



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr L Karadag

v

Asda Stores Limited

Heard at: Watford (by CVP)

**On: 14 to 17 July 2025; 24 July 2025
(in chambers); 20 October 2025
and 13 November 2025 (further
hearing)**

**Before: Employment Judge Wyeth
Mr M Kaltz
Ms K Omer**

Appearances:

For the Claimant: Mr C Ezike (solicitor-advocate)

For the Respondent: Mr S Gittens (counsel)

JUDGMENT having been sent to the parties on 17 November 2025 after being handed down along with reasons verbally on 13 November 2025 and a request for written reasons having been made by the respondent in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2024, the following written reasons are provided:

REASONS

The claims

1. By way of a claim form issued on 23 January 2024 the claimant brought complaints of ordinary unfair dismissal, wrongful dismissal (breach of contract) and direct race discrimination. The respondent defended the claims.

The issues

2. The issues for this final Hearing were identified and set out in the order of EJ McNeill KC sent to the parties on 21 October 2024 following a preliminary hearing before her on 15 August 2024. She recorded them as follows:

"1. What was the reason or principal reason for the Claimant's dismissal and was it a potentially fair reason within the meaning of section 98(2) of the Employment Rights Act 1996 (ERA)? The Respondent contends that the reason for the Claimant's dismissal was conduct being: "Serious negligence through a failure to implement processes and controls, that allowed falsification of company records equating to £289,000 of shrink benefit, which if not identified, would have resulted in a personal gain, which is a gross misconduct offence."

2. Did the Respondent hold a genuine belief in the Claimant's misconduct?

3. If so, was that belief formed on reasonable grounds and following as reasonable and thorough an investigation as was warranted in the circumstances? The Claimant makes the following allegations of unfairness:

3.1 A thorough and fair investigation was not carried out into the Claimant's defence or mitigation;

3.2 The Respondent failed to provide the Claimant with a copy of the spread sheet which was the basis of its investigation

3.3 No interrogation or investigation carried out on any of the points raised in the Claimant's appeal, such as the IT issues complained about by the Claimant;

3.4 New evidence regarding daily checks and alleged ethics complaint for the Claimant's previous store were relied upon during the appeal process, which were unrelated to the Claimant's store.

3.5 During the appeal, the Respondent relied on a spread sheet dated 3 December 2023 as the reason for the Claimant's dismissal. The spread sheet post-dated the Claimant's dismissal of 10 October 2023

3.6 Inconsistency with the disciplinary process and outcomes with the Claimant and general store managers in different stores. Other store managers were not dismissed with similar allegations, rather informal actions were taken.

4. Was the decision to dismiss within the range of reasonable responses open to a reasonable employer when faced with these facts?

5. Did the Respondent adopt a fair procedure? The Claimant challenges the fairness of the procedure and will confirm to the Tribunal and Respondent by 22 August 2024 what specific procedural errors he alleges, as ordered above.

6. If the Claimant was dismissed for a potentially fair reason, did the Respondent act reasonably in all the circumstances of the case by treating that reason as sufficient reason to dismiss him (section 98(4) ERA)?

Wrongful dismissal

7. Did the Respondent breach the Claimant's contract of employment by dismissing him without notice, or without pay in lieu of notice? The Respondent's case is that he has no such entitlement because he was summarily dismissed for gross misconduct.

8. Do the facts confirm that the Claimant's action amount to gross misconduct?

Race Discrimination

9. *The Claimant is of Turkish descent/heritage.*

Direct Discrimination – s.13 Equality Act 2010

10. *Did the Respondent do the alleged following acts:*

10.1 *In August 2023, the Respondent compiled a list of 8 employees that were suspected of falsifying records within the store at which the Claimant was employed. Of the list of employees, investigations were commenced against 3 employees only, [MT, GI] and the Claimant, all of whom were Turkish or perceived by Noel Barnes in particular (but also Bryan Boyle) to be of Turkish descent;*

10.2 *Between 29 and 31 August 2023, the Respondent's investigation manager Noel Barnes questioned the 3 employees (including the Claimant), who were subject to investigation, on their ethnicity, which had no bearing on the allegations made against them. In relation to the 2 employees who are not the Claimant and are not parties to this claim, this allegation is not relied on as a separate act of discrimination but as evidence in support of the Claimant's case that he was discriminated against.*

10.3 *Between July and October 2023, 5 further stores of the Respondent were highlighted as having the same or similar issues giving rise to the investigation against the Claimant, however, no action was taken against the Store Managers (all of whom were non-Turkish).*

10.4 *On 6 October 2023, the Claimant was dismissed at the end of a disciplinary hearing (later confirmed in writing by letter on 16 October 2023).*

11. *If so, did any of the above alleged conduct constitute the Respondent treating the Claimant less favourably than they treated others whose circumstances are not materially different to those of the Claimant? The Claimant relies on [BO], Operations Manager of the store at which he was employed by the Respondent, as his comparator. The Respondent contends that the Operations Manager is not a suitable comparator as they are not the same seniority as the Claimant. In the alternative, the Claimant relies on a hypothetical comparator who would be a General Store Manager with the Claimant's responsibilities but who was not of Turkish descent/heritage.*

12. *If so, was such treatment because of the Claimant's race?*

Remedy – Unfair dismissal

13. *If the Claimant is successful in respect of his complaint of unfair dismissal it is understood he is claiming reinstatement:*

13.1 *Should an order for reinstatement be made (s.116(1) ERA)? In this regard:*

13.1.1 *Is it practicable for the Respondent to comply with an order for reinstatement (s.116(1)(b))?*

13.1.2 *Would it be just to order reinstatement (s.116(1)(c))?*

13.2 *If the Tribunal does not order reinstatement, should an order for reengagement be made? In this regard:*

13.2.1 *Is it practicable for the Respondent to comply with an order for reengagement (s.116(3)(b))?*

13.2.2 *Would it be just to order reengagement, and if so, on what terms (s.116(3)(c))?*

13.3 Is he entitled to the basic award?

13.4 Is he entitled to claim financial losses? If so, at what level?

14. Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

15. Has the Claimant taken reasonable steps to mitigate his loss?

16. Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason? If so, ought there to be a Polkey reduction?

17. Did the Claimant contribute to the dismissal by culpable conduct? If so, would it be just and equitable to reduce the compensatory award? By what proportion?

18. Did the parties follow the ACAS Code of Practice on Disciplinary and Grievance Procedures?

19. If not, was the non-compliance unreasonable?

20. If yes, would it be just and equitable to increase or decrease any award payable to the Claimant in light of this?

Remedy - discrimination

21. If the Claimant is successful in respect of his complaints under the Equality Act 2010:

21.1 Is he entitled to claim financial losses? If so, at what level?

21.2 Is he entitled to an award for injury to feelings? If so at what level, taking into consideration the guidelines set out in *Vento v Chief Constable of West Yorkshire Police (No 2)* [2003] IRLR 102 and associated Presidential Guidance?"

3. The claimant complied with the request at paragraph 5 of the issues above and sent in a two-page document listing 21 allegations said to amount to procedural unfairness. That document was headed "Procedural issues raised for tribunal" and appeared at pp50 to 51 of the trial bundle. A copy of it is annexed to this order.
4. At the start of the final hearing the representatives for both parties confirmed that those were the issues that the tribunal had to determine in this case and there were no changes to what had been identified.

Evidence

5. Prior to the start of the hearing the tribunal was provided with a witness statement from the claimant (consisting of eleven pages). For the respondent the tribunal received witness statements from Mr Noel Barnes, the investigation officer (consisting of fourteen pages), Mr Nicholas Johnson (consisting of twelve pages) who was appointed by the respondent as note taker during the disciplining hearing; and Mr Feroz Patel, the appeal officer (consisting of eighteen pages).

Also before the tribunal was an agreed electronic bundle consisting of 1087 pages.

6. Not unusually, there was a conflict regarding the burden of proof in relation to the claims being advanced. The respondent had the burden of showing the potentially fair reason for dismissal (although the burden regarding reasonableness was neutral) and the claimant had the initial burden of proving discrimination. Both sides agreed that the tribunal would hear evidence from the respondent's witnesses first given that the thrust of this case was about the claimant's dismissal. Accordingly, evidence was heard in the following order: Mr Barnes, Mr Johnson and Mr Patel. Thereafter the claimant gave his evidence. The evidence was concluded by circa 3pm on day three.
7. On behalf of the respondent, Mr Gittens provided 24 pages of written submissions which the tribunal took time to read. The claimant's representative, Mr Ezike, made oral submissions only. Mr Gittens was then given the opportunity to expand orally on his written submissions. Accordingly submissions concluded at the end of the third day. The intention was for the tribunal to endeavour to deliver an extemporary judgment the following day but it was clear that there was too much material and evidence to consider and that further deliberation would be required. More significantly, having commenced deliberations on the fourth day, the tribunal considered there was a significant lacuna in the evidence regarding the issue of purported serious negligence. With the agreement of the representatives for both sides, the tribunal took the unusual but necessary step of requesting to hear further evidence from Mr Patel and Mr Johnson for the respondent and also the claimant dealing with the issue of what they had said to be 'serious negligence'.
8. In particular, the tribunal needed to understand why Mr Patel and Mr Johnson said it should have been obvious to a General Store Manager in the claimant's position as at March 2023 that the electronic book stock figures had been inappropriately manipulated. In addition the respondent's witnesses were requested to explain: a) what tools were available to a general manager (as at March to June 2023) to be able to identify this problem; b) what training was available regarding any such tools; and c) why they said this problem could and should have been spotted at the time. In turn, the claimant was requested to explain why he said it was not reasonable for the respondent to regard his failure to address the book stock discrepancy to amount to serious negligence.
9. Given that each side was represented, it was somewhat surprising that this material had not been forthcoming in the documentation presented particularly as the witnesses alluded to such material in their evidence. Be that as it may, the tribunal considered that it was in the interests of justice to take this step and having canvassed the views of each side, neither party raised any objection.
10. The parties were ordered to provide short supplementary statements and were given liberty to produce any additional relevant documents relating to that point only (having been reminded that disclosure should have taken place already and therefore it was not anticipated that there would be much in the way of additional documentation not already disclosed).

11. Again with the agreement of the parties the hearing was listed for a further two days, namely 20 October 2025 and 13 November 2025. The tribunal dealt with the additional evidence and further submissions on the issue of serious negligence on the first of those days. Mr Johnson, Mr Patel and the claimant were recalled to give further evidence in that order. Both sides took the opportunity to cross-examine and make further submissions. It was not possible to provide an extemporary Judgment with reasons on the afternoon of 20 October 2025. As a consequence, Judgment on liability with reasons was delivered orally on 13 November 2025 in the morning. The tribunal then heard further evidence and submissions on remedy and made a further Judgment awarding the claimant compensation. Again, oral reasons were given explaining the basis of the calculations reached.

