



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs M Bailey

**Respondent:** Lloyds Bank Plc

**HELD at Newcastle CFCTC**

**ON: 23<sup>rd</sup>, 24<sup>th</sup> and 25<sup>th</sup> September 2025**

**BEFORE: Employment Judge Aspden**

## **REPRESENTATION:**

**Claimant:** Mr McSally

**Respondent:** Ms Zielinska, counsel

**JUDGMENT** having been sent to the parties on 3 November 2025 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the Tribunal provides the following:

## **REASONS**

1. The claimant was employed by the respondent until the respondent terminated her contract of employment with effect from 31 May 2024. The claimant complains that the respondent unfairly dismissed her contrary to the Employment Rights Act 1996.
2. The parties agree that:
  - 2.1. the respondent terminated the claimant's employment without notice by an email sent and received on 31 May 2024;
  - 2.2. had the respondent not terminated the claimant's employment in that way, the claimant's employment would have ended later that day by reason of redundancy.
3. The effect of the summary termination is that, although the claimant's employment was not due to continue beyond this date in any event, the claimant was not paid the redundancy payment that she had been expecting. She was also classed as a

'bad leaver' for the purposes of a share scheme she was a member of, resulting in financial loss.

**Evidence and facts**

4. I heard evidence from the two witnesses for the respondent:
  - 4.1. Mr Quadir who was the person who took the decision to dismiss, and
  - 4.2. Ms Webster who dealt with the appeal .
5. I heard evidence from Mrs Bailey herself.
6. The parties had prepared a file of documents. I took into account the documents in the file to which I was referred.
7. The claimant had 24 years' service with the respondent. At some point in the first quarter of 2024 the claimant had the opportunity to apply for voluntary redundancy. She did and was accepted. Her employment was due to terminate on 31 May 2024 by reason of redundancy and with a sizeable redundancy payment. Meanwhile the claimant continued to work with the respondent.
8. The claimant worked at a relatively small branch. Her colleagues knew she was taking voluntary redundancy.
9. There was no evidence before me that the respondent had had any concerns with the claimant's performance or the way she had treated customers or staff before the alleged events that led to the claimant's dismissal. The claimant's unchallenged evidence was that she had an unblemished work record until the alleged incidents which the respondent cited as the reason for dismissing her before her redundancy termination took effect. I find as a fact that was the case.
10. Related to that I find that before the claimant's impending redundancy became known, none of the claimant's colleagues had raised any concern about the claimant suggesting she had or may have said something that might be considered derogatory and related to race or disability or otherwise disrespectful, whether concerning a customer or a member of staff.
11. On 28 April one of the claimant's colleagues made a complaint about the claimant through the respondent's 'Speak Up' whistleblowing programme. The complaint concerned some alleged behaviour by the claimant in relation to customers on two particular occasions.
12. The respondent appointed two individuals to investigate. Between 2 and 8 May the investigators interviewed three of the claimant's colleagues, referred to in these proceedings as colleagues F, A and B. Someone took notes of the questions asked and the answers given in the interviews.
13. The respondent has not disclosed the notes taken in their entirety in these proceedings: the respondent has made numerous redactions. Based on the evidence given by Mr Quadir, I find the redactions were made before copies were given to Mr Quadir, Ms Webster and the claimant. None of those individuals saw unredacted copies of the statements.
14. I find that a decision was taken by somebody at the respondent to redact the interview notes. The redactions included but were not limited to the names of the colleagues who were interviewed and names of others they referred to in their interviews. There were many other redactions. Those redactions were not confined to the removal of customer details. No evidence was given by the respondent that

would explain why the redactions were made or who made them. The interview notes record the investigators as having sought the interviewees' consent to share the note of interview and as having said 'The meeting notes may be considered by colleagues or third parties as part of other relevant processes (eg any future disciplinary process or regulatory action).' There was no evidence before me that any of the interviewees declined to consent to the note of their interview being shared. Indeed the notes of the interviews with A and B record those individuals giving their explicit consent to the notes being shared. I find it more likely than not that all were asked and all agreed to the note of their interview being shared, including with the claimant if disciplinary action was taken. There is certainly no evidence that any of the individuals asked to remain anonymous and I infer they did not. There is no evidence that any of the individuals said they feared retaliation and I find none of them did suggest they held any such concerns.

15. It is unnecessary for me to recount all of the details of the unredacted parts of the notes. From the parts that have not been redacted I note the following.

15.1. F said amongst other things that about a month and a half earlier F had heard the claimant refer to a Cantonese customer as a 'stupid Chinaman' on one occasion. F said this had occurred following an exchange between the claimant and the customer concerning the appropriateness of staff helping him access online banking on his phone and a disagreement between the claimant and customer about whether the customer could speak English. F said the customer could be difficult and had been argumentative in the past.

