# EMPLOYMENT TRIBUNALS

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| **Claimant:** | **Mr C Hemingway** |
| **Respondent:** | **Cash Converters Yorkshire Limited** |
| **On:** | **3 October 2025** |
| **Before:** | **Employment Judge McAvoy Newns** |
| **Heard at:** | **Leeds Employment Tribunal (via CVP)** |

**Appearances:**

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| **For the Claimant:** | **In person** |
| **For the Respondent:** | **Mr Menon, Counsel** |

## RESERVED JUDGMENT

1. The Claimant was not unfairly dismissed.

2. His unfair dismissal claim is not well founded and is dismissed.

## WRITTEN REASONS

Form of hearing

1. This was a remote hearing which was not objected to by the parties.

Issues in the claim

2. The Claimant's claim was limited to a claim for unfair dismissal. The Claimant confirmed at the outset that he was not pursuing a claim for wrongful dismissal/breach of contract regarding his notice pay.

3. It was agreed that the issues were as follows:

a. It was accepted between the parties that the Claimant sold a personal item (namely an Airbrush) to the store in which he worked without obtaining authorisation from the Regional Manager, contrary to the "Employee Usage" policy, causing financial loss to the Respondent. It was accepted that this was the reason for the Claimant's dismissal.

b. Did the Respondent act in all the circumstances reasonably in treating its reason as sufficient reason to dismiss the Claimant? In this regard:

   i. the Claimant contended that he had been treated inconsistently to several allegedly comparable employees;

   ii. the Claimant asserted he was not provided with evidence in advance of the hearing, key parts of statements were omitted and Tony Ward displayed bias, rendering the process unfair; and

   iii. the Claimant said the dismissal decision was too harsh, particularly given he was left in post for 48 hours after the sale was discovered, and did not take into consideration his length of service or his father's then recent stroke.

Preliminary issue – specific disclosure

4. Prior to today's hearing, the Claimant had made several specific disclosure requests largely relating to documents concerning the alleged comparators that he sought to rely upon. The Respondent's representative did not agree to provide them until their counsel became involved, soon before the hearing. This resulted in these documents being provided to the Claimant very late. The Claimant had no objection to me considering them, and did not wish for the hearing to be postponed, but wanted me to note the Respondent's failures in this regard. He told me that he had had sufficient time to consider these documents as part of his preparations and would not be prejudiced if I decided to continue with the hearing. The hearing, therefore, proceeded.

Application for anonymisation

5. On 6 October 2025, therefore after the hearing had taken place, the Respondent applied for an anonymity order pursuant to Rule 49(3)(b) of the Tribunal's Rules of Procedure 2024. The request was for the names of the alleged comparators to be abbreviated. Rule 49 states that the Tribunal may, on its own initiative, make such an order if it is necessary in the interests of justice or in order to protect the Convention rights of any person. Prior to receiving the Respondent's application, I had already decided to make such an order which is why I have not sought comments from the Claimant on this application before considering it. Plainly it would be in the interests of justice and necessary to protect the Article 8 ECHR rights of these individuals. They had not participated in this hearing and may not have even been aware that their names and personal information about them was being discussed during these proceedings. It would therefore be grossly contrary to the interests of justice and their Article 8 ECHR

rights for them to be identifiable, enabling their alleged misconduct, and decisions about their employment, to be reported on in the media.

Evidence

6. The Claimant served a witness statement and was cross examined on that statement. For the Respondent, witness statements for Paul Stead (Regional Manager and Dismissing Officer), Tony Ward (Head of Operations and Appeal Officer) and Lynne McGarvey (HR Manager (who had two statements, the latter largely to address the comparators)) were served. Each were cross examined. No other witnesses gave evidence.

7. I also had sight of a bundle of documents comprising 174 pages (excluding the witness statements) and a handful of documents provided at the outset of the hearing.

Findings of fact

8. Having considered the evidence, both oral and documentary, I make the following findings of fact on the balance of probabilities.

