EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr S Hussain	**v**	**Trenitalia c2c Limited**

Heard at: London Central **On**: 13 & 14 May 2021

Before: Employment Judge P Klimov, sitting alone

Representation

For the Claimant: Mr D. Curwen (of Counsel)

For the Respondent: Mr G. Anderson (of Counsel)

JUDGMENT having been announced to the parties and the reasons having been given orally at the hearing on 14 May 2021, and written reasons having been requested by the Respondent at the end of the hearing, in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Background and Issues

1. By a claim form presented on 13 March 2020 the Claimant brought a complaint of unfair dismissal. The Respondent admits dismissing the Claimant but denies that the dismissal was unfair. The Respondent avers that it dismissed the Claimant for gross misconduct, namely for stealing a cash bag containing £1,269.95, and that in all the circumstances of the case it was reasonable for the Respondent to treat this reason as a sufficient reason for the dismissal.

2. The Claimant denies stealing the cash bag. He accepts that the reason for his dismissal was related to conduct, however, he claims that the dismissal was procedurally unfair.

3. Therefore, the main liability issue before the tribunal was the fairness or otherwise of the dismissal, which issue shall be decided in accordance with section 98(4) ERA, namely by considering "*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 shall be determined in accordance with equity and the substantial merits of the case".*

4. At the hearing, the Claimant was represented by Mr Cowen and the Respondent by Mr Anderson. I am grateful to both of them for their submissions and assistance to the tribunal.

5. The Respondent called three witnesses, Ms Lisa Hayter (the investigating officer), Mr Kevin Haffie (the dismissing officer) and Mr Christian Addy (the appeal officer). They all gave sworn evidence and were cross-examined. The Claimant gave sworn evidence and was cross-examined.

6. I was referred to various documents in the common bundle of documents of 296 pages the parties introduced in evidence. I was also shown two CCTV video clips of approximately 4.5 minutes' and 4 seconds' long, which the Claimant introduced in evidence.

7. There was a draft list of issues prepared by the Respondent, which was accepted by the Claimant at the start of the hearing. The draft list contained the following issues:

> **2. Unfair Dismissal**
>
> 2.1 Did the Respondent dismiss the Claimant on 11 November 2019 within the meaning of section 95(a) ERA 1996?
>
> 2.2 Was the dismissal on the grounds of the Claimant's conduct within the meaning of section 98(2)(b) ERA 1996?
>
> 2.3 Was the dismissal fair in all the circumstances under section 98(4) ERA 1996?
>
> **3. Remedy**
>
> 3.1 Should any remedy awarded to the Claimant in respect of unfair dismissal be wholly or partially reduced because the dismissal would have occurred in any event regardless of any unfairness found (see *Polkey v. AE Dayton Services Ltd [1988] AC 344*)?
>
> 3.2 Should any remedy awarded to the Claimant be reduced in total or in part because the Claimant wholly caused or contributed to his dismissal?

3.3 Has the Claimant acted reasonably to mitigate his losses?
3.4 Should the Claimant be awarded a payment in respect of the loss of statutory rights?

4. Acas Code

4.1 Did the Respondent fail to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures (the "**Acas Code**")?
4.2 If the Respondent did fail to comply with the Acas Code:
   4.2.1 Was that failure unreasonable?
   4.2.2 Is it just and equitable for the Employment Tribunal to apply an uplift or a reduction to compensation, and if so, how much (subject to a maximum of 25% of the overall award)?

8. At the start of the hearing the parties agreed that the issues 2.1 and 2.2 were not relevant, as the Respondent did not dispute dismissing the Claimant and the Claimant accepted that the reason for his dismissal was related to conduct.

Findings of Fact

9. The Respondent is a train operating company owned by Trenitalia that operates the Essex Thameside railway franchise serving 26 stations in East London and South Essex.

10. The Claimant was employed by the Respondent as a Customer Delivery Assistant – Ticket Office Level 2, from 10 December 2007 until his dismissal on 11 November 2019. At the time of his dismissal, he was working in the ticket office at Upminster station. He was dismissed in the following circumstances.

11. At Upminster station's ticket office there are two safes, both located in the "safe room", which is accessible only through the level 2 ticket office, where the Claimant worked. The following are stored in the "main safe": (i) cash bags containing cash takings of an individual ticket office assistant from his/her immediate shift, (ii) data bags with records of cash takings for that ticket office assistant in his/her shift; (iii) float bags containing, for each ticket office assistant, £300 for change in various denominations; and (iv) bags for Loomis, a security firm, with the previous day cash takings for Loomis to take away. Individual ticket office assistant's cash bags are transparent and are approximately A4 size. Loomis bags are larger (about A5 size) and are not transparent.

12. At the close of each day, the closing shift prepares the Loomis bag for Loomis to take the next time they visit. There is a separate safe for bags with change. The key for the change safe is kept in the main safe. There are six sets of keys

for the main safe. On the afternoon of 30 September 2019, the only two key holders in the ticket office were the Claimant and Ms Adheena Andrews.

13. Mr Kris Narendren worked an earlier shift that day. He finished his shift at 13:00 and put his cash bag containing £1,269.95 (including two £50 notes) in the main safe. When he did that there were other cash bags in the main safe from earlier shifts.

14. On 30 September 2019, the Claimant arrived at work at 13:48. His shift started at 14:00. He took his float bag from the main safe. When he arrived for work Mr Brain Scott and Mr Satwinder Dhand were in the ticket office. The Claimant gave his main safe's key to Mr Scott to pass it to Mr Dhand. Mr Dhand used the Claimant's key to put his float, cash bag and data bag in the main safe. He then returned the key back to Mr Scott, who gave it to the Claimant.

15. Ms Andrews started work at 14:15 and took her float bag from the main safe.

16. At 14:49, Loomis security arrived to collect a Loomis bag with cash bags from the previous weekend. The Claimant opened the main safe and got the Loomis bag for them. At 14:51, the Loomis security guard left the ticket office with the Loomis bag and came back at 14:52 with a bag of change. The Claimant did not wish to deal with counting change and asked Ms Andrews to deal with it.

17. Ms Andrews opened the main safe to get a key for the change safe. While she was counting change, the main safe door remained open for approximately 8-9 minutes. At the same time Mr Mustafa Eray and Mr Carl Humphries were in the ticket office. Both worked on the platform and were not meant to be spending time in the ticket office except for tea breaks and to put and pick up personal items. They were chatting with Ms Andrews and the Claimant. They were again in the ticket office on several occasions during the day.

