



# EMPLOYMENT TRIBUNALS

## Claimant

Ms Julie Taylor

## Respondent

Stanley Black & Decker Limited

v

**Heard at:** Cambridge

**On:** 20 & 21 April 2023

**Before:** Employment Judge S Moore

## Appearances

**For the Claimant:** In person

**For the Respondent:** Ms K Barry, Counsel

## JUDGMENT

**(1) The claim of unfair dismissal is dismissed.**

**(2) The claim of wrongful dismissal/breach of contract is dismissed.**

## REASONS

1. This is a complaint of unfair dismissal and breach of contract (wrongful dismissal) following the Claimant's dismissal for gross misconduct.
2. I heard evidence from the Claimant, Mr Craig Latta (the Claimant's son) provided an unchallenged statement, and I was also referred to short character statements from Mr Shokabi and an anonymous person.

3. For the Respondent I heard evidence from Mr Mathew Knight, Operations Manager, Ms Sheila Sloan, Human Resources Manager, Mr Terence Brown and Mr Vilius Purtulis, both Warehouse Operatives.
4. I was also referred to an agreed bundle of documents.
5. The following is a summary of that evidence insofar as it is relevant to the issues in the case:

**The Evidence**

6. On about 3 November 2021, Daniel Gardos (DG) told a colleague, Daniel Lindley (DL), that the Claimant had approached him while he was sitting in a (warehouse) truck talking to another colleague and had grabbed him in a private area. DL informed his Team Leader, Jessica Tofield (JT) who spoke to DG and asked him to write a statement.
7. Since DG was reluctant to write a statement, on 4 November 2021 JT sought advice from Human Resources (HR). JT was told that if DG did not want to make a complaint, she should encourage him to write an anonymous statement. On 5 November 2021 JT advised HR that she believed DG was willing to put something in writing and that he had asked to think about it over the weekend.
8. On 9<sup>th</sup> November DG wrote the following handwritten statement:

“On 27 October I was in aisle “L” asking a colleague a couple of questions and then I saw team leader Julie walking down towards us. The she approached me and made a joke, in the middle of doing it she reached into my truck area and grabbed me inappropriately on my private area, without permission. This incident made me feel very uncomfortable. On 3<sup>rd</sup> November I was in conversation with my colleague about workplace harassment, and I decided to tell him what had recently happened to me. This fellow decided to tell our Area Team Leader...”
9. DG signed the statement “witness A”.
10. On 9 November 2021 the Claimant was suspended on grounds of inappropriate physical contact with a member of staff and Frants Polovina (FP) was appointed to conduct an investigation.
11. On 10 November 2021 FP interviewed DG. DG repeated what he had said in his statement. He also said that he was shocked when the incident happened and he had shouted. He stated that the Claimant had made similar comments and joked like that with him before. He was also aware that others had experienced similar treatment but was unsure if they wanted to come forward.
12. Later that same morning DG met with the colleague he had been speaking to in aisle “L” during the incident with the Claimant. They met in a Costa Coffee shop. The colleague was Gabor Malinger (GM), an agency worker, whose last day of work with the Respondent had been 27 October 2021

and whose contract with the Respondent had been terminated on 3 November 2021.