Findings of fact

12. The tribunal made the following findings of fact on the balance of probabilities from the evidence presented.
13. The respondent is a well-known supermarket chain with over 600 stores across the United Kingdom with around 180,000 employees.
14. The claimant commenced employment as a general store manager (GSM) for the respondent on 12 June 2017 and at the time of his dismissal was the GSM of the Southgate Circus store in the London Borough of Enfield, North London having moved from the respondent's Feltham store in May 2022.
15. As GSM, he was responsible for overseeing store operations, including inventory (stock) control.
16. The claimant was considered to be a very capable GSM. He had strong performance reviews and a clean disciplinary record.
17. As a retail business, unsurprisingly the respondent monitors trading data throughout all of its stores and, in particular, inventory levels and "shrink" (i.e. stock loss). The success and trading performance of any store will be a factor that is taken into account in relation to bonuses that store managers can earn each year. Need it be said, the trading performance of a store will be impacted by its levels of shrink. The tribunal accepted the evidence of Mr Johnson that bonuses for GSM's can be in the region of 40% of their annual salary. The extent to which any particular GSM has reached or exceeded their key requirement areas (KRAs) will impact upon the amount by which their bonus may be increased.
18. According to the evidence of Mr Barnes, a certain level of stock loss is always anticipated and the Southgate Circus store had a budget for shrink of around £700,000 to £750,000 per annum. If that level of loss can be reduced then that will reflect positively in the assessment of a GSM's performance. Shrink discrepancies of either extreme (worse or better) are likely to flag up the need for investigation.
19. The respondent will usually undertake an inventory check process in each of its stores annually which involves physical items in store being counted and reconciled with the number of items being shown on electronic records as being in stock (known as "book stock"). The day to day digital book stock record is

described as perpetual inventory or, rather, "PI". It is very important that PI is as accurate as possible at all times.

20. Because of the cost of undertaking the inventory check which is both complex and expensive, the respondent's central inventory team will usually carry out a pre-inventory check in advance of the substantive process taking place. This check is carried out electronically.
21. In August 2023, based on the pre-inventory check, a member of the respondent's central office inventory management team referred concerns about perpetual inventory ("PI") anomalies at the Southgate Circus store to the loss prevention team. Mr Noel Barnes, one of four dedicated Divisional Investigation/Loss Prevention Managers covering 300 to 400 stores in the south of the country, was appointed to investigate.
22. The respondent had identified a pattern in the PI stock recording at the Southgate Circus store that it considered to be suspicious. By way of explanation, the respondent will hold and sell items of stock that are seasonal to reflect specific events throughout the year, such as Easter eggs or plants and flowers for Mother's Day. When the event is over, any remaining stock needs to be cleared and will usually be reduced in price. Any reduction in price for seasonal items is issued to all stores centrally by the respondent and there will often be more than one reduction on any sale item in an effort to clear stock that is no longer seasonal. Because the reduction in price has a negative effect on each individual store's accounts, which in turn affects the store's profit margin, when a price adjustment is issued by the respondent centrally, stores are notionally credited by the amount of the reduction based on the number of items the store has remaining in stock after the event has passed and which are consequently affected by the price reduction. Accurately crediting the store with any price reduction depends on the store having an accurate digital record of what it has in stock.
23. Indeed, inflating the PI (i.e. book stock) just prior to a price reduction can lead to a store being credited with more money than it should be, which makes the store's financial performance look better than it actually is because it artificially reduces the extent of the store's shrink level.
24. Mr Barnes gave the following example in his evidence. If a store does not have an item in stock it is still possible for the PI to be manually adjusted to show that the store did have, say, 10 units of that item in stock. If the normal price for that stock item (or "unit") is £1 then the book stock recorded for the artificial figure of 10 units would be £10. If the respondent's central office then issues a price change to reduce the price of the item by, say, 50 per cent, the book stock value is automatically reduced to £5 rather than £10 and the store is given the "lost" £5 in credit so that the store's profit margin is not negatively affected. If the PI for those items is then corrected back to what it should have been (i.e. zero) the book stock reduces to nil but the store will still benefit from the £5 credit it was given for the reduction that would have applied to the stock had it existed.
25. In relation to the claimant's Southgate store, the respondent became concerned because it appeared that the PI for seasonal stock had been deliberately manipulated to benefit from the credit that would be given for stock that had not been sold during any event to which it related.

26. Immediately prior to a seasonal item going on sale, the stock figure recorded for some items was being vastly inflated to show the store was holding a significantly higher number of that product than it in fact had remaining in stock. When the product value was reduced centrally by the respondent the difference between its full price value and subsequently reduced value was credited to the store. Once the store had the benefit of that credit it appeared that somebody was then logging onto the electronic system again at a later date and reducing the stock to the correct level. Even though the stock was reduced back to what it should have been, the store retained the credit for the price adjustment and had the benefit of a credit that it should never have received. The respondent believed that someone was doing this deliberately in the knowledge that the item was very likely to be subject to a price reduction once the event was over.
27. Employees are able to update the PI manually using a handheld scanner gun. Indeed, store colleagues are encouraged to monitor and keep PI figures updated and correct on a daily basis. If the store appears not to have a product but the PI is showing that it is in stock the PI should be adjusted so that it accurately reflects the true position at any point in time. If items go missing, for example, because they have been stolen it will be necessary to update the PI because the stock level is not accurate and needs to be reduced to reflect the true amount in stock.
28. Any significant changes in PI stock levels had to be approved by a store manager. The system produces a report which store managers can and should check on a daily basis so that change to stock is properly monitored and stock levels are being managed directly.
29. The various duties that GSMs were expected to carry out when the claimant was employed were set out in a "Day of the Life" document. This refers to various activities which relate to shrink or on-hand changes, namely: reviewing the daily recap report; delivering leadership huddle (which involves updating managers on store performance including shrink); MOT ("Moment of Truth") Availability review (which includes reviewing on-hand changes from the previous day and finalising changes for that day); completing the weekly shrink review; reviewing the GSM weekly pack; and holding weekly Accelerate meetings (including taking all relevant managers through their on-hand changes and shrink controls). GSMs also complete a monthly shrink audit which incorporates monitoring of PI and on-hand changes.
30. In accordance with the Day in the Life document, by its very description, all GSMs were expected to review the daily recap report on a daily basis. The report would be automatically generated and printed first thing in the morning for this purpose.
31. Those reports contain a daily inventory control log containing a "markdown markup" column. If there was a substantial increase in PI on products that were subject to a markdown, this would be easy to spot as this column would show an unusually high figure possibly in the tens of thousands. There was also a table in the reports setting out the value of markdowns over the previous 24 hours by individual product line.
32. In addition to the daily recap reports, GSM's also received a daily report detailing on hand changes for the previous 24 hours. There is an Adjustment column in the report showing the number of units of stock that were added or taken away by the on-hand change. According to the box at the top of the sample report

provided in evidence before us, it would seem that the person requesting it could specify the time frame to be covered which would suggest that reports could show information that was not limited to the previous 24 hour period.

33. In accordance with the Bookstock Guide issued to management, at the outset of the “On Hand Changes” section, it states the following:

“On Hand Changes (OHCs) are key to understanding what is driving our shrink in stores. We can perform On-Hand Changes for several reasons and getting to the root cause of this will enable you and your store teams to take the correct action. Reviewing your On-Hand changes on a daily and weekly basis is crucial to identify the areas which your store need to put more of a focus. On Hand Changes play a pivotal role with inventory processes and protecting availability, they are also an important indicator of loss but do not directly translate to Shrink.”

34. Despite the fact that the claimant suggested in his supplementary statement that the daily reports were issued to trading managers, and that they were responsible and accountable for reviewing their PI changes, this is inconsistent with the Day of the Life document setting out the responsibilities of a GSM. This is also inconsistent with the fact that during the investigation meeting the claimant appeared to accept full responsibility for the managers he had not trained. The tribunal is satisfied that it was his responsibility as GSM to be checking these reports on a daily basis.
35. In addition to these reports, the respondent had a digital reporting system using software known as PowerBI. The claimant says that this was intended to replace the automated reports that were printed daily. He also says that this was fraught with errors when first released. Nevertheless, the tribunal is satisfied that access to PowerBI did not detract from the fact that the automated reports were still in use at the relevant time and remained available for all GSMs to check regardless of the use of PowerBI. Ultimately, the claimant’s case was that he had not been undertaking these daily checks but had been relying on weekly checks instead.
36. According to Mr Barnes, it is standard for financial anomalies valued over £100,000 to be reported to the respondent’s ethics team and this incident was flagged as a tier 2 case. That meant that the respondent’s board of directors was notified and there was a concern that the matter would need to be reported to external bodies. It was for this reason that Mr Barnes was engaged to investigate.
37. As indicated above, Mr Barnes had identified particularly significant issues in relation to Mother’s Day gifts and Easter Eggs that spiked around April 2023.
38. The tribunal had in the bundle of evidence before it (starting at page 873) a spreadsheet running to 128 pages which Mr Barnes referred to in his evidence. Notably this document was never provided to the claimant. The spreadsheet showed changes made to the PI of individual products day by day.
39. Again, Mr Barnes gave an example of an item identified as “Asda mother’s basket”. On 20 March 2023 it appears that this item was manually updated to increase the stock level by 491 to a total of 533 items. This result resulted in the book stock value increasing by £2,455. On 28 April (over a month later) somebody adjusted the PI manually to reduce the number of items in stock from

502 to zero. Notably, the user ID for the colleague who authorised both of those changed was "M0T005Y" which belonged to one of the Food Hall managers, MT.

40. As part of his investigation, Mr Barnes identified that many of the changes were suspicious in his view. On 11 April 2023 alone, which was the day after the Easter bank holiday, manual increases of over 500 units or more were made to 90 product lines, all of which were related to Easter. Mr Barnes was confident that the store would not have had that many units of those product lines in stock. This resulted in a total of over £90,000 of stock being artificially added to the book stock value on that one day through the PI adjustments process.
41. This was the day when price reductions would have been anticipated on Easter specific product lines. The PI record was then adjusted back down again on 28 April 2023.
42. On the same day, the PI figure was increased to 980 across six product lines, 981 across two product lines and 982 across four product lines. Mr Barnes considered this very unusual. He believed that whilst one or two manual changes could be down to a mistake, the scale of the changes suggested in his view that this was deliberate.
43. He also identified significant increases being made to products on 5 and 21 April where those lines were again reduced to the correct level on 28 April 2023. Nearly all the changes were in relation to items that would be subject to the price reductions.
44. Mr Barnes considered that the fact that changes were so concentrated on products which were subject to price changes indicated this was being done deliberately. Furthermore, he believed that it was very unlikely that ordinary shop colleagues would understand the impact of the changes whereas managers would be aware of the impact on the store's financial records and perceived positive performance by managers.
45. It was between March and April 2023 that a very large number of these manual PI changes had been made that Mr Barnes considered not to be credible. Mr Barnes calculated that this resulted in an artificial increase in the store's accounts (by way of a reduction of anticipated shrink levels as that is how the respondent records the credit) of approximately £225,000.
46. The vast majority of these changes were authorised by two user IDs one of which has been referred to already as belonging to MT. The other user ID was "G0I00F" which belonged to the George and General Merchandise manager, GI.
47. As part of his investigation, Mr Barnes attended the Southgate store on 30 August and 1 September 2023. He interviewed MT, GI, and KP (a store colleague) on 30 August and KB, another food hall manager, on 1 September. Lastly, he interviewed the claimant also on 1 September 2023. All of the interviews were recorded by consent.
48. The individuals who were interviewed other than the claimant were questioned because their user IDs were recorded in connection with the PI adjustments during the period under investigation by Mr Barnes. Mr Barnes formed the view that none of them appeared to have an understanding of PI manipulation. Furthermore, they all confirmed the user IDs were shared amongst colleagues. As

a result it was not possible to confirm who had put through or authorised any of the PI changes despite the fact that ostensibly they had been authorised by certain managers.

