

RESERVED JUDGMENT



EMPLOYMENT TRIBUNALS

Claimant: Isaac Menka
Respondent: Mitie Limited
Held at: East London Hearing Centre (by video)
On: 18 & 19 March 2026
Before: Employment Judge S Povey

Representation

For the claimant: Ms Godwins (Counsel)
For the respondent: Ms Charalmbous (Counsel)

JUDGMENT

1. The complaint of unfair dismissal is not made out and is dismissed.
2. The complaint of wrongful dismissal is not made out and is dismissed.
3. The complaints of unauthorised deductions from wages and unpaid holiday pay, having been withdrawn by the Claimant, are dismissed under Rule 51 of The Employment Tribunal Procedure Rules 2024.

REASONS

1. At the culmination of the hearing on 19 March 2026, I reserved my judgment due to lack of time. These are my decisions and reasons.

Background

2. This is a claim brought by Isaac Menka (hereafter referred to as the Claimant) against his former employer, Mitie Limited (hereafter referred to as the Respondent).

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3. The Claimant was employed by the Respondent as a Security Officer from 1 December 2009 until the termination of his employment with effect from 21 February 2025. The Claimant brings complaints of unfair dismissal and wrongful dismissal (in respect of unpaid notice pay). He withdrew complaints of unauthorised deductions from wages and unpaid holiday pay. The complaints of unfair and wrongful dismissal are resisted in their entirety by the Respondent.
4. At the hearing on 18 & 19 March 2026, I heard oral evidence from the Claimant, and for the Respondent, I heard from Abimbola Aderibigbe (Security Duty Manager, who chaired the disciplinary hearing) and Frederick Ntiri (Operations Manager, who chaired the appeal hearing). Each witness adopted their written statements. I was provided with an indexed, paginated bundle of documents ('the Bundle'), to which, by consent, was added an email and attachments from February 2025. I was also provided with relevant CCTV footage.
5. I received written and oral submissions from Ms Charalambous for the Respondent and oral submissions from Ms Godwin for the Claimant
6. I was also provided with a witness statement in support of the Claimant from Augustine Kwakye. I was informed that Mr Kwakye has relocated to Ghana, was unable to return to the UK for the hearing and no permission had been secured for him to give evidence from Ghana. I heard from both parties within their submissions as to the weight I should attach to Mr Kwakye's written evidence.
7. It was agreed that the hearing would be limited to liability only.
8. I was grateful to Ms Godwin, Ms Charalambous and their instructing solicitors for the assistance they provided and the work they had undoubtedly undertaken both before and during the hearing. I was also grateful to all the witnesses, including the Claimant, who attended and answered the questions asked of them.
9. I have taken all the evidence I have seen and heard and the parties' respective submissions into account in reaching my decision.

The law

Unfair dismissal

10. By virtue of section 94 of the Employment Rights Act 1996 ('ERA 1996') an employee has the right not to be unfairly dismissed by his employer. In respect of what constitutes an unfair dismissal the relevant law is to be found within section 98 of the ERA 1996.

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11. Section 98(1) requires that in deciding whether a dismissal was unfair it is for the employer to show the reason for that dismissal. That reason must fall within a list of potentially fair reasons to be found within Section 98(2) of which subsection (2)(b) states:

“A reason falls within this subsection if it relates to the conduct of the employee.”

12. Section 98(4) of ERA 1996 requires the Tribunal to consider whether the employer acted reasonably in dismissing the employee for one of the reasons in Section 98(2). In a conduct dismissal, the Tribunal is bound to consider the guidance issued by the Employment Appeals Tribunal in the Courts (including the decisions in British Home Stores Ltd v Burchell [1978] 379, Iceland Frozen Foods Ltd v Jones [1993] ICR 1, Post Office v Foley [2000] IRLR 827, Sainsbury’s Supermarkets v Hitt [2003] IRLR 23).
13. In particular, the case law requires me to consider four sub-issues in determining whether the decision to dismiss on the grounds of conduct was fair and reasonable:
 - 13.1. Whether the employer genuinely believed that the employee had engaged in conduct for which he was dismissed;
 - 13.2. Whether they held that belief on reasonable grounds;
 - 13.3. Whether in forming that belief they carried out proper and adequate investigations, and
 - 13.4. Thereafter, whether the dismissal was a fair and proportionate sanction to the conclusions they had reached.
14. The Tribunal must consider the reasonableness of the employer’s decision to dismiss and, in judging the reasonableness of that decision, the Tribunal must not substitute its own decision as to what was the right course to adopt for the employer. Rather, the Tribunal must consider whether there was a band of reasonable responses to the conduct within which one employer might reasonably take one view whilst another quite reasonably takes a different view. Our function is to determine whether in the circumstances of the case, the decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within that band it is fair. If it falls outside that band, it is unfair.
15. The Tribunal is also required to consider the fairness of the procedure that was followed by the employer in deciding to dismiss the employee. However, if the procedure followed was unfair, the Tribunal is not allowed to ask itself whether the same outcome (i.e. dismissal) would have resulted anyway, even if the procedure adopted had been fair (per Polkey v AE Dayton Services Ltd [1987] IRLR 503 HL).

