



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Angelina Rowntree  
**Respondent:** Tesco Stores Limited

**Heard at:** Watford Employment Tribunal  
**On:** 23/24/25 March 2026  
**Before:** Employment Judge Alliott

## Representation

**Claimant:** In person  
**Respondent:** Ms A Niaz-Dickinson (counsel)

# RESERVED JUDGMENT

The judgment of the tribunal is that:

1. The claimant's claim of unfair dismissal is dismissed.

# FULL REASONS

## Introduction

1. The claimant was employed by the respondent on 11 June 2017 as a Customer Assistant and by 2023 she had been promoted to Team Manager Nights at the Ponders End Tesco Store. The claimant was dismissed on 2 June 2024 with immediate effect and paid in lieu of notice. By a claim form presented on 7 November 2024, following a period of early conciliation from 27 August to 8 October 2024, the claimant presents a claim of unfair dismissal. The respondent defends the claims.

## The issues

2. What was the reason or principal reason for dismissal?
3. Was it a potentially fair reason?
4. If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The tribunal will usually decide, in particular, whether:

- 4.1 There were reasonable grounds for that belief;
- 4.2 At the time the belief was formed the respondent had carried out a reasonable investigation;
- 4.3 The respondent otherwise acted in a procedurally fair manner;
- 4.4 Dismissal was within the range of reasonable responses.

Remedy for unfair dismissal

5. Remedy for unfair dismissal

- 5.1 Does the claimant wish to be reinstated to their previous employment?
- 5.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?
- 5.3 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.
- 5.4 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.
- 5.5 What should the terms of the re-engagement order be?
- 5.6 If there is a compensatory award, how much should it be? The Tribunal will decide:
  - 5.6.1 What financial losses has the dismissal caused the claimant?
  - 5.6.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
  - 5.6.3 If not, for what period of loss should the claimant be compensated?
  - 5.6.4 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?
  - 5.6.5 If so, should the claimant's compensation be reduced? By how much?
  - 5.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
  - 5.6.7 Did the respondent or the claimant unreasonably fail to comply with it?

- 5.6.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- 5.6.9 If the claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?
- 5.6.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
- 5.6.11 Does the statutory cap of fifty-two weeks' pay apply?
- 5.7 What basic award is payable to the claimant, if any?
- 5.8 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 law

#### 6. Section 98 Employment Rights Act provides:-

“98 General.

- (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.

### The evidence

7. I had a hearing bundle of 566 pages.
8. During the course of the hearing the claimant produced the following:-
  - (i) a clip of three rotas for the weeks commencing Sunday 18, 25 February and 3 March 2024;
  - (ii) Witness statements of Yvonne Gibbons and Jacqui Ward;
  - (iii) An email chain from June 2024;
  - (iv) The claimant's grievance dated 4 April 2024.
9. I had witness statements and heard evidence from the following:-
  - (i) Ms Marta Szarowar, Lead Operations Manager; Colney Hatch Extra at the time, who dismissed the claimant;
  - (ii) Mr Henry Saunders, Operations Manager, who heard the appeal;
  - (iii) The claimant.
10. Ms Niaz-Dickinson provided me with written closing submissions for which I am grateful.

### The facts

11. The claimant was employed by the respondent on 11 June 2017 as a Customer Assistant. In due course she was promoted and by 2023 was working as a Team Manager Nights at the respondent's store at Ponders End.
12. The respondent has a "My Role Team Manager" document. As explained in the introduction:-

"Your my role pack is designed to help you understand your role in more detail and supports you and your manager in developing a tailored training plan. Training for your role is available from Click & Learn as well as facilitated workshops and coaching which will be provided on the job."
13. In the "What the role involves" section the following is set out:-
  - Promote a culture of safety first within my store through leading and managing safe & legal routines.
  - Ensuring that the team are fully trained and validated in their roles."
14. In the "What you should be doing:" section, the following is set out:-

**"Supporting my team** to work at their full potential, helping everyone to **understand** and **perform** in their role having received robust and timely **training** and ongoing **coaching/guidance**."
15. In the "Your people responsibilities" section the following is set out:-

“Training. Validate my team have completed their legal and operational training they need to complete their role safely and efficiently.”

16. In the “Your safe & legal responsibilities” section the following is set out:-

“Training. Understand the legal training process, content and timescales, ensuring my team, are fully trained and refreshed and training records reflect this. Validate training records are correct on Click and Learn and everyone completes tasks for which they are trained to do.”

