EMPLOYMENT TRIBUNALS

Claimant:	**Mrs D Clarke**
Respondent:	**Creative Management Services Limited**
Heard at	**Newcastle Employment Tribunal**
Sitting at:	**Civic Centre On: 17 and 18 November 2025**
Before:	**Employment Judge Martin**
Representation	
Claimant:	**Ms Puckrane (Claimant's daughter)**
Respondent:	**Mr A Scott (Counsel)**

RESERVED JUDGMENT

1. The claimant's complaint of unfair dismissal is well founded.
2. The claimant's complaint of breach of contract (notice pay) is also well founded.
3. The case will be listed for a remedy's hearing with a time estimate of half a day.

REASONS

Introduction

1. Mr Stephen Jackson HR/business manager, Mrs C Henderson, director, Mrs J Charlton, catering manager and Ms N Sylvester (previous catering assistant) all gave evidence on behalf of the respondent. The claimant gave evidence on her own behalf.
2. At the outset of the hearing the claimant confirmed that she was not pursuing the application for leave to amend her claim to include a claim of automatic unfair dismissal for making a protected interest disclosure, nor any claim for disability discrimination.

The Law

3. The law which the Tribunal considered was as follows: -

4. Section 98(1) Employment Rights Act 1996:

> "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".

5. Section 98(2) ERA 1996:

> A reason falls within this subsection if it —
>
> (b) relates to the conduct of the employee,

6. Section 98(4) ERA 1996:

> "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."

7. Section 86(1) ERA 1996:

> "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 —
>
> (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."

8. Section 122(2) ERA 1996:

> "Where the tribunal considers that any conduct of the complainant before the dismissal was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly."

9. Section 123(6) ERA 1996:

> "Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding."

10. The well known case of **British Home Stores Limited v Burchell [1978] IRLR 379** where the EAT held that, where an employee is dismissed because the employer suspects or believes that the employee has committed an act of misconduct, the Tribunal has to consider firstly whether the employer believed the employee had committed the act of misconduct; secondly that the employer had in his mind reasonable grounds upon which to sustain that belief and thirdly that the employer

carried out as much investigation into the matter as was reasonable in all the circumstances of the case.

11. The well-known case of **Polkey v A E Dayton Services Ltd [1987] IRLR Page 503** where the House of Lords held that the Tribunal has to consider whether an employee would still have been dismissed even if a fair procedure had been followed. If an Employment Tribunal thinks there is a doubt whether or not the employee would have been dismissed, this element can be reflected by reducing the normal amount of compensation by a percentage representing the chance that the employee would still have lost his employment.

12. The case of **Nelson v BBC (No 2) [1979] IRLR 346** where the Court of Appeal held that, in considering whether an employee contributed in any way to his dismissal, the Tribunal must consider misconduct on the part of the employee which was culpable or blameworthy. This is reflected in the statutory provisions under section 123 of the Equality Act which states that compensation should only be awarded if it was just and equitable to do so. Further the conduct should have contributed to some extent to the claimant's dismissal, and it must be just and equitable to reduce the amount of any compensation.

13. The case of **Hollier v Plysu Limited [1983] IRLR 260** where the Court of Appeal held that in considering whether compensation should be reduced on the grounds of the employee's contribution the Employment Tribunal should take a broad brush approach in considering what, if any, the employee's conduct played in causing or contributing to the dismissal, then in the light of that finding decide what, if any reduction should be made in the assessment in any compensatory award.

The Issues

14. The issues which the Tribunal had to consider were as follows:

15. What was the reason or principal reason for dismissal? The respondent asserts that it was for conduct.

16. The Tribunal therefore had to consider whether the respondent genuinely believed the claimant had committed an act of misconduct, whether this was based on reasonable grounds and whether the respondent had undertaken a reasonable investigation into the allegations.

17. The Tribunal then had to consider whether the respondent followed a fair procedure and whether dismissal was a reasonable response in the circumstances of the case taking account of equity and the substantial merits of the case.

