



EMPLOYMENT TRIBUNALS

Claimant: Miss E Greenhall

Respondent: Barney's Leisure Limited

HELD AT: Liverpool via CVP

ON: 27 June 2022

BEFORE: Employment Judge Shotter (sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Ms Anna Bithrey (Solicitor)

JUDGMENT having been sent to the parties on 28 June 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Preamble

1. In a claim form received on the 3 February 2022 following ACAS Early Conciliation that took place between 14-17 January 2022, the claimant complained that she had been unfairly dismissed and was seeking damages.
2. The claimant also brings complaints of wrongful dismissal (notice pay) and unlawful deduction of wages.
3. In short, the claimant was summarily dismissed for misconduct arising out of alleged theft and mis-recording of financial information. The claimant claims she was unfairly dismissed because she was under an investigation and was not allowed witnesses in the room during the investigation meeting, was threatened with being reported to the police and was not provided with copies of the investigation meeting notes. Turning to the disciplinary hearing the claimant complains she was "bullied," she was threatened with her pay being withheld and showed "loads" of documents. The claimant confirmed that this was the basis of her unfair dismissal claim at the

hearing today, and I have taken this into account together with the contents of the claim form in which the claimant alleged she was told she had stolen in excess of £10,000, the nature of the theft was not made clear, she was provided with a contract to pay back the money and was not given the chance to tell her story or timeline of events which were described as “irrelevant.” The claimant confirmed that the references to her being made to feel uncomfortable “throughout the job” as a result of jokes about her weight and “sexual body parts” were not separate claims of unlawful sex discrimination and did not form part of the unfair dismissal complaint.

4. The unlawful deduction of wages is withdrawn as the claimant has since received payment.

Agreed issues

5. The issues were agreed between the parties from the outset and prior to oral submissions being made as set out below:

Unfair Dismissal

1. Did the respondent have a potentially fair reason for dismissing the claimant?
The respondent relies on ‘conduct’ as being the potentially fair reason for the claimant’s dismissal, pursuant to s. 98(2)(b) ERA 1996. The claimant accepts she was dismissed for her conduct.
2. Was the Respondent’s decision to dismiss the Claimant within the range of reasonable responses?
3. In considering (2) above, the following issues require consideration:
 - a. Did the Respondent have a genuine belief in the Claimant’s misconduct?
 - b. Was that belief based upon reasonable grounds?
 - c. Was there a fair investigation?
4. Alternatively, if the Claimant’s dismissal was unfair:
 - a. Should any compensatory award be reduced on the ground that, had the Respondent acted fairly, the Claimant would or might have been dismissed in any event?
 - b. Would it be just and equitable to reduce the Claimant’s basic and/or compensatory awards on the ground of the Claimant’s contributory conduct?

Wrongful Dismissal

5. Was the respondent entitled to summarily dismiss the claimant?

Witness evidence

6. The Tribunal heard oral evidence from the claimant under oath, and on behalf of the respondent it heard from Stephen Ashe, director and owner who acted as both investigation and dismissing officer. I also heard from Paul Burton, assistant manager a key witness in the disciplinary investigation who confirmed the claimant had not issued any “Barney’s Bucks” or “Manager’s Specials” and produced documents to that effect.

7. There are numerous conflicts in the evidence between the claimant and Stephen Ashe. I did not find the claimant’s evidence credible; she was an inaccurate historian whose explanation was contradicted by the contemporaneous evidence. The claimant denies she admitted the theft at the investigation meeting and yet the documents and correspondence which followed points to such an admission being made. On balance, I preferred the evidence of Stephen Ashe as to the admissions made by the claimant during the first investigation meeting when she was taken by surprise and did not have the time to think about her responses. I found her to be an inaccurate historian whose evidence was undermined by the contemporary documents. It is notable that she has attempted to deflect the seriousness of the allegations for which she was dismissed in the Grounds of Complaint by references to corruption, concern for her safety, slander, debt companies, racist and sexist comments about customers, health and safety risk at work, investments suggesting illegality, and so on in an attempt to undermine the respondent, particularly Stephen Ashe. At no stage did the claimant explain throughout the disciplinary process or at any stage throughout this liability hearing why she was the one who had not stolen the money and/or failed to keep true and proper financial records.

