



EMPLOYMENT TRIBUNALS

Claimant: Malgorzata Chmielewska

Respondent: Next Distribution Limited

Heard at: Leeds Employment Tribunal (CVP)
On: 3rd of March 2026

Before: Employment Judge Bridge (sitting alone)

Representation
Claimant: Ms Janusz (representative)
Respondent: Mr Hignet (counsel)

JUDGMENT

1. The Claim for unfair dismissal is not well founded and is dismissed.

REASONS

Background

1. The Claimant brings a single claim of unfair dismissal.
2. Early conciliation took place between the 7th August 2025 and the 22nd August 2025.
3. An ET1 was received by the Tribunal on the 22nd September 2025.
4. The ET3 was received on the 23rd October 2025.

The Issues

5. Unfair dismissal
 - a. What was the reason or principal reason for dismissal? The Respondent says the reason was conduct. The Tribunal will need to

decide whether the Respondent genuinely believed the Claimant had committed misconduct.

- b. Did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:
 - i. there were reasonable grounds for that belief;
 - ii. at the time the belief was formed the respondent had carried out a reasonable investigation;
 - iii. the respondent otherwise acted in a procedurally fair manner;
 - iv. dismissal was within the range of reasonable responses.

6. Remedy for unfair dismissal

- a. Does the Claimant wish to be reinstated to their previous employment?
- b. Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?
- c. Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.
- d. Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.
- e. What should the terms of the re-engagement order be?
- f. If there is a compensatory award, how much should it be? The Tribunal will decide:
 - i. What financial losses has the dismissal caused the Claimant?
 - ii. Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - iii. If not, for what period of loss should the Claimant be compensated?
 - iv. 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?
 - v. If so, should the Claimant's compensation be reduced? By how much?
 - vi. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

- vii. Did the Respondent or the Claimant unreasonably fail to comply with it by [specify alleged breach]?
 - viii. If so is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?
 - ix. If the Claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?
 - x. If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?
 - xi. Does the statutory cap of fifty-two weeks' pay?
- g. What basic award is payable to the Claimant, if any?
- h. 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?

The Hearing

- 7. The Tribunal was provided with an agreed bundle of 291 pages.
- 8. Oral evidence was given by Mrs Stead and Mr Cromwell on behalf of the Respondent.
- 9. The Claimant also gave evidence on her own behalf.

Findings of Fact

Employment with Next

- 10. The Claimant began employment with the Respondent on the 23rd November 2008. She was dismissed on the 7th June 2025. She worked as a warehouse operative at Next's Dearne Valley Boxed Warehouse. At the time of dismissal her hours of work were 05.30 to 13.00 hours Monday to Friday.
- 11. The Claimant primarily worked on the tray sorter in the Repack department of the warehouse.
- 12. On 21st of November 2008 the Claimant was issued with her terms of employment which was initially a temporary contract.
- 13. On 21st of November 2009, the Claimant's employment was made permanent. Her terms and conditions remained the same.
- 14. On 18th August 2023 the Claimant was issued with a new statement of terms. In the main, her terms and conditions remained the same.

15. Next have an employee handbook which is accessible to all employees which outlines, among other things, termination of employment and the bonus scheme.
16. Next have a disciplinary policy which defines gross misconduct as *“theft from or dishonesty in relation to the company, its employees or customers, falsification of any company documentation or electronic records for your own or others gain, serious breach of trust and confidence, falsification of bonus documentation and or anything tantamount to bonus abuse.”*
17. Both policies were readily accessible to employees.

Training

18. The Claimant had received relevant training during her employment. She completed Repack training on 18 July 2017 and further refresher training on 17 March 2020. Following each session, she signed a declaration confirming that she understood the process and would ask for clarification if unclear about any aspect of the task.
19. On 15 March 2020 the Claimant also completed retraining on the Respondent’s bonus scheme. She again signed a declaration confirming that she understood how bonus work was to be undertaken and recorded.
20. In addition, on 4 October 2016 the Claimant signed a detailed declaration acknowledging her understanding of the rules governing the bonus scheme. This included confirmation that bonus payments were based on accurately recorded production data; that bonus sheets had to be completed neatly, honestly and in actual minutes; that incorrect recording of time or production constituted bonus fraud; and that bonus fraud was treated as a serious disciplinary matter.