15.2. F also said that somebody (whose name on the statement was redacted) had told them that subsequent to that earlier alleged incident, the claimant had called the same customer a 'F\*\*\*ing chink'. F claimed that whoever that person was had said that they 'had not raised it', (presumably with management) because 'he was a longstanding customer and we thought as we hadn't been there so long it wasn't worth us bringing up as it was our impression others might not agree.'

15.3. F also referred to an alleged incident involving a second customer. F described the customer's nationality or national origins and said English was this customer's second language. F also said that the customer had a disability which appeared to be both physical and mental. F said that when a colleague was dealing with the customer, the claimant 'kept knocking on the desk and rolling her eyes' though the customer did not notice. F said he or she took the knocking on the desk to imply the customer was stupid. F said after the customer left the claimant knocked on the desk again, and F heard the claimant say to somebody (whose name was redacted) 'he's not right in the head'. F said that somebody then said to the claimant 'you can't say that he's disabled' and the claimant replied 'well that makes sense.'

15.4. A said that on Saturday 20 April (ie 8 days before the complaint had been made through the 'Speak up' programme) the Cantonese customer that F had referred to had tried to get in the bank by trying the door to the banking hall ten minutes before they were due to open. A said the claimant had shouted at him but then A also said the claimant was 'was almost shouting at him.' A claimed A had said to the claimant 'you didn't have to shout at him' and that the claimant had responded 'I don't want to serve him'. A claimed that as the claimant was walking across the banking hall she had referred to A as 'the little Chink.' A did not say how close they were to the claimant when the claimant was alleged

to have said this. A said they had said to the claimant 'you don't say that, its out of order, I know you don't like him' and that the claimant shrugged her shoulders and said 'what'.

- 15.5. A also referred to the claimant having told A and a colleague off and reporting them to a manager for handling the customer's phone when helping him with internet banking and the colleague being unhappy about the claimant having told the manager.
- 15.6. A also referred to the second customer that F had talked about. A said a colleague had told A that day that the claimant was rolling her eyes and pretending to bang on the table and circling her finger by the side of her head as if to say the customer was crazy. A said that after the son left the claimant said to A 'he's not all there in the head'. A alleged that A was startled and had said to the claimant 'he has learning disabilities and things are going to be more difficult for him' and that the claimant had shrugged her shoulders and said 'that explains it.'
- 15.7. A said about the claimant 'I always had a vibe from her that she was a low key racist but she had never really said anything before and you can't accuse someone if nothing has happened.'
- 15.8. B referred to the second customer and the incident alleged to have occurred on 27 April. B said at the time they were serving the customer and the claimant was beside B and knocking on the desk. Colleague B alleged that B had said to the claimant at the time 'I understand it's hard to serve them but we have a job to do.' B made no reference in the interview to hearing the claimant say the customer was not right in the head or anything along those lines.
- 15.9. B also said someone (whose name had been redacted) had said the claimant had called a customer a 'Chinky' although B said he or she was not sure if the person who told her that had actually heard the claimant say it.
16. During the interviews A also referred to the claimant having asked A whether there was a local Festival of Colours, saying she had enjoyed attending such a festival while on holiday recently. A said she had replied 'how am I supposed to know, I'm not Indian or Hindu, I'm Bengali' and that the claimant 'was like I thought you were the same thing'. F claimed someone (presumably A) had told F about this and that that person thought the claimant was 'really ignorant' because of this.
17. After these interviews the claimant was told that there was an investigation into concerns that had been raised about her and that she needed to attend a meeting via Teams with the investigators. She was not told what the allegations were.
18. The claimant was not told she could have anyone accompany her at the meeting. There was no right under the respondent's internal policies to be accompanied at this kind of investigation meeting. Nor was there any statutory right for the claimant to be accompanied at that meeting it being an investigatory meeting. The claimant was asked to keep the matter confidential and not discuss the details of the meeting with anyone.
19. The meeting took place on 9 May with the two investigators. They asked the claimant about the Cantonese customer referred to by the claimant's colleagues in their interviews. The claimant responded by describing a recent occasion when a colleague had been helping the customer with his online banking by using the

customer's phone herself, which was against the respondent's policy. The claimant said she told the customer her colleague should not be helping him in that way, whereupon the customer said he did not speak English and the claimant responded by disagreeing with the customer and saying he did speak English. The claimant said she had reported the matter to a manager who had agreed the claimant's colleagues should not have been using the customer's phone and that she would speak to them about it. The claimant was asked if she had referred to that customer as 'little Chink' and 'stupid Chinaman'. The claimant said 'No I did not say that, I can't recall that. I'm definitely not a racist. Far from it. I don't know why it's been raised but I definitely didn't say that. That is not terminology I would use.' During the interview the claimant said the customer was a 'horrible little man', 'nasty', was rude in the way he speaks with people and that he had a reputation for being rude and abrupt with people. She said she would deal with him the same as any other customer. She acknowledged she would have told others in the office he was rude.

