



EMPLOYMENT TRIBUNALS

Claimant: Mr Satpal Singh

Respondent: Beauty Base Ltd

Heard at: East London Hearing Centre

On: 17 - 20 January 2023

Before: Employment Judge Housego
Members: Ms M Daniels
Ms R Hewitt

Representation

Claimant: In person

Respondent: Henry King, of Counsel

JUDGMENT

1. **The Claimant was unfairly dismissed.**
2. **The claims for age discrimination are dismissed.**

REASONS

Summary

1. Mr Singh started work for the Respondent on 07 November 2017. In February 2018 he wanted a long holiday, which was outside the Respondent's parameters. He left his employment and took the holiday. He returned to work after the holiday. He says that when he left it was agreed that he would come back after the holiday. The Respondent denies this. This is important, because unless the two periods of employment are linked, he did not have 2 years' service and so cannot claim unfair dismissal. Mr Singh says that he was treated unfairly by reason of his age – he was born on 10 July 2001 – and was made to carry out tasks such as taking out the

bins, running errands and dusting the ceiling because he was the youngest. He says that he was dismissed unfairly. He says that he was accused behind his back of dishonesty, but there was no investigation. Subsequently he was dismissed for alleged misuse of his mobile phone and for talking to colleagues on the shop floor too much, which he says was a pretext, unfair and also age discrimination.

2. The Respondent said that not only did Mr Singh not have 2 years' service, but the dismissal was fair, both procedurally and on the facts. They said the dismissal took account of a final written warning already on his file, and he did not have the credit of long service. They say the dismissal was for impermissible use of his mobile phone on the shop floor and for talking too much to colleagues. They say that they had genuine belief of this, on reasonable grounds after a proper investigation.
3. The Tribunal decided that there was continuity of employment, so the Claimant could bring a claim for unfair dismissal. The reasons given for the dismissal were not the real reasons for the dismissal and in any event were insufficient to make dismissal fair, and the procedure was unfair as well. The Tribunal did not think that Mr Singh would have been dismissed if the procedure had been fair. Mr Singh did use his phone when he should not have done, and he was over conversational with colleagues, but as this was not the reason for the dismissal the Tribunal did not reduce his awards. If his conduct had been for misconduct the reduction would have been small, as the Respondent described his misconduct as minor.
4. The Tribunal did not think there was any age discrimination because many of the staff were young, Sana Mukhtar (who it was said had instigated the disciplinary action) had promoted him not many months before. While there was (the Tribunal finds) an ulterior motive for the dismissal the dismissal was not connected with his age. The other matters were either not detriments at all, or (the ceiling) somewhat vindictive action by the deputy manager who told Satpal Singh to do it.

Claims made and relevant law

5. The Claimant claims unfair dismissal¹ and that the dismissal, as well as being unfair was direct age discrimination². He claims that there were three things which were age related detriments (set out above and in more detail below).
6. In respect of the claim for unfair dismissal, the Respondent has to show that the dismissal was for a potentially fair reason³. The Respondent says this was conduct, which is one of the categories that can be fair⁴. This is not accepted by the Claimant as the real reason. The Claimant says dismissal was unfair for a variety of reasons. It must be shown that the decision to

¹ S98 of the Employment Rights Act 1996

² Section 13 of the Equality Act 2010:

“13 Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

³ S98(2) of the Employment Rights Act 1996

⁴ Also S98(2) of the Employment Rights Act 1996

dismiss was fair⁵. The employer must follow a fair procedure throughout⁶. It is not for the Tribunal to substitute its own view of what should have happened, for it is judging whether the actions of the employer were fair, and not deciding what it would have done. Dismissal must be within the range of responses of the reasonable employer⁷. That range is not infinitely wide⁸. It is unfair not to consider alternatives to dismissal even if there is a genuine belief even in gross misconduct⁹. It is not for a Tribunal to disregard a final written warning¹⁰.