49. Notably, Mr Barnes did not interview the stores operations manager, BO, because BO was absent from the business at the time Mr Barnes was carrying out his investigation. Mr Barnes had intended to speak to BO at a later date but BO apparently left the business without him having done so.
50. No explanation was offered as to why BO could not be contacted even after he had left the business or why efforts were not made to ensure that there was some means of communicating with him both prior to and post his departure given the seriousness of this matter. Indeed, BO emailed Mr Barnes on 24 September 2023 to confirm the dates of his absence in 2023. According to that email (which appears from the address to have been a personal email account) BO was absent due to long term sickness from the end of March 2023 until the beginning of June 2023. It seems that BO was still working for the respondent in late September (page 611). Given that Mr Barnes believed that someone was responsible for consciously inputting this data manually by using a device of some kind and would have dedicated time and effort to that process, establishing what BO knew or did not know about this apparent manipulation could have been relevant in terms of the investigation.
51. Indeed, according to the HR shared services records to which the tribunal was referred in evidence (page 611) it is noted that BO was on long-term sick leave at the time of the high-level PI changes but that BO also used a Bring Your Own Device facility (which the tribunal understands to be an app on a user's phone). According to that record Mr Barnes suspected it was highly unlikely that BO had made those changes and in any event "system limitations" made it impossible to determine that, "unless [BO] was to admit to making the changes from his device from home". The note recorded that BO would be interviewed after his holiday in two weeks' time (the note was dated 26 September 2023). On the basis that none of the managers interviewed seemed to understand how their IDs came to be associated with the PI inflated increases, the importance of speaking to BO to establish what he might have known seemed to be all the more relevant to the investigation.
52. At the start of the claimant's interview with Mr Barnes on 1 September, Mr Barnes spoke to the claimant about the fact that the respondent had big concerns regarding PI movement around price changes in six departments. He identified, in particular, seasonal changes such as Mother's Day and Easter where this had resulted in a potential reduction in the Southgate store's shrink by at least £200,000.
53. There was a dispute of fact about what the claimant was shown at the investigation meeting. Mr Barnes says that he went through the data entries with the claimant on his laptop but did not provide this information to him (either by hardcopies or electronic) at any stage because it was too cumbersome and ran to over 900 pages. Certainly in the audio recording there is a reference to one example of Easter eggs being discussed. Mr Barnes puts to the claimant that 986 units were added in, and then removed, although there is no specific reference as to which entry this was referring to.

54. The claimant says that he was not shown the detail of these transactions and that, so far as Mr Barnes was referring to anything on his laptop screen, the screen was only ever facing Mr Barnes not the claimant.
55. Regardless of whether or not Mr Barnes showed the claimant particular entries, it stands to reason that the claimant could not properly consider the material that Mr Barnes had before him because it was never provided to him either in advance or subsequently. Instead he was provided with isolated examples. The tribunal is also satisfied on the evidence that there was no reason why the claimant could not have had that evidence provided to him at some stage in the investigation process. Even if it ran to 900 pages, this was material that was available to Mr Barnes. Accordingly, at the very least, it should have been made available to the claimant even if this was simply electronically either by provision of a digital file or at the very least by allowing him access to a room and time to look at it, either before or after the investigation meeting. There was no evidence to suggest that this needed to be provided in hardcopy, nor was there any suggestion that this was highly sensitive material that could not be shared with a GSM. On the contrary, the respondent's case was that the GSM should have been aware of this information on a day to day basis.
56. Furthermore, given that the claimant remained in employment during the period of investigation and up to the point of his disciplinary hearing, the opportunity to facilitate the claimant's ability to properly examine this material must have been possible. That said, it is noted that the claimant did not between his interview and his disciplinary meeting make the request to examine the detail of this material.
57. When asked at the outset if he had requested his team to inflate PI around price changes, the claimant denied doing so. He said it was normal for the store to deliberately manipulate stock levels in order to drive delivery of items where they wanted more stock. Mr Barnes said in evidence that this was frowned upon because it was deliberate manipulation of PI but according to the claimant's oral evidence before us, other GSM's did the same thing. In any event, this was not considered to be the same as price change manipulation.
58. During the meeting the claimant denied that he had given any instructions to anyone to change the PI for price change purposes. He explained that GI was a new manager to the business and he was not aware whether MT understood the implications because he had never checked her understanding.
59. There was a discussion about scanner guns that would be used to alter PI. These guns required a user ID and it was accepted by the claimant that colleagues would routinely share scanner guns even though the device may be logged on to someone else's user ID account. The claimant referred to the store being short of guns resulting in them being shared. The claimant also referenced the fact that certain key colleagues were able to access the inventory management system on their phone by way of the "Bring Your Own Device" facility. The Claimant said that passwords were not shared as to do so would have enabled managers to see each other's personal details. In the investigation meeting, the claimant had also expressed his intention to order more guns as part of actions he said he would take to ensure this issue did not occur again.

60. In oral evidence, the claimant accepted that it was easy to log out of a device and there was nothing preventing a manager from ensuring that this was done before any gun was returned or handed on.
61. Mr Barnes asked the claimant if there was a process in store whereby the value of “on hand” changes was monitored on a daily basis to which the claimant indicated that there was not. He asked whether the claimant used the dashboards that the respondent supplied regarding looking at on hand changes on a regular basis along with senior management. Again, the claimant confirmed that he did not -he suggested the reason for this was the fact that he no longer had an admin manager at the store. We accept the respondent’s evidence that this was a role that was removed from the respondent structure several years previously
62. The claimant indicated during the investigation that, since the removal of the admin manager there were not “approaches in place to monitor it daily, weekly or monthly”. He did, however, say that the daily changes were reviewed by the Operations Manager or that day’s Duty Manager and that he himself reviewed changes weekly.
63. The claimant also referenced the fact that he had seven new managers at the start of the year from around February to March suggesting that this had made it difficult for him to keep on top of such matters.
64. The claimant did acknowledge in the investigation meeting that there was a massive focus in the respondent business at the time of his investigation meeting in terms of shrink. He referred to this being “billions of pounds” and seemed to suggest that the budget had been “blown already” as he put it. He indicated that he was aware of a new shrink KPI that had been established by the respondent three to four weeks prior to the investigation meeting (that is, some months after the time of the PI changes which were the focus of the investigation).
65. Midway through the meeting Mr Barnes put to the claimant that it appeared that someone had “sat there and keyed in and taken out the PI afterwards” a number of Mother’s Day products even though prior to doing so, there were no products, no shelf edge labels and no barcodes in existence in relation to those product lines. Mr Barnes put to the claimant that although the respondent could not prove it and there was no evidence to support it, this appeared to be a conscious decision of somebody “sitting there” actively inputting this data. In response, the claimant appeared to agree.
66. Mr Barnes acknowledged the mitigation that the claimant had advanced in relation to the guns and the complexity about stock from the depot, but he was clearly of the view that this was missing the point and as he put it “that would be like looking at a mountain in the Lake District compared to Everest“. In essence he considered that those matters would not in themselves prevent the claimant from seeing the very significant stock manipulation that was the subject of the investigation.
67. During the meeting the claimant appeared to understand that it was necessary to correct any PI inaccuracy within seven days. Mr Barnes put it to the claimant that this was precisely the problem because the corrections were not being made within that timeframe but in most cases 20 or so days later which in turn resulted

in there being no automatic cancellation of the credit received for reductions in stock that the store never had.

68. The claimant also raised the fact that he had flagged up a concern about Manhattan chairs that appeared to be missing according to the stock records. The claimant maintained that he had carried out scanning checks of random products in July 2023 and discovered that this product line was showing the store having around 317 items in stock on the PI. The actual stock holding, however, was 22 units. Consequently, there were 295 missing. On 18 July 2023, the claimant emailed two colleagues to query this discrepancy (and notably had copied in GI, KB and BO amongst others into that email). It is apparent from the email chain that the claimant was concerned about having £12,000 on the store's book stock when the items were missing and was asking for assistance from colleagues to support looking into the matter.
69. During the discussion with Mr Barnes about this at the investigation meeting, the claimant indicated that he thought the matter "dropped into the ether". Mr Barnes pointed out that there were two big on hand changes done, firstly on 20 May and secondly on 22 May. Both were each for an increase of 144 units. He put to the claimant that this was added in around the time the price for the item went down from £35 to £10. This, in turn, resulted in a credit to the store of £2,920 which the store should never have received. Mr Barnes was of the view that this was just another example of stock being inflated, credit being awarded, and a stock reduction being made several weeks later. In so far as it is relevant, for reasons that are unclear to the tribunal, the figures discussed in the meeting do not seem to make sense mathematically.
70. The claimant emphasised that he was clearly chasing for assistance with this stock problem and pointed out that no one had come back to him for some considerable time. He maintained that this was evidence that he was trying to do the right thing at the store and that there were problems with missing deliveries and a lot of new managers that needed the right guidance and right coaching.
71. Twice during the investigation meeting Mr Barnes referred to needing to interview BO including at its conclusion.
72. Towards the end of the meeting, the claimant accepted that he should take full responsibility for whatever had happened at the store and having to deal with his people as he put it but denied any personal gain (p249).
73. In his evidence before the tribunal, Mr Barnes was adamant that he had not seen anything on this scale in his 38 years of working for the respondent.
74. After completing the interviews, Mr Barnes undertook a review and completed an investigation recap form (p251). In it he set out his position regarding the information he had discovered and the basis for reaching a decision that the matter should be forwarded to a disciplinary manager. In short, Mr Barnes was of the view that the PI price change issues involved numbers that were very high. In his view they were so high that it was difficult to believe that a store manager could not have noticed the problem. Mr Barnes was influenced by the fact that the claimant had indicated that he knew how to manipulate the PI to drive stock deliveries. He also concluded that the claimant did not have processes in place for monitoring manual PI changes. He regarded this to be a serious failing because it was a fundamental part of the role of a GSM to maintain accountability

based on PI accuracy. Mr Barnes clearly did not believe that this was a mistake and was of the view that the stock levels had been manipulated deliberately. He also formed the view that the claimant accepted that this had been done deliberately even though the claimant maintained that he did not know what had happened.

75. Mr Barnes believed that the changes had been made by a manager because the store's stock result was a key part of their performance metrics whereas hourly paid staff had nothing to gain from price change manipulation.