18. Ms Andrews left the ticket office at 18:31 and returned at 18:32.

19. At 19:46, the Claimant finished his shift, he put his cash bag, the float bag and the data bag in the main safe. He locked the main safe and left the ticket office to catch his train. His train was due to arrive at 19:49 and to leave the platform at 19:54. The next train was in 30 minutes.

20. At 20:41, Mr Scott came to the ticket office with three cash bags and three data bags. Ms Andrews opened the main safe and started to prepare a Loomis bag for the following day's collection by putting in it that day's cash bags. She realised that one cash bag was missing. That was Mr Narendren's cash bag from his morning shift with £1,269.95.

21. At about 21:30, Ms Andrews called Mr Daniel Buck, on-call manager, to report the missing bag. At 21:50, Mr Buck called Ms Salrita Sheen-Suresh because she was Ms Andrews's "Chain of care". Ms Salrita Sheen-Suresh then called Ms Andrews. They spoke again at 22:45.

22. In those telephone conversations, Ms Andrews sounded upset and told Mr Buck and Ms Salrita Sheen-Suresh that she wanted someone to come and search her and for police to be called. She said that she and Mr Eray had been searching for the bag but could not find it anywhere. She said that the Claimant's behaviour was strange when the Loomis security guard had come in the afternoon to collect the Loomis bag. She also said that she remembered seeing £50 notes in one of the bags earlier that day, either when she was getting her float bag at the start of the shift or later when the main safe was open and she was counting change.

23. On 4 October 2019, both the Claimant and Ms Andrews were suspended pending the Respondent's investigation into the matter.

24. Ms Hayter conducted the investigation. She interviewed the Claimant (twice), Ms Andrews, Mr Scott, Mr Eray, Mr Humphries, Mr Dhand, Mr Narendren, Mr Buck, Mr Graham Howell, and Mr David Walker. She received a note from Ms Salrita Sheen-Suresh with details of her telephone calls with Ms Andrews. She reviewed some 12 hours of CCTV footage. She produced a detailed investigation report with interview notes, CCTV stills, roaster information, shift sheets and other supporting documentation. The conclusion section of her report read:

> Due to the evidence investigated including CCTV which showed Sultan [the Claimant] rushing out of the ticket office at 19:46 and contradicting the statements made by Sultan in his interview where he states that Carl [Mr Humphries] and Mustafa [Mr Eray] where in the ticket office when Adheena [Ms Andrews] was checking the safe. Shift sheets confirming the time he logged off. Key register sheets showing that only Sultan and Adheena had access to the safe since the bag was identified as being present. Safe check sheet indicating the time that Adheena checked the safe, emails confirming the bag had not been accidentally collected by Loomis, and interviews undertaken indicating the erratic

behaviour displayed by Sultan with regard to dealing with Loomis, where he originally started the process of dealing with Loomis but then decided not to complete it.

I conclude that on 30th September 2019, Sultan Hussain removed and Kept cash Bag number 38-94101981-6, containing £1269.95 from the safe at Upminster when he was leaving to go home.

I also conclude that on 30th September 2019 Sultan neglected to undertake part of his duties when he failed to complete the process of dealing with the Loomis delivery. This placed additional pressure on his colleague as she then had to complete the task.

25. Ms Hayter recommended that the Claimant was charged with grave misconduct on two counts:

Charge 1 : On Monday 30th September 2019 Sultan Hussain removed and kept cash bag number 238-94101981-6 containing £1269.95 from the safe at Upminster Station. This contravenes the c2c disciplinary procedure 3.3.1 theft (including attempted theft) or possession of stolen property.

Charge 2: On Monday 30th September 2019 Sultan Hussain failed to take ownership of the Loomis task of paying in change saying it was "a lot of work". This contravenes the c2c disciplinary procedure 3.3.1. persistent or wilful failure to perform duty.

26. On 11 November 2019, there was a disciplinary hearing conducted by Mr Kevin Haffie. The Claimant attended with a trade union representative, Ms Billie Soule. CCTV images were viewed. Mr Haffie relied on the investigation report's findings and conclusions. The Claimant denied the allegations. He and Ms Soule made various representations challenging the findings of the investigation and pointing out to inconsistencies in the investigation report. Mr Haffie concluded that the Claimant was guilty of gross misconduct by reason of Charge 1 being proven, and that he should be summarily dismissed. Mr Haffie, however, dismissed the second charge. Mr Haffie gave the following reasons for his decision(***my emphasis***):

*With regards to Charge 1, I have considered the timeline as portrayed and the evidence provided and **my conclusion is that with the access to the safe, the statements made from other members of staff and what I consider to be strange behaviour**, I uphold Charge 1.*

27. The Claimant appealed his dismissal. The appeal was heard by Mr Christian Addy. He upheld the dismissal. Mr Addy gave the following reasons for dismissing the Claimant's appeal (***my emphasis***):

*We know money was stolen, **only 2 people had access to the safe**, Sultan has one key and Adheena had one and **she reported the bag missing, she was upset, she wanted the theft reported to the police, she asked for on call manager to come and report the bag and stood by the safe when it was open**. **That's why she was negated it out. Only 2 people could've taken that money and her behaviour as mentioned before would negate her and this levels up to you being the individual charged after the investigation.***
It's clear on the CCTV you were rushing out of the office. You had enough time to go through the platform and I don't accept your explanation for this and your actions were concerning.

*As an Appeal Officer and my job is that a fair and reasonable process has been carried out and **I think it has been and it has and I think Kevin is reasonable in his finding the charge proven** and also with regards to the sanction issued.*

I think the sanction is reasonable and I uphold this, and you no longer work for c2c and I will write to you confirming this.

The Law

28. In reaching my decision I applied the following law to the facts, as I found them. Section 98 of the Employment Rights Act 1996 (ERA) states:

"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

(a) The reason (or, if more than one, the principal reason) for the dismissal; and

(b) That it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it –

…….

(b) Relates to the conduct of the employee;

29. If the employer shows that the reason for the dismissal is a potentially fair reason under section 98(1) ERA, the tribunal must then consider the question of fairness, by reference to the matters set out in section 98(4) ERA which states:

    Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason 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.

