



EMPLOYMENT TRIBUNALS

Claimant: Mr P Wood
Respondent: Marston's Plc

Heard at: Leeds by CVP

On: 18 February 2021

Before: Employment Judge Tegerdine

Representation

Claimant: In person
Respondent: Mr Lawrence, Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that the respondent did not unfairly dismiss the claimant. Accordingly, the complaint of unfair dismissal fails.

REASONS

1. After hearing evidence and receiving submissions from the claimant and the respondent's representative, the Tribunal reserved judgment. The Tribunal now gives its reasons for the judgment that has been reached.

Introduction

2. In a claim form presented to the Tribunal on 8 October 2020, the claimant brings a complaint of unfair dismissal. This is a statutory complaint brought under the Employment Rights Act 1996.
3. The Tribunal heard evidence from the claimant. The respondent called evidence from Mr Donnelly (General Manager and the Investigating Officer), Mr Townsend (General Manager and the Disciplining Officer) and Ms Richardson (Area Operations Manager and the Appeals Officer).

4. Mr Donnelly, Mr Townsend and Ms Richardson produced witness statements for the hearing. The claimant did not produce a witness statement, however he did attach a statement to his ET1. The claimant confirmed that he was happy for the statement which was attached to his ET1 to be treated as his witness statement for the purposes of the hearing.
5. The Tribunal shall firstly make its findings of fact. A summary of the relevant law will be then set out. The factual findings will be applied to the relevant law in order to determine the issues in the case.

Findings of fact

6. The claimant was employed by the respondent as an Assistant Manager at the respondent's pub, The Woodman, which is situated in South Yorkshire. The claimant had a licence to occupy a flat above The Woodman which was owned by the respondent, whilst he remained in employment. The claimant's employment began on 4 December 2004, and ended on 24 September 2020, when he was dismissed for gross misconduct.
7. The Claimant's responsibilities as Assistant Manager including ensuring that food hygiene and safety standards were observed at the pub.
8. The respondent requires its staff to carry out and record temperature checks of all food stored within its pubs twice a day. In addition, the respondent requires its staff to check that the temperature probes which are used to carry out the temperature checks are working correctly by using them to test the temperature of boiling water and ice. The respondent requires temperature probe checks to be carried out weekly.
9. Guidance on how to test the temperature probes is set out at page 51 of the respondent's Food Safety Policy Manual (page 252 of the bundle). The respondent requires employees who works at its pubs to record the results of the food temperature checks and temperature probe checks in a document known as the "kitchen book". Each time a food or temperature probe check is carried out, the employee who carries out the test is required to record the test results in the kitchen book, and sign or initial the book next to the test results. An example of a kitchen book is at page 99 of the bundle.
10. Mr Donnelly's evidence was not challenged by the claimant. The Tribunal makes the findings of fact at paragraphs 11 – 27 on that basis.
11. Mr Donnelly took over as the General Manager of The Woodman on or around 25 July 2020. On or around 15 September 2020, Mr Donnelly checked the kitchen book and noticed that the temperature probe checks which had been carried out on 15 and 22 August 2020 had been signed off by the claimant. This alarmed Mr Donnelly, as the claimant had been self-isolating in his flat on 15 and 22 August 2020, after returning from a holiday abroad. A copy of the relevant page of the kitchen book is at page 109 of the bundle.