17. The Ponders End store delivery risk assessment required two trained store colleagues to work together to remove units of delivery from lowered tail-lifts.

18. It is clear and I find that ensuring that store colleagues were trained for any task they were allocated on the rota was an important part of the claimant’s responsibility.

19. The respondent also had a “Lateness Guide.” This provides as follows:-

**“Introduction**

At Tesco we expect our colleagues to arrive at work on time as lateness or poor timekeeping can have a detrimental impact on our business, colleagues and ultimately on our ability to serve customers.”

...

“2. What do we define as lateness?

There may be times when a colleague struggles to get to work on time for one reason or another. We define lateness as when a colleague turns up after the start of their scheduled shift or working day.”

20. And

“3. What should a colleague do if they are going to be late?

If a colleague is going to be late, they should contact the store/site to let them know that they are on their way to work, but are going to be late. We do understand that this may not always be possible, depending on the circumstances, but generally if a colleague is not already on their way to work or planning to leave for work shortly, it is likely that the reason for their non-attendance is another form of absence.”

21. And

“6. When would it be appropriate to treat lateness as misconduct?

To enable you to make the decision on whether or not to take formal action and treat lateness as misconduct you should consider:

- How many times the colleague has been late over the last six months.
- The reasons for lateness.

- Whether or not they notified the site/store they were going to be late.
- Overall timekeeping and attendance.
- Whether a different type of option should have been considered e.g., emergency leave or time off for dependants.
- Whether there has been any improvement in their timekeeping following informal conversations.
- Whether any adjustments have been considered or put in place to improve their timekeeping (but only where these are practical from a business perspective).
- What documentation you have to support/evidence the conversations you have previously had with the colleague.”

22. Unfortunately, by 2023 the claimant had caring commitments for her father. As she states in her witness statement:-

“24. October 2022 my uncle (dad’s brother) had passed and things became more difficult with my dad, he became suicidal, severely depressed and very hard to manage, the lateness issues started after this loss. An ALEXA was set up so I could drop in and check on him throughout the night as I could not leave the shop being the only person.

25. I did my best to be on time but there were times this was just not possible, I would have to wait until my dad fell asleep in order to come to work, this would always be communicated to the manager I am working with or the duty in question. There would be times I would have to call a friend or ask a neighbour to watch over him for me to get to work.”

23. The respondent has “Let’s Talk” documents recording informal conversations. Documents from December 2022, January 2023, May 2023, and September 2023 record unscheduled absences by the claimant.

24. There is a Let’s Talk document dated 17 October 2023. The topic talked about was “Your lateness and punctuality over the past few weeks.” The “Our actions or agreed outcomes” section contains the following:-

- “ - Did not disclose anything that needs to be considered to support.
- If this does not improve, then will go down the conduct route as you are currently not fulfilling your contractual obligations.
- Inform your line manager for any potential lateness’

25. There is a Let’s Talk document from 22 December 2023 which records that lateness was talked about and the following is set out:-

“Coming to work on time. Any reason you are late need to inform your line manager/duty manager.”

26. In her witness statement the claimant refers to discussing changing her days/altering her times with Marco, a previous store manager, but states that, in

effect, this would not work because her father's episodes were unpredictable.

27. On 4 June 2023 Roberto Wilson was transferred into the claimant's team as a Customer Assistant. The claimant became his direct manager.
28. Roberto Wilson had previously been on a development programme to become a shift leader. However, either Tesco or Roberto decided that he was not going to perform the shift leader role and, consequently, he was transferred to the claimant's team.
29. Marta Szarowar gave evidence that on the Shift Leader Development Programme Roberto Wilson would have reported directly to the store manager, not to a team manager. As such, whilst Roberto Wilson was on the Leader Development Programme the claimant was not responsible for his training or validating his training. However, it is the respondent's case that, once Roberto Wilson reverted to being a Customer Assistant Colleague reporting to the claimant, then the claimant became responsible for his training and validating his training.
30. Roberto Wilson was moved to another night manager's team (Yvonne) in January 2024. However, the fact remains that the claimant had been Roberto Wilson's line manager for over six months.
31. During the night shift there would generally be 1 night manager, 2 shift leaders and between 12 and 17 customer advisers. It was the claimant's responsibility to prepare the rota allocating the staff to various tasks within the store. One of the tasks was "backdoor" which involved taking deliveries and placing them in the warehouse.
32. Before working on the backdoor staff were required to undertake specific training. The training included the requirement to wear personal protective equipment, namely a Hi-Viz vest, safety shoes, and gloves.
33. It is common ground that Roberto Wilson did not have the requisite training to work on the backdoor.
34. The respondent has produced a rota for the week commencing 1 October 2023. The rota is referenced in the disciplinary hearing heard on 7 May 2024. Phillip Arthur, the claimant's TU representative, is recorded as saying:-

"A rota was pulled from October when I asked for recent rota..."