30. In a misconduct case, the test set out in *British Home Stores v Burchell* [1978] IRLR 379 should be applied. The three elements of the test are:

    a. Did the employer have a genuine belief that the employee was guilty of misconduct?
    b. Did the employer have reasonable grounds for that belief?
    c. Did the employer carry out a reasonable investigation in all the circumstances?

31. In reaching my decision, I apply the principle that the tribunal must determine whether the employer's decision was within a range of reasonable responses which a reasonable employer could come to in the circumstances. It means that the tribunal must review the employer's decision to determine whether it falls within the range of reasonable responses, rather than to decide what decision it would have come to in the circumstances of the case.

32. In looking at whether dismissal was an appropriate sanction, the question is not whether some lesser sanction would, in the tribunal's view, have been appropriate, but rather whether dismissal was within the range of reasonable responses that an employer could reasonably come to in the circumstances. The tribunal must not substitute its view for that of a reasonable employer. *(Iceland Frozen Foods Limited*

v Jones 1982 IRLR 439, *Sainsbury's Supermarkets Limited v Hitt* 2003 IRLR 23, *and London Ambulance Service NHS Trust v Small* 2009 IRLR 563).

33. In cases of gross misconduct, especially involving theft, the length of service as a mitigating factor by itself is unlikely to take the decision to dismiss outside the range of reasonable responses (see, e.g., *AEI Cables Ltd v McKay* [1980] IRLR 84).

34. When an employee is dismissed for a reason of his conduct, the "range of reasonable responses" tests applies both to the decision to dismiss and to the procedure by which that decision was reached, including the investigation stage of the process. (*HSBC Bank plc v. Madden 2000* ICR 1283 CA). However, the correct approach is not to consider this as two separate questions, but as relevant considerations the tribunal must have regard to in answering the single question posed by section 98 (4) of ERA (see *USDAW v Burns* EAT 0557/12).

35. The principle that the tribunal must not substitute its view for that of a reasonable employer equally applies in relation to the question of credibility of witnesses, based on whose evidence the employer took the decision to dismiss. It is not for me to decide whether the Respondent should have believed the Claimant, and not Ms Andrews or other witnesses. The question for me is whether in all the circumstances of the case it was within the range of reasonable responses for the Respondent to prefer the version of events it had constructed based on the collected evidence.

36. Where there are problems with the disciplinary hearing itself, those can in some circumstances be remedied on appeal, even if the appeal is not a complete rehearing, however the procedure must be fair overall (*Taylor v OCS Group Limited* [2006] IRLR 613).

37. In a case where the employer dismissed an employee for a substantively fair reason but failed to follow a fair procedure, the compensatory award (but not the basic award) may be reduced to reflect the likelihood that the employee would still have been dismissed in any event had a proper procedure been followed. Such reduction can be reflected by a percentage representing the chance that the employee would have been dismissed. In exceptional cases, the award can be reduced to nil if it can be shown that a fair procedure would have resulted in a dismissal anyway (*Polkey v AE Dayton Services Ltd* 1988 ICR 142, HL).

38. The burden of proving that an employee would have been dismissed in any event is on the employer (*Britool Ltd v Roberts and ors* 1993 IRLR 481, EAT). In assessing a *Polkey* reduction a degree of speculation is expected (*Thornett v Scope 2007* ICR 236, CA). However, "*there will be circumstances where the nature of the evidence for this purpose is so unreliable that the tribunal may reasonably take the view that the exercise of seeking to reconstruct what might have been is so riddled with uncertainty that no sensible prediction based on the evidence can properly be made. Whether that is the position is a matter of impression and judgement for the tribunal*" (per Mr Justice Elias, the then President of the EAT, in in *Software 2000 Ltd v Andrews and ors* 2007 ICR 825, EAT).

39. **Section 122(2) of ERA** states that: *"Where* t*he tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent.*"

40. **Section 123(6) of ERA** states that*: "Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding."*

41. In finding contributory conduct the tribunal must focus only on matters, which are "*causally connected or related*" to the dismissal (*Nejjary v Aramark Ltd* EAT 0054/12) and evaluate the employee's conduct itself and not by reference how the employer viewed that conduct (*Steen v ASP Packaging Ltd* [2104] I.C.R. 56).

42. In determining whether to reduce an employer's unfair dismissal compensation on grounds of contributory conduct, the tribunal must consider three questions. Was there conduct by the employee connected with the unfair dismissal which was culpable or blameworthy? Did that conduct caused or contributed to some extent to the dismissal? Is it just and equitable to reduce the amount of the claimant's loss to that extent? *(Nelson v BBC No. (2)* 1979 IRLR346)

43. Turing to the two specific cases drawn to my attention by Mr Anderson, the first of which is *Monie v Coral Racing Ltd* [1981] ICR 109.

44. While I accept the ratio, that is that a dismissal on reasonable suspicion of theft might be fair, the Court of Appeal in that case emphasised that the fairness

depended on the circumstances of the case and whether there were "*solid and sensible reasons"* on which the employers could reasonably suspect dishonesty. The Court of Appeal reiterated that the *Burchell* test must be applied in determining that issue. In his judgment Lord Stephenson said: "*When a single employee is suspected of dishonesty, it would clearly be unfair and unreasonable for an employer to dismiss him without belief in his guilt and reasonable grounds for that belief. Paragraph 6(8)* [current s.98(4) ERA] *is there to underline what is only common sense, what has been repeatedly stated to be not only good sense but good law and what was assumed in such cases as Burchell and Weddel"*.

45. The second case Mr Anderson relies upon is *Frames Snooker Centre* [1992] IRLR 472 (EAT). I accept that this case establishes that there should be no "*all or none*" principle where any one of a group of employees could have committed a particular offence. However, this case again reiterates the importance of a thorough investigation. The paragraph in the judgment saying that is the very same paragraph where it is stated that there is no "*all or none*" principle. It reads (***my emphasis***): "*In our judgment, there is no "all or none" principle in the dismissal of a group of employees in a Parr situation. As a general rule, if the circumstances of the members of the group in relation to the relevant offence are similar, it is likely to be unreasonable for the employer to dismiss one or more members of the group and not others, and those dismissed will thus succeed in a claim for unfair dismissal. But if the employer is able to show that he* ***had solid and sensible grounds*** *(which do not have to be related to the relevant offence) for differentiating between members of the group and not dismissing one or more of them, that will not of itself render the dismissal of the remainder unfair*."