7. The burden of proof as to the reason for dismissal is on the employer, on the balance of probabilities. There is no burden or standard of proof for the Tribunal's assessment of whether it was fair to dismiss¹¹. If the dismissal was procedurally unfair the Tribunal has to consider assessing what would have happened if a fair procedure had been followed¹².
8. The Respondent does not accept that the dismissal was procedurally unfair, but also asserts that had the procedure been unfair the same result would inevitably have occurred. It says that any failing was cured by the appeal against dismissal. It says that in any event the Claimant contributed at least 80% to his dismissal¹³.
9. The test for a claim that the Claimant has suffered unlawful discrimination is whether or not the Tribunal is satisfied that in no sense whatsoever was there less favourable treatment tainted by such discrimination. It is for the Claimant to show reason why there might be discrimination, and if he does so then it is for the Respondent to show that it was not. The Tribunal has applied the relevant case law¹⁴, and has fully borne in mind, and applied S136¹⁵ of the Equality Act 2010. Discrimination may be conscious or unconscious, the latter being hard to establish and (by definition) unintentional. It is the result of stereotypical assumptions or prejudice.

Issues

10. These are:

⁵ S98(4) of the Employment Rights Act 1996

⁶ *Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23 CA

⁷ *Iceland Frozen Foods Ltd v Jones* [1982] UKEAT 62_82_2907

⁸ *Newbound v Thames Water Utilities Ltd* [2015] EWCA Civ 677, paragraph 61: "The "band of reasonable responses" has been a stock phrase in employment law for over thirty years, but the band is not infinitely wide. It is important not to overlook s 98(4)(b) of the 1996 Act, which directs employment tribunals to decide the question of whether the employer has acted reasonably or unreasonably in deciding to dismiss "in accordance with equity and the substantial merits of the case". This provision, originally contained in s 24(6) of the Industrial Relations Act 1971, indicates that in creating the statutory cause of action of unfair dismissal Parliament did not intend the tribunal's consideration of a case of this kind to be a matter of procedural box-ticking. As EJ Bedeau noted, an employment tribunal is entitled to find that dismissal was outside the band of reasonable responses without being accused of placing itself in the position of the employer. The authority he cited as an example among decisions of this court was *Bowater v NW London Hospitals NHS Trust* [2011] IRLR 331, where Stanley Burnton LJ said:

"The appellant's conduct was rightly made the subject of disciplinary action. It is right that the ET, the EAT and this court should respect the opinions of the experienced professionals who decided that summary dismissal was appropriate. However, having done so, it was for the ET to decide whether their views represented a reasonable response to the appellant's conduct. It did so. In agreement with the majority of the ET, I consider that summary dismissal was wholly unreasonable in the circumstances of this case."

⁹ *Brito-babapulle v Ealing Hospital NHS Trust (Disability Discrimination : Disability)* [2013] UKEAT 0358_12_1406 (14 June 2013)

¹⁰ *Taylor v OCS Group Ltd* [2006] ICR 1602

¹¹ Section 98(4) of the Employment Rights Act 1996

¹² *Polkey v AE Dayton Services Ltd* [1987] UKHL 8

¹³ S122(2) and S123(6) of the Employment Rights Act 1996

¹⁴ The law is comprehensively set out in *Royal Mail Group Ltd v Efoji* [2021] UKSC 33 (23 July 2021)

¹⁵ "136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

..."

Unfair Dismissal

- 10.1. The Respondent says that it had a potentially fair reason for dismissing the Claimant. The Respondent says the reason for the Claimant's dismissal was conduct (in line with s.98(2)(b) Employment Rights Act 1996). The Claimant disputes that this was the reason. He says it was a pretext to get him dismissed, either because another employee, Lilly, had accused him of theft, or because of his young age.
- 10.2. It is not conceded that the procedure was unfair, but if it was, what would have happened had there been a fair procedure? The Respondent says dismissal was inevitable. The Claimant says that he would not have been dismissed at all.
- 10.3. What remedy should there be if the claim succeeds? The Claimant does not seek reinstatement or re-engagement. This hearing was reduced from 5 days to 4 days and so had time only to deal with liability.
- 10.4. Should there be any reduction for contributory conduct¹⁶?

Direct Age Discrimination

11. The Claimant says that because he was young (his date of birth is 10 July 2001, and the date of his dismissal was 20 March 2020 when he was 20) he was subjected to detriment. He says the following things happened to him because he was young, and humiliating to him as a supervisor:
 - 11.1. He was made to put the bins out often.
 - 11.2. He was made to run errands – buying things for the store.
 - 11.3. On one occasion the assistant manager Richard made him dust the ceilings.
 - 11.4. He was dismissed.
12. The Respondent objected to dismissal as a head of claim because Satpal Singh did not put this in the further and better particulars of the age discrimination claim. The Tribunal decided that it was sufficiently clear from the Particulars of Claim that he was claiming that dismissal was by reason of his age.