Thus it appears to have been supplied in response to a request from Phillip Arthur and not as part of the investigation. Nevertheless, it was available to Marta Szarowar and Henry Saunders at the time.

35. On the rota Roberto is marked down as backdoor on the Monday, Tuesday, Wednesday and Thursday of that week. Whilst no doubt there was an element of flexibility with staff having their roles changed at short notice, it does indicate that the claimant was being rostered on the backdoor back in October 2023.
36. No other rotas prior to 18 February 2024 formed part of the investigation or have

been produced for this case.

37. In a letter dated 15 February 2024 which the claimant says she received on 19 February 2024, the claimant was invited to an investigation meeting on 19 February 2024. Five allegations were due to be discussed but I only deal with one as it was only one of these that made it to the disciplinary hearing. The relevant allegation was:-

“Consistently failing to attend shifts as scheduled and failure to notify line manager before and after thereby unethically gaining company’s money.”

38. The claimant’s normal shift pattern was as follows:

34.1 Sunday: 11.30 pm - 06.30 am the next day.

34.2 Monday-Wednesday: 10.00 pm – 07.15 am the next day.

34.3 Thursday: 10.00 pm –06.45 am the next day

39. When dealing with the claimant’s lateness, Marta Szarowar states that the material she reviewed included clock in records. However, none have been produced before me and none are referenced in the various meetings, I find that she probably did not have clock in records as they would have provided precise timings. As will be seen, the timings vary and have been taken from CCTV footage of the claimant being seen arriving at the store in her outdoor clothes.

40. There was an investigation meeting held on 19 February 2024 with the claimant conducted by Mr Omar Dibba, Store Manager. The following is recorded:-

“OD: So going to the lateness you are in at 1.06 am on camera 29<sup>th</sup> 23.47 25<sup>th</sup> Jan 23.52 and 30 Jan 23.19, so when you come late how do you communicate.

Claimant: I will call the duty phone and put on the WhatsApp Group or call individuals sometimes.”

41. The claimant goes on to assert that she called duty but that it was not always picked up. She also acknowledged that her lateness needed to get better. The claimant also acknowledged that she did rotas.

42. Later in the meeting the following exchange took place:-

“OD: When you come in late do you communicate with line manager.

Claimant: No I mention it when they come in.”

43. On 20 February 2024, the claimant was on annual leave No manager was in for that shift. Roberto Wilson was working at the backdoor and took a delivery. Roberto Wilson sustained personal injury to his foot when a cage wheel rolled onto it. He sustained a broken toe and went off work due to the accident.

44. The accident was recorded on CCTV footage. It was clear that Roberto Wilson was not wearing PPE, in particular he was not wearing safety shoes. He was

wearing trainers. Marta Szarowar states that she believes that the cage wheel was not working properly.

45. There was a further investigation meeting held by Omar Dibba on 5 March 2024. A decision was made to escalate to a disciplinary hearing involving lateness and other matters. The meeting notes record Omar Dibba's justification as follows:-

“The reason why I move to disciplinary point 2 I have reasonable evidence that Angelina has had opportunity to resolve the issue due to the[re] being numerous conversations with previous SM [store manager] and current SM. As Angelia own admission to failure to improve. She has admitted it was bad and is working to improve. I don't believe enough has been done to improve since the last conversation with Marco...”

46. I find that the decision to escalate the claimant's lateness to a disciplinary investigation was within the guidelines at paragraph 21 above and a decision within the range of reasonable responses of a reasonable employer.

47. At around 22.38 pm on 20 March 2024 Roberto Wilson was interviewed to discuss the accident that happened on 20 February 2024. The interviewer was Khadigat Abimbola, Team Manager. The following is recorded:-

“KA: Who was your manager at that time.

RW: It was Angelina

KA: On the day of the incident you have been seen doing delivery, who asked you?

