Case Number: 6018359/2024

EMPLOYMENT TRIBUNALS

Claimant: **Daisy Moon Taylor Wells**

Respondent: **Sorrelle UK Ltd**

Heard at: **Leeds Employment Tribunal** **On: 14th April 2025**

Before: **Employment Judge Lucy Bridge (sitting alone)**

Representation
Claimant: None
Respondent: Mr Cowley Solicitor

JUDGMENT

1. The claim for breach of contract is well founded and succeeds.
2. The claim for unpaid holiday pay is dismissed upon withdrawal.
3. The claim for unfair dismissal is dismissed.
4. The Respondent is ordered to pay to the claimant the sum of £457.60 (gross) being damages for the breach of contract

REASONS

Background

1. On 12th November 2024 the Claimant filed an ET1 with the Tribunal making claims of breach of contract, unpaid holiday pay and unfair dismissal. Early conciliation took place between 27th September 2024 and 23rd October 2024.

2. On 20th February 2025 the case was listed for a final hearing on 14th April 2025. Orders were attached to the notice of hearing for the Claimant to submit copies of all supporting documents and evidence within four weeks and the Respondent to do the same within six weeks.

3. On 19th March the respondent submitted an ET3 expressing their intent to

defend the claims.

4. The Claimant brings a claim of unfair dismissal. It is not in dispute that she was an employee of the respondent from 5th December 2023 until 17th July 2024. To bring a claim for unfair dismissal, the Claimant must have a minimum of two years' service. The Claimant has not asserted that her dismissal is for one of the reasons for which two years' service is not required. The claim for unfair dismissal is therefore dismissed.

5. The Claimant also brought a claim for unpaid holiday pay. During today's hearing the parties told me that the issue of holiday pay has been resolved between them. The claimant withdrew her claim for holiday pay, and it is dismissed.

The Issues

6. The issues that fell to be determined during today's hearing were agreed at the start of the hearing as being the following:
    a. Did the Respondent breach the employment contract with the Claimant by dismissing her without notice?
    b. Does the issuing of a refund outside of the 14-day limit specified in company policy amount to a repudiatory breach entitling the respondent to summarily dismiss the claimant?
    c. If so, what is the appropriate remedy for the breach ?

The Hearing

7. There was an agreed bundle of documents running to 53 pages.

8. The Claimant gave evidence under oath.

9. Miss Cox gave evidence under oath on behalf of the Respondent

10. Both parties made final submissions which have been considered when making the decision.

Findings of Fact

11. I have made the following findings of fact based upon what I believe is more likely than not to have happened and applying the evidential test of the balance of probabilities. I have considered all of the evidence but have only referred within these findings of fact to those matters which are relevant to the determination of the list of issues.

12. The Claimant was employed by the respondent from 5th December 2023 as a

fashion supervisor working 40 hours a week. Her pay was £457.60 per week gross and £382 net. On 17th July 2023 she was dismissed without notice.

13. On 14th May 2024 the Claimant issued a refund to a customer for £400 worth of goods. The Respondent has a policy that goods will only be refunded if they are returned by the customer within fourteen days of the date of purchase.

14. The goods were received back by the company in good resaleable condition three days outside of the fourteen day returns window.

15. On the 17th of July 2024 the Claimant was dismissed from the Respondent company by email.

16. The email stated the following:

> "*It has been brought to my attention that you have been refunding customers when they are over the 14 day returns policy, we have returns policy for a reason and this is to be stuck to. On one occasion you offered a refund when she was one day over, and it was a big order but when looking at this she was actually 17 Days Inn returning her parcel and it was £400 order and it's not your decision to make. We have a returns policy for a reason. For this reason, we will be ending your contract."*

17. No other conduct or performance issues were raised in this email. The Respondent did not give the Claimant any period of notice of her dismissal or pay her in lieu of notice. No disciplinary procedure was followed prior to the email being sent.

18. As a result of this email the Claimant sent a WhatsApp message to the Respondent questioning the fairness of the dismissal and asking to speak with the Respondent. The response was "unfortunately, as you are still in your probation, we're ending this with immediate effect, this is not unfair dismissal and do not need a verbal or written warning within your probation."

