



EMPLOYMENT TRIBUNALS

Claimant: Rebecca Smith

Respondent: The Rising Sun (Church Gresley) Ltd

Heard at: Nottingham Justice Centre **On:** 16-17 March 2026

Before: Employment Judge Ost (sitting alone)

Representation

Claimant: in person

Respondent: Mr Richards-Jones (solicitor)

JUDGMENT

After consideration of the evidence provided and hearing from the parties the judgment of the Tribunal is as follows:

1. The complaint of Wrongful Dismissal is dismissed upon withdrawal by the Claimant during the hearing.
2. The complaint of Unfair Dismissal is well founded and succeeds.

ORDERS

3. **The remedy hearing for the case will take place on 6 July 2026 by Cloud Video Platform (CVP)** as requested by the parties. The hearing will start at **10.00 am**. The parties must join the CVP meeting room by 9.30 am. Please note and diarise this date and time. No other notice of hearing will be issued.
4. If either party wishes to rely at the remedies hearing on any additional evidential documents beyond those already contained within the existing hearing bundle, then they must provide copies of the additional documents to the other party by **22 June 2026**. The parties must then agree the contents of any supplemental bundle by **26 June 2026**. On **29 June 2026** the Respondent must provide an electronic copy of any supplemental bundle to the Tribunal (copied to the Claimant).

5. The details for joining the remedy hearing will be issued in due course. If the parties have not received joining details **by 29 June 2026**, they must write to the Tribunal (copying the other in) to request joining details

REASONS

Introduction

6. The Respondent operates a public house called The Rising Sun in Church Gresley, South Derbyshire. The Claimant was employed as a bartender at The Rising Sun from 16 September 20220 until she was summarily dismissed on 23 January 2025. The claim relates to that dismissal.
7. The Claimant commenced early conciliation on 4 February 2025 ("Day A") and the early conciliation certificate was issued on 18 March 2025 ("Day B").
8. On 7 April 2025 the Claimant presented a claim form in which she ticked a box at section 8.1 to indicate that she was bringing a complaint of Unfair Dismissal. She also referred to slandering her name and influencing other employees.
9. After a delay due to the claim form being sent to an inappropriate address, the Respondent submitted a response form in which it resisted those complaints dated 8 August 2025.
10. The case was previously listed to be heard on 6 October 2026 before Employment Judge Adkinson. However, the case was not ready for hearing at that point. Employment Judge Adkinson postponed the final hearing and converted that hearing into a preliminary hearing to conduct case management and assist the parties to prepare the case. In his case summary, Employment Judge Adkinson noted that the claim consisted of complaints of both unfair dismissal and wrongful dismissal and provided a list of issues for both such complaints.
11. Both parties attended the postponed final hearing and called witnesses to give evidence on their behalf.
12. The parties cooperated in the production of a bundle of 131 pages. Additionally, six video clips were provided which were viewed on laptop screens. The Tribunal considered the documentary evidence provided in the bundle. During the hearing additional documents were added by the agreement of all parties so that at the time of deliberations the bundle consisted of 156 pages.

The hearing

13. This was a public hearing in which all parties attended. The Claimant represented herself in person. The Respondent was represented by Mr Richards-Jones