76. At the end of that document (on p256), Mr Barnes records his reasons for recommending the matter proceeded to a disciplinary for misconduct as follows:

- There is no control over User ID log ons - with guns being left signed on, on the dept(s) all day. This is a management failing.
- That the PI inflation is a deliberate act (by persons unknown) to manipulate books stocks through un-authorized Price change claims.
- Although denied – Senior management kudos based on a good stock result this would be the main motivation for these practices to either be endorsed or ignored. This would Impact on store Bonus position.
- Falsification of company records or failure to follow correct financial procedures.
- Making an unauthorised / false financial claim(s)
- There is no process in place *[sic]* to review or monitor OHC on a daily or weekly basis – even following key seasonal events which would be regarded as a fundamental lack of management responsibility.
- There is no malicious intent on 2nd receipting issues and this is borne out of no knowledge and no structure around corrections.

Given the scale of Issues around Price Change specifically – the matter concerning GSM and 2 trading managers has been forward for disciplinary to a decision making manager.

77. It appears Mr Barnes did have email contact with BO because on 24 September 2023, BO emailed Mr Barnes explaining that he was off work from 25 March 2023 to 5 June 2023 due to surgery on 4 April 2023 following a short period of holiday (p274). Beyond this short communication there is no evidence of any discussion about BO's knowledge of PI and the apparent manipulation of the figures.

78. Mr Brian Boyle, who is no longer employed by the respondent, was a Senior Director for Central Scotland was appointed to hear the disciplinary. He was chosen specifically because he was based in a separate region to the claimant. The tribunal finds nothing unusual about this decision despite the claimant suggesting otherwise.

79. On 25 September 2023, Mr Boyle wrote to the Claimant inviting him to a disciplinary meeting on 29 September 2023. The letter referenced gross misconduct and stated that the meeting was intended "to discuss the allegation that you have shown serious negligence through a failure to implement processes and controls that allowed falsification of company records equating to 289k of shrink benefit, which if not identified, would have resulted in personal gain". As required by the Acas code, the letter indicated that there was a possibility that the claimant's employment might be ended if he was found to be responsible for gross misconduct. The letter also referred to the right for the claimant to be represented at that meeting.

80. It is apparent from an email that Mr Boyle sent to himself on 24 September 2023 that he had a discussion with Mr Barnes on Friday, 22 September 2023. There is no need to refer to everything in that note but the fact that Mr Barnes decided that there was no requirement to suspend the claimant was recorded. The reason given by Mr Barnes was that suspension was not necessary given the time lapse in the bulk of the “high on hand changes and no evidence these changes were completed by [the claimant]”.
81. Again, notably there is a reference in this note about the need to interview the operations manager, BO, as follows
- “[the Operations Manager, BO] was on long term sick at the time of the high level of PI changes (end April). It has been confirmed [BO] does use Bring Your Own Device facility. [BO] will be interviewed on return from holiday (he has not been to this point due to bereavement leave and also not being in store when Noel visited to interview) Given [BO] was on long term sickness leave at the time of the high value price changes Noel suspects [BO] highly unlikely to have made these PI changes. System limitations will make this impossible to determine unless [BO] was to admit to making these changes on his device from home. [BO] will be interviewed after his holiday in 2 weeks’ time”.
82. The final two bullets recorded are relevant to Mr Barnes’ belief about what his investigation had uncovered:
- “• Noel’s investigation has highlighted the bulk of the PI changes were made on the system sign on’s of Trading Managers [MT and GI] and has now been passed to a disciplinary manager to review. Noel’s belief is both Trading Managers lacked the knowledge to intentionally manipulate PI to improve store shrink results.
 - Noel’s investigation has highlighted lack of Shrink controls & leadership team review/follow up ultimately impacting on store P&L.”
83. Mr Boyle concluded that note by referencing the need to invite the claimant to a disciplinary interview later that week on the following grounds:
- “• * Financial corrections of £289k had to be processed following incorrect PI changes and £52k of duplicate receipts processed unchallenged resulting in shrink favourability.
 - * Lack of financial integrity controls & actions in place.
 - * Potential for personal gain through improved KRA performance and End of year performance gradings impacting bonus payout.”
84. The meeting was rescheduled at the claimant’s request to 6 October 2023.
85. It seems from an email to Mr Boyle from Graham Nelson, the Senior Director of Central Operations, on 29 September 2023, following the investigation into the claimant’s store (Southgate circus) an estate-wide review of potential malicious price change benefit was conducted by the investigations team that concentrated on five areas: “Mother’s Day flowers; Valentine’s Day flowers; Easter eggs; Xmas confectionery; and department 16 gardening”. These were said to mirror the departments reviewed as part of the Southgate Circus investigation.
86. Five stores were identified as possibly benefiting higher than average on price changes through PI movement. Notably the values of PI movement arranged from £42,494 (the lowest) to £57,500 (the highest).

87. According to the email, each of the five stores required further investigation to determine whether the benefit was gained maliciously. Nevertheless, the highest shrink benefit of those stores was substantially lower than the shrink benefit identified at Southgate Circus - a point that was recorded in a note Mr Boyle had made of discussions with the Senior Director of Central Operations held on 2 October 2023.
88. Again, notably, the last entry on that record of their discussions Mr Boyle states: "in Southgate Circus there are clear examples of corresponding PI changes more than three weeks later in Southgate indicating intentional activity to improve shrink position, there are no examples of this found so far in the 5 stores indicating their potential shrink benefit has been as a result of poor process in the 5 stores." (p287)
89. Also according to this note, the Senior Director of Central Operations reminded Mr Boyle that there was a chain wide GSM shrink up-skilling session in week 16 of 2023 and a shrink session held with both South Divisions GSMs in week 17. Mr Boyle indicated an intention to follow up the point about the shrink sessions.
90. The disciplinary hearing took place on 6 October 2023. Although Brian Boyle conducted the hearing, Mr Nicolas Johnson (who gave evidence in these proceedings about the disciplinary process) attended as a notetaker and to support Mr Boyle.
91. Although the claimant had been provided access to Mr Barnes' investigation file, that did not include full access to the spreadsheets relied on by Mr Barnes as part of the investigation.
92. At the meeting, the claimant provided Mr Boyle with a four page document setting out points that he wished to raise as part of the discussion. In the first paragraph he stated as follows (p388):
- "As I have stated throughout today's hearing, I am devastated that I am here today due to me missing key information in the earlier part of the year that could have seen me highlight potentially wrong doing within my store. I want to be clear that I have had no knowledge of these acts, was neither complicit in them or ignorant [sic] to these practices happening within my store. This does not absolve me of responsibility and I understand ultimately I am accountable for what happens in my store but I implore you to please consider the following points of mitigation when deciding upon your sanction".
93. He went onto list 15 points that he wanted Mr Boyle to take into account as part of the process. He described those points primarily as mitigation. It is necessary to interpose here that the 15 key points to which the claimant refers in paragraph 28 of his statement do not seem to correlate with the 15 paragraphs in the four page document he provided. More importantly, the four page document provided to Mr Boyle did not include any reference or suggestion to the fact that only Turkish colleagues were being investigated so as to raise concerns about racial bias (something in his witness statement he alleged was referenced in that document). Indeed, somewhat conversely, at paragraph 12 of the document he provided to Mr Boyle he alleges that a small minority of people within the store apparently disliked him because he was put in the store to fix it. He went on to suggest that

he believed there may be a vendetta against him because there was, apparently, an anonymous grievance raised claiming that he only recruited people from outside the store and only recruited Turkish people.

94. It is clear from that document and also the notes of the disciplinary meeting itself that the claimant accepted that he had missed potential wrongdoing within the store.
95. The claimant was accompanied at that meeting by another general store manager from Dagenham. Following an adjournment requested by the claimant's companion when the meeting reconvened, the claimant accepted that he did understand the impact PI changes had on finance. He also confirmed that he understood that to be the reason why he was at the disciplinary meeting that day.
96. When asked whether he held shrink accelerate meetings with his team, the claimant said he did not. He claimed he would review on hand changes personally on a weekly basis on a Monday but that PI would be locked down on a daily basis by either the operations manager or duty managers depending on who was in. The claimant accepted that he did not review on hand changes on a daily basis. He claimed that he had other priorities but accepted that this too was a priority.
97. He claimed that shrink reviews were conducted by way of a huddle.
98. He raised again the fact that he previously had an administrative assistant to help with the process. He accepted at the meeting that it was his job to identify significant changes in book stock and make the changes if required. The claimant also gave an assurance that since this had come to light he had insured that his team were checking shrink ways of working every morning.
99. The claimant did not deny that the significant spikes had occurred, but instead claimed that he had not spotted these and would have put them right if he had noticed.
100. Indeed, through his companion the claimant confirmed that he understood that the price change manipulation had occurred and that this was calculated manipulation by somebody. Nevertheless, he denied that he would have personally gained from this. Mr Boyle specifically put to the claimant during the meeting that improved shrink performance had a link to the claimant's bonus because of his end of year appraisal that would in turn benefit both him and the salary managers in the store. The claimant repeated his position that he did not consider he stood to personally gain from the manipulation other than kudos. The claimant maintained during the meeting that he would have still met 8 out of 10 of his KRAs. It seems Mr Boyle did not share the claimant's view that he stood nothing to gain by a lower shrink figure and challenged him about this in some detail. He suggested that the lower figure might have resulted in him achieving nine KRAs rather than eight. Again, through his companion, it was clarified that the claimant was suggesting that the shrink figures would not have impacted on his end of year grade because he would have met the necessary targets regardless. It is necessary to interpose here that somewhat surprisingly the respondent provided no specific evidence to this tribunal about how KRAs were assessed and certainly nothing to show that a reduced shrink figure would have a

direct result on KRA meeting particular KRAs so as to result in him receiving an improved bonus payment.

101. Towards the end of the meeting, the claimant insisted that he was not negligent and that he was a competent store manager. He told Mr Boyle that he ran successful stores with a good set of KRAs but that there was a definite shortfall in his knowledge around shrink. He acknowledged that there were mistakes made but claimed that this was an unconscious error and that he had learned his lesson. Notably the claimant's companion also stated on his behalf at the end of the meeting that the claimant accepted something significant had happened in his store and that this needed some level of repercussion but made reference to there being a short fall in the claimant's knowledge.

102. There followed an adjournment of approximately 1 hour and 45 minutes whilst Mr Boyle deliberated.

103. During that time it appears that Mr Boyle prepared a handwritten note of his rationale for reaching his decision in those proceedings. The note identified three key points regarding the gross misconduct allegation namely negligence, failure to implement processes and controls, and personal gain.

104. According to the note, Mr Boyle then set out his thinking in relation to each of those matters. With regard to negligence included in Mr Boyles analysis was the following (p353):

"No awareness of on hand changes, no proactive approach to this by [the claimant]; Admission to the practice of gun sharing and PI changes to drive in additional stock with potential impact on price changes and financial controls; Lack of personal review process expected in the role of GSM around importance of financial controls..."

105. As for failure to implement processes and controls according to Mr Boyle's note he considered the following significant:

"Lack of daily reviewing routines; Lack of shrink meeting/review processes on PI changes and impact on financial book stock; Awareness of inexperienced team and yet no additional measures evident from [the claimant] to ensure financial control risks are minimised; Thorough robust PI lockdown process would have identified the PI inflation in subsequent removal; Widespread concerns with password sharing was known by [the claimant] but no action taken..."

