



EMPLOYMENT TRIBUNALS

Claimant: Mr Bhavin Patel

Respondent: HBOS Plc

JUDGMENT having been given at the hearing and reasons having been requested by the claimant in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, reasons are set out as follows.

REASONS

The Case

1. The claimant issued proceedings on 22 January 2021. The Claim Form said the claimant worked for Halifax bank from 29 November 2015 to 11 October 2020 as a Customer Adviser. The claimant claimed unfair dismissal. The details of complaint referred to an accusation that he had stolen money from 2 customers for a total sum of £800. The claimant said he followed the correct procedures and policies in respect of incidents. He said that the investigation and the outcome were unfair and unreasonable as follows:
 - a. The customer's identifications were verified by chip and pin which is the banks preferred way of confirming a customer's identity. No evidence was provided to show the claimant that this process was not followed.
 - b. For savings accounts, there was a flaw in the bank's system which allowed the customers to press the green button chip and pin pads to confirm the transaction without producing any paper-based documentation. The claimant had not questioned this and had no reason to do so, and it had never been brought up in his branch as an issue.
 - c. No CCTV evidence had ever been provided, or even viewed, to confirm that the customers did receive their money that they disputed.
 - d. The claimant had no motive to steal the money. This is supported by a thorough investigation into his finances that was completed as part of the disciplinary process; the respondent agreed that there was no motive.
 - e. There was no evidence of TCR's [teller cash recycler] balancing in dual checks after 30 April 2020, which is carried out once every 2 to 3 months. Even though daily check on the TCR balanced, the evidence that the dual TCR check (every 2 to 3 months) was not provided. This would show the TCR had dispensed an incorrect amount.
 - f. The claimant had been carrying out transactions in a similar way throughout his employment and at no point have he received prior warning to flag that he

was following an incorrect process or was given a warning or training to indicate he should be doing things differently.

2. The details of complaint said the claimant was dismissed on 11 October 2020 on the grounds of gross misconduct. He appealed and the hearing manager concluded on 24 December 2020 that the dismissal outcome would remain the same, for the same reasons stated before. The claimant contended that the consequence of such a dismissal would have serious detrimental effect on his career on the basis of a crime, he said, he did not commit. The claimant also said that action short of dismissal should have been considered and would be more appropriate so that the flaws in the system could have been addressed and he could have been trained in an alternative process. The claimant contended that he gave his employers no reason to doubt his integrity prior to his dismissal. There was no evidence to prove that he took the money, and the dismissal had stained his character. This negatively affected his mental health, damaged his reputation, character and career and he had no motive to steal the money.
3. The response was received on 23 February 2021. The grounds of resistance said that the claimant was employed by Lloyds Banking Group which was part of the respondent. The respondent disputed the claimant's start date by 3 days. The respondent contended that between May and July 2020 the respondent received 2 separate concerns from 2 elderly customers, which were investigated by its Group Investigations team who ascertained that the claimant had processed both transactions. The claimant attended a fact-finding interview on 18 August 2020 and whilst he denied that he had processed an unauthorised withdrawal, the claimant admitted he breached the respondent procedures when processing the withdraw for the second customer – he failed to maintain any documentation in the branch to support that the transaction had taken place at the customer's request and had failed to update the customer's passbook following the withdrawal. The claimant was then suspended on full pay pending further investigation. The respondent contended that after investigating the claimant's till and TCR no cash problems or cash errors were found. The respondent proceeded with a disciplinary hearing on 23 September 2020, via conference call, in which the claimant was accompanied by his trade union representative. The claimant denied taking any money from the customers. The respondent decided to dismiss the claimant for gross misconduct and confirmed its decision in a letter dated 7 October 2020. The claimant appealed his dismissal and a hearing proceeded on 27 November 2020. The claimant's appeal was unsuccessful, and he was advised of the respondent's decision on 23 December 2020.
4. The respondent contended that the claimant was dismissed for a potentially fair reason, related to his conduct, pursuant to section 98(2)(b) Employment Rights Act 1996. The respondent contended that it acted reasonably in treating this reason as sufficient reason for dismissal. The respondent also contended that if the Tribunal was to find that the claimant's dismissal was unfair (which was denied) then any compensation should be reduced to nil to reflect the claimant's contribution towards his dismissal and/or any compensation should be reduced to reflect the chance that the claimant would have been dismissed in any event.