*Background*

9. The Claimant commenced employment with the Respondent in January 2015. He was initially employed as a General Assistant. He was promoted to Assistant Store Manager in December 2016. He was later promoted to Store Manager and worked at the Respondent's Halifax store until his dismissal on 10 April 2025.

10. The Respondent's disciplinary procedure states that any breach of the Respondent's rules regarding "Employee Usage" is an offence of gross misconduct and "that an employee who commits them will normally be summarily dismissed". The Claimant was aware of this.

11. The Respondent's rules regarding "Employee Usage" were previously contained in a formal policy. The Claimant was aware of this policy. In relation to "Staff Buys", which is the part of the policy relevant to this case, the policy previously stated (with my emphasis added):

    "**Staff Buys can only be authorised by a Regional Manager.** If an employee wishes to sell an item(s) of stock to us they must first make the request with their Line Manager who will then contact a Regional manager on their behalf. The details of the transaction will be agreed and authorisation given. **It will be deemed as gross misconduct and may result in dismissal if any employee including members of management conduct Staff Buys Transactions or Buyback Transactions without the consent of a Regional Manager".**

12. This policy was changed on 22 October 2024 and this change was communicated to the Claimant on 30 October 2024. He had received this email.

However, a new formal policy was not created which looked similar to the above mentioned policy. Instead, an email was sent by a director stating:

"COMPANY BUYING FROM STAFF: Store manager has free reign on buying from staff, plus writing buybacks and pawns for staff. This right does NOT pass on the ASM when the SM is off. SM themselves continue to need RM approval".

13. The reason for this change was to give Store Managers more autonomy to approve their own store's sales. This freed up time spent by Regional Managers on providing such approvals. However, Store Managers still needed to obtain approval in order to minimise the risk of managers abusing their positions of power. All layers of management required their immediate manager's approval to undertake such transactions. This is particularly important given that the Respondent is an FCA regulated business that predominantly deals in cash.

14. During the Respondent's cross examination of the Claimant, it was put to the Claimant that it would be a "plainly ridiculous regime, given the business" for an employee to be able to sell any item of property to the Respondent for any price they wanted without obtaining any approvals. The Claimant replied that this was "possibly" correct.

*Shop floor visit*

15. On 8 April 2025, Mr Stead emailed Chris Lister (Investigating Officer) explaining that, on 6 April 2025, he completed a floor walk with the Assistant Manager of the Claimant's store and found an overpriced item.

16. These visits are undertaken, typically weekly, to ensure stock is being replenished and stock pricing is checked, to ensure the Respondent is operating competitively and to ensure compliance with company policies.

17. This item was an Airbrush and was being priced at £69.99. Mr Stead saw this a few weeks ago and asked the Assistant Manager where it had come from but he didn't know. Mr Stead thought nothing further of it but was concerned to see it on the shop floor again on 6 April 2025. The Airbrush was brand new, unused and in its box.

*Investigation*

18. Upon investigation, which was completed by Mr Lister, it was discovered that the Claimant had sold the Respondent the Airbrush on 26 March 2025 for £40 but did not obtain authorisation from his Regional Manager. The email recorded that, when the Claimant was asked why he did not obtain authorisation, he said that he was not aware of the requirement to do so. The Airbrush was subsequently sold for £19.99, leading to a financial loss of £20.01 for the Respondent.

19. Mr Lister asked the Claimant how he had priced the item. There is a dispute on the facts regarding this. The notes of the investigation record that the Claimant said he would normally price items by reference to a number of sources, e.g.

Google and eBay but on this occasion he had priced it based on his original purchase receipt. However, in evidence, the Claimant swore that he had also considered comparable prices online. I was referred to some documents showing Airbrush's for sale on eBay and other sites. The prices ranged from around £47 to £52. However all of these adverts post-date the Claimant's dismissal. They don't evidence that the Claimant undertook these searches at the time of selling the item to the Respondent. The notes mentioned in this paragraph are also contemporaneous. Therefore, on balance, the evidence of the Respondent is preferred.

