



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms F Bokhari  
**Respondent:** Poundland Limited  
**Heard at:** East London Hearing Centre  
**On:** 11, 12 and 13 July 2023  
**Before:** Employment Judge Jones

## Representation

Claimant: in person  
Respondent: Ms G Nicholls (Counsel)

**JUDGMENT** having been sent to the parties on **26 July 2023** and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. This was the Claimant's complaint of unfair dismissal, which the Respondent defended.
2. The matter was heard by EJ Jones, sitting alone on the above dates. Judgment was given in court on 13 July.

### *Evidence*

3. The Respondent prepared an agreed bundle of documents. The Tribunal had witness statements from the Claimant and from her witnesses – Ms A Pranami, Ms R Begum, Mr M Ali and Mr I Rauf who had all worked in her store. The Respondent presented the Tribunal with a witness statement from Mr Muhammad F Khan, who conducted the disciplinary hearing. All witnesses gave live evidence to the Tribunal. Mr M Ali was assisted in giving his evidence by an interpreter who spoke Urdu. Mr Ali confirmed that he understood the interpreter.

4. The Tribunal made the following findings of fact from the evidence in the hearing. The Tribunal has not made a finding on every piece of evidence but only on the matters relevant to the issues in the case.

Findings of Fact

5. The Claimant was initially employed by the Respondent as a sales assistant. She began her employment on 20 January 2017. She was promoted to Assistant Store Manager in early 2019. The Tribunal was not shown a job description for the Assistant Store Manager (ASM) role, but I find it likely that the Claimant's duties included a duty to ensure, in the absence of the store manager, that all shifts were covered, and that time was recorded accurately on the Kronos system so that wages would be accurately recorded and where due, would be properly paid.

*Kronos*

6. Kronos is the Respondent's electronic time and attendance system, which was introduced in January 2017. The Claimant would have been using it herself as a sales assistant for most of her employment with the Respondent to punch in on arrival at work and to punch out when her shifts ended. She also used it as a manager. Kronos allows staff to punch in and out or clock in and out, of their shifts using their fingerprint. It enables the Respondent to pay staff accurately, by the minute, against their scheduled rota, it allows rotas to be completed in advance, it records staff holidays and allows staff to take ownership of their own hours by accurately punching in and out at the start and end of their shifts. The Claimant agreed with the Respondent in this hearing, that it is important that Kronos is used accurately as it produces data which payroll relies on to work out what each employee should be paid. She also agreed that it is important that staff are paid for the work that they do and that their entitlements are correctly recorded. She agreed that all the Respondent's employees knew that you must not work unless you punch in and punch out. Each employee can access Kronos at any one of the Respondent's stores to punch in their attendance when they arrive to start a shift and to punch in the time that they stopped working, at the end of the shift.
7. We spent a lot of time in the hearing discussing training in the use of the Kronos system. A large part of the Claimant's case was that she was not trained on Kronos and therefore should be excused if she made a mistake while using it. She referred to this in her ET1, in her correspondence with the Tribunal, in her evidence and in her witness statement.
8. The Tribunal finds that the Claimant was able to use Kronos. The Tribunal was not told that there was any formal training on Kronos. The Respondent's Induction Handbook, which was in the hearing bundle, has a section on how to use Kronos for sales assistants. There is also a section on '*Frequently asked Questions*' about it, which addresses questions such as '*What happens if I do not punch out*' or '*What happens if I work an extra shift*' both of which would be relevant to the issues that arose in this case. The Claimant disputed that the particular copy in the bundle was her Handbook. The Respondent did not have proof that she had signed for it.

However, I find it likely that she had been given a copy of this Handbook at the start of her employment. If she had not, it is likely that she would have complained about not having it.