46. Therefore, on the facts of this case, I do not see how these two authorities take me beyond or away from the *Butchell* test I must apply. If anything, in situations where more than one person could have committed the offence in question, these authorities, in my view, put further and stronger emphasis on the importance for the employer to have "*solid and sensible*" grounds before excluding one of potential culprits.

47. Mr Curwen drew my attention to paragraphs 60 and 61 of the EAT judgment in *A v. B* EAT/1167/01 ST. I accept these citations are relevant for me to consider and apply. I also find the passage in paragraph 79 of the judgment is of assistance.

48. By way of a background the claimant in that case was employed as a residential social worker. He was accused of having a minor staying in his flat and after a flawed investigation dismissed. Mr Justice Elias (as he then was) giving judgment for the EAT said (***my emphasis***):

> *60. **Serious allegations of criminal misbehaviour, at least where disputed, must always be the subject of the most careful investigation, always bearing in mind that the investigation is usually being conducted by laymen and not lawyers**. Of course, even in the most serious of cases, it is unrealistic and quite inappropriate to require the safeguards of a criminal trial, **but a careful and conscientious investigation of the facts is necessary and the investigator charged with carrying out the inquiries should focus no less on any potential evidence that may exculpate or at least point towards the innocence of the employee as he should on the evidence directed towards proving the charges against him.***
>
> *61. This is particularly the case where, as is frequently the situation and was indeed the position here, the employee himself is suspended and has been denied the opportunity of being able to contact potentially relevant witnesses. Employees found to have committed a serious offence of a criminal nature may lose their reputation, their job and even the prospect of securing future employment in their chosen field, as in this case. **In such circumstances anything less than an even-handed approach to the process of investigation would not be reasonable in all the circumstances**.*
>
> *…………...*
>
> *79. It is obvious that once these opinions had been formed by the various social workers it was going to be very difficult for any employee, however innocent in fact, to demonstrate that innocence. **In such cases there is a particular need to ensure that reasonable steps are taken to identify such persons who may be able to give evidence to counter the allegations made against him**.*

Analysis and conclusions

What was the reason for the dismissal?

49. It was accepted by the Claimant that the reason for his dismissal was related to the alleged gross conduct, namely the theft of the cash bag on 30 September 2019.

Burchell test

50. Turning to the question of whether the Respondent had a genuine belief that the Claimant was guilty of the misconduct.

51. I find that it had. On the face of it, the cash was stolen, and if the Claimant was responsible for the theft, that plainly would be gross misconduct.

52. I find, and the Claimant did not argue otherwise, that the dismissing officer, Mr Haffie, and the appeal officer, Mr Addy, when taking their respective decisions to dismiss him and to uphold the dismissal, both were genuine in their views that the Claimant was guilty of gross misconduct. This, however, is just the first step in the enquiry I need to undertake.

53. The next question is whether the Respondent had reasonable grounds to believe that the Claimant was guilty of the alleged misconduct.

54. To answer this question, I must also decide whether at the time when the belief in the Claimant's misconduct was formed on such grounds, the Respondent had carried out as much investigation into the matter as was reasonable in the circumstances. In other words, the issue of reasonable investigation and having reasonable grounds to believe go hand in hand.

55. It is also important to note that the reasonableness must be considered by reference to the knowledge and the investigation of the person who made the decision to dismiss, in this case - Mr Haffie.

56. Mr Anderson submits that "*Ms. Hayter's investigation was a model of thoroughness.*" He argues: "*The fundamental point is this: only Ms. Andrews and [the Claimant] had key access to the safe. Ms. Andrews reported the theft, helped the investigation exclude other employees and was distraught. She wanted the police to be involved. [The Claimant] was the only person apart from Ms. Andrews who was alone with the safe open after it is known that the cash was present. It is plain that [the Claimant] stole the cash (and it was certainly within the range of reasonable responses for [the Respondent] to conclude as much).*"

57. Mr Curwen argues that there were a number of serious flaws in the investigation process, including Ms Hayter's failure to follow up on inconsistencies between evidence given by people she interviewed and the CCTV footage, her failure to ask

pertinent questions to the witnesses, her acceptance of Ms Andrews' account of events without considering whether she might have had some ulterior motive to try and implicate the Claimant, her failure to properly investigate the circumstances of the alleged "*erratic*" behaviour by the Claimant when dealing with the Loomis visit. He submits that Ms Hayter did not approach the investigation with an open mind, because she started from the premise that the money must have been stolen either by Ms Andrews or the Claimant. Then, having spoken with Ms Andrews, she decided it was not her. She then concludes that therefore it must have been the Claimant, and she does that without properly testing Ms Andrews' assertions that led her to that conclusion. Mr Curwen further submits that Ms Hayter, having decided at an early stage of the investigation that the Claimant was guilty, was looking only for evidence that were confirming her conclusion and ignoring evidence pointing in the opposite direction. Therefore, he argues, what on the face of it appears to be a thorough investigation, in reality was a seriously flawed investigation process, and therefore the Respondent has failed to carry out such investigation as was reasonably required in the circumstances. Mr Curwen submits that if the matter had been properly investigated and all the circumstances established, on the available evidence no reasonable employer would have found the Claimant guilty of having stolen the cash.

Reasonable investigation?

58. I am mindful that I must not fall into the error of substitution, and it matters not what investigation I or another hypothetical reasonable employer would have carried out in those circumstances. What matters is whether the investigation as it was carried out by the Respondent was open to a reasonable employer to carry out in those circumstances.

59. In my judgment, in the circumstances where the Respondent suspected the Claimant of committing a crime, which the Claimant unequivocally denied, considering the seriousness of the allegation it was incumbent on the Respondent to carry out as much investigation as reasonably possible in the circumstances to have sufficient evidential basis to come to a reasonable view that the Claimant was indeed responsible for the theft.

60. I fully accept that the Respondent cannot be expected and is not obliged to undertake an investigation to the same standard as it would have been required if it had been a criminal investigation. Nevertheless, the Respondent suspected the Claimant of a criminal conduct and would have known that likely consequences of the Respondent's decision on that matter would entail severe and potentially long-lasting repercussions for the Claimant.