18. The Tribunal also went on to consider whether the claimant contributed to her dismissal in any way and whether she would have been fairly dismissed if a fair procedure had been followed.

19. In relation to the claimant's complaint of breach of contract (notice pay) the Tribunal had to consider whether the respondent was entitled the to dismiss her without notice namely if she was guilty of gross misconduct. If not, what notice is she entitled to, for what period and in what amount.

Findings of Fact

20. The claimant was employed as a cook in charge/manager at the Westgarth Primary School in the Northeast of England. She worked at that school for approximately the last four years.

21. The claimant's employment transferred on several occasions. Redcar and Cleveland Local Authority had initially employed the claimant since 1991. She had transferred to the respondents from Galileo Academy Trust.

22. In 2019 the claimant had been suspended and subject to disciplinary proceedings because of concerns about use of cash and food stuffs not being purchased by her which were potentially used from the school kitchen stocks. She was issued with a final written warning for 24 months shortly before she transferred to the respondent. It appears that she was likely to be under that final written warning when she transferred to the respondent - page 103.

23. In her claim form and her witness statement the claimant suggested that she had an exemplary record but that is not entirely true bearing in mind the disciplinary action which had been taken against her by a previous employer for not dissimilar concerns.

24. The respondent is a company which manages school kitchens in the Northeast of England.

25. There is a policy at page 327 which appears to relate to most school kitchens. It states that items of food, drink or items of kitchen equipment should not be removed without written authorisation. It states it may lead to suspension and possibly could be theft and that an employee could be subject to summary dismissal. It suggests that any authorisation should be signed and dated by the catering manager. The claimant confirmed in her evidence that she was aware of the policy of not removing food from school premises.

26. The respondent's disciplinary policy is at pages 328-361 of the bundle. At page 337 it sets out examples of gross misconduct which includes theft or unauthorised possession of money or property whether belonging to the respondent, another employee, or a third party.

27. The investigation into the claimant which ultimately led to her dismissal arose out of an incident on 9 October 2023 regarding some interpersonal dispute between the claimant and two other colleagues who worked in the kitchen - Mrs Joanne Charlton and Ms Nicola Sylvester.

28. The employees were all asked to submit statements about that incident. Ms Sylvester submitted a written complaint about the claimant. She raised concerns about bullying and harassment on 14 October 2023. Her statement is at page 113 of the bundle. The claimant submitted her version of events in writing on 16 October 2023 (page 115 of the bundle). Mrs Charlton submitted a formal complaint against the claimant on 17 October 2023 (page 117 of the bundle).

29. In her statement Mrs Charlton refers to the claimant and her husband removing stock on the last day of term before the summer holidays. She said that she and Ms Sylvester saw the claimant and her husband putting stock from the pantry into their car which she says was parked at the back door of the kitchen. Ms Sylvester did not mention that incident.

30. Mr Jackson who is the HR and business manager undertook an investigation into the original incident and the complaints against the claimant.

31. He interviewed Mrs Charlton on 25 October (page 119-121). At page 120 Mrs Charlton said that on the last day of term a tin of mixed fruit was carried past her to the car. She said that the claimant was carrying many boxes and that her husband drove the car to the back door. She said the boxes were from the pantry and that

the clamant had done it before. She said it was at the end of term and she did not raise it because she was scared of how the claimant would react.

32. Ms Sylvester was interviewed afterwards. She was asked about the incident. She said in her statement at page 123 that on the last day of term that they were cleaning. She said the claimant was putting stuff from the pantry into boxes and the boxes contained food items. She said she saw some tins (fruit cocktail). She said that she had never seen fruit cocktail served and that there was a cloth over to hide the items. She said that the claimant's husband helped to load the car. She said that the claimant sometimes drives, cycles to work or gets a lift. Ms Sylvester said she did not report the incident at the time as she was worried about how the claimant might react. She said she was worried that she would bully her or she might lose her job.