14. The Tribunal received witness evidence from the following witnesses for the Claimant:
 - 14.1. The Claimant; and
 - 14.2. Mark O'Shea - the Claimant's partner and a customer of The Rising Sun at the time in question.
15. The Tribunal received witness evidence from the following witnesses for the Respondent:
 - 15.1. Marcus Simpson ("Mr Simpson") – the Respondent's Director and the senior manager of The Rising Sun who made the decision to dismiss the Claimant;
 - 15.2. Connor Simpson – Mr Simpson's son and a customer at The Rising Sun at the time in question; and
 - 15.3. Barrie Stevenson – the Landlord of another public house, the Foresters Arms, which employed the Claimant for a short period after her dismissal.
16. Each witness provided a prepared witness statement. The Tribunal took time to read the statement in advance. Each of the Claimant, Mr O'Shea and Marcus Simpson attended in person to give evidence under oath and made themselves available for cross examination. Each of those witnesses were cross examined by the other party and the Tribunal also asked questions. However, Connor Simpson and Barrie Stevenson did not attend and did not make themselves available for cross examination. As a result, the Tribunal gave their witness evidence little weight.
17. Prior to hearing on 4 March 2026, the Claimant requested that a screen be deployed to create a visual barrier between herself and Mr Simpson, or, that she and Mr Simpson be situated in different rooms due to anxiety. On the day of the hearing, the Tribunal arranged for a screen to be in the hearing room so that the Claimant could see the room and see how a screen arrangement might work. The Tribunal explained to the Claimant how the hearing process would proceed and invited her to consider what she wished to do. After considering the issue the Claimant decided that she was content to proceed in the customary format without the use of a screen. The Claimant was supported by Mr O'Shea who sat next to her at the parties' desks during the hearing. The Claimant did not exhibit any signs of struggling due to anxiety, and, she did not express any issues regarding anxiety relating to seeing Mr Simpson during the hearing.
18. At the beginning of the hearing the Respondent referred to the need to show video evidence, but it became clear that the Respondent had not requested or made any arrangements to have equipment available to show the videos.

Written Submissions

19. Due to the exploration of special measures described above, the delays in the provision of video, and the initial absence of the suitable display equipment

and the consequential delays in the presentation of the video evidence to all present, the evidence was only completed at the end of the allocated 2 days. Therefore, at the end of the hearing, with the agreement of both parties, and with a view to avoiding delay by waiting for a further listing date to complete oral submissions, the Tribunal gave permission at the hearing for each party to provide their submissions in writing by 14 April 2026. At this point the Respondent expressed concern that one party might wait to see what the other said in submissions and then respond to it. The Respondent asked for the parties to be permitted to write to the Tribunal without copying in each other contrary to the normal requirement set out in rule 90(1). The Tribunal indicated that it would write to the parties after considering this issue which amounted to an application to apply rule 90(3).

20. After the hearing the Tribunal subsequently wrote to the parties confirming that they should provide their submissions in writing and rejecting the application to apply rule 90(3) and gave its reasons. When confirming this in writing, the Tribunal directed that the parties to provide their submissions by 4pm on 14 April 2026 so that the parties could, if they so wished, time their submissions to be close to a specific time and therefore reduce concerns about parties 'responding' to the other party's submissions.
21. The Claimant's submissions were provided by email at 15:44 on 14 April 2026. The Respondent's submissions were provided by email at 21:06 on 14 April 2026.
22. The Claimant subsequently wrote to the Tribunal on 15 April 2026 objecting to the Respondent's submissions and requesting a right to respond on the basis that she disagreed with the Respondent's characterisation of her evidence. The Respondent resisted both the Claimant's objection and her request to reply to their submissions. The Tribunal considered but rejected the Claimant's objection on the basis that the Tribunal had added the 4pm time to 14 April 2026 after orally referring only to 14 April 2026 and the Tribunal did not consider that it would be fair or proportionate in those circumstances to penalise the Respondent for not meeting the more specific timescale which the Tribunal had added in writing given that this did not cause any real prejudice to the Claimant. The Tribunal also rejected the Claimant's request for a right of reply on the basis that the Tribunal would not simply accept any party's description of the evidence within its submissions, but rather the Tribunal would use its own record of evidence. The Tribunal determined that the provision of a reply was not in accordance with the overriding objective because it was unlikely to materially assist in the determination of the issues but it would occupy further time and resources and it would cause further delay to the delivery of judgment. The Tribunal did not believe this was justified or proportionate to the importance and complexity of the issues in scope of the intended reply.
23. Subsequently, despite objecting to the Claimant's request to reply to submissions on the stating that "... *both sides have been given the opportunity to fully present their written case. Allowing a right to reply would be unnecessary and would only cause further delay to make a final decision ...*", the Respondent itself sought to reply to the Claimant's submissions. The

Tribunal considered the Respondent's implicit request for a right of reply but rejected this also. The Tribunal did so on the same basis set out above in respect of the Claimant's request. Additionally, having decided to refuse the Claimant's request to reply, the Tribunal also determined that it would not be in accordance with the overriding objective to allow the Respondent a right of reply to submissions which had been denied to the Claimant. The Tribunal only took into account each parties' written submissions when deliberating.

