures as well as the disciplinary policy and procedures.

11. The Disciplinary policy is set out at pages 39 – 44 of the bundle and includes examples of gross misconduct which includes "*Deliberate falsification or fraudulent misuse of our records, property or facilities (including time sheets)"* (page 41).

12. The policy in respect of Clocking in and out/Time Sheets is set out at page 45 *"If you are required to (complete time sheets) clock in and/or out of our premises for time management purposes, you must do so personally. Any person tampering with the time management system, or fraudulently using the system for their personal gain or the gain of others, will potentially face disciplinary action that could lead to dismissal."*

13. Mr. Clutterbuck gave oral evidence explaining the importance of keeping accurate time sheets and adhering to the clocking in and out procedure. He explained that everyone on site had to clock in and out to indicate whether they were on site. He stated that employees' wages, including overtime, were calculated using the information from the clocking in and out cards and that it was also important as a 'roll call' in case of a fire evacuation. The Claimant also conceded in cross examination that he was aware of the importance and reasons for the clocking in and out system. Whilst it was argued during submissions that the fire roll call was only referred to during this hearing the Tribunal finds that the Claimant, by his own admission, was aware of the all the reasons the policy was in place.

14. The procedure required employees to physically clocked themselves in and out. On occasion, where it was not possible for an employee to personally do so, Mr. Clutterbuck explained that a Branch Manager was authorised to write on the clocking in and out cards but not to use the machine so as to provide an automatic stamp. Mr. Clutterbuck confirmed that Transport Managers did not have authority to clock another member of staff in or out. Only Branch Managers had authority, and, in any event, it had to be done in writing with the manager's initials to explain why the employee had not been able to clock out themselves. The Tribunal accepted this evidence.

15. On 9 December 2019 an employee Mr. T Taylor, reported to Mr. Clutterbuck that he needed to check the clocking in and out cards and in particular the finishing times. Mr. Taylor told Mr. Clutterbuck that the Claimant had clocked out a driver at the end of a shift on 23 November 2019 but that the driver had left earlier than his finishing time. Mr. Clutterbuck instructed Mr. Littler, Transport Manager to investigate and to speak to the Claimant about the allegation.

16. Mr. Littler spoke to the Claimant who initially denied the allegation, however, Mr. Littler was concerned that he had not been told the truth and spoke to Mr. Clutterbuck who advised him to speak with the Claimant again. The Claimant stated in cross examination. that he did not lie *"I just said that I had not done it….bit of an untruth but not deliberate"* and that he did not recognise Mr. Littler as a transport manager because he was 'acting' and decided not to tell him the truth because it was none of his business. The Tribunal finds that the Claimant was not open and honest during the investigation and did initially try to conceal the truth.

17. Mr. Littler met again with the Claimant on 10 December 2019 and at this meeting the Claimant changed his version of events and admitted that he had clocked out the driver at 1.00pm when he had left at 12.30. The Claimant said during the investigation that the reason he had done this was because the driver had done him a favour by completing another drop after he had completed his original delivery. He had therefore instructed the driver to go home but not clock out at 12.30 and he would clock him out at 1.00 pm. The Claimant did this on the clocking in and out machine so that an automatic stamp was produced and did not initial or make any comments on the clocking in and out card.

18. In his witness statement at paragraph 7, the Claimant: *"In the weeks prior to 23 November 2019, Mr. Danny Fildes had completed a late delivery job for the Respondent business on his way home at my request as manager. On Saturday 23 November 2019, Mr. Fildes finished work and left site at 12:30. I had a delivery job that I wanted Mr. Fildes to finish on his way home, so I advised that he didn't sign out, however, I later covered this work and as Mr. Fildes had previously worked extra time which was not recorded on his time sheet, I advised that he could leave his time sheet and I clocked him out at 13:00 on this day."*

