



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4102740/2024**

5 **Held in Glasgow on 18, 19 and 20 June 2024**

**Employment Judge S MacLean**

10 **Mr B Rielly**

**Claimant  
Represented by:  
Mrs V Rielly,  
Lay Representative**

15 **Precision Windows and Doors Limited**

**Respondent  
Represented by:  
Mrs A Singh,  
Solicitor**

20 **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Employment Tribunal is that the claims are dismissed.

### **REASONS**

#### **Introduction**

- 25 1. In the claim form the claimant complains that the respondent dismissed him unfairly when terminating his employment on 3 November 2023. The claimant also claims payment of outstanding holiday pay. He seeks compensation.
- 30 2. The respondent admits terminating the claimant's employment on 3 November 2023. The respondent says that the reason for dismissal was gross misconduct and denies that the claimant was unfairly dismissed. The respondent says that the claimant has been paid all money to which he is entitled.
- 35 3. For the respondent I heard evidence from Tom Hunter, production manager, Thomas McLaughlin, production supervisor and Katherine Cassidy, director. The claimant gave evidence on his own account. The parties prepared a joint file of documents to which the witnesses were referred.

4. I have set out facts as found that are essential to my reasons or to an understanding of important parts of evidence. I have dealt with the points made in submissions while setting out the facts, law, and the application of the law to those facts. It should not be taken that a point was overlooked, or  
5 facts ignored, because a fact or submission is not part of the reasons in the way it was presented to me.

### Findings in fact

5. The respondent is a company carrying on business manufacturing and installing double glazing windows and doors. John Cassidy, managing  
10 director is responsible for operations. Katherine Cassidy, director has responsibility for administration particularly finance.
6. Tom Hunter, production manager has responsibility for the daily production output at the factory in Wishaw where approximately 32 employees work including Thomas McLaughlin, production supervisor. Mr Hunter reports to  
15 Mr Cassidy.
7. A personal assistant and an administrator supported Mrs Cassidy. From 2020 the business grew significantly. Around 2021 Mrs Cassidy decided to engage Peninsula to provide HR services. Around September 2021, Peninsula prepared HR documentation including template terms and conditions of  
20 employment and staff handbooks.
8. On 2 August 2021, the respondent employed the claimant to carryout maintenance and despatch at the factory and yard (the premises). The respondent prepared and issued a statement of terms and conditions of employment to the claimant around October 2021.
- 25 9. The claimant initially worked with a maintenance electrician. As the claimant did not work in the factory, he did not report to either Mr Hunter or Mr McLaughlin. If maintenance work was needed around the factory, they approached Mr Cassidy who would direct the claimant to do the work. The claimant was a valued member of the team and highly regarded by Mr and  
30 Mrs Cassidy. He had good working relationships with his colleagues.

10. Around 2022, the respondent employed a health and safety manager. Part of his responsibility was to deliver mandatory induction training to employees when policies and procedures (including health and safety) were explained and information including the employee safety handbook and employee handbook was provided to employees.
11. The health and safety manager delivered induction training to the claimant on 25 October 2022. The claimant signed for and received the health and safety and employee handbooks.
12. The employee handbook states that to avoid congestion, all vehicles must be parked in designated parking areas. Although there is no contractual right to search employee's vehicles while on the premises, employees are asked to assist should the respondent feel that such a search is necessary. It also states that close circuit television (CCTV) cameras are used on the premises for security purposes and the respondent reserves the right to use any evidence obtained in that manner for disciplinary purposes. The respondent provides tools and or equipment necessary to carry out duties.
13. The disciplinary procedures set out in the employee handbook provide that an employee will only be disciplined after careful investigation of the facts and an opportunity to present their side of the case. Temporary suspension with pay may be necessary. There is a right to be accompanied by a fellow employee at all formal stages of the disciplinary process. There is a non-exhaustive list offences deemed as gross misconduct (which included theft) where the penalty is dismissal without notice or any previous warning being issued. A line manager has authority to take the decision to dismiss. There is a right of appeal against any disciplinary penalty. The appeal procedure will normally be conducted by a member of staff not previously connected with the process. If the appeal is on the grounds that the employee has not committed the offence, then the appeal may take the form of a complete rehearing and reappraisal of all matters so that the person who conducts the appeal can make an independent decision before decision to grant or refuse the appeal. The appeal will be made known in writing normally within five working days after the hearing.