61. Therefore, in my judgment, the Respondent had to apply the same rigour and thoroughness in discovering and testing evidence which point towards the Claimant's innocence as evidence pointing towards his guilt.

62. Has it done that? I accept that on the face of it, Ms Hayter has done a substantial investigative piece of work. I also find that she approached her task conscientiously and with all the seriousness it demanded.

63. However, I find, it is important to consider her conclusions as the final product of her investigations. These are recorded in the Conclusions sections of her investigation report. These conclusions were the basis for her recommendation to charge the Claimant with two offences of grave misconduct (as these were described by her): (i) stealing the cash bag, and (ii) "*persistent and wilful failure to perform duty*".

64. It is worth repeating the relevant paragraph and breaking it down to each evidential item upon which the conclusion was reached. It reads (**the added numbers are mine**):

> Due to the evidence investigated including CCTV which showed ***(1)*** Sultan rushing out of the ticket office at 19:46 and ***(2)*** contradicting the statements made by Sultan in his interview where he states that Carl and Mustafa where in the ticket office when Adheena was checking the safe. ***(3)*** Shift sheets confirming the time he logged off. ***(4)*** Key register sheets showing that only Sultan and Adheena had access to the safe since the bag was identified as being present. ***(5)*** Safe check sheet indicating the time that Adheena checked the safe, ***(6)*** emails confirming the bag had not been accidentally collected by Loomis, and ***(7)*** interviews undertaken indicating the erratic behaviour displayed by Sultan with regard to dealing with Loomis, where he originally started the process of dealing with Loomis but then decided not to complete it.
>
> I conclude that on 30th September 2019, Sultan Hussain removed and Kept cash Bag number 238- 94101981-6, containing £1269.95 from the safe at Upminster when he was leaving to go home.
>
> I also conclude that on 30th September 2019 Sultan neglected to undertake part of his duties when

he failed to complete the process of dealing with the Loomis delivery. This placed additional pressure on his colleague as she then had to complete the task.

65. Now, there appear to be seven discreet pieces of evidence, which led Ms Hayter to conclude that the Claimant stole the money. Taking them in the reverse order.

66. Item 7 – In her oral evidence to the tribunal Ms Hayter said the "*erratic behaviour*" evidence was only relevant to the second charge of neglecting duties, even though up until that admission it appeared to be part of the Respondent's defence of the Claimant's unfair dismissal claim (see paragraph 14.1 of the Grounds of Resistance and paragraph 29.1 of the Respondent's Skeleton for Hearing).

67. Mr Haffie, in his evidence, said that the reason he had cleared the Claimant of the "*neglecting duties*" charge was because he had found that there was nothing wrong with the Claimant not dealing with the Loomis change delivery, and that was just a matter of work arrangements between two work colleagues.

68. Therefore, the so-called "*erratic behaviour*" could not have been the evidence pointing towards the Claimant's guilt in relation to the theft. Nonetheless, it was included in the list of evidence in relation to both charges. It also acquired the epithet "*erratic*", which is not used by Ms Andrews or any other witnesses in their interviews. In might be just an unfortunate label Ms Hayter, in summing up her evidence, put on that episode. However, in my view, labels do matter in sensitive issues like the one she was handling, particularly when she knew that the disciplining manager would be relying on her report as the basis for his decision. That label creates an impression that the Claimant behaved erratically throughout the day, where the Respondent's case is that "*the erratic behaviour*" was the moment of the Claimant's leaving the office on the day in question, which was a matter of a few seconds.

69. Furthermore, the two other witnesses who mentioned "*strange behaviour*" were just repeating to Ms Hayter what Ms Andrews had told them on the phone after the incident. They were not present in the ticket office on that day, yet the phrase in the charge implies that there were several people who witnessed the Claimant's "*erratic behaviour*". In fact, Mr Humphries, who was present on the day and saw the Claimant, said in his interview to Ms Hayter that he did not notice anything unusual.

70. Item (6) – This is simply confirming that the bag was indeed missing, but that by itself cannot not be taken as an evidence that it was the Claimant who stole it. Of course, he had an opportunity to steal it, but so did Ms Andrews and other members of staff present in the ticket office when the main safe door was open, and those who had access to the safe key.

71. Item (5) – I do not see how from the fact that Ms Andrews discovered the missing bag and had access to the safe during the day it could be reasonably concluded that it was the Claimant and no one else who stole the cash bag.

72. Item (4) - yes, it is a relevant evidence, however, it is far from being conclusive. They both had keys to the safe and there were four other people who also had the keys. Even discounting the possibility of 3 staff who were not working that day passing their keys to someone else, and accepting that Mr Narendren had left with his key before the Claimant and Ms Andrews arrived at work, and at the time of them starting their shift Mr Narendren's cash bag was still in the safe, that evidence by itself still cannot lead to a sound conclusion that it was the Claimant and not Ms Andrews or someone else who stole the money. Even more so, when Ms Hayter, based on her interviews, knew that at least one other person, Mr Dhand, had the keys in his hand and had accessed the main safe on that day.

73. Item (3) – this appears to refer to Ms Andrews saying that the Claimant had his window still open at 19:36 instead of his usual pattern of closing the window at 19:30 and then logging off at 19:45. I do not see how that could be pointing towards the Claimant stealing the bag from the safe. In response to my question at the hearing, Mr Anderson confirmed for the Respondent that there was nothing significant to the fact that the Claimant had his window still open at 19:36.

74. Item (2) – it appears Ms Hayter's conclusion here is that the Claimant was not telling her the truth about who was in the ticket office at the relevant time. By the time of finalising her report, Ms Hayter will have watched the CCTV footage and will have seen that what the Claimant was telling her was true. What he was saying in his interview was not contradictory with the video evidence. On the contrary, the CCTV footage clearly shows that both Mr Eray and Mr Humphries were in the ticket office at the time when Ms Andrews was counting change delivered by Loomis and the main safe door was open.

75. Of course, Mr Eray and Mr Humphries being in the ticket office does not necessarily mean that they were inside the safe room at the relevant time. However, Ms Hayter would not have been able to determine that with any degree of certainty from the CCTV footage. Mr Eray and Mr Humphries in their interviews denied being in the ticket office at the relevant times. Mr Eray gave inconsistent answers. First, he said that he had taken a break in the safe room at 19:00 but had not been in the room before that. However, in answering the follow up question from Ms Hayter he said that he "*might have been in there to take [his] jacket*], and then again said: "[he] *wasn't in there*".