19. The Claimant was not clear in his evidence why he was now suggesting that the reason he had clocked him off at 1.00 pm instead of 12.30 was because he had done extra work for the Respondent and this was in effect paying him back for overtime he had done previously. The Claimant said that the Respondent did not always pay overtime, and this is why he had done it. However, this is in contrast to the statements he made at the time of the investigation and disciplinary hearing where the claimant was very clear that he had done it as a favour because Mr. Fildes had done him a favour by doing an additional drop. The Claimant had said during the disciplinary hearing that *"he done me a favour put him in my pocket for when I needed it".*

20. After the investigation meeting, the Claimant approached Mr. Clutterbuck to discuss the issue. Mr. Clutterbuck told the claimant that he was not prepared to discuss it with him at that time. The Claimant again admitted what had happened and that he had done it previously at the Huyton branch. Mr. Clutterbuck again

explained that he did not want to discuss it with him, and that the investigation was still ongoing. The Claimant did not provide Mr Clutterbuck with any details regarding who at this branch had allegedly also followed this practice. During his evidence the Claimant gave specific details saying that Mr Devereaux the branch manager at the Huyton branch had given him permission to do this and that another colleague, Mr. Sutton had been investigated but that the disciplinary action had been dropped. None of these details were provided to the Respondent at the time of the investigation or during the disciplinary hearing.

21. However, Mr Clutterbuck sought advice from HR and spoke to Ms. Thomas and Mr. Tony Carrol (Operations Manager), both of whom were primarily based at the Huyton branch. He made enquiries in respect of the suggestion by the Claimant that this was common practice at the Huyton branch and was informed that this was not the case. He was also informed that there had been a previous member of staff who had been dismissed for a similar offence.

22. Ms Thomas gave evidence that she was not aware of a custom and practice at the Huyton branch and that she was aware that a previous employee had been dismissed for the same offence. She confirmed that another employee, Mr. Sutton was not dismissed but that he had denied the allegation and there had been no witnesses. This was different to this case where the conduct had been admitted by the Claimant and there had been witness. The Tribunal found Ms. Thomas's evidence credible and accepted that she had told Mr. Clutterbuck that this conduct was not normal custom and practice at the Huyton branch.

23. The Claimant was invited to a disciplinary meeting on 18 December 2019. The letter set out the reason for the disciplinary hearing *"It is alleged that you clocked off another member of staff (Danny Fildes) at 1.00 pm when we have reason to believe he left site at approximately 12.30pm…….. In the Company's view, these allegations constitute gross misconduct-deliberate falsification or fraudulent misuse of our records, property or facilities".* The Claimant was provided with:

    a) Copy of the clock card and Danny Fildes clock card w/e 23/11/2019
    b) Copy of an email from Sam Littler following the informal fact-finding meeting
    c) Copy of the investigation summary notes made by Kevin Clutterbuck

24. The letter advised the Claimant of his right to be accompanied and that a possible outcome could be dismissal.

25. The claimant attended the hearing on 18 December 2019 with a colleague, Colin Dykins. Also present was Mr. Clutterbuck and Carol Thomas as note taker. Copies of the meeting notes were provided at pages 52 – 55 of the bundle.

26. At the disciplinary meeting the Claimant again confirmed that he had clocked off Mr. Fildes half and hour early and that the reason for this was because Mr. Fildes had done him a favour.

27. The Claimant also said, *"sorry didn't know you don't do it here".* Mr. Clutterbuck pressed the Claimant on this statement and asked him if it happened at Huyton but the Claimant said it did but *"no comment"*. Mr. Clutterbuck asked him if he had

done it previously at Huyton and the Claimant's response was *"No comment on that, I did say it".* The Claimant was given the opportunity to tell Mr. Clutterbuck further details in mitigation and chose not to do so.

28. The Claimant's explanation for clocking Mr. Fildes out was that he considered that he had done some extra work, and that he thought he would pay him back and then he (Mr. Fildes) would 'owe him'. He was asked whether he believed his actions were correct and the Claimant said *"Not now I don't. I would not do it again, thought he done me a favour, put him in my pocket for when I needed it."*

29. The meeting started at 09.52 and at 10.01 am it was adjourned for deliberations. The meeting was reconvened at 10.25 where Mr. Clutterbuck asked whether there was anything further the Claimant wished to say before giving his decision to dismiss on the grounds of gross misconduct. The claimant argued that the respondent failed to give due consideration prior to making the decision to dismiss because the adjournment was only 24 minutes. The Tribunal finds that the disciplinary hearing itself was quite short and the information provided by the Claimant was brief. The adjournment was not long but it cannot be said that it was too short a period for the Respondent to have been able to form a considered opinion. The Tribunal accepts that Mr. Clutterbuck considered carefully the information he had before him.