The law

5. The claimant claims that he was unfairly dismissed, in contravention of s94 Employment Rights Act 1996 (“ERA”).
6. S98 ERA sets out how the Tribunal should approach the question of whether a dismissal is fair. First, the employer must show the reason for the dismissal and that this reason was one of the potentially fair reasons set out in s98(1) and s98(2) ERA. If the employer is successful at that first stage, the Tribunal must then determine whether the dismissal was fair under s98(4):

Where the employer has fulfilled the requirements of subsection (1), the determination of the question of 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.
7. The s98(4) test can be broken down to two key questions:
 - a. Did the employer utilise a fair procedure?
 - b. Did the employer’s decision to dismiss fall within the range of reasonable responses open to an employer of this size and type?

8. For misconduct dismissals, the employer needs to show:
 - a. an honest belief that the employee was guilty of the offence;
 - b. that there were reasonable grounds for holding that belief; and
 - c. that these came from a reasonable investigation of the incident.These principles were laid down in *British Home Stores v Burchell* [1980] ICR 303. The principles were initially developed to deal with dismissals involving alleged dishonesty. However, the *Burchell principles* are so relevant that they have been extended to provide for all conduct-related dismissals. Conclusive proof of guilt is not necessary, what is necessary is an honest belief based upon a reasonable investigatory process.

9. Accordingly, my emphasis, the emphasis of the case at the hearing was whether the Tribunal could be satisfied that, in all the circumstances, the respondent was justified in dismissing the claimant for the reasons given, i.e. in relation to his purported misconduct, the thefts.

10. ACAS has issued a Code of Practice under s199 Trade Union & Labour Relations (Consolidation) Act 1992. Although the Code of Practice is not legally binding in itself, Employment Tribunals will adhere closely to the relevant Code when determining whether any disciplinary or dismissal procedure was fair. The ACAS Code of Practice represents a common-sense approach to dealing with disciplinary matters and incorporates principles of natural justice. In operating any disciplinary procedure or process, the employer will be required to:
 - Deal with the issues promptly and consistently;
 - Established the facts or the evidence before taking action – both for and against the claimant’s guilt;
 - Make sure the employee was informed clearly of the allegation;
 - Ensure that the nature and extent of the investigation reflect the seriousness of the matter, i.e. the more serious the matter then the more thorough the investigation should be;

- Allow the employee to be accompanied to any disciplinary interview or hearing and to state their case;
 - Make sure that the disciplinary action is appropriate to the misconduct alleged;
 - Provide the employee with an opportunity to appeal the decision.
11. In *West Midlands Cooperative Society Limited v Tipton [1986] ICR 192* the House of Lords determined that the appeals procedure was an integral part of deciding the question of a fair process. Indeed, a properly conducted appeal can appropriately reinstate an unfairly dismissed employee or remedy some procedural deficiencies in the original hearing.
 12. In judging the reasonableness of the employer's decision to dismiss, an Employment Tribunal must be careful to avoid substituting its decision as to what was the right course of action for the employer to adopt for that which the employer did, in fact, chose. Consequently, the question for the Tribunal to determine is whether the respondent's decision to dismiss the claimant fell within the band or range of reasonable responses open to a reasonable employer: see *Foley v Post Office; HSBC Bank plc v Madden 2000 ICR 1283*.
 13. The range of reasonable responses test applies not only to the decision to dismiss but also to the procedure by which that decision was reached: *J Sainsbury plc v Hitt 2003 ICR 111 CA* and *Whitbread plc (t/a Whitbread Medway Inns) v Hall 2001 ICR 669 CA*.