12. After discovering this apparent anomaly with the temperature probe check records, Mr Donnelly checked the NSF audit portal to see if any issues had been raised in respect of the claimant's compliance with health & safety requirements during any NSF audits. The respondent's pubs are regularly audited by NSF International ("NSF"). NSF is an external auditor which conducts health and safety audits for businesses operating in the food sector, amongst other things.
13. When Mr Donnelly checked the NSF audit portal, he discovered that when an NSF audit was carried out in January 2020, the NSF auditor had identified an issue with the temperature probe checks which appeared to suggest that the claimant had falsified checks.
14. The outcome of the January 2020 NSF audit, which is in the bundle at page 107, stated: *"FALSE CALIBRATION – probe calibration records are falsified. Records show there are four working probes, yet only one working probe is available. Ensure assistant manager undertakes this task legitimately. Probes must be checked for accuracy weekly. Probes must be numbered and checked in iced and boiling water. The readings in iced water should be between - 1 degree centigrade and 1 degree centigrade. The readings in boiling water should be between 99 degrees centigrade and 101 degrees centigrade. It is essential to know that our probes are working properly, so we can rely on their readings."*
15. Extracts from the respondent's Employee Handbook are in the bundle at page 92. The handbook states that *"falsification of records/time sheets or documents"* and *"breach of health and safety regulation in any area of the business including out of date food/falsification or records etc"* are both examples of gross misconduct.
16. Mr Donnelly contacted the respondent's Area Operations Manager, Julie Richardson, to discuss his concerns about the temperature probe check records, and they agreed that a disciplinary investigation was needed.
17. When Mr Donnelly spoke to Ms Richardson, she explained to him that she had received the January 2020 NSF audit report in March 2020 and had asked the previous managers of The Woodman, Alan and Barbara Goodchild, to carry out a disciplinary investigation at that time. However, it had not been possible to progress the investigation owing to the combination of the national lockdown caused by the coronavirus pandemic, and Mr and Ms Goodchild's decision to retire.
18. Mr Donnelly and Ms Richardson agreed that Mr Donnelly would speak to the claimant about the issue which had been identified by the NSF in its January 2020 audit, as well as the issue which had come to light in relation to the records of the temperature probe checks carried out on 15 and 22 August 2020.
19. On 15 September 2020 Mr Donnelly had an investigatory meeting with the claimant in Mr Donnelly's office at The Woodman. Notes of the meeting are at page 111 of the bundle. The accuracy of these notes is not disputed by the claimant, and the Tribunal makes the following findings of fact based on those minutes.

20. During the investigatory meeting Mr Donnelly asked the claimant about the kitchen book entries for 15 and 22 August 2020 which had the claimant's signature next to them. The claimant confirmed that he had signed the entries for 15 and 22 August 2020 when he returned to work following his period of self-isolation, as he had noticed that they were incomplete.
21. When Mr Donnelly asked the claimant why he had filled out the probe test records, the claimant's response was: *"because the book should be checked off and signed every night"*. When Mr Donnelly asked the claimant whether he had ever filled out temperature probe test records in the past without actually carrying out a probe test, the claimant replied: *"I'll take the fifth amendment on that"*. The claimant also said: *"I'm not going to mention anything in the past. It's possible, it may also not be possible."*
22. When the claimant was asked during cross-examination why he hadn't just said "no", when he was asked by Mr Donnelly whether he had ever done this before, the claimant said: *"It's not unnatural for some of these things to get missed and filled in retrospectively. You can suggest I had falsified these documents before. Yes, I have entered details on forms and documents that were not done at the time. This is not an uncommon practice, not only within The Woodman and Marsden, but in the industry as a whole"*.
23. When the claimant was asked during cross-examination whether he had signed the book to confirm that temperatures were accurate when he had no idea whether they were accurate, he responded: *"It was just a question of checking the book on the day, as was common practice, just a question of completing paperwork; crossing the t's and dotting the i's and not specifically about certifying those temperatures."*
24. On the basis of the Tribunal's findings at paragraphs 19 - 22, the Tribunal concludes that the claimant did falsify the temperature probe check records relating to 15 and 22 August 2020 by signing the kitchen book to confirm that those checks had been done, when he hadn't done the checks himself, or taken any steps to find out whether they had been done, and if so by whom.
25. When Mr Donnelly asked the claimant to comment on the NSF audit report which indicated that he had falsified temperature probe checks in January 2020, the claimant replied that the matter should have been brought to his attention in January 2020, and that there had been no prior investigation into the matter.
26. The claimant was suspended after the investigatory meeting while the respondent carried out an investigation.
27. After the investigatory meeting Mr Donnelly discussed the matter with the respondent's Employee Relations team, and it was agreed that Mr Townsend, who was a General Manager at one of the respondent's other pubs, would conduct a disciplinary hearing. Mr Donnelly spoke to Mr Townsend to explain what the allegations were about, and sent him his notes of the investigatory meeting, copies

of documents relating to the January 2020 audit, and copies of the temperature probe check records relating to 15 and 22 August 2020.