The Claimant's case

13. When in early 2019 he asked for a three and a half week holiday, his then manager Sandra refused this as the policy at that time was that he could not take more than two weeks. After discussing this with Sandra (who has since left the Respondent) she told him, (he thought with the agreement of Ahmed Jhamaney, a director and Sandra's line manager), that he could resign and then come back when he had returned from holiday. That was what he did. It was to be three and a half weeks but he was ill when he returned so it was a total gap of five and a half weeks. On his return to the

¹⁶ S122(2) and S123(6) Employment Rights Act 1996.

workplace, he did not fill in a job application form, and there was no interview. He did not have to provide proof of right to work in the UK. He kept the same payroll number. He was never sent a P45. His return to work was prearranged. He signed a new contract in part as he had a slightly higher pay rate. He did not pay any attention to the fact that it said that there was no continuity of service prior to it being signed. He had not given a written resignation or said why he was resigning, both of which were required by his contract. That was because it was always intended that he would return after the holiday. His resignation was just a means of getting round the two-week limit on holidays.

14. He used his mobile phone now and then to check the time, or to look at the Respondent's website to help him identify a product like a lipstick which needed to be returned to a supplier. The Respondent did not give staff individual lockers to store their personal belongings, just a communal cupboard with a number padlock on it as the security key pad did not work. He did not think it safe to keep his phone in the communal locker. He was never told by Sana Mukhtar that he should not use his phone. Sandra had always permitted it and Sana Mukhtar had not stopped him doing so.
15. His conversations with colleagues were not long and never interfered with customers.
16. The security guard, Usman, had told him that Ahmed Jhamaney had asked for a statement from him saying that he (Satpal Singh) had been seen stealing from the shop. He understood, from Usman, that a trainee supervisor, Lilly, had reported this to Sana Mukhtar, who had told Ahmed Jhamaney. Any report by Lilly of Satpal Singh stealing was not true. Lilly had subsequently been dismissed for suspected theft, so she may have been deflecting attention from herself. Usman had refused to provide such a statement. Later, Satpal Singh asked Usman for a statement about this, but Usman had refused. Satpal Singh thought this was because Usman's line manager was a friend of Ahmed Jhamaney and that if he made such a statement his own job might be in jeopardy. What Usman then said was that it was Richard who had made the request. He did not say that such a request was not made.
17. Richard had made Satpal Singh clean the ceilings, and the dust had been problematic. He had taken off his work shirt and wrapped it round his head to stop breathing it in. A customer passing had said "*They're taking the piss with that young man*".
18. Despite being a supervisor, Satpal Singh had been made to take out the trolleys with rubbish far more often than others and had been sent on errands.
19. All these three things were detriments and he was only asked to do them because he was young.
20. The dismissal was unfair. He had previously received a final written warning for lateness, and subsequently not only had he never been late, he had also been promoted by Sana Mukhtar. There was nothing wrong with his work. It was not only unfair but he had been targeted as he was young.

The Respondent's case

21. There was no arrangement that Satpal Singh could come back after his holiday. The job had remained vacant so that when he asked to return to work there was no reason why he should not be reemployed.
22. After he was promoted he used his mobile phone on the shop floor. This was not permitted. It was in the staff handbook. Sana Mukhtar told him multiple times, but he took no notice. It should have been kept in the locked cupboard provided. He spoke to colleagues on the shop floor and that was not permitted either, other than for work related matters. He had a final written warning on record that had not expired.
23. It was not unfair to take disciplinary action given these two matters, and since he had a current final written warning dismissal was plainly within the range of responses of the reasonable employer. The disciplinary procedure expressly covered disciplinary matters cumulating, even if for different things.
24. The allegation that a witness statement had been requested from Usman was not true. No one, Lilly or anyone else, had ever made an accusation that Satpal Singh was dishonest.
25. The procedure had been fair throughout. While Ahmed Jhamaney had investigated after the appeal hearing, all he had heard supported the decision to dismiss Satpal Singh, so there was nothing unfair in that.
26. The evidence of Satpal Singh did not have credibility for various reasons (mostly set out below) and he should not be believed. His schedule of loss was very large and he was simply seeking financial gain.
27. There was nothing in the age discrimination claim. He had been promoted, which did not indicate any issue with his age. The dusting of the ceiling had never happened. There was a contractor retained to dust the ceilings every six months (314). Satpal Singh had not put the bins out more than anyone else, and he only went on an errand once, with a colleague who said he had been so unhelpful that he was never sent again.