33. When she was asked in the Tribunal as to why she did not raise the matter before Ms Sylvester said she was concerned about working with the claimant if she mentioned it and suggested that they had a difficult working relationship.

34. Mr Jackson then went to investigate the allegations regarding the removal of items on the last day of term by the claimant. He arranged to meet with the claimant about all of these allegations on 3 November.

35. The claimant went off sick for a period of time from 6 November until January 2024.

36. The investigatory meeting was therefore adjourned until 15 January 2024. The notes of that investigatory meeting with the claimant are at pages 141-144 of the bundle. The investigation deals with the original incident and the further incident with regard to the removal of the items. The claimant said that she had a tin of rhubarb and a tin of apples and that the stock was going out of date. She also said there was a bag of pizza mix and cake mix which were 0.5kg. She referred to fruit cocktail and said that this was cash on delivery and that she had an invoice. She said that she was arranging a party for her mum's 80th birthday at her home. She said she had not taken items purchased before because she was on her bike. She said that the fruit cocktail was mixed into fruit salad but could not remember when she stopped using it. She agreed that both Mrs Charlton and Ms Sylvester were present in the kitchen. She wondered whether she might have swapped a tin of fruit cocktail with someone else. She said that she had spoken to both Mrs Charlton and Ms Sylvester and confirmed that she was cash purchasing. The claimant indicated that she had obtained the goods from Country Valley. (pages 142-143 of the bundle).

37. At that meeting the claimant also raised a grievance.

38. At the end of the meeting on 15 January Mr Jackson suspended the claimant.

39. Mr Jackson then followed up with Country Valley requesting the order (pages 155-156 and pages 158-159).

40. In the bundle before us there is an invoice on 11 May showing a number of items from Country Valley being some bread rolls, cake mix, scone mix, muffin mix and rhubarb solid pack. It refers to a cash on delivery invoice addressed to the claimant (page 420).

41. On 17 January 2024 the claimant sent in a written statement which is at pages 160-162 of the bundle. In that statement she says that she has an invoice with regard to the goods that she removed from the kitchen with her husband. She said it will show that she paid for the items removed. She says that she did not take them at the time, but bought them and stored them in the office. She was going to and from work on

her bike and could not carry them. She said two of them were to be used for her mother's 80th birthday party (page 161).

42. It appears that the invoice (page 420) was provided to Mr Jackson. It was not listed in any of the investigatory or disciplinary proceedings. It was not produced by them in the bundle either.

43. On 19 January the claimant subsequently suggested she may have the original of the invoice, but it was never produced.

44. On 19 January 2025 the claimant received a letter from Nadine Todd the cook at Coatham Primary School about the tin of fruit cocktail. Ms Todd's statement is at page 165 of the bundle. In the statement Mrs Todd states that she asked the claimant if she could help out by lending her a tin of fruit cocktail because she had forgotten to order one. She says that the claimant said she would and would drop it round after work. She had then intended to replace it. She said that, unfortunately she never received the tin of fruit cocktail due to a family emergency which the claimant had. She said she had no paper trail to cover it (page 165).

45. The claimant then produced a further statement on 20 January with regard to the tin of fruit cocktail. She indicated that this followed on from a telephone call from Nadine the cook at Coatham Primary School who had asked her to get her a tin of fruit cocktail and drop it off. She said that she had gone to do that, but she had a family emergency and had to explain to Nadine that she could not bring her the fruit cocktail today because she had to take her husband to the hospital. She said that it was in the boot of her car, and she meant to drop it off, but never got round to dropping it off to Nadine. She said that it sat in her car until January 2023 when she took it back to the kitchen to use it as part of the menu. She said that she brought it in early in the morning when she was the only one there (page 169).

46. On 16 January 2024 the claimant went off sick again.

47. The respondent decided to deal with the claimant's grievance first. Mr Jackson dealt with the grievance. The outcome was sent to the claimant in March 2025. The claimant appealed against the decision. The appeal was heard by Mrs Henderson but was not upheld.