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16. The requirement for procedural fairness includes consideration of the reasonableness of the decision to dismiss up to and including any appeal process undertaken (West Midlands Co-operative Society v Tipton [1986] ICR 192, HL).

Breach of contract

17. Employment Tribunals in England and Wales were given power to deal with breach of contract claims by the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (“the 1994 Order”).
18. The jurisdiction under the 1994 Order only applies to breaches of contract outstanding on the termination of employment, so current employees cannot claim and the Tribunal cannot deal with breaches occurring after termination.
19. Section 86 of the ERA 1996 affords rights of notice to employees, the length of which is determined by their period of continuous employment with their employer. Any failure by the employer to give correct notice constitutes a breach of his contract of employment, save where either the employee waives his rights to, or accepts payments in lieu of, notice. In addition, an employer is entitled to dismiss an employee without notice where satisfied that the employee’s conduct amounted to a repudiatory breach of the employment contract and discloses a deliberate intent to disregard the essential requirements of that contract. The employer faced with such a breach by an employee can either affirm the contract and treat it as continuing or accept the repudiation, which results in immediate dismissal.
20. Complaints under the 1994 Order must be presented to the Tribunal within three months of the effective date of termination of employment (subject to ACAS Early Conciliation).

Findings of fact

Introduction

21. The Respondent provides security services to various clients, one of which is Eurostar International Limited (‘Eurostar’). The Claimant was based at Eurostar’s Temple Mills Depot in Leyton, East London, where he provided services under the Respondent’s contract with Eurostar.
22. So far as relevant, Eurostar had Standard Operating Procedures (‘SOP’), which applied to contractors such as the Claimant. In evidence were extracts from the SOP for train searches (at [71] – [74] of the Bundle) and the SOP for Conduct in Workplace (at [75] – [84]).

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23. The case centred on the events of the night of 23 – 24 December 2024. The Claimant's shift began at 7pm on 23 December 2024 and ended at 7am on 24 December 2024. The Claimant was one of a team of six security officers on duty. The Respondent had in place a duty roster which allocated various tasks and breaks to each officer at various times of their shift (at [86] of the Bundle). According to the roster, the Claimant's shift was as follows:
- 23.1. 7pm – 9pm Control Room;
 - 23.2. 9pm – 10pm Gate;
 - 23.3. 10pm – 11pm X-ray Screening;
 - 23.4. 11pm – 1am Site Perimeter Fence Patrol;
 - 23.5. 1am – 2am Break;
 - 23.6. 2am – 3am Other duties;
 - 23.7. 3am – 4am Building Patrol;
 - 23.8. 4am – 5am Reception;
 - 23.9. 5am – 6am Gate;
 - 23.10. 6am – 7am Body Search & X-ray Screening.
24. The depot and buildings had CCTV in operation at various points and locations. Mr Ntiri's evidence, which I did not understand to be in dispute, was that the CCTV footage was automatically stored for 28 days, after which time it was deleted, unless it was downloaded and saved during those 28 days.
25. The depot was used by Eurostar to clean and re-stock its trains. Other contractors also worked at the depot, including cleaning contractors.
26. As the Claimant brings complaints of unfair dismissal and wrongful dismissal, I have structured my findings as follows:
- 26.1. I first make findings about the disciplinary process undertaken by the Respondent.
 - 26.2. I then go back and make findings, so far as relevant, to what actually occurred on the night in question.

The disciplinary proceedings

27. Another member of the team of security officers on shift that night was Waleed Gul. On 26 December 2024, he emailed the Respondent with the following allegation against the Claimant (at [88] of the Bundle, emphasis retained):

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From two days I'm in huge amount of mental pressure how to explain and describe what I am witness in two nights at site. To whom to explain the situation I am going through couldn't sleep what I witnessed.

I'm still in trauma, thinking we suppose to provide protection & work with honesty that's what I learn in induction. I feel embarrassed to report about my own colleagues.

...

Third incident

later 23/12/2024 ...

@ 00:46 followed by Mr Isaac menka [sic] came with two Eurostar paper bag full of drinks and even he dropped a champagne bottle in front of reception x-ray machine then he picked the bottle and went behind the wall and hides in jacket can be seen in reception camera. I spoke to Isaac this is stealing and its not good for our reputation, even in morning he changed everything into his backpack bag. In CCTV can seen both of them.

In induction I have learned that's [sic] even our senior does something wrong we have to challenge & report. I hope management will do their own investigation regarding this incident and a lot more things will come out.

28. In the same email, Mr Gul raised two other alleged incidents of theft from the depot by different security officers. One was alleged to have taken place on 21 December 2024 (Joshua Frimpong) and the other on 23 December 2024 (Anthony Newton), albeit earlier than the allegation regarding the Claimant.
29. The Respondent interviewed Mr Gul on 27 December 2024 (at [89] – [92] of the Bundle). In respect of the allegation against the Claimant, the following exchange took place between Mr Gul and Nebiyou Feleke, the Respondent's Security Duty manager (at [91] – [92]):

NF: Furthermore, you mentioned that you witnessed Mr Isaac with x2 Eurostar paper bag full of drinks. Where did Isaac get the drinks from?

WG: Must be from the train

- Nighttime Eurostar Canteen is closed.
- Eurostar Canteen don't sell alcohol.
- The only place drinks can be found is on the train.
- He was coming from the direction of side stable siding or waste management.