Evidence

28. There was a bundle of documents which was augmented during the hearing. In total there were:
 - 28.1. An agreed bundle of documents originally 359 pages but a further supplemental bundle increased it to 390 pages (1);
 - 28.2. The Claimant's bundle of documents (2.1, extra documents 2.2 and schedule of loss (2.3));
 - 28.3. Witness statements (3);
 - 28.4. Other documents at (4) –
 - 4.1 -Skeleton argument for previously listed hearing from Claimant (11 May 2021),
 - 4.2 a revised skeleton argument dated 09 January 2023

- 4.3 the Claimant's (agreed) chronology
- 4.4 Respondent's list of issues
- 4.5 Respondent's chronology;

28.5. Both parties' written submissions (5.1 and 5.2).

29. The Claimant gave oral evidence. He provided a witness statement from a friend who did not attend to give oral evidence. For the Respondent the Tribunal heard oral evidence from Sana Mukhtar (store manager at the time of dismissal), Ahmed Jhamaney, a director who took the appeal against dismissal, and two supervisors, Mohammed Alinoor Miah and Arif Rahman. The Respondent tendered witness statements from the assistant manager Richard and from a sales assistant Alisha. These two had left the employment of the Respondent and did not attend. The Respondent did not call the person who dismissed the Claimant, Prajakta of human resources. As these last three (and others named in this judgment) did not give oral evidence and so have had no opportunity to comment on anything said about them the Tribunal uses only their first names. Their identities are immediately apparent to everyone who needs to know.
30. All the witnesses who gave oral evidence were cross examined and the Tribunal also asked them questions.
31. There are some credibility issues with the evidence of the Claimant. He said both that he did not know that he was not allowed a mobile phone on the shop floor and that he had permission to do so (which would not be necessary if he did not know that he should not use the phone). At various times in the disciplinary process he said different things about what he used the phone for. He said that he used his phone to check the time, but he had a watch. He said that he used the phone to access the Respondent's website the more easily to identify products that had to be returned to suppliers. The shop is primarily fragrances which are easy to identify. There is a computer to look at, and a manager and assistant manager. This was not credible. He cast doubt on whether it was him shown in a seven minute CCTV video of the shop in conversation with another member of staff when plainly it was him.
32. The Tribunal found there were credibility issues with the oral evidence of the Respondent's witnesses.
33. Sana Mukhtar was unable to explain why it was that she had gone from promoting Satpal Singh to commencing disciplinary action without ever telling him that she would do so if he did not cease using his mobile phone or talking to colleagues. It was not that she disliked him, for she had promoted him only a few months before¹⁷. The only documentary evidence of any discussion between her and Satpal Singh was a manuscript note bearing the date 11 March 2020¹⁸. Sana Mukhtar said that the assistant manager, Richard, was in attendance at this meeting. Neither he nor Satpal Singh signed this note. It is not on company headed paper. It was not said to have been placed on the human resources file for Satpal Singh. When

¹⁷ 28 November 2019, page 136, signed as accepted the same day.w

¹⁸ Page 143.

and why it was made and where it was kept are unclear. It is not strong supporting evidence of the Respondent's case. There is no evidence of any other discussion about either phones or conversations. The oral evidence of Sana Mukhtar was that this was because this was a minor matter not worthy of formal action and that only on the one occasion did she make a note. It was not clear where it was kept.