13. On 11 November 2021 FP interviewed DL (identified in the investigation as witness B), who confirmed that on 3 November 2021 DG had told him about an incident in aisle L with the Claimant. DL also told FP that the Claimant made “dirty rude comments” and that when he (DL) had started the Claimant had made comments and touched him too but because he was new, he didn’t feel he could speak out.
14. On 11 November 2021 FP interviewed Mr Victor Purtulis (VP) (identified in the investigation at witness F). He stated that on one occasion, as he was about to put a pallet up on the racking, the Claimant put her hand on his leg and swiped her hand down his thigh. On another occasion he was bending over and felt someone watching, and when he turned around the Claimant was standing there and had said, “I want to squeeze those buns so bad”. He hadn’t said anything to the Claimant because she was older than him and sometimes older people thought they could get away with things.
15. In his evidence at the hearing VP reiterated what he had said in his interview. The time the Claimant had touched his thigh was in October 2021. As he was sorting out the rack of packaging, the Claimant had placed her hand on the upper part of his thigh and swiped her hand continuously down his thigh to his knee. There had been no other instances of inappropriate touching, but when the Claimant made the “buns” comment VP had turned around to find the Claimant standing with both hands out in front of her.
16. On 15 November 2021, FP interviewed witness O who said the Claimant had made comments in front of his wife such as “why are you single, such a pity, shame you are not single”, which had upset his wife.
17. On 15 November 2021, FP interviewed witness Q who said the Claimant was very flirty with her husband which made her jealous and upset. Witness Q also said the boys “go through a bit of flirting with Julie and I know DG does not like it, and he doesn’t like that she touched him”. Witness Q further said that Terence Brown (identified in the investigation as witness R) had told witness Q that the Claimant had “touched his bum”, but he gave her a dirty look and she didn’t do it again.
18. On 15 November 2021 FP interviewed Terence Brown (TB) who said he had had a couple of experiences with the Claimant but he had just brushed them off. The Claimant had come behind him as he was wrapping a pallet and “grabbed his bum”. He gave her a dirty look and she didn’t do it again. When he had first started the Claimant had pointed out he was wearing a ring and said, “You’re married then.” He also said that DG had told him about his incident with the Claimant and asked for advice, he (TB) had left it for DG to decide what to do but had told him it shouldn’t happen.

19. In his evidence to at the hearing TB said the Claimant had touched his bottom on two occasions. The first time was after his first Covid injection in Spring 2021 when, after a conversation with the Claimant, the Claimant had “pinched his bum”. The second time was around his second Covid jab in May 2021 - the Claimant had “pinched his bum” as he was wrapping pallets, he had given her a dirty look and it had not happened again.
20. On 11, 12 and 15, November 2021, FP interviewed witnesses C, D, E, G, H, I, J, K, L, M, N, P, S, T, U. Although none of these witnesses made allegations of sexual harassment, some referred to instances of shouting and bullying by the Claimant. However many of them said positive things about her.
21. On 19 November 2021, FP interviewed the Claimant. The Claimant was shown DG’s statement. She said she could “recall that whole day from the minute she got out of bed” and said the incident hadn’t happened. The accounts of VP, TB and witness O were also put to the Claimant, as well as the allegations of the witnesses who had made comments about shouting and bullying. The Claimant accepted she was abrupt and like to get things done but denied all the allegations of inappropriate touching and inappropriate comments.
22. Towards the end of her interview the Claimant stated that following his meeting with DG in Costa Coffee, GM had contacted her. Further the Claimant said she was in possession of a statement from GM dated 12 November 2021, which she then gave FP. In that statement GM states that when he met DG on 10 November 2021 DG had asked if he remembered the incident in aisle “L” 3 weeks earlier when the Claimant had touched “his thing”, and asked GM if he would put in a statement against the Claimant. GM’s statement states that he was shocked and had told DG he did not know what DG was talking about as he did not see it happen. GM’s statement further states that DG had told him six team leaders had pushed him for a week to put in a statement and that he (DG) had been offered a Team Leader position and a £2000 pay rise to do so.
23. FP told the Claimant he would follow this up.
24. The Claimant then told FP that on 27 October 2021 she had been away from work and visiting her mother’s grave in Scotland, so the alleged incident with DG could not possibly have happened.
25. On 24 November 2021 FP interviewed DG again. DG agreed he had met GM in Costa Coffee and asked him to put in a statement. GM had been surprised and said men didn’t usually do anything about things like that. DG told FP that GM had said he remembered the incident but felt sorry for the Claimant. As regards the involvement of Team Leaders, DG said that only one Team Leader, JT, had asked him to put in a statement, and he had never told GM that six Team Leaders had asked him to do so or offered him a pay rise. As regards the date of the incident, if the Claimant had been on holiday on 27 October 2021 the incident must have occurred on another day.