8. The Tribunal was referred to an agreed bundle of documents consisting of 135 pages and the written statements. Having considered the oral and written evidence and oral submissions presented by the parties (the Tribunal does not intend to repeat all of the oral submissions, but has attempted to incorporate the points made by the parties within the body of this judgment with reasons), I have made the following findings of the relevant facts resolving the conflicts in the evidence.

Facts

9. The respondent is a small family business running a Bingo hall based in Fleetwood, Lancashire and employed approximately 7 employees including Stephen Ashe. Stephen Ashe is the sole director, shareholder and company secretary. Both his wife and her husband were involved in the business during the relevant period, but not in the running of it. Paul Burton was and continues to be employed as the assistant manager. In short, the respondent’s case is that apart from Paul Burton there was no one in the business who could investigate disciplinary allegations and conduct a disciplinary process through to hearing apart from Stephen Ashe. This had not posed a problem in the past but this changed when it came to light that substantial amounts of money were missing from the company and Paul Burton became a witness in the investigation .

10. The claimant was employed as a “team member” from 12 March 2019. She was responsible for operating book sales and the cashiers desk including dealing

with money, taking orders, sales and cashing up at the end of the day when she would write on an envelope the cash she had taken and gift vouchers i.e. Barney's Bucks and Managers Specials which could be handed out to customers and used for the purchase of food and tickets. The cash was placed in an envelope and a WhatsApp picture of the written record sent to Stephen Ashe as set out in a number of documents included within the trial bundle. The claimant's responsibilities included imputing the opening and closing cash figures into a computerised electronic record.

11. The claimant worked full time and was provided with an employment contract included in the trial bundle that was not signed. The Employment contract referred to a Disciplinary Procedure that was not before me, and a Grievance Procedure.

12. In November 2021 it was brought to Stephen Ashe's attention that from May 2021 to November 2021 there was a discrepancy of approximately £10,000 in the accounting records compared to the amount of cash in the business. The CCTV footage was reviewed and it was noted from the footage the claimant was incorrectly recording the vouchers taken in the business. Stephen Ashe took it upon himself to conduct a more thorough investigation as he believed the only other person capable of doing so was the assistant manager, Paul Burton, but he had provided information about the vouchers incorrectly recorded by the claimant that was key to the investigation and therefore Stephen Ashe believed he was the only person to conduct the investigation and disciplinary hearing with his wife and her brother not being suitable to either task because they were too closely connected to the business as family.

13. On the 26 November 2021 the claimant was invited to an investigation meeting, Stephen Ashe having taken the advice of ACAS as to what steps he should take. Tim Dobson, the head Bingo caller attended as a note taker. The claimant was unaccompanied. Stephen Ashe carried out the investigation and the notes taken were not originally disputed by the claimant. The notes reflect the following:

13.1 The claimant was informed she was under investigation regarding company monies, paperwork and CCTV evidence relating to Barney's Bucks. The claimant's response was that she had nothing to say. Stephen Ashe referred to CCTV evidence he had watched "today" which showed the claimant had not received one Barney's Buck but had accounted for 17 to which the claimant responded "nothing to say it don't matter."

13.2 When threatened with the respondent "going down the official route" to recover money and resign or report the matter to the police the claimant responded "I will resign with immediate effect. It's not what it seems and not as much as it looks like."

13.3 In response Stephen Ashe asked the claimant "So what does it look like are you admitting to it and can I ask are you going to pay it back" the claimant responded, "Can I ask how much it will be and how long will I have to pay it back."

13.4 The claimant was told "it is already over £9000 to which she response "Can I go home now and speak to me parents about it." The hearing adjourned to the

next day in order that the claimant could think about how she was going to pay the money back.

14. At the reconvened investigation meeting the claimant was informed by Stephen Ashe that he had worked out a plan for the repayment of £9686 owed to which the claimant responded; “will it have to be done instantly?” Stephen Ashe confirmed it would have to be done “within a specific time as I would have to inform the relevant companies this is a breach.” The claimant admitted taking money from a customer account and denied the allegation that she had registered Barney’s Bucks and a manager’s special when there were none, disputing she had taken any money asking again to adjourn so that she could speak to her parents which was granted.