34. Ahmed Jhamaney was evasive in many of his answers, using the formula "*I am not qualified to answer that question*" when responding to many of the questions put to him, when they were about the processes and procedures of the stores, and he is a director who goes to every store once a week, and line manages the head of human resources, Prajakta.
35. Ahmed Jhamaney sent two letters dismissing the appeal, on successive days. The first went to the solicitor acting for Satpal Singh in a personal injury claim arising from a fall at work on 15 January 2020 that had meant Satpal Singh was absent from work from 16 January 2020 to 02 March 2020. Ahmed Jhamaney had clearly relied on what Sana Mukhtar told him, since he put in both letters that at a return to work meeting she had warned Satpal Singh about the mobile phone and conversations. The return to work meeting note mentions neither matter¹⁹.
36. All the witness statements were in the same font and spacing. It is plain that they were all prepared together. There is nothing inherently wrong with that, and indeed it is helpful to have the words of the witnesses presented in a professional manner.
37. However, the witness statements of Ali Miah and of Arif Rahman are, word for word, identical at paragraphs 9-12 of Ali Miah and at 12-15 of Arif Rahman, save for one small addition in paragraph 10 of Ali Miah's witness statement. Each said in oral evidence that they had written their statements out themselves, by hand, and handed them in to be typed up. Each said that they had not seen the witness statement of the other before this hearing. We were asked to ensure that the questioning of Arif Rahman was simply phrased (and we did so) because English is not his first language. (I checked at the end of his evidence that Counsel for the Respondent was content that Arif Rahman had understood all that was said, and he so confirmed.) Arif Rahman's witness statement is phrased in terms that are unlikely to have been written by a person with a limited command of English – for example paragraph 13: "*I understand that Satpal claims that he had to clean dust from the ceiling during March 2020. I have never seen any staff member cleaning dust from the ceiling, including Satpal, before or after store hours and this kind of cleaning duty has never been allocated to any staff member. The store also does not have any equipment to clean the ceiling which is very high. Cleaning dust from the store ceiling has never been a cleaning duty that has been assigned to any staff member. The only kind of cleaning that we do in the store is cleaning the shelves, shell strips, the till area and when customers brake testers on the shopfloor then we mop.*" (These are words also in paragraph 10 of Ali Miah's witness statement.)

¹⁹ Page 141. It deals only with whether Satpal Singh is able to carry out each of the duties of the role, and 2.1 at 42.

38. Arif Rahman is said to have complained to Sana Mukhtar about the Claimant's mobile phone use, without telling him that he was going to do so, even though they were friends. This is inherently unlikely. It becomes the more unlikely because a few days after he said that he reported Satpal Singh's mobile phone use to Sana Mukhtar, Arif Rahman sent Satpal Singh a video of a prank he had taken with his mobile phone while on the shop floor. This was during working hours, and was of a security tag being attached to the bag of a female colleague, Ioanna, who was leaving the shop at the end of her shift, so setting off the alarm. The security guard called her back, repeatedly as the tag was not clearly visible. Arif Rahman said this was during his lunch break so the bar on his phone did not apply to him at the time. He accepted that management would think this inappropriate (and we were told that when it came to light as a result of being disclosed by Satpal Singh in this case he was disciplined (but not dismissed)). He said that as Satpal Singh was his friend he was sure that he would not report his (Arif Rehman's) prank. It is inherently implausible that Arif Rahman would report his friend without first telling him that he really needed to stop using his phone and talking to people. It is even more implausible that having done so he would then, a few days later, send Satpal Singh a video which Satpal Singh could have (but in fact did not) report to management. The Tribunal found the evidence of Ali Miah and Arif Rehman to be of little or no veracity. The Tribunal concluded that their witness statements had been written for them and that they had done little more than sign them.
39. Counsel for the Respondent relied on CPR 31.9 to support a submission that the Claimant was not able to contest the validity of documents submitted by the Respondent, in particular the manuscript note made by Sana Mukhta (143) of a verbal warning for having conversations on the shop floor. The Tribunal did not need to address this argument, for it accepted that Sana Mukhtar had made the note in question: it is addressed elsewhere in this decision, but was afforded little weight.

Submissions

40. My record of proceedings contains a note of both Counsel's submissions and those of Satpal Singh, which set out their respective positions, outlining their cases. The substance of them is covered above or in the Tribunal's conclusions.
41. Counsel for the Respondent correctly pointed out that Satpal Singh's cross examination, while otherwise highly competent for a litigant in person, had not challenged any of the witnesses about age discrimination.

Facts found

42. The Respondent's store sells (mainly) fragrances, and some other beauty related products. Satpal Singh worked as a shop assistant in the Respondent's flagship store in the Stratford Westfield Centre. The Respondent has 10 stores and a core staff of about 100. The number goes up a lot at Christmas. There is a person responsible for human resources (Prajackta) and she was responsible for holding disciplinary hearings. She

reported to Ahmed Jhamaney, who is one of the directors. He has been with the Respondent since 2002. Satpal Singh started on 07 November 2017 when he was 17. At the time the Respondent had a policy that allowed no more than two weeks holiday could be taken at any time. Satpal Singh wanted to go on holiday to India for about 4 weeks. His manager (then Sandra) was not able to permit this. She agreed that he could resign and then resume his job when he came back. Ahmed Jhamaney denies that he knew or approved of this. That may be so, but it is not relevant.