NF: What kind of drinks were in the bags with Isaac?

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WG: As Isaac entered the reception area by x-ray machine a big bottle of champaign dropped on the floor but didn't break. Then he picked it up and put it in his inside jacket pocket. I said what are you doing? this is stealing, and he replied to Waleed you talk to much. He picked up the two bags with full of drinks and went to the changing room. In the morning when we finished our shift I. Manka was there in changing room his bag pack was full and I said where you are taking all these drinks, and he replied to my kids like the drinks. I replied you going to take the stolen drinks and feed the kids. I saw him going out with his bag pack.

30. On 6 January 2025, the Respondent's Director, Kelly Parish and Mr Ntiri met with the then Operations Manager of Eurostar, Matt Rogers. Eurostar had asked to meet given their concerns over the theft allegations. According to Mr Ntiri, Ms Parish made the following assurances to Mr Rogers (per Paragraph 63 of his witness statement):

...Kelly Parish assured Eurostar that [the Respondent] would do all it could to make sure the right action was taken against those involved. She assured Eurostar that we would make sure the right decision was made to deter other officers from doing the same.

31. The Respondent appointed John Prado, another Security Duty manager to undertake a disciplinary investigation. On 7 January 2025, the Respondent suspended the Claimant on full pay, pending the outcome of the investigation.
32. Mr Prado met with the Claimant on 9 January 2025 (at [93] – 98] of the Bundle). Prior to the meeting, extracts of the CCTV recordings from the night of 23 – 24 December 2024 were downloaded and viewed by Mr Prado. Each page of the notes of the meeting was signed by the Claimant to confirm their accuracy. So far as relevant, the Claimant informed Mr Prado of the following:
- 32.1. He could not remember his allocated position under the roster for the period from 12pm to 1am (as noted above, between 12pm and 1am, the Claimant was rostered to be halfway through his Site Perimeter Fence Patrol).
- 32.2. When asked if he had carried out a train search during his shift, the Claimant's response was "*No, I can't remember. I didn't do a train search I can't remember*".
- 32.3. When asked if he entered a train during his shift, the Claimant said that he could not remember and would need to see the roster. Later, when asked if he entered a train between 12.16am to 12.18am or left a train at 12.37am, the Claimant said that he could not remember.
- 32.4. He denied carrying two bags to his locker, as alleged by Mr Gul and stated as follows (at [95]):

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2 bags in my locker no who's that saying that I have caried two bags to my locker. This guy was at the reception Waleed security officer. Augustine Kwakye from Churchill cleaning company called me around 20:37 and I called him that I was busy at work, and he said you should come for my Christmas present when I am free. I went and saw him after 00:00 on the platform. He gave me Christmas card and Ghana chocolate for my children, and he gave me non-alcohol drink because every year he gives me present for Christmas along to other Ghanaian security. When I came to reception the non-alcohol drink dropped in the reception then I took it put it in my pocket and went to my changing room and put it in my bag. I was carrying only one bag not two bags. I still have the Ghana chocolate at my home.

- 32.5. When Mr Prado informed the Claimant that CCTV footage from reception showed him carrying two bags, one white and one black, at 12.45am, the Claimant re-stated on four further occasions that he was only carrying one bag.
- 32.6. He denied speaking to Mr Gul in reception regarding the bottle of drink in his hand or the two bags he was carrying.
- 32.7. He denied taking any Eurostar stock and reiterated that the only items he took home from his shift were the gifts he had received from Mr Kwakye.
33. The Respondent appointed Mr Aderibigbe as the disciplinary manager. By a letter dated 24 January 2025, he invited the Claimant to a disciplinary hearing scheduled for 31 January 2025 (at [99] – [100] of the Bundle). The hearing was subsequently rescheduled, at the Claimant's request, to 11 February 2025 and another invitation letter sent, dated 29 January 2025 (at [102] – [103]). Mr Aderibigbe informed the Claimant that he faced the following allegations:
- Theft and serious Breach of Site Security Procedures.
 - Specifically, it is alleged that on 24th December 2024 at around 00:45 you took Eurostar stock from Eurostar train and proceeded to your locker room to keep this stock
 - Aggressive or unacceptable behaviour.
 - Specifically it is alleged that you behaved unprofessionally in relation to the theft allegation.
 - Bringing the company and client into disrepute.
 - Specifically it is alleged that your actions on 24th December 2024 could damage Eurostar and MITIE's reputation.
 - Serious Breach of Trust and Confidence.
 - Specifically it is alleged that the company has lost confidence in your ability to carry out your primary role sufficiently in relation to the above.