26. On 1 December 2021, after FP had made many attempts to contact GM through his agency, GM contacted the Respondent and was interviewed. As regards the alleged incident, GM said he could remember chatting with DG and the Claimant in the warehouse. He did not think that had been on 27 October 2021, as that was his last day with the Respondent, and he thought maybe it had been the week before. He said he hadn't seen the Claimant touch DG, saying "he wasn't paying attention." As regards his meeting with DG on 10 November 2021 at Costa Coffee he said DG had told him he was forced by six Team Leaders to put in a statement, and that DG also said he had been told he would get a promotion to Team Leader and a pay rise. He (GM) had then contacted the Claimant through Facebook; they had met and the Claimant had then asked him to make a statement. He stated in interview, "I cannot back [DG] up because I did not see anything, I wasn't paying attention as I wouldn't expect this to happen at work. It was two weeks after it happened that he contacted me and it didn't add up so I wanted to check with Julie first".
27. On the basis of the evidence obtained from the investigation, FP decided the matter should proceed to a formal disciplinary hearing.
28. On 2 December 2021, the Claimant was asked to attend a disciplinary hearing "to address allegations relating to Harassment at Work, where it is alleged that your behaviour was inappropriate through physical contact, sexual innuendos and of a bullying nature". She was given a copy of the information gathered during the investigation and warned the hearing could lead to her summary dismissal.
29. The hearing took place on 8 December 2021. The Claimant was accompanied by her trade union representative and the chair was Mathew Knight (MK). The Claimant was asked about the incident in aisle L, and was told it could have happened the week before the date initially stated (i.e. on 20 October rather than 27 October 2021). She denied it had happened at all. She further denied touching VP's thigh, and as regards the alleged comment about "squeezing buns" said she didn't even know what buns were. She denied making the alleged comment to witness O, and said he was always flirting with her (rather than the other way round). She also denied "grabbing TB's bum" and said she would only ask if someone was married in order to get to know them.
30. When the Claimant was asked why such allegations might have been made against her, the Claimant said people might be intimidated by her because she didn't play games and was straightforward. Also, that DL was a "wanna be" Team Leader.
31. During that meeting the Claimant told MK that in fact she had a voice recording of her conversation with GM when they met on or about 12 November 2021.
32. MK decided to adjourn the disciplinary hearing to transcribe that voice recording and make further enquiries.

33. In the transcription of that conversation from 12 November 2021, GM tells the Claimant that DG was alleging the Claimant had “touched his one in front”. GM continues “..basically the company wants to get rid of you so all the managers came together the team leaders basically and they forced Daniel to put down a statement against you basically so what’s happening right now, Daniel, I don’t know, I don’t trust Daniel...So that’s why he came to me, the company they offer him team leader position, £2000 if he puts down a statement basically against you...And basically he wants me to put down a statement against you as well as I was there and I’ve seen everything...but I’m not going to help them no worries so I’m not going to put my statement down but I wanted to speak with you first. ... The truth was you only had a conversation for 2 minutes Julie and then you fucked off basically that was the truth.”
34. Later in the conversation GM says “I said if it was sexual harassment why didn’t you go and fucking report it at that time when I was there with fucking Julie and you basically, what the fuck you doing going there two weeks later...Secondly you’re a fucking man, stand up for yourself, if someone touches your shit you tell him to fucking get out...That’s the situation Julie, I’m pretty sure they don’t have you on CCTV camera, Julie, they can’t have.” At which point the Claimant said, “They can’t have because it wasn’t, it didn’t happen.” And GM said, “Even if it did happen they can’t prove that, I’m pretty sure they can’t see that closely...I said [to DG] I didn’t see fuck all, what should I have seen anyway, touched me it was there but he didn’t tell me straight same day it was a day after when we were having a conversation that lowbay aisle...and one or 2 days later actually he told me you’ve touched his thing basically which is already not honest cause if he had a problem with that he should have said straight right at the moment.”
35. The conversation records the Claimant insisting that nothing had happened and becoming upset and emotional.
36. Having seen that transcription, MK arranged further interviews of JT and DL by FP.
37. In her interview of 9 December 2021, JT stated that DL had told her somebody had been sexually assaulted on the floor but at first wouldn’t tell her who it was. After she explained it was a serious matter, DL told her the person in question was DG and she had then spoken to DG. She hadn’t spoken to any other Team Leaders about it and wasn’t aware of any other management approaching DG.
38. In his interview of 9 December 2021, DL said that when he first came onto the shift, the Claimant would pinch or touch his bum and it made him feel uncomfortable so he knew it must have been uncomfortable for DG.
39. Copies of those further interview notes and of the transcript were provided to the Claimant.