The bonus scheme

21. Warehouse operatives participated in a productivity-based bonus scheme. Productivity was measured by reference to the number of boxes scanned and the number of items accurately counted.
22. The Claimant’s contract of employment stated:

“ you will be eligible to participate in a bonus scheme, details of which are available from your Manager. Bonus is paid on recognition of you and your team’s work performance for work that is undertaken and achieved. You will not be entitled to receive a bonus unless you are working and completing bonus work. You should not rely upon bonus payments as part of your normal earnings. Bonus schedules and payments may be subject to change.”
23. There were two separate bonus schemes in operation.
24. The first was “individual bonus”. When working on this scheme, warehouse operatives were required to log into the system using their own individual employee number. Any items processed whilst an employee is logged in

under that number were used to calculate the individual's productivity and corresponding bonus payment.

25. The second scheme was the "average bonus" scheme. When working on this scheme, operatives were required to log into the system using a generic "dummy" number. Bonus payments for any period spent on average bonus were calculated using the employee's individual five-week rolling average productivity score, which was based on their actual recorded performance over that period.
26. Employees were required to submit time spent off individual bonus, such as periods spent on average bonus, for manager approval. The Respondent operated strict rules to ensure that all time is recorded accurately so that productivity data and bonus payments are correctly calculated.
27. The shift manager informed operatives whether they were working on individual bonus or average bonus for any given period. When on individual bonus, operatives were required to log into the system using their personal employee number so that their scanning activity was recorded for the purpose of calculating their productivity for that period
28. The processing of Fat Face products did not involve scanning in counting the boxes nor transferring items into a green tote. Therefore, this was classified as average bonus work.
29. Operatives were not permitted to change their bonus status without manager approval.
30. Each operative productivity was monitored by the company's bonus team. If an individual's performance fell below 85% then steps are taken to address underperformance. The bonus was capped at 125% productivity. Any productivity in excess 125% was flagged for further investigation because it is extremely unlikely an individual would legitimately exceed 125%.
31. During her time at the Respondent, the Claimant's performance figure was usually around 90% and she had never been performance managed for falling below 85%.

Procedures in the warehouse

32. I accept the account of Mrs Stead about the workings of the warehouse as follows:
33. Within the warehouse, a dedicated picking team selects items from cardboard boxes to fulfil customer orders. After picking, the box is transferred to the Repack department via the conveyor system.
34. Upon arrival at Repack, the box is directed to an individual operative's workstation. The warehouse operative is required to scan the barcode on the outside of the box. Once scanned, the screen at the station shows what item is in the cardboard box, including the number of items that should be

in the box.

35. The warehouse operative is required to confirm that the physical contents (both item and number) match the system information. If discrepancies are identified, the operative is required to amend the system record accordingly. Once checked, the items are transferred by the operative into a green tote. The green tote is then sent back along the warehouse system to the storage area of the warehouse known as HDS.
36. Occasionally, a box may have more than one product type due to an error. For example, this may occur when boxes collide on the conveyor system causing items to fall into neighbouring boxes. In those circumstances, the operative is required to remove the stray item from the box and place it to one side. A separate operative reintegrates the stray item into the system.
37. If the HDS tote is at capacity, the items must be split across two totes to avoid overfilling.
38. These procedures ensure that the Company maintains an accurate and reliable stock record ensuring that it does not sell an item that it doesn't have the stock to fulfil.
39. In around early 2024, the Respondent began storing Fat Face products within the warehouse. Because these products were new to the business, a separate processing system was established. These items were not stored in the HDS storage facility of the warehouse, instead being stored in a separate area. The existing warehouse systems could not automatically route Fat Face products into that separate area.
40. Therefore, when a Fat Face cardboard box arrived at the repack department, the warehouse operative was required to simply lift the box off the station and push it to the end. They were not required to scan the box or count the products. Another operative would then pick up the Fat Face boxes from the end of the station and manually move it to the Fat Face storage area.
41. During some shifts, mixed batches of Fat Face boxes and NF boxes arrived at Repack. NF products are ladies' accessories such as jewellery and belts. Managers determined whether the volume of Fat Face boxes warranted placing an operative on average bonus rather than individual bonus.
42. At times, operatives received a mixture of both types of boxes. Operatives were expected to process all work according to the bonus status set by management.