14. Waste from the factory and customers is brought to the premises and broken down into glass, pvc, aluminium and mixed product. Then manually, or if required using a forklift truck, it is placed into the designated skips, paid for by the respondent. When full, the respondent sends the skips for recycling. The money received for recycling is used by the respondent towards the cost of paying for the skips and the employees breaking down the waste. Around June 2023, the claimant was working in the recycling area.
15. In late September 2023 two employees reported to Mr Hunter their suspicion that something was going on in the recycling area; scrap was being stockpiled and stolen. Mr Hunter told Mrs Cassidy about the discussion. Mr and Mrs Cassidy met the employees. The employees said that they saw the claimant stockpiling scrap between a building. Later they saw the claimant put the scrap in his van and drive away. When he returned his van was empty. While Mrs Cassidy was in disbelief at the allegation against the claimant, she considered that the employees had no animosity towards him. Mrs Cassidy considered that it was premature to raise the issue with the claimant without further supporting evidence.
16. Mrs Cassidy reviewed the CCTV footage back to August 2023. She noted that although there were designated parking areas, the claimant parked his van in the yard in the vicinity of the skips. When worked permitted Mrs Cassidy monitored the CCTV. She saw a pattern usually on a Friday, around tea break, of the claimant reversing his van into the recycling area out of range of the CCTV coverage, then leaving the premises in his van.
17. Mrs Cassidy and Mr Hunter checked the yard. They noted that some weeks scrap was being stockpiled then it was no longer there. Mrs Cassidy referred to the employee handbook. She read that theft was an example of conduct normally deemed gross misconduct resulting in dismissal.
18. During the week commencing 30 October 2023, Mr Hunter and Mr McLaughlin monitored scrap being stockpiled. Early on 3 November 2023, they noted that the scrap had accumulated. Mr Hunter took a photograph. Around tea break, Mrs Cassidy was monitoring the CCTV. She saw the

claimant reverse his van into the area out of range of the CCTV cameras. Mrs Cassidy spoke to Mr Hunter and ask him and Mr McLaughlin to stop the claimant's van from leaving the premises. There was no discussion about what would happen if his van contained aluminium products (the products).

5 19. Mr Hunter and Mr McLaughlin went into the yard. They approached his van as the claimant was driving away. Mrs Cassidy, who was sitting in a car watching, thought that the claimant was not going to stop so she drove in front of his van. The claimant was surprised and stopped. Through the windshield Mr Hunter and Mr McLaughlin could see the products at the back of the van.  
10 The claimant initially refused to give permission for Mr Hunter to search his van but then agreed to do so. His van contained the products. Mr Hunter took a photograph. Mrs Cassidy opened the passenger door and asked the claimant why he was stealing. Mr Hunter asked if anyone else was involved. The claimant mentioned a colleague who worked in the recycling area (the  
15 colleague). Mr Hunter said that they should go to the boardroom. He asked Mr McLaughlin to bring the colleague to the boardroom, which he did.

20. In the boardroom the colleague said that he knew what had been happening. The claimant said that it was only scrap and was not worth much. He was skint and would not do it again. Mr Hunter said that it was theft and could not  
20 be condoned. He suspended the claimant and the colleague. On departing the colleague said that he knew what was going on, but he did not receive any money for the scrap. The claimant removed the products from his van and placed them in the skips before leaving.

21. The claimant admitted that the products were in his van. Mrs Cassidy  
25 considered that there was no reason for them to be in his van. She believed that had she not blocked his van the claimant would have removed the products from the premises. Mrs Cassidy also believed that the claimant was stealing products. She believed that the colleague has seen what the claimant was doing but unlike the other employees did not report the matter  
30 to management.