15. Stephen Ashe spoke with the customer following the claimant’s admission that she had taken money out of the customer’s account and was told the claimant had helped her with some shopping during the Covid 19 pandemic but was not given her permission to take the money out of her account. Stephen Ashe had no reason to disbelieve the customer the claimant having admitted to taking money out of her account.

16. The claimant was given a letter dated 26 November 2021 setting out the alleged actions that were being investigated and a draft agreement for the repayment of £9616 which was to be independently signed with a witness signature and the claimant’s signature. Stephen Ashe’s main concern was for the missing monies to be repaid.

17. The claimant’s response was to email the respondent on the 29 November 2021 and inform it that she will not be attending any more meetings “on guidance from my solicitor” and was appealing “the dismissal”. The claimant did not sign the agreement and nor did she resign.

18. Stephen Ashe responded in a letter dated 7 December 2021 stating the claimant had not been dismissed, there was nothing for her to appeal and the investigation on 26 November 2021 was to establish whether there was a disciplinary case to answer in relation to “discrepancies in the accounting records, voucher records, staff files and monies taken and received.” Reference was made to the claimant’s indication that she intended to resign.

19. In a second letter of the same date the claimant was invited to a disciplinary hearing. Two allegations were raised, these being:

19.1 “In the period from 20 May 2021 to 25 November 2021 you took cash from the company without permission and subsequently falsified the accounting records to cover up your conduct, and

19.2 You accessed and took money from a customer account without express permission from a customer to do so”.

20. The basis for the allegations were set out including the discrepancy of £9.686 which the claimant had been unable to account for, and the claimant had been reporting that Barney Bucks had been taken when none had been “in order to take

money from the Till without this being identified.” Reference was made to Stephen Ashe reviewing CCTV evidence of the claimant stating; “we had taken 23 Barney Buck and one Managers special when in fact none were taken; and you admitted during the meeting of 26 November that you had taken money but that ‘it was not as much as it looks like.’”

21. Stephen Ashe informed the claimant about his conversation with the customer and the customer’s denial that the claimant had been given permission to take money out of the customer’s account. A signed statement from the customer dated 7 December 2021 was taken and produced during the investigation confirming the claimant was not given permission to access the account.

22. CCTV evidence was not attached; however, it is uncontroversial the evidence in question is lengthy spanning hours and both parties confirmed today that it was not practicable for me to view the CCTV footage and this was not required in order to decide the issues in the case. It is unfortunate the relevant section of the CCTV footage could not be agreed; however it is clear that the claimant was unconcerned with viewing the footage either at investigation and disciplinary stage or during this liability hearing despite my invitation to both parties that I would view the relevant sections with oral evidence being given to explain what was going on in the footage.

23. The claimant responded by email sent on 10 December 2021 at 7.37 referencing legal advice she had received, maintaining she had not been provided with a contract of employment and threatening proceedings for unpaid wages. In a second email the claimant indicated she would be bringing someone with her to the hearing. It is notable the claimant did not deny the allegations or the admissions she had made during the investigation.

24. The letter inviting the claimant to the disciplinary complied with the standards set out within the ACAS Code of Practice and the claimant was aware of the seriousness of the allegations, her right to be accompanied and purpose of the hearing which included giving the claimant the opportunity to respond and put forward her side.

25. The disciplinary hearing proceeded on the 13 December 2021 with the agreement of the claimant who was offered an adjournment as she was unable to be accompanied by her partner (who was not a work colleague or trade union representative) and rejected the offer of an adjournment in order to give her time to find someone suitable. The claimant today complains that she was not allowed to be accompanied by her partner, a complaint that had no merit taking into account the fact that there is no requirement for an employer to allow an employee to be accompanied by anybody other than a fellow employee/worker or trade union representative and the claimant refused to take up the offer of an adjournment happy to proceed with the disciplinary hearing.