RW: The shift leader, don't remember who, there was no manager on that day.

KA: Has anyone ever asked you to take delivery at all at the backdoor. Please mention ?

RW: Yes managers and manager from different store and shift leaders.

KA: Is backdoor your department.

RW: No it's not my official department, they put me on since you was CSTL [Customer Service Team Leader], I was familiar with the backdoor.

KA: When you was a CSTL, was you or have you ever been trained on backdoor.

RW: No.

...

KA: How many managers have your worked with in this store.

RW: All of them.

KA: Do you remember how many times have you worked with them.

RW: AKM and Angelina pretty much all the time in the early stages. Yvonne is pretty much new.

...

KA: Has anyone of them asked you to do backdoor.

RW: I can't focus on what they tell me to do I just get on with wat I need to do.

KA: When you're doing what you've been asked to do, has any of the managers asked you if you done your backdoor training.

RW: No one has asked me."

48. In a letter dated 23 March 2024 the claimant was invited to a further investigation meeting to discuss three allegations two of which were:-

- “• Failure to ensure health and safety measure is followed as per Tesco policy.
- Allowing an untrained colleague to accept delivery.”

49. The investigation meeting was held on 4 April 2024. It was held by Khadijat Abimbola, Team Manager. When asked about training for Roberto Wilson the claimant referred to him as a shift leader in training and that he should have been reporting to Satish Domah, Store Manager. However, later in the notes the claimant is recorded as saying:-

“Roberto not qualified as a SL and, I give the feedback that he was not suitable...”

50. Also during the interview, the following exchange is recorded:-

“During Roberto's shift have you asked him to work on backdoor and work on delivery.

Claimant: No...

...

K: During your time with Roberto have you seen him work on backdoor collecting deliveries?

Claimant: We send everyone to the backdoor to collect delivery.”

51. The investigation meeting was adjourned and resumed on 15 April 2024. The following exchanges are recorded:-

“KA: From our previous meeting you said you never asked Roberto to work on backdoor?

Claimant: No, but I have asked him to assist...”

52. Later the following is recorded:-

“Claimant: I taught Roberto and you can ask anyone from nights I am not happy with him being on backdoor. I was not here when the incident took place. Roberto still sits under the management system he is not my responsibility.

KA: You was not here on 20/04/24 but Roberto mentioned you have previously asked him to do the backdoor. We have footage for 19/04/24 in which he

worked and you also worked.”

53. The claimant was then shown the CCTV footage. The claimant denied responsibility as she said she was in the investigation meeting at the time and blamed the shift leader.

54. In a letter dated 20 April 2024 the claimant was invited to a disciplinary hearing. Four allegations were made, the relevant two being:-

“ – Failing to attend shifts as scheduled and to notify your line manager, thereby misusing company time on the 29/1/2024, 30/01/2024, 05/02/2024, and 08/02/2024 for a total of 429 minutes.

- Failure to ensure health and safety measures are followed by not training your colleague and allowing Roberto to take deliveries resulting in an accident at work on 20/02/2024.”

55. A disciplinary meeting was heard on 7 May 2024 by Richard Pomroy, Store Manager. The claimant was represented by Phillip Arthur, USDAW rep. He references a rota being pulled from October when he asked for recent rotas.

56. The conclusion of the disciplinary hearing was that the matter was moved back to investigation for some points to be investigated

57. Chris Sheehan, a Store Manager from Harrow, was asked to review the allegations. A number of allegations were removed but he concluded that on two allegations there was a case to answer. This was communicated to the claimant in an email dated 20 May 2024. The allegations were put as follows:-

**“Failure to ensure health & safety measures are followed as per Tesco policy/allowing untrained colleagues to accept delivery.**

As detailed in the investigation held on 15 April 2024 which was moved to a disciplinary meeting.

**Consistently failing to attend shifts as scheduled and failure to notify line manager before and after, thereby unethically gaining company’s money** (persistent lateness & failing to attend shifts with no communication). As detailed in the investigation scheduled for 19 February 2024 and held on 5 March 2024 which was moved to a disciplinary hearing.

These allegations will be heard in one disciplinary meeting and you will receive a formal invite letter from the store in due course.”

58. The letter inviting the claimant to the disciplinary hearing has not been produced by the respondent. I have no evidence as to what was sent to the claimant in advance but this was not a matter of complaint.