20. In addition to the item which is the subject of this claim, the Claimant had sold items to the Respondent approximately ten times in the past and on all occasions he had obtained Regional Manager approval. He only sold one item to the Respondent after the October 2024 change and this was the Airbrush that is relevant to this case.

21. Mr Lister completed an investigation report on 8 April 2025 and discussed this with the Claimant on this date.

*Disciplinary*

22. Following the above, and on the same date, the Claimant was invited to a disciplinary hearing arranged for 9 April 2025.

23. The Claimant was informed that the allegations being considered against him were that he had breached the company staff purchasing / selling transaction policy and that there was financial loss to the business. He was informed that these allegations could constitute gross misconduct and that the outcome could be his summary dismissal. He was informed about his right to be accompanied. Evidence that was to be considered at the hearing was enclosed. He was told he would be able to present his own evidence at the hearing.

24. The Claimant had consented to the hearing taking place on 9 April 2025 as he was due to go on holiday the following week. The Respondent had suggested that the hearing take place on his return from holiday but the Claimant declined.

25. The hearing took place on 9 April 2025. It was chaired by Mr Stead.

26. At the outset of the hearing, it was acknowledged that 48 hours' notice had not been provided. The Claimant again confirmed that he had agreed to waive this and wished to continue.

27. The Claimant acknowledged that he had read the evidence provided. He said that he genuinely believed the Airbrush was worth £70. He said he had missed the section of the email dated 22 October 2024 which stated that Store Managers needed to obtain Regional Manager approval. Mr Stead found this concerning and did not consider the contents of the email explaining this change to be difficult to understand, particularly bearing in mind the Claimant's long service with the Respondent and his senior role.

28. Mr Stead informed the Claimant that if the policy was read how the Claimant had interpreted it, this would give Store Managers free reign. He said the policy had always required Regional Manager approval before Store Managers sold items to the Respondent. He said, "If you had rang me I would have said no it's not worth it, so go and research again". The Claimant said that it was a stupid mistake and he had no intention of personal gain.

29. Mr Stead adjourned the disciplinary hearing for nine minutes. On his return, he informed the Claimant that the policy had been broken and his trust in the Claimant was gone. He had found that, in the absence of a reasonable explanation for the Claimant's conduct, he must have been acted dishonestly. He had no confidence that the Claimant would not commit further breaches going forward. Therefore, he would be terminating with immediate effect.

30. The Respondent takes a zero tolerance approach to breaches of these rules. This is to prevent staff from being able to freely sell their own personal items to the Respondent without authorisation. If this happened the Respondent could be exposed to a high volume of overpriced and undesirable stock, leading to significant financial loss.

31. Mr Stead swore that he had considered the Claimant's length of service. However he saw this as an aggravating rather than mitigating factor, given that an employee of the Claimant's seniority with such a long period of service should not have committed such a "cardinal error".

32. After Mr Stead confirmed this decision, the Claimant said, "How can this be fair other people keep jobs". The Claimant did not elaborate on this further and Mr Stead did not ask him to do so. The Claimant laboured on this significantly in his cross examination of Mr Stead. However, he did not suggest that he said this to Mr Stead earlier in the disciplinary meeting, before the decision had been communicated. Given that he did not raise this to Mr Stead until after Mr Stead had reached and communicated his decision to dismiss, albeit only orally at that point, no criticism is made of Mr Stead for not engaging in this point further.

33. On 10 April 2025, Mr Stead confirmed the Claimant's dismissal in writing and offered him a right of appeal. The reasons for dismissal were explained as:

    *"Breach of company staff purchasing/selling transaction policy. Upheld all staff purchases or selling need authorisation via the Regional/Area Manager, this policy has been in place for several years, and reminders sent out numerous times.*

    *Financial loss to the business, upheld paid yourself more than the item was worth or would sell for, causing financial loss to the store and business".*

34. The notes of the disciplinary hearing were enclosed alongside this letter.

*Appeal*

35. On 14 April 2025, the Claimant requested an appeal against his dismissal. His grounds of appeal were:

    a. his actions stemmed from a misinterpretation of an updated company policy, not a deliberate or reckless breach of company rules. He purchased the item in his own name and other staff members witnessed the transaction.