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34. The Claimant was provided with the evidence relied upon by the Respondent and informed that he would have an opportunity to view the CCTV footage at the hearing. He was informed that given the nature of the allegations, if proven, they could constitute gross misconduct which may result in his dismissal. He was told of his right to be accompanied at the hearing.
35. The disciplinary hearing took place as scheduled on 11 February 2025 (the signed minutes were in evidence, at [106] – [116] of the Bundle). The Claimant was accompanied by his trade union representative, Edward Ackah. It began at 10.20am and ended at 3.10pm.
36. During the hearing, Mr Aderibigbe asked the Claimant some questions, gave him the opportunity to comment on or respond to the evidence and took him through the CCTV footage. The Claimant and Mr Ackah were also afforded an opportunity to add anything else they wished to say (which they both did).
37. In the course of the hearing, the Claimant initially said that he could not remember whether he entered a train during his shift. However, later in the same meeting, he stated, for the first time, that he had in fact entered a train in order to collect his gifts from Mr Kwakye, although he could not recall the time.
38. The Claimant also stated during the disciplinary hearing that he could no longer recall how many bags Mr Kwakye had given him. After viewing the CCTV footage, which showed the Claimant carrying two bags, he recalled that Mr Kwakye had in fact given him two bags of gifts.
39. The Claimant was clear and consistent in what the gifts were which Mr Kwakye gave him. In his investigation meeting and on several occasions during the disciplinary hearing, the Claimant confirmed that Mr Kwakye had given him a bottle of non-alcoholic drink, Ghanaian chocolate, salted corns and a Christmas card. The Claimant offered to email pictures of some of the gifts to Mr Aderibigbe after the hearing.
40. The Claimant confirmed that he dropped a bottle in reception, in the presence of Mr Gul. The Claimant stated that it was the bottle of non-alcoholic drink given to him by Mr Kwakye. He denied speaking to Mr Gul at that time.
41. After the meeting, Mr Aderibigbe emailed a copy of the hearing notes to the Claimant. On 13 February 2025, Mr Menka emailed Mr Aderibigbe, as follows:

As requested during our disciplinary meeting on 11th of February, I have attached some images of items I was gifted by Augustine Kwakye, these are also the contents of the plastic bags in question.

please do not hesitate to contact me for further information

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42. Attached to the email of 13 February 2025 were photographs of the following:
 - 42.1. A bottle of non-alcoholic sparkling drink;
 - 42.2. Two plastic tubs of nuts;
 - 42.3. Dark & milk Ghanaian chocolate;
 - 42.4. A Christmas card, with the words "From Offa Kwakye" inside;
 - 42.5. A bag of plantain crisps;
 - 42.6. A plastic tub of coconut chin chin, described as an "African-style fried wheat snack with coconut".
43. By a letter dated 21 February 2025, Mr Aderibigbe informed the Claimant of his decision (at [117] – [121] of the Bundle). He found the Claimant had taken Eurostar stock, seriously breached site security procedures in doing so, brought the Respondent into disrepute and committed a serious breach of trust and confidence. Mr Aderibigbe did not find that the Claimant had engaged in aggressive behaviour, although he did conclude that, by reason of the theft allegation being made out, the Claimant had engaged in unprofessional behaviour.
44. Given those findings, Mr Aderibigbe concluded that the Claimant was guilty of gross misconduct. He decided to summarily dismiss the Claimant.
45. The decision letter set out in some detail Mr Aderibigbe's reasoning and how he had determined the evidence. In summary, he found that the inconsistencies and discrepancies in the Claimant's accounts of what happened during his shift, when viewed in the context of the CCTV evidence and the evidence of Mr Gul, led him to conclude that the Claimant's account was neither clear nor truthful.
46. In respect of mitigation, Mr Aderibigbe had regard to the Claimant's length of service and the submissions made during the hearing. However, he concluded that dismissal was the only proportionate outcome (per Paragraphs 14 & 15 of his witness statement).
47. The letter informed the Claimant of his right of appeal, which the Claimant exercised on 24 February 2025, setting out his grounds of appeal (at [122] of the Bundle). The Claimant was invited to the hearing of his appeal, scheduled for 19 March 2025 (at [125] – [126]). The Respondent appointed Mr Ntiri to conduct the appeal.
48. The hearing of the Claimant's appeal took place on 19 March 2025. The Claimant attended with his trade union representative. During the hearing, which lasted, two and half hours, the Claimant's grounds of appeal were

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discussed and the Claimant's representative made submissions (a copy of the minutes of the meeting were in evidence, at [127] – [135] of the Bundle).

49. After the hearing, Mr Ntiri undertook a number of lines of enquiry and reviewed the documentation and evidence. In particular, on 8 April 2025, and in response to the Claimant's complaint that Mr Kwakye had not been contacted during the disciplinary process to verify the Claimant's account, Mr Ntiri arranged for Churchill Services (Mr Kwakye's employer) to be contacted. However, Churchill Services replied the same day to explain that Mr Kwakye had left their employment on 31 December 2024 and was not contactable (at [138] – [141] of the Bundle).
50. Mr Ntiri also made further enquiries of Mr Aderibigbe (at [142] – [143] of the Bundle) and of the Claimant (at [144] – [145]). The enquiry of the Claimant was as follows, arising from points raised by the Claimant during both the disciplinary and appeal hearings:

Could you kindly elaborate on the following statements:

- **Critical CCTV footage:**
Could you please clarify which specific footage you are referring to and what concerns you believe were not addressed?
- **Other key witness statements were not reviewed or properly considered:**
Could you specify which witness statements you believe were overlooked or inadequately considered, and in what way?
- **Phone records were ignored:**
Could you elaborate on which phone records you are referring to and how you believe they were disregarded?