28. The respondent wrote to the claimant to invite him to a disciplinary hearing. A copy of the letter is at page 118 of the bundle. The letter stated that the hearing was to consider allegations of *"falsifying company documentation"*. The claimant was informed of his right to be accompanied in the letter. The hearing was initially arranged to take place on 18 September 2020, however it was re-arranged for 24 September 2020 to enable the claimant to be accompanied.
29. When Mr Townsend reviewed the investigation paperwork before the disciplinary hearing, he decided that the allegations relating to the January 2020 audit would be difficult to determine, as Mr and Mrs Goodchild had retired and could not be questioned, so he decided he would not pursue that particular allegation.
30. In his oral evidence the claimant said that in relation to Mr Townsend's decision not to pursue the issues which had been raised in the January 2020 audit, he: *"wasn't aware of Mr Townsend's thought process"* but *"had no problems with Mr Townsend and how he proceeded"*.
31. In his oral evidence the claimant said that he thought Mr Townsend's decision not to pursue the issues arising from the January 2020 audit was a fair decision. The claimant said: *"I think that was a very fair an honourable thing to do."*
32. The disciplinary hearing was held on 24 September 2020. The claimant was accompanied at the hearing by his colleague, Alice Sanderson. The minutes of the disciplinary hearing are at page 125 of the bundle. The accuracy of the minutes is not disputed, and the Tribunal makes the following findings as to what happened at the disciplinary hearing on that basis.
33. When Mr Townsend asked the claimant if he had signed the kitchen book when was supposed to be on holiday, the claimant replied that he had not done this, but had signed the book when he came back to work. The claimant added: *"I came back checked fridges, did fridge temperature checks and looked through the book and tried to tidy it"* (page 125 of the bundle).
34. When Mr Townsend suggested to the claimant that he should have crossed the entries out and investigated the fact that the records had not been signed, the claimant replied: *"it may be hearsay but his happens a lot in kitchens"* (page 126 of the bundle).
35. At paragraph 13 of Mr Townsend's witness statement, he says that the claimant also claimed during the disciplinary hearing that he had not had proper training on how to complete the kitchen book. As this aspect of Mr Townsend's evidence was not disputed by the claimant, the Tribunal finds that the claimant did make this claim.
36. As there is no evidence that the claimant raised any mitigating factors during either the investigatory meeting or the disciplinary hearing, the Tribunal finds that he did not do so.

37. Mr Townsend adjourned the hearing to consider the evidence and investigate the claimant's claim that he had not received proper training.
38. In his oral evidence Mr Townsend explained that all of the respondent's staff are required to complete training on food hygiene and safety on a regular basis. Mr Townsend explained that he is himself required to complete this training on a regular basis, and the training includes guidance on how to complete the kitchen book.
39. In his oral evidence Mr Townsend explained that he knew how important it was to carry out temperature probe checks correctly, as he was aware of a case involving a different company where both a chef and a pub manager had falsified temperature checks. Mr Townsend said that an OAP had subsequently died after eating food at that pub, and the chef and pub manager had gone to prison for it.
40. The Tribunal accepts Mr Townsend's account of the matters referred to a paragraphs 37 and 38, which were not challenged by the claimant, and which appear to be soundly based.
41. During the adjournment Mr Townsend telephoned the respondent's Employee Relations team, who confirmed that the claimant's training records were up-to-date, and that he had received the necessary training on food hygiene and safety.
42. Having considered the evidence, Mr Townsend decided that it was clear that the claimant had admitted signing off the kitchen book for 15 and 22 August 2020, even though he did not carry out the tests or know whether the results were accurate, and it was clear that the claimant had falsified the records. Mr Townsend did not accept the claimant's explanation that it is customary to sign off records retrospectively, and the Claimant had not provided any examples of that happening. Mr Townsend concluded that the claimant was guilty of gross misconduct.
43. Mr Townsend considered what the appropriate sanction should be. Mr Townsend was aware that falsification of company records amounts to gross misconduct, and could result in summary dismissal. Mr Townsend decided that the claimant had committed a serious breach of the requirement to complete the kitchen book accurately, which had created a significant risk for the respondent, had provided no credible explanation for falsifying the documents, and appeared to be indifferent to the risk he had created. Mr Townsend considered the claimant's length of service, but felt that that did not adequately mitigate his misconduct.
44. Mr Townsend reconvened the hearing to ask the claimant whether he had been able to ask for support about completing the kitchen book if he was unsure. The claimant replied that he didn't really think about asking questions, and just made sure the kitchen book was completed in any event.
45. Mr Townsend confirmed to the claimant that he had found him guilty of gross misconduct, and that he was summarily dismissed.