    b. The revised policy was circulated via a general email in October and was not accompanied by any formal rollout, briefing, or requirement for signed acknowledgment. The absence of follow-up or training meant there was little opportunity to ensure full and accurate understanding of the changes.

    c. the policy made use of abbreviations to refer to managerial roles without including any key or explanation. This made it difficult to clearly identify which positions held specific authority, contributing further to the confusion and his misunderstanding of what was required.

    d. the updated policy was more lenient than its predecessor in terms of staff transactions. In this regard, the Store Manager now had the authority to complete buybacks involving staff members without any authorisation required. He said: “while it was mentioned that Regional Manager approval was required, this condition appeared at the end of the section outlining the Store Manager's authority, and as such, it was not clearly emphasised. As a result, this detail got lost in translation, and I misinterpreted it, not realising that the Regional Manager’s approval was still necessary for these transactions”.

    e. The financial loss to the business arose because the Respondent did not give the Airbrush time to be sold at the value that the Claimant expected it to be sold at.

    f. He had been employed by the Respondent for ten years during which he had consistently followed policies. He did not believe this had been properly considered.

    g. He considered dismissal for gross misconduct to be too harsh, considering that he believed gross misconduct ordinarily referred to very serious actions, such as fraud and physical violence. He considered a lesser sanction to be more appropriate.

    h. He felt he had been unfairly targeted during the process, given that the Airbrush had already been on the shop floor for several weeks without any issues being raised and noting that new management had been put in place.

36. The Respondent acknowledged this request the following day and, on 19 April 2025, formally invited the Claimant to an appeal meeting arranged for 22 April

2025 to be chaired by Mr Ward. The Claimant was reminded about his right to be accompanied.

37. The appeal hearing took place on 22 April 2025. It lasted 45 minutes.

38. At the outset the Claimant said that he had been told that Mr Ward had said that he did not rate the Claimant as a Store Manager. Mr Ward denied this and assured the Claimant that he would consider the appeal professionally. Mr Ward swore that he never said he did not rate the Claimant as a manager, that he had a very good professional working relationship with the Claimant and that he had promoted the Claimant to his first managerial post in Wakefield.

39. No evidence was adduced from the person who allegedly heard Mr Ward say this about the Claimant. The Claimant also agreed for the appeal hearing to take place before Mr Ward, notwithstanding these alleged concerns. The Claimant accepted that he and Mr Ward had had a good working relationship.

40. Mr Ward says he asked the Claimant whether he would have phoned him for approval before selling the Airbrush had he been the Regional Manager at the time. He says the Claimant said that he would. This is recorded in the notes of the hearing. However, the Claimant strongly disputes this and, on 30 April 2025, after receiving the notes of the appeal hearing, the Claimant emailed Ms McGarvey to correct this point. The Claimant subsequently wrote: “I was not aware that I needed to contact him”. Ms McGarvey replied on 30 April 2025 and said that Mr Ward disagreed. As this formed part of Mr Ward’s decision making (considered later), it is important that I resolve this dispute. I do so in favour of the Claimant because:

    a. The Claimant was insistent throughout the internal proceedings and this hearing that he thought he did not need manager approval. Although there are inconsistencies in the Claimant’s position, it would be very peculiar for the Claimant to have made inconsistent remark as significant as this at the appeal hearing;

    b. Immediately upon the Claimant reviewing the notes he asked for this to be corrected;

    c. Considering other findings I have made, the notes of the appeal hearing do not appear to be particularly reliable; and

    d. Ms McGarvey did not give evidence on this point despite being in the appeal hearing and giving live evidence at this hearing.

41. The Claimant said that others don’t follow policy and weren’t treated as harshly as he was. He gave an example regarding an employee involved in the counting of jewellery. He also referred to a former colleague, DV. Mr Ward did not enquire further regarding this. He did not offer to investigate either cases further before reaching his decision.