20. The claimant was also asked about the second customer. The claimant responded 'I think I do know what you're talking about.' She described the customer coming in for help sorting his internet banking out. The claimant was asked directly whether she had knocked on the desk 'insinuating that they don't understand what's being said as in stupid'. The claimant responded 'I certainly wouldn't do it when the customer was there. I can't recall doing it, I wouldn't mock a customer.' The claimant was then asked 'does that mean you would do it when they weren't there' The claimant said 'I might have done. Quite a few customers are like that, I possibly might have done. I don't know if I did it with that particular customer but I have done it with customers in the past when they have gone out and there's nobody in the branch. It sometimes stems from frustration on our part when dealing with difficult customers.' The claimant was asked whether she had said about that customer 'he's not right in the head' or 'he is not all there in the head.' The claimant said 'I didn't say that'. The claimant said that what she had said was 'I don't know if he is special needs he may need an indicator on his account.' The claimant was asked if colleagues had challenged her about what she had said. The claimant said that someone called Naz had said to her 'Michelle you can't do that' and that she had replied 'I've done nothing.' The claimant added 'I certainly wouldn't have knocked on the table whilst he was there. My actions are wrong and I shouldn't do it. I should be more professional'. The claimant accepted that such behaviour would not have 'demonstrated the behaviours the group expected.' The claimant said 'It wouldn't have been nice for him. I am in the wrong, I shouldn't have done it. I have helped foreign customers last week and one the week before who didn't understand and her friend translated for them so I don't have a problem serving them.'
21. The claimant was also asked questions about the conversation she was alleged to have had about the Festival of Colours.
22. After the claimant's interview the investigators interviewed two more of the claimant's colleagues. They have been described in these proceedings as colleague D and colleague E. Again, someone took notes of the questions asked and answers given in the interviews. As with A, B and F, someone redacted parts of those notes before copies were given to Mr Quadir, Ms Webster and the claimant.

- 22.1. Colleague D did not claim to have witnessed any of the events that later led to the claimant's dismissal. D said that 'on a Saturday about a month ago' somebody (whose name is redacted) went to D and said that the claimant has upset them. D said the claimant had called a customer 'Chinky' after the customer had knocked on the door at 8.50.
- 22.2. Colleague E said they had never heard the claimant say anything racist but had heard third hand that somebody had said the claimant had referred to a customer as 'Chinky.'
23. Meanwhile the claimant had been suspended on full pay. She was told that was happening by Mr Burn and Ms Brown. The claimant has complained in these proceedings she was not allowed a representative at that meeting. It was no part of the respondent's policy that she ought to have been and nor did the claimant have any statutory right to be accompanied.
24. The claimant was sent a letter confirming her suspension. She was not given the full details of the allegations but was told that concerns had been raised, that her behaviour and actions did not meet the expectations of colleagues under the colleague conduct policy, code of ethics and responsibility and in line with the group's commitment to create an inclusive environment for all by being an anti-racist organisation.
25. By 15 May the investigators had completed a report in which they referred to allegations as follows.
- 25.1. Firstly they referred to the Cantonese customer. The report said the investigation team 'established that' on two separate occasions the claimant had made racist comments about the same customer. Based on what is said in that report I find that the investigation team had discussed the comments alleged to have been made to this customer with somebody from the race advisory panel and that that person had advised that the comments were, in their words, 'blatantly racist.' The investigators described these allegations as 'substantiated.'
- 25.2. The investigators then referred to the second customer and said they had found that the claimant had knocked on the desk and had referred to the customer as 'not being right in the head.' Before reaching that conclusion the investigation team had viewed CCTV footage to see if it shed any light on the incident but it was inconclusive. The investigators also spoke to somebody from the respondent's disability advisory panel and that person advised them the actions were inappropriate. The allegations were said to be 'substantiated.' There was nothing in the report to indicate that the investigators considered that claimant's actions towards this customer to be racially motivated.
- 25.3. There was a reference to what the claimant was alleged to have said about the Festival of Colours. This was said to be 'not substantiated.'
26. A decision was taken that there would be a disciplinary hearing looking at the allegations concerning the two customers. Mr Quadir was appointed to conduct that disciplinary. Notwithstanding the fact that the investigators had purported to reach conclusions and make findings as to what had happened, Mr Quadir's role was to assess the evidence himself and decide for himself if the alleged wrongdoing had happened and what sanction should be imposed. I am satisfied

that is what he did. He did not simply accept what the investigators had concluded as to the facts.