The Claimant's role in the warehouse

43. The Claimant's workstation primarily received NF boxes. NF items comprise small ladies' accessories. Due to their size, individual boxes commonly contained high volumes of items.

Previous final written warning and previous disciplinary record

44. On 13th October 2024 the Respondent conducted an investigation led by Izabela Stebelska into an allegation that the Claimant had damaged company property. The Claimant accepted that she had driven her car through a barrier in the company carpark while the barrier was showing a red light. CCTV footage confirmed that she had approached the barrier at speed.

45. The Claimant was honest and remorseful about the incident. Following a disciplinary hearing, she received a final warning on 21st October 2024 for breaching the Respondent's health and safety procedures.

46. Her final warning stated the following: -

" I would like to take this opportunity to remind you that should we have any cause to investigate any further incidents of conduct in the future, related or unrelated to this incident, disciplinary action may be taken against you. However, I am confident that this course of action will not be necessary, and you will respond in a positive and committed manner."

47. This warning is the only blemish on the Claimant's employment record. She has not been involved in any other disciplinary proceedings.

The Claimant's father

48. Around the time of the dismissal, the Claimant's father was undergoing intensive chemotherapy treatment for cancer.

49. He and the Claimant's mother lived in Poland. Until the 18th May the Claimant and her family had believed that the treatment was stabilising his condition.

50. On 18th May, the Claimant received a phone call from her parents in Poland and was told that her father's treatment was no longer effective and that she should prepare for the worst. She became extremely upset and was in tears following the call.

19th May 2024

51. On 19th May 2024, the Claimant came to work for her scheduled shift of 5am to 1.30pm.

52. I accept that she was still very distressed about the news she received the previous day. I find she did not inform any manager of her emotional state. Although she claimed to have spoken to a manager, the individual she named was not on shift and on balance I am satisfied that no conversation took place.

53. At the start of the shift the Claimant was informed that she would be working on the average bonus scheme.

54. The Claimant did ask if she would later be moved to the individual bonus scheme, but no such instruction was given, and her manager did not tell her to move to the individual bonus scheme at any point on that date.

55. Between 5am and 9am, when she took her breakfast break, the Claimant logged out of the average bonus scheme and into her individual bonus number on seven separate occasions. The log in records showed the following:

- 06:51:48 to 06:51:58
- 06:52:22 to 06:52:35
- 07:35:59 to 07:37:25
- 08:13:06 to 08:13:12
- 08:26:25 to 08:26:57
- 08:41:30 to 08:41:43
- 09:24:38 to 09:24:41

56. On each occasion she logged into the individual bonus scheme she processed items from NF crates. During one of these log ins she processed a box without counting the contents contrary to the required procedure, which required the operative to verify that the physical items matched the system record

57. After each log-in the Claimant returned to the average bonus scheme and continued her shift under that scheme.

58. At the end of her shift, she discovered that these log-ins resulted in an inflated productivity figure of 756%

59. When submitting her work times to her manager, she reported working from 9:04 and 1:30 reducing her recorded working time by four minutes in an attempt to reduce the inflation of her performance figure.

60. The inflated performance was flagged to the bonus team because it was so above what can be reasonably achieved during a shift.

The investigation

61. On 1st June 2025 Lee Davies, the investigation manger, commenced an investigation after the Claimant's productivity was flagged at 760%. He emailed a colleague the following:

"I Have an investigation regarding potential bonus fraud and I'm wondering if you can send me the current average performance for the above operative.