46. A letter confirming the outcome of the disciplinary hearing was sent to the claimant on 24 September 2020 (page 128 of the bundle). The disciplinary outcome letter stated that the reason for the claimant's dismissal was: *"Falsifying company documentation. You admitted that you had signed kitchen documents after the dates had already passed falsifying the temperature probe checks. You accepted that what you had done was wrong and that it shouldn't have been signed after the date had passed."* The letter informed the claimant of his right of appeal.
47. At page 2 of the claimant's statement, he states that signing off temperature probe checks which he had not carried out, some time after the dates in question: *"was a retrospective action as had been required by senior management [line manager and previous area managers whether by direction or inference]"*. However, the claimant accepted during cross-examination that although senior management used to notify him when an NSF auditor was coming, and that they wanted things to be right and documents to be up-to-date, he had never been instructed to complete paperwork fraudulently. On this basis the Tribunal finds that the claimant had never been instructed to complete temperature probe checks retrospectively.
48. When it was put to the claimant during cross-examination that he had not produced any evidence that it was custom and practice for members of staff to sign off on food and temperature checks they hadn't carried out themselves, the claimant confirmed that he hadn't produced any evidence of this and said: *"I thought it would be wrong to throw previous managers and other members of staff into a situation where they could have been subject to a disciplinary"*.
49. In Ms Richardson's oral evidence she explained that falsification of temperature probe check records in kitchen books was not an issue she had ever had to deal with before. Ms Richardson explained that falsifying temperature check paperwork can lead to food poisoning, fines, imprisonment, reputational damage, the risk of a venue being forced to close, and: *"you could potentially kill someone"*.
50. The Tribunal is not in a position to make any finding as to what happened in the respondent's other pubs, however the claimant produced no evidence either during the disciplinary process or at the Tribunal hearing to support his assertion that it was common practice for the kitchen book to be completed fraudulently. The Tribunal finds Ms Richardson to be a credible witness, and finds that the respondent did not consider fraudulent completion of temperature probe check records to be either a common or acceptable practice. The claimant produced no credible evidence to the contrary.
51. At page 1 of the claimant's witness statement, he says that he believes that: *"senior management including Area Manager Julie Richardson, and possibly Regional Manager Paul Greenwood along with the new General Manager, Jack Donnelly may have colluded to get me removed from my accommodation at The Woodman in one form or another"*. He also states: *"I believe the apartment may have been used as an enticement for the "new" assistant manager Joe"*.

52. In August 2020 Mr Donnelly informed the claimant that smoking was not permitted anywhere on the respondent's premises, including in the claimant's flat. The claimant questioned this, as it was not something he had been told before. The claimant initially queried this with Mr Donnelly, and then with Ms Richardson. Ms Richardson informed the claimant that smoking was prohibited everywhere on the premises except in "*designated smoking areas*". The claimant says there weren't any designated smoking areas at the Woodman.
53. At page 1 of the claimant's witness statement he says: "*I now believe this was an attempt to catch me out by contravening an instruction*". However, the Tribunal notes that the respondent never took any action against the claimant in relation to the smoking issue.
54. The Tribunal finds that it was reasonable for the respondent, as the claimant's employer and the owner of the premises, to instruct the claimant not to smoke on its premises, including in the flat the claimant occupied, on the basis that smoking is a potential health and safety risk, whether or not this was something which had been permitted in the past.
55. The claimant has not produced any evidence to support his claim that the respondent was trying to catch him out by instructing him not to smoke on the respondent's premises, and the Tribunal finds that the "no smoking" instruction was not an attempt to "catch him out".
56. During the Tribunal hearing the claimant was unable to explain why he believed that "senior management" may have colluded to get him removed from his accommodation, and did not produce any evidence to support this allegation.
57. In his oral evidence the claimant said: "*I thought The Woodman might be going in a different direction. I thought there might be an idea that I should move on and this was an opportunity*". However, the claimant has never produced any evidence to show that the respondent dismissed him because it was thought that it was time for him to "move on", and he accepted in cross-examination that the principal reason for his dismissal was the temperature probe check issue.
58. The Tribunal finds that Mr Townsend's evidence was coherent and consistent, and finds Mr Townsend to be a credible witness. However, the claimant's claim that the respondent's management team may have colluded to get him removed from his accommodation is fanciful, as is not supported by any evidence. For these reasons the Tribunal prefers Mr Townsend's evidence about the reasons for the claimant's dismissal.
59. The Tribunal finds that having considered the evidence Mr Townsend reasonably concluded that it was not customary for employees to sign off temperature probe tests retrospectively which they had not completed themselves, and that the claimant knew how to complete the kitchen book properly.