40. The reconvened hearing took place on 15 December 2021. The Claimant was given an opportunity to ask any further questions, the meeting was then adjourned, and after about 30-40 minutes, MK made his decision. In his summing up he stated, "I have a reasonable belief that the allegations against you are well-founded and your conduct has fallen below the standard and practice of the organisation...". He concluded the events amounted to gross misconduct and summary dismissal was the appropriate sanction. That outcome was confirmed in a letter of 15 December 2021.
41. At the Tribunal hearing, MK stated that on the basis of all the evidence he believed the account of DG. There was no CCTV so the only evidence was that of DG, GM and the Claimant. There was no evidence that DG had any grudge or argument with the Claimant. To the contrary the evidence was that he was a hesitant and reluctant complainant. Further DL's interview corroborated DG's evidence that DG had spoken to DL about the incident on 3 November 2021 before JT (or any Team Leader) was informed about it. Furthermore, in the transcript GM is recorded as stating in conversation with the Claimant that DG had spoken to him about the incident a day or two after it happened, and again before JT was informed. TB had also stated in his interview that DG had spoken to him about the incident and had asked advice about whether to raise the matter with management. All this pointed away from the suggestion that DG had been induced or forced to give a false statement and towards something having occurred. Furthermore, while MK couldn't reconcile, on the one hand, GM's allegation that DG had told him six Team Leaders had pressurised him (DG) into making a complaint with, on the other hand, JT's evidence that she was the only Team Leader who had encouraged DG to make a statement, at no point had GM alleged that DG was forced or induced into making a *false* statement.
42. As regards the date of the incident, MK considered DG had been mistaken about the date having been 27 October 2021 and decided the incident had probably taken place the week before. The fact that DG had spoken to GM about the incident a day or two after it had taken place together with the fact that GM's last day of work was 27 October 2021, also indicated the incident could not have taken place on 27 October 2021. In his statement GM said that when he had spoken with DG on 10 November 2021, DG had said the incident had taken place 3 weeks earlier. This put the date of the incident as being about 20 October 2021.
43. MK didn't consider that a mistake about the date fundamentally undermined the truthfulness or credibility of DG's account, particularly as the other aspects of that account had remained consistent.
44. Further MK did not believe the fact that GM said he hadn't seen the incident suggested it hadn't taken place. GM had not alleged the incident couldn't have taken place but had simply said he hadn't seen anything because he wasn't paying attention. In addition, the transcript of GM's conversation with the Claimant suggested he thought badly of DG for raising a sexual harassment complaint.

45. As regards the allegations of inappropriate sexual touching with respect for VP and TB, MK believed these incidents had happened as well and also amounted to gross misconduct. However, as regards the allegation made by DL, MK didn't consider the investigation had covered that issue adequately and did not take that allegation into account.
46. MK also stated that he considered the use of sexual innuendo and comment constituted misconduct but that if that had been the only example of misconduct he would have considered a lesser sanction, such as further training and a Final Written Warning or demotion.
47. The Claimant appealed by letter of 20 December 2021. Her grounds of appeal stated, first, that the allegations against her could not be well-founded when of the 22 people interviewed only 5 had given examples of alleged wrongdoing, which in most cases were historic and, secondly, that apart from the interview statements there was no proof or evidence to support the allegations whereas she was a long-standing and loyal worker.
48. The appeal was heard on 14 January 2022 by Sheila Sloan (SS) and discussed the issue of the mistaken date and the alleged conspiracy by Team Leaders, as well as the grounds of appeal. By letter of 21 January 22 SS dismissed the appeal. Although DG had initially said the incident took place on 27 October 2021, when the Claimant was on holiday, DG had later agreed it must have happened the week before. There was no evidence to support the suggestion Team Leaders and management had conspired against the Claimant and DG had not been given any promotion or payment as a result of the Claimant leaving the business. While the Claimant continued to deny the claims against her, SS considered there was evidence of a pattern of unacceptable behaviour and the Claimant's length of service and previous record had limited impact in the face of such serious allegations.

