EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT	**v**	**RESPONDENT**
Miss J Capaldi		Asda Stores Ltd

Heard at: London South Employment Tribunal **On:** 31 May 2022

Before: Employment Judge Hyams-Parish

Representation
For the claimant: In Person
For the Respondent: Mr Rozycki, Counsel.

JUDGMENT

The claims of unfair and wrongful dismissal fail and are dismissed.

REASONS

A. CLAIMS AND ISSUES

1. By a claim form presented to the Employment Tribunal on 26 April 2020, the claimant brings claims of wrongful and unfair dismissal against the respondent.

2. It was agreed that the questions which I needed to answer in order to determine the claims are as follows:

Unfair dismissal

2.1. Was the reason for the dismissal a potentially fair reason within the meaning of s.98 Employment Rights Act 1996 ("ERA")?

2.2. Did the respondent genuinely believe the claimant to be guilty of misconduct?

2.3. Was that belief based on reasonable grounds?

2.4. At the time of forming that belief, had the respondent carried out as much investigation as was reasonable in the circumstances?

2.5. Did the dismissal fall within the range of reasonable responses open for the respondent to take?

2.6. Was the dismissal procedurally fair?

2.7. Was it reasonable for the employer to regard the claimants conduct as gross misconduct on the facts of the case?

2.8. If the claimant's dismissal was unfair, should there be a "Polkey" reduction in the compensation awarded and if so, by how much?

2.9. Did the claimant contribute to the dismissal and if so, by how much, if any, should any basic and compensatory awards be reduced?

Wrongful dismissal

2.10. Was the respondent contractually entitled to dismiss the claimant without notice?

3. As far as the claimant was concerned, the unfairness of her dismissal was based on her assertion that others who had done the same thing, namely breaching the swiping in/out procedures, had been treated more leniently and not been dismissed.

B. THE HEARING

4. The hearing was listed for two days but was completed in one. An oral judgment with reasons was given to the parties at the conclusion of the hearing. These written reasons are provided at the request of the claimant.

5. Witness statements were provided by the following:

(a) Janine Capaldi, the claimant.

(b) Tony Chandler, dismissing officer.

(c) Keval Sankrecha, appeal officer.

6. All of the above witnesses gave evidence at the hearing.

7. I was also provided with a bundle of documents consisting of 357 pages which I was referred to at the hearing.

C. BACKGROUND FINDINGS OF FACT

8. I decided all the findings referred to below on the balance of probabilities, having considered all of the evidence given by witnesses during the hearing, together with documents referred to by them. Any failure to mention any specific part of the evidence should not be taken as an indication that I failed to consider it. I have only made those findings of fact necessary for me to determine claims brought by the claimant. It has not been necessary to determine every fact in dispute where it is not relevant to the issues between the parties.

9. The claimant commenced employment with the respondent on 17 November 2007. She was provided with an offer letter which set out certain terms of employment but the main terms were set out in a section of the colleague handbook. The claimant signed to confirm that she had received her copy of the colleague handbook and that it was her responsibility to read it. During the hearing the claimant was shown the above mentioned handbook and denied ever having seen it. However, I find on the balance of probabilities that she did in fact receive it.

10. The handbook contained the following contractual provision:

> ***What is my working week?***
>
> ***Your hours of work will be those specified in your offer letter. The days and work pattern will be on a rota basis and as notified by your manager.***
>
> ***Colleagues are expected to work such extra hours as deemed necessary to enable duties to be carried out satisfactorily. Our stores are busiest on weekends. All colleagues are expected to take part in some form of weekend working.***
>
> ***You are responsible for swiping in at the start of your shift, and swiping out at the end of your shift. If you lose your card, you will be asked to sign in until you are given a replacement card and you will be charged for the new card.***
>
> ***Remember you must only ever sign in or swipe out for yourself. All colleagues need to ensure that they swipe in and out of work on a daily basis in order that we can monitor their working hours.***

11. The claimant was promoted to the position of Night Replenishment Section Manager in February 2019. At that point she was given an offer letter which again set out certain main terms relating to that position, but she was also given a management handbook which set out the remaining terms of employment. These terms replicated what was contained in the colleague handbook referred to at paragraph 9 above.