27. On 16 May Mr Quadir wrote to the claimant asking her to attend a disciplinary meeting which was to be held via Teams. He said 'If you can't make this date or time or there are any access considerations or other meeting adjustments you need please let me know.' There has been a suggestion in these proceedings that it was unreasonable to hold this disciplinary hearing by Teams rather than face to face. I find the claimant was given the opportunity to raise any concerns in advance of the hearing if she thought it was inappropriate to hold the meeting by Teams. She did not do so.
28. The letter written by Mr Quadir was based on a pre-existing template letter. Mr Quadir added the allegations that he said would be talked through. There were two numbered allegations.
29. The first allegation was described as follows:

*Potential Gross Misconduct*

*In your role as a Customer Services advisor within the Group you are expected to adhere to the Group's Colleague Conduct Policy, Code of Ethics & Responsibility, and the Group's requirements to act with integrity and in line with the Group's commitment to create an inclusive environment for all, by being an anti-racist organisation.*

*As an anti-racist, inclusive business, we do not accept, and will investigate, language or behaviour that is discriminatory, offensive or harasses others.*

*It is alleged that you have breached the Group's:*

- Colleague Conduct Policy*
- Code of Ethics & Responsibility*

*It is alleged you have made inappropriate racist comments regarding a Group customer.*

*Specifically: -*

- You have referred to a Group customer as a "Little Chink" and a "Stupid China Man".*

*It is alleged that the potential and actual risks and impacts of this conduct are:*

- that your actions fall outside of what is expected of all colleagues within the Group in line with its anti-racist values and culture*
- that your personal integrity as a colleague has been brought into question.*

30. The second allegation was described as follows.

*Potential Gross Misconduct*

*In your role as a Customer Services advisor within the Group you are expected to adhere to the Group's Colleague Conduct Policy, Code of Ethics & Responsibility, and the Group's requirements to act with integrity and in line with the Group's commitment to create an inclusive environment for all.*

*As an inclusive business, we do not accept, and will investigate, language or behaviour that is discriminatory, offensive or harasses others.*

*It is alleged that you have breached the Group's:*

- Colleague Conduct Policy*
- Code of Ethics & Responsibility*

*It is alleged you have made inappropriate comments and gestures regarding a Group customer with both physical and learning disabilities.*

*Specifically: -*

- You knocked on the desk after the customer had left the branch to imply that the customer was stupid.*
- You referred to the customer as "Not being right in the head".*

*It is alleged that the potential and actual risks and impacts of this conduct are:*

- that your actions fall outside of what is expected of all colleagues within the Group in line with its anti-racist values and culture*
- that your personal integrity as a colleague has been brought into question.*

31. There was then a list of documents that were said to be included with the letter. They included 'statements' (ie interview notes) of colleagues A, B, D and E. The claimant accepted in evidence she was sent colleague F's interview notes, although they were not referred to in the letter. She said she thought she was not sent one of the sets of interview notes from the other four colleagues but was not sure which one. I think it unlikely she did not receive copies of the notes from all four of those interviews because if any had been omitted it is likely she would have raised it at some point during the disciplinary proceedings.
32. Mr Quadir's evidence was that he only saw four of the statements. That included the three most significant from F, A and B. He was unsure whether the one he did not get was the one of D or E. Neither Mr Quadir nor the claimant were given a copy of the original 'Speak Up' complaint.
33. The letter Mr Quadir sent to the claimant said 'I have removed any sensitive or customer details from the evidence to keep everything confidential to make sure we don't breach any data protections laws.' However, Mr Quadir said in evidence, and I find, that he did not actually remove anything from the statements. That wording was just part of a template document that he used.

34. On 22 May 2024 Mr Quadir met the claimant for a disciplinary hearing. At that hearing:
- 34.1. The claimant denied making the comments she was alleged to have made about the first customer.
  - 34.2. Regarding the second customer, the claimant admitted knocking on the desk but not that she did so to imply he was stupid. She said she was implying he was not listening. The claimant denied saying the customer was not right in the head. Mr Quadir did not ask the claimant if her admitted actions of knocking on the desk were motivated by race in any way.
35. After the meeting Mr Quadir considered the evidence. He formed the following beliefs:
- 35.1. He believed that the claimant had referred to a customer on one occasion as 'stupid Chinaman' when talking to a colleague and that she had referred to him on another occasion as 'little Chink' when talking to another colleague and that these were racist comments and contravened the standards of behaviour the respondent expected.
  - 35.2. Mr Quadir also believed that, with regard to the second customer, the claimant had knocked on a desk after the customer had left the branch to imply that the customer was stupid and that the claimant had referred to the customer as not being right in the head. Mr Quadir also formed a belief that those actions were motivated by that customer's race.
36. Mr Quadir decided to dismiss the claimant summarily ie without giving any notice. On 31 May he sent a letter by email to the claimant confirming that decision and setting out his reasons for reaching the decision he did.
37. That was the date the claimant's employment was due to end by reason of redundancy. There is no suggestion by the claimant that she did not receive and read that email on that day or that her employment had already ended that day by reason of redundancy by the time she read the email. Both parties say her employment was terminated by this email rather than the earlier decision on redundancy.
38. One of the submissions made by the claimant is that the reason she was dismissed was not genuinely to do with conduct; rather it was to avoid making a redundancy payment. I do not accept that was the case. I am satisfied that one of the claimant's colleagues did make a complaint originally through the Speak Up programme. That triggered an investigation in which more concerns were raised. That was investigated as one would expect it to be. Mr Quadir conducted his role in good faith, completed the investigation, and formed his own view in good faith as to what had happened and the appropriate sanction. I am satisfied that the fact of the impending redundancy played no part in his decision. The reason he dismissed the claimant was his belief as to what the claimant had done.
39. The claimant appealed her dismissal. Ms Webster dealt with that appeal. During the course of the appeal the claimant criticised the respondent for not interviewing her line manager. Ms Webster decided not to interview the claimant's line manager. She decided that there were no grounds for overturning Mr Quadir's decision and so the dismissal was upheld.