51. The Claimant confirmed in his oral evidence that he did not respond to the first bullet point and could not remember if he responded to the second. There was no evidence in the Bundle of any response to the second bullet point.
52. In respect of the third bullet point, the Claimant sent Mr Ntiri a screenshot of a phone log (which Mr Ntiri reproduced in his appeal outcome letter, at [149] of the Bundle), which included reference to a call at 00:18 on 24 December 2024 with "GIWAH.CHURCHILL.TMI". The Claimant had not provided the call log previously as part of the disciplinary process. There was no evidence before me that the Claimant provided any explanation or context for the call log with the screenshot. The Claimant also made no reference to the call of 00:18 in his witness statement or the context of the call log.
53. However, in his oral evidence, and seemingly for the first time, the Claimant alleged that on the night in question, Mr Kwakye had in fact left the Claimant a message when he called him at 12.24am. He also alleged

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that when he subsequently tried to contact Mr Kwakye to arrange to meet with him, he had been unable to contact him. As a result, the Claimant said that he called one of Mr Kwakye's colleagues, named Giwah, and was told by Giwah that Mr Kwakye was on the train.

54. The Claimant also said in his oral evidence that he provided the Respondent with a phone log which showed him receiving the call from Mr Kwakye at 12.24am. The only phone log in evidence was the one referred to above, which did not show the Claimant receiving a call from Mr Kwakye.
55. When it was put to the Claimant in cross-examination that he had never previously raised the allegation that he had called Giwah and been told that the Mr Kwakye was on the train, the Claimant alleged that he had tried to raise it during the disciplinary process but was told that the Respondent did not want to know about it. I had some difficulty accepting that evidence, in circumstances where there was no reference to the Claimant raising or trying to raise any reference to Giwah in either the investigation interview, the disciplinary hearing or the appeal hearing, and the minutes of all those meetings were, as the Claimant confirmed in his oral evidence, signed by him at the time as being accurate records. He also failed to make any reference to this allegation in his witness statement and seemingly raised it for the first time in response to questions about why he had never raised speaking to Giwah before now.
56. In addition, the Claimant was, in any event, given a clear opportunity after the appeal hearing to explain the purported involvement of Giwah when he sent in the call log screenshot but did not do so.
57. What the submitted call log did not show, without more, was the Claimant making or receiving any calls from Mr Kwakye on 24 December 2024.
58. On 12 April 2025, the Claimant started ACAS Early Conciliation, which concluded on 22 May 2025.
59. By a letter dated 30 May 2025, Mr Ntiri informed the Claimant of the outcome of his appeal (at [146] – [152] of the Bundle). The decision letter detailed Mr Ntiri's conclusions on all seven of the points of appeal raised by the Claimant, setting out his reasons for each. Mr Ntiri did not uphold any of the Claimant's grounds of appeal.
60. On 16 June 2025, the Claimant presented his claim to the Tribunal.

The events of 23 – 24 December 2023

61. As explained at the outset of my findings of fact, it was also necessary for me to make findings as to the specific allegations against the Claimant and for which he was dismissed. In other words, did the Claimant take goods from the Eurostar train (as alleged by the Respondent) or were the

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goods he was seen with by Mr Gul and seen carrying on CCTV given to him as gifts by Mr Kwakye (as alleged by the Claimant)?

62. Unlike the Respondent, I had the benefit of written evidence from Mr Kwakye, in the form of his witness statement, which included a signed statement of truth. As explained above, Mr Kwakye did not attend the hearing and, as a result, his evidence was not capable of being challenged.
63. I am reminded that Mr Kwakye's statement was obtained on behalf of the Claimant and adduced in support of his claim. I am also reminded that the Claimant has conducted these proceedings with the benefit of legal advice, assistance and representation.
64. Mr Kwakye's written evidence included the following regarding the events of 23 December 2024 (at Paragraphs 7 – 15):
 7. On 23 December 2024, I was working my final shift prior to retirement.
 8. Because it was my last working day after many years of service, a small farewell gathering was organised for me by the Churchill night staff in the staff canteen.
 9. During the gathering, I received several farewell gifts from colleagues, including drinks, biscuits, cards, and other small items.
 10. The gathering ended at approximately 12:30 am.
 11. I had received more items than I could reasonably take home. At around 2:00am, I contacted Mr Menka, who was on duty and on his break, and asked him to come and see me.
 12. When we met, I gave Mr Menka some of the farewell gifts I had received. These items included:
 - Ghanaian chocolate,
 - Roasted corn in a sachet; and
 - A bottle of non-alcoholic drink.
 13. I gave these items freely as a personal gift from me. I often referred to Mr Menka's children as my "grandchildren" and intended the items for them.
 14. There was no expectation of anything in return, and the gift was not connected in any way to Mr Menka's duties or position.
 15. After giving him the items, we went our separate ways and I continued with my work.