48. In his evidence to the Tribunal Mr Jackson admitted that he did a stock check and admitted that he was not able to identify any tin of fruit cocktail. That record was not in the bundle. He did he provide it to the claimant or ask any other witnesses about it at any stage during the investigation nor during the disciplinary process.

49. The claimant was then invited to a disciplinary hearing on 13 May 2025 (page 257-258 of the bundle). The letter is written by Mr Jackson and states that the company is considering disciplinary action against the claimant because it is alleged that she removed company property (food stock from the food stores at the school without permission). It goes on to indicate she could be liable to summary dismissal if she is found to have committed theft or unauthorised possession of money or property whether belonging to the respondent, another employee or a third party. It then sets out the facts and the details set out in the statements from the other two employees as well as the claimant's responses during her investigatory meeting. It states that the respondent was unable to locate copy of the invoice to corroborate the claimant's version of events. It states that it will be Mr Jackson who will chair the disciplinary hearing. The claimant was given has the right to bring a companion.

50. Mr Jackson proceeded to chair the disciplinary hearing which took place on 21 May 2024. The claimant attended with her trade union representative.

51. The notes of the disciplinary hearing are at pages 259-267 of the bundle.

52. The claimant subsequently produced the Country Valley invoice although it is not clear when that was produced but it is in the bundle before us. The respondent indicated that they had not been provided with that invoice at the time.

53. In the disciplinary meeting the claimant said that she had removed food and that her husband had come to the back door. The claimant said that she purchased the food in May and took it in July. Prior to that she had been cycling to work. She said that she told Mrs Charlton and Ms Sylvester that she had bought it in May. She said she had an invoice and it could be in her locker. She said she paid cash on 11th or 12th and received it on the Tuesday or Friday. She said that she stored it in a box with a cover with rhubarb at the front. She said that the items were at the end of the date and that was why they were cheap.

54. The claimant says that the fruit cocktail she was taking to another cook which was well before the end of term. She indicated that this was Nadine Todd at Coatham Primary School. The claimant said she did not take the fruit cocktail out on her last day of term.

55. The claimant's trade union rep suggested the claimant had never been accused of theft in her 30 years as a cook. The claimant at the disciplinary hearing did not correct her although she would have been fully aware of the previous incident at her previous employer for which she received a final written warning.

56. The claimant went on to say that the fruit cocktail was to go to Mrs Todd as it had been missing off her delivery and that she had intended to drop it off but due to personal circumstances had not been able to do. She said that she had a statement from Mrs Todd to that effect.

57. The trade union representative questioned whether the other two witnesses had collaborated.

58. The claimant admitted that she had sometimes taken items before to Danielle at the lake and had always got them back the next day, but she had never taken anything personally. The claimant says that the items were covered with a white cloth and the tin of rhubarb were next to them in the box.

59. Mr Jackson said that he was going to adjourn the meeting and undertake some further investigation.

60. The handwritten notes that Mr Jackson made of the disciplinary meeting with the claimant is at pages 269-271.

61. Mr Jackson then undertook some further investigation with Ms Sylvester. The notes of that telephone conversation are at pages 281. She said that she was not aware that Country Valley did cash on delivery. She said she never witnessed the claimant paying cash for any food items. She said that on the last day of term the claimant's husband came into the building and three large boxes were removed covered in tea towels. She said that the only thing that she could see was a large tin of fruit cocktail. She also said she had seen the claimant remove other items before on the last day of term like eggs, potatoes and bread.

62. Mr Jackson then proceeded to write up a statement for Ms Sylvester which is at page 282 of the bundle. She also confirmed in that statement that she would not

generally be at work when Country Valley deliver food items. She said that she had never seen any food items in the storeroom covered in a tea towel (page 282).