76. The CCTV footage clearly shows they were in the ticket office and as such could have had access to the main safe when its door stayed open. Ms Hayter did not ask Ms Andrews whether they were in the safe room with her when she was counting change. Yet, Ms Hayter in her report concludes that it was not them but the Claimant who gave contradictory statements.

77. I disagree with Mr Anderson that Mr Eray and Mr Humphries being in the ticket office when the main safe was open "*is entirely irrelevant to the investigation*". In my judgment, it was a line of enquiry a reasonable employer would have had to pursue before eliminating them as possible culprits.

78. Further, Mr Anderson's careful analysis as to Mr Eray's movements inside the ticket office he undertook at the hearing, including the Claimant's reference to Mr Eray having his feet on the desk, is just that - Mr Anderson's analysis. I saw no evidence that Ms Hayter had equally gone through the same analysis as part of her investigation before eliminating Mr Eray as a possible culprit.

79. Finally, Mr Anderson submits that "*in any event, the Respondent's investigation, on which it was entitled to rely, made clear that Ms. Andrews was alone with the safe when dealing with the change from Loomis: Ms. Andrews said as much [167]; Mr Eray said as much [177]; Mr. Humphreys said as much [178]. Simply because they were in the ticket office next door and the Respondent may not be able to confirm with CCTV footage Mr. Eray's exact whereabouts at a given minute, comes nowhere near suggesting that either Mr. Eray or Mr. Humphreys must in fact have stolen the cash*".

80. I agree with the latter statement, but not with the former. Mr Eray's and Humphries' statements contradict the CCTV footage. Mr Eray gave inconsistent answers in his interview as to his presence in the ticket office. In my judgment, in those circumstances it was too early for Ms Hayter to eliminate them as possible culprits without undertaking further enquiries.

81. That leaves the "*rushing out of the office*" evidence. Ms Hayter admitted on cross-examination there was not much difference between how the Claimant exited the office in late afternoon and how he did that at the end of the shift. Having looked at the video myself, I think it would be a stretch to call him leaving the office as "*rushing*". I appreciate that it does not matter what I would consider "*rushing*", but whether it was within the range of reasonable response for the Respondent to conclude that based on that video clip the Claimant's behaviour shows that he was guilty of theft. I find that no reasonable employer would have found the Claimant guilty of theft based on that evidence alone.

82. In finding that, I take into account, that Ms Hayter reviewed the Claimant leaving the office on 27/09 and 01/10 and found him doing that at a slower pace than on the day of the incident. However, it appears that on the day in question he was quicker only by 0.5 of a second.

83. Having gone through the list of evidence upon which Ms Hayter had reached her conclusion, I pause to consider whether dissecting in that manner the conclusions section of her report is the right way for me to look at the reasonableness of the investigation. I accept that I must not fall into the error of trying to recreate the investigation and judging it on the basis of how I or another hypothetical reasonable employer would have conducted investigation in those circumstances. I equally must not overanalyse the wording in the investigation report and peruse it for errors and inconsistencies.

84. I must step back and look at the overall picture and decide whether in the circumstances as they were then, what the Respondent did by way of its investigation was within the range of reasonable responses open to a reasonable employer – or using the *Buchell* test wording - "*whether it has carried out as much investigation into the matter as was reasonable in all he circumstances of the case*".

85. However, before I do that, I find it is important to note that the charge of gross misconduct was based on those 7 items of evidence, and that was how the case was presented to Mr Haffie to decide whether the Claimant was responsible for the theft. That was the framework given to him by Ms Hayter. Mr Haffie told the tribunal that he thought the presented evidential basis was sufficient for him to decide the case, and he did not feel the need to do any further investigation despite the Claimant and Ms Soule pointing out at various problems with the gathered evidence and the investigation process.

86. Now, stepping back and considering whether the investigation process, as a whole, was within the range of reasonable responses. As I mentioned earlier, I find that Ms Hayter approached the matter conscientiously and with all the seriousness and rigour it required.

87. However, I find that unfortunately very early into her investigation she had put herself in a rather impossible position as an investigator. I find that she has very quickly, and well before concluding her investigation, made up her mind on two significant matters: (1) that it was only the Claimant and Ms Andrews who could have stolen the money; and (2) that Ms Andrews was innocent. In doing so, she has effectively "boxed" herself into a position that there was no other possible outcome, but to conclude that the Claimant was guilty. The cash bag was stolen, and that was a reasonable conclusion to make. In her mind it was either A or B who stole the cash, and it was not A, therefore logically it ought to be B.

88. Having put herself in that position well before completing her enquiry and without properly testing evidence pointing towards the Claimant's innocence as well as those pointing towards his guilt, she effectively had to defend her predetermined conclusion. Therefore, having set those two "red lines", she was gathering evidence going in one direction only, that is proving the Claimant guilt, and discounting anything that might be questioning the correctness of those assumptions or varsity of the incriminating evidence against the Claimant.

89. She did not follow up with Ms Andrews about what had happened in the safe room during the 9 minutes' period when the main safe remained open, and that was simply on her assumption that Ms Andrews was there supervising the main safe and as she was "innocent" nothing could have happened to the cash inside. It might

be so, but this was a significant matter and there were enough evidence to suggest that the initial stories given by Ms Andrews, Mr Eray and Mr Humphries were not tallying up.

90. She ruled out that the bag could have gone missing before the Claimant started his shift on the basis of Ms Andrews saying that she had seen it in the main safe because she remembered seeing £50 notes inside the bag. This, however, did not sit well with evidence of three other witnesses, the Claimant and Mr Dhand, both of whom said that they had not noticed Mr Narendren's bag, and more importantly, Mr Narendren himself saying that he would normally put data and cash bag rolled up together, which presumably would have made it impossible for Ms Andrews to see the £50 notes inside the bag. Yet, that issue was not pursued any further, and Ms Andrews was not questioned about that.

91. Ms Hayter did not undertake any investigation into whether other keys might be floating around by reason of staff members lending them to each other, despite knowing that it was the usual practice.