9. Also, the Tribunal find that the Claimant was actually given some training on the job about how to do specific tasks on Kronos. It is unlikely that she was sent away on a course to learn about Kronos and there was no virtual training that she attended. I had no evidence to suggest that there was such training available. In that way she was not treated differently from anyone else. Instead, it is likely that everyone was given what she referred to as '*learning by doing*' training on the job. She was also expected to look at the Company Induction Handbook and learn from it. I find it highly likely that the Claimant was given on the job training by various managers on how to do specific tasks by having them explained to her and showing her how to do them; when there were things that she needed to do on Kronos. She was not on Kronos all the time as she was not required to be using it all the time.
10. For a period of approximately 5 weeks from 1 January 2021, the Claimant was in charge of the store while her manager, Mr Gofran Uddin was on furlough. It is likely that she had to operate Kronos during that time. According to her evidence to this Tribunal, the Claimant knew how to do the following functions on Kronos - change the pay code, add a shift, open it to look at and clear exceptions and punch in/out on behalf of a colleague. She also knew how to input holiday, if she was asked to do so by a manager in their absence.
11. There was evidence that the Claimant asked her manager for assistance with other more complicated tasks on Kronos, especially when she had to deal with some of the complications caused by the Covid-19 furlough scheme and how it interacted with holidays, quarantine and sickness. On 15 February, Mr Gofran Uddin responded to her request for assistance with a rota, by advising her that as there was an acting store manager in the store, she should refer the matter of the rota to him. This did not mean that she could never ask him another question about Kronos or that he was forever unavailable to her. This was understandable as Mr Uddin was off sick at the time. The Tribunal finds that the Claimant understood that she could still refer matters to him as on 13 March she messaged him to ask about his status and whether he would be on holidays or on furlough for the following week, presumably so she could complete the rota, which would include putting information on to Kronos.
12. All of those facts lead this Tribunal to find it more likely than not that the Claimant had some knowledge of the workings of Kronos and that she had sufficient knowledge to address the issues that arose at the store between 21 and 31 March 2021.

### *Background*

13. It was the Claimant's evidence that the following matters existing around the time of the disciplinary investigation and possibly influenced it: -

- 13.1 The store manager requiring her to do some physical work after she gave the Respondent a fit note from her GP recommending that she should be allowed to do admin work only for a month due to shoulder pain following a recent fall. She says that she reported this to the Area Manager. She did not give evidence about any negative feedback she received for doing so, apart from her manager 'mocking' her when she spoke to him about it. She did not report that he had any other issues with it or that it was of ongoing concern to him. It is likely that he did not treat it seriously but there was no evidence that he took any further action about it.
  - 13.2 There was apparently a till shortage at the store between 6 and 7 March. However, there was no evidence that the Respondent held the Claimant responsible for this. She recalled that she was asked questions about it, but the Tribunal was not told that questions were only asked of her. It is likely that other members of staff were also asked about it.
  - 13.3 The Claimant believes that there was a report made to managers that she was promoting the '*bags for life*' in the store, to customers. Again, this does not appear to be a matter of concern to the Respondent.
  - 13.4 The Claimant alleges that a supervisor wanted to purchase 21 packs of Paracetamol and that she refused to allow her to do so, and this disciplinary action may have been a retaliation because of that refusal. The Tribunal finds that this allegedly happened in October 2020, which was much earlier than the disciplinary action that led to her dismissal. There was no action taken against the Claimant for refusing to sell the medication to the supervisor, and it does not appear from the Claimant's evidence that the issue was ever referred to again, by the Store Manager or even by the person involved.
14. The Tribunal finds it likely that these were all matters that the Claimant was upset about but there was no evidence that they were issues for the Respondent. There was no evidence of any ongoing investigation against the Claimant for failing to complete tasks given to her by her manager, holding her responsible for a till shortage, for promoting '*Bags for Life*' or related to her refusal to sell issue the Paracetamol to the supervisor. It was not put to Mr Khan when he gave evidence that these matters influenced him or the person who conducted the investigation into making the allegations that the Claimant faced.

*The incidents which led to disciplinary action*

15. As the duty manager, the Claimant was doing the rotas for the store for the week ending 26 March 2021. It is likely that there was not enough members of staff scheduled to work the following week, to enable her to cover all the shifts. Many members of staff at this branch had booked leave for the following week, in order to use up their leave before the end of the financial year. The Claimant decided that in order to be able to cover all the shifts in the following week, she would have to ask some people who were already booked on leave that week to come in to work.