The evidence

14. I (i.e. the Employment Tribunal) heard evidence behalf of the respondent from the dismissing officer, Michael Mulhern, and the appeal officer, Ruth Welsh. I then heard evidence from the claimant. The witnesses and parties had provided statement which they confirmed, and they were cross-examined by opposing counsel. I asked questions for clarification.
15. I also considered a surprisingly large hearing bundle consisting of 489 pages. At the outset of the hearing, I emphasised to the parties that, as a matter of course, I would not read all of the documents contained in a Hearing Bundle. I stated I would read documents referred to me by a representative or witness or which had been cross-referenced in a witness statement. I said I may read additional documents that have not been referred to me and, if so, I would identify those documents; however, I emphasised that if a party thought that a document was relevant and important, then he or she should bring that document to my attention.

Findings of fact

16. I made the following findings of fact. I did not resolve all of the disputes between the claimant and the respondent, I merely concentrated on those disputes that would assist me in determining whether or not the claimant had been unfairly dismissed. I have set out how I have arrived at such findings of fact where this is not obviously or where, I determine, this requires further explanation. I have set out how I have arrived at such findings of fact where, I determine, this requires further explanation.

17. In determining the following facts, I placed particular reliance upon contemporaneous or near contemporaneous correspondence, emails and documents. I approached the witness statements with some care because this evidence was prepared sometime after the events in question and for the purposes of either advancing or defending the claims in question.
18. I accept the claimant's evidence that he started work for Lloyds Bank on 29 November 2015. His contract of employment [Hearing Bundle pages 36-44] did not state a start date. Mr Mulhern's statement referred to a later start date, but it is not clear where this came from (probably an internal Halifax bank record). The discrepancy is small I give the claimant the benefit of the doubt, particularly as he gave direct evidence on this.
19. The claimant started work at the Halifax Wembley branch and then he moved to the Halifax Harrow branch over 2 years later. The claimant's role was a Customer Adviser.
20. On 30 April 2020 the claimant served a customer, SP, who had come into the bank to withdraw £837.60 using a passbook. The claimant completed the transaction and updated SP's passbook. When SP got home, she counted the money and contended that she was £100 short [HB58]. She returned to the bank the next day (i.e. 1 May 2020) and spoke with the Branch Manager, Lorna Hudson. Ms Hudson checked the counter journal and compared this to the TCR journal and saw no error. A colleague counted the till that day and found no discrepancy so initially Ms Hudson did not uphold the customer's complaint. At the time it was recorded that TCRs do make errors, they were not 100% accurate all of the time but that the TCR journal would reflect the error locally and there was no evidence to back up the customer's claim [HB59, 60]. Ms Hudson recorded that she did not doubt what the customer was saying but, at that time, she did not regard this as a matter of possible theft by the claimant [HB60]; nevertheless, she refunded the cash shortfall to SP.
21. On 4 June 2020, the claimant served another elderly customer, NK, who had come to the bank to pay £1,300 into a credit card from her passbook account. The claimant completed the transaction and updated NK's passbook [HB57]. 3 minutes later another transaction was undertaken and £700 in cash was withdrawn from NK's account. NK returned to the bank on 14 July 2020 and updated her passbook. She reported that she was missing £700. Upon checking the respondent discovered that the claimant had not updated NK's passbook or completed a withdrawal slip. NK was eventually refunded the £700 discrepancy on the basis that there was no voucher for the transaction which could be located and NK's passbook had not been updated [HB72].
22. There were some key features between these 2 transactions; both elderly ladies, both passbook accounts, both made withdrawals and reported cash shortfalls from the claimant within a relatively short space of time.
23. On 18 August 2020 the claimant attended a fact-finding meeting. Paul Osbourne was the investigator. Mr Osbourne provided an investigation report on 2 September 2020 [HB68-77]. The investigation was expensive. Both customers were longstanding and had not made complaint previously and both customers were wealthy [HB72, 76]. Mr Osbourne examined the bank statements, an audit

