



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs J Launders

**Respondent:** Next Retail Ltd

**Heard at:** Manchester (via CVP)

**On:** 7 September 2022

**Before:** Employment Judge Shergill  
(sitting alone)

## Representation

**Claimant:** In person

**Respondent:** Mr. Graham (solicitor)

**JUDGMENT** having been sent to the parties on 20 September 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

## Introduction

1. The claimant worked for the respondent as an assistant store manager in one of their stores. She was dismissed on 15 November 2020 for alleged gross misconduct. She brought a claim for unfair dismissal.

## The Hearing

2. The hearing was conducted remotely. The Tribunal heard evidence from three witnesses: Mrs Launders ('the claimant') on her own behalf; Ms. Robinson ('CR'); and Ms. Burke ('MB') on behalf of the respondent. I had regard to an agreed bundle of documents of 192 pages, and the witness statements of all three witnesses.
3. I gave my decision orally at the end of the hearing, and that forms the basis of my written reasons. I had made it clear in my oral judgment that I found each of the witnesses had given full and honest evidence to the best of their recollection making genuine efforts to assist the Tribunal.

## The Issues

4. There was no live issue about the core fact that the claimant had removed money from tills on a number of occasions. The claimant's argument was that she had an innocent explanation for that. There was no necessity to view the CCTV footage in light of the claimant's acceptance of removing money from the till. That was accepted by both parties.
5. There were no issues as regards employment status, time limits or that there had been a dismissal. A list of issues was set out and both parties accepted these were matters that needed to be decided. They can be summarised as follows:

### Unfair Dismissal

1. What was the principal reason for dismissal and was it a potentially fair reason in accordance with section 98 of the Employment Rights Act 1996 ("ERA")? The respondent asserts that the reason for dismissal was conduct.

2. If so, was the dismissal fair or unfair in accordance with section 98(4) of ERA? Matters to be determined which are relevant to this question will include:

- (a) Was a fair process followed?
- (b) Was dismissal reasonable in all the circumstances?
- (c) Was the claimant treated inconsistently when compared to other employees in the same or similar circumstances?
- (d) Was dismissal within the band of reasonable responses open to the respondent?

3. If the dismissal was procedurally unfair, what adjustment, if any, should be made to any award to reflect the possibility that the claimant would still have been dismissed in any event had a fair and reasonable procedure been followed?

4. If the Tribunal finds that the dismissal was unfair, should any compensation awarded be reduced to reflect the claimant's contributory conduct?

### Findings of Fact

6. The following paragraphs summarise the salient facts which underpinned my decision.
7. The claimant was a long-standing employee of the respondent, having worked for them for nearly 15 years, starting off as a temp. She had progressed to the post of assistant store manager in more recent time. She ought to have been fully aware of what was expected of her in terms of cash handling and the refunds policy. I accepted the respondent's evidence about the level of training and expectations for compliance with procedures.
8. The claimant took money out of the till on a number of occasions to process refunds for customers. The respondent undertook an investigation into these transactions because their computer systems flagged higher value

cash refunds as something requiring further inquiry. A particular refund that was relied on by the respondent related to a wardrobe purchase.

9. The claimant co-operated with the investigation and has given a consistent account of why she took the money out of the tills. The two main explanations which have remained consistent were:
  - a) that she was processing cash refunds for customers who had phoned up and were either coming into the store later, and on one occasion was elsewhere in the store; and
  - b) she gave the money to the customers or put it to one side for them, or could not recall what happened.
10. Having assessed all the documentary and oral evidence, I accept that these explanations put forward by the claimant were sufficiently plausible. The claimant accepted she did not properly follow procedures in the store. I accepted her account was that things were somewhat slack at this store as regards sharing of PINs to access tills and some lack of compliance with till transaction policy.
11. The claimant had maintained all along that she had an innocent explanation. She indicated that there were issues with how certain stock items were duplicated in store and/or how the system logged certain sales/refunds. I accepted that this may have been part of the relevant background to consider in assessing her unfair dismissal claim.
12. A key allegation the claimant faced related to a wardrobe refund. It was an expensive and unusual item for a store refund in cash. The claimant wanted all 40+ members of store staff to be contacted as part of the investigation and appeal. She believed someone else would have known about the wardrobe item being sold/duplicated. She wanted that step to take place to exonerate her. The respondent maintained that there were no issues with their systems and that it was disproportionate and/or not appropriate to pursue that matter with 40+ other staff. I decided that it was disproportionate for all the staff to be contacted.
13. Further investigations took place and the claimant was invited to a disciplinary meeting. The initial disciplinary hearing was suspended for those further investigations. The claimant was accompanied by a friend on 15 November 2021. CR conducted the disciplinary meeting. The claimant was dismissed at this meeting for gross misconduct. A confirmatory letter was sent the next day which relied on that ground for dismissal, and indicated that CR had 'reasonable grounds to believe that [the claimant had] fraudulently processed cash refunds for your own financial gain'.
14. The appeal was dealt with by MB and she had told the claimant that this was not a rehearing of the allegation but her opportunity to put reasons for the appeal and/or new evidence. The claimant had no new evidence and relied on her view that all staff should be contacted. MB decided that there were no grounds to change the decision to dismiss. The parties were unable to resolve the matter through ACAS. The internal policies were followed and these were compliant with best practice.