92. She appears to have discounted the inconsistency in Ms Andrews saying in her interview that she did not leave the office all day, which she also told Mr Buck and Ms Salrita Sheen-Suresh on the telephone after the incident, and the CCTV footage showing her leaving the office at 18:31, albeit just for a minute. Although, of course, this does not necessarily point towards Ms Andrews being responsible for the theft, in my judgment, it was certainly a piece of evidence, which potentially points against the Claimant's guilt, and for the investigation to be done even-handedly it needed to be considered fully.

93. This is to be contrasted with Ms Hayter rather readily spotting "inconsistencies" in the Claimant answers on such matters as him saying that he had never heard of incidents like that at Upminster before and then referring to a different incident two months earlier. She did not put that "inconsistency" to the Claimant or otherwise sought clarification. However, that formed part of her judgment as to the Claimant's credibility. As the hearing showed, the "inconsistency" was clearly explainable, a simple follow-up question just needed to be asked. The Claimant was simply saying that he had never heard of an incident involving a disappearance of a cash bag, which was true. The earlier incident was of a different kind.

94. Ms Hayter also dismisses out of hand the Claimant's theory that Ms Andrews and Mr Eray might be "working together" because she says in her report "*the Claimant had no basis to make this comment*". Well, the basis was the previous incident with the missing cash, where it appears both of them were involved in some way. Even without that, since Ms Hayter knew that Mr Eray was in the ticket office when the main safe was open, and Ms Andrews was dealing with counting the delivered change, the Claimant's suggestion was not completely fanciful to be dismissed out of hand.

95. For completeness, I shall say that while I accept that it was perfectly reasonable for the Respondent not to re-open the previous incident as part of this investigation process, in my view, by not doing that, it further limited the scope of its enquiry and potential findings, which might have assisted the Claimant's case to show his innocence.

96. Ms Hayter seems to have exonerated Ms Andrews largely by her emotional reaction to the incident and not by hard facts found on a balance of probabilities. The logic of why Ms Andrews would have reported the incident and asked for police to be called and for her to be searched if she had taken the money works only to some degree. Most likely the morning shift or Loomis would have found that the bag was missing in any event. Asking to get police involved and be searched might be a way to exonerate yourself if by then the bag had been taken out of the ticket office.

97. This, of course, does not me that I find that Ms Andrews was responsible of taking the money. Firstly, it is not an issue I need to decide. Secondly, even if it were, I find there is not enough evidence for me to make any such finding.

98. The Respondent's taking at the face value Ms Andrews' reaction and on that basis determining her innocent, by itself might not put it outside the range of reasonable responses. However, I must look at that conclusion in the overall context of the investigation.

99. I remind myself that it is not for me to evaluate the credibility of witnesses who gave evidence as part of the investigation process, provided the Respondent's assessment was within the range of reasonable responses. There was nothing wrong for the Respondent to consider the emotional component in assessing the credibility of the witnesses.

100. Nevertheless, in the circumstances where in the Respondent's mind exonerating Ms Andrews based on her emotional reaction necessarily meant that the Claimant was guilty, in my judgment, the Respondent not applying critical thinking to the "emotional reaction" factor, especially when that emotional reaction was coupled with Ms Andrews very quickly and persistently pointing finger at the Claimant, was another flaw in the process.

101. Ms Andrews, despite sounding distressed and upset by the incident, very clearly and quickly points her finger at the Claimant by recounting the Loomis story to Mr Buck and then Ms Salrita Sheen-Suresh, and then again at her investigation interview, where she further amplifies that by her suggestion that next day the Claimant was looking at her "*weirdly*". Ms Hayter did not seem to pause to consider whether there might be a possibility of Ms Andrews deliberately trying to implicate the Claimant.

102. She does not ask any pertinent questions of Ms Andrews, including on such obvious matters as the apparent inconsistency in Ms Andrews' saying she did not leave the ticket office all day and the CCTV footage showing that she did. She did not ask if Ms Andrews had given her key to someone else or whether it could have been taken without her noticing that. She did not ask her who was in the safe room with her when she was dealing with the Loomis change and the main safe was open, and that is despite the Claimant in his interview telling Ms Hayter that both Mr Eray and Mr Humphries were in the room.

103. It appears the reason for that was because by that stage Ms Hayter in her mind had already exonerated Ms Andrews, thus foreclosing any further enquiry in that direction.

104. It seems short of the Claimant producing some irrefutable proof of Ms Andrews guilt, he was deemed to be found guilty by the simple method of exclusion applied by the Respondent. It was either him or Ms Andrews, and it could not have been Ms Andrews because of her emotional reaction and therefore it was the Claimant.

105. In my judgment, at that stage of the process there were too many loose ends and unanswered questions for the Respondent to make such conclusion.

106. I do not accept Mr Anderson's submission that the Claimant's case at its highest is that the Respondent should have suspected other people. His case is that the

Respondent blamed him without undertaking a sufficient investigation and not treating him even-handedly with others who had as good opportunity to steal the cash bag as he had. It is a different and, in my judgment, legitimate complaint that goes to the central issue in the case, namely whether the dismissal was fair or unfair under s.98(4) ERA.

107. I reject Mr Anderson's submission that it is not good enough for the Claimant to complain about the flaws in the process, and he must positively show how that would have affected the outcome of the investigation. The burden here is neutral. Although this issue might go towards *Polkey*, it is no answer for the Respondent on the liability question. Just because the Claimant cannot positively show that had X or Y been done during the investigation process, he would have been found not guilty, this should be taken as meaning that the Respondent's investigation was reasonable.

108. I am equally unpersuaded by Mr Anderson's argument that because the Claimant had failed to tell the Respondent about possible avenues of enquiry that should lead me to the conclusion that the investigation process was reasonable. Firstly, he did suggest such possible avenues:- the previous incident, Mr Eray and Ms Andrews "working together", other people being in the ticket office when the safe was open. The Respondent chose not to pursue them. More importantly, it was not his job but the Respondent's to conduct a fair and thorough investigation.

109. Now, each of the above flaws in the investigation process by itself, in my judgment, would not have rendered the dismissal unfair. However, looking at the entire process I find the investigation process and the conclusions reached based on it fell outside the range of reasonable responses open to a reasonable employer.

110. However, by that stage the Claimant was not yet dismissed, and I must decide whether his dismissal was fair or unfair. I must decide that by reference to the knowledge and the investigation of the person who made the decision, that is Mr Haffie.