The Issues

24. The issues to be decided by the Tribunal in order to determine the complaints were identified by Employment Judge Adkinson at the Preliminary Hearing on 6 October 2026. However, at the start of the hearing the Claimant clarified that she was not bringing a complaint for Wrongful Dismissal. The Tribunal explained the irreversible nature of withdrawing a complaint so that the Claimant understood the consequence of withdrawing a complaint. The Claimant then confirmed that, to the extent a complaint for Wrongful Dismissal was live within the case, she was withdrawing that complaint.

25. The list of issues remaining for determination was therefore as follows:

List of Issues

1. Unfair dismissal

- 1.1 Was the claimant dismissed? The parties both accept there was a dismissal.
- 1.2 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.
- 1.3 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:
 - 1.3.1 there were reasonable grounds for that belief;
 - 1.3.2 at the time the belief was formed the respondent had carried out a reasonable investigation;
 - 1.3.3 the respondent otherwise acted in a procedurally fair manner;
 - 1.3.4 dismissal was within the range of reasonable responses.

2. Remedy for unfair dismissal

- 2.1 If there is a compensatory award, how much should it be? The Tribunal will decide:
 - 2.1.1 What financial losses has the dismissal caused the claimant?

- 2.1.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - 2.1.3 If not, for what period of loss should the claimant be compensated?
 - 2.1.4 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?
 - 2.1.5 If so, should the claimant's compensation be reduced? By how much?
 - 2.1.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 2.1.7 Did the respondent or the claimant unreasonably fail to comply with it by
 - 2.1.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
 - 2.1.9 If the claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?
 - 2.1.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
 - 2.1.11 Does the statutory cap of fifty-two weeks' pay apply?
- 2.2 What basic award is payable to the claimant, if any?
- 2.3 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 Relevant Facts

26. The relevant facts are as follows in the paragraphs below. Where the Tribunal had to resolve a conflict of evidence, it did so on the balance of probabilities and it has indicated how it resolved that conflict at the relevant point. Otherwise, the facts found are based upon evidence that was consistent between the parties or evidence from one party which was unchallenged by the other party.

Background

27. The Respondent operates a public house called The Rising Sun in Church Gresley, South Derbyshire. The Respondent is owned by Marcus Simpson who is also the most senior manager at The Rising Sun. The Claimant was employed by the Respondent as a bartender at The Rising Sun from 16 September 2020 until her dismissal without notice on 13 January 2025. In her role, the Claimant handled cash and processed payments to the Respondent and operated the till. She was also trusted to look after takings and put cash into the safe from time to time when Mr Simpson was away. At the relevant times the Respondent also employed a bar manager and two other bar staff.
28. In addition to their work relationship, prior to the events in question, the Claimant and Mr Simpson were friends. They and their families socialised together, they attended family parties, and sometimes they shared significant events such as Christmas Day together.

29. The Claimant's partner, Mark O'Shea was a regular customer at The Rising Sun.
30. The Respondent operated a loyalty card scheme for customers. The Claimant and Mr O'Shea had a shared loyalty card. The rules for the loyalty card were on a wall in The Rising Sun. The rules stated amongst other things:

"The loyalty Card is NONE TRANSFERABLE [sic] and the owner of the card needs to be on the premises. If the card is found to be used by the somebody who is not the named holder of the card, the company reserve the right to suspend the card until next renewal. This condition will be repeated to/reminded to the holder ONLY ONCE."

31. When loyalty cards were used by customers they received a 12% discount and the bartender recorded that use on the till system. Each pound spent by a customer using the loyalty card generated one loyalty point on that customer's account. Each loyalty point had a very small credit value (for example 400 loyalty points were required to redeem one pint of beer). The customer could later exchange their loyalty points for bar products.
32. As is common in many public houses, customers of The Rising Sun would sometimes buy drinks for bartenders who had served them, as a means to express appreciation. The Rising Sun operated a till system whereby the value of the drinks bought for bartenders by customers was allocated to the bartender's account so that the bartender could then use that credit value to buy drinks or other bar products for themselves at another time.