## Relevant Legal Principles

15. I have to apply section 98 of the Employment Rights Act 1996 in deciding the case. The key legal requirements are: a) it is for the respondent to show on balance that the claimant was dismissed for a potentially fair reason; and b) the question of whether the dismissal was fair or unfair depends on whether in the circumstances the employer acted reasonably.
16. In considering the question of reasonableness, I have had regard to the decisions in **British Home Stores v. Burchell [1980] ICR 303**; **Iceland Frozen Foods Limited v. Jones [1993] ICR 17**; **Foley v. Post Office and Midland Bank plc v. Madden [2000] IRLR 82**.
17. The key principles are whether the respondent had an honest belief about the claimant undertaking the alleged misconduct, and whether the respondent had a reasonable basis for that belief.
18. A tribunal is not allowed to substitute its own decision as to what it may have decided in the same situation. The tribunal's role is to decide if the respondent's decision to dismiss the claimant fell within the band of reasonable responses open to an employer.
19. In considering the question of reasonableness, I must apply the test outlined in the '**Burchell**' case. The three elements of the test are:
  - 1.1 Did the employer have a genuine belief that the employee was guilty of misconduct?
  - 1.2 Did the employer have reasonable grounds for that belief?
  - 1.3 Did the employer carry out a reasonable investigation in all the circumstances?
20. The 'band of reasonable responses' test applies to both the conduct of an investigation and the final decision on sanction (see **Sainsbury's Supermarket v Hitt 2003 ICR 111**).
21. The claimant suggests, at least obliquely, that her failings have been singled out. That may be relevant where there is true parity between cases of similar misconduct (see **Paul v East Surrey District Health Authority, CA, [1995] IRLR 305**).

## Submissions

22. Mr. Graham set out the key legal principles that I had to apply, he summarised the grounds relied on to show that the respondent's investigation and grounds for dismissal were reasonable. They included the key features of the investigation, compliance with the company policies and ACAS codes. He submitted the claimant had been unable to give a proper explanation of the events.

23. The claimant said she had concerns about the way the matter had been investigated and how she had been treated after 15 years of loyal service. She did not like being branded a thief. She said she accepted she had not followed proper security processes contrary to company policy. She also said she had carried out refunds in that manner before and had not been corrected about it. She said in one transaction relied on by the respondent, the CCTV footage shows there is another member of staff present, and that supported she was not stealing. She said it was not reasonable for the employer to have dismissed her and she should have been given a warning/final warning and retraining.

## **Discussion and conclusions**

**What was the principal reason for dismissal and was it a potentially fair reason in accordance with section 98 of the Employment Rights Act 1996 ("ERA")? The respondent asserts that the reason for dismissal was conduct.**

24. I accept (and it was not disputed) that the reason for dismissal was the claimant's conduct and that this is a potentially fair reason within s.98 ERA.

**If so, was the dismissal fair or unfair in accordance with section 98(4) of ERA? Matters to be determined which are relevant to this question will include:**

- (e) **Was a fair process followed?**
- (f) **Was dismissal reasonable in all the circumstances?**
- (g) **Was the claimant treated inconsistently when compared to other employees in the same or similar circumstances?**
- (h) **Was dismissal within the band of reasonable responses open to the respondent?**

25. The claimant's key motivation for bringing this case is to clear her name. Being accused of dishonesty is a serious matter and she is understandably upset by the conclusion drawn by her former employer. I accept that she has given a consistent account through a fairly rigorous investigation process. The initial investigation meeting was lengthy and when various alleged discrepancies were put to her, she tried to offer some form of explanation as to what might have happened. Those explanations are sufficiently plausible. She has remained consistent in her accounts and I accept she has been an honest straightforward witness before me today. Whilst an employer does not have to conduct a criminal style investigation, as a tribunal I did not consider there was sufficiently cogent evidence for the respondent to conclude that she had fraudulently processed cash refunds for her own financial gain. That part of the dismissal letter seems somewhat excessive given the other evidence before me that the cash handling and refunds policy breaches were sufficiently serious to dismiss. To that extent, I do not make a judicial finding that the claimant acted dishonestly. That should be some level of consolation to her to clear her name.