60. The Tribunal finds that after considering all the evidence, including the claimant's own evidence, Mr Townsend believed that the claimant had falsified records of temperature probe checks, and believed that this amounted to gross misconduct.
61. The Tribunal finds that the reason for the claimant's dismissal was gross misconduct in relation to the falsification of temperature probe checks, and finds that there was no "*collusion*" amongst senior management to "*get the claimant out*" of his flat.
62. The Tribunal finds that Mr Townsend considered whether dismissal was an appropriate sanction, and took into account relevant factors, including the claimant's length of service, the risk to the respondent which had been created by the claimant's actions, and the claimant's apparent indifference to the seriousness of the issue, before he decided to dismiss the claimant.
63. On 27 September 2020 the claimant sent an email to the respondent appealing against his dismissal (page 136 of the bundle). The email stated: "*I appeal on the grounds of procedure and severity*".
64. On 29 September 2020 the respondent wrote to the claimant to invite him to an appeal hearing (page 138 of the bundle).
65. The appeal hearing took place on 2 October 2020 and was conducted by Ms Richardson. The minutes of the hearing are at page 153 of the bundle. The accuracy of the minutes was not disputed by the claimant and the Tribunal makes the following findings based on those minutes.
66. At the beginning of the appeal hearing the claimant said that something had been brought up in January that he should have been told about, and if he had been told about it, the incident in August wouldn't have happened. The claimant also said that he believed the sanction which had been imposed was too severe.
67. When the claimant was asked at the appeal hearing whether he understood the importance of completing paperwork he replied: "*we do but we know it doesn't always get done properly. If you look at what I did it wasn't falsifying it was dotting the i's and crossing the t's from the information logged by someone else*" (page 153 of the bundle).
68. According to the appeal hearing minutes, the claimant also said: "*I have done this here that I understand is bad. I know it's still going on today. I think for that I should have received a right royal one and told we don't do it again. I was following what I thought was common practice, I think gross misconduct has been taken too far*", "*We have been over loaded, the company, yourself and Jack have decided it's time for me to go and that's how I feel*", "*I think I have been railroaded to get me out*", "*People haven't followed process. I know I didn't follow process, but it should have been pointed out to me before*", "*you can see this happens more, and it is happening now*", and "*I think I have been pushed out. A General Manager has been brought in from another site after leaving from being in a site where the kitchen got shut down. There's a degree of inconsistency*" (page 154 of the bundle).

69. Ms Richardson's evidence about what happened between January and July 2020 is unchallenged, and the Tribunal makes the following findings based on her evidence.
70. Ms Richardson did not find out about the issues which had been identified in the January 2020 NSF audit until March 2020, because she had taken over as Area Operations Manager from the previous Area Operations Manager in January 2020, and the audit results had been sent to the previous Area Operations Manager.
71. In March 2020 Ms Richardson spoke to The Woodman's General Managers at the time, Alan and Barbara Goodchild, about the issues which had been identified in the January 2020 audit, and asked them to investigate it. However, the pub was subsequently closed for several months owing to the Covid-19 national lockdown, and as everyone was on furlough leave, Mr and Mrs Goodchild weren't allowed to do any work. Later on, when Ms Richardson was liaising with Mr and Mrs Goodchild about re-opening, they informed her that they had decided to retire. They left the business in July 2020.
72. The period between March and July 2020 was a very trying time for the respondent. Ms Richardson had forgotten all about the issues which had been identified in the January 2020 NSF audit by the time she herself returned from furlough leave, and didn't remember about it until Mr Donnelly asked her about it in September 2020.
73. The Tribunal finds that the issues which were identified in the January 2020 audit were not investigated by the respondent between January and July 2020 because of issues outside the respondent's control, namely the fact that Ms Richardson did not receive the audit report for two months, the fact that the General Managers were not able to conduct an investigation into the issues because they were on furlough leave, and the General Managers' resignation in July 2020.
74. In any event, the Tribunal finds that the claimant was dismissed because of the falsification of the August 2020 temperature check records, and not because of anything that had been raised in the January 2020 NSF audit.
75. The Tribunal is satisfied that the issues which were identified by the auditors in the January 2020 audit did not play any part in the respondent's decision to dismiss the claimant.
76. After listening to the claimant's points, Ms Richardson adjourned the appeal hearing to consider her decision. Ms Richardson decided that the claimant's claims that it was customary to complete the kitchen book in the way he did, and that there was a plan to remove him, were not credible, and she upheld Mr Townsend's decision to dismiss the claimant for gross misconduct.
77. Ms Richardson sent a letter to the claimant on 5 October 2020 to inform him that his appeal had been unsuccessful (page 159 of the bundle).
78. The Tribunal finds that the claimant was given an opportunity to appeal against his dismissal, and that his appeal was handled in an appropriate way.