## CONCLUSIONS

### Unfair dismissal

49. The reason the Respondent relies upon for dismissing the Claimant is that it genuinely and reasonably believed she had touched DG, VP and TB in a sexually inappropriate way at work. This is a potentially fair reason for dismissal (misconduct) within the meaning of section 98(2)(b) Employment Rights Act 1996.
50. Accordingly, the Respondent must show that it genuinely believed the Claimant was guilty of the alleged misconduct, that it had in mind reasonable grounds to sustain that belief, and that at the stage that belief was formed it had carried out as much investigation into the matter as was reasonable in the circumstances (**British Home Stores Ltd v Burchell [1980] ICR 303**).
51. It has not been suggested the Respondent did not genuinely believe the Claimant guilty of the alleged misconduct. However, at the hearing the



Claimant contested the reasonableness of that belief and/or the reasonableness of the Respondent's investigation into the matter, on the basis of the following:

- (i) The Respondent must have decided she was guilty from day 1 because they hadn't even checked whether she was at work on 27 October 2021;
- (ii) The Respondent had not confirmed what truck DG was in when the incident allegedly occurred. It had been assumed DG was driving a reach truck. However, the Claimant didn't believe DG drove a reach truck and suggested he would have been driving a lollipop truck, which had access from both sides. This showed investigation had been too vague.
- (iii) The witness evidence had been contaminated. The Respondent's instructions to the witnesses during the investigation had been inconsistent and, moreover, DG had met GM and discussed the matter with him after the investigation was underway.
- (iv) GM should have been asked more questions about his comment in the transcript that DG had told him about the incident with the Claimant a day or two after it had happened and his allegation that he was told by DG that he (DG) had been induced to make a complaint by management. Further DG had said he shouted when the incident happened, so even if GM hadn't been paying attention, he would have heard that shouting if the incident had happened.
- (v) The details of the incidents had been very vague. The date of the incident regarding DG was initially incorrect and the other alleged incidents were undated.
- (vi) The evidence of TB was inconsistent because in his evidence at the hearing he alleged the Claimant had touched or pinched his bottom twice, whereas witness Q said in interview that TB had told her the Claimant had touched his bottom once. Also, TB said in evidence at the hearing he had been too embarrassed to tell his wife but had apparently told witness Q.
- (vii) There must be CCTV of the alleged incident but none had been submitted.

52. I don't consider the fact that the Respondent didn't check at the outset of the investigation whether the Claimant was at work on 27 October 2021 meant it had already decided the Claimant was guilty. It was reasonable of the Respondent to assume the Claimant was at work on 27 October 2021 until she told them otherwise, at which point the Respondent went back to DG and pointed out the incident could not have happened that day. It's true the fact that DG initially alleged the incident happened on a day when the Claimant was away could have suggested DG was making the matter up. However, given the evidence of DL, GM and TB that DG had told them

about the incident relatively soon after it happened (and before JT or HR were informed), and the fact that DG had no grudge against or quarrel with the Claimant, and indeed seemed to be a reluctant complainant, it was reasonable of the Respondent to believe the incident had happened and that DG had simply made a mistake about the date.

53. The question of the type of truck DG might have been driving at the time, was not raised by the Claimant at either the disciplinary or appeal hearing. In any event since the incident could have happened whether DG was in a reach truck or a lollipop truck the fact the Respondent didn't investigate this point does not undermine the reasonableness of the investigation.
54. As regards potential contamination of the witnesses it is clear that DG spoke to GM about the matter outside of work and also that FP gave the witnesses inconsistent instructions as regards whether they were required to keep the content of their interviews confidential. I also accept the matter became a source of gossip within the company. Nevertheless, I don't consider that any of these matters affected the overall reliability of the evidence or the Respondent's conclusions. If DG had persuaded GM to make a statement supporting his account of what happened before GM had been interviewed by FP, then such a statement from GM may well have been unreliable. However, that's not what happened. GM refused to provide any statement to DG and the only evidence from GM was the statement that GM provided to the Claimant, GM's interview with FP and the transcript of GM's phone call with the Claimant. Furthermore, VP and TB did not suggest that there were any witnesses to the instances of inappropriate touching they experienced so there was no possibility of anyone having been persuaded to provide corroborating evidence of those allegations.
55. As regards whether the Respondent should have asked more questions of GM, the Respondent had been given a statement from GM (procured by the Claimant), had then (after several efforts to contact him) managed to interview GM, before (at the disciplinary hearing) being given the recording of the telephone conversation between GM and the Claimant which it then had transcribed. I consider the Respondent was reasonably entitled to take the view it had sufficient evidence from GM. Further the evidence shows that the Respondent took seriously GM's allegation that DG had been pressurised into making a complaint, transcribing the recorded telephone conversation before re-interviewing JT and DL. MK was entitled to note that at no point had GM alleged DG was pressurised into making a false statement. He was also entitled to take the view that the fact GM said he did not hear DG shout out did not mean the incident had not happened and that GM may either have not have heard DG shout or not wanted to support DG's complaint out of sympathy to the Claimant.
56. As regards the dates of the incidents, I am also satisfied that the initial mistake as regards the incident with DG and the vagueness of the dates of the earlier incidents with VP and TB didn't undermine the overall fairness of the investigation or the reasonableness of the Respondent's conclusions. Throughout the disciplinary process Claimant's position was