59. The disciplinary meeting was held on 23 May 2024 by Marta Szarowar. The following is recorded in the notes:-

“Claimant: On the incident which RIDDOR was apparently involved. However when I was on annual leave and not in the building two shift leaders were. So then other CCTV was looked at from a time I was on shift where

Roberto did go on the backdoor. However I was not seen in any of that footage of him on the backdoor. Another shift leader was on shift at no point have the shift leaders been interviewed. I do not put Roberto on the backdoor not because he is not trained because he procrastinates and is better on the shop floor.”

60. Once again the claimant sought to distance herself from training by asserting that Roberto was a shift leader.
61. The disciplinary hearing was adjourned because Marta Szarowar did not have the notes from the earlier disciplinary hearing on 7 May 2024.
62. The disciplinary meeting was resumed on 29 May 2024 by Marta Szarowar. The following exchange is recorded:-

“Claimant: No one knew in this building that Roberto stopped training for shift leader.

MS: So what is his job role.

Claimant: I don’t know until recently he started showing up as backdoor no one knew who moved him.”

...

And later

“MS: The training for backdoor would be different. Have you ever asked him if he completed the training.

Claimant: No, he’s not supposed to work on backdoor.”

63. The disciplinary hearing was once again adjourned for Marta Szarowar to make further enquiries relating to responsibility for training.
64. Statements were taken from Hassan Babu, Lead Day Manager and Satish Domah, Store Manager, which confirmed that team leaders were responsible for ensuring their colleagues were fully trained and that rotas were done by managers, including the claimant, on nights.
65. The disciplinary meeting was resumed on 2 June 2024 (although the meeting notes erroneously recorded it as 3 June 2024). As far as the issue concerning Roberto Wilson’s training was concerned, the claimant’s position was that two shift managers should have been interviewed and that since Roberto Wilson was classed as management so she was not responsible for ensuring that he was trained.
66. As far as the claimant’s attendance is concerned, the following dates were highlighted (against a start time of 10 pm for all of them):
  - Monday 29/1/2024: 01.05 (185 minutes late)

- Tuesday 30/1/2024: 23.49 (109 minutes late)
- Monday 5/2/2024: 22.22 (22 minutes late).
- Thursday 8/2/2024: 23.39 (99 minutes late)

TOTAL: = 415

67. Given that the times have been taken from CCTV and are approximate, the 415 minutes late broadly correlates with the 429 minutes set out in the allegation in the letter dated 20 April 2024 – see paragraph 54 above.

68. The notes then go on to show that further instances of lateness were discussed, namely:

- 10/04/2024: 23.55
- 22/04/2024: 00.30
- 20/05/2024: 00.30

69. The claimant complains that she had only been shown one CCTV clip of her arriving late. When discussing the failure to notify her line manager or anyone else that she was going to be late, the meeting notes show that the issue is answered by the claimant by suggesting that the duty phone doesn't work on occasions. In evidence, the claimant said she would text or phone work colleagues. The following is recorded in the notes:-

“Phillip Arthur (claimant’s TU rep) question to Angelina, regarding the lateness dates that there was no notification followed did anyone call you.

Claimant: No to my knowledge the previous ones no, I’ve been asked to provide my call log which I have and that’s why I never received a Let’s Talk about failing to follow notification process.”

70. The claimant’s call log has not been produced before me. Consequently, I am unable to compare any call log data with the dates and times of the claimant’s lateness.

71. I have concerns about the respondent’s investigation into the lateness allegations. These are:-

- (i) The timings have been taken from CCTV recordings. As such, I infer that someone has sat down and viewed the recordings and noted down the times at which it is said the claimant went into the store in her ordinary clothes. No such record or report was provided to the claimant or has been placed before me. Only one CCTV clip was shown to the claimant.
- (ii) Save for the historic Let’s Talk documents, no report or evidence of the claimant’s alleged failure to report her lateness was provided to the claimant

or has been placed before me. At the various interviews and disciplinary hearings there is just the simple assertion that she did not.

72. At the conclusion of the third disciplinary hearing, the claimant was dismissed for gross misconduct. The notes record Marta Szarowar saying as follows:-

“Following what has been said at this meeting you have failed to ensure health and safety measures was followed allowing an untrained colleague to accept the delivery potentially leading to the accident and not challenging unsafe behaviours you have failed to deliver your responsibility to deliver the training making sure colleagues are working safely and we are protecting them from risk on injury and accidents at work so everybody goes home safely failure to complete the training with colleagues which is a serious health and safety breach despite if you’re on duty or not. You have not taken any action to prevent the colleague from the accident. You are constantly failing to attend contracted shifts on time. You have failed to take the responsibility and show improvement by signing Let’s Talk forms you have been aware of your duties and responsibilities. You have fundamentally breached the trust between the company and you.”