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65. Mr Kwakye's statement to the Tribunal was materially at odds with the Claimant's explanations to the Respondent and his own evidence to the Tribunal, as follows:
- 65.1. The Claimant said that he had been contacted by Mr Kwakye at 12.24am (per Paragraph 9 of his witness statement), yet on Mr Kwakye's evidence, he was attending his retirement gathering in the staff canteen that did not end until 12.30am.
- 65.2. The Claimant's case, both to the Respondent at the time of the disciplinary proceedings and before the Tribunal, was that he met Mr Kwayke shortly after his call at 12.24am, was given his gifts and was back at reception prior to his break at 1.00am (see, for example, Paragraphs 9 & 10 of the Claimant's witness statement, and the Claimant's oral evidence, where he acknowledged that the CCTV footage showed him returning to reception at 12.44am). That was directly contradicted by Mr Kwakye's evidence that he did not contact the Claimant until 2.00am and the two of them met thereafter.
- 65.3. Mr Kwakye made no reference to meeting the Claimant on the train and did not refer to a number of gift items or a Christmas card, which the Claimant alleged during the disciplinary proceedings he had been given. Mr Kwakye.
66. The Claimant's written evidence to the Tribunal was also at odds with his oral evidence, in respect of his meeting with Mr Kwakye. As noted above, the Claimant's written evidence was that Mr Kwakye called him at 12.24am, asking to come and see him. In his oral evidence, the Claimant confirmed that the CCTV footage of him boarding the train was to meet Mr Kwayke. However, according to the time stamp on the CCTV footage, he boarded the train at 12.16am, eight minutes before, on his evidence, Mr Kwakye had called him.
67. In addition, the Claimant's written evidence to the Tribunal was at odds with his email to the Respondent of 13 February 2025, where he provided photographs of the gifts he alleged Mr Kwakye had given him (as set out above). In these proceedings, the Claimant's recollection of the gifts he received had changed, albeit it was consistent with Mr Kwakye's statement (per Paragraph 9 of the Claimant's witness statement):
- ...When I met [Mr Kwakye], he handed me a small Christmas gift consisting of Ghanaian chocolate, roasted corn, and a bottle of non-alcoholic drink.
68. As was noted by the Respondent, the Claimant's account of the events of the night in question also changed. When he was first interviewed as part of the investigation on 9 January 2025, the Claimant told Mr Prado that Mr Kwakye had only given him one bag of gifts, not two, and they had met on the platform. During the disciplinary hearing on 11 February 2025, the

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Claimant's recollection changed to being unable to recall whether he entered the train and how many bags Mr Kwakye had given him, to recalling that they did meet on the train and being given two bags of gifts.

69. I was invited by Ms Godwins for the Claimant to conclude that, where their evidence conflicted, I should conclude that Mr Kwakye's recollection was erroneous. I was also invited to have regard to the length of the various disciplinary meetings and that it was reasonable to conclude that any inconsistencies in the Claimant's account were a result of fatigue and confusion.
70. Despite Ms Godwins invitation, I had no basis to conclude that Mr Kwakye's recollection was flawed, in circumstances where there was clear and consistent evidence of the Claimant's account changing and where the evidence of Mr Kwakye had been obtained and adduced in support of the Claimant's case and with the benefit of legal advice and assistance.
71. The changes detailed above in the Claimant's account of the events of 24 December 2024 were not, in my judgment, reasonably explained by the length of the various meetings he attended, fatigue or confusion. The Claimant was supported and assisted by his trade union at the disciplinary and appeal hearings. His union representative spoke on behalf of the Claimant and made submissions in support of his case. Any errors of recollection or confusion or issues with fatigue could and should have been addressed by the representative. It was not suggested at the time that the Claimant's account had differed for the reason now advanced by Ms Godwins.
72. In addition, and self-evidently, the length of the disciplinary meetings did not explain the inconsistencies in the Claimant's evidence to the Tribunal, not least the clear and obvious differences in his account when compared to Mr Kwakye's, and between his own written and oral evidence to the Tribunal.
73. Considering the evidence in the round, I found the Claimant's various accounts of the events of the night in question to be unreliable. His account changed in material ways, both shortly after the events in question and in the course of this litigation.
74. Drawing all the evidence together, I made the following findings of fact:
 - 74.1. The Claimant met with Mr Kwakye some time after 2.00am on the morning of 24 December 2024, wherein Mr Kwakye gave him a bottle of non-alcoholic drink, chocolate and roasted corn, gifts which Mr Kwakye himself had received as part of his retirement celebrations earlier that night.
 - 74.2. The Claimant did not meet with Mr Kwakye before 2.00am nor was he given any gifts by Mr Kwakye before 2.00am.

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- 74.3. At 12.16am, the Claimant boarded the train which was parked at the depot and exited the train at or around 12.24am. He entered the train without any bags and exited it carry two bags. He arrived at reception at 12.44am, where he was seen by Mr Gul (and where he dropped a bottle from the one of the bags and put it in his jacket pocket).
- 74.4. Given the above findings, the goods in the two bags being carried by the Claimant from the train could only, on balance, have been taken from the train itself, since other than the allegation that he was given those goods by Mr Kwakye, the Claimant did not provide any other explanation for why or how he obtained those goods.
75. On the balance of probabilities, and given the above findings, I concluded that the goods in the bags being carried by the Claimant from the train at 12.24am, which he arrived at reception with at 12.44am and were seen by Mr Gul, were taken by the Claimant from the stock on the train.

Analysis & Conclusions: Unfair Dismissal

76. It was not in dispute that the Respondent dismissed the Claimant by reason of conduct or that the Claimant had been continuously employed for over 13 years by the time of his dismissal.
77. As noted above, the reasons for dismissal were that the Claimant had taken Eurostar stock, seriously breached site security procedures in doing so, brought the Respondent into disrepute and committed a serious breach of trust and confidence.
78. Conduct is a potentially fair reason for dismissal pursuant to section 98 of the ERA 1996. What was in issue was whether the decision to dismiss the Claimant was substantively and procedurally fair.