106. As for personal gain Mr Boyle seem to be of the view that the following was relevant:

"Delivery of shrink KRA would have improved KRA performance."

107. When the meeting was resumed Mr Boyle informed the claimant that he was to be summarily dismissed for the reasons which were subsequently repeated in his letter to the claimant sent on 16 October 2023 (but dated 10 October 2023) as follows:

"1. My findings are that your processes & controls around shrink & PI management are insufficient and would have led to an inaccurate stock result and company reporting records.

2. Falsification of company records did happen and went undetected by your failure to implement the controls & review processes expected. You admitted to changing PI yourself and being aware of & not acting upon poor controls around password/login sharing which I deem as a major contributing factor to being able to manipulate price changes in your store, you also admitted to sharing your device while logged in.
3. The financial corrections processed beyond the auto price change correction window were calculated in their nature and benefited shrink performance and should have been picked up by process controls from pi lock down to 'on hand' change reviews all of which are basic actions in my view.
4. Your leadership in ensuring Shrink processes are followed has been poor with inadequate shrink review processes evident.
5. Personal gain, be it reputational &/or financial gain would have been the outcome if this had gone undetected."

108. By a letter dated 18 October 2023 the claimant appealed against his dismissal and listed various grounds in support. The claimant was invited to an appeal hearing on 10 November 2023 but the claimant request this was rescheduled to 14 November 2023. Shortly before that meeting began, the claimant emailed Feroz Patel a written statement consisting of 14 pages detailing his points of appeal.
109. The claimant, for the first time, referred to a previous customer trading manager as someone who had previously raised a grievance against him and implied that remaining members of her "clique" would have been fully aware of the PI process and potentially how to manipulate it. Likewise, the claimant identified another GSM by name within his region who was disciplined for "similar issues" and yet was not dismissed (p456).
110. The meeting on 14 November was relatively short and adjourned to allow Mr Patel time to investigate in much greater detail the significant number of points that the claimant had set out in the document he provided just hours before it had begun.
111. As part of the appeal process, Mr Patel interviewed both Mr Boyle and Mr Barnes.
112. Mr Patel also interviewed a loss prevention manager ("LPM") on 30 November 2023 who had been involved with the claimant at his previous store in Feltham. According to the LPM, the claimant was very experienced in dealing with shrink issues. The LPM also informed Mr Patel that there had been issues in relation to inventory manipulation at the Feltham store when the claimant was the GSM there in 2021 but said that the investigation was inconclusive and there were no formal disciplinary proceedings as a result.
113. Mr Patel met the claimant again on 4 December 2023. He asked the claimant how he had missed the PI changes at the Southgate store and was not satisfied with the claimant's response. It seems the claimant was unable to explain how he had missed the changes. He told Mr Patel that he undertook weekly shrink meetings but he did not seem to know how the issue had occurred. During the meeting the claimant made the point that he had never seen the "numbers". This was a reference to the fact that he had never been provided with spreadsheets showing the offending entries of inflated and reduced stock. In response Mr Patel agreed to share the PI changes that he had seen.

114. The claimant also stated that he apparently had nine new managers in store at the time, who he considered to be inexperienced, and no Operations Manager. He claimed that shrink was one of his weakest areas and that for around 6 to 8 weeks he had no Store Director (his superior) to report to.
115. Clearly Mr Patel was not persuaded by those reasons because he specifically put to the claimant that whilst he took on board those points he still struggled to understand how the claimant was able to miss the spikes in PI changes that were occurring over a period of a couple of months if he was doing weekly shrink meetings. Indeed, Mr Patel put to the claimant that an inexperienced team was all the more reason for him to ensure that the shrink meetings took place regularly, referring to this being part of the “basics”.
116. It is not clear from the evidence but either during the meeting or subsequent to it Mr Patel provided the claimant with a two page spreadsheet that he had been sent from the loss prevention team. According to Mr Patel, this was a spreadsheet that was put together to summarise the issues identified with the stock changes at the Southgate store.
117. The spreadsheet showed monthly figures from January to October 2023 and not from March 2023 to December 2023 as suggested by the claimant in his evidence. In any event, the tribunal is satisfied that it contained monthly figures for the relevant period in question. Of those figures, 11 were highlighted - seven orange and four green. What is notable is that Mr Patel did not have (and never did have) before him the spreadsheet that was available to the tribunal starting at page 768. It appears that Mr Patel only ever saw a summary of the stock variations for each month.
118. It is not in dispute that Mr Patel did not see the initial report that Mr Barnes relied on for the purpose of the initial investigation. The tribunal accepts that the information in this two-page spreadsheet (sent to the claimant after 4 December 2023 meeting) was relevant data, but it was undoubtedly in a different format to the data that had been discussed with the claimant during the investigation and disciplinary meetings. In any event, even at the appeal stage the claimant was still not provided the opportunity to properly inspect the detail of the data that had led to the disciplinary process being undertaken.
119. There was further communication between the claimant and Mr Patel following the meeting but it is not necessary to go into the detail of those exchanges. Suffice it to say that Mr Patel explained to the claimant that the two-page spreadsheet was a summary of the data that the loss prevention team had relied on for the purposes of the investigation and that this had been sent to Mr Patel at his request. The tribunal rejects the suggestion by the claimant that this spreadsheet was manufactured in bad faith so as to show false information. The tribunal finds on the evidence that such an assertion is neither plausible or correct.
120. Mr Patel held a further meeting with Brian Boyle on 29 December 2023 to further investigate various points that the claimant had raised as part of the appeal process. It is not necessary to go in to the detail of that meeting.

121. A little later, on 4 January 2024, Mr Patel held a meeting with the retail change coach at the relevant time who confirmed that the claimant had attended the shrink training at Wembley on 25 April 2023 and also expressed the view that the claimant understood stock management and PI generally. Attendance at the shrink training (described as “Retail Loss Way of Working Reskilling activity” was apparently compulsory for all regional GSMs including the claimant. There was a dispute of fact about whether the claimant did attend such training (the claimant denies this and maintains he attended a different session that day) which the tribunal need not resolve. For these purposes, the tribunal is satisfied that both Mr Boyle and Mr Patel held a reasonable belief that he had attended that training given that there appeared to be a photograph of him being present and because those organising the training were adamant in their communications about this that he was present.
122. On the same day Mr Patel met with Graham Nelson, the senior director of loss prevention. Mr Nelson made reference to the investigation that he had emailed Mr Boyle about on 29 September 2023 (already referred to). He confirmed to Mr Patel that having discovered the problem at the Southgate store the loss prevention team had investigated the issue nationally and five stores had been identified as having potential issues with PI and price change manipulation. On the basis of that evidence the tribunal accepts and is satisfied that of those five stores, other than the claimant’s store (Southgate) the second highest store stood at a figure of roughly £57,500 shrink credit which was substantially lower than the figure exceeding £200,000 at Southgate. In addition, the loss prevention team was satisfied that there was nothing suggesting that the price variations at these other five stores were malicious.
123. Furthermore, it seems that a similar problem had been identified previously at the Clapham Junction store, which had also led to disciplinary proceedings against the general store manager at the relevant time. That disciplinary process involved a different disciplining manager who, it seems, was advised not to dismiss for gross misconduct the GSM in post at the time although Mr Nelson was unable to specify why she was advised not to do so. The tribunal nevertheless notes that the issue of price variation was one that was on that previous occasion considered serious enough to amount to potential gross misconduct.
124. Also on 4 January 2024, Mr Patel held a further meeting with Noel Barnes. Again it is not necessary to go into the detail of that meeting other than to say that it was to follow up issues that the claimant had raised as part of the appeal process.
125. Mr Patel met again with the claimant on 10 January 2024 and informed him that he was up holding the decision to dismiss him and that his appeal was rejected.
126. That same day, Mr Patel wrote to the claimant setting out the reasons why his appeal was rejected in a very detailed letter consisting of 14 pages. It is not necessary for these purposes to cover all of the content and reasoning in that letter. Mr Patel’s outcome letter set out the claimant’s points of appeal both in terms of the general headings that the claimant had referred to in his initial appeal letter dated 18 October 2023 and also the numerous points he raised in the claimant’s own 14 page document that he had emailed to Mr Patel on the

afternoon of his initial appeal meeting on 14 November 2023. The appeal outcome letter then went on to address each of those (37) points one by one. The tribunal is satisfied that Mr Patel conducted the appeal in good faith and gave reasons addressing each of the claimant's points of appeal.

The law

127. An outline of the relevant legal principles that the tribunal has applied in this case is set out below. It is not an exhaustive commentary of the law but is instead a proportionate summary only.

Unfair dismissal

128. The law relating to unfair dismissal is predominantly contained in Part X ERA 1996. The respondent must first demonstrate that the principal reason for the claimant's dismissal was for one of the potentially fair reasons set out in s98 (in this case, misconduct). The tribunal must then consider whether the dismissal was generally fair and, more specifically, whether the employer acted reasonably or unreasonably in treating that reason as sufficient for dismissal. The burden of proving whether or not a dismissal was reasonable is a neutral one.

129. Misconduct can be deliberate or inadvertent. Gross negligence, as well as deliberate wrongdoing, can amount to misconduct and can constitute repudiatory conduct even where the behaviour is not wilful, or even blameworthy (Philander v Leonard Cheshire Disability EAT 0275/17). Misconduct might encompass serious neglect, omission or carelessness. By way of examples, a fundamental failure by a senior employee to initiate rigorous financial management systems can amount to misconduct rather than capability or dismissal for some other substantial reason (Burdis v Dorset County Council EAT 0084/18). Likewise, serious dereliction of duty by a senior manager can amount to gross negligence justifying summary dismissal even in the absence of any intentional wrongdoing (Adesokan v Sainsbury's Supermarkets Ltd [2017] ICR 590, CA).

130. In accordance with the seminal case of British Home Stores Limited v Burchell [1980] ICR 303, the respondent is not required to have conclusive direct proof of the claimant's misconduct, only a genuine belief on reasonable grounds after carrying out as much investigation into the matter as is reasonable in the circumstances.

131. When deciding the issue of reasonableness, the tribunal must apply the band of reasonable responses test. Consequently it cannot substitute its own view for that of the employer but must instead ask the question as to whether no reasonable employer would have dismissed in those circumstances. Only then will a tribunal conclude that a dismissal fell outside the band of reasonable responses.

132. Furthermore, the band of reasonable responses test also applies to the extent of any investigation required to be conducted by the respondent in accordance with the third limb of the Burchell test. Again, the tribunal cannot substitute its own view as to what it would have done to investigate the matter but must instead ask itself whether what was done in terms of the investigation fell within what a

reasonable employer would have done in those circumstances (J Sainsbury plc v Hitt [2003] ICR 111, CA).