22. Mrs Cassidy telephoned Mr Cassidy who was in London and advised him of developments. She had held the claimant in high regard. Employees had raised the issue with them. She had now seen the products in the back of his van as the claimant was trying to leave. Other than saying he was skint the claimant gave no explanation for this. Mrs Cassidy considered that the claimant was stealing which was gross misconduct. Reluctantly Mrs Cassidy decided that the claimant should be told that he was dismissed because of gross misconduct. The colleague was also dismissed.
23. Mrs Cassidy asked the personal assistant to telephone the claimant and advise him that he was not to return to work as Mrs Cassidy had decided to terminate his employment. That decision was confirmed in a letter dated 4 November 2023 in which the claimant was advised of his right of appeal. The claimant did not receive this letter.
24. On 17 November 2023, the claimant sent an email to Mr Cassidy setting out 13 reasons complaining about his dismissal and requesting a meeting to discuss this. Mrs Cassidy acknowledged the email and asked whether the claimant was appealing her decision or raising a grievance. The claimant asked for the concerns in his grievance to be addressed so that he could decide how to proceed. There was an email exchange about possible meetings at a neutral venue or remotely at which the claimant would be accompanied by his wife. This meeting did not happen.
25. On 5 December 2023, Mrs Cassidy emailed the claimant to advise that an impartial consultant from Peninsula Face2Face would hear his appeal remotely on 8 December 2023. The hearing would be recorded, and the transcript would be made available to the claimant. The claimant was advised that the consultant would make recommendations which the respondent would consider on receipt of the report and write to the claimant with the outcome. It was confirmed that the claimant could be accompanied by his wife.
26. The appeal hearing took place remotely on 8 December 2023. It was conducted by a consultant from Peninsula Face2Face who had been provided

with a file of information but had not spoken to the respondent. The claimant and his wife participated. The appeal hearing was recorded. It was explained that as the points raised in the grievance related to dismissal and the process a disciplinary appeal was being conducted. The consultant explained the procedure and went through each point raised by the claimant in the grievance. He and his wife were given an opportunity to provide an explanation and comments.

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27. In relation to events on 3 November 2023, the claimant said that he was working away. His van, with his tools, was always in the yard. He reversed to put a welding machine, that he was using later, in his van. As the area was littered with scrap, he threw it into the van with the intention of cleaning the area and putting the scrap in the skips. It was teatime. As the claimant was running late and going to the snack van across the road, he was driving out as the managers approached. The claimant said he panicked when Mrs Cassidy skidded in front of him. He did not really know what was going on. Mrs Cassidy accused him of stealing. The claimant refused to let them look in his van but then agreed. He was told to go to the boardroom. Mr McLaughlin went for the colleague. In the boardroom meeting the claimant said that he was accused of stealing, apparently for months. He said he was not that they had got it all wrong.

28. At the appeal hearing the claimant was shown the photographs of the contents of his van. He did not dispute what was in his van. He said that the aluminium was contaminated with plastic. He denied ever taking this sort of thing to the scrap yard before.

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29. Following the appeal hearing the consultant raised in writing some points for Mrs Cassidy to clarify, which she did. Mrs Cassidy said that if plastic or insulation must be stripped off this would be done at the recycling end. She considered that there was no need for the claimant to use his van to move scrap. The frames are broken down in the yard and forklifts are available. The only use for the products was to take them to a scrap yard for monetary value. The colleague said that this was what was happening, but he did not

receive money. The claimant had commented about being skint at the boardroom meeting.

30. The consultant prepared a report dated 15 December 2023. The report set out findings. The consultant concluded that there was substantial evidence  
5 that the claimant intended to remove property from the premises for his own gain. The original decision of gross misconduct dismissal was reasonable in the circumstances. The appropriate process was not followed but due to the conclusive findings in relation to the allegations it was unlikely that had a fair process been followed any different outcome would be reached. The  
10 consultant recommended that the appeal about process be upheld but the decision to dismissal be upheld as a different outcome would not have been reached.

31. On receipt of report Mrs Cassidy considered the findings and recommendation. She felt that the claimant was caught with the products in  
15 his van. She was unconvinced about the explanation he gave at the appeal hearing for it being there. Mrs Cassidy attached a copy of the report to an email sent to the claimant on 20 December 2023. She confirmed the decision to uphold her original decision because if a process had been followed then the outcome would have been the same. The claimant was advised that there  
20 was no further right of appeal.

32. At the date of termination, the claimant was 45 years of age. He had been continuously employed for two years. His gross weekly pay was £461.73. The net weekly pay was £378.10. The claimant has been paid for all holidays that he accrued but had not taken.

25 33. The claimant was assessed by his doctor on 4 December 2023 who advised that he was unfit for work for six weeks due to anxiety. On 18 December 2023, the doctor provided a fitness to work certificate for the period 11 November 2023 until 4 December 2023. The claimant has been in receipt of employment support allowance since 4 December 2023. He has been  
30 awarded an adult disability payment.