111. The unfairness in the investigation could have been corrected as part of the disciplinary hearing. Unfortunately, this did not happen. All the flaws and the resulting unfairness from the investigation process were simply rolled over and indeed were further amplified during the disciplinary hearing.

112. Mr Haffie accepted the investigation report as proving the Claimant guilt and dismissed all attempts by the Claimant and Ms Soule to challenge it. He did not make any further enquiries or critically questioned the soundness of the conclusions in the investigation report despite the obvious flaws in it, as was pointed out to him by the Claimant and Ms Soule, for example, the inconsistencies in some critical findings in the report and the CCTV evidence.

113. The brevity of his conclusion shows that he simply dismissed the Claimant and Ms Soules submissions and stood by the investigation report without independently testing its conclusions.

114. This opportunity was equally missed on appeal. Mr Addy evidence is that the Claimant had the opportunity to steal the money and that the investigation showed that it was reasonable to believe that he did. He did not question the investigation report. He viewed an additional clip showing the Claimant rushing over the rail bridge to catch his train. However, that additional item of evidence cannot be reasonably taken as showing that the Claimant was responsible for the theft.

115. At best, the appeal process was neutral for the purposes of the procedural fairness issue, and, in my judgment, it certainly did not rectify any of the previous serious flaws in the process.

116. I find it peculiar how much emphasis were placed by the Respondent on the fact that the Claimant could have got to his train without "*rushing*". Mr Anderson argued in his closing submissions that the Claimant was "*clutching at straws*" in arguing the procedural fairness issues. I, however, find that "*clutching at straws*" better describes the Respondent's pernickety assessment of the swiftness of the Claimant's exit from the office on the day of the incident and how much spare time he had to get to his train.

117. I remind myself that I must not judge the Respondent from the point of view of today but looking at the circumstances as they were at the time of the Claimant's dismissal.

118. However, taking all that into account and stepping back and looking at all these issues in the round, I do find that in those circumstances the decision to dismiss the Claimant fell outside the range of reasonable responses open to a reasonable employer. It follows, that I find that the Claimant was dismissed unfairly.

Polkey reduction

119. Turning to the issue of *Polkey*, I do not see how a sensible *Polkey* reduction could be applied without me embarking on a highly speculative exercise of trying to predict what a reasonable investigation would have uncovered. All sort of things could have come to light.

120. I do, however, find that if Mr Haffie had properly and critically analysed the conclusions in the investigation report against the evidence upon which the conclusions were reached, he would have had to conclude that he could not dismiss the claimant on that basis with such dismissal satisfying the test of fairness under s98(4) ERA. He would have had to either undertake a further investigation himself or would have had to dismiss both disciplinary charges against the Claimant. I find the same applies to Mr Addy's decision on appeal.

121. Therefore, I find that there is no proper basis for me to conclude that the Claimant would have been dismissed in any event at some point in time in the future or there is a percentage chance that following a reasonable investigation he would have still been found guilty of the theft and dismissed, and such dismissal would have been fair. Even accepting that the *Polkey* reduction issue involves some degree of speculation, I find that on the facts as they are before me, it would be wrong and unfair for me to pluck a percentage figure out of thin air as the chance of the Claimant being still dismissed. There is simply no sufficient evidential basis for me to do that.

122. For this reason, I find that no *Polkey* reduction should be applied to the Claimant award.

Blameworthy contributory conduct

123. Based on the evidence I have heard and the documents in the bundle I do not find that I can conclude on the balance of probabilities that the Claimant was responsible for stealing the cash bag. I have no reason to disbelieve the Claimant, who was unequivocal in his evidence that he did not do that. That does not mean that I find that Ms Andrews or anyone else was responsible for stealing the cash bag. That is not an issue for me to decide in these proceedings, and as I said

earlier, even if it were, I find there are simply not enough evidence gathered to conclude on a balance of probabilities who that was.

124. I do not accept Mr Anderson's submission that the Claimant's bank account statements show that he was using the stolen cash. In my judgment, all that they show is that he stopped withdrawing cash when money had stopped coming into his account because his salary had been cut off by the dismissal.

125. I find that the so-called "*erratic behaviour*" or "*rushing from the office*", even though might be causally connected to his dismissal, on any sensible view cannot be considered as culpable of blameworthy conduct.

126. If it is suggested that the Claimant is blameworthy for not defending himself during the disciplinary process with as much rigour as he did during these proceedings with the able assistance of Mr Curwen, that again cannot be sensibly described as culpable conduct. Otherwise, the Claimant fully cooperated with the investigation and the disciplinary process, including by raising pertinent issues for the Respondent to look into, all of which were dismissed by the Respondent.

127. For these reasons, I find that it will not be just and equitable to apply any reduction to the Claimant's compensation under s 122(2) or 123(6) of ERA.

Overall Conclusion on Liability

128. To sum up, I find that the Claimant was unfairly dismissed, and the Respondent shall pay him compensation for unfair dismissal without any reduction applied under *Polkey* or s 122(2) or 123(6) of ERA.

Remedies

129. Turning to the issues of remedy, the Claimant's loss to the hearing exceeds the limit on a compensatory award, stipulated by s.124(1ZA) ERA. - 52 multiplied by the Claimant's week's pay.

130. The Respondent challenged the Claimant's mitigation evidence on the basis that the first online application in the bundle was dated 5 February 2020. The Respondent sought to cap compensation at 6 months' loss. The Claimant was

recalled to give oral evidence on mitigation and was cross-examined by the Respondent. He explained that he had started applying for jobs in December 2019 around Christmas time but had been doing that by physically visiting local shops and businesses and handing his CV. He was then advised by Job Centre to apply on-line and keep a record of all his applications, which he started doing from February 2020. He said that he had difficulties in securing a job because when asked about the circumstances of his departure from his previous employer he had to explain that he had been dismissed for the alleged theft. Based on his evidence, I was satisfied that the Claimant had taken reasonable steps to mitigate his loss.

131. Having decided the mitigation issue, I discussed with the parties the exact calculations of the basic and the compensatory awards. The sums were agreed as recorded in my judgment.

132. The Respondent requested six weeks to pay compensation. The Claimant accepted that on the basis that the full amount should be paid by no later than six weeks (i.e. by 25 June 2021), otherwise the statutory interest would apply from the date of the judgment.

Employment Judge P Klimov
28 May 2021

Sent to the parties on:

29/05/2021

For the Tribunals Office

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