How many average hours each week is claimed by her over several weeks please.

Also have you the table for what performances what money please?"

62. On 2nd June 2025 the Claimant was invited to an investigation meeting.

63. The meeting was conducted by Mr Lee Davies, with notes taken by Izabela Stebelska. Sarah Ellis provided Human resources advice.

64. The Claimant signed the meeting notes to confirm their accuracy.
65. The meeting began with the following introduction which was in writing and signed by the Claimant:
- “You have been asked to attend this investigation to discuss your conduct. This is an informal meeting and as such you are not entitled to representation. The note taker is Izabela Stebelska. The note taker will be taking notes, and you will be given a copy at the end. The note taker's role is to take accurate notes of the discussions and will not be participating in the meeting or be involved in any decision making. Whether note taker is a member of HR they're able to give advice as well as taking notes.*
- If you require an adjournment, please tell me.*
- Once I've gathered all the facts, I will adjourn the meeting to review these. After the adjournment I will give you my decision if I can or may need additional time to investigate or consider new evidence. If this is the case, I will either arrange to reconvene the meeting at a later date alright to you to advise you of my decision, which ideally will be within the next 14 days.”*
66. During the investigation meeting the Claimant was asked if she had a good understanding of the bonus procedures. She replied, “yes I think”
67. She was asked if in her current duties she's had training on all the jobs and agreed she had for most.
68. It was explained that the reason that she was at the meeting was an allegation of bonus fraud. The Claimant said that when she arrived at work that day a manager named Richard was saying that they may be changing from average bonus to individual, but he hadn't made-up his mind.
69. She accepted logging into the individual scheme to “get ahead” for the afternoon assuming they would switch to the individual scheme then. She denied any untoward intent in her actions.
70. When she realised how inflated her performance figures were, she recorded her working hours as 4 minutes less in an attempt to fix the figures. She realises now this did not help.
71. There was no mention at this time of any mitigating personal circumstances with her father. There was no mention of having any brain fog so the circumstances were not investigated.
72. As part of the investigation, the records of other operatives working that shift were reviewed and showed that they had recorded their time correctly.
73. The Claimant's productivity records were checked for the two days prior to the 19th which showed she recorded her time appropriately.
74. Following the meeting, Mr Davies determined that the matter should proceed to a disciplinary hearing.

The disciplinary hearing

75. The Claimant was invited to attend a disciplinary hearing. Although the invitation letter referred to a hearing on 7th June 2025 at 11am, the hearing took place on 6th June 2025.
76. The hearing was chaired by `Mrs Wendy Stead, with notes taken by Mr Ryan Greensmith. The Claimant attended with her union representative Kelly Sykes. HR advice was provided by Ms Jessica Turner.
77. At the hearing, the Claimant confirmed that she understood the Respondent's bonus procedures.
78. She initially stated that she believed she had logged into her individual bonus number only twice, but accepted the documentary evidence showing seven log-ins. She explained that when logged in under her individual number she had scanned the NF boxes.
79. The Claimant spoke for the first time about her father's illness and how this had affected her. She said that she had spoken to a manager but could not recall who. She also stated that she had been experiencing "brain fog".
80. She later said that she thought she might be moved onto individual bonus later in her shift because Richard Campbell, who was a team manager, had given this impression. She denied she had any bad intentions by her actions but confirmed that she did this to get a "head start" on her productivity to avoid underperformance. She accepted that she thought scanning the boxes on an individual number instead of on average would mean if they went on to bonus after their break, her performance ratings would be improved.
81. The Claimant also accepted that with one of the boxes she processed during this time she did not count the items within the box as required. She confirmed that it would not have been possible to count 697 units in eight seconds and that she'd simply confirmed the number was correct on the system due to the box being full.
82. The Claimant processed the box in this way to boost her numbers. Had a manager instructed the Claimant to change to bonus later in her shift her actions would effectively mean she had banked some productive time.
83. The Claimant accepted that when she realised how inflated her productivity figure was, she had attempted to adjust her time submission to reduce the figure. She accepted she had not deducted the correct amount of time which should have been two minutes and not four. She also accepted that she should have claim for bonus or average time based on management instructions rather than her own discretion.
84. Miss Sykes made a number of submissions on the Claimant's behalf as follows: -
- She did not consider the Respondent took the actions very seriously because the letter inviting her to the investigation did not mention gross misconduct but merely stated the issue was with her conduct and the