26. Notes were taken of the disciplinary hearing. The allegations were put to the claimant and she was asked if she had anything to say in respect of them, to which she answered “no” more than one occasion and when the evidence was explained (including the CCTV) the notes reflect Stephen Ashe stating, “here is the paperwork would you like to explain or show anything to me you don’t agree with” to which the

claimant answered, “no it’s fine.” Stephen Ashe had before him the envelopes signed by the claimant breaking down the monies and the computer records completed by the claimant which did not match up. This was an opportunity for the claimant to go through all of the records she had produced and explain why they were different and money appeared to be missing. The claimant chose not to take up this opportunity or give an explanation for the discrepancies.

27. When asked whether she had anything to say the claimant’s only comment was to criticise the respondent for allowing a third party to view the CCTV evidence. The claimant had been provided with a signed dated statement from the third party confirming he had viewed the CCTV and seen no vouchers handed over by customers.

28. The claimant produced a statement from the customer confirming the claimant had been given permission twice to take money from her client account. When asked if there was any other evidence the claimant wished to be taken into account she responded, “no nothing.”

29. In a written outcome letter dated 20 December 2021 the claimant was dismissed for taking cash from the company without permission in the period 20 May to 25 November 2021 and subsequently falsifying the accounting records. The claimant was found to have been guilty of stealing money and falsifying accounting records. The actual amount of money taken by the claimant was not established and Stephen Ashe reached the conclusion that the £9,686 discrepancy may “at least, in part, be due to you falsifying the accounting records in order to take cash from the company without permission.”

30. The reasons given by Stephen Ashe in the dismissal letter were the same as explained during this liability hearing, in short, the claimant had admitted that “it was not as it seems and not as much as it looks like” during the first investigation and had failed to put forward any alternative explanation having originally offered to resign and pay the company back. He relied on the CCTV footage taken when the claimant had reported the days takings as including 23 Barney Bucks and one manger’s special that had not been recorded as taken on the day of 26 November 2021. When it was put to the claimant in the 7 December 2021 letter and at the disciplinary hearing she had taken the money, this was not denied.

31. The allegation that the claimant had accessed and taken money out of a customer’s account was not found to be an act of misconduct as Stephen Ashe took into account the “conflicting reports” from the customer, underlining his attempts at being even-handed when taking into account the fact that the customer provided him with a statement denying she had not granted the claimant access which he had no reason to disbelieve having taken the statement from the customer himself.

32. As the claimant had failed to put forward any mitigation none was taken into account, and she was summarily dismissed. Stephen Ashe held a genuine belief based upon reasonable investigation and the claimant’s own earlier admission that the claimant was guilty of theft and falsifying accounting records to hide the theft. Even if the fact the claimant worked in the regulated area of betting were ignored, the decision to dismiss fell well within the bounds of reasonable responses open to a

reasonable employer. The claimant, who worked alone with cash, was required to show a high level of trust and confidence in her ability to handle money belonging to the company and individual clients against the backdrop of the Bingo betting industry.

33. The claimant was advised of her right to appeal. She did not appeal and nor did she comment on Stephen Ashe's observations set out in the correspondence about her admission of guilt either before or after the decision to dismiss was taken. The effective date of termination was 20 December 2021.

Law: unfair dismissal

34. Section 94(1) of the Employment Rights Act 1996 ("the 1996 Act") provides that an employee has the right not to be unfairly dismissed by her employer. Section 98(1) of the 1996 Act provides that in determining whether the dismissal is fair or unfair, it is for the employer to show the reasons for the dismissal, and that it is a reason falling within section 98(2) of the 1996 Act. Section 98(2) includes conduct of the employee as being a potentially fair reason for dismissal.

35. Section 98(4) provides that 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 reasons shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the respondent's undertaking) the employer acted unreasonably or reasonably in treating it as a sufficient reason, and this shall be determined in accordance with equity and the substantial merits of the case.