16. On 21 March the Claimant produced an amended rota for the week ending 26 March, which can be seen on page 432. She scheduled in a number of people, including Mr Mushahid Ali to work. On the rota which she sent out to the group of staff and to each individual assistant she wrote the following:
  - a. *'Rota for next week.. I really appreciate support from each colleague. rota was quite difficult to adjust everything but thanks for cooperation. Plz have a look properly as some of the holiday colleagues will be working for a day or two as well. Thanks'*
17. Mr Mushahid Ali was one of the people who was expecting to and had booked to be on annual leave all of the following week, from Monday 22 March to Friday 26 March. In the amended rota the Claimant had scheduled him to work on Friday 26 March.
18. When he received the rota, Mr Ali was not happy about this change. It is likely that he spoke to the Claimant about this, and he reluctantly agreed that he would work on 26 March. It is likely that in their conversation, they also agreed that Mr Ali would get his one day's leave back on the 31 March, the following Wednesday. The Claimant was concerned that if he worked on 26 March, he would not have used up all his annual leave for the financial year and that he would have 1 day's leave owing, which he might not be able to carry forward. There had been an issue with colleagues being able to use up all their leave before the end of the financial year, which is why so many people were off on annual leave that week, leaving the Claimant short-handed.
19. The Claimant did not contact payroll or another manager to find out how to reconcile all these matters on Kronos. After she spoke to Mr Ali on 21 March, the Claimant was aware that there was an issue with Mr Ali's one day of annual leave, but she did not seek advice from payroll or another manager as to how to resolve it on Kronos. Instead, she simply agreed with Mr Ali that he would get his one day's leave back on 31 March.
20. On Friday 26 March, the Claimant arrived at work, after Mr Ali had started his shift. The Claimant herself was also working an extra shift as the supervisor who had been on the rota to work, had called in with a family emergency and the manager was not there. Mr Ali was annoyed at having to leave his family and come into work. He spoke to the Claimant about it, in Ms Begum's presence. He said that he did not want his leave week to be changed and that he wanted it to remain as a week's leave. The Claimant reportedly said to him that *'it doesn't work like that'*. However, the Tribunal finds it highly likely that because he continued to be unhappy about it, during the shift the Claimant went back into Kronos and made a further change. She changed the 26 March, which on that day was showing Mr Ali as working, from a workday back to an annual leave day. It is likely that she did this to keep Mr Ali happy. As a result of this change, Mr Ali was paid holiday pay for the whole week. Mr Ali did in fact work on 26 March and therefore had not been on annual leave that day and the Claimant knew this.

21. The Tribunal also finds that Mr Ali did not punch in or punch out on 26 March. I find it likely that the Claimant became aware of this on Sunday 28 March when she was doing exceptions and generally reviewing the Kronos records, before submitting them to payroll. She discussed this with Mr Ali. However, she did not ask him change the Kronos records to show him as having worked on 26 March and she did not change it herself.
22. The following week, on 31 March, Mr Ali attended work simply to clock in/punch in and he then left. He gave inconsistent evidence on this. In the statement he gave to the Respondent's investigation, he stated that the Claimant had told him not to punch in or out on 26 March and that the agreement with the Claimant was that he would come to work on Wednesday 31 March, punch in on Kronos and then go home. He stated that the agreement was that the Claimant would sign him out so that he would get paid for the 8-hour shift he worked on 26 March. He also confirmed that he went home after punching in on 31 March.
23. Mr Ali's evidence to the Tribunal was inconsistent. He was unwilling to confirm something as simple as how his witness statement came to be created. This was a live issue for the Tribunal, especially as later it transpired that he does not read or write in English and at the same time, his witness statement was written in English. The statement given to the investigation was written by Ms Pranami who gave clear live evidence to the Tribunal that she wrote it in Mr Ali and Mr Gofran Uddin's presence, in real time, with Mr Uddin telling her, in English, what Mr Ali said in each answer he gave, after he asked him a question in their language. Both Mr Uddin and Mr Ali speak the Bengali language. Ms Pranami does not. She simply wrote what she was told he had said.
24. I find it unlikely that the Claimant told Mr Ali not to clock in or out on 26 March. If the Claimant had told him not to clock in and out on 26 March, it is unlikely that the Claimant would have taken this up with him as an issue on Sunday 28 March.
25. Mr Ali also did not clock out on 31 March. It is likely that the agreement the Claimant with Mr Ali, which she made in order to encourage him to work on 26 March was that he would punch in on 31 March and go home and she would ensure that he was paid for the hours that he worked on 26 March. This is what happened as the Claimant punched out for him, 8 hours later. Mr Ali did not work the shift on 31 March. Apart from when he attended the store to punch in, he had not been at work at all that day.
26. The Respondent's disciplinary procedure set out that breaches of health and safety policies are considered gross misconduct. Also, manipulation of Kronos is another type of misconduct that the Respondent would view as amounting to gross misconduct.
27. The Tribunal had copies of the Respondent's disciplinary policy and procedure in the bundle of documents.
28. It is likely that sometime in April the Respondent became aware that Mr Ali had worked an 8-hour shift on 26 March without clocking in or out, when he

was scheduled to be on annual leave and that he had punched in on Wednesday 31 March and an 8 hour shift had been recorded for him, when he had not actually done any work.