- Claimant was never suspended.
- The meeting should have been carried out immediately after the Claimant's holiday and it had not been.
 - This was an isolated incident
 - There had been no monetary gain
 - There had been confusion since the Fat Face stock arrived at the warehouse.

The decision to dismiss

85. The decision to dismiss was taken by Mrs Stead following the disciplinary hearing. I accept her evidence as to the conclusions she reached.
86. Mrs Stead found that the Claimant knew the NF boxes should have been processed when she was on average bonus yet she removed them from her station and processed them under her individual bonus number on seven occasions.
87. She also found that, when the Claimant realised that her productivity had not been transferred to individual bonus as she had assumed, she attempted to adjust her time submission by four minutes in an attempt to dilute the inflated performance figure.
88. Mrs Stead concluded that the Claimant had intentionally failed to follow the Respondent's bonus procedures. In her view, the Claimant's actions inflated her productivity and if they had not been detected by the bonus team, they would have increased both her individual and average bonus performance scores to her advantage.
89. I accept she took the Claimant's mitigation into account. I accept she did because she has been able to explain in evidence every submission and how she weighed this up in reaching her conclusion.
90. In relation to it being an isolated incident, she concluded that despite this it was a serious and intentional act. She did not think that the Claimant showed any genuine remorse and did not think that she provided any credible explanations for her actions.
91. She viewed it as serious because of the importance for following procedures in the warehouse. Firstly, following procedures was very important for health and safety reasons and secondly, to ensure the smooth running of the warehouse. Customers may have been able to place orders for items the company did not have in stock because the Claimant processed a box without checking the contents.
92. She considered the Claimant was able to demonstrate a good knowledge of the correct procedures.
93. In relation to the Claimant making no monetary gain the only reason there wasn't any monetary gain is because the bonus teams process flagged performance for investigation. Had this not been flagged and had the team being moved on to bonus following their break which the Claimant had

assumed would be happening, her actions would have increased their productivity to the maximum of 125%. In turn it would increase performance scores for both individual productivity bonus as well as their average score used for the average bonus work.

94. She did not place weight on the Claimant's reference to her father's illness or "brain fog" finding these accounts inconsistent with the Claimant's explanation that she had acted to "get ahead".

95. Mrs Stead accepted the submissions of the Claimant's representative that her disciplinary invitation letter referred to conduct and not gross misconduct. She stated that she nevertheless regarded her behaviour as gross misconduct, but because of the error in the paperwork she treated the matter as a conduct issue and dismissed the Claimant with notice.

The dismissal

96. On 9th June a letter was sent to the claimant which reads as follows: -

"I am writing to confirm the decision made following your disciplinary meeting on the 6th of June 2025 of which you were accompanied by Kelly Sykes.

The meeting was held to respond to allegations about your conduct, specifically bonus fraud whilst working on average, completing a large number of items on bonus number GP4, enhancing individual performance and future average payments. I have taken all of the facts of the case into consideration, along with previous formal action taken against you, including your final written warning issued on the 19th of October 2024. When this warning was issued you were advised that if your conduct did not improve, you are likely to be dismissed.

I do not feel the formal steps we have taken to try and address your conduct have led to an acceptable and consistent improvement. Based on this, it was my decision to dismiss you on the grounds of your conduct. For further details please refer to the notes taken at the disciplinary meeting."

97. The letter went on to confirm the terms of her dismissal and when various payments would be made and inform her of her right to appeal."