36. Where the reason for dismissal is based upon the employee's conduct, the employer must show that this conduct was the reason for dismissal. For a dismissal to be procedurally fair in a case where the alleged reason for dismissal is misconduct, Lord Bridge in Polkey -v- A E Dayton Services Limited [1981] ICR (142) HL said that the procedural steps necessary in the great majority of cases of misconduct is a full investigation of the conduct and a fair hearing to hear what the employee has to say in explanation or mitigation. It is the employer who must show that misconduct was the reason for the dismissal, and must establish a genuine belief based upon reasonable grounds after a reasonable investigation that the employee was guilty of misconduct – British Home Stores Ltd v Birchell [1980] CA affirmed in Post Office v Foley [2000] ICR 1283 and J Sainsbury v Hitt [2003] C111. In short, the Tribunal is required to conduct an objective assessment of the entire dismissal process, including the investigation, without substituting itself for the employer, which I have carried out in the case of Ms Greenall, satisfied that the legal principles were met at investigation, disciplinary hearing and appeal stage despite the fact that Stephen Ashe acted as both investigator and dismissing officer.

37. The Court of Appeal in British Leyland (UK) Ltd v Swift [1981] IRLR 91 set out the correct approach: "If no reasonable employer would have dismissed him then the dismissal was fair. But if a reasonable employer might reasonably have dismissed him, then the dismissal was fair...in all these cases there is a band of reasonableness, within which one employer might reasonably take one view and another reasonably take a different view.

38. In between extreme cases of misconduct there will be cases where there is room for reasonable disagreement amongst reasonable employers as to whether dismissal for the misconduct is a reasonable or unreasonable response: LJ Mummery in HSBC Bank Plc v Madden [2000] ICT 1283. I find that a proven allegation of theft falls well within the band of reasonable responses unless there are extenuating circumstances and/or strong persuasive mitigation.

39. Boys and Girls Welfare Society v McDonald [1996] IRLR 129, the EAT clarified that there is a neutral burden of proof when it comes to establishing whether the *Burchell* test has been satisfied. If the tribunal finds that the *Burchell* test is satisfied, it will then consider whether the decision to dismiss fell within the range of reasonable responses available to a reasonable employer in the circumstances. The tribunal's findings in this regard will depend on the individual circumstances of the case.

39.1 The range of reasonable responses test applies both to the decision to dismiss and to the investigation Sainsbury's v Hitt (above). This means that the tribunal has to decide whether the investigation was reasonable, not whether it would have investigated things differently.

39.2 It is irrelevant whether or not the tribunal would have dismissed the employee if it had been in the employer's shoes: the tribunal must not substitute its view for that of the employer: Foley v Post Office; Midland Bank plc v Madden (above).

39.3 The degree of investigation required very much depends on the circumstances. The Court of Appeal in Shrestha v Genesis Housing Association Ltd [2015] EWCA Civ 94 made it clear that it is not necessary for an employer to extensively investigate each line of defence advanced by an employee. This would be too narrow an approach and would add an "unwarranted gloss" to the *Burchell* test. What is important is the reasonableness of the investigation as a whole. The employer should assess its approach taking account of the following: the strength of the prima facie case against the employee, and the seriousness of the allegations and their potential to blight the employee's future. In Ms Greenall's case I found the allegations were serious and it was not unreasonable for Stephen Ashe to take into account the claimant's admission and the way she approached the disciplinary allegations concluding she was guilty of misconduct.

39.4 In Ilea v Gravett [1988] IRLR, it was pointed out that: "At one extreme there will be cases where the employee is virtually caught in the act and at the other there will be situations where the issue is one of pure inference. As the scale moves towards the latter end, so the amount of inquiry and investigation, including questioning of the employee, which may be required, is likely to increase."

39.5 In A v B [2003] IRLR 405, it was stated that the employer's investigation should be particularly rigorous when the charges are particularly serious or the effect on the employee is far-reaching. The principles were reinforced by the Court of Appeal in Salford Royal NHS Foundation Trust v Roldan [2010] IRLR 721, in which an employee with four years' service faced a not only a "a real risk that her career would be blighted by this dismissal" but certain deportation and

the end of any opportunity for her to build a career in this country (*paragraph 60*).