that none of the incidents had ever happened; that she would never touch someone inappropriately at work, would never use the word “buns” and didn’t even know its meaning. In that context, identifying the precise dates that each of the incidents occurred was not necessary to enable the Claimant to defend herself against the accusations.

57. As regards TB’s evidence, in interview TB said he had had a couple of experiences with the Claimant, but then appeared to describe only one of them, speaking about the Claimant “grabbing his bum” and him giving her a dirty look. In his witness statement to the Tribunal TB also refers to an incident when the Claimant touched his bottom about a month earlier. I do not consider this discrepancy undermines TB’s credibility. Since TB’s interview was short, and it was clear from his evidence to the Tribunal that he found the matter embarrassing to talk about, it’s not surprising that he expanded further in his witness statement than he did in his short interview with FP.

58. As regards the lack of CCTV evidence, the question of CCTV wasn’t raised during the disciplinary proceedings and I accept MK’s evidence that there wasn’t any CCTV footage of the area where the incident with DG happened. The lack of CCTV evidence therefore doesn’t undermine the reasonable of the investigation or the Respondent’s conclusions.

59. In the light of all the above I am satisfied the Respondent had genuine and reasonable grounds for its belief the Claimant had touched DG, VP and TB in a sexually inappropriate way and that it arrived at that conclusion having carried out as much investigation into the matter as was reasonable in the circumstances.

60. The next question is whether, in all the circumstances, it was reasonable of the Respondent to treat that reason as a sufficient reason to dismiss the Claimant for the purposes of section 98(4) Employment Rights Act 1996. In this respect, although the Claimant was a long-standing employee with an unblemished record, and indeed, highly regarded by many of her colleagues, having reached the conclusion that the Claimant had touched DG, VP and TB in a sexually inappropriate way, I consider dismissal was plainly within the range of reasonable responses open to a reasonable employer.

61. It follows that the claim of unfair dismissal is dismissed.

#### Wrongful dismissal

62. As regards the claim of wrongful dismissal, since the Claimant was summarily dismissed, the question is whether that dismissal was a breach of contract or whether the Respondent has proved, on the balance of probabilities, that the Claimant acted in repudiatory breach of contract entitling the Respondent to dismiss without notice.

63. I am satisfied the Respondent has established, on the balance of probabilities, that the Claimant touched DG, VP and TB in a sexually

inappropriate way. In the light of the evidence set out above, and having also heard the evidence of VP and TB at the hearing, I find it more likely than not that the instances of sexually inappropriate touching happened as alleged. The alternative scenario is that the allegations of DG, VP and TB were all fabricated. Furthermore, that DG told DL, GM, TB, and JT about an incident that had never happened, pretending to be a reluctant complainant while all the time intending to frame the Claimant for something she hadn't done. I consider that latter scenario highly implausible, particularly since the Claimant and DG were on good terms at the time.

64. Sexually inappropriate touching at work constitutes gross misconduct and a repudiatory breach of contract which the Respondent was entitled to accept by summary dismissal.
65. It follows that the claim of wrongful dismissal is also dismissed.

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Employment Judge S Moore

Date: 2 May 2023

Sent to the parties on: 4 June 2023

GDJ  
For the Tribunal Office