73. There is no specific reference to the claimant failing to notify a manager or the store that she was going to be late.

74. On 15 June 2024, the claimant appealed. The appeal is nine pages long. It is notable that the appeal solely refers to the Roberto Wilson issue and the lateness finding is not appealed.

75. The appeal was held by Henry Saunders. The first appeal hearing took place on 11 July 2024. The claimant was accompanied by Vimalraj Parker, a trade union representative. The notes of the first appeal hearing are 22 pages long and appear comprehensive.

76. During the interim, Henry Saunders interviewed Marta Szarowar. The notes of the interview include the following:-

“HS Do you think Roberto was regularly on the backdoor?”

MS I believe he was allocated to the backdoor on many occasions.

HS Do you believe Angela knew he was working on the backdoor?”

MS Yes I do believe this to be the case as she was doing rotas.”

77. The appeal was reconvened on 25 July 2024. At that reconvened hearing the claimant provided a number of colleague statements. The claimant had circulated a number of questions to a number of colleagues who had replied. The statements include the following answers (with the colleague identified by initials).

- (i) KS (A shift leader)

“ - I did saw Roberto working on the backdoor regularly. I don’t know who send him

to work there.”

- Your attitude and mindset was negative most of the time and that affected your team.
- But, your lateness was bad. You use to be late daily. Which was affecting everyone and everything. I’m believe if you a leader you have to lead by example.”

(ii) PH (Shift Leader)

- “4. Have you ever heard/seen me send Roberto to the backdoor?

Yes.

- 6. Who, if anyone have you ever heard/seen send Roberto to the backdoor?

Yes Angelina send him to backdoor.”

(iii) Unidentified (Shift Leader)

- “4. Have you ever heard/seen me send Roberto to the backdoor?

Yes.”

(iv) DC (Shift Leader)

- “4. Have you ever heard/seen me send Roberto to the backdoor?

Yes”

...

- 6. Who if anyone has you ever heard/seen send Roberto to the backdoor?

Backdoor was Roberto’s preferred task”

(v) OS (Shift Leader)

- “4. Have you ever heard/seen me send Roberto to the backdoor?

Yes.”

...

- “3. Who sent Roberto to the backdoor if anyone?

It was on rota.”

78. It is fair to say that many of the other answers were to the effect that they did not hear the claimant send Roberto to the backdoor and/or that others did.

79. Henry Saunders adjourned the second appeal hearing to read through the new material. The answers cited above corroborate that Roberto worked regularly on the backdoor, that some colleagues had heard the claimant send him there, that on 20 February 2024, Roberto had been on the rota for the backdoor and that

the claimant's lateness was very bad.

80. Once again, Henry Saunders adjourned the appeal meeting to undertake a detailed review of all the procedural concerns raised by the claimant and the additional evidence she had presented.
81. The appeal was reconvened on 1 August 2024. At the conclusion of that hearing, the appeal was rejected and the dismissal upheld. That was confirmed in a letter dated 1 August 2024 which gave the reasons as:-
  - “1. Marta had a genuine & reasonable belief that on the balance of probability an act of gross misconduct had occurred.
  2. Dismissal was within the range of reasonable outcomes.
  3. Angelina has shown no remorse for her actions and there was a high chance of further offences being committed if a lower sanction was issued.”

### **Conclusions**

82. I find that Roberto Wilson did not have the requisite training to work on the backdoor taking deliveries.
83. I find that when Roberto Wilson joined the claimant's team and came under her line management she was aware that he was not a shift leader. This is because I find that it is probable that he did not appear on any rotas as a shift leader. He was a colleague and, as such, came within the claimant's responsibility.
84. I find that the claimant's reference to Roberto Wilson as being management on the respondent's system is merely an effort to deflect responsibility from herself.
85. I find that Roberto Wilson was regularly assigned by, amongst others, the claimant to work on the backdoor from when he joined the claimant's team on 4 June 2023. That was over the course of six months.
86. I find that the claimant failed to check that Roberto Wilson had the requisite training before assigning him to the backdoor.
87. I find that the claimant had responsibility for the rota and that Roberto Wilson was probably on the rota for Tuesday 20 February 2024 on the backdoor.
88. I find that the claimant was regularly late for her shift.
89. I find that the question of whether or not she informed a manager, or anyone at the store, is less certain. However, I find that on a number of occasions the claimant probably did fail to report her lateness.
90. I find that the reason for dismissal was gross misconduct.
91. I find that Marta Szarowar genuinely believed that the claimant had committed gross misconduct, principally in relation to causing or permitting Roberto Wilson to work on the backdoor on a regular basis, but with the claimant's attendance record as a secondary issue.