12. The claimant's offer letter stated that the claimant's employment could be terminated without notice in the event of gross misconduct. In the respondent's disciplinary procedure, under a section dealing with gross misconduct, it stated that an example of gross misconduct would be "*Breaching swiping in and out rules, working hours including breaks where the intent was to defraud the company*".

13. In her management role, the claimant was responsible for leading and supervising a team of section leaders, overseeing all overnight modular, seasonal and promotional changes, ensuring the overnight team achieved its targets and ensuring detailed handovers took place between day and night. The claimant's brother, Mark Capaldi, also worked for the store as a night replenishment colleague.

14. Mr Chandler gave evidence at the hearing. He was the manager who decided to dismiss the claimant. His evidence was largely unchallenged by the claimant and therefore I accept as fact the following evidence which he gave:

> ***In around 14 January 2020, allegations came to light regarding the claimant's conduct. In particular, PB, Night Replenishment Colleague, alleged that at around 22:00, he saw the claimant clock in. He thought this was strange because the claimant started work at around 20:00, so he mentioned it to AH, Section Leader.***
>
> ***On 23 January 2020, whilst checking the punch details report for himself and PB, CP, Night Replenishment Colleague, told PB that Mr Capaldi's punch details for 14 January 2020 showed that he worked 22:00-06:00. PB had worked that night and knew that Mr Capaldi had not worked that night so he mentioned it to AH again.***
>
> ***AH brought the allegation to the attention of SE, former Night Trading Manager, on 25 January 2020, upon SE's return to work following a period of annual leave.***
>
> ***In the light of those allegations, a full investigation was carried out to establish the facts and consider whether there was evidence of any misconduct. SE was appointed to conduct the investigation.***
>
> ***On 5 February 2020, SE chaired an investigation meeting with the claimant. The claimant confirmed that she did not wish to have the support of a representative at that meeting.***
>
> ***At the investigation meeting, the claimant confirmed that she attended work on 14 January 2020 and her shift started at 19:30. When asked whether Mr Capaldi also worked on 14 January 2020, the claimant said "yes". SE explained to the claimant that he had three witness statements from Night Colleagues who worked on 14 January 2020 alleging that Mr Capaldi did not work that night. At the end of the investigation meeting, the claimant admitted that when SE asked her to confirm whether Mr Capaldi also worked on 14 January 2020 at the start of the investigation meeting, she lied and said "yes" because she panicked.***
>
> ***In AH's statement, he stated that over the course of the night on 14 January 2020, he asked the claimant multiple times about where Mr Capaldi was, and why he was not at work. AH stated that the claimant***

was reluctant to give him an answer before eventually telling him that Mr Capaldi was "sick".

At the investigation meeting, SE asked the claimant about this and the claimant confirmed that she told Mr Hill that Mr Capaldi was "sick".

The claimant stated that Mr Capaldi was owed monies for 2 days that he worked over the Christmas period so she swiped him in because SE was on holiday.

SE asked the claimant why she did not ask a Senior Manager to ensure that Mr Capaldi was paid, to which she replied: "On nights, we sort ourselves out when colleagues don't get paid".

SE also asked the claimant why she did not ask SS, People Trading Manager, to do a wage adjustment for Mr Capaldi, to which the claimant replied: "I didn't think about Sue".

The claimant admitted that SE had spoken to her previously about her involvement with Mr Capaldi at work, especially around holiday and sick notes.

At the conclusion of the investigation, SE decided that there was a case for the claimant to answer. This did not mean that any decision had been made, but that SE felt that the claimant's conduct was such that it could justify a disciplinary hearing.

I had no involvement in the investigation, and therefore I was asked to review the investigation documents and consider whether disciplinary action should be taken, and to chair the disciplinary hearing if necessary.

Having reviewed the case and the investigation summary I felt that SE had done a thorough investigation. I was also entirely satisfied that I fully understood the allegations at that stage and that no further investigations were required at that point. Therefore, in accordance with the Disciplinary Policy, I agreed with the recommendation to proceed to a disciplinary hearing.