29. As the Claimant had been duty store manager at the time, it was appropriate that the Respondent began its investigation into these matters by arranging a meeting with her to discuss it.
30. On 12 April 2021, Mr Gofran Uddin, Store Manager, began an investigation into these matters by meeting with the Claimant and taking her statement. The Respondent had CCTV evidence of Mr Ali working in the store on 26 March, although he was booked on Kronos as being on annual leave and paid as such. In the investigation meeting, the Claimant stated that it was Mr Ali's decision not to punch in or out of the Kronos system on 26 March. She also confirmed that he had punched in on 31 March and not punched out but that she had punched him out and manually adjusted Kronos to add 8 hours to his time. She stated, as she has consistently done throughout these proceedings as well as the internal proceedings, that she did so to make sure that he was paid for the 8 hours he had worked on 26 March and to ensure that he did not lose a day's leave. She accepted that she should not have allowed Mr Ali to work on 26 March without punching in or out. She also stated that she was not sufficiently trained on Kronos.
31. On the same day, the Respondent suspended the Claimant on full pay pending further investigation. Mr Uddin wrote to her to confirm her suspension on full pay, pending investigation of the allegation of gross misconduct against her. The Claimant was told that the purpose of the suspension was to allow the Respondent to conduct the investigation impartially and fairly and that it was in no way a form of disciplinary action against her.
32. On the following day, 13 April 2021, the Respondent interviewed Mr Ali about this. Mr Ali does not read, speak or write English. He speaks Bengali. Mr Uddin also speaks Bengali and he spoke to Mr Ali and told him that he wanted him to provide a statement on this matter. Mr Ali was worried how this would affect the Claimant's employment and he raised this with Mr Uddin. It is likely that Mr Uddin told him that the Claimant would only receive a warning for this matter. Mr Uddin was not the manager who dealt with the rest of the proceedings, and he would not have been able to predict how they would end. There was no evidence that he was in control of the disciplinary proceedings. The Tribunal did not hear from Mr Uddin and so cannot confirm what he said to Mr Ali but it is likely that Mr Ali understood from their conversation that if he made a statement about what happened with the rota and his shifts, on those two days in March, the Claimant would keep her job.
33. The Tribunal finds that Mr Ali's motivation for coming to this hearing and the evidence he gave was to assist the Claimant in getting her job back and possibly because he felt responsible for her losing her job. Both Mr Ali and the Claimant were concerned that the statement taken in the internal investigation suggested that she had forced him to work on 26 March and that this was the main thing which contributed to her dismissal. Mr Ali was

at pains to point out that she had not forced him to come to work. The Tribunal finds it unlikely that the Claimant forced Mr Ali to work on 26 March. However, the Tribunal also finds that when he received the rota on 21 March, Mr Ali spoke to the Claimant and they agreed that he would work on 26 March and he would be given back the shift on 31 March, if he came to the store, punched in and returned home.

34. By letter dated 21 April 2021, at the conclusion of the investigation, Mr Muhammad Khan, Dalston store manager invited the Claimant to a disciplinary hearing. She was advised of her right to be accompanied. Mr Khan was going to chair the hearing. There is no recognised trade union within the Respondent, which meant that she could have exercised her right to be accompanied by either someone from another trade union from outside the business or by a colleague. Although it was explained in the letter of invitation to the disciplinary hearing, the Claimant did not understand this right, so she did not invoke it in the internal process.

35. The invitation letter set out three allegations of misconduct:

35.1 Gross breach of the company procedures when you allowed a colleague to work and not clock in or out on Kronos while the colleague was scheduled to be on annual leave;

35.2 Gross breach of company procedures when you instructed the colleague to clock into Kronos and manually clocked them out when they were not on shift;

35.3 Which has resulted in a gross breach of health and safety regulations.

36. The Tribunal finds that the Respondent took the issue of Health & Safety seriously. It was noted in the investigation that if there had been a fire or other emergency during those shifts, it would not have been easy to account for Mr Ali's whereabouts at the store as it had been falsely recorded. The invitation letter advised the Claimant that a possible outcome of the hearing, once she had a chance to put everything forward that she wanted to raise, could be her dismissal without notice.

37. The disciplinary hearing was conducted on 23 April. The Tribunal heard from Mr Muhammad Khan who chaired that meeting. Before the meeting the Claimant had a copy of the investigation notes and a copy of Mr Ali's statement. In the hearing she had an opportunity to explain her version of events to Mr Khan. It is likely that she tried to bring up other matters with Mr Khan that did not relate to these incidents, such as what happened when she returned from sick leave. Mr Khan did not recall her raising the issue of the sale of the Paracetamol and the sale of bags for life or the till shortage in March. His evidence was that he told her that any matters not covered by these allegations of misconduct would be dealt with by another manager and in this disciplinary hearing, he would focus on the allegations of misconduct relating to the 26 and 31 March.