30. Mr. Clutterbuck made a note of his decision at the time (page 55) and gave written and oral evidence of the factors he considered when making his decision. The Tribunal finds that Mr. Clutterbuck's evidence was clear and unambiguous and that he was consistent and honest in his written witness statement and during cross examination. Mr. Clutterbuck set out his thinking at paragraph 23 of his witness statement as follows:

"the comments which Mr. Case had made to me in mitigation in that:

- *i) the reason why he had falsified the record was because Mr. Fildes had done him a favour; and*
- *ii) that he had disclosed to me on 10 and 11 December 2019 that he did this when working from the Huyton branch,*

however, I did not consider this to explain his actions and I also noted that there was no evidence to support his remark in relation to the Huyton branch.

- *i) that Mr. Case was an experienced, senior member of staff with managerial responsibilities and as a Transport Manager it was part of his role to demonstrate compliance with Company policies, practices and procedures.*
- *ii) that Mr. Case had been issued with a written warning on 27 March 2019 (see page 46)*
- *iii) the wording of the Clocking in and out/Time Sheets Policy (see page 45) which clearly stated that (emphasis on bold and underlined): 'If you are required to (complete time sheets) clock in and/or out of our premises for time management purposes, **you must do so personally**. **Any person tampering** with the time management system, or fraudulently using the system for their personal gain or the gain of others, **will potentially face disciplinary action that could lead to dismissal.'***

iv) the wording which was explicitly set out on the timecard records (see page 46): 'You are your own timekeeper. We pay by this record. Your own recording'
v) the wording of the disciplinary procedure as set out in paragraph 11, above; and
vi) that Mr. Case had admitted to the allegation (which had been done in the presence of other members of staff)."

31. A letter dated 18 December 2019 was sent to the Claimant setting out the Respondent's findings and the outcome. The Claimant was advised of his right to appeal but chose not to do so. The Claimant stated that the reason he did not appeal is because he did not want to get anyone into trouble. The Tribunal finds that the Claimant had an opportunity to put forward mitigation and explanations at the disciplinary hearing and again by being given the opportunity to appeal. The Claimant chose not to do so despite knowing the seriousness of the situation.

32. Mr. Clutterbuck was cross examined on his decision-making process and it was suggested that his thought process as set out in his witness statement was not recorded in his adjournment notes on page 55 of the bundle. Mr. Clutterbuck accepted this was the case. Mr. Clutterbuck records *"after considering all the details from this disciplinary hearing I have made a decision".* The Tribunal accepted Mr. Clutterbuck's oral and written evidence that the matters recorded in paragraph 26 of this judgment were matters which he considered before taking the decision to dismiss. The Tribunal notes the disciplinary hearing was relatively short and the Claimant had admitted his guilt. However, Mr. Clutterbuck took his time to come to a decision and prior to delivering his decision, he again asked the Claimant if there was anything further he wanted to say which the Claimant declined.

33. It was suggested to Mr. Clutterbuck that he was not aware of the Claimant's previous warning however, he confirmed that he had been informed by HR but the Claimant's previous record was not a determining factor in the dismissal. He was clear that he would have dismissed the Claimant without a written warning being on his file.

34. The Claimant in his written and oral evidence stated that it was no personal benefit to him and it would have only cost the company £4 for the half an hour's work. The claimant stated in his witness statement that he did not see it as fraudulent or a deliberate attempt to fabricate time sheets to steal from the respondent. The Respondent's evidence was that the conduct was dishonest and a breach of the rules regardless of the value.