trail of transactions undertaken by the customers [HB71] and reviewed the original complaints and conversations the customers had with bank staff on 1 May 2020 (in respect of SP spoke with Ms Hudson) [HB58] and where NK spoke with Fraud Manager, Patrick Croke [HB72]. I have some concerns about this investigation and about the role of the investigating officer, Mr Osborne. Mr Osbourne was obviously convinced of the claimant's guilt and concluded, in part, that the claimant was not competent in his role as he disregarded the bank's procedures when processing multiple customer withdrawals. At the hearing, I was not shown any policy or standard operating procedures in this regard. So that part of Mr Osbourne's conclusions appears to be unsustainable. However I note that he said where the claimant was not able to obtain a signature from a customer and where he accepted the transaction by the keypad and was not able to print this off, Mr Croke had advised him that the expectation was that the transaction would be cancelled and started again so that there could be a record of the withdrawal stored in the branch for audit and review purposes. Mr Osbourne checked the claimant's transaction from 1 January 2020 to 18 August 2020 and other than the 2 identified and there were no accounts impacted by the claimant's unexpected practice for this 8½ months period [see HB75].

24. On 14 September 2020 the claimant was invited to a disciplinary meeting. It was made clear that he faced an allegation that the bank had reasonable grounds to believe he had stolen money from 2 customers for his own personal gain [HB103]. The claimant was provided with copies of the investigation report and the evidence gathered during the investigation process as well as the conduct policy [HB105].
25. On 23 September 2020 the claimant attended a disciplinary meeting chaired by Michael Mulhern [HB117-125]. The claimant raised a variety of possible defences, particularly in respect of TCR fault, chip and pin verifications and the required transaction procedure.
26. Mr Mulhern engaged with the claimant's case and on 28 September 2020 Mr Mulhern completed a rationale for the decision sheet in which he recorded his reasons for finding the claimant's guilty of gross misconduct [HB130-133].
27. On 7 October 2020 an outcome letter was sent to the claimant informing him that he had been dismissed for gross misconduct for stealing money from 2 customers. The disciplinary outcome letter was quite detailed [HB134-138]. Mr Mulhern made the following findings:

The allegation of gross misconduct is upheld based on the following;

- You told me you had worked for the bank for 4.5 years and you have told me you were fully trained and were aware of what was expected in your role.
- You have denied that you took any funds and told me that you don't remember the customer involved. You did admit that you did not follow the process in the investigation meeting and told me you said this as you were under duress. I believe based on the balance of probabilities based on your experience you were aware of the correct process which was not followed on this occasion and while you have said this was under duress I have found no evidence to support this claim by yourself.
- I questioned you around the fact that both customers were passbook customers, both in their 70s, both had large balances and never made a complaint before regarding this. You told me this was a coincidence and that it was possible both customers were trying to commit fraud. I have investigated this claim and I found no evidence to support this.

As the till and the TCR have both balanced on both days and there were no cash errors I believe on balance of probability you have not been able to give a satisfactory reason for this money going missing and I have considered this in my decision.