I approached the hearing independently and with an open mind. This is something that I always do when dealing with disciplinary matters. I was interested in hearing what the claimant had to say and was more than willing to say that the act was not so serious (i.e. not gross misconduct) if the evidence showed this.

In order to prepare for the hearing, I conducted a thorough review of the evidence gathered during the investigation, in addition to the relevant policies and procedures. I also familiarised myself with the written statements that had been provided by the witnesses.

The disciplinary hearing took place on 18 February 2020. It commenced at 19:35. The claimant confirmed that she did not wish to have the support of a representative at the hearing.

The claimant admitted to manually swiping in and out for her brother, Mr Capaldi, on 14 January 2020, for a shift that he did not work. The claimant explained that the reasons for doing so were as stated in her letter to the

respondent dated 10 February 2020, specifically, due to Mr Capaldi's pay query regarding festive holiday pay.

I made clear to the claimant that the disciplinary hearing was not about the pay query but rather it was about the procedure around the way that the claimant tried to resolve it. The claimant confirmed that it was not common practice to swipe for colleagues for shifts that they did not work. She did however allege that when she was a Section Leader on night-shifts, it was common practice for Section Managers to allow colleagues who had pay queries to leave their shifts early and be paid for full shifts through the respondent's exceptions process. Specifically, she said they would "go at 5 and we would clock them out at 7" but she could not provide any specific dates or times.

The claimant alleged that ES allowed colleagues to leave their shifts early and paid them for their full shifts through the respondent's exceptions process but she could not provide any specific dates or times.

The claimant admitted to knowing the correct process to follow for pay queries which was to make a wage adjustment as she had done previously for Mr Capaldi when he was owed holiday. She stated that on this occasion she had manually swiped for Mr Capaldi due to lack of time and being under pressure. She admitted that was an error of judgment on her part.

The claimant admitted that she was dishonest with AH because she was fed up with people knowing her business and because people made assumptions and took things the wrong way.

The claimant stated that during the investigation meeting, when SE asked her to confirm whether Mr Capaldi also worked on 14 January 2020, she accepted that she lied and said that it was because she panicked because she knew that what she had done was wrong.

The claimant stated that she did not seek support because she felt that it was her responsibility as a Manager to deal with colleague queries or issues. However, the claimant also said that when a couple of other colleagues had the same issue, she did not seek to resolve it in the same way as she did with her brother.

The claimant admitted that she signed the Ethics annual refresher on 14 January 2020, but did not read it due to time pressures.

I adjourned the hearing at 22:16 when I informed the claimant that I needed to carry out further investigations. During the adjournment, I spoke with SE as the claimant alleged that when she was a Section Leader on night-shifts, it was common practice for Section Managers to allow colleagues who had pay queries to leave their shifts early and be paid for full shifts through the respondent's exceptions process.

SE denied that this was common practice. He also confirmed that he was not aware of ES allowing colleagues to leave their shifts early and pay them for full shifts through the respondent's exceptions process, as alleged by the claimant.

SE also explained that Mr Chalcraft approached him around four weeks' before, said that the claimant asked him to swipe Mr Capaldi in as he

was not paid holiday and that Mr Chalcraft told the claimant that he could not do that and that it needed to be paid on adjustments.

During the adjournment, I reviewed the claimant's personnel file.

The hearing reconvened on 21 February 2020 when the claimant was further questioned.

After taking into account all of the evidence and the claimant's representations, I formed a genuine belief that the allegation against the claimant was well founded and amounted to gross misconduct.

The main reasons for my findings were:

- ***the claimant admitted to the allegation, knew what she did was wrong and confirmed that she knew how to do a wage adjustment as she had done one for Mr Capaldi in October 2019, which was also a breach of the Ethics Policy, as Mr Capaldi is the claimant's brother;***

- ***the claimant admitted that she made a mistake and an error of judgment due to time pressures. She stated that she had previously spoken to SE and Ms Swallow about not managing Mr Capaldi, especially around holidays and sick notes;***

- ***the claimant mentioned that it was common practice for Section Managers, including ES, to pay colleagues for time owed by allowing them to leave their shifts early and paying them for their full shifts through the respondent's exceptions process, but she did not provide any specific dates or times. ES was no longer in the business and therefore unable to provide further information to support the claimant's assertion. I reviewed the exceptions from 9 June 2019 to 30 November 2019, during which time ES was still in the business and could see no evidence that colleagues left early and were paid on exceptions;***