34. The claimant provided fit notes up to May 2024. He has undertaken SQA courses with Citizen Advice Bureau (CAB). He is currently undertaking CAB adviser training. From March 2024, the claimant has applied unsuccessfully for various jobs with North Lanarkshire Council.

5 **Observations on witnesses and conflict of evidence**

35. I was told that the claimant had anxiety. With the parties' agreement I minimised the time he spent at the final hearing and arranged for observers, other than his daughter, to observed remotely rather than be present in the hearing room. My impression was that the claimant gave his evidence robustly. He did not make any concessions and made comments which were not foreshadowed in the claim form or put the respondent's witnesses. The respondent's witnesses gave their evidence in an understated manner. They readily made concessions about line management, the disciplinary process and how they handled events on 3 November 2023.

15 36. There was disputed evidence about whether the claimant received the terms and conditions of employment and the employee handbook. The claimant said that he did not. Mrs Cassidy said that using a template, that had been provided by Peninsula, she had prepared the statement of terms and conditions that had been produced. There were similar documents prepared by her for employees whose employment started before and after the claimant. Mrs Cassidy understood that the administrator provided this to the claimant around October 2021 when it was prepared. There was no reason for her not to have done so. Mrs Cassidy accepted that the respondent did not hold a signed version. Mrs Cassidy said that the health and safety manager delivered induction training to the claimant on 25 October 2022. The health and safety manager recorded on the claimant's HSE and training record that the claimant had confirmed receipt of the employee and safety handbooks and various health questionnaires.

30 37. I found the claimant's evidence about not receiving documentation unconvincing. At his appeal hearing, while referring to not having been made aware of the disciplinary and grievance procedures, the claimant did not say

that he had not have a statement of terms and conditions of employment. Before the final hearing, in reply to the response form, the claimant said that he was asked to sign for a copy of the employee handbook which, he did as he trusted that he would be given a copy but his did not happen. At the final hearing, the claimant seemed to imply that he had not signed the statement of terms and conditions rather than not having received it. While I did not doubt that he did not remember the documents, I was less convinced that this was because he did not receive them but rather because did not read or retain them. It seemed unlikely that Mrs Cassidy would go to the time and expense of preparing terms and conditions of employment but not issue the document to the claimant. I also considered it unlikely that the health and safety manager would undertake an induction programme referring to health and safety and employee handbooks, completing training records but not provided the handbooks to the claimant. Had the health and safety manager not done so, I found it concerning that the claimant would not have mentioned this at the time.

38. There was conflicting evidence about events on 3 November 2023. The evidence of Mr Hunter and Mr McLaughlin was that in the yard the claimant said that he had a family emergency and tried to drive away before he was stopped by Mrs Cassidy's car. He made no reference to driving to a hut for tea. Mrs Cassidy's evidence was that she asked the claimant why he was stealing. Mr Hunter asked the claimant who else was involved. The claimant mentioned the colleague. The claimant said that he did not mention a family emergency or the colleague. He said that everything was a blur.

39. At the boardroom meeting the respondent's evidence was that emotions were high. There had been no prior discussion about having a meeting or how it would be handled. Mr Hunter did most of the talking. The colleague said that he knew what had been happening. The claimant said that it was only scrap and was not worth much. He was skint and would not do it again. Mr Hunter said that it was theft and could not be condoned. He suspended the claimant and the colleague. On departing the colleague said that he knew what was going on, but he did not receive any money for the scrap. The respondent's

witnesses accepted that the claimant did not say that he was stealing. The claimant's evidence was that he knew he was being accused of stealing the products in the back of his van. He was bewildered and remembered his colleague joining the boardroom meeting. The claimant said that he was a rabbit caught in the headlights. It was a rabble. He was suspended.

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40. Mrs Cassidy referred to the notes of the boardroom meeting. She said that there were some inaccuracies with dates and times. She prepared them after the boardroom meeting from her recollection. She did not discuss the notes with Mr Hunter or Mr McLaughlin. The notes were provided to Peninsula before the appeal hearing. They were sent to the claimant on 8 January 2024 when he made no comment about them. At the final hearing the claimant denied the accuracy of the notes but had previously said that events on that day were a blur and he was bewildered.