19. During this message exchange, the Claimant requested a copy of her contract.

20. The Respondent replied, "I'm out of office I'll send it you when I'm back in".

21. On an unknown date (but before the 20th of September 2024) the Claimant wrote to the Respondent raising a formal grievance. The letter stated the following: -

> "*I am writing to raise a formal grievance for the following reasons. Number one I believe I was unfairly instantly dismissed. I was accused of an action that at worst was an oversight and could have been committed by multiple people and in any case does not constitute gross misconduct. There was no fair procedure followed or investigation or discussion, despite me saying I did not do as accused and asking for a discussion regarding this which was instantly refused. No notice was given, consequently no final weeks' pay. Despite having been asked and being informed that a contract with to be given to me over two months ago, I have not received one since then or anytime during my employment with Sorelle. I therefore ask that fair procedure and an investigation into this matter be undertaken and at the very least the weeks' pay that is owed to me is issued. Being instantly unfairly dismissed has not only caused me significant financial hardship but considerable stress with potential*

to harm future job prospects."

22. On the 20th of September 2024 the Respondent replied to this letter and said the following: -

> "*a copy of your contract was given to you in person while you worked at Sorelle UK.*
> *No mention of "gross misconduct" was given, you were instantly dismissed due to you breaching company policy.*
> *We investigated internally and confirm from our findings it was you, so no discussion is needed.*
> *You and holly are the only customer service staff, holly signed her name at the bottom of all her emails, it was sent from a laptop and confirmed on CCTV you was like your laptop at the time it was done, also after speaking with holly and you confirmed it was also you feel bad for customers outside of the refund policy. Also, when I asked who sent the e-mail, you did not reply and say it wasn't you either, so I investigated this with CCTV and other staff members and shopify logs to confirm. This is our returns policy, and all staff are well aware and do not have any authority to override and it's not for you to "feel bad" and refund customers as this is a breach of company policy and contracts and effects Sorelle UK. An internal investigation is being made for every e-mail centre refund given."*

23. On the 20th of September 2024 the Claimant wrote again to the Respondent asking for a copy of her contract.

24. On the 26th of September 2024 a further e-mail was sent by the Claimant to the Respondent which said as follows: -

> *"Further to my grievance letter sent on the 18th of September I have had no response to the issue of the weeks' pay for the notice I'm entitled to, and I did not receive. Moreover, I maintain I have not seen a contract of employment and await a copy of the contract you insist was given to me."*

25. This e-mail also mentions holiday pay which is now resolved.

26. On the 27th of September 2024 an e-mail was sent by the Respondent to the Claimant which again said a hard copy of the contract was given to in person but attaching a copy of the contract.

27. I find that this was the first time the Claimant saw a copy of this contract.

28. The contract was dated 5th December 2023 signed by Miss Cox and with Miss Taylor-Wells name printed on the bottom. Her job title was specified as ladies fashion supervisor.

29. The contract was not signed by the Claimant.

30. The contract specifies a probationary period of 1 month trial plus 6 months probation during which employment can be terminated immediately. The Respondent conceded during the hearing that this does not override legislative notice periods under the Employment Rights Act 1986 though at the time of the dismissal she believed that it did.

31. Clause thirteen of the contract states "*The employer can terminate the employee with immediate effect without notice if the employee is found to be breaking terms within this agreement, breaking company policies, defaming the company or stealing under further action from the employer may be taken against the employee to recover costs and losses*."

32. On the 1st of October 2024 Miss Cox emailed the Claimant advising that she had queried with payroll regarding holiday hours as payroll works them out and sent over a copy of her contract of employment.

33. On the 23rd of October 2024 Miss Cox emailed the Claimant asking for a meeting to discuss her dismissal. This followed contact from ACAS.