38. During the Tribunal hearing the Claimant stated that she believed that matters raised in a grievance should be addressed before allegations of misconduct and that the Respondent's decision to carry on with the disciplinary hearing was a breach of that practice. The Tribunal finds it likely that a disciplinary process would usually be halted if a grievance is raised related to the allegations of misconduct or the employer's process in addressing those allegations. However, as the issues the Claimant mentioned to him were unrelated to these particular allegations of misconduct, Mr Khan decided to proceed with the disciplinary hearing. The Claimant did not refer to any internal company procedure that he had breached in deciding to go ahead.
39. In the disciplinary hearing the Claimant explained that it was due to staff shortages that she put Mr Ali and others on the rota to work during the week beginning 22 March. The Respondent had no issue with her calling staff back from annual leave to work some shifts. Mr Khan told her that this was not a problem for the Respondent. The Claimant stated that it was Mr Ali's idea that he should clock in on 31 March. She confirmed that she had not considered the Health & Safety aspects if anything happened during the stores opening hours on either day, when his attendance at work was incorrectly recorded. She felt that this did not present a problem as she would be able to tell anyone who asked that the Claimant was or was not present, depending on which day it was. The Tribunal finds that there is no guarantee that if anything happened at work, the Claimant would be in a position to give an accurate report of Mr Ali's whereabouts. The Tribunal takes judicial notice that the reason why the whereabouts of each member of staff needs to be accurately recorded is to ensure accuracy and so that the employer does not have to rely on people's memories or them being able to recall who was at work and when.
40. The Tribunal finds that in the disciplinary hearing, the Claimant admitted the allegations against her. The Claimant has never denied that she allowed Mr Ali to attend work on 26 March while he was on the rota as being on annual leave and that she allowed him to punch in on 31 March, added 8 hours to his shift and punched him out that day. She has explanations for doing so. She did not become aware that he had failed to punch in and out on 26 March until Sunday 28 March.
41. Having listened to the Claimant's explanation in relation to the 26 and 31 March, Mr Khan was concerned about two matters – firstly, that the misconduct was not done by mistake. He concluded that the Claimant did these acts deliberately and that she had been trying to manipulate the Respondent's system. She added a shift to 26 March and when Mr Ali complained about it, she changed it back to a holiday shift. She added 8 hours to the 31 March so that he could be paid for a whole shift, even though he was not at work.
42. It was Mr Khan's conclusion that the Claimant made one mistake on 26 March and compounded it by making another error on 31 March to try to undo the first. Mr Khan's evidence was that if it had only been the first mistake, i.e., allowing Mr Ali to work on 26 March but not putting the working shift on the rota, he may have considered it as misconduct. However, he

considered that by doing the second act of misconduct, the Claimant had committed gross misconduct because that was a clear attempt to manipulate the Kronos system by getting it to pay someone for a day's work which they had not done.

43. It was for those reasons that he decided that the Claimant had committed gross misconduct. He also decided that the Claimant had been given basic training on Kronos so that she could do all the actions that she did. In the few days between 21 and 31 March, the Claimant had been able to change a shift from holiday to work and back again to holiday, to punch out on behalf of staff and to clear exceptions. She confirmed that she was aware of the changes that she should have made on Kronos to show Mr Ali working on 26 March and him not working on 31 March, but had failed to do so. She admitted that she had done the wrong thing by not making the relevant changes to reflect the situation. She did not accept that there had been a health & safety issue in what she did.
44. During the disciplinary hearing Mr Khan adjourned on two occasions to seek advice from the Respondent's HR team. He carefully considered the Claimant's explanations for her actions. It is unlikely that he saw the Claimant's changed rota on page 432 where she put Mr Ali down to work. She produced this at the start of the Tribunal hearing. However, the Tribunal finds from Mr Khan's evidence that it is unlikely that this would have made a difference to his decision because the Claimant changed it back a few days later on 26 March, to show Mr Ali as being on leave. Mr Ali was paid for 5 days leave that week as he was recorded on Kronos as being on leave for the whole week. It is an accurate description of what happened to say that Mr Ali was not recorded as having worked that shift. He did not punch in or punch out and as he was on the rota as being on annual leave, even if he had tried to punch in or out the system would not have accepted this. Mr Ali had not tried to punch in and punch out on 26 March and even after she realised on Sunday 28 March that he had not done so, the Claimant did not ask him to do so or change the records to show that he had worked.
45. At the end of the disciplinary hearing, Mr Khan informed the Claimant that her employment would be terminated for gross misconduct, and she would be dismissed summarily. The date of termination of the Claimant's employment was 23 April 2021. A letter confirming dismissal and advising on the appeal process was sent to the Claimant on 6 May. The letter confirmed the allegations and the reasons why Mr Khan chose dismissal over any other sanction. Those relate to his conclusion that the Claimant committed two acts of misconduct and that the second was more serious as it was a deliberate attempt to manipulate the Respondent's system to get someone paid for a shift that they had not worked. He concluded that this had not been done because the Claimant did not know how to operate Kronos. She did know how to operate Kronos which is why she was able to do as she did.
46. The Claimant wrote a letter of appeal against her dismissal. Her appeal was heard by Mr Periyasamy, who was more senior than Mr Khan as he was an Area Manager. The appeal was held on 20 May. Although the

Claimant stated in the appeal hearing that she did not know how to put time in and time out in Kronos, it is noted that she did know how to put schedules in Kronos and how to put holidays in Kronos and how to do exceptions. She confirmed that she also knew how to sign off payroll. Also, she did not ask another manager at another store or payroll or anyone else to assist her. The Claimant did know how to put time into Kronos as she was able to add 8 hours to Mr Ali's punch in time on 31 March and punch out for him.