42. When emailing Ms McGarvey and asking for the notes of the appeal meeting to be corrected, the Claimant also stated: “You have also omitted the part where I was expressing my concerns regarding the process. Tony interrupted me during this section, stating that he was getting “annoyed”. I also attempted to reel off examples of other members of staff who had breached far more serious policies, but I was cut off by Tony and not given the opportunity to express these concerns further. This was a significant moment in the conversation, as I had several additional concerns that I felt could not be addressed at the time due to the interruption”.

43. This was not considered by Mr Ward at the time. He saw this for the first time when this email was brought to his attention during cross examination. This is because Ms McGarvey did not bring it to his attention at the time. When discussing the Claimant’s request for the notes to be amended, Ms McGarvey only asked Mr Ward about the Claimant’s contention that he hadn’t said he would have obtained Mr Ward’s approval had he been Regional Manager at the time.

44. The evidence about whether Mr Ward had said he was getting annoyed during the hearing was inconclusive. The Claimant was adamant that he said he was. Again, he had asked for the notes to be updated to reflect this soon after receiving them. Mr Ward had no recollection of saying this. However, given that he was frustrated with the Claimant’s representations and concluded that these lacked credibility, it is perhaps understandable why he may have got annoyed. He also gave relatively short shrift to the Claimant’s representations concerning inconsistency which is consistent with the Claimant’s account in the above mentioned email. On balance, it is more likely than not that he did say he was getting annoyed.

45. Although not reflected in the brief notes of the appeal hearing, Mr Ward gave a substantial amount of evidence about the Claimant’s assertions that the policy made use of abbreviations to refer to managerial roles without including any key or explanation. Specifically, the Claimant had said that the abbreviations used in the 22 October 2024 email for “AM” and “RM” were unclear. Mr Ward explained that these abbreviations were commonplace within the Respondent, especially the management team. He could not see how the Claimant, a Store Manager with 10 years’ experience, had any issues interpreting them. The Claimant also accepted that he had not sought clarity on this policy change which Mr Ward would have expected the Claimant to have done if he was genuinely unclear. Mr Ward also found the Claimant’s position on this to be contradictory, considering what was said at the disciplinary hearing. The relevant part of the email which changed the policy stated: “This right does NOT pass on the ASM when the SM is off. SM themselves continue to need RM approval”. The Claimant had said that he had “missed” the last sentence. However, had he missed the last sentence, he also could not have been confused about the use of these abbreviations.

46. The Respondent also asked the Claimant about this in cross examination. The Claimant replied, “I brought them up because it could have been misinterpreted. Email rather than official policy. Should have been written better”. This and other

points led the Respondent's counsel to put to the Claimant: "Can you see how this makes you look dishonest and shifty? You don't own it, you try and deflect and focus on other people". The Claimant replied: "Why would I risk a £40k per year job for £40. We were on the verge of trying to buy a house. I'm not that stupid".

47. At the end of the appeal hearing, Mr Ward said that he wouldn't make a decision that day.

48. On 29 April 2025, Mr Ward wrote to the Claimant to confirm the outcome of the appeal, namely that it had not been upheld.

49. Mr Ward acknowledged that changes to the "Employee Usage" policy had been made over the years but it had consistently been the case that Store Managers required Regional Manager approval before selling items to the store.

50. He referred to what he considered to be the Claimant's concession during the appeal hearing that he would have sought his approval to the purchase had he been the Claimant's Regional Manager at the time. Mr Ward considered this to contradict the Claimant's assertions that he was not aware that Regional Manager approval was needed.

51. He explained that he did not accept that the Claimant was unaware of the abbreviations or that the use of these in the policy change email would have created confusion.

52. He disputed the Claimant's assertion that there was no financial loss, given that the Respondent paid the Claimant more for the Airbrush than the Respondent was able to recover from a customer.

53. In respect of sanction, Mr Ward concluded: "A lesser role was considered however after great consideration it was my belief that the severity of the offence, typically involves actions that are intentionally wrong, and demonstrate a reckless disregard for rules and regulations that the company has set out. A lessor role does not sufficiently address these issues or restore the trust that has been broken and therefore agree that dismissal was the appropriate sanction".