- You told me there were issues with the TCR and asked me to look at this and ask for the TCR errors log from April.
I explained that there is no TCR error log from April and I have reviewed the branch error log and I have found no evidence of any issues with customer transactions.
As I have not found any issues with customer withdrawals on balance of probabilities, I do not believe this has been an issue.
 - I questioned you around the second customer and why £700 was withdrawn after the customer had paid her credit card. You told me you did not remember the transaction.
I raise concerns why the second transaction took place 3 minutes after the first transaction to the credit card took place and you could not explain this saying 3 minutes is not a long time.
I also questioned you around why you did not update the passbook or get a receipt to check signature and store on file and you could not explain why this occurred. However, you did tell me it was possible that the customer asked you not to update the passbook.
You also told me verification may not have occurred as the customer pressed the green button on the system too early. It would be reasonable for a colleague of your experience to have checked this and followed correct process if this happened.
On Balance of probabilities I do not believe the customer has asked for the passbook not to be updated and I also believe that if there was an error the till would have been £700 over. As this has not happened, I have concluded 3 minutes after you serve this customer a further transaction was made and £700 was withdrawn without the customer's consent which you were responsible for.
 - I have also reviewed the customer you serviced straight after this customer and they were also passbook customer and this process was followed correctly this has shown me that you were aware of the correct process but failed to follow it.
28. The dismissal letter said that the claimant would be dismissed for gross misconduct with no notice and that the dismissal will take effect from 11 October 2020.
29. The claimant appealed against his dismissal on 21 October 2020 [HB141-146]. His appeal letter was detailed.
30. On 27 November 2020 the claimant attended an appeal hearing chaired by Ruth Welsh [HB147-159].
31. On 23 December 2020 Ms Welsh wrote to the claimant to confirm the outcome of his appeal. Ms Welsh concluded that the original decision was fair and reasonable and at the claimant's appeal had not been successful [HB160-161]. She gave her reasons as follows:
- You disagree with the strength of the disciplinary sanction taken against you and believe it is wrong. A lesser sanction was considered by the original hearing manager Michael Mulhern, dismissal would be the sanction representative of an allegation of such severity.
 - You advised in our meeting that you believed in hearing the recording it would evidence that you are under duress. The meeting is an investigatory meeting and not a formal disciplinary hearing as this was not a formal disciplinary hearing, where disciplinary action could be taken you did not have the right to be accompanied. The recording evidenced that another party was there for support and as witness to the meeting.
 - You advised that the interviewer Paul Osbourne asked a series of close questions and delved into personal finances. Your investigation was completed by Group Investigations, meetings of this type can be of a direct nature due to the series requirements of the

investigation. Group Investigations have the right to investigate background information to establish a thorough and robust investigation.

- You requested that the Chip and Pin entries be tracked to established that the process had been followed. At no point of the investigation or formal process has there been a concern regarding the customer's been verified. Establishing this detail would not dispel the allegation.
- We advise that you felt that the retention of the CCTV footage was convenient however the retention of CCTV footage is in line with the Records Management expectations for the Group and is consistent for all branches.
- You advised that believe that the customers should have been interviewed however these concerns were highlighted through the customers raising the issues, questioning to establish a situation was completed and a complaint was logged. Both of these customers are long-standing customers with no previous complaints or concerns regarding cash differences. Group Investigation review of the accounts further confirmed that there was no suspicious activity for either of these customers.
- The decision has been concluded on the balance of probabilities and evidence available, in both of these scenarios there is one thing that is consistent and that is you were the person involved in the transaction. These funds have never been found and the customer has never received these.
- I acknowledge that there on occasion can be errors with TCR machines and therefor did not deem it beneficial to take a statement from your suggested witnesses. Michael confirmed that he established that there were no errors with the TCRs on the dates in question for both instances.
- You confirm to me that on reflection you believe that you did not produce a withdrawal slip as the request was in addition to a transaction you had already concluded however you also fail to update the customers passbook meaning that there is no audit trail of the request or transaction.

My determination

32. I explained to the parties that I was not going to make any findings of fact in respect of the claimant's involvement in previous allegations of missing money as these were either not pursued by the respondent at the time or they were not a feature of the respondent's decision-making in accordance with the contemporaneous documents and correspondence.
33. The claimant was dismissed for misconduct [HB103, 134] which is potentially a fair reason under s98(2)(b) ERA. Notwithstanding the claimant disputes that he committed the misconduct in question (stealing money from 2 of the bank's customers), both parties were agreed that, irrespective of whether dismissal was fair or unfair, the dismissal for a conduct-related reason.
34. I emphasised throughout the process that we were dealing with the civil standard of proof so conclusive proof of guilt is not necessary. My view on the claimant's guilt or innocence was irrelevant. This was not a second appeal. My analysis emphasises that the respondent was a large bank, so its administrative resources were considerable. The impact of the respondent's decision was career-ending for the claimant, so I expected the respondent's disciplinary process to be thorough and exhaustive.
35. In respect of the procedure, the respondent undertook a fair process in line with its disciplinary and grievance policy and the ACAS Code of Practice. In particular,

the claimant was fully informed of the allegations of misconduct made against him [HB103-107]. The claimant was given the opportunity to answer or address the allegations in the disciplinary meeting [HB117-125] before a decision was made. He was informed of the decision in writing [HB134-138]. Provision was made for an appeal [HB140] and an appeal meeting [HB147-159] and he was given a detailed and reasoned outcome [HB160-161].