47. Even if she had not told Mr Ali to attend work on 26 March without punching in or out, she admitted to Mr Periyasamy that she had asked him to come to the store on 31 March, clock in and go home and she would be sure to pay him the 8 hours owed from 26 March. He found that to be a clear manipulation of Kronos and a breach of company time and attendance policy and its Health and Safety policy.
48. In the circumstances, Mr Periyasamy was unable to uphold the Claimant's appeal.

### **Law**

49. The Law the Tribunal considered was discussed at the beginning of this hearing and again during the submissions.

### Unfair dismissal

50. In this case, the Tribunal is concerned with the question of determining the reason for the Claimant's dismissal and whether it is one of the reasons set out in section 98(2) of the Employment Rights Act 1996 (ERA). The burden is on the Respondent to show the reason for the dismissal and that it is a potentially fair reason i.e. that it relates to the Claimant's conduct or capability.
51. A dismissal that falls within that category can be fair. In order to decide whether it is fair or unfair, the Tribunal needs to look at the processes employed by the Respondent leading up to and including the decision to dismiss. In cases concerning the employee's conduct, a three-stage test must be applied by the Respondent in reaching a decision that the employee has committed the alleged act/s of misconduct. This was most clearly stated in the case of *British Homes Stores Ltd v Burchell [1980] ICR 303*, as follows. The employer must show that:-
  - (a) he believed the employee was guilty of misconduct;
  - (b) he had in his mind reasonable grounds which could sustain that belief, and
  - (c) at the stage at which he formed that belief on those grounds, he had carried out as much investigation into the matter as was reasonable in the circumstances.
52. This means that the employer does not need to have conclusive direct proof of the employee's misconduct but only a genuine and reasonable belief, which has been reasonably tested through an investigation.

53. If the Tribunal concludes from all the evidence that this is the case; then the next step for the Tribunal is to decide whether, taking into account all the relevant circumstances, including the size of the employer's undertaking and the substantial merits of the case, the employer has acted reasonably in treating it as a sufficient reason to dismiss the employee. In determining this, the Tribunal has to be mindful not to substitute its own views for that of the employer. Whereas the onus is on the employer to establish that there is a fair reason, the burden in this second stage is a neutral one. The *Burchell* test applies here again and the Tribunal must ask itself whether what occurred fell within "the range of reasonable responses" of a reasonable employer. The law was set out in the case of *Iceland Frozen Foods v Jones [1982] IRLR 439* where Mr Justice Browne-Wilkinson summarised the law concisely as follows:
- (a) "We consider that the authorities establish that in law the correct approach for the ... tribunal to adopt in answering the question posed by [section 98(4)] is as follows:
    - (1) the starting point should always be the words of section 98(4) themselves;
    - (2) in apply the section (a) the tribunal must consider the reasonableness of the employer's conduct, not simply whether they (members of the tribunal) consider the dismissal to be fair;
    - (3) in judging the reasonableness of the employer's conduct (a) tribunal must not substitute its decision as to what was the right course to adopt for that of employer;
    - (4) in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another;
    - (5) the function of the .... Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable response which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair."

## Decision

The first matter for the Tribunal is to decide on the reason for dismissal.

54. It is this Tribunal's judgment that the Claimant has not succeeded in showing that there was any other matter in Mr Khan's mind at the time he decided to dismiss her, other than the misconduct she committed on 26 and 31 March.
55. The investigation into the allegations was conducted by Mr Gofran Uddin, the Claimant's manager. The Claimant had her issues with her line

manager before these allegations occurred. However, there is nothing connecting these allegations of misconduct on 26 and 31 March 2021 to the complaints she had with Mr Uddin's management such as the sale of the Paracetamol, the Bags for Life, the way she was treated on her return from sick leave or anything else.