79. The Tribunal finds that the claimant's central challenge to the fairness of the respondent's decision to dismiss him both during the disciplinary process and during the Tribunal hearing was that the sanction which was imposed was not a reasonable sanction.
80. In his oral evidence the claimant said: *"I couldn't believe I was being disciplined"* and said that he had completed the kitchen book with the best of intentions.
81. When it was put to the claimant during cross-examination that according to the examples which are set out in the handbook, his actions did amount to gross misconduct, the claimant initially replied: *"I would question the world falsification and what that means. I didn't deliberately alter or amend or deliberately lie. I just added my signature. It was not my intention to deliberately mislead or deceive the auditors or anyone else"*. The claimant said in oral evidence: *"I am criticising the interpretation of my act as gross misconduct."* and said: *"it could have been done in a different way"*.
82. However, in his oral evidence the claimant eventually accepted that signing the kitchen book records did satisfy the definition of *"falsification of records"*. The claimant also accepted that falsifying the temperature check records constituted gross misconduct, and confirmed that a failure to comply with health and safety obligations could make a customer ill, and could lead to criminal liability. The claimant accepted that his conduct had been *"highly negligent"*. The claimant said: *"There are lots of potentials. The top of the pinnacle would be death – of course I understand that"*.
83. The claimant also accepted during cross-examination that it was important for food temperature checks to be recorded accurately. The claimant said: *"staff should only sign off on food temperatures that they know to be true"* and *"staff should only sign off on temperature checks that they have carried out themselves"*.
84. The Tribunal finds that the potential implications of temperature probe checks not being carried out and recorded properly were very serious owing to the potential health and safety and reputational issues, and finds that the nature of the claimant's gross misconduct in falsifying temperature probe check records was very serious.

The relevant law

85. The Tribunal now turns to the relevant law.
86. Employees who have been employed for the requisite period of time have the right not to be unfairly dismissed under section 94 of the Employment Rights Act 1996.
87. Section 98 of the Employment Rights Act deals with the fairness of dismissals. In order for a dismissal to be fair, the employer must show that it had a potentially fair reason for dismissal. If the respondent is able to show that it had a potentially fair reason for dismissal, the Tribunal must consider whether the respondent acted fairly or unfairly in dismissing the employee for that reason.

88. Misconduct is a potentially fair reason for dismissal. In order for a dismissal for misconduct to be fair:
- the employer must establish that misconduct was the real reason for the dismissal; and
 - the Tribunal must find that the employer acted reasonably, in all the circumstances of the case, in treating misconduct as the reason for dismissing the employee.
89. Whether the claimant's dismissal was fair or unfair depends on whether the respondent acted reasonably or unreasonably in dismissing the claimant on the grounds of misconduct. In deciding whether the employer acted reasonably or unreasonably, the Tribunal is required to take into account the matters which are set out in section 98(4) of the Employment Rights Act 1996.
90. It is well established law that the issue to be determined by the Tribunal is not whether the Tribunal would have acted differently, or whether it would have made the same decision as the employer. The Tribunal must consider the reasonableness of the employer's conduct, and must not substitute its decision as to what was the right course to adopt for that of the employer (**Iceland Frozen Foods Ltd v Jones 1982 IRLR 439 and Sainsbury's Supermarket Ltd v Hitt 2003 IRLR 23**).
91. In many cases there will be a range of reasonable responses to the employee's conduct within which one employer might reasonably take one view, and another might quite reasonably take another. The function of the Tribunal is to determine whether in the particular circumstances of the case the decision to dismiss the employee fell within the range of reasonable responses which a reasonable employer might have adopted. This includes consideration of whether the dismissal was procedurally fair.
92. The leading case on reasonableness in relation to misconduct is **BHS v Burchell [1980] ICR 303**. The Tribunal must first decide whether the employer had a genuine belief in the employer's guilt the time of the dismissal. If the employer did have a genuine belief in the employers' guilt, the Tribunal must then decide whether the employer held that belief on reasonable grounds and after carrying out a reasonable investigation.
93. The Tribunal must decide whether the employer acted reasonably or unreasonably in relation to all aspects of the case, including the investigation, the grounds for the employer's belief, the penalty imposed, and the procedure followed.
94. Should the Tribunal decide that the dismissal was unfair it shall go on to consider remedy.
95. Under section 118 of the Employment Rights Act 1996, where a Tribunal makes an award for compensation for unfair dismissal, it shall consist of a basic award and a compensatory award.