The emergence of concerns

33. On 27 December 2024 Mr O'Shea noticed a drink which was showing on his customer account at The Rising Sun but for which he could not account, so he raised this with Mr Simpson in the latter's capacity as the manager of The Rising Sun.
34. After the Christmas and New Year period, Mr Simpson addressed the issue raised by Mr O'Shea by reviewing transactions recorded on the till at The Rising Sun involving Mr O'Shea and matching them to purchases seen on CCTV footage of The Rising Sun. Mr Simpson also noticed that the stocks of Coors and Carling appeared to be lower than they should be. Whilst exploring these issues Mr Simpson noted various discrepancies between the CCTV footage and the till transactions processed by the Claimant. Mr Simpson continued to explore the Claimant's processing of transactions.
35. Mr Simpson identified the following discrepancies of concern relating to the Claimant:
 - 35.1. On 9 January 2025 at 18:44, the till records showed the Claimant had processed a transaction which recorded Mr O'Shea purchasing a pint of Guinness which therefore credited the relevant loyalty points to Mr O'Shea's customer account. However, CCTV footage showed a customer called Mr Moore appearing to purchase a pint of Carling from the Claimant.

- 35.2. On 9 January 2025 but this time at 18:56, the till records showed the Claimant had processed a transaction which recorded Mr O Shea purchasing a pint of Coors and a gin and lemonade which therefore relevant credited the loyalty points to Mr O'Shea's customer account. However, CCTV footage showed two female customers paying for two 'shot' drinks known as 'Baby Guinness' at this time.
- 35.3. On 9 January 2025 but this time at 19:35, the till records showed the Claimant had processed a transaction which recorded Mr O'Shea purchased a pint of Carling which therefore credited the relevant loyalty points to Mr O'Shea's customer account. However, CCTV footage showed a customer called Mr Coggins appearing to purchase a pint of Carling from the Claimant.
- 35.4. On 9 January 2025 but this time at 19:50, the till records showed the Claimant had credited the value of two pints of Coors to her account. Mr Simpson found no CCTV footage which showed a customer buying these drinks for the Claimant.
- 35.5. On 11 January 2025 at 20:01, the till records showed the Claimant had again credited the value of two pints of Coors to her account. Mr Simpson found no CCTV footage which showed a customer buying these drinks for the Claimant.
- 35.6. On 11 January 2025 at 20:01, CCTV footage shows the Claimant taking a sausage roll and a packet of crisps and, whilst she initially enters them onto the till whilst Mr Simpson is behind the bar, the Claimant subsequently deletes the transaction after Mr Simpson leaves. The till records did not show the Claimant paying in any way for a sausage roll and a packet of crisps.
- 35.7. On 16 January 2025 at 20:40, the till records showed the Claimant had credited the value of three pints of Coors to her account. Mr Simpson found no CCTV footage which showed this transaction.
- 35.8. On 18 January 2025 at 19:00 an unidentified customer buys a pint of Bass, a single Bathtub gin and tonic water and a single Gordon's pink gin and lemonade but at 19:02 the Claimant credits to her own account the value of a double Gordon's pink gin and lemonade.
- 35.9. On 18 January 2025 but this time at 20:08, the till records show Connor Simpson buying a single vodka and lemonade and a single Gordon's pink gin and lemonade, but the Claimant credits to her own account the value of two double Gordon's pink gin and lemonades. CCTV footage showed only one transaction at this time.
36. On 20 January 2025, the Claimant's dog, Breeze, was put to sleep by a vet. This caused considerable distress to the Claimant. The Claimant asked Mr Simpson if she could miss her shift at The Rising Sun that night as a result. Mr Simpson agreed to this.