- ***in any event, in these instances, the colleagues would have actually been in the business and worked a shift but on 14 January 2020, Mr Capaldi did not work the shift and was manually swiped in by the claimant. Despite saying this was common practice, the claimant admitted that she knew that the correct process was to do a wage adjustment;***

- ***no Manager had authorised the claimant to swipe for a colleague instead of completing a wage adjustment. The claimant did not seek help or advice even when she knew this was wrong;***

- ***the claimant knew of another colleague who may not have been paid over the festive period and had a potential wage query but failed to support that colleague and did however, ensure that Mr Capaldi was paid and did not show the same amount of care to other colleagues;***

- ***the claimant admitted reading the huddle note in relation to festive pay arrangements but focussed more on the deadline of 16 December 2019 to book holiday rather than the detail around the arrangements for payments on 3 January 2020 or 31 January 2020. Due to her actions, Mr Capaldi may have been overpaid as***

following the above-mentioned arrangement, Mr Capaldi was paid 5.5 hours on adjustments;

- ***as a Manager, the claimant had additional responsibilities especially around ethics;***

- ***the claimant admitted that she had signed for the Ethics annual refresher on 14 January 2020 but did not read it;***

- ***the claimant breached the swiping in and out policy as well as the Ethics Policy as Mr Capaldi is a family member and the claimant left herself open to perception that she was not acting fairly, which is a conflict of interest;***

- ***although the claimant was still working with Mr Capaldi, as she had done previously as a Section Leader, there were other individuals who would have managed Mr Capaldi including SE, Mr Chalcraft and AH;***

- ***in terms of the Ethics Policy, the allegation does not fall under the immediately reportable criteria but as above it does fall under conflict of interest and personal relationships with colleagues. The claimant managed Mr Capaldi despite being told not to;***

- ***there were signed receipts on the claimant's personnel file for a Colleague Handbook on 12 November 2007 and a management contract letter on 17 April 2019, which refers to the Management Handbook which the claimant said she did not receive. Both handbooks refer to the same contractual swiping in and out policy;***

I considered the claimant's length of service with the respondent as well as her employment record.

Having considered everything and the range of sanctions available to me, I decided that the most appropriate sanction was summary dismissal.

The main reasons why I decided that summary dismissal was the appropriate sanction were:

- ***the starting point is that breaching the swiping in and out rules and the Ethic's Policy are examples of gross misconduct for which dismissal without notice is the appropriate sanction;***

- ***the claimant acted dishonestly, by lying to AH and then to SE about Mr Capaldi's non-attendance at work on 14 January 2020;***

- ***the claimant eventually admitted that Mr Capaldi did not attend work on 14 January 2020, that she signed him in and out for a shift that he did not work, that she knew what the correct process was for dealing with colleague's wage adjustments and that she knew what she had done was wrong;***

- ***the claimant only did this for her brother, despite there being other colleagues with the same query or issue around festive pay;***

- ***the claimant admitted that what she had done for Mr Capaldi was not common practice, but alleged that when she was a Section Leader, it was common practice for Section Managers to allow colleagues who had pay queries to leave their shifts early and be paid for full shifts through the respondent's exceptions process and sought to rely on this as mitigation. Regardless of whether I had found that this was or was not common practice, this alleged common practice and the offence that the claimant committed are materially different. The claimant was subjected to disciplinary proceedings for swiping Mr Capaldi in and out for a shift that he did not work, not for allowing him to leave his shift early and be paid for his full shift through the respondent's exceptions process.***

I did not consider that a lesser sanction (such as a warning) was appropriate given the severity of the claimant's actions and the managerial position that she was in. I did not feel that the claimant was credible or that I could trust the claimant to carry out her role properly in the future.

Given the impact that dismissal from employment can have on someone's life, I did not (and would never) take such a decision lightly. I took the decision extremely seriously and gave it a lot of thought. However, I felt that the claimant's conduct was so serious that summary dismissal was the only appropriate sanction.