63. Mr Jackson then proceeded to interview Mrs Charlton. The handwritten notes of that telephone conversation are at page 292 of the bundle. She also confirmed that she did not know it was possible to purchase cash items with Country Valley and that she had never witnessed the claimant paying cash for any items. She said she had never seen any scone mix or rhubarb. She did say she saw fruit cocktail. She said she saw that being removed by the claimant with her husband on the last day of term. She also said she did not see a box stored in the storeroom with a tea towel. She said that there were several trips made to the car and that it was definitely a tin of fruit salad. She said that usually on the last day of term the claimant's husband would come and food would be removed from site (page 292 of the bundle).

64. Mr Jackson then produced a written statement for Mrs Charlton which she signed which is at page 293 of the bundle. In that statement she states that she specifically remembers a tin of fruit cocktail being removed from the kitchen area and placed in the claimant's husband's car boot. She says there were a number of items which were covered in what appeared to be a tea towel which obscured the contents of the boxes. She said that the claimant and her husband made several trips to load items into the car boot. She also said she'd never seen any food items stored in the storeroom covered in a tea towel.

65. On 28 May 2024 Mr Jackson wrote to the claimant for some clarification. He said the claimant had indicated that the items which she had purchased were on a shelf in the store cupboard within a box with a tea towel over the top except for the tin of rhubarb which was stored alongside the box. He asked her if the items had been stored in the office or the food cupboard in different locations (page 286-287 of the bundle).

66. On 29 May 2024 the claimant replied to Mr Jackson. She said she initially stored the purchases in her office and then she moved them into the pantry food store cupboard within a box with a tea towel over the top except for the tin of rhubarb which was stored alongside the box at the time. She then said that, on reflection, nobody had mentioned she would also store items of equipment in the pantry/food store for storage. She said people come in over the school holidays which is why they would have started storing them in boxes. She thought that therefore she might have moved the Country Valley purchases around in the pantry as equipment was being stored there. She said that she could obtain a statement from her husband. She also said that she would have taken all the uniform and shoes etc out of the lockers and thought they may have been in the boxes as well (page 285 of the bundle).

67. Mr Clarke himself also provided a statement. He said the claimant was taking out stuff which she had purchased to make cakes and rhubarb pies for her mother's birthday. He said the box had a cloth over it and there was a black bag with dirty cloths and mops for cleaning. They were all put in the boot of his car (page 90A).

68. Mr Jackson did not make any enquiries with the other witnesses about what the claimant said about other equipment being stored in the pantry/food store.

69. On 19 June 2024 Mr Jackson wrote to the claimant in which he informed the claimant that she was being summarily dismissed for theft or unauthorised possession of company or property. He said that the respondent's trust and confidence in the claimant had been completely undermined. He provided the claimant with a right of appeal (page 302 of the bundle).

70. In his evidence to the Tribunal Mr Jackson said that he had in effect been able to prove from the evidence of the other witnesses that the claimant had taken a tin of fruit cocktail. He said that that was the only item he could prove that the claimant had removed albeit that she had been seen removing other items but none of those items could be identified.

71. In his evidence to the Tribunal Mr Jackson said in answer to question regarding the same that he had considered alternatives to dismissal but said the respondent had lost trust and confidence in the claimant and that is why the respondent decided to dismiss her.

72. On 28 June 2024 the claimant's trade union stated that the claimant wished to appeal against the decision. She also asked for certain documents including any audit/stock information (page 303 of the bundle). It had been decided that Mrs Henderson, a director of the respondent company, would deal with the appeal. She wrote to the claimant and her trade union representative in July acknowledging the appeal and indicating that the respondent would be in touch to arrange an appeal hearing. She said it would not be in the immediate future due to arranged summer leave and other longstanding diary commitments (page 305). Mrs Henderson did not, as promised, get in touch with the claimant or her union representative until much later in the autumn. There then followed some correspondence with a view to arranging the appeal hearing between Mrs Henderson and the claimant's trade union representative.

73. In November the respondent arranged the appeal hearing for 13 November which the claimant's trade union was not able to attend and suggested an alternative date on 22 November which Mrs Henderson was not able to attend. Eventually on 5 December 2024 the respondents arranged an appeal hearing for 13 December.