96. The basic award is calculated according to a formula set out in section 119 of the Employment Rights Act 1996 based on the claimant's age, length of service and gross weekly pay. It is the same calculation as is used for calculating statutory redundancy pay.
97. If the Tribunal considers that any conduct of the claimant before the dismissal was such that it would be just and equitable to reduce the amount of the basic award to any extent, then the Tribunal shall reduce amount of the basic award accordingly (section 122(2) of the Employment Rights Act 1996).
98. Section 123 of the 1996 Act provides that the compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal, insofar as that loss is attributable to action taken by the employer.
99. Where the tribunal finds that the dismissal was to any extent caused or contributed to or by the action of the claimant, the tribunal shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding (S.123(6) ERA).
100. Should the Tribunal find that the dismissal was procedurally unfair but, had a fair procedure been adopted, the employee would have been dismissed in any event, that is a matter which will affect the compensatory award (**Polkey v A E Dayton Service Limited 1988 ICR 142**). A Tribunal may award no compensation or make a percentage reduction in compensation (known as a "Polkey deduction") to reflect the possibility that the employee may still have been dismissed.

Conclusions

101. The Tribunal has reached the following conclusions based on the findings of fact which have just been set out.
102. The Tribunal is satisfied that there was a potentially fair reason for the dismissal of the claimant, which was the claimant's conduct. The Tribunal is satisfied that the respondent had a genuine belief that the claimant was guilty of gross misconduct by falsifying the temperature probe check records relating to 15 and 22 August 2020, and that this was the reason for the claimant's dismissal.
103. During the course of Mr Donnelly's investigation he reviewed the kitchen book records of the temperature probe tests carried out on 15 and 22 August 2020 and interviewed the claimant. The claimant was accompanied at the disciplinary hearing by a colleague, and had the opportunity to put forward his version of events during the hearing.
104. The claimant was given the opportunity to appeal, and was given a further opportunity to put forward his version of events at the appeal hearing.
105. The claimant admitted falsifying the temperature probe check records, and falsification of records is classed as gross misconduct in the respondent's Employee Handbook.

106. The Tribunal is satisfied that the respondent's belief that the claimant had committed an act of gross misconduct was reasonably held, based both on the documentary evidence, and what the claimant himself said during the investigatory meeting and disciplinary hearing, following a reasonable process.
107. The Tribunal finds that the sanction which was imposed was within the range or reasonable responses, taking into account all the circumstances, including the seriousness of the misconduct, the potential consequences of the claimant's actions, and the claimant's apparent indifference to what he had done.
108. The judgment of the Tribunal is that the respondent did not unfairly dismiss the claimant. Accordingly, the claimant's complaint of unfair dismissal fails.
109. The Tribunal finds as a fact that the claimant did falsify the 15 and 22 August 2020 temperature probe check entries, and it was this which caused the respondent to dismiss him. If the claimant's dismissal had been found to be unfair, the Tribunal would have found the claimant to have contributed to his dismissal such that it would be just and equitable to reduce the compensatory award by 100%, and that his conduct was such that it would be just and equitable to reduce the basic award by 100%.

Employment Judge Tegerdine

Date 1 April 2021

RESERVED JUDGMENT & REASONS SENT TO

THE PARTIES ON

Date: 13 May 2021

FOR EMPLOYMENT TRIBUNALS

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