The Disciplinary Process

37. On 21 January 2025 Mr Simpson telephoned the Claimant and informed her that he was suspending her whilst carrying out an investigation. During this call Mr Simpson referred to 'Coors and Carling being down'. The Claimant asked if Mr Simpson had suspended anyone else and he responded that he hadn't suspended anyone else. Mr Simpson did not suspend anyone else because he had only spotted anomalies on the Claimant's till transactions.
38. Mr Simpson confirmed his decision to suspend the Claimant in writing by a letter dated 21 January 2024 and sent by email on that day. The letter stated:

"The purpose of the suspension is to enable us to investigate an anomaly made in the operating system. It is showing a discrepancy that you may have:

- Been adding drinks to the account that you hold within the company system, without prior payment.*
- Also discussing matters of privacy with other employees."*

39. The letter went on to identify that Mr Simpson had been appointed as the investigating officer. It stated *"At this stage we are only investigating the anomaly and the breach of privacy"*. It also informed the Claimant that she was entitled to be accompanied at the investigation meeting.
40. On the morning of 23 January 2025 Mr Simpson called the Claimant multiple times but she did not answer. At 13:32 Mr Simpson texted the Claimant as follows:

"Hey Becky, I am trying to call you several times. I need you to come in and go through what I have found. I want to get this sorted as quickly as possible. Many thanks Marcus

41. The Claimant texted back as follows:

"My phone didn't ring but for some reason I have 3 miss calls... can this not be sorted over the phone as I'm in such a emotional vulnerable state at the minute with losing breeze. x [sic]

42. She then quickly added a further message:

"Or could you pop round to mine maybe x

43. Mr Simpson agreed that he would visit the Claimant at her home at about 3pm.
44. Prior to this meeting the Claimant had not been informed of the precise allegations against her. She had also not received any evidence relating to those allegations. Mr Simpson was aware of the ACAS code of Practice on disciplinaries and grievances and was seeking to follow it. The main factual disputes between the parties in the case concerned what took place at this meeting.

45. Mr Simpson arrived slightly later than planned at approximately 3:30pm. He had a black folder with him which contained some papers.
46. The meeting lasted approximately 10 to 15 minutes. In evidence the Claimant estimated it lasted 5-10 minutes and Mr Simpson estimated it lasted 15 to 20 minutes. The Tribunal decided that the most likely duration was the middle ground between these estimates, being 10 to 15 minutes.
47. During this short meeting:
 - 47.1. Mr Simpson took out a small number of pages from a black folder he was carrying and read from those papers. Mr Simpson gave evidence that he took approximately ten pages (being the till records subsequently included at pages 72 to 81 of the bundle). In contrast in cross examination the Claimant described Mr Simpson as taking out two or three pages. The Tribunal finds that Mr Simpson took with him all of the pages but only removed two or three pages to read from.
 - 47.2. Mr Simpson told the Claimant that the CCTV showed discrepancies in transactions which she had put through the till. Mr Simpson referred to:
 - 47.2.1. The value of three pints of Coors which the Claimant had credited to her account which could not be accounted for;
 - 47.2.2. A roll and some crisps which had been taken by the Claimant but for which she had not paid;
 - 47.2.3. The Claimant using her loyalty card for other persons' drink purchases;
 - 47.2.4. Charging Mr Moore for a pint of Guinness when he bought a pint of Carling.
 - 47.3. Mr Simpson gave evidence that at the meeting with the Claimant he explicitly raised each of the discrepancies that were evidenced in the bundle (i.e the nine discrepancies listed at paragraph 35.1 to 35.9 above). However, the Tribunal prefers the Claimant's evidence that Mr Simpson only explicitly referenced the four broad discrepancies listed in paragraph 47.2 above. It does so because other evidence available showed that Mr Simpson had not been specific and detailed about the allegations but rather at all other times he had consistently been general in his description of the issues and allegations (including in both the suspension letter and the dismissal letter). Therefore he was more likely to continue giving general descriptions at this meeting. Also, the Claimant's response text to Mr Simpson at 18:52 only refers to allegations regarding 3 pints, the misuse of her loyalty card, and charging Mr Moore for Guinness which would also be more consistent with Mr Simpson only referring to the 4 issues put forward by the Claimant (although the Claimant accepted in evidence that Mr Simpson did

also raise the allegation regarding the roll and crisps). Furthermore the very short time scale of the meeting being only 10 to 15 minutes makes it less likely that Mr Simpson raised and explained nine different specific discrepancies between the till records and the CCTV footage and more likely that he referred generally to the four broad issues. The Claimant was clear and consistent throughout that four specific issues were raised with her. The Tribunal also notes that the reference to the Claimant using her loyalty card for other persons purchases indirectly refers to most of the remaining issues of concern, which may explain why Mr Simpson had the impression that he had raised all of the individual issues.