54. In respect of the points that the Claimant raised during the meeting about consistently, Mr Ward stated: "In relation to the example of the employee that you gave then I cannot comment on the detail of another employee but can assure you that the company adopts the same policy for all employees".

*Allegations of inconsistent treatment*

55. Although some reference was made to them at the end of the disciplinary hearing (after the dismissal decision had been communicated) and during the appeal hearing, a significant amount of time was spent, during these

proceedings, on the Claimant's suggestion that he had been treated inconsistently compared to a number of alleged comparators.

56. Mrs McGarvey has worked for the Respondent as the HR Manager since May 2016. She swore that, from her experience of supporting disciplinary hearings, the decision to dismiss the Claimant was neither disproportionate nor inappropriate in the circumstances and was instead consistent with the Respondent's general approach towards and application of the "Employee Usage" rules.

57. In respect of the alleged comparators relied upon by the Claimant, and taking each in turn:

    a. CM – the Claimant said that CM had failed to follow the jewellery security policy, leading to lost items, but he was not dismissed. This was largely agreed by the Respondent save that there was a dispute between the parties about whether CM had acted dishonestly or not. CM had attended a disciplinary hearing to consider allegations that he had not followed company policy/process and financial loss had been suffered. During the disciplinary hearing he accepted he was at fault by not undertaking the stock counts correctly. The notes do not suggest that he sought to excuse his behaviour in any way. The Respondent decided to issue him with a final written warning. Ms McGarvey's evidence was that the failure in question had not been categorised as gross misconduct. She also said that he had been responsible for "sloppy" stock taking and it had not been concluded that he had acted dishonestly. Although Mr Ward was not involved in this case, he read the documents that I had been provided with and provided evidence about this when being cross examined by the Claimant. He said that it appeared in CM's case to be a capability rather than conduct issue. He said capability issues require additional training and support. He drew a comparison between CM's case and the Claimant's, namely that it hadn't been concluded that CM had acted dishonestly or that CM had received a financial gain. The Claimant had no direct involvement in CM's case. CM did not give evidence himself. The evidence that the Respondent was able to give was therefore much more reliable and is preferred.

    b. AS – the Claimant said AS had threatened a customer with a hammer on the shop floor. Ms McGarvey said that AS had been verbally threatened by a customer which led to AS hitting a hammer on the countertop. The Respondent had concluded that AS was acting out of self defence and was issued with a final written warning rather than be dismissed. The Claimant did not pursue his arguments regarding this comparator with any vigour during this hearing. As Ms McGarvey is likely to have been better informed about AS' case than the Claimant, her evidence in relation to this matter is likely to be more reliable and is therefore preferred.

    c. KF – the Claimant alleged KF had misused customer accounts, including dead customer accounts, to conceal poor buybacks and faulty purchases

but he was not dismissed. Ms McGarvey said that she had no involvement in the case save for preparing KF's invitation to disciplinary hearing letter. However, as part of preparing her supplemental witness statement, she had liaised with the manager responsible for KF's disciplinary who had elected not to dismiss because KF had only been a Store Manager for four months and there had been gaps in the training and support provided to him. He had also concluded that the breaches were not malicious or for personal gain. The notes of the disciplinary meeting record the Respondent concluding at the time: "You have admitted that what you did is wrong and you didn't follow my instructions. I am satisfied that you made no personal gain from these transactions however using dead customer's accounts is fraudulent. Based on this meeting I am issuing you with a conduct final written warning and due to the seriousness of our findings you are being demoted". His salary was reduced as a consequence. Considering the objective and contemporaneous evidence and noting the Claimant's comparative lack of involvement in this case to the Respondent's, the evidence of the Respondent is preferred.

d. MB – the Claimant alleged that MB had caused a shortfall of around £800 through cash handling errors. Ms McGarvey again candidly accepted that she had no involvement in the case. However, as part of preparing her supplemental witness statement she looked into it. She found that the error was looked into informally, following which it was concluded that BM was not responsible for the discrepancy. Although none of the witnesses could give reliable evidence about this matter, as with the above, Ms McGarvey is likely to have been better informed about this case than the Claimant, resulting in her evidence in relation to this matter being more reliable and is therefore preferred.