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41. I had no doubt that emotions were high on 3 November 2023. There were some inconsistencies with the evidence of the respondent's witnesses which, overall, made it more convincing particularly as they made appropriate concessions. They accepted that the claimant did not expressly admit to stealing. From the information provided and monitoring before 3 November 2023 they had no reason to suspect that the colleague knew what was happening. In contrast the claimant said that it was a blur but was then able to recollect detail to challenge evidence unsupportive of his position. For these reasons I felt that the respondent's evidence was more reliable.

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### **Deliberations**

42. The claimant accepted that he had been paid his holiday entitlement on termination on employment. He withdrew the claim about failure to pay holiday pay at the final hearing. Accordingly, that claim was dismissed under rule 52 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

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43. It was undisputed that the respondent dismissed the claimant on 3 November 2023. I therefore referred to section 98 of the Employment Rights Act 1996 (the ERA) which deals with the fairness of the dismissal.

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44. Under section 98(1) it is for the employer to show the reason (or if there is more than one the principal reason) for dismissal and that it was a potentially fair reason falling within section 98(2).
45. The respondent said that the reason for dismissal was conduct (a potentially fair reason). This is acting of such a nature, whether done in the course of employment or out with it, that reflects on, in some way, the employer-employee relationship. Mrs Cassidy confirmed in evidence that she believed that the claimant had products in his van, and he was intending to remove them from the premises. This was why she dismissed him I was satisfied that the respondent had shown the reason for dismissal was conduct. I concluded that the respondent was successful in establishing that the dismissal was for a potentially fair reason.
46. I then considered whether the dismissal was fair or unfair under section 98(4). This involves having regard to the reason shown by the employer, and 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 must be determined in accordance with equity and the substantial merits of the case.
47. As this was a conduct dismissal, I referred to the guidance in *Burchell* [1978] IRLR 379 and *Post Office v Foley* [2000] IRLR 827. I considered that the first issue to be determined, the burden of proof being neutral, was whether the respondent had a genuine belief in the claimant's guilt. Then whether the respondent held such genuine belief on reasonable grounds and after carrying out a reasonable investigation.
48. I was satisfied that when dismissing the claimant Mrs Cassidy believed in the claimant's guilt. Unprompted she had been alerted by employees of the claimant removing products from the premises. She viewed the CCTV footage back to August 2023. She checked the yard and noticed a pattern of stockpiling scrap. The claimant parked his van and reversed it out of the CCTV range then drove away. In the week commencing 30 October 2023,

Mr Hunter and Mr McLaughlin reported that scrap was being stockpiled. On 3 November 2023 on CCTV Mrs Cassidy saw the claimant reverse his van. She asked Mr Hunter and Mr McLaughlin to stop the claimant leaving the premises and search his van. The claimant was leaving the premises, and his van contained the products.

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49. I then asked if the respondent held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. I was mindful that it could not substitute my own view as to whether a reasonable investigation was carried out or embark on an analysis of the quality of the evidence obtained so as to lead to my own view of the evidence resulting in my conclusion as to what Mrs Cassidy ought to have found as opposed to applying a range of reasonable responses tests to the investigation carried out by the respondent leading to its conclusion to dismiss the claimant.

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50. I turned to the investigation in this case. Mrs Cassidy began monitoring the area for five weeks after a tipoff from employees. She noticed a pattern emerge, this culminated on 3 November 2023, in Mr Hunter taking a photograph of the stockpile of products accumulated that week. The claimant reversed his van into the area out of range of the CCTV. Before the claimant could leave the premises, his van was stopped. It contained the products which Mr Hunter photographed. Mr Hunter asked if anyone else was involved. The claimant mentioned the colleague.

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51. In the boardroom meeting the claimant was aware that he was being accused of theft. He said that it was only scrap and was not worth much. He was skint and would not do it again. The colleague said that he was aware of what was going on but did not receive any money. The claimant and the colleague were suspended by Mr Hunter who had no further involvement in the process. Mrs Cassidy then telephoned Mr Cassidy and informed him what had happened. Mrs Cassidy carried out no further investigation before dismissing the claimant.

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52. While there were flaws in the disciplinary process, I did not consider that the decision to suspend the claimant was predetermined. Had the claimant not

been seen by Mrs Cassidy on the CCTV on 3 November 2023 acting in the way he did no action would have been taken. There was no prior discussion about what would happen if the products were in his van. Mr Hunter spoke at the boardroom meeting. He made the decision to suspend the claimant. Mr Hunter had no further involvement. Mr McLaughlin was involved in the investigation from 30 October 2023. He made no decisions about suspension or dismissal.