The Law

Unfair Dismissal

35. Section 98 of the Employment Rights Act 1996,

a) did the respondent have a potentially fair reason to dismiss?
b) did the employer act reasonably or unreasonably in dismissing the Claimant for the reason given?

36. Section 98(4) provides that the determination of the question whether the dismissal is fair or unfair (having regard to the reasons 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.

37. A dismissal for a reason which relates to an employee's conduct is a potentially fair reason for dismissal. When determining cases of misconduct the Tribunal has settled case law to assist it in drawing conclusions. In particular in cases of misconduct guidelines have been set out by Arnold J in **British Home Stores Ltd v Burchell [1978] IRLR 379**. Essentially the Tribunal must determine the following:

    a) Did the respondent reasonably believe that the Claimant was guilty of misconduct at the time of the dismissal?
    b) Did the respondent have in mind reasonable grounds to sustain that belief? And
    c) At the stage the respondent formed that belief had it carried out as much investigation into the matter as was reasonable in the circumstances?

38. Further once a Tribunal has determined whether the Burchell test has been satisfied a Tribunal is required to consider whether the dismissal falls within the 'range of reasonable responses' of a reasonable employer. This is an objective test and a Tribunal should not substitute its own view on whether it thinks the dismissal was fair.
39. In **Orr v Milton Keynes Council [2011] ICR 704**, Aikens LJ says:

> *"The Employment Tribunal must consider, by the objective standards of the hypothetical reasonable employer, rather than by reference to its own subjective views, whether the employer has acted within a 'band of reasonable responses' to the particular misconduct found of the particular employee. If it has, then the employer's decision to dismiss will be reasonable. But that is not the same thing as saying that a decision of an employer to dismiss will only be regarded as unreasonable if it is shown to be perverse. The Employment Tribunal must not simply consider whether* they *think that the dismissal was fair and thereby substitute their decision as to what was the right course to adopt for that of the employer. The Employment Tribunal must determine whether the decision of the employer to dismiss the employee fell within the band of reasonable responses which "a reasonable employer might have adopted"…. An Employment Tribunal must focus its attention on the fairness of the conduct of the employer at the time of the investigation and dismissal (or any appeal process) and not on whether in fact the employee has suffered an injustice."*

40. In cases of gross misconduct, a Tribunal must decide whether the employer acted within the band of reasonable responses in choosing to characterise the misconduct as gross misconduct entitling it to terminate the employment contract without notice. Further, whether the employer acted within the band of reasonable responses in deciding that the appropriate sanction for that gross misconduct was dismissal.

41. An employer should consider whether dismissal is reasonable after considering any mitigating factors: **Brito-Babapulle v Ealing Hospital NHS Trust [2013] IRLR 854**. And the employer should consider the employee's length of service and disciplinary record prior to deciding that dismissal is the appropriate sanction: **Trusthouse Forte (Catering) Limited v Adonis [1984] IRLR 382.**

42. In conduct cases the 'range of reasonable responses' test applies in conduct cases not only to the decision to dismiss but also to the procedure by which that decision was reached. ***J Sainsbury Plc v Hitt [2003] ICR 111 CA***.

43. The ACAS Code states that an employers' disciplinary rules should set out clearly what the employer regards as gross misconduct and should be clear on what conduct it considers serious enough to justify summary dismissal.

Summary of Submissions

Respondent

44. The Respondent argued that it had clear policies setting out the rules and that the Claimant was fully aware of them, had acknowledge why they were important and had admitted that he had breached them. Further that after an investigation carried out by Mr. Littler a properly convened disciplinary hearing was held and that Mr. Clutterbuck held a reasonable belief in the Claimant's guilt because the Claimant had admitted the conduct. The Respondent had carried out further investigations into the allegations made by the Claimant regarding the Huyton branch and had spoken to Ms. Thomas and Mr. Carrol who were both primarily based at the Huyton branch and had found no evidence that this was normal practice at that site and that a previous incidence of this type had resulted in dismissal of the employee concerned.

45. The Respondent argued that the Claimant had failed to provide any evidence of this conduct being normal practice at Huyton and refused to make any comment during the disciplinary hearing. Further Mr. Clutterbuck confirmed that whilst he did consider his previous warning, he would have dismissed in any event due to the seriousness of the allegation and the claimant's position within the company.