34. The Claimant did not respond to this e-mail.

35. On the 30th of December 2024 the Respondent sent £500 via transfer to the Claimant's bank account.

36. On the 2nd of January 2025 the Claimant emailed the Respondent and said, *"can you please confirm why I have been sent £500?"*

37. The Respondent replied to this e-mail stating *"payroll have worked out the end of year account, so it'll be from that."*

38. I find this payment was sent as accounts considered it owed to the Claimant for reasons unknown and not evidenced.

39. At no stage prior to the claim being made against it did the Respondent indicate to the Claimant that it considered her behaviour to be gross misconduct, as Illustrated in the e-mail of the 20th of September 2024.

40. No disciplinary procedure was followed because the Respondent believed that it was not necessary. The Claimant was never given a chance prior to her dismissal to give her version of events. The only time she was invited to speak to the company about her dismissal with some months later following contact with ACAS.

41. I accept the Claimant's evidence that she did not consider issuing a refund to be completely beyond her job description and that she had seen other members of staff issuing refunds.

Law

42. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 gives the Employment Tribunal jurisdiction to deal with this claim.

43. Section 3 states: -

Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other

than a claim for damages, or for a sum due, in respect of personal injuries) if—

(a)the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;

(b)the claim is not one to which article 5 applies; and

(c)the claim arises or is outstanding on the termination of the employee's employment.

44. Section 86 of the Employment Rights Act 1996 states that:

(1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—

(a)is not less than one week's notice if his period of continuous employment is less than two years,

(b)is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and

(c)is not less than twelve weeks' notice if his period of continuous employment is twelve years or more.

(2) The notice required to be given by an employee who has been continuously employed for one month or more to terminate his contract of employment is not less than one week.

(3) Any provision for shorter notice in any contract of employment with a person who has been continuously employed for one month or more has effect subject to subsections (1) and (2); but this section does not prevent either party from waiving his right to notice on any occasion or from accepting a payment in lieu of notice.

(4) Any contract of employment of a person who has been continuously employed for three months or more which is a contract for a term certain of one month or less shall have effect as if it were for an indefinite period; and, accordingly, subsections (1) and (2) apply to the contract.

(6) This section does not affect any right of either party to a contract of employment to treat the contract as terminable without notice by reason of the conduct of the other party.

45. *Briscoe v Lubrizol Ltd 2002 IRLR 607, CA* states that the Tribunal are entitled

to find there was a repudiatory breach of contract when the employee behaves in a way which "undermines the trust and confidence inherent in his contract of employment"." In this case the court found that complete failure to cooperate with an employer's reasonable requests while off work due to ill health were capable of being characterised as gross misconduct and being properly treated as repudiatory.

46. *Neary and Anor v Dean of Westminster 1999 IRLR 288* states that summary dismissal would be justified if the employee behaved in a manner so inconsistent with the employment as to undermine the fundamental duty of trust and confidence. In this case the Tribunal found this to be the situation where the Claimant had derived secret profits in the form of fixing fees and surpluses on special events.

47. In *Leach v Office of Communications 2012 ICR 1269, CA* the Court of Appeal upheld an earlier decision in *A v B 2010 ICR 849, EAT* in fining that an abuse of trust and confidence can be sufficiently serious to justify summary dismissal. In this case, the Respondent received information from the police that the Claimant was a risk to children.

Conclusions

48. The Claimant, having worked at the Respondent company for seven months is entitled to one week's notice in the event of dismissal under section 86 of the Employment Rights Act 1996. Failure to provide notice is a breach of contract by the Respondent unless it can establish that the Claimant had committed a repudiatory breach of contract.

49. During the hearing it was conceded by the Respondent that it was irrelevant whether the Claimant was in her probationary period or not because either way her rights under the Employment Rights Act 1996 take precedence over the provisions of her contract of employment. I agree with the Respondent's concession although note that at the time of the decision to dismiss the Respondent was not aware this was the case.

50. The Respondent relies on Clause 13 of the contract which states that an employee's employment may be terminated without notice in the event of a breach of company policy.

51. I have found as a fact that the Claimant had never seen a copy of her contract of employment until it was sent via email on 27th September 2024.

52. For this reason, she was not aware of and had not agreed to any of the terms in the contract.

53. I have come to this conclusion for a number of reasons. Firstly, on examination of the contract, I note that there is a signature from the manager, Miss Cox at the foot of the contract. By contrast the Claimant's name is printed and there is no signature. The Claimant stated in evidence that the printed version of her name is not her signature, and I accept this is the case.