53. The claimant was not advised of the allegation in writing or invited to a disciplinary hearing at which he could be accompanied to set out his case and respond to the allegations. On Mrs Cassidy's instructions the personal assistant informed the claimant of Mrs Cassidy's decision. The personal assistant had no other involvement.

54. An employer's actions at the appeal stage are relevant to the reasonableness of the whole dismissal process. I was satisfied that the claimant was offered a right of appeal which he exercised. There was an appeal hearing at which he was accompanied by his wife.

55. While it might have been possible for Mr Cassidy to have conducted the appeal hearing, he was involved in speaking to the employees in September 2023 and speaking to Mrs Cassidy on 3 November 2023. The appeal hearing was conducted by a consultant who was not an employee and had no previous involvement.

56. At the appeal hearing the claimant was aware of the allegation against him. He had the opportunity to respond to the allegation and explain why the products were in his van. He said that the area was littered with scrap. He threw the products into his van with the intention of cleaning the area and putting the products in the skips. It was teatime. The claimant was running late and going to the snack van across the road, he was driving out as the managers approached. The claimant said he panicked when Mrs Cassidy skidded in front of him. He did not really know what was going on. Mrs Cassidy accused him of stealing. In the boardroom meeting the claimant said that he was accused of stealing, apparently for months. He said he was not

that they had got it all wrong. The claimant was shown the photographs of the contents of his van. He did not dispute what was in his van. He said that the aluminium was contaminated with plastic. He denied ever taking this sort of thing to the scrap yard before.

5 57. Following the appeal hearing the consultant raised in writing some points for Mrs Cassidy to clarify which she did. The consultant prepared a report and made recommendations. The report acknowledged the lack of process before the dismissal. While it might have been preferable for Mr Cassidy to have considered the report, given relationship between Mr and Mrs Cassidy and his earlier involvement, it was reasonable, in my view, that Mrs Cassidy reflected on the report. She concluded that the original decision should stand.

10 58. I considered whether the respondent's failure denied the claimant an opportunity of demonstrating that the reason for his dismissal was not sufficient. I concluded that the claimant was not so denied. He provided an explanation which Mrs Cassidy considered was unconvincing. It was not an explanation supported by the colleague and was inconsistent with the allegations made by the employees five weeks previously.

15 59. I then applied the range of reasonable responses test to the decision to dismiss. I was satisfied that there was a reasonable investigation. The claimant knew that Mrs Cassidy thought he was stealing. He admitted that the products were in his van. The claimant, albeit reluctantly, accepted that employers considered theft to be gross misconduct which could lead to dismissal.

20 60. I did not consider that Mrs Cassidy's decision to dismiss was pre-determined. The claimant was well regarded by the respondent. There was no animosity between the claimant and his colleagues. The claimant was suspended, and Mrs Cassidy discussed the situation with Mr Cassidy before dismissing the claimant.

25 61. The claimant did not expressly say in the boardroom meeting that he admitted to stealing. The respondent's witnesses accepted that, but he was aware of the allegation and his comments implied that he had no explanation for the

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products being in his van. This was compounded by his colleague's comments.

62. At the appeal hearing he was given an opportunity to explain why the products were in his van. I was satisfied that Mrs Cassidy considered the points raised by the claimant at the appeal hearing. She was unconvinced by the explanation.

63. My impression was that the claimant's focus was on the respondent having no proof of his guilt and the subsequent absence of process. He lacked awareness of how leaving the premises with the products in the back of his van looked to the respondent and other employees. He showed no insight of the impact his actions had on others, especially those working in the recycling area. The claimant displayed no remorse about what had happened.

64. I concluded that the respondent's decision to dismiss the claimant fell within the band of reasonable responses which a reasonable employer might have adopted.

65. I concluded that the dismissal was fair, and having reached this conclusion I did not consider it necessary to go onto consider remedy. The unfair dismissal claim is dismissed.

66. As I have not found in favour of the claimant, I therefore have no duty to make an award for failure under section 38 of the Employment Act 2002. In any event I found that the respondent had provided the claimant with a written statement of employment particulars in October 2021.

25 **S MacLean**  
**Employment Judge**

**9 July 2024**  
**Date of Judgment**

30 **Date sent to parties**

**9 July 2024**