The Appeal

98. On the 9th of June 2025 the claimant wrote an e-mail to formally appeal the decision on the grounds that she had no intention to commit fraud, that any issue had been caused by system error rather than any deliberate conduct, that she had a clean record, long service and that dismissal was disproportionate.

99. On the 20th of June 2025 the Claimant was invited to an appeal hearing to be held on the 30th of June 2025. She was advised of her right to be accompanied to the hearing. She was asked if any specific adjustments were needed. This letter was signed by Matthew Cromwell.

100. The appeal hearing took place on 30th June 2025 and was chaired by Matthew Cromwell. The note taker was Ms Turner and the Claimant was accompanied by Steve Maundrill.

101. The Claimant signed the notes to confirm their accuracy

102. At the hearing, the Claimant was given chance to explain her grounds of appeal which she did. Mr Cromwell also heard submissions from her representative regarding the mitigation advanced including her length of service.

103. Mr Cromwell adjourned the hearing to allow time to consider the matter before reaching his decision.

Appeal decision

104. Mr Cromwell upheld the decision to dismiss.

105. He concluded that the Claimant's conduct had been deliberate. He relied on the fact that she had logged into her individual bonus number on seven occasions during a single shift in order to scan NF items which should have been processed while she was on average bonus.

106. He took account of the Claimant's admission at both the disciplinary and appeal hearings that she had acted to 'get ahead' with her figures and that she believed her performance might later be assessed under individual bonus. He considered that these admissions supported his conclusion that the Claimant had acted intentionally to inflate her productivity.

107. Mr Cromwell did not accept the Claimant's explanation that she had been experiencing brain fog or that she was acting out of concern about performance management. He noted that she had never been underperforming and that performance monitoring had been in place for some time.

108. He found that the Claimant's explanations were inconsistent and lacked credibility.

109. Mr Cromwell considered the mitigating factors advanced on the Claimant's behalf. He concluded that the absence of financial gain did not assist her, as any benefit had been prevented only because the bonus team had detected the inflated figure at an early stage. He also noted that the Claimant had not brought the matter to the attention of her managers, which he considered inconsistent with an honest mistake.

110. He further considered the Claimant's length of service, her previous clean record, and the submission that dismissal was disproportionate. He concluded that these matters had been taken into account at the disciplinary hearing, and that the nature of the conduct was sufficiently serious that a lesser sanction was not appropriate.

111. He did not consider further training to be an appropriate alternative, as he found that the Claimant understood the bonus procedures but had chosen not to follow them. He stated that alternatives to dismissal had been considered but were not appropriate in the circumstances.

112. Mr Cromwell acknowledged that the disciplinary invitation letter had referred to conduct rather than gross misconduct but considered that the Claimant had been made aware of the seriousness of the allegations and that dismissal with notice was appropriate in light of the paperwork error.

113. He noted that the deliberate nature of the conduct suggested that it may not have been an isolated misunderstanding. Though he had considered this may not have been an isolated incident, this was not the main reason for his decision.

Law

114. Section 98 of the Employment Rights Act 1996 states

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

(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

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

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

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

115. ***Abernethy v Mott, Hay & Anderson [1974] ICR 323*** states,

“A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee.”

116. ***Iceland Frozen Foods v Jones [1982] IRLR 439*** gives guidance to the Tribunal when considering cases of unfair dismissal. Mr Justice Brown Wilkinson specified the approach for the Tribunal is as follows: -

- (1) *“The starting point should always be the words of [s.98(4)] themselves.*
- (2) *in applying the section an Industrial Tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the Industrial Tribunal) consider the dismissal to be fair.*
- (3) *in judging the reasonableness of the employer's conduct an Industrial Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer.*
- (4) *in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another.*
- (5) *the function of the Industrial Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band, it is unfair.”*

117. In ***Burchell, and Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23***, Lord Arnold states that the Tribunal should ask itself the following questions:

- “1. Did the respondent genuinely believe that the claimant was guilty of misconduct?*
- 2. If so, was that belief based on reasonable grounds?*
- 3. Had the employer carried out such investigation into the matter as was reasonable?*
- 4. Did the employer follow a reasonably fair procedure?*
- 5. If all those requirements are met, was it within the band of reasonable responses to dismiss the claimant rather than impose some other disciplinary sanction such as a warning?”*

Conclusions

118. In reaching my conclusions on this claim, the law does not require me to

make a positive conclusion that the Claimant did or did not commit any form of fraud, nor do I intend to do so.