56. Mr Uddin could not have predicted how these proceedings would end as he was not the person who conducted the disciplinary hearing. It is likely that he thought that she might be disciplined but not dismissed as he told Mr Ali that she would not be dismissed.
57. As far as Mr Ali's witness statement in the investigation is concerned, the main difference the Claimant focussed on before this hearing was that she had not ordered Mr Ali to attend work. The Respondent accepts that she had to do the difficult task of asking people on leave to come in to work to cover shifts. It was coming to the end of the financial year and lots of people had been given holiday so they could use up their outstanding leave. Not everyone would be happy to receive such a request and she would have needed to be firm with some staff to get them to agree to come in. The Respondent accepted that. She was not disciplined for that.
58. As far as Mr Ali was concerned, it is likely that he was prepared to agree to come in to work on the understanding that he would get the time back before the end of the financial year. The Claimant agreed to do this but did not seek advice from payroll, from Mr Uddin or from another manager on the best or most appropriate way to do that.
59. It is this Tribunal's judgment that the Claimant was dismissed because of the way in which she dealt with the recording of Mr Ali's work on both 26 and 31 March on Kronos as those recordings were inaccurate, had been done deliberately and in relation to 31 March - was an attempt to manipulate the Kronos time recording system to get Mr Ali paid for a day he had not worked.
60. The Claimant was dismissed because of her conduct.

Did the Respondent believe that the Claimant had committed gross misconduct and was that belief based on a reasonable investigation?

61. Firstly, the Claimant complains that she did not have sufficient training on Kronos. It was also her case that the Respondent relied on a false statement by Mr Ali. Lastly, she stated that the issue of Health & Safety was not that important to the Respondent so she should not have been dismissed for it.

### *Training*

62. It is not clear to the Tribunal whether it was a regular occurrence for members of staff to have a day's leave outstanding at the end of the financial year, which needs to be recorded on Kronos or carried forward or dealt with in some other way. It is unlikely that any training that the Claimant received on Kronos would have covered how to deal with it. When she

submitted to the Tribunal that she did not have sufficient training on Kronos the Claimant did not clarify which function she needed training on that would have prevented her from committing the acts of misconduct that she did. The evidence shows that she knew how to change the rota from annual leave to work and how to add 8 hours to a shift and how to punch out for an employee. The Respondent does not say that there was something that she should have done on Kronos to ensure that Mr Ali did not lose his day's holiday. The Respondent was concerned with the fact that even after she realised on Sunday 28 March that Mr Ali had not punched in or out on 26 March, she did not get him to change it, did not change it herself and did not refer it to someone else to change it. Also, although the Respondent accepted that she changed the rota on 21 March to show him as working on Friday 26 March; when he complained she changed it back to annual leave, which is why he was paid for the whole week as holiday.

63. It is this Tribunal's judgment that Mr Khan came to a fair and reasonable decision that the Claimant had sufficient training and knowledge on Kronos to change the rotas, to add 8 hours to the shift on 31 March and to punch Mr Ali out and to change the shift on 26 March from holiday to work and back again to holiday; which meant that she had sufficient knowledge and ability on the system to correctly record what had happened. She failed to do so, and it was fair to hold her responsible for her actions.

*Mr Ali's statement*

64. As far as Mr Ali's statement is concerned – there are two issues the Claimant took with it, which she did not raise in the disciplinary hearing with Mr Khan. The first is that she did not coerce him to come to work. It is unlikely that she did and that was not an issue for the Respondent. However, he clearly was not pleased to be put on the rota and might have taken some persuading to agree to work on 26 March. He agreed to do so on the understanding that he would get the day back on 31 March.
65. The second issue was whether she told him not to punch in and out on 26 March. It is likely that the statement Mr Ali gave to Mr Uddin was inaccurate in that the Claimant was not aware that Mr Ali had not punched in and out on 26 March until she was doing the exceptions on the following Sunday night, 28 March. The evidence shows that it was unlikely that she told him not to punch in or out on 26 March. It is also unlikely that she was aware that, having changed the rota again to show 26 March as a holiday, the system would not have accepted Mr Ali's punching in and out, even if he had tried to do so. When she found on the Sunday night that he had not punched in or out of Kronos on 26 March, the Claimant did not insist that he punch in and out to ensure that the record was accurate. She did not raise it with the Area Manager or raise it with anyone else. She simply left it. Therefore, that part of Mr Ali's statement is likely to be inaccurate.
66. However, it was still open to Mr Khan to conclude that she allowed Mr Ali to work on 26 March without clocking in and out because having changed the shift back to annual leave, it meant that the system would not have accepted his punching in and out and, on Sunday 28 March, after she realised that he had not done so, she took no action to rectify the situation. Also, she

had changed the 26 March from a work shift back to an annual leave/holiday. It was accurate for Mr Khan to conclude that she had by her actions, allowed Mr Ali not to punch in or out on 26 March.