133. The Court of Appeal decision in Newbound v Thames Water Utilities Limited [2015] IRLR 734 serves as a reminder to tribunals and parties that the band of reasonable responses is not an infinite one. It does have boundaries and it is right that the tribunal properly identifies those boundaries.
134. The ACAS Code of Practice on Disciplinary and Grievance Procedures sets out the basic requirements of fairness that will be applicable in most conduct cases and is to be taken into account by a tribunal when determining the reasonableness of the dismissal in accordance with section 98(4).
135. If compensation is to be awarded then the tribunal must order the respondent to pay a basic award (calculated on a standard formula) and a compensatory award. In accordance with s123(1) ERA the compensatory award is to be such amount as the tribunal considers just and equitable. Both awards may be subject to reductions for certain reasons. Section 122(2) ERA provides that the basic award may be reduced where the claimant's conduct before dismissal renders it just and equitable to do so. Under s123(6) ERA, the tribunal must likewise consider whether the claimant contributed to their dismissal in some way and if so reduce any compensatory award accordingly. For a reduction to be made for this reason, the relevant action by the claimant (proven on the balance of probabilities) must be culpable or blameworthy; it must have actually caused or contributed to the dismissal; and it must be just and equitable to reduce the award by some proportion. Furthermore, the compensatory award may be reduced where it is evident that the claimant might have been dismissed fairly regardless of any actual unfair dismissal (the Polkey principle).
136. In accordance with the reminder by HHJ Auerbach in the recent decision of Davidson v National Express Limited [2025] EAT 151, when assessing the appropriate award to be made for the compensatory element of a successful unfair dismissal claim, the starting point is that section 123(1) Employment Rights 1996 provides that the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances "having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer." It is therefore not sufficient for a tribunal merely to refer to what it considers just and equitable. It has to have regard to the loss sustained "in consequence of the dismissal"; and so it needs to evaluate that loss, as best it can.
137. As for the approach to be taken to a Polkey assessment, in Davidson the EAT referred to paragraph 54 of the EAT Judgment of Elias P in Software 2000 Limited v Andrews [2007] ICR 825. Assessing any Polkey adjustment inherently involves some uncertainty, because it is concerned not with what did happen but with what would or might have happened.
138. Likewise, the assessment of future loss is concerned with predicting what will happen, in the future and also has an inherent element of uncertainty.
139. The overall task of assessing compensation applying the words of section 123(1) requires a tribunal to properly grapple with these considerations. When

dealing these aspects as HHJ Auerbach said in Davidson “in deciding what are matters of “impression and judgment” the tribunal must “have regard to any material and evidence which might assist it in fixing just compensation”. That is so, even if there are limits to the extent to which it can confidently predict, in relation to Polkey, what might have been, or, in relation to future loss, what will happen in the future. In both exercises “[t]he mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence””.

140. The approach to be taken in relation to future loss was considered by Langstaff P in Contract Bottling Ltd v Cave [2015] ICR 146 EAT (also referred to in Davidson). At paragraph 18 of his Judgment, Langstaff P stated: “As I have indicated, the position in most cases will necessarily involve a number of imponderables. They will vary heavily from case to case and from employee to employee. But the fact that many matters are imponderable does not mean to say that a Tribunal should not grapple with them insofar as it can.”

Wrongful dismissal (breach of contract)

141. Gross misconduct is a contractual concept dependent on a finding of fact about what happened on the balance of probabilities (West v Percy Community Centre EAT 0101/2015). It may result in summary dismissal, relieving an employer of the obligation to pay any notice pay. A distinction needs to be drawn here with unfair dismissal. Unfair dismissal is a statutory concept which considers the reasonableness of an employer’s belief and sanction. Accordingly it is not necessary to decide whether misconduct amounts to gross misconduct before deciding whether dismissal for that misconduct was unfair.
142. It is generally accepted that it must be conduct which fundamentally undermines the employment contract (i.e. it must be repudiatory conduct by an employee going to the root of the contract). Furthermore, the conduct must be a deliberate and wilful contradiction of the contractual terms or amount to gross negligence (Laws v London Chronicle (Indicator Newspapers) Ltd [1959] 1 WLR 698, CA, and Sandwell and West Birmingham Hospitals NHS Trust v Westwood EAT 0032/09).

Direct race discrimination

143. Section 13(1) EqA provides: “A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”
144. The question of whether there was less favourable treatment is answered by comparing the way in which the claimant was treated with the way in which others have been treated, or would have been treated. This exercise will usually involve looking at the treatment of a real comparator, or how a hypothetical comparator is likely to have been treated. In making this comparison the tribunal must be sure to compare like with like. Section 23(1) EqA section provides: “(1) On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.”

145. Evidence of the treatment of an actual comparator who is not close enough to satisfy the statutory definition may nonetheless be of assistance since it may help to inform a finding of how a hypothetical comparator would have been treated.
146. In the absence of a real comparator and as an alternative to constructing a hypothetical comparator, in an appropriate case it may be sufficient to answer the “reason why” question, i.e. why did the claimant receive the treatment complained of?
147. As to whether any less favourable treatment was because of the claimant’s protected characteristic, direct evidence of discrimination is rare and it will frequently be necessary for a tribunal to draw inferences from the primary facts. If the tribunal is satisfied that the claimant’s protected characteristic was one of the reasons for the treatment complained of, it will be sufficient if that reason had a significant influence on the outcome, it need not be the sole or principal reason.
148. The burden of proof is addressed in section 136 of the EqA, which so far as material provides: “(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. (3) But subsection (2) does not apply if A shows that A did not contravene the provision occurred.”
149. When considering whether the claimant has satisfied the initial burden of proving facts from which a tribunal might find discrimination, the tribunal must consider the entirety of the evidence, whether adduced by the claimant or respondent (Laing v Manchester City Council [2006] IRLR 748 EAT).
150. Furthermore, a simple difference in treatment as between the claimant and his comparators and a difference in protected characteristic will not suffice to shift the burden (Madarassy v Nomura [2007] IRLR 246 CA).
151. The burden of proof provisions will add little in a case where the tribunal can make clear findings of a fact as to why an act or omission was done or not (Martin v Devonshires Solicitors [2011] IRLR 352 EAT and Hewage v Grampian Health Board [2012] ICR 1054 UKSC).

Applying the law to the facts

152. Applying the law to the fact the tribunal resolves the issues as follows:

What was the principal reason for the claimant’s dismissal?

153. The tribunal is satisfied that the potentially fair reason for the claimant’s dismissal was the reason given by the respondent, namely his conduct and that this was not a pretext for any other reason for his dismissal.
154. Given the findings, there is no question that there was deliberate manipulation of the stock figures that in turn created a large shrink benefit applied to the Southgate Circus store. Whether or not it totalled £289,000 or a lesser figure of circa £220,000, the shrink benefit arising from the manipulation was huge in relation to the claimant’s store and was substantially greater than anything

identified in any other store nationally, including the five stores that were a flagged up as a matter of concern following the investigation that was prompted by the discovery of the manipulation at the Southgate Circus store.

155. The claimant should have been aware of the importance of managing shrink levels because all GSMs were expected to attend compulsory training on it in April 2023. The tribunal is satisfied that the respondent believed the claimant was seriously negligent in failing to ensure that there were adequate processes and controls in place to ensure this did not happen or, at the very least (and most importantly), spot the problem when it did occur. It was incumbent on the claimant as GSM to be frequently monitoring this by checking the daily recap reports and the tribunal is satisfied that this was a critical part of his role as GSM. He had various tools available to him to ensure this was undertaken. Even if he struggled with PowerBI software (as he suggested), he had a daily print out he could and should have checked routinely. In any event, if he was struggling with the systems available to him to undertake this critical task, it was, again, incumbent upon him to insist on receiving help to overcome those difficulties. Accordingly it was within the band of reasonable responses for the respondent to form this view.

As for personal gain, the tribunal is satisfied that, at the very least, the claimant stood to gain reputationally from the high level of shrink benefit as it would give the appearance that he was leading a well performing store. The claimant, himself, acknowledged he would gain kudos for such good shrink figures. As for any impact that a low shrink figure would have had a direct impact on the claimant's KRAs such that he stood to receive a higher bonus, as noted above, there was a total absence of evidence from the respondent about this and the tribunal was not satisfied that this was the case on the facts. Despite this lack of evidence to support a factual finding of that kind and the fact that the claimant maintained that he had met his KRAs for the purposes of his bonus irrespective of the shrink levels, the tribunal finds on the balance of probabilities that Mr Boyce and Mr Patel believed that he did potentially stand to gain financially because this would reflect well in his performance review generally.

Did the respondent hold a genuine belief in the claimant's misconduct?

156. The tribunal finds on the evidence that the respondent held a genuine belief in the claimant's misconduct given that he was ultimately responsible for ensuring the stock records were accurate as part of his fundamental obligation as GSM to protect and maintain stock and protect the integrity of the store's financial and stock records.

Was the respondent's belief reasonable following a reasonable investigation?

157. When resolving this issue, the tribunal addresses each of the claimant's challenges as identified in paragraphs 3.1 to 3.6 of the list of issues on p63 as follows.

Was there a thorough and fair investigation into the claimant's defence and mitigation?

158. As part of the investigation, the respondent should have interviewed the operations manager despite his absence from the store at the relevant time. There was no reason why he could not have been interviewed. It is clear from the note that Mr Boyce made of the discussion with Mr Barnes that there was an expectation that he would be interviewed once he returned from his holiday. The tribunal has noted in its findings that Mr Barnes was able to have email contact with the operations manager on 24 September 2023, some considerable time before the claimant was dismissed. Therefore the tribunal concludes that a reasonable employer would not have failed to have a discussion with him about the events being investigated even if this was remotely or by telephone (or at least endeavour to do so). The failure to do so did impact on the fairness and reasonableness of the investigation.

159. That said, the tribunal considers that had he been interviewed, the operations manager may have denied any knowledge of who was responsible for the stock manipulation. Nevertheless, there must have been a possibility that he could have been able to shed some light on what had been going on at the store, which might in turn have provided some mitigation as to why this had not been discovered by the claimant.

Failing to provide the claimant with a copy of the spread sheets forming the basis of the investigation.

160. Likewise, a reasonable employer would have ensured that the claimant had access to the spreadsheets or rather detailed data that was being relied upon by the investigator. As the tribunal has recorded in the findings of fact above, there was no reason why the respondent could not have allowed the claimant access to the same data that Mr Barnes had before him even if this involved a supervised session on a device belonging to the respondent in a room and at a time convenient to both parties. The unreasonableness of the respondent's failure to provide the claimant access to this information is compounded by the fact that the respondent was able to produce a sample of the figures with dates in the bundle before this tribunal at pages 768 to 872. The very fact that the respondent was able to produce this for the purposes of the trial begs the question why something of a similar kind was not produced and provided to the claimant in advance of his disciplinary meeting at the very least, if not at the time of the investigation meeting. The tribunal is satisfied that it was incumbent upon the respondent to ensure that the claimant had that detail in front of him at the time of the investigation. To discuss the detailed stock manipulation with the claimant in the abstract and in the absence of the claimant having in front of him access to the material to which the investigator was referencing was outside the bands of what a reasonable employer should have done. Expecting the claimant to recall that level of detail and answer for it without him having the opportunity to see exactly what was being referred to was unreasonable and unrealistic. The tribunal is satisfied that without that detail before him it was inevitably harder for him to explain what had gone wrong or provide any potentially mitigating reasons.