### **Legal framework**

40. When a complaint of unfair dismissal is made, it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason falling within section 98(2) of the 1996 Act or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held: ERA section 98(1).
41. The reference to the reason, in section 98(1)(a), is not a reference to the category within section 98(2) into which the reason might fall. It is a reference to the set of facts known to the employer, or beliefs held by the employer, which cause it to dismiss the employee: *Abernethy v Mott, Hay and Anderson* [1974] ICR 323, CA. In *Abernethy* the Court of Appeal noted that: 'If at the time of his dismissal the employer gives a reason for it, that is no doubt evidence, at any rate as against him, as to the real reason, but it does not necessarily constitute the real reason'.
42. Having identified the reason (or, if more than one, the principal reason) for the dismissal, it is then necessary to determine whether that reason falls within subsection (2) or is some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. In this case the respondent contends that the reason for the claimant's dismissal was a reason relating to the conduct of the claimant, which is a potentially fair reason for dismissal within section 98(2)(b).
43. Where an employer alleges that its reason for dismissing the claimant was related to his conduct the employer must show:
  - 43.1. that, at the time of dismissal, it genuinely believed the claimant had committed the conduct in question; and
  - 43.2. that this was the reason (or, if there was more than one reason, the principal reason) for dismissing the claimant.
44. The test is not whether the Tribunal believes the claimant committed the conduct in question but whether the employer believed the employee had done so.
45. If the respondent shows that it dismissed the claimant for a potentially fair reason the Tribunal must then decide if the employer acted reasonably in dismissing the employee for that reason applying the test in section 98(4) of the Employment Rights Act 1996.
46. Section 98(4) of ERA 1996 provides that: '... 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.'
47. In assessing reasonableness, the Tribunal must not substitute its view for that of the employer: the test is an objective one and the Tribunal must not fall into the substitution mindset warned against by Mummery LJ in *London Ambulance Service NHS Trust v Small* [2009] EWCA Civ 220, [2009] IRLR 563. The objective approach requires the Tribunal to decide whether the employer's actions fell within the range of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted (*Iceland Frozen Foods Ltd v Jones* [1982] IRLR 439). This 'range of reasonable responses' test applies just

as much to the procedure by which the decision to dismiss is reached as it does to the decision itself (*Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23).