36. I did have concerns regarding Mr Osborne behaviour during the investigation. The claimant contended that Mr Osborne was aggressive and had made up his mind. He contended that he did not get a fair hearing from Mr Osborne. From reading the investigation report, Mr Osborne elevated branch practice to a policy in a manner that overstated the case in respect of failure to provide documentary corroboration for the £700 withdrawal. Mr Osborne, however, was not a decision-maker so my concerns about his contended rush to judgment is limited.
37. The claimant could not recall the 2 cash transactions, so he was not able to give a clear account and neither the disciplinary officer nor the appeal officer took this to be indicative of guilt. The claimant explained what he thought had happened at various stages during the investigation, at the disciplinary hearing and at the appeal.
38. In respect of the first transaction, Mr Mulhern, the disciplinary officer, said that the TCR till checks and journals saw no discrepancy the next day and that the enquiries were sufficient and prompt. The money had gone missing, and it was either the claimant or SP.
39. In respect of the second transaction, this transaction was not the same but a similar cash transaction. A substantial amount of money had gone missing. NK said she was not given the £700 withdrawn from her account. There was no cash error discovered. The claimant could not explain why he had not updated NK's passbook. The claimant explained to me that he would normally ask the customer to sign a withdrawal slip, but he did not do so in NK's case. I accept the investigation report overstated the requirement to follow a clearly defined policy and it became clear that the respondent could not prove that either the passbook update or a withdrawal slip or voucher was required for every transaction. However, Mr Mulhern was engaged and measured in dealing with this point: he said the second transaction should have followed a well-established procedure. There was a substantial withdrawal, and the claimant knew that there was an expectation based on the standard way of doing things, indeed even based on common sense, that a Customer Adviser would provide for some form of documentary corroboration for the audit or paper trail. The claimant proffered no convincing explanation as to why there was no second entry in the passbook or withdrawal voucher documentation. So, he rejected the claimant explanation that NK did not ask or did not want her passbook to be updated at that time, particularly when she wanted it updated for the credit card transfer 3 minutes earlier.
40. Mr Mulhern came to his own view after reading the report listening to the claimant and reflecting on the matter. He was experienced as a Hearing Officer. Mr Mulhern was an impressive witness; he was diligent and took his task seriously. Mr Osborne's views did not affect Mr Mulhern's decision-making. When I pressed Mr Mulhern on this, he said that he was most troubled by the fact that a £1,300 credit card payment was recorded in the passbook but the £700 cash withdrawal was

not and he rejected the claimant's explanations why this was not recorded. He was convinced that the claimant took this money and that he had also take £100 from SP.