46. Mr. Cranshaw pointed to the credibility of the Claimant's evidence in that he had lied and concealed his previous disciplinary warning; he had lied during the investigation although he did later admit the office and the evidence he gave at the hearing was inconsistent with his witness statement.

47. Finally, the Respondent submitted that the dismissal was both procedurally and substantively fair.

Claimant

48. The Claimant argued the Tribunal was required to consider what was in the mind of the decision maker at the time of dismissal and what evidence had been collected. Mr. Susak submitted that that the Respondent had failed to speak to Mr. Devereaux regarding the practice in Huyton and that a reasonable decision maker would have made such enquiries and that while the HR manager was asked that was insufficient to discharge the burden of a reasonable employer.

49. The Claimant argued that whilst the Respondent had set out in detail in the witness statement Mr. Clutterbucks decision making process this was not reflected in his notes at the time. The Claimant also argued that is was not a reasonable sanction and suggested that Mr. Clutterbuck was not aware of the previous warning and that the decision to dismiss was therefore not a reasonable sanction.

50. The Claimant submitted that the disciplinary hearing was very short and that deliberations only took 24 minutes which was insufficient for a 20-year employee and that the statement from Mr. Devereaux was only produced to bolster their case.

51. The Claimant conceded that the conduct amounted to Gross misconduct and said it was "*as plain as day*". However, it was a first offence, and the financial loss was only £4. The reason for clocking in and out being a fire safety reason had only come out today and if anything had of happened it was likely that the Claimant could have easily corrected the error so that no one spent time looking for Mr Fildes in the event of a fire.

52. Mr Susak submitted that the claimant had a long record of unblemished employment and although he should have known the procedures, he had an honest belief that it was a practice that happened at the Huyton branch and that although he was dishonest at first admitted the offence and maintains it was custom and practice.

53. Finally, the Claimant did not want to get anyone else in trouble and was reasonable for him not to appeal.

Conclusions

54. The parties agreed that the reason for dismissal was conduct and this is a potentially fair reason under S98 of the ERA 1996. The Tribunal therefore must consider whether the Respondent acted reasonably or unreasonably in dismissing the Claimant for the reason given.

55. In considering the reasonableness of the dismissal the Tribunal has settled case law to assist it in drawing conclusions and in particular guidelines have been provided by Arnold J in **British Home Stores Ltd v Burchell [1978] IRLR 379**. I have considered each stage of the 'Burchell Test'.

56. The Claimant has admitted the conduct and has also confirmed at the time and during this hearing that he knew it was wrong. The Claimant's main argument was

that it was custom and practice at his previous branch. The Claimant did not provide any evidence of this to the Respondent at the time or at this hearing. The Claimant stated that it had happened at the Huyton branch and the Respondent took reasonable steps to establish the truth of that statement. The Tribunal finds that speaking to the HR manager and the Operations Manager were reasonable steps. The Claimant has suggested that the Respondent should have spoken to the branch manager Mr. Devereaux, however, the Claimant did not raise at any time during the investigation or at the disciplinary hearing that Mr. Devereaux had given him authorisation to disregard the procedures or that Mr. Devereaux had himself done this. In fact, when given the opportunity to defend himself or provide further information he replied 'no comment' on two occasions.

57. The Claimant has sought to rely on this behaviour as being custom and practice and has provided the Tribunal with the names of employees who the Claimant alleges have either authorised this behaviour or who were not dismissed for this behaviour. The Claimant has not been able to explain why this information could not have been supplied to the Respondent at the time of the investigation or during the disciplinary hearing. The Claimant relies instead on the Respondent investigating and interviewing specific individuals and by failing to do so resulting in a failure to act reasonably.

58. I have found that the Respondent conducted reasonable enquiries into the limited information provided by the Claimant at the time and that it was reasonable and appropriate to speak to Ms. Thomas and Mr. Carroll. The Tribunal is reminded that in conduct cases the 'range of reasonable responses' test applies in conduct cases not only to the decision to dismiss but also to the procedure by which that decision was reached.