54. The Claimant's submission that she never received a copy of the contract is supported by her reaction in the immediate aftermath of her dismissal. She was

clearly shocked at what had happened and asked to see a copy of her contract on several occasions.

55. When asked about this in evidence during the hearing, Miss Cox said that she told the Claimant immediately that she had a hard copy of the contract from when she was first employed. This is however inconsistent with the documentary evidence. The email messages show that she advised the Claimant that she would send a copy to her as soon as she returned to the office. However, she did not do this, and no copy of the contract materialised until 27th September 2024.

56. The Claimant's immediate reaction to receiving the contract was that she had never seen it. On balance I consider it more probable than not that no contract was ever given to the Claimant, leaving her completely unaware of the terms.

57. For this reason, the Respondent cannot rely on Clause 13 of the contract to justify summary dismissal because the Claimant had not agreed to the term, nor had she been made aware of the provision.

58. Section 86 of the Employment Rights Act 1996 states that the notice required to be given by an employer to an employee who has been continuously employed for one month or more to terminate his contract of employment is not less than one week.

59. This section does not affect any right of either party to a contract of employment to treat the contract as terminable without notice by reason of the conduct of the other party.

60. I therefore must consider whether on the facts of the case, I consider the conduct of the Claimant to amount to gross misconduct or other conduct which gave the Respondent the right to dismiss the claimant without notice.

61. I have reminded myself of the relevant case law in determining whether the acts of the claimant amount to gross misconduct.

62. In *Briscoe v Lubrizol Ltd 2002 IRLR 607, CA*, the Court of Appeal approved the test set out in *Neary and Anor v Dean of Westminster 1999 IRLR 288*, Special Commissioner (Westminster Abbey), where Lord Jauncey asserted that the conduct "*must so undermine the trust and confidence which is inherent in the particular contract of employment that the [employer] should no longer be required to retain the [employee]"*

63. In *Leach v Office of Communications 2012 ICR 1269, CA*, Lord Justice Mummery remarked: *'The mutual duty of trust and confidence, as developed in the case law of recent years, is an obligation at the heart of the employment relationship. I would not wish to say anything to diminish its significance. It should, however, be said that it is not a convenient label to stick on any situation, in which the employer feels let down by an employee or which the employer can use as a valid reason for dismissal whenever a conduct reason is not available or appropriate. The circumstances of dismissal differ from case to case. To decide the reason for dismissal and whether it is substantial and*

sufficient to justify dismissal the employment tribunal must examine all the relevant circumstances.'

64. The ACAS Code of Practice on Disciplinary and Grievance Procedures (2015) gives examples of behaviour which may be considered gross misconduct at para 24, and includes theft, physical violence, gross negligence or serious insubordination.

65. Both the case law and ACAS guidance lead me to conclude that behaviour must be substantial and sufficient to justify the dismissal and to reach this conclusion I have to examine all of the circumstances of the case.

66. The Respondent made submissions during the hearing that it did not consider summary dismissal to be a breach of contract as the actions of the Claimant amounted to gross misconduct. They say that issuing a refund outside of the fourteen day window breaches company policy and the contract states that in the event of a breach of company policy, the Respondent can terminate the contract of employment without notice.

67. I do not accept this submission. I have already concluded that because the Claimant had not seen a copy of the contract until after dismissal, she was unaware of the terms and therefore not bound by them.

68. Even if this were not the case and she was aware of the terms of the contract, the relevant clause merely refers to "breach of company policy". It does not clearly specify which company policy this is. The Respondent gave evidence that this is specified in any training and there are posters about the policy on the wall.

69. Though I accept that employees were made aware of the policy, I do not accept that the consequences of breaching it were ever made clear to them. It is clear from the shock expressed by the Claimant in relation to her dismissal that she was not aware that she could be dismissed for refunding a customer outside of the 14 day returns period.