41. The respondent did not interview the customers at the heart of this matter as part of the investigation. I heard that respondent refunded the money and there was no further complaint or confirmation from the customers that they might have made a mistake. The respondent initially refused SP's complaint because at that time it did not see any reason to believe that the claimant had taken the money. Mr Mulhern said that it would be very rare to involve a customer in an internal disciplinary investigation. The respondent wanted to preserve the integrity of their banking system. Both the dismissal and appeal officer reviewed statements and an audit trail of transactions undertaken by the 2 customers who had reported money missing following the transactions carried out by the claimant [HB71]. They considered the original complaint made by the customers and the conversations that they had with bank staff. Mr Mulhern and Ms Welsh also considered the interview with the claimant on 18 August 2020 where he was given the opportunity to answer the allegations and put forward his own explanation as to what happened to the missing money [HB73] as well as hearing this direct from the claimant.
42. My role is to review this the respondent's behaviour; i.e. what they done and why. That is part of our forensic review of the dismissal process. I am not entitled to substitute my view as to what the right course of action was. I merely assess whether it was within the range of reasonable responses for an employer of this type to rely upon the material stated in paragraph 41 above. I determine that this was within the range of reasonable responses available to an employer of this type to determine the matter without hearing directly from SP and NK given Mr Mulhern's explanation.
43. As to the 6 grounds the claimant relies upon in contending that the investigations unfair:
 - a. I do not understand why the claimant contends that there was a failure in the investigation by not providing the claimant with evidence to demonstrate that the process of verifying NK's identification had not been followed. The claimant was dismissed for allegedly stealing money. He was not disciplined nor dismissed for failing to verify a customer's identity.
 - b. I am not persuaded that there was a flaw in the bank system of allowing the customer to press a green button on the chip and pin pan to confirm the transaction without this producing any document confirmed the transaction. In any event this is not a failing in the investigation. It was dealt variously throughout the entire process [HB111-113] including the disciplinary meeting [HB121-123], the decision rationale [HB132,136], and the appeal meeting [HB149-150, 156]. Irrespective of whether or not the customer pressed a green button too early to provide the paper voucher, the decision-makers relied on the claimant's failure to provide a paper voucher confirming the transaction. If he chose this method then he should have cancelled the transaction and started again.

- c. The investigation did attempt to obtain CCTV [HB 75]. However, CCTV was held for 30 days, according to Ms Welsh who I believe. Those incidents took place on 30 April 2020 and CCTV was therefore not recoverable after 30 May 2020. The second incident took place on 4 July 2020. According to Mr Mulhern it was also unlikely CCTV would determine what happened at either incident.
 - d. The claimant's contention that there was a failure in the investigation because he could not be shown to have a motive is relevant but not determinative. The investigation did seek to investigate motive by looking at the claimant's bank accounts [HB71]. I accept Mr Welch's submission that motive is not required to prove a crime, including theft. An absence of apparent motive did not mean the claimant did not do it, it was just one factor amongst many, and that factor was fully ventilated.
 - e. The claimant said that there was no evidence of TCR being balanced is wrong. This was investigated and investigated promptly. The TCR was found to have no errors and the tills balanced [HB71, 76]. Furthermore, the claimant's case throughout the disciplinary process was that there was no system error; he said repeatedly that system error was not relevant [see HB 143].
44. The *Burchell test* applies primarily to Mr Mulhern as the dismissing officer, but also to the appeal officer, Mr Welsh. I am satisfied that this was not a rubber-stamping decision. I am in no doubt that Mr Mulhern found this a difficult decision, but he came to a conclusion and provided the justification set out above. The decision was a little easier for Ms Welsh as she dealt with an appeal from someone who had already been dismissed. I conclude that both dismissal and appeal officers had a genuine and honest belief in the claimant's guilt. The decisions are detailed and sufficiently well-reasoned. The investigation was reasonable and addressed all of the relevant issues raised by the claimant.
45. I am not persuaded by the claimant's argument that action short of dismissal should have been considered [HB18]. The claimant was summarily dismissed for gross misconduct. This involved the alleged theft of customers' money by bank staff. The role of bank staff requires absolute trust and integrity and if this had been found to have been compromised by the claimant's actions then, in the circumstances of this case, dismissal was clearly the appropriate sanction. As the respondent was to find the claimant guilty then it is impossible to say how his conduct could not be regarded as a dismissing offence. Nevertheless, Mr Mulhern considered mitigation, he considered the claimant's length of service, and he concluded that the only option available to him was dismissal [HB132]. Ms Welsh also saw the consequences of this difficult decision [HB160].
46. I determine that both the respondent's decision to dismiss the claimant and the process by which this decision was reached were within the range of reasonable responses.

Employment Judge Tobin

Date: 16 March 2023

REASONS SENT TO THE PARTIES ON

17 March 2023

FOR THE TRIBUNAL OFFICE