e. DV – the Claimant said that DV had stolen stock from stores, was dismissed and then re-hired. Ms McGarvey's original witness statement stated that DV was dismissed for gross misconduct for theft. However, the documents presented to me showed that DV was made redundant, rather than being dismissed for misconduct. In her supplemental witness statement, Ms McGarvey accepted this but maintained her awareness that there was a gross misconduct issue. She also said that DV was and remained a longstanding family friend of the Respondent's founders. Ms McGarvey accepted that DV was later reemployed by the Respondent however this decision was made at Board level and she was not involved in it. I have found that this was a case in which DV had originally been found to have acted dishonestly but that, due to his relationship with the Respondent's founders, they had treated him more leniently.

The Law

*Unfair dismissal*

58. The relevant parts of s.98 Employment Rights Act 1996 (**ERA**) state:

*(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*

*a. the reason (or, if more than one, the principal reason) for the dismissal…*

*b. that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

*(2)*

*(b) relates to the conduct of the employee;*

*(3) …*

*(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*

*a. depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*

*b. shall be determined in accordance with equity and the substantial merits of the case.*

59. In misconduct dismissals, there is well-established guidance for Tribunals on fairness within section 98(4) in the decisions in ***Burchell 1978 IRLR 379*** and ***Post Office v Foley 2000 IRLR 827***. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer (***Iceland Frozen Foods Limited v Jones 1982 IRLR 439, Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23, and London Ambulance Service NHS Trust v Small 2009 IRLR 563***).

60. In regard to inconsistency of treatment, in ***Hadjioannou v Coral Casinos Ltd 1981 IRLR 352*** (which was subsequently endorsed by the Court of Appeal in ***Securicor Ltd v Smith 1989 IRLR 356***) the EAT recognised the importance of consistency of treatment and held that unreasonableness based on inconsistency of treatment would only be relevant in limited circumstances:

a. where employees have been led by an employer to believe that certain conduct will not lead to dismissal;

b. where evidence of other cases being dealt with more leniently supports a complaint that the reason stated for dismissal by the employer was not the real reason; or

c. where decisions made by an employer in truly parallel circumstances indicate that it was not reasonable for the employer to dismiss.

Submissions

61. Both parties provided oral submissions. They are not set out in detail in these Reasons but both parties can be assured that I have considered all the points made and all the authorities relied upon, even where no specific reference is made to them.

Conclusions

*Reason for dismissal*

62. During this hearing, the Claimant accepted that he sold the Airbrush to his store without obtaining the appropriate authorisation from the Regional Manager. Therefore, he conceded that the Respondent had reasonable grounds for genuinely believing that he had committed the act of misconduct complained of and that a reasonable investigation, prior to forming this belief, had been undertaken. Therefore, the Respondent had a fair reason for the Claimant's dismissal: conduct.

63. The crux of the complaint is therefore around the reasonableness of the Respondent's process and decision making. This requires me to draw conclusions in respect of the following issues:

    a. Did any procedural irregularities render the process followed outside of the range of reasonable responses?

    b. Was the decision to dismiss within the range of reasonable responses?

    c. Did the Respondent act reasonably in respect to its approach to the comparator issue?

64. Taking each of these in turn:

*Procedural issues*

65. The evidence relevant to the disciplinary proceedings was provided to the Claimant in advance of the disciplinary hearing. He had read it. There was not sufficient notice for the disciplinary hearing but this was the Claimant's choice. He was asked on several occasions whether he would prefer for the hearing to take place after his holiday and he said he would not.

66. The notes of the appeal hearing were not representative of the discussions that took place. But considering the size of the Respondent's undertaking, its approach to this was not unreasonable.

67. Mr Ward was not biased towards the Claimant. The Claimant accepted that they both had a good working relationship, that Mr Ward had promoted him and he

had not asked for the hearing to be conducted by someone else. Mr Ward did get frustrated during the hearing however this is likely to have been because the Claimant's representations did not make sense and he suspected the Claimant was not telling him the truth.