67. Lastly, the investigation showed that the Claimant was not concerned about the Health & Safety issue and continued to be unconcerned about it up to this Tribunal hearing. Whether or not there were other Health & Safety matters going on in the store does not justify or excuse her failure to ensure that the records were accurate. No additional or indepth training on Kronos would be required for the Claimant to appreciate that those records needed to be accurate and reflect what actually happened. She was aware of this which is why, when Mr Ali first stated that he wanted the whole week recorded as holiday even though he worked on 26 March – she replied that *'it does not work like that'*. That was correct. Her misconduct was to give in to him and change the rota back to show him on annual leave when he was actually at work.
68. The Claimant does not say that there was anyone else that the Respondent should have spoken to in the investigation. Mr Uddin viewed the CCTV to confirm that Mr Ali was at work on 26 March, and he spoke to the Claimant and Mr Ali before recommending disciplinary proceedings.
69. The allegations against her arose out of the evidence and those allegations did not change throughout the process.
70. Mr Khan considered the same allegations and the documents that the Claimant had been sent beforehand.
71. The Claimant says that Mr Khan should have looked at the rota she created when she put Mr Ali and his colleagues on shift that week, but as stated above, she cancelled out the effect of that by returning Mr Ali to holiday by the time the returns were submitted to payroll on Monday morning. What was important was the information submitted to payroll.
72. Mr Khan listened to her in the disciplinary hearing and considered what she had to say. He also considered the investigation notes and Mr Ali's statement. There was no evidence that Mr Uddin had any contact with Mr Khan or that he influenced him in any way. It is this Tribunal's judgment that Mr Khan came to the decision to dismiss on his own and that it was based on the evidence in front of him, after seeking advice from the Respondent's HR/Employee Relations team.

Was the dismissal fair and reasonable in all the circumstances?

73. Mr Khan decided that the Claimant committed gross misconduct. It was also his decision to terminate the Claimant's employment because of gross misconduct. The Respondent's handbook referred to manipulation of the Kronos system as an example of gross misconduct. There was a Health & Safety issue here and the Claimant did not show that she had any understanding of that issue. If someone is not recorded as working and they are actually at work, this is a breach of health and safety. As an employer, the Respondent has duties to keep its employees safe and

provide them with a safe system of work when they are at work. By recording Mr Ali as not being at work when he was at work, and by recording him as being at work when he was not, the Claimant breached Health & Safety. She has failed to appreciate that. If there is a disaster on a day when someone is at work but not recorded as such, there will be no search for them. That is why a fire marshal in a business premises will tick people off a list when there is a fire drill. It is important from a health and safety perspective to know who is at work at any time.

74. The Tribunal find no evidence of procedural issues with the Respondent's procedure in coming to a decision to terminate the Claimant's employment.
75. The Claimant was not dismissed because of Mr Ali's statement to the investigation. She was dismissed because of the following actions: - She did not leave the rota as showing Mr Ali working on 26 March. She changed the rota to show him on annual leave when he had been at work. She did not raise with anyone the fact that Mr Ali had not punched in or out on 26 March and submitted returns to payroll for 26 March that she knew were inaccurate. She allowed Mr Ali to clock in on 31 March and immediately leave the store and then added an 8-hour shift to his time and punched out for him; when he had not worked that day. Those were the Claimant's actions which were unrelated to any lack of knowledge of Kronos and which led to her being disciplined and dismissed.
76. This was not a matter of a lack of training but the Claimant's efforts to manipulate the system to suit a colleague. The Respondent took this seriously as they were entitled to do.
77. The decision to dismiss the Claimant was within the band of reasonable responses open to the Respondent as the employer, given the seriousness of the Claimant's misconduct and the Claimant's failure to appreciate the serious nature of it.
78. The Tribunal has to decide – not whether the decision to dismiss was the only decision that the employer could take or what the Tribunal itself would have done in that situation or whether the decision to dismiss was the best decision. The Tribunal has to decide whether, given all the relevant circumstances and the Respondent's size, knowledge and resources at the time, this decision was within the range of reasonable responses that employers could have to these circumstances. It is this Tribunal's judgment that the decision to dismiss the Claimant was within that range.
79. The Claimant had no new information to put to the appeal but it was considered and Mr Periswamy gave due consideration to her points. The dismissal was upheld and it was fair and reasonable for him to do so.

### **Judgment**

80. It is this Tribunal's judgment that the Respondent had a reasonable belief that the Claimant committed gross misconduct and that belief was based on a reasonable investigation. The Respondent's decision to dismiss the



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Claimant was fair and reasonable in all the circumstances and within the band of reasonable responses. The claim fails and is dismissed.

**Employment Judge Jones  
Dated: 27 October 2023**