70. It was the evidence of the Respondent that since the Claimant's dismissal they have discovered that the Claimant had made other refunds outside of the 14-day window. I was only presented with evidence of this on one occasion, namely in July 2024 where an order was cancelled for a customer following her telling the company of the death of her sister. During the hearing the Claimant denied that it was her who issued this refund. The Respondent's evidence was that this was not the basis of her dismissal, but something found out afterwards.

71. In stating that it was not her who made the refund, the Claimant said that other staff often logged onto her computer. Miss Cox said this was further behaviour forbidden by the company. She also said that there was CCTV evidence of the Claimant being at her desk at the time of the refund though none of this evidence was presented during the hearing.

72. I have considered whether the additional refund and allowing other staff to log into her computer could constitute a repudiatory breach of contract or another good reason to summarily dismiss and have concluded that it is not.

73. The Claimant was employed in a supervisory capacity dealing with customers. I accept her evidence that she believed she could use her discretion in refunding customers to provide a good customer service and that she had seen others in the company do this before including the Respondent.

74. I have considered the consequences of the claimant's conduct. The primary refund was only three days outside the returns window. The goods were returned in resale condition.

75. I have only been presented with evidence of one other refund by the Claimant and this appears to have been issued in exceptional circumstances where the customer suffered a bereavement.

76. Many employers may consider use of this discretion to keep good customer relations commendable. This is not an action which would generally be regarded as undermining the Respondent's trust and confidence in the Claimant to the extent they should not be expected to employ her.

77. Indeed, this was their own view expressed during an email confirming that "nobody was mentioning gross misconduct".

78. I accept the Claimant's evidence that her role allowed an element of discretion. There is no evidence that the claimant acted dishonestly. This is not a situation where the Claimant issued refunds to make a gain for herself or gave favourable treatment to friends or family. I consider she was making attempts to provide good customer service.

79. My conclusion regarding this is supported by the fact that only one refund was noticed quickly, leading me to conclude that refunds were either more common than the Respondent was prepared to admit or that the refunds were only minor infringements of the 14-day policy. It is also of note that despite saying in evidence, there were many more refunds, there was only evidence of one additional refund presented during the hearing.

80. The Respondent in its response to the claim submitted that the actions of the Claimant in their view amounted to theft. This is the first time it had ever claimed the Claimant's actions were so serious.

81. The Claimant's actions most certainly would not amount to theft. I do not consider at any point the Claimant acted dishonestly.

82. In relation to the sharing of log in details, this is something referred to only during the hearing. I accept the Claimant's evidence about this as a common event between a small and friendly team. This is supported by her email where she readily admitted it to the Respondent. If this was something thought badly of by the company, it is likely she would not have admitted to this in an attempt to reason with her employer.

83. I am not satisfied on the balance of probabilities that the Claimant committed conduct which entitled the Respondent to treat the contract as terminable without notice. The Claimant was therefore entitled to a notice period of one week.

84. The Respondent dismissed the Claimant without notice and without payment in lieu of notice, in breach of section 86 of the Employment Rights Act 1996 and in breach of contract.

85. It is my conclusion the Claimant was dismissed summarily due to a misunderstanding on the part of the Respondent of the Claimant's rights and the law. The Respondent believed that it could terminate employment without any due process or consequence because the Claimant was in her probationary period, and did not take account of section 86 of the Employment Rights Act 1996.

Remedy

86. The Claimant has requested one week's notice pay. This is £457.60 gross.

87. In considering remedy for this case, I am asked by the Respondent to reduce damages by an overpayment made for the resolved issue of unpaid holiday pay.

88. In her claim form the Claimant said she was owed 4 days holiday pay and that amounted to £366.08. The Respondent submits that the £500 paid to the Claimant on 30th December 2024 was for unpaid holiday pay. For this reason, the Respondent asks that any monies ordered to the Claimant be reduced by £133.92 as this represents the overpayment.

89. The Respondent has not persuaded me that the £500 paid to the Claimant was in respect of notice pay or represented any sort of overpayment because Miss Cox was unable to explain what the payment was for.

90. Therefore, the Claimant remains entitled to £457.60 damages in respect of notice pay.

Approved by:

Employment Judge Bridge

12 May 2025

JUDGMENT SENT TO THE PARTIES ON

20 May 2025

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/