43. The basic facts are that:

43.1. Satpal Singh is noted by the Respondent as resigning on 21 February 2019. He worked until 26 February 2019.

43.2. He returned to work five and a half weeks later, in early April 2019 (he had intended to be away for three and a half weeks but was ill on his return to the UK which delayed his return to work).

43.3. His role within the store remained vacant for that time. It was not said that it was left unfilled as this is a quiet time of year. No evidence was produced of any attempt to fill the vacancy, other than a generic assertion in his oral evidence from Ahmed Jhamaney that it "*would have been*" advertised. It is inherently unlikely that candidates for a shop assistant role in a Westfield store would not emerge over that period when many people laid off after Christmas would want work. The Tribunal finds that his role was not advertised because he was coming back.

43.4. No P45 was issued. The Respondent blames its payroll provider at the time which they say was months behind. No evidence was produced to support this assertion.

43.5. When he returned the identical payroll number was used. Payslips were issued for January February and March 2019. Hours worked to 20th of each month are paid at the end of the month. In February 2019 Satpal Singh was paid for the days up to 20 February 2019. In March 2019 he was paid for 21-26 February 2019. In April 2019 he was paid for the work after he returned to work. All that happened was that Sandra did not input hours for him while he was away.

43.6. There was no written resignation – it was an oral understanding between him and Sandra that he would in effect have unpaid leave (in part, as his February payslip contained holiday pay accrued to 26 February).

43.7. He made no job application. No one checked his right to work.

43.8. He signed a new contract on return, but with a higher pay rate. While it says "*no previous service has continuity*" this is a standard form, and the Tribunal finds that this fact does not negate the finding that this was an arrangement to enable Satpal Singh to take his holiday.

44. For these reasons the Tribunal found that there was an arrangement that he would return to work after his holiday.
45. The test for continuity is in S213(2)(c) of the Employment Rights Act 1996. If an employee is “*absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for any purpose*” he has continuity of employment.
46. Counsel for the Respondent laid stress on the circumscribed nature of the statutory linking provision. He correctly submitted that there was no question of a custom. However, Satpal Singh was an employee on the payroll with the same employee number the whole time he was away, and was paid in all consecutive months for the hours he worked in each of those months. That is sufficient.
47. Satpal Singh submitted that the gov.uk website sets out that a returning employee must be treated as a new employee, and the previous employment cannot be revived. The Respondent was not given notice of this submission. The Tribunal does not rely upon it. The facts found are more than sufficient to result in the Tribunal’s finding that there was continuity of employment from start date of 07 November 2017 until his dismissal on 20 April 2020.
48. The chronology towards the end of employment is as follows:
- On 21 June 2019 a 1st written warning was given for lateness²⁰;
 - On 07 August 2019 a final written warning was given for lateness²¹;
 - Satpal Singh was not late again;
 - In November 2019 Sana Mukhta promoted Satpal Singh to supervisor;
 - On 15 January 2020 Satpal Singh had a fall at work, injuring his arm, and was signed off work from 16 January 2020.
 - On 29 January 2020 he tried to return to work but as he was still signed off, and was not able to undertake some of his role, Sana Mukhtar did not let him return to work²²;
 - At some point during this period Satpal Singh instructed solicitors to progress an injury at work claim, and they wrote to the Respondent. The letter came to the attention of Ahmed Jhameney;
 - On 02 March 2020 Satpal Singh returned to work. The return to work form dealt only with his ability to work and nothing else²³;