68. A reasonable employer would have engaged further with the Claimant's assertions regarding inconsistency of treatment. They would have asked the Claimant more questions about the points he was raising and taken more time to investigate them before reaching their decision. However, considering the steps that the Respondent did take during the various processes, this failure did not render the procedure as a whole as outside of the range of reasonable responses. Further, given the conclusions I have reached in respect of the comparator issue below, this is very unlikely to have made a difference to the decision.

*Sanction*

69. It was reasonable for the Respondent to be suspicious about the representations that the Claimant gave during the disciplinary and appeal proceedings. This is because:

    a. The Claimant had said that he had misunderstood the changes that had been made to the Employee Usage policy, in part, because the revised Employee Usage policy had not been documented in the same way as its predecessor. Whilst that may reasonably give rise to some confusion for an employee, the part of the policy relevant to the Claimant's own sales to the Respondent had not changed. Nothing in the policy gave the Claimant a right to sell items to the Respondent without manager approval. Had this been changed, it is very likely the Claimant would have noted it. However, given the Respondent's reasons for having this policy in the first place, as explained earlier, it is very unlikely that this would have been changed. As a manager himself, the Claimant would have been aware of the vulnerabilities the Respondent could have faced if it had given employees free reign to sell items to the Respondent. It was reasonable for the Respondent to doubt the Claimant's belief that this policy had changed in this way.

    b. The Claimant's account of his misunderstanding of the changes to the Employee Usage policy were inconsistent. On one hand he had said that he did not read the last sentence of the email containing the revised policy, which read: "SM themselves continue to need RM approval". On the other hand, he said he was confused about these abbreviations. If he had not read this last sentence, he would not have noted these abbreviations. It was reasonable for this to result in the Respondent doubting the Claimant's honesty.

    c. Linked to (b), the Claimant's assertion that the policy's use of abbreviations, to refer to managerial roles, making it difficult to clearly identify which positions held specific authority, significantly impacted upon his credibility. He was a Store Manager himself. He ought to have

been aware that SM meant Store Manager. His direct line manager was a Regional Manager. He ought to have been aware that RM meant Regional Manager. As with the above, it was reasonable for this to result in the Respondent doubting the Claimant's honesty.

70. The Respondent did consider the Claimant's long service but this was an aggravating factor. Someone of the Claimant's seniority, who had been working for the Respondent for the amount of time that the Claimant had, would have been aware that selling the Airbrush to the Respondent without Regional Manager approval would have been prohibited. This meant that the Claimant must have sold it dishonestly.

*Comparator issue*

71. I have considered the evidence in conjunction with the case law, including *Hadjioannou*. It is the third of the *Hadjioannou* factors mentioned above that is relevant to this case.

72. Like some of his alleged comparators, the Claimant had failed to follow process. However, the distinguishing factor in the Claimant's case was that the Respondent had found that he had done this dishonestly. Therefore the only alleged comparator that is actually comparable is DV.

73. I have considered whether the Claimant and DV were in truly parallel circumstances resulting in the different decisions indicating that it was not reasonable for the Respondent to dismiss the Claimant and have concluded that this did not render the decision to dismiss the Claimant unreasonable because:

    a. DV was dismissed. He was in the same position as the Claimant initially. However, his dismissal was referred to as a redundancy because of his relationship with the founders; and

    b. DV was re-engaged. However, again, this was because of his relationship with the founders.

74. The Claimant did not have such a relationship with the founders. Whilst it is peculiar that the Respondent chose to re-hire someone who had committed gross misconduct, this meant that the Claimant and DV were not in truly parallel circumstances.

75. For these reasons, the Respondent did act reasonably. Both the processes followed and the decision reached were within the range of reasonable responses. The Claimant was not unfairly dismissed and his claim is dismissed.

***Chris McAvoy Newns***

**Employment Judge McAvoy Newns**

**27 October 2025**

**Sent to the parties on:**

**For the Tribunal:**

**…….**