48. The Employment Appeal Tribunal (EAT) set out guidelines as to how the reasonableness test should be applied to cases of alleged misconduct in the case of *British Home Stores Ltd v Burchell* [1980] ICR 303. The EAT stated there that what the Tribunal should decide is whether the employer had reasonable grounds for believing the claimant had committed the misconduct alleged and had carried out as much investigation into the matter as was reasonable in all the circumstances of the case.
49. In that case the EAT also made clear that, in deciding whether an employer had reasonable grounds for believing that the employee had committed the misconduct alleged, the test is not whether the material on which the employer based its belief was such that, objectively considered, it could lead to the employer being 'sure' of the employee's guilt. What is needed is a reasonable suspicion amounting to a belief and that the employer had in his or her mind reasonable grounds upon which to sustain that belief. If the employer's decision was reached his or her conclusion of guilt on the balance of probabilities that will be reasonable.
50. The concept of a reasonable investigation can encompass a number of aspects, including: making proper enquiries to determine the facts; informing the employee of the basis of the problem; giving the employee an opportunity to make representations on allegations made against them and put their case in response; and allowing a right of appeal.
51. The case of *Linfood Cash and Carry Ltd v Thomson* [1989] IRLR 235, EAT the EAT gave guidance as to how a fair investigation may be achieved by employers where an informant (and by extension a witness) refuses to allow their identity to be disclosed on the ground that they fear retaliation. It is apparent from that guidance that the EAT considered that, in those circumstances, it may in some cases be reasonable for an employer to omit or erase parts of a witness statement prepared for disciplinary proceedings to protect the identity of such an informant/witness if the employer reasonably believes the fear of retaliation is genuine.
52. The Tribunal must take into account relevant provisions of the In ACAS Code of Practice on Disciplinary and Grievance Procedures when assessing the reasonableness of a dismissal on the grounds of conduct.
53. Even if procedural safeguards are not strictly observed, the dismissal may be fair. This will be the case where the specific procedural defect is not intrinsically unfair and the procedures overall are fair (*Fuller v Lloyd's Bank* [1991] IRLR 336, EAT). Furthermore, defects in the initial disciplinary hearing may be remedied on appeal if, in all the circumstances, the later stages of a procedure are sufficient to cure any earlier unfairness (*Taylor v OCS Group Ltd* [2006] IRLR 613). The Court of Appeal noted that the Tribunal must 'determine whether, due to the fairness or unfairness of the procedures adopted, the thoroughness or lack of it of the process and the open-mindedness (or not) of the decision-maker, the overall process was fair, notwithstanding any deficiencies at the early stage.'
54. In applying section 98(4) the Tribunal must also ask itself whether dismissal was a fair sanction for the employer to apply in the circumstances ie one falling within the

range of reasonable responses open to a reasonable employer. As noted above, it is not for the Tribunal to substitute its view for that of the employer.

### **Conclusions on liability**

55. The respondent dismissed the claimant because Mr Quadir held the following beliefs:
- 55.1. That claimant had referred to a customer on one occasion as 'stupid Chinaman' when talking to a colleague and that she had referred to him on another occasion as 'little Chink' when talking to another colleague and that these were racist comments and contravened the standards of behaviour the respondent expected.
- 55.2. That the claimant had knocked on a desk to imply that another customer was stupid and had referred to the customer as not being right in the head; and that those actions were motivated by that customer's race.
56. That was a reason relating to the conduct of the claimant. Therefore the respondent dismissed the claimant for a reason that was potentially fair ie one falling within section 98(2) of the Employment Rights Act.
57. I have decided that the respondent acted unreasonably in treating that as a sufficient reason for dismissing the claimant for the reasons that follow.
58. Firstly, the respondent failed to provide the claimant and Mr Quadir with the unredacted notes of interview from those who were said to have witnessed the claimant's conduct. I make the following observations.
- 58.1. Although the claimant knew which customers were being referred to and had a guess as to who some of the interviewees were (and those guesses may well have been accurate - the respondent will not say either way), it was not just the names that were redacted. The respondent redacted other things that were said in the interviews. The claimant could not assess whether there was anything behind those redactions that could potentially have helped her case.
- 58.2. Nor could Mr Quadir, and Ms Webster at appeal stage, make such an assessment. This is significant because decision-makers are expected to consider evidence that might tend to exculpate the claimant; not just evidence that points to guilt.
- 58.3. I have found as a fact that this was not a case in which any of the witnesses refused to allow their identity to be disclosed and/or told the respondent they feared retaliation. There was no suggestion by Mr Quadir or Ms Webster that they thought it was such a case; indeed there is no evidence that they gave any thought to the reasons behind the redactions. I have found as a fact that the interviewees consented to their interview notes being disclosed. In the circumstances, this is not the kind of case considered in *Linfood Cash and Carry Ltd v Thomson* [1989] IRLR 235 (or for that matter the case of *Tai Tarian Ltd v Howell Wyn Christie*: UKEAT/0059/19/VP (3 March 2020, unreported), which I was referred to.
- 58.4. The respondent has given no explanation for the redactions at this hearing. Nor did those responsible explain the reasons for the redactions to Mr Quadir (or Ms Webster).
- 58.5. This is a case where the evidence supporting the allegations of what was said about the Cantonese customer was not extensive. Some people who were said to be witnesses said they saw or heard one thing, others other things. There were some contradictions between statements.