74. On the same day Mr Jackson provided the notes from the disciplinary hearing and the subsequent statements from Ms Sylvester and Mrs Charlton. He stated that he did not use audits and stock control information when taking the decision to terminate the claimant's employment (page 319) but in fact that was incorrect as in evidence before this Tribunal he stated that he did in fact look at the stock records but he did not provide them to anyone during the course of the investigatory or disciplinary hearing to ask them their comments on the same.

75. Meanwhile the claimant had contacted ACAS in mid-September and then proceeded to issue these Employment Tribunal proceedings on 23 November 2024.

76. The respondent said the part of the delay in arranging a disciplinary hearing was in arranging for someone to hear it. Both other two directors were apparently on sick leave during the autumn of 2024.

77. It transpired the appeal hearing fixed for 13 December 2024 did not proceed. It appears that the claimant decided that, since she had issued these proceedings already, she was not going to proceed with the appeal hearing.

78. The Tribunal had the benefit of hearing evidence from the two witnesses who witnessed the alleged incidents. Mrs Charlton and Ms Sylvester both had produced witness statements which appeared to have been drafted by either Mr Jackson or the respondent's solicitors as they were almost in identical format. However, in asking questions of the two witnesses it was quite clear that their evidence was much more detailed than the bland comments made in their witness statements. They made it clear in their evidence where they were and what they were doing when they had witnessed the claimant removing the boxes from the pantry. Mrs Charlton

also indicated that she had in fact used to clean the uniforms and that they were not taken home by the claimant.

79. Both of the witnesses explained why they had not decided to refer the matter at the end of term. They both said that they had been scared about raising the matter. Ms Sylvester said that she was worried about losing her job.

80. They were both clear in their evidence about what they had seen removed namely a number of boxes and were both adamant it was a tin of fruit cocktail.

Conclusions

81. The Tribunal finds that although the respondents appeared to believe that the claimant had committed an act of gross misconduct, it was not clear that they had undertaken a reasonable investigation into the allegations: -

    81.1. Firstly, although a stock take was undertaken it was immediately discounted without any questioning or discussion with any of the witnesses including the claimant.

    81.2. Further, the claimant's explanations and subsequent comments were not fully put to all the two witnesses. In particular they were not asked about what the claimant asserted subsequently that some of the items in the store cupboard may have been equipment and /or whether some of the items being removed may have been equipment.

    81.3. Furthermore the claimant was not provided with the further statements from the witnesses which is not always necessary but in a case so heavily reliant on oral evidence it is important to ensure the claimant has a proper opportunity to respond to everything that is being asserted.

82. The Tribunal does not consider a fair process was followed. Mr Jackson undertook the investigation and then proceeded to hear the disciplinary hearing having himself formed the view that there should have been a disciplinary hearing for gross misconduct. He went on to chair the disciplinary hearing without hearing any further evidence other than the claimant's response to the allegations. No attempt was made to consider appointing at anyone else to deal with the disciplinary hearing. Mr Jackson even proceeded to deal with the grievance hearing raised by the claimant. It is difficult to see Mr Jackson had not formed an unbiased view bearing in mind that he was the one having undertaken the investigation to decide that it should be referred to a disciplinary hearing in the first place.

83. Further, as indicated above Mr Jackson undertook a stock review record and noted that no tin of fruit cocktail was in the stock records. However, he failed to ask any of the witnesses about this crucial piece of documentary evidence. He failed to tell the claimant about the stock review or the outcome it.

84. Further, Mr Jackson did not put any of the claimant's explanation about the equipment or the uniforms to the other witnesses before deciding to dismiss her. Nor did he provide the claimant with the witnesses' response to her comments at the disciplinary hearing before proceeding to dismiss her.

85. It was also unclear what view Mr Jackson took about the fact that two witnesses had raised allegations of bullying and harassment against the claimant. There is no If no indication of what, if any, weight he attached to that nor his view about why Ms Sylvester did not raise the matter initially in her first statement.