²⁰ Page 129

²¹ Page 133

²² Page 141

²³ Page 142

- A security guard, Usman, told Satpal Singh that a trainee supervisor, Lilly, had told Sana Mukhta that he, Satpal Singh might be stealing so that he (Usman) told Satpal Singh that he should watch himself, especially as Ahmed Jhameney had asked him (Usman) to make a statement that he had seen Satpal Singh stealing – which he had refused to do as it was not true.
- On 09 or 10 March 2020 Sana Mukhta asked Prajakta if disciplinary action could be taken against Satpal Singh. This was, according to Sana Mukhtar, authorised by Prajakta.
- On 11 March 2020 Sana Mukhta interviewed Satpal Singh. The note²⁴ is very brief and is in manuscript, and is not signed by Satpal Singh or any witness;
- Satpal Singh then asked Usman for a statement setting out what he had told Satpal Singh. Usman temporised, then said that it was Richard who had asked for the statement. (Satpal Singh says that Usman's line manager and Ahmed Jhameney are close and Usman feared for his own job if he gave such a statement, but while going back on saying it was Ahmed Jhameney who had asked for the statement, Usman had never retracted the statement that he had been asked to make a statement that Satpal Singh had been seen stealing, and that this was false.)
- On 20 March 2020 furlough was announced, and on 24 March 2020 the first Covid lockdown started;
- On 23 March 2020 Prajakta held a telephone disciplinary hearing²⁵. Alisha was with Satpal Singh. The meeting was very short. Satpal Singh recorded it, with Prajakta's consent. It ends with Prajakta saying she needed to investigate.
- On 01 April 2020 Prajakta wrote to Satpal Singh to dismiss him. She wrote that having considered his responses and his short amount of service, and his current final written warning she dismissed him. It does not appear that she carried out any other investigation.
- On 22 April 2020 Satpal Singh appealed²⁶.
- Ahmed Jhameney took the appeal (the director who would have taken it dealt with online sales and was particularly busy, given lockdown).
- The appeal was on 14 April 2020, again on the telephone. It was very short. Ahmed Jhameney agreed to it being recorded and agrees the transcript. Satpal Singh read a short pre prepared statement, ending "*That's all I have to say.*" The only words spoken by Ahmed Jhameney after agreeing to the recording followed this and were limited to 3 words "*OK, cool*" and "*Bye*".

²⁴ Page 143

²⁵ Page 145-6

²⁶ Page 152-153

- On 21 April 2020 Ahmed Jhamaney wrote to the solicitor who had, or was, acting for Satpal Singh in a personal injury claim, dismissing the appeal. He did not check with Satpal Singh whether the appeal outcome should be sent to this solicitor.
 - On 22 April 2020 Ahmed Jhamaney wrote a slightly shorter letter to Satpal Singh (in the same terms but with some of the content excised). He claimed that the difference in the letters was due to the one that was sent to the solicitor being a draft that was sent in error.
 - At some point Lilly was dismissed. While this was said to be a training issue and a probation fail, the interview notes taken by Sana Mukhtar²⁷ indicate that there were strong suspicions of dishonesty.
49. The allegation about being made to dust the ceiling is true. There is a contemporaneous exchange of text messages (246) between Satpal Singh and a colleague (Shalal) where he complains about it and the other person responded “*Yh I heard*” (plainly having been told about it by another person).
50. In a text message (244) a colleague, Alisha said “*But I know for a fact that Richard is after you*”. Satpal Singh plainly enjoyed a good relationship with the young female staff. Whether that made Richard wish to humiliate Satpal Singh is unknowable, but the contemporaneous evidence is that at least one other member of staff thought Richard was not well disposed towards Satpal Singh. That also ties in with Usman’s changed account (although Satpal Singh does not think that changed account accurate).
51. The cleaning contractor came at six monthly intervals. This was mid-way between two cleans. The ceiling cleaning episode was Richard being unpleasant to Satpal Singh. There is nothing to suggest it was age related.
52. Putting the bins out is not arduous. They are metal cages on wheels to be pushed to the rear of the shop. It is not done frequently. It was not humiliating to be asked to do this. It was not a detriment.
53. Going on shopping errands with a colleague is also not a detriment. Nor was Satpal Singh asked to do this more than once, or more than others.
54. There is nothing to suggest Satpal Singh’s age had anything to do with these two matters either.

Conclusions

55. In the course of his carefully prepared cross examination Satpal Singh did not put to any of the witnesses for the Respondent that they had discriminated against him by reason of his age. While plainly (and, as is apparent from what follows, with good reason) Satpal Singh believes he was treated unfairly. He has concluded that this is because he is young. The Tribunal did not consider that there was any evidence before it that could lead it to conclude that age was a factor in anything that happened and so

²⁷ Page 332, undated

the burden of proof did not shift to the Respondent. Accordingly, the age discrimination claims fail and are dismissed.