92. I find that a reasonable investigation was conducted into the issue concerning Roberto Wilson.
93. I find that Marta Szarowar had reasonable grounds to conclude that the claimant had caused or permitted Roberto Wilson to work on the backdoor whilst not trained. I find that the following was established:
- (i) The October rota showed Roberto being rostered for four days on the backdoor.
  - (ii) In his interview, Roberto Wilson confirmed that managers had asked him to take delivery at the backdoor. That would include the claimant.
  - (iii) Roberto Wilson was working on the backdoor on 19 and 20 February 2024.
  - (iv) The claimant's answers at various times as set out above were inconsistent and I find were the claimant being evasive and seeking to shift the blame elsewhere. She denied asking Roberto Wilson to work on backdoor but then she said we send everyone to assist. She said Roberto Wilson was a shift leader and so not her responsibility but gave feedback he was not suitable as a shift leader and said he was not supposed to work on backdoor. She referenced not putting Roberto Wilson on the backdoor as he "procrastinates" and was better on the shop floor, thereby confirming she knew he had worked on backdoor. As does her reference to Roberto Wilson showing up at the backdoor with no one knowing who moved him.
  - (v) If anything, the colleagues' statements provided by the claimant on appeal strengthened the evidence that Roberto Wilson regularly worked on the backdoor and was sent there by the claimant. Further, she had placed him on the rota as on the backdoor for 20 February 2024.
94. I find that Marta Szarowar genuinely believed that the claimant's lateness had not improved and that she had not reported her lateness.
95. I have considered whether the lateness issue investigation can be characterised as unreasonable. As already recorded, I have concerns about the lack of a report of the times the claimant is alleged to have been late, the fact that she was unable to see the CCTV and that there is no evidence concerning her alleged failure to report in her lateness. The standard of investigation expected is reasonableness and not perfection. In my judgment the shortcomings are not sufficient to conclude that the dismissal was procedurally unfair. I make this finding for the following reasons:
- (i) The lateness issue was very much subsidiary to the Roberto Wilson issue.
  - (ii) It is highly probable that the information concerning CCTV observation and the lack of any reports to the respondent of the claimant being late, was based on a genuine investigation and has not been invented.

- (iii) The claimant's explanation that on occasions she was unable to get through to the duty mobile lacked credibility.
  - (iv) In her explanation the claimant sought to emphasise that there was no suggestion of her being paid for fewer hours as she stayed longer at the end of her shift.
  - (v) The relative unimportance of the lateness issues is reflected in the fact that it did not arise in her appeal. That is because the claimant probably knew that her lateness record was very bad.
  - (vi) In the notes of the disciplinary hearing recording the reasons for the dismissal, the failure to report absence is not specifically referenced.
96. Consequently, I find that the investigation into the lateness issue was reasonable and that Marta Szarowar had reasonable grounds for believing that the claimant had committed gross misconduct.
97. I find that Marta Szarowar had reasonable grounds to conclude that the claimant had demonstrated a lack of contrition and a failure to take responsibility due to her evasiveness and attempts to blame others.
98. I have gone onto consider whether the decision to dismiss was within the range of reasonable responses of a reasonable employer. In my judgment, given that the Roberto Wilson issue related to fundamental workplace safety, in my judgment a reasonable employer would be entitled to consider it was very serious, and the decision to dismiss the claimant was within the band of reasonable responses of a reasonable employer.
99. In the circumstances, taking into account the size and administrative resources of the respondent, I find that the respondent acted reasonably in treating the claimant's gross misconduct as a sufficient reason for dismissing her.
100. Accordingly, the claim is dismissed.

Approved by:

Employment Judge Allott

Date: 20 May 2026

JUDGMENT SENT TO THE PARTIES ON  
20 May 2026

FOR THE TRIBUNAL OFFICE

## 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/](http://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)