Did the respondent fail to properly investigate the claimant's points of appeal?

161. The tribunal has already concluded that the claimant should have been provided with access to the detailed data showing the stock manipulation rather than a two page summary of it. Indeed, at the very least the claimant should have

been provided with the type of spreadsheet that was in evidence before this tribunal. Given that Mr Patel had offered to provide the claimant access to the figures, simply supplying the claimant with a two-page summary was not sufficient to meet that requirement (even though the tribunal is satisfied that the data on the two page summary was not fabricated as suggested by the claimant).

162. Likewise, as the tribunal has identified already, the respondent should have interviewed the operations manager as part of the investigation.

163. Save for these two points, the tribunal is satisfied that the appeal process was carried out by Mr Patel in good faith and was reasonable. Mr Patel gave careful thought to each of the points that the claimant raised in his appeal and reached conclusions that were open to him. He then set out his reasoning comprehensively in the appeal outcome letter.

“New evidence regarding daily checks and alleged ethics complaint for the claimant’s previous store were relied upon during the appeals process.”

164. The tribunal accepts the respondent’s evidence that the previous problem involving potential shrink manipulation at the Feltham store when the claimant was the GSM there did not factor in Mr Patel’s decision to reject the claimant’s appeal. The tribunal finds on the balance of probabilities that at most, it provided some context in relation to the fact that any GSM with past experience of shrink problems (whatever the reason) should have known how important it was to manage shrink levels and ensure stock levels were accurate.

The spreadsheet of 3 December 2023

165. The tribunal has dealt with this point above. There was nothing inappropriate about the spreadsheet itself but, the tribunal repeats, the claimant should have been provided with access to the full data.

Inconsistency with the disciplinary process

166. The tribunal rejects the suggestion that there was some inconsistency in the treatment of the claimant and others. There was no evidence of inconsistency in relation to any equivalent circumstances to this case. True it is that the tribunal has seen reference to another GSM responsible for the Clapham Junction store being disciplined but not dismissed. However, in that case, the disciplining officer was different and not Mr Boyce and there was no evidence before this tribunal about how those circumstances (and any mitigation) may have compared or differed to the present disciplinary involving the claimant. What is striking, however, is that in that previous instance the respondent considered potential stock manipulation to justify the commencement of a disciplinary process that *could* have resulted in the dismissal of a GSM. The tribunal considers this relevant to the question of whether or not such conduct fell within the parameters of justifying the sanction of dismissal, which the tribunal addresses below.

167. With regard to the fifth issue identified on p63 – the tribunal turns to the additional allegations of unfairness listed in 21 numbered paragraphs on behalf of the claimant at pages 50 and 51 of the bundle (and attached to these Reasons). The tribunal addresses each of those in the following corresponding sub-paragraphs briefly as follows:

167.1. There was no requirement to provide the claimant with any notice of the investigation or allow him to be represented during that process and it was not unfair for the respondent to fail to do so;

167.2. The claimant had the notes of the investigation before the disciplinary meeting and the tribunal cannot see the significance of this point or how any challenge of this kind could be sustained;

167.3. This point has been dealt with already when addressing whether the respondent had failed to provide the claimant with a copy of the data for the investigation and whether or not the appeal had been conducted appropriately;

167.4. Again, the tribunal rejects this assertion of unfairness. The investigation meeting was recorded and the claimant was provided with a transcript of that recording. There was nothing inherently unfair about what was provided to the claimant;

167.5. If there was indeed any change between the reason for the investigation and the subsequent reason for the disciplinary, the tribunal is satisfied that this was not an unfair process on the part of the respondent. It was clear that the claimant was being investigated for serious negligence in relation to failing to identify and or prevent substantial manipulation of stock figures that would in turn increase shrink benefit. The tribunal is content that the respondent investigated the manipulation of stock figures and having conducted that investigation decided to pursue disciplinary action against the claimant for gross negligence;

167.6. The tribunal is satisfied that there was not any significant breach of confidentiality in this case but even if there was, it had no bearing on the fairness of the process. As regard to 6(a), the respondent accepts that it was poor practice to discuss the investigation outcome with the claimant in front of his subordinates but the tribunal considers that this had no impact on the actual process. As for 6(b), the tribunal has seen no evidence of this occurring and there was no challenge about this made to any of the witnesses before the tribunal;

167.7. The tribunal is satisfied that the allegation against the claimant was clear and there was no inconsistency in relation to that for the reasons that have already been set out when addressing the potentially fair reason for dismissal;

167.8. This has been covered repeatedly already. The tribunal has concluded that the claimant should have been provided with the detailed data;

167.9. Again, this has been dealt with already when addressing previous issues;

167.10. The tribunal is satisfied that save for the defects already identified, the investigation was a reasonable one. It was not unduly rushed. The claimant

has failed to particularise who he alleges he identified to be investigated at the disciplinary stage but in any event the level of stock manipulation was so great that it would not have impacted on the fact that he had ultimate responsibility for ensuring the integrity of the stock records;

167.11. The tribunal is satisfied that Mr Boyce did engage with the claimant in relation to mitigation and adequately addressed this in his disciplinary outcome letter;

167.12. Again, this point was a factor that Mr Boyce took into account but in any event the tribunal is satisfied on the balance of probabilities that such pressure, if it did exist, did not detract from the claimant's obligation to adequately monitor and protect stock records. This was a matter for the respondent and not something that the tribunal should trespass upon in terms of reasonableness;

167.13. The tribunal is satisfied that the respondent did provide adequate tools, training and oversight such as to enable the claimant to monitor stock levels;

167.14. Again, the tribunal is satisfied that even if there were errors on the PowerBI dashboard as alleged by the claimant (and the tribunal need make no finding about this) there was sufficient material and other mechanisms available to the claimant, not least, the daily recap report that could be physically produced and that he could and should have utilised so as to render any purported technical difficulties he had with the PowerBI software to be irrelevant. In any event, the tribunal reminds itself that this did not appear to feature substantially in the disciplinary process as a reason for the claimant's failing. These proceedings are not an opportunity to re-run the disciplinary process less still is it permissible for the tribunal to trespass upon what is within the discretion of the employer to determine. That would be an error of law;

167.15. Inconsistency has already been addressed when setting out the tribunal's position in relation to earlier issues. Again, it is unclear precisely who the claimant is referring to in these assertions but in so far as the claimant is suggesting that his two subordinate managers were not dismissed, the tribunal is satisfied that this was because the investigator had determined that they were not aware of the significance of the stock manipulation and also could not be satisfied that they were responsible for undertaking the inputting of false stock data;

167.16. This point adds nothing to the fact that the tribunal is satisfied that, save for the two aspects of the investigation that rendered the disciplinary unfair (the failure to provide the claimant access to the detailed data and the failure to interview the operations manager) the disciplinary officer was entitled to reach the conclusion that he did reach in relation to serious negligence and his belief that this resulted in personal gain (albeit indirectly);

167.17. For reasons that will be expanded upon when addressing the allegations of race discrimination the tribunal rejects any suggestion that there was anything underhand in relation to the manner in which the appeal officer investigated and addressed the claimant's allegation about Mr Barnes asking about the nationality of one of the claimant's subordinate managers during the investigation;

167.18. Whilst it was not ideal, the tribunal is satisfied that the time taken to investigate the claimant's appeal was not unreasonable. The delay was because Mr Patel considered it necessary to undertake a number of interviews with various individuals spanning the festive period to ensure that process was fair and thorough;

167.19. This is a vague assertion that was not explored in evidence and for reasons already given the tribunal does not consider that this has any bearing on the substantive fairness of the respondent's decision to dismiss;

167.20. This is a repeat or recasting of earlier issues and has been addressed already;

167.21. The appropriateness of the sanction is addressed below.

168. For all the above reasons, the tribunal is satisfied that both Mr Boyce and Mr Patel had a reasonable belief in the claimant's misconduct as alleged.

Was dismissal within the range of reasonable responses open to a reasonable employer in these circumstances?

169. Noting the issues that the tribunal has to determine, it would seem that issues four and six on page 63 cover the same ground and for these purposes the tribunal deals with them under the one heading.

170. In accordance with the respondent's disciplinary policy, non-exhaustive examples of gross misconduct include "financial integrity breaches/falsification of company records" and "failure to protect Asda from loss". Furthermore, serious negligence is included as an example of a general breach of company standards that may amount to gross misconduct (see page 87).

171. It is undisputed that the claimant was in a very senior position with the respondent. General store managers command a salary that is substantially higher than the national average to reflect the responsibilities and expectations of the individual conducting that role. Even without regard to the evidence before this tribunal, simply using its industrial experience the tribunal recognises that it is an inherent part of the role of a senior retail store manager to ensure that stock is protected, that stock records are accurate and that financial integrity is maintained at all times including the integrity of stock and financial records. That responsibility ultimately rested with the claimant. There may not have been any actual loss caused to the respondent by this serious manipulation of stock records but the very fact that it was able to occur on such a large scale without being traced demonstrates a significant failure of processes in place to ensure the respondent was protected from loss.

172. All store managers were expected to carry out the necessary checks to ensure that stock records were accurate. The claimant was no exception. The tribunal is satisfied that the claimant was in serious dereliction of his own duty to the respondent so as to be negligent. He was obliged to ensure that stock records were accurate and that manipulation of stock in the way that was identified over a period of months (and not days) should have been prevented. Having regard to the consequences, the fact that the respondent viewed that negligence to be grave and weighty was far from being outside of the band of a reasonable belief

or response of a reasonable employer. It resulted in a substantial artificial increase in shrink benefit which gave the impression of both the store and the claimant performing well in this respect. Mr Boyce identified in his outcome letter that in his view the claimant stood to gain personally by way of enhanced reputation regardless of any financial gain. That was a view that he was reasonably entitled to reach.

173. The claimant was perceived to be an experienced manager. A reasonable employer would have expected someone of the claimant's experience and ability to have acted differently. Accordingly, whilst the tribunal may not have dismissed the claimant in these circumstances, the tribunal is nonetheless satisfied that in the absence of any reasonable mitigation or explanation the claimant might have been able to offer had the shortcomings in the process (as identified above) not occurred, it would have been within the band of reasonable responses of a reasonable employer to dismiss the claimant for the reasons stated regardless of his length of service of six complete years and his otherwise clean disciplinary record.

Wrongful dismissal.

174. As identified above, the tribunal concludes on the balance of probabilities that the claimant was negligent in failing to identify and prevent the stock manipulation which was sufficiently grave and weighty to amount to gross negligence. This justified summary dismissal. The respondent's disciplinary policy identified this type of behaviour to amount to gross misconduct.

Race discrimination.