86. The Tribunal had concerns about whether or not dismissal was a reasonable response in the circumstances of the case. Mr Jackson's evidence was that ultimately the claimant was dismissed for taking a tin of fruit cocktail as he himself said that he was unable to prove what, if any, other items had been taken, although the evidence was that she had removed a substantial number of other items.

87. In his evidence it would appear that Mr Jackson genuinely believed that she had removed the tin of fruit cocktail and that in effect he had reasonable grounds to believe that because of the evidence of the other two witnesses who he says saw that tin being removed.

88. For those reasons this Tribunal considers that the claimant's dismissal was unfair

89. However the Tribunal having heard evidence from the other two witnesses involved in the incident, considered that evidence to be compelling, consistent and credible. The Tribunal had concerns about the fact that the witness statements they had produced were clearly drafted by someone else either Mr Jackson or the respondent's solicitors, but on actually hearing those two witnesses' evidence they both came across as credible and honest witnesses.

90. The claimant's evidence on the other hand was not as convincing. Firstly she seemed to change her story or add her story about what happened on different occasions. In the first instance it was suggested she was moving a tin of apples or rhubarb. Then she suggested it was Country Valley items. Then she went on much later to suggest that it might have been some equipment that she was bringing home to clean or some uniforms.

91. Most significantly she suggested in her evidence to this Tribunal and indeed allowed her trade union representative to suggest she had an exemplary record in the disciplinary hearing when that was not in fact true. She had received a final written warning from her previous employers before her transfer to the respondent in which she had been given a final written warning for alleged gross misconduct for a not dissimilar offence. Her oral testimony was less convincing than the other two witnesses

92. This Tribunal considers that, although the process was unfair, there was a good chance that the claimant would have been fairly dismissed in any event. The Tribunal thinks that, if a different manager had been appointed to hear the disciplinary hearing and the process had been undertaken fairly, that there is at least a 50% chance that the claimant would have been fairly dismissed in any event. Although the respondent only seemed to rely on one item there was certainly evidence that other items were being removed.

93. Furthermore, this Tribunal considers that the claimant did contribute to her dismissal. This is a claimant who had been given a previous final written warning for a not dissimilar offence just before her transfer to the respondent which would likely to have been still in effect during her employment with the respondent. Furthermore, she has self-acknowledged in evidence that she was aware that she should not have been removing food items or any items from the storeroom from the respondent yet she proceeded to do so. She made no attempts to try and notify or seek authorisation before doing so. Even on her own account she would have been aware that she should have informed somebody at the respondent company before she proceeded to remove items which she said she had already previously purchased. Accordingly, this Tribunal considers that the claimant is 40% liable taking account what it would be just and equitable to award in that regard.

94. The Tribunal considers that the claimant's conduct is sufficient to take into account as a contribution in relation to any basic award as well as any compensatory award.

95. On balance this Tribunal does not consider that there should be any uplift or reduction to the award for a failure the ACAS Code of Conduct on the part of either party. The respondent delayed unnecessarily in arranging the appeal hearing although the claimant herself was the one who decided not to go ahead with the appeal hearing as she had issued these proceedings. This Tribunal therefore considers that they were both at fault in not proceeding with the appeal.

96. The Tribunal has gone on to consider whether the respondent was entitled to treat the claimant as having committed an act of gross misconduct and does not find that the respondent was entitled to dismiss the claimant without notice for reasons above in particular the Tribunal does not consider that dismissal was a reasonable response in the circumstances of this case as a proper investigation was not undertaken into the events.

97. For those reasons the claimant's complaint of unfair dismissal and breach of contract (notice pay) are upheld. However, the Tribunal considers as noted above that the claimant substantially contributed to her own dismissal and that there was a chance that she would have been fairly dismissed in any event. Although a remedies hearing is be arranged, the tribunal does not consider it would be necessary in the light of this judgement.

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Approved by Employment Judge Martin

_____

Date 8 January 2026

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