15. The claimant appealed against her dismissal by letter dated 2 March 2020, suggesting that there was a culture of poor practice and breach of swiping in and out procedures.

16. The appeal was considered by Keval Sancrecha and rejected. He found that there was no evidence of the culture alleged by the claimant.

D. LEGAL PRINCIPLES

Unfair dismissal

17. The law relating to the right not to be unfairly dismissed is set out in s.98 ERA. Section 98 ERA states:

(1) In determining….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—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

> ***(b) relates to the conduct of the employee,***
>
> ***(c) is that the employee was redundant, or***
>
> ***(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.***
>
> ***(4) 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.***

18. What is clear from the above is that there are two parts to establishing whether someone has been unfairly dismissed. Firstly, the Tribunal must consider whether the employer has proved the reason for dismissal. Secondly, the Tribunal must consider whether the employer acted fairly in treating that reason as the reason for dismissal. For this second part, neither party bears the burden alone of proving or disproving fairness: it is a neutral burden shared by both parties.

19. The burden of proof on employers to prove the reason for dismissal is not a heavy one. The employer does not have to prove that the reason actually justified the dismissal because that is a matter for the Tribunal to assess when considering the question of fairness.

20. In a conduct case, it was established in ***British Home Stores v Burchell [1980] ICR 303 EAT*** that a dismissal for misconduct will only be fair if, at the time of the dismissal:

- the employer believed the employee to be guilty of misconduct;
- the employer had reasonable grounds for believing that the employee was guilty of that misconduct; and
- at the time it held that belief, it had carried out as much investigation as was reasonable.

21. In ***Iceland Frozen Foods Ltd v Jones [1983] ICR 17 EAT***, it was said that the function of the Employment Tribunal in an unfair dismissal case is to decide whether in the particular circumstances the decision to dismiss the employee fell *within the band of reasonable responses* which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair. If the dismissal falls outside the band, it is unfair. In ***Sainsburys Supermarket***

Ltd v Hitt [2003] ICR 111 CA it was said that the band of reasonable responses applies to both the procedures adopted by the employer, as well as the dismissal itself.

22. Importantly, in ***London Ambulance NHS Trust v Small [2009] IRLR 563 CA*** the court warned that when determining the issue of liability, a Tribunal should confine its consideration of the facts to those found by the employer at the time of the dismissal. It should be careful *not to substitute its own view* for that of the employer regarding the reasonableness of the dismissal for misconduct. It is therefore irrelevant whether or not the Tribunal would have dismissed the employee, or investigated things differently, if it had been in the employer's shoes: the Tribunal must not "*substitute its view*" for that of the employer.

23. In a gross misconduct case, a Tribunal must consider both the character of the conduct and whether it was reasonable for the employer to regard that conduct as gross misconduct on the facts of the case. Here, the employer's rules and policies are important because a particular rule which makes clear that a certain type of behaviour is likely to be categorised as gross misconduct, may make it reasonable for the employer to dismiss for such behaviour.

24. If an unfair dismissal complaint is well founded, remedy is determined by sections 112 onwards of the ERA. Where re-employment is not sought, compensation is awarded by means of a basic and compensatory award.

25. Section 123(1) provides that the compensatory award can be reduced if the Tribunal considers that a fair procedure might have led to the same result, even if that would have taken longer (***Polkey v A E Dayton Services Limited [1988] ICR 142***.

26. The basic award is a mathematical formula determined by s.119 ERA. Under section 122(2) it can be reduced because of the employee's conduct:

> ***Where the 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, the tribunal shall reduce or further reduce that amount accordingly.***

27. A reduction to the compensatory award is primarily governed by section 123(6) as follows:

> ***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……***

28. The leading authority on deductions for contributory fault under section 123(6) remains the decision of the Court of Appeal in ***Nelson v British Broadcasting Corporation (No. 2) [1980] ICR 111***. It said that the Tribunal must be satisfied that the relevant action by the claimant was culpable or blameworthy, that it

caused or contributed to the dismissal, and that it would be just and equitable to reduce the award.