119. The law does not permit me to stand in the shoes of the Respondent and substitute my view or decision for that taken by the Respondent.

120. The principal reason for the Claimant's dismissal was her conduct. This is a potentially fair reason under s98(2)(b) of the Employment Rights Act 1996.

121. In considering the fairness of the dismissal I have answered the following questions as set out in the case of *Burchell, and Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23:

Did the respondent genuinely believe that the Claimant was guilty of misconduct?

122. I am satisfied that from the outset the Respondent believed the Claimant committed bonus fraud.

123. An email has been provided from during the investigation process which expressly says Mr Davies was investigating a bonus fraud.

124. At each stage of the process bonus fraud was referred to. This was during the investigation, disciplinary and appeal processes. Though the act was referred to as conduct in error and not gross misconduct, I am content that this was an error and not any indication that the actions were not being taken seriously.

Was that belief based on reasonable grounds?

125. I find that the belief was based on reasonable grounds, including recorded log in data, the Claimant's admissions during both the investigation and the disciplinary hearings and the evidence of how she had processed NF items under her individual bonus number.

126. It is entirely reasonable that they concluded that she had attempted to defraud the Respondent because she accepted her intention was to gain advantage with her performance data.

Had the employer carried out such investigation into the matter as was reasonable?

127. I have taken into account the size and resources of Next in making my conclusions.

128. I am satisfied that the Respondent conducted a reasonable investigation. The key facts were not in dispute, and the Respondent checked the Claimant's recent performance records, as well as records of her colleagues. Although the Claimant later relied on her father's illness, she did not raise this during the investigation, and there was nothing to prompt the Respondent to explore this issue further.

Did the employer follow a reasonably fair procedure?

129. I am satisfied that a fair procedure was followed. The Claimant was invited to an investigation meeting, a disciplinary hearing, and an appeal hearing. She was

accompanied at both formal hearings and had the opportunity to make representations at each stage.

Was it within the band of reasonable responses to dismiss the claimant rather than impose some other disciplinary sanction such as a warning?

130. The question for the Tribunal is whether the Respondent acted reasonably in treating the Claimant's conduct as a sufficient reason for dismissal. I am satisfied that it did.
131. The Claimant logged into her individual bonus number on seven occasions during a single shift in order to process NF items which she knew should have been processed under average bonus. She also recorded inaccurate time with the intention of reducing the inflated productivity figure. The Respondent was entitled to regard this as deliberate manipulation of the bonus process.
132. The Respondent considered all mitigation advanced, including that the incident was isolated, the Claimant's long service, her previous good record, and the difficult personal circumstances relating to her father's illness. It concluded that the Claimant's explanations were inconsistent and that her actions were deliberate. That was a conclusion reasonably open to it.
133. The Respondent also considered that although the Claimant did not ultimately gain financially, this was because the bonus system had detected the inflated productivity at an early stage. It was entitled to conclude that the absence of financial gain did not reduce the seriousness of the misconduct.
134. I am satisfied that the Respondent considered alternatives to dismissal but reasonably concluded that a lesser sanction was not appropriate. The Claimant was already subject to a final written warning for unrelated conduct, and the Respondent did not accept that retraining would address conduct it regarded as deliberate.
135. Taking all of these matters into account, I find that dismissal fell within the range of reasonable responses open to a reasonable employer in the circumstances.
136. For these reasons, the claim for unfair dismissal is not well founded and is dismissed.

Approved by:

Employment Judge Bridge

30th March 2026

Notes

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

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

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