175. The tribunal is satisfied that investigations were commenced against MT and GI specifically and only because it was their user identification references that were entered in relation to the most serious stock manipulation that occurred. It had absolutely nothing to do with their race or perceived race. The investigation against the claimant was commenced because he was the GSM responsible for ensuring those records were accurate at the time. Again, the tribunal has no hesitation in concluding that the treatment of the claimant by anyone involved in the disciplinary process had nothing to do with his race. On the contrary, regardless of his race, until this stock manipulation was identified it appears from the evidence that he was considered to be a competent GSM.
176. For completeness the tribunal should add that there was no evidence that Mr Barnes questioned MT, GI and the claimant about their ethnicity and this was not a point that was pursued in cross examination of Mr Barnes. As for any mention of MT's nationality, there is a dispute of fact about whether or not Mr Barnes enquired about her nationality before or after the meeting he held with her. Nevertheless Mr Barnes does not deny enquiring about MT's accent but he says the context of doing so was to ensure that there were no misunderstandings in terms of the communication between them. It is not necessary for the tribunal to resolve any dispute of fact about precisely why and when Mr Barnes made that remark or inquiry because the tribunal is in absolutely no doubt that this had no bearing on the reason for the claimant being investigated and ultimately dismissed for the reasons already stated.

177. As for the allegation that five other stores were highlighted as having the same or similar issues and yet no action was taken or appeared to be taken against those GSMs, again, the tribunal is satisfied that this had nothing to do with the claimant's race or theirs. There was no evidence as to whether or not the respondent did take action against any of the other store managers, but in any event that had no bearing or reflection upon the action taken against the claimant. The stock manipulation in relation to the Southgate Circus store for which the claim was responsible was substantially greater than any stock manipulation discovered in those five stores and as the tribunal has found as a fact, the respondent did not believe there to be any malice in relation to those stock variations involving those five stores.

178. For these reasons the claimant's race discrimination complaints are not well founded.

Adjustments to remedy for unfair dismissal

179. Having regard to the fact that the claimant's dismissal was unfair, the tribunal reaches the following conclusions in relation to Polkey and contributory conduct.

180. The tribunal is of the view that providing the claimant with the detailed data that was relied on for the purpose of the investigation may have enabled the claimant to give a more expanded explanation for his failure to identify the problem of serious stock manipulation. Likewise, as the tribunal has alluded to in its findings of fact, interviewing the Operations Manager may have shed further light on the situation that may have mitigated the degree to which the claimant's failings were perceived. That in turn may have resulted in the disciplinary sanction being commuted to one of a final written warning but the tribunal considers the chance of that to have been no more than 25%. Accordingly, the compensatory award element of remedy to which the claimant is entitled for unfair dismissal must be subject to a reduction of 75% to account for the fact that there remained that level of likelihood of a fair dismissal regardless of the procedural failings that have been identified by the tribunal.

181. Likewise, as the tribunal has identified, the claimant contributed to his dismissal through gross negligence which the tribunal is satisfied did occur on the balance of probabilities. That said, as the tribunal has identified, the claimant advanced points in mitigation that he may have been able to advance more forcefully if he had been given access to the detailed data and those matters may have been corroborated or enhanced by his operations manager if questioned. The tribunal also recognises that there was no actual loss caused to the respondent as a consequence of failing to prevent the stock manipulation and the claimant did have a significant number of new subordinate managers working for him at this time. Therefore, the tribunal concludes that it would not be appropriate to award anything more than a 50% reduction to amount awarded for the claimant's contributory conduct. This adjustment is to be applied to both the basic and compensatory awards.

182. Finally, neither party was seeking for the tribunal to make an adjustment to the compensatory award because of any failure to comply with the ACAS code. The tribunal would not have been minded to make any such adjustment in any event

given that the spirit of the code was followed by both parties notwithstanding the shortfalls identified in the respondent's process.

Liability Summary

183. The claimant was unfairly dismissed. The claimant was not wrongfully dismissed. The claimant's claim of race discrimination is rejected. The basic award and compensatory award for unfair dismissal are to be reduced by 50 per cent to reflect the claimant's contributory conduct after a 75 per cent reduction is made to the compensatory award only to take account of the Polkey principle.

REMEDY

184. The tribunal considered the remedy evidence as a whole, applying its industrial experience and having particular regard to the state of the employment market. The burden rested on the respondent to establish any failure on the part of the claimant to mitigate his losses. Although the claimant's documentary evidence of job-seeking efforts was limited, the tribunal accepted his oral evidence and was satisfied that he made genuine and reasonable attempts to secure alternative employment in challenging circumstances.

185. The only job-market evidence relied upon by the respondent was a limited snapshot of vacancies available in late October 2025. The respondent produced no evidence of opportunities in the months immediately following the claimant's dismissal on 10 October 2023. The tribunal took this into account, recognising that the job market remained weak across the relevant period.

186. The tribunal further noted that no roles identified by the respondent approached the salary level the claimant would have received had he remained in his previous employment. This was also reflected in the tribunal's assessment of ongoing and future loss.

187. The basic award was agreed at £5,144, calculated on the statutory weekly limit of £643. Applying the 50 per cent reduction for contributory conduct, the tribunal awarded £2,572 for the basic award.

188. The compensatory award comprised the prescribed and non-prescribed periods. For the prescribed period, the tribunal accepted that the claimant's net weekly loss, calculated at £1,236.97, ran for 109 weeks and two days to the date of the remedy hearing. The resulting figure, after deduction of actual earnings of £8,526.32 and a 75 per cent Polkey reduction, and thereafter a 50 per cent contributory conduct reduction, came to £15,849.77.

189. For the non-prescribed period, the tribunal assessed the claimant's likely earnings trajectory. The tribunal accepted his evidence that he had sought full-time hours with his present employer, where he was working approximately 75 hours per month as a waiter. The tribunal considered that he would continue to sustain losses for a further two weeks on the same weekly differential. Thereafter, from December 2025, he was likely to obtain full-time restaurant work at approximately 156 hours per month for the following 52 weeks.

190. The tribunal was not satisfied that the claimant would obtain a management position within that first year. The evidence showed only limited comparable roles, and none close to his previous remuneration. The tribunal determined that he would reach a lower-paid management role after a further 26 weeks. Accordingly, the tribunal calculated future loss based on the differential between his likely net managerial earnings (estimated at £950.40 per week) and his former salary (£1,236.97 per week) over a period of 26 weeks.
191. The total future losses for this element amounted to £7,450.82, giving a total non-prescribed compensatory loss of £104,848.32. Applying the relevant adjustments, namely the 75 per cent Polkey reduction and the further 50 per cent contributory conduct reduction, resulted in a non-prescribed compensatory award of £13,106.04.
192. The tribunal also considered lost benefits. The loss of a company car (£28.67 per week) and private medical insurance (£31.31 per week) were both recoverable up to the point at which the claimant was projected to obtain a managerial role - a period of 163 weeks. The total combined sum was of that loss was £9,776.74.
193. Loss of statutory rights was assessed at £500. Pension loss over the same 163-week period, after adjusting for limited contributions from the current employer, came to £43,712.60. The tribunal awarded the claimant's reasonable job-seeking expenses at £100.
194. The gross combined compensatory award (prescribed and non-prescribed periods and all additional elements) totalled £31,527.81. As this exceeded £30,000, the tribunal applied grossing-up using a multiplier of 1.25. The resulting tax adjustment was £1,909.76, giving a total award of £31,909.76.
195. In summary, the breakdown of the total award and prescribed period was as follows. The compensatory award element is £29,337.76. The basic award remains £2,572. The prescribed period runs from 10 October 2023 to 13 November 2025, and the excess compensatory sum over the prescribed element is £16,059.99.

Approved by:

Employment Judge Wyeth

Date: 3 February 2026

Sent to the parties on:

13 February 2026.....

For the Tribunal:

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Karadag v Asda Supermarkets

Procedural issues raised for tribunal

1. No notice of the investigation or right of representation given to me
2. Notes of the investigation not provided and the recording of the initial part of the investigation was uploaded into a Google drive that I lost access to on my dismissal
3. Limited scope of investigation – fixed to specific dates despite me requesting a wider review of the activities under investigation
4. Investigation outcome not recorded and the notes do not reflect the accurate discussion – example the notetaker puts in the notes “Noel discusses receive it right” – there was a more in depth conversation where Noel (investigation officer) admits that Umar, a Security Officer had deliberately adjusted stock figures in my store
5. Allegation changed between investigation and disciplinary with no further investigation into the actual allegation
6. Breach of confidentiality
 - a. 2 subordinate managers were in the room when I received my outcome of investigation
 - b. Investigation notes were left in open offices, despite this being against Asda’s policy, and were seen and read by subordinate managers
7. Allegation unclear – negligence and deliberately committing an act cannot both be found
8. Failure to provide the evidence used to dismiss me
 - a. This meant I could not prepare to adequately defend myself. Despite raising this on numerous occasions, evidence was still not provided (namely the spreadsheet used to dismiss)
 - b. Evidence used to dismiss me not listed meaning I could not check I had received all the evidence
9. Fabricated evidence used to dismiss me
 - a. The Appeals Officer provided the “spreadsheet used to make the decision” but this was created after my dismissal and included dates and amounts accrued after I had been dismissed
 - b. The Investigation Officer fabricated the reason why he could not investigate the Operations Manager
10. Lack of a thorough investigation
 - a. Investigation officer was in a rush to complete the investigation quickly prior to his holiday and whilst he had other investigations to complete
 - b. People I requested be investigated and evidence I requested be reviewed was not reviewed in the disciplinary
 - c. Evidence cherry-picked to prove the Investigation Officer’s allegation. Evidence where stock changes did not benefit the store were discounted
11. Mitigation not taken into account
 - a. During the disciplinary I raised 13 points of mitigation which was not taken into account as part of the disciplinary or appeal decisions
12. Unconscionable work environment created by Asda not taken into account
 - a. I was placed under overt pressure to over-achieve on wages of £127k to fund other stores as well as my store being the only store denied the wages overlay for Q4
13. Contributory negligence by Asda not taken into account

- a. Failure to provide the right tools, training and oversight of this process
- 14. Technical errors on the PowerBI dashboard not taken into account
 - a. This led to me not having access to the right information
- 15. Inconsistency in sanction
 - a. 5 other Store Managers (as told to me in the disciplinary) have been found to have committed the same act but none have been dismissed
 - b. 2 colleagues who were found to have committed “financial fraud” not dismissed
 - c. Other examples of negligence, such as with Right to Work checks and payroll overspends, had lower sanctions than dismissal
- 16. Continued investigation after dismissal
 - a. Disciplinary officer continued to investigate after he dismissed me, pointing to that he was not clear in his decision
- 17. Fabricated response to my race allegation not investigated
 - a. Appeals Manager was happy to believe the Investigation Officer when he said he asked about nationality before the investigation meeting, where the independent witness states it was at the end of the meeting (after it would have been clear whether a translator was needed)
- 18. Unreasonable delay in appeals investigation
 - a. Took 3 months to investigate my appeal, despite little further investigation being completed. Outcome of appeal was given on the day my leave to appeal to tribunal would have been
 - b. I was not kept updated during the appeals process despite being told that I would need to be available at short notice for appeals meetings, meaning I could not enter into full time work
- 19. Further investigation notes for disciplinary and appeal not provided
- 20. Failure to adequately consider the allegation
 - a. A negligent act cannot be calculated in nature
- 21. Alternative sanction not considered
 - a. Despite my length of service, the points of mitigation provided and the contributory fault on Asda’s part, a sanction alternative to dismissal was not considered