Substantive Fairness

79. As this was a conduct dismissal, the following principles required determination, as follows:
- 79.1. Whether the Respondent genuinely believed that the Claimant had engaged in conduct for which he was dismissed;
- 79.2. Whether the Respondent held that belief on reasonable grounds;
- 79.3. Whether in forming that belief, the Respondent carried out proper and adequate investigations; and

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- 79.4. Thereafter, whether the Claimant's dismissal was a fair and proportionate sanction to the conclusions reached by the Respondent.
80. Given my findings regarding the disciplinary process, I was of the view that the Respondent did genuinely believe that the Claimant had engaged in the conduct for which he was dismissed. That arose from the Respondent's own investigations and the evidence it obtained, including from Mr Gul and the CCTV footage.
81. That genuine belief was reasonably held and arose from proper and adequate investigations. The Claimant was afforded the opportunity at each stage to provide his account of the events which had occurred, produce any evidence he wished to support that account, and test the evidence relied upon by the Respondent. Mr Ntiri in particular, during the appeal process, proactively engaged in the Claimant's account of receiving gifts from Mr Kwakye. He made enquiries of Mr Kwakye's employer, only to be told that Mr Kwakye had left employment without any forwarding contact details (consistent with Mr Kwakye's evidence that he attended his retirement party on 24 December 2024, from where the gifts he gave the Claimant emanated).
82. In addition, Mr Ntiri specifically invited the Claimant to explain what witness evidence had been overlooked or not considered by the Respondent. This afforded the Claimant, who was being assisted by his union, another opportunity (over and above the invitations to present whatever evidence he wished to rely on) to bring forward Mr Kwakye's evidence. The Claimant, for reasons unknown, chose not to do so. Indeed, the Claimant has provided no evidence of any attempts he made during the disciplinary process to contact or secure support for his account from Mr Kwakye. The Claimant had Mr Kwakye's contact details (or was reasonably able to obtain them), such that he has secured a statement from him for these proceedings. Whilst the Respondent was responsible for undertaking the disciplinary investigation, the Claimant's ability to present the evidence he wished to rely on was always open to him.
83. It was reasonable for the Respondent's genuine belief to have been reinforced by the Claimant's inconsistent accounts of when, where and how he obtained the goods he was seen carrying in the CCTV footage and as witnessed by Mr Gul (as detailed above).
84. The evidence before the Respondent was properly weighed and considered by the investigating officer, the disciplinary officer and the appeal officer.
85. As noted in my findings, before his involvement in the disciplinary process, Mr Ntiri attended a meeting with Eurostar about thefts from its trains, during which the Respondent's Director assured Eurostar that the Respondent would "*make sure the right decision was made to deter other officers from doing the same*" (at Paragraph 63 of Mr Ntiri's statement).

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86. I considered to what extent, if at all, attending that meeting and hearing the Director's assurances impacted upon or influenced Mr Ntiri's belief as to the Claimant's conduct. Given the manner in which Mr Ntiri conducted the appeal process, including the efforts he made to locate Mr Kwakye, the opportunities he afforded the Claimant to provide additional evidence and the detailed and cogent reasoning he provided for the decisions he reached, I was satisfied that Mr Ntiri belief in the Claimant's conduct was genuine and arose solely from the investigations undertaken and evidence presented to him during the course of the disciplinary process.
87. I also considered whether it was permissible for the Respondent to hold a genuine belief or the extent to which that belief was undermined in circumstances where there was no direct evidence of the Claimant taking anything from the train. This was a case which relied upon circumstantial evidence. There was no direct evidence, in the sense of anybody witnessing the Claimant taking goods belonging to Eurostar.
88. I reminded myself that, at all stages of the analysis, the Respondent's actions must be reasonable. It is also no part of my role to substitute my view or belief for that of the Respondent. It is not necessary for there to be direct evidence of misconduct in order for a dismissal to be fair. What there must be is a genuine belief, held on reasonable grounds and properly informed by an adequate investigation (adequate in the context of the serious allegations being made and the risks to the Claimant's employment).
89. Was it unreasonable for the Respondent to conclude, on the totality of the evidence before it, that the bags of goods the Claimant had with him after exiting the train, which were seen on CCTV and by Mr Gaal, were taken from Eurostar without permission? In my judgment it was reasonable for the Respondent to hold such a belief, given the evidence that was available to it, the inconsistencies in the Claimant's account and the opportunities the Claimant was given to provide evidence to rebut the allegations.
90. Finally, I considered the Claimant's argument that the Respondent should have considered and provided CCTV footage from a wider time frame than the one provided and relied upon. Reliance was placed upon a request by the Claimant on 5 April 2025 for CCTV footage for the period from 12.14am to 12.36am on 24 December 2024 (at [136] – [137] of the Bundle).
91. The Claimant alleged that this request was not responded to and would have shown Mr Kwakye entering the train before he did, which would have supported his case. I had a number of reservations with the strength of that argument:

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- 91.1. The Claimant's request of 5 April 2025 was made under data protection legislation and as a subject access request, rather than in the course of the disciplinary proceedings (although the request was seemingly copied to Mr Ntiri).
 - 91.2. The Claimant was shown the entire footage in the course of the disciplinary hearing on 11 February 2025 but made no request at that stage for any other footage.
 - 91.3. Mr Ntiri specifically invited the Claimant, after the appeal hearing, to clarify the CCTV footage he had alleged during to hearing had not been reviewed or properly considered (at [144]). The Claimant confirmed in his oral evidence that he chose not to respond to that invitation.
 - 91.4. As found, CCTV footage was automatically deleted after 28 days, unless specifically downloaded. By the time of the Claimant's request, it was reasonable to conclude that the footage had been lost
92. Did the scope of the CCTV footage and the failure or inability to consider a wider time frame render the disciplinary process flawed and the genuine belief held by the Respondent undermined? It did not. The CCTV footage was only one part of the evidence relied upon by the Respondent to inform its genuine belief. It always remained open to the Claimant to obtain corroborating evidence from Mr Kwakye that he was already on the train when the Claimant was seen entering it at 12.16am on 24 December 2024. It was always open to the Claimant to secure evidence from Giwah as to the phone call which had taken place, which would have again supported the Claimant's claim that he met Mr Kwakye on the train. The duration of the CCTV footage relied upon in the disciplinary process did not preclude the Claimant from addressing his primary point in other ways (that he met Mr Kakye on the train).
93. As noted above, even when he did provide his account of meeting the Claimant, Mr Kwakye's statement in these proceedings was silent on where their meeting took place. Given the above submission advanced on behalf of the Claimant (that the Respondent should have considered a wider CCTV time frame, as it would show Mr Kwakye entering the train before the Claimant did), it was surprising that Mr Kwakye was not asked by the Claimant or his legal representatives to confirm where their meeting on 24 December 2024 took place, not least to add force to the aforementioned submission.
94. Whilst it is for the Respondent to show that it acted reasonably and fairly in dismissing the Claimant, it can only be judged on the evidence reasonably before it. If the Claimant had evidence which supported his account, he could and perhaps should have provided it at the time (especially in circumstances where he was being supported and represented by his trade union).

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95. As such, I did not find that the extent of the CCTV footage undermined the Respondent's ability to hold a genuine belief as to the Claimant's conduct.
96. In my judgment, having concluded that the Claimant took goods belonging to Eurostar from the train, based upon a genuine belief, reasonably held and following a proper investigation, dismissal was within the range of reasonable responses available to the Respondent. That was so even allowing for the Claimant's arguments on mitigation.
97. As such, the Claimant's dismissal was substantively fair.

Procedural Fairness

98. As found, there was an investigation by an independent officer. The Claimant was invited to meetings at the investigatory, disciplinary and appeal stages of the process. He was provided with all the relevant information and evidence in the Respondent's possession. He was afforded the opportunity to present his own evidence and test the evidence obtained by the Respondent. He was made aware that dismissal was a possible sanction. He was given notice of the disciplinary and appeal hearings. He was entitled to be accompanied and represented by his trade union. Both hearings were chaired by officers not previously involved in the process.
99. There was nothing to suggest that the decisions reached were not the independent decisions of the officers who made them, based upon the evidence presented to them. There was clear evidence in their decision letters and their evidence to the Tribunal that the Claimant's mitigation was considered. As found above, even allowing for that mitigation, dismissal remained within range of reasonable responses available to the Respondent.
100. The decision letters issued by Mr Aderibigbe and Mr Ntiri were clear, cogent and properly reasoned. The Claimant could reasonably understand the basis for each decision and how the evidence had been weighed and considered. Whilst he undoubtedly disagreed with those conclusions, the procedure followed by the Respondent, from the initial investigation to the appeal hearing, was fair.
101. As the decision to dismiss was both substantively and procedurally fair, the claim of unfair dismissal was not made out and is dismissed.

Analysis & Conclusions: Wrongful Dismissal

102. Section 86 of the ERA 1996 affords rights of notice to employees, the length of which is determined by their period of continuous employment with their employer. An employer is entitled to dismiss an employee without notice where satisfied that the employee's conduct amounted to a repudiatory breach of the employment contract and discloses a deliberate

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intent to disregard the essential requirements of that contract. The employer faced with such a breach by an employee can either affirm the contract and treat it as continuing or accept the repudiation, which results in immediate dismissal.

103. It was the Respondent's case that the latter applied to the Claimant – that his conduct constituted a fundamental breach of his employment contract. As recorded above, I found that the Claimant did remove goods from the Eurostar train without permission.
104. The Claimant's behaviour went to heart of the implied term of mutual trust and confidence between employer and employee. The Claimant was employed to provide security services for the Respondent's client, Eurostar. Both the Respondent and Eurostar were entitled to trust the Claimant not to take advantage of his role and take the very goods he was charged with protecting.
105. In my judgment, the Respondent was entitled to consider such behaviour to be gross misconduct and a fundamental breach of the Claimant's employment contract. As such, the Respondent was entitled to dismiss the Claimant without notice and the claim for wrongful dismissal fails.

**Approved by:
Employment Judge S Povey
Dated: 29 April 2026**

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