26. It was much more plausible that the various situations arose due to her lack of adhering to proper procedures or not acquainting herself to the staff learning that she should have undertaken. The three incidents relied on in the disciplinary process could be explained away by a failure to adhere to proper cash handling and refunds policy and process. Of course, those

policies are in place to prevent cash from going missing and once it was taken out of the till it is inevitable that the audit trail as to where it went is lost. That is why serious concerns arose about her actions.

27. As part of the senior management of the store and with 15 years' experience, the claimant should have been exemplary in her adherence to staff policies. Cash handling is core to a retail business and ultimately there is a sum of several hundred pounds not accounted for. Whether that is as a result of duplicated sales or mismatched receipts, computer/till errors or money simply going 'walkabout' I do not know. Whilst I do not find that this money being unaccounted for was due to the claimant's dishonesty, her actions have led to this not-insignificant financial discrepancy within the store. That is a serious matter and it is understandable why the employer took the matter seriously.
28. The financial discrepancies and high value cash refunds gave cause for investigation by the employer. The initial interview is overly lengthy and some of it is irrelevant. However, looking at it overall, the claimant was able to follow the questions, gave answers to what she knew and tried to explain other matters. Further enquiries were made and overall, I take no issue with that initial investigation. I take no issue with the decision to postpone the disciplinary hearing or ask for further investigations to happen. That suggests the employer was treading carefully in dealing with serious concerns about a long-standing and senior member of store staff. I concluded there was nothing unfair about the process, the respondent had undertaken a thorough and fair investigation. The disciplinary hearing itself and the appeal were satisfactory. The process and procedures were sufficiently compliant with good practice and fell within the band of reasonable responses.
29. The claimant had concerns about her not being allowed to speak to other staff yet being required to sit in the staff room before the meetings. This may have been uncomfortable for her but is not something which was designed to upset her or otherwise made the process unfair. She also had concerns about the employer's failure to speak to store staff about the wardrobe. I noted that the claimant had suggested all staff should be spoken to. Whilst an employer must investigate matters likely to exculpate the claimant, as well as those likely to implicate them, I decided the employer had been thorough and even handed. There was no requirement to conduct any further investigation as regards the wardrobe issue when looking at the totality of the evidence before me, and asking all staff at the store was disproportionate.
30. I am satisfied the core factual issues are not materially in dispute. The claimant accepts she processed cash refunds though she does not know the full reasons why or what happened to the money, without speculating. I am satisfied that removing cash from the till to process such refunds was contrary to policy, and that her approach to processing refunds when the customer was not present was also outside accepted norms. I am satisfied that there was a serious breach of till procedures/cash handing procedures under the disciplinary policy. I am also satisfied that the claimant's seniority meant she was under a heightened level of expectation to comply with proper procedures regardless of any claimed culture of non-compliance or

her claimed inability to access training. The claimant's situation, and vague accounts of failings at the store, did not bring her within the case of **Paul**.

31. Those conclusions are relevant to my decision that her actions were a serious breach of till/cash handling procedures that the employer was able to rely on. I am satisfied there was no bad faith in the employer's actions and that they relied on a legitimate cause for concern from the refund discrepancies.
32. I am satisfied the claimant's actions would have seriously damaged the trust and confidence between her and her employer. That was the underlying reason for dismissal from reading the interviews and hearing records. Whilst I do not consider there was sufficient grounds to amplify that to fraud in the actual dismissal letter, I cannot conclude that the decision to do so fell outside the range of reasonable responses. It was a permissible decision for the respondent to make at that time on the evidence that was before them. It was also open to take a lesser course of action than immediate termination i.e., final warning, given the claimant's lengthy good service, but again, the employer's decision to terminate did not fall outside the range of reasonable responses.
33. If I am wrong about the reasoning in the dismissal letter itself, the admitted breaches leading to refund discrepancies would still have led to a dismissal for gross misconduct, such that any award for unfair dismissal would have been reduced to zero.
34. Overall, I am satisfied that there were reasonable grounds that were operative for dismissal, and those had been formulated after a reasonable investigation. The investigation process would have been uncomfortable and as it was thorough, may have led to prolonged distress. However, it was procedurally fair and was within the range of reasonable responses. I find that the respondent had a genuine and reasonable belief that the claimant had committed gross misconduct under their policies. I am satisfied there was a fair reason to dismiss on grounds of misconduct, and that the grounds of dismissal were within the band of reasonable responses open to the employer. Therefore, there was no unfair dismissal. The case is dismissed.

Employment Judge Shergill  
Date: 8 November 2022

WRITTEN REASONS SENT TO THE PARTIES ON  
10 November 2022

FOR EMPLOYMENT TRIBUNALS