59. The Respondent *could* have interviewed more staff members but whether the Respondent acted unreasonably by not doing so is a question the Tribunal must determine by having regard to the 'range of reasonable response' test. I find that by interviewing two senior staff members both of whom either worked primarily at the Huyton site or who had detailed knowledge of the practices and procedures of all sites fails squarely into a band of reasonable responses by an employer.

60. The Claimant was provided with several opportunities to provide details of a particular person whom he considered would have information helpful to his case and chose not to do so. Further once the Claimant was aware of the seriousness of the situation, the fact that he was dismissed, he was given the right to appeal and chose not to. No real explanation was provided other than he did not want to get anyone else into trouble, however, the Claimant has felt able to provide details now and he should have done so either at the time or he should have appealed and provided the information if he considered that it would have made a difference to the outcome.

61. Whilst Mr. Devereaux was not in attendance today and I have therefore attached little weight to his statement, I do accept the evidence of Mr. Clutterbuck that he has subsequently spoken to Mr. Devereaux and that this was not normal practice at the Huyton branch. It would therefore not have made any difference to his decision. However, regardless of the evidence of Mr. Devereaux or indeed Mr.

Clutterbuck on this issue the Tribunal finds the Respondent acted reasonably at the time when investigating the matter and at the disciplinary hearing and at that time it carried out reasonable investigations and reasonable enquiries from appropriate employees of the Respondent.

62. The Tribunal therefore considers that the Respondent had in mind reasonable grounds to sustain its belief in the Claimant guilt and had carried out as much investigation as was reasonable in the circumstances. The Claimant had admitted the conduct and Mr. Susak conceded in submissions that the conduct amounted to gross misconduct. The Claimant agreed he knew and understood the Respondent's policies and procedures. The Tribunal finds that it was therefore reasonable for the Respondent to be satisfied that the Claimant had committed the conduct in question. In view of the above the Tribunal finds that the Burchell test is satisfied.

63. The Tribunal is required to determine whether the decision to dismiss falls 'range of reasonable responses' of a reasonable employer. This is an objective test and a Tribunal should not substitute its own view. The Tribunal has accepted the evidence of Mr. Clutterbuck that he considered all the evidence before him, including the Claimant's mitigation (which had been investigated reasonably), length of service, his seniority within the Respondent business, that he had found no evidence to support his assertion that it was custom and practice at the Huyton branch and that the Claimant had admitted the allegation. Mr Clutterbuck also confirmed that he had known of the Claimant's previous warning but that he would have dismissed him in any event because of the seriousness of the conduct.

64. The Tribunal has found that the Respondent had clear policies and procedures and that the Claimant was fully aware of those policies/procedures. The Tribunal does not accept the Claimant's argument that the 'cost' to the Respondent in financial terms was insignificant or trivial and therefore dismissal was not appropriate. The Respondent's policies were clear and reasonable; the Tribunal finds that a reasonable employer would consider such policies are essential for the effective operation of its business and that a reasonable employer would expect an employee in the same position as the Claimant to uphold the standards of conduct required. The Tribunal finds that the Respondent was entitled to expect an employee with such a long length of service and in a position of authority and responsibility to comply with its procedures in relation to financial controls and fire safety.

65. I have considered the submissions made by the Respondent and the Claimant and I find that the Respondent's decision to dismiss falls within a 'band of reasonable responses open to an employer'. The Tribunal has reminded itself that it must not substitute its own view and that this is an objective test. Having considered the actions of the Respondent during the investigation and at the time of dismissal I have found that the Respondent has acted fairly and reasonably.

66. The Respondent had clearly stated policies and procedures stating that such conduct amounted to gross misconduct and that dismissal was a possible sanction. I therefore find that the decision to dismiss falls within the band of reasonable responses.

67. In all the circumstances the Tribunal finds that the dismissal was fair.

Employment Judge Hill

30 December 2020

REASONS SENT TO THE PARTIES ON

12 February 2021

FOR THE TRIBUNAL OFFICE