39.6 In A v B (above) Elias J made the following points:

- Serious allegations of criminal misbehaviour must always be the subject of the most careful investigation (at least where they are disputed), bearing in mind that the investigation is usually being conducted by laymen and not lawyers.
- Even in the most serious cases, it is unrealistic and quite inappropriate to require the safeguards of a criminal trial. However, 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 they should on the evidence directed towards proving the charges. It is notable in Ms Greenall's case she failed to provide or point to any evidence that may show she was innocent of the allegations on the balance of probabilities.
- This is particularly the case where, as is frequently the situation, the employee 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. In such circumstances anything less than an even-handed approach to the process of investigation would not be reasonable in all the circumstances. (Paragraphs 60 and 61.)

39.7 Roldan was considered by the Court of Appeal in *Crawford and another v Suffolk Mental Health Partnership NHS Trust* [2012] IRLR 402, which held that the dismissal of two nurses for tying a patient to a chair was unfair due to defects in the disciplinary procedure followed. The court made it clear that where a finding of misconduct will blight an employee's future career, the standard of fairness and thoroughness required from the employer will be high, and it will be correct for tribunals to scrutinise the procedures followed particularly carefully. I have followed this guidance.

40. The question for the Tribunal is the reasonableness of the decision to dismiss in the circumstances of the case, having regard to equity and the substantial merits of the case. The Tribunal will not substitute its own view for that of the respondent. In order for the dismissal to be fair, all that is required is that it falls within the band of reasonable responses open to employer. It is necessary to apply the objective standards of the reasonable employer – the “band of reasonable responses” test – to all aspects of the question of whether the employee had been fairly dismissed, including whether the dismissal of an employee was reasonable in all the circumstances of the case.

41. The test remains whether the dismissal was within the range of reasonable responses and whether a fair procedure was followed. Section 98 (4) provides that

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 reasons shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the respondent's undertaking) the employer acted unreasonably or reasonably in treating it as a sufficient reason, and this shall be determined in accordance with equity and the substantial merits of the case.

Wrongful dismissal

42. The term "gross misconduct" connotes the most serious types of misconduct, such as theft or violence, warranting instant dismissal. It will be conduct that "so undermines the relationship of trust and confidence ... that [the employer] should no longer be required to retain [the employee] in his employment" (Neary v Dean of Westminster [1999] IRLR 288).

43. The sole question is whether the terms of the contract, express or implied, have been breached. The employee will have a claim in damages if the employer, in dismissing, breached the contract and caused loss.

Conclusion: applying the facts to the legal principles.

44. With reference to the first issue, namely, did the respondent have a potentially fair reason for dismissing the claimant, I found that it did. The respondent relies on 'conduct' as being the potentially fair reason for the claimant's dismissal, pursuant to s. 98(2)(b) ERA 1996. The claimant accepts she was dismissed for her conduct.

45. With reference to the second issue, namely, was the Respondent's decision to dismiss the Claimant within the range of reasonable responses I found that it was. Stephen Ashe held a genuine belief in the claimant's misconduct belief based upon reasonable grounds as set out above with reference to the evidence that was before him coupled with the claimant's admission and response to the allegations at investigation and disciplinary stage.

46. With reference to the issue was there a fair investigation, I found on the balance of probabilities that there was. I was initially concerned that Stephen Ashe acted as both the investigation and disciplinary officer and failed to provide the claimant with copies of the CCTV evidence before the disciplinary hearing, having decided that his wife and brother-in-law should not have been involved in the investigation or disciplinary process because they were family. In a case with different facts this may have resulted in a finding of unfair dismissal, but not in the claimant's case given her admission at the first investigation meeting which Stephen Ashe was entitled to rely upon, coupled with the strong evidence against her which the claimant did not attempt to dislodge, preferring Stephen Ashe's evidence supported by contemporaneous documents to that of the claimant, who I did not find to be a credible witness.