Wrongful dismissal

29. In wrongful dismissal cases, employers typically rely on serious or gross misconduct by the employee to justify summary dismissal. But it is important to remember that the underlying legal test to be applied by a Tribunal is whether there has been a fundamental or repudiatory breach of contract by the employee entitling the employer to treat the contract as at an end.

30. The Tribunal's function when considering a claim of wrongful dismissal is very different to that of an unfair dismissal claim. In a wrongful dismissal case, the Tribunal does not look at the employer's actions and decide whether it was reasonable for the employer to treat the claimant's conduct as a repudiatory breach of contract. The Tribunal itself has to be satisfied that the claimant did, on the balance of probabilities, commit a repudiatory breach of contract.

31. Where an employer dismisses for a breakdown in trust and confidence, that is in essence a reliance on a breach of the implied duty not to "*without reasonable and proper cause"* conduct oneself in a manner likely to destroy or seriously damage the relationship of trust and confidence between employer and employee; ***Malik v Bank of Credit and Commerce International SA [1997] I.C.R. 606***.

E. ANALYSIS, CONCLUSIONS AND ASSOCIATED FINDINGS OF FACT

32. I then turned to each of the claims, applying the legal principles to the facts, in order to reach a decision.

Was the reason for the dismissal a potentially fair reason within the meaning of s.98 ERA 1996?

33. I was in no doubt that the reason the respondent dismissed the claimant was because of her conduct. The respondent had clearly discharged the burden of proving the reason for the dismissal.

Did the Respondent genuinely believe the claimant to be guilty of misconduct?

Was that belief based on reasonable grounds?

At the time of forming that belief, had the Respondent carried out as much investigation as was reasonable in the circumstances?

34. There was no challenge or criticism of the investigation by the claimant or any suggestion that the respondent did not genuinely believe the claimant was guilty of misconduct. Indeed I could find nothing wrong with the respondent's investigation into what the claimant did.

Did the dismissal fall within the range of reasonable responses open for the Respondent to take?

Was it reasonable for the employer to regard the claimants conduct as gross misconduct on the facts of the case?

35. I was left with no doubt that the dismissal of the claimant fell well within the band of reasonable responses open to the respondent. By clocking her brother in when he was not there, she abused the trust the respondent had in her as a manager, and it was dishonest because her actions resulted, or could have resulted, in her brother being paid when he was not entitled to any payment. Whether or not her brother was owed money did not lessen the seriousness of what she did. It was reasonable for the respondent to take a dim view of the claimant's conduct and treat what she had done as gross misconduct, particularly in view of the fact that this was stated in the disciplinary policy and other documents as constituting gross misconduct for which she could be dismissed.

36. Whilst it was open to the claimant to challenge the fairness of the dismissal by establishing that others who had done the same thing had not been disciplined or dismissed in the way the claimant had, she failed to point to examples which bore much if any similarity to her situation. Firstly the respondent rejected any suggestion that there was a culture of breaching this important policy. Secondly the example she gave about employees being allowed to leave shift early, as a form of wage correction, was completely different and not nearly as serious as the conduct for which the claimant was dismissed. I could see nothing which persuaded me that the dismissal was unreasonable.

Was the dismissal procedurally fair?

37. The claimant did not allege that there was anything procedurally unfair about the dismissal. I could also not see any procedural unfairness.

38. For the above reasons, the claim of unfair dismissal is not well founded and is therefore dismissed.

Was the respondent contractually entitled to dismiss the claimant without notice?

39. The respondent was contractually entitled to dismiss the claimant. Her contract of employment stated that the respondent was entitled to dismiss without notice in the event that she was guilty of gross misconduct. I was satisfied that the claimant had breached the swiping in/out procedures with a view to defrauding the company because it was intended so that the claimant's brother would be paid for a day which he did not work.

40. I further concluded that the claimant's actions represented a fundamental breach of implied term of mutual trust and confidence. Ethics and honesty

were clearly treated seriously by this respondent and it was a serious breach of the ethical standards required by the respondent to behave as she did.

41. Her behaviour was so serious that the respondent was entitled to consider themselves no longer bound by the contract of employment and terminate it with immediate effect. For these reasons, the claim of wrongful dismissal is not well founded and is dismissed.

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Employment Judge Hyams-Parish
20 June 2022