59. In the circumstances the respondent's failure to provide the claimant with the unredacted copies of interview notes during the disciplinary proceedings fell outside the range of reasonable approaches open to a reasonable employer. It was also outside the band of reasonable approaches for Mr Quadir to reach his conclusions without considering the unredacted statements.
60. This failure undermined the fairness of the entire disciplinary process. The process was substantively unfair. It was not remedied by the appeal.
61. That reason alone is sufficient to render the dismissal unfair.
62. There is also a second, and separate, reason that I conclude the respondent acted unreasonably. That is that Mr Quadir formed the view that that comment about the second customer was related to race without the claimant being given a reasonable opportunity to respond. Mr Quadir had reasonable grounds for concluding that the claimant knocked on the table as alleged (given that she had admitted to doing so). However, he did not ask the claimant any questions directed at ascertaining whether her actions towards this customer were motivated by race. Unlike the comments the claimant is alleged to have made about the first customer, there is nothing in the alleged conduct towards the second customer that marks it out as obviously related to race. The investigators had not suggested in their report that they considered this conduct was related to race. In the letter inviting the claimant to the disciplinary hearing it was not obvious that the respondent was or may be considering that the conduct towards this customer was motivated by his race. There are clear differences in the way the two allegations are expressed in that letter. In respect of the alleged comments about the first customer, it is clearly stated that the comments are alleged to have been racist and there are repeated references to the organisation being 'anti-racist'. In respect of the second customer, however, the letter setting out the allegations does not expressly allege, in the same way, that the claimant's behaviour was racist. Indeed there is no reference at all to the customer's nationality, or national or ethnic origins. In the bullet points following the allegation it was said

*'It is alleged that the potential and actual risks and impacts of this conduct are:*

- that your actions fall outside of what is expected of all colleagues within the Group in line with its anti-racist values and culture'*

However, read in context it was not obvious that it was being alleged that the claimant's conduct towards the second customer was racially motivated.

63. It is a fundamental aspect of a fair disciplinary process that the employee knows what they are being accused of. It was unreasonable of the respondent to consider whether the claimant's conduct concerning the second customer was motivated by race, and to conclude that it was, without making it clearer to the claimant that this was being considered.
64. For those reasons I conclude that the respondent unfairly dismissed the claimant.
65. The claimant submitted that the respondent acted unreasonably in other respects. I did not find those arguments compelling. In particular:

- 65.1. Not allowing the claimant to be accompanied at meetings at early stages was not unreasonable.
- 65.2. Holding a meeting by Teams rather than face to face was not unreasonable. The claimant could have asked for face to face meetings but did not do so.
- 65.3. The claimant asked for her line manager to be interviewed. A fair process involves investigating potentially exculpatory evidence, not just evidence that points to guilt. The claimant's line manager would have known if the claimant had had any previous complaints against her or if other similar concerns had been raised during her 24 years' service. On the claimant's case her line manager would have been able to confirm that there had been no such complaints or concerns. That evidence might have been relevant in deciding how likely it was that the claimant had done what was alleged. It may also have been relevant to sanction. I consider that interviewing the claimant's line manager would have resulted in a more thorough investigation. However, it was not outside the range of reasonable responses for the respondent not to do so. The respondent is not required to conduct a perfect investigation. It is required only to conduct as much investigation as was reasonable.
- 65.4. The claimant also suggested the respondent should have interviewed a further witness. The claimant did not ask for them to be interviewed at the time and I do not consider the failure to do so undermined the fairness of the investigation.

### **Remedy**

66. The claimant is not seeking reinstatement or reengagement. The remedy she seeks is compensation under section 112(4) of the Employment Rights Act 1996. Such compensation comprises a basic award and a compensatory award, calculated in accordance with sections 119 to 126 of the Act.

### **Compensatory award**

67. Section 123(1) ERA provides that, subject to certain other provisions, the compensatory award shall be such amount as is just and equitable having regard to the loss sustained by the claimant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.
68. Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the claimant, it must reduce the compensatory award by such proportion as it considers just and equitable having regard to that finding (section 123(6) of the 1996 Act). The conduct must be in some way 'culpable or blameworthy': *Bell v The Governing Body of Grampian Primary School* UKEAT/0142/07.
69. In cases such as this one, section 124 of the Act caps the amount of any compensatory award.

### ***Loss sustained by the claimant***

70. The claimant has not sustained any lost earnings because her employment was due to terminate by reason of redundancy in any event. However, her dismissal for conduct resulted in her losing the redundancy payment she would otherwise have received (£37,040). It also resulted in her being classified as a 'bad leaver' for the purpose of a share scheme she was a member of resulting in a further loss of

£5645.24. The parties agree that this combined loss, in the sum of £42,695, was sustained by the claimant in consequence of the dismissal (subject to Polkey arguments) and is the starting point for the assessment of compensation.

**Polkey**

71. The compensatory award may be reduced or limited to reflect the chance that the claimant would have been fairly dismissed in any event had a fair procedure been followed: *Polkey v AE Dayton Services Ltd* [1987] ICR 142. As the Employment Appeal Tribunal said in *Software 2000 Ltd v Andrews* [2007] IRLR 568 a degree of uncertainty is an inevitable feature of this exercise and the mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence.
72. The respondent has decided, for whatever reason, not to disclose the information redacted from the interviewees' statements. That makes it impossible for me to even attempt to construct what might have happened had the full interview notes been disclosed. That being the case it is not appropriate to reduce compensation on the basis that there is a chance the claimant would still have been dismissed had the unredacted notes been provided to the claimant and the decision-makers.