56. The dismissal process was not a fair process:
 - 56.1. Sana Mukhtar did no more than speak to Prajakta. No documents were provided by Sana Mukhtar to her. Prajakta had the final written warning on the human resources file, but nothing else, save the short telephone attendance note bearing the date 11 March 2020.
 - 56.2. There were no statements taken by Prajakta from any other employee.
 - 56.3. The dismissal hearing was very short.
 - 56.4. The appeal hearing was even shorter, and all Ahmed Jhamaney said, after introductory remarks was “Ok, cool” and “Bye”. This was a foregone conclusion.
 - 56.5. The investigation made by Ahmed Jhamaney subsequent to the appeal hearing was secret from Satpal Singh.
 - 56.6. The outcome letter wrongly says that at the return to work from sick leave meeting, phones and too much conversation were raised and warnings given.
57. It is evident that something caused an abrupt change in the working relationship between Satpal Singh and his employer.
58. His previous store manager Sandra thought well enough of him to allow him (in effect) unpaid leave in February 2019 (and even if that was not so, she rehired him – either way she wanted him back). Sana Mukhtar promoted him as recently as November 2019.
59. Satpal Singh attributes his dismissal to his young age, but that is unlikely. Whether Satpal Singh’s belief that Lilly accused him of theft, behind his back, to Sana Mukhtar (who denied this occurred) and this was the pretext to dismiss him; or was because he was intending to pursue a personal injury claim (of which Ahmed Jhamaney clearly knew since he sent the first appeal outcome letter to the solicitor acting for Satpal Singh in that matter); or whether Richard orchestrated it, or whether there was another cause not identified in the hearing cannot be known. What is apparent to the Tribunal was that it was not the minor (as was the oral evidence of Sana Mukhtar) matters of phone use and being too chatty on the shop floor.
60. The abrupt change in management approach to Satpal Singh led directly to his dismissal.
61. There was no reason for the matters complained of to have led Sana Mukhtar to have started disciplinary proceedings. She was at pains to explain why there was no formal verbal warning and only informal warnings by saying that these were minor matters not serious enough to require anything more. But having had (she says) three such discussions her

evidence is that she then started disciplinary proceedings that she knew (her evidence was such) were likely to lead to his dismissal. This was without telling him that if he continued to use his phone and talk to people that this is what she would do. This for someone she had promoted in November 2019 despite him having a current final written warning. This is not credible.

62. The complaints said to have been made to Sana Mukhtar by Arif Rehman and Ali Miah were not made as claimed. In short Prajakta dismissed Satpal Singh on the basis only of a verbal report from Sana Mukhtar and a very brief telephone conversation with Satpal Singh. Ahmed Jhamaney's appeal was perfunctory.
63. The note made by Sana Mukhtar dated 11 March 2020 reflects a real conversation. It is similar in handwriting and style to the note about Lilly. When it was made is unclear, though it probably reflects a conversation on 11 March 2020, the date written on it. No one else was present at that discussion, and the Tribunal rejects Sana Mukhtar's evidence that Richard was present. If he was there it would have been a formal meeting, a companion would have been offered, and Sana Mukhtar, Richard and Satpal Singh would all have signed it and it would have been placed on the human resources file. There were no other notes of such conversations. There was no explanation as to why one meeting was noted and others not. There was only one such conversation, and it was informal. It was later used as a pretext for dismissal.
64. Whether the impetus for the process came from Sana Mukhtar or Ahmed Jhamaney, or even Richard cannot be known by the Tribunal.
65. For these reasons the Tribunal finds that the reason for dismissal was not misconduct. Therefore, the dismissal was unfair.
66. Even had it been a misconduct dismissal the procedure was unfair, and a fair procedure would not have resulted in the dismissal. The Tribunal fully noted the existence of a final written warning for lateness but noted also that after it was given Satpal Singh was not late again. Had he been told that disciplinary action would be taken if he continued to use his mobile phone or have conversations with shop assistants (as a reasonable employer would have done) he would have been very likely to have stopped this behaviour. This is academic, for the Tribunal finds that these were not reasons but pretexts. The final written warning cannot in these circumstances be used to justify the dismissal.
67. Had it been a misconduct dismissal, the Tribunal would have assessed contribution at a low level: Satpal Singh did use his phone when he should not have done and was over conversational with shop assistants, but these were not serious transgressions, and he was never told that he would be disciplined if he did not stop.

68. The case will be relisted for a remedy hearing.

**Employment Judge Housego
Dated: 24 January 2023**