47. It is notable in the first investigation meeting held on the 26 November 2021 the claimant was informed about the investigation and CCTV evidence following which she admitted "it's not what it seems and not as much as it looks like" offering to resign and asking how long it she would be given to pay back £9000. On the basis

of this the claimant was handed a draft agreement having been given time to discuss the matter with her parents. At the 27 November 2021 reconvened investigation meeting the claimant admitted taking money out of a client's account which she was not ultimately dismissed for as the client provided a letter confirming she had authorised the claimant to do so. The fact Stephen Ashe decided not to proceed with this equally serious allegation reflects his attempt at objectively assessing the evidence against the claimant. Stephen Ashe had spoken to the client and taken a statement from her confirming she had not consented to the claimant accessing her account, the claimant at the disciplinary hearing produced another statement from the same client confirming she had authority and it was open to Stephen Ashe to prefer the version of the story given to him by the client but he gave the claimant the benefit of the doubt.

48. The issue for the claimant, who denied making any admissions whatsoever at this liability hearing, was that after the 27 November meeting she wrote to the respondent refusing to attend any more meetings having received legal advice. The claimant failed to respond to the 7 December 2021 letter that referenced her intention to resign and admissions she made and the invite to the disciplinary hearing which referenced the admission and the outcome letter. The claimant in oral evidence explained she had been advised not to respond but go straight to Tribunal, which made no sense given the fact an admission had been made to a serious act of misconduct that went to the heart of the employment contract, namely the implied term of trust and confidence. It is not credible a solicitor would have advised the claimant not to deal with the earlier admission she made, especially given the fact that the claimant now disputes she made it.

49. The respondent can be criticised for not sending the claimant the CCTV evidence (of which there are many hours of footage), however nothing hangs on this. The claimant was provided with notes of meetings and copy documents relied upon by the respondent at the disciplinary hearing. These were shown to her at various meetings with the exception of the CCTV footage. A number of the documents had been produced by the claimant whilst she was carrying out her daily duties, and it is notable that she failed to explain the discrepancies and take a meaningful part in the investigation or disciplinary hearing. It was not unreasonable for Stephen Ashe to reach the conclusion he did, taking into account the admission, Paul Burton's evidence and the documents pointed to the fact that the claimant had committed an act of theft together with falsifying accounting records to cover up her conduct. The claimant was given an opportunity to put forward her defence, which she did in relation to the allegation of accessing money from a customer account successfully as she was not dismissed for this, having produced the evidence relating to permission that was given. In direct contrast, the claimant refused to and/or was unable to produce any meaningful response to the allegation of theft and falsifying records, which accords with the admission she made at the outset of the investigatory meeting.

50. The degree of investigation required very much depends on the circumstances. The Court of Appeal in Shrestha (above) made it clear that it is not necessary for an employer to extensively investigate each line of defence advanced by an employee. In the claimant's case the line of defence she offered up in connection with the client was accepted, and she did not offer up any meaningful

defence to the allegation of theft and falsifying records to cover the theft up. The strength of the prima facie case against the claimant was strong, she was aware of the seriousness of the allegations and yet refused to or was unable to put forward any explanation or mitigation as recorded in the dismissal outcome letter. The decision to dismiss fell well within the band of reasonable responses open to an employer acting reasonably.

Wrongful Dismissal

51. With reference to the issue, namely, was the respondent entitled to summarily dismiss the claimant, given my findings above, it was. I was satisfied taken as a whole the claimant's conduct constituted a repudiatory breach of contract and her dismissal without notice was therefore lawful. It is fundamental to the contractual relationship between employee and employer that both can be trusted, hence the existence of the implied term of trust and confidence.

52. Theft and falsifying records to cover up the theft is one of the most serious types of misconduct warranting instant dismissal. It is conduct that *"so undermines the relationship of trust and confidence ... that [the employer] should no longer be required to retain [the employee] in his employment"* (Neary above)

53. In conclusion, the claimant was not unfairly dismissed and her claim for unfair dismissal is not well-founded and is dismissed. The claimant was not wrongfully dismissed and her claim for breach of contract (notice) is not well-founded and is dismissed. The claim for unlawful deduction of wages is dismissed on withdrawal.

27 July 2022
Employment Judge Shotter

JUDGEMENT & REASONS SENT TO THE PARTIES ON

28 July 2022

FOR THE SECRETARY OF THE TRIBUNALS