**Conduct**

73. I have considered whether it is more likely than not that the claimant did what she is alleged to have done.
74. With regard to the second customer, the claimant admits that she knocked on the desk when a colleague was dealing with the second customer and that doing so was wrong. Her doing this contributed to the decision to dismiss her.
75. The claimant denies the other allegations, however (ie the allegation about what she is alleged to have said about that customer as well as the allegations about the first customer).
76. None of the individuals who are said to have witnessed that conduct gave evidence at this hearing. The evidence contained in their interview notes has not been tested by cross examination. That affects the weight it carries, particularly in light of the following.
- 76.1. There are discrepancies and disparities between what the claimant's colleagues said in their interviews, including as to the words used by the claimant.
- 76.2. The statements lack the level of detail that would assist in understanding how close the individuals were to the claimant when she said what she is alleged to have said and, based on that, the likelihood of the claimant being misheard.
- 76.3. One of the alleged witnesses, A, said 'I always had a vibe from her that she was a low key racist but she had never really said anything before and you can't accuse someone if nothing has happened.' This indicates A considered the claimant was racist even before the claimant had said or done anything that would support that opinion. That comment suggests to me A held prejudicial views about the claimant that may well have influenced their perception and recollection of events.

- 76.4. The claimant had complained to the line manager about A and another colleague (seemingly F), with justification. That might have affected the perception of the claimant and/or led to prejudice against her.
- 76.5. The impression given by the interviews is that there were rumours and gossip circulating about the claimant and what she may or may not have said. That may well have influenced perceptions and recollections of events
- 76.6. The interview notes suggest that neither A nor F reported at the time what they say they heard the claimant say about the Cantonese customer. If their allegations are true the claimant's comments were obviously offensive and A and F would have known that was the case and that they were inappropriate. That they did not report the alleged comments at the time undermines their evidence that the comments were made. The explanation given by F for not reporting is unconvincing.
77. I do not consider the untested hearsay evidence of what these individuals said in interviews can be given any weight.
78. Having considered the evidence I do not consider it more likely than not that the claimant made the comments attributed to her about the first customer or the second customer.
79. I have decided it is just and equitable to reduce compensation (both the compensatory and the basic award) on account of the claimant's conduct in knocking on the desk when a colleague was dealing with the second customer. I have not been persuaded that the claimant's conduct was motivated by the customer's race. That said, I do not accept that the claimant did this simply because she thought the customer was 'not listening'. I find it is more likely than not that the customer did have some form of disability. I find it more likely than not the claimant's gesture was intended as a comment on the customer's intellectual ability. The gesture was not intended to be seen by the customer; but it was intended to be seen by the claimant's colleagues. It was conduct that was disrespectful to and disparaging of the customer and of those with similar disabilities. That said, the claimant had long service and there is no evidence that she had behaved in a similar way on other occasions throughout her 24 years' service. Furthermore, the respondent has failed to establish that the claimant did the other things she was alleged to have done. In the circumstances I consider an appropriate deduction for this conduct to be 25%.
80. This takes the compensatory award down to £32,021.25, before applying the cap in section 124.

### **Acas Code**

81. There has been a suggestion by the respondent that there should be a reduction because the claimant failed to follow the ACAS Code. The suggestion was that she had breached the Code by bringing an appeal without setting out certain grounds of appeal. I do not agree that the claimant acted unreasonably in relation to the appeal.

### **Statutory cap**

82. The amount of the compensatory award that can be awarded to the claimant is capped by ERA section 124. In this case, the amount of the compensatory award cannot exceed 52 multiplied by a week's pay of the claimant.

83. The parties agreed that a week's pay for the claimant was £356.15. Therefore the maximum that could be awarded as a compensatory award is £18,519.80.

84. That is the amount I awarded.

**Basic award**

85. The basic award is in addition to the compensatory award. Subject to what is said below about conduct, the basic award is a fixed amount calculated by reference to the claimant's age, length of service and the amount of a week's pay.

86. The parties agreed that a week's pay for the claimant was £356.15 and that this meant the basic award was £10,506.43, subject to my decision on conduct below.

87. Where the Tribunal considers that any conduct of the claimant prior to dismissal was such that it would be just and equitable to reduce the amount of the basic award to any extent, it must reduce the amount accordingly (section 122(2) of the 1996 Act).

88. I consider that the conduct of the claimant in knocking on the desk as a comment on the second customer's intellectual ability was such that it would be just and equitable to reduce the amount of the basic award. I conclude that the same reduction should be made to the basic award as the compensatory award ie 25%. I reduced the award accordingly, resulting in a basic award of £7,879.82.

Employment Judge Aspden

Date: 23 January 2026

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