- 47.4. The Claimant was highly distressed during this meeting and was on her own meeting with Mr Simpson.
- 47.5. Mr Simpson offered to show the Claimant CCTV footage on his mobile phone, but she did not engage with this, and the footage was not shown at any point to the Claimant. The Claimant denied that CCTV footage was offered, but the Tribunal noted that the Claimant gave evidence that she was distressed during the meeting and was likely to be focused on the serious allegations against her that she had just heard. Therefore the Claimant's awareness of the details of what was being offered may well have been reduced. Mr Simpson gave evidence that he had the video footage on his mobile phone, and, he confirmed that he still had the footage on his phone at the time of the hearing. The Tribunal considers that it is more likely that, having told the Claimant in advance in his earlier text message, that he wanted to "*go through what I have found*" that Mr Simpson did take the video footage on his mobile phone to show to the Claimant. The Tribunal also noted that on their own, the till records prove very little: the video footage is needed to show how the till records appeared to be incorrect. Also, when Mr Simpson subsequently informed the Claimant of the decision to dismiss her two hours later he explicitly referred to this combination saying "*With the weight of the evidence from the system backed up by video, I have no choice but to dismiss you ...*". In the Tribunal's view it is more likely that Mr Simpson was aware that the two types of evidence were required to show the alleged wrongdoing so he went to the meeting ready to show this video footage and he wanted to show it to the Claimant to demonstrate to her 'what he had found'. For these reasons the Tribunal prefers Mr Simpson's account of having video footage available on his phone and wanting to show the Claimant but she did not view it.
- 47.6. The Claimant said to Mr Simpson that other people do the same thing meaning that other people used their loyalty cards for other people's purchases.
- 47.7. The Claimant also said to Mr Simpson that customers had bought the three pints of Coors for her and suggested that Mr Simpson look at this again. She asked Mr Simpson what would happen if he

couldn't find the evidence that customers had bought the three pints of Coors for her. Mr Simpson said that if he couldn't find that evidence then the Claimant would be dismissed for gross misconduct.

47.8. Mr Simpson did not leave written details of the allegations or any evidence with the Claimant for her to review or respond to in her own time.

48. Mr Simpson left the Claimant's home at approximately 3:45pm and arrived back at The Rising Sun at approximately 4pm.

The decision to dismiss

49. Mr Simpson looked at the till transactions and the corresponding CCTV footage to see if it matched the Claimant's responses but he did not find evidence to support the Claimant's explanation. Mr Simpson then made his decision on the evidence of the till transaction records and the corresponding CCTV footage relating to all of the discrepancies he had found (i.e. those set out in paragraphs 35.1 to 35.9 above). Mr Simpson decided to dismiss the Claimant on the basis of the combined effect of all of the discrepancies which he had identified. He considered the Claimant's actions to amount to theft and this meant that he had lost trust in the Claimant.

50. Mr Simpson tried to call the Claimant prior to 5:43pm. The Claimant did not answer due to issues with her network service. The Claimant texted Mr Simpson at 5:43 to ask if he had tried to call her.

51. Mr Simpson replied by text to inform the Claimant that she was dismissed stating within that text:

"With the weight of evidence from the system backed up by video, I have no choice but to dismiss you from the post of bartender with immediate effect" This is on the grounds of gross misconduct after checking the system back to the 21st of December 2024."

52. Mr Simpson then said he would be reporting the theft to local authorities and described the arrangements for the Claimant's P45 and outstanding pay.

53. The Claimant responded by text at 6:52pm to express her disbelief and her disagreement with Mr Simpson's decision. The Claimant stated that Mr Simpson had no proof that the three pints of Coors hadn't been bought for her by customers. The Claimant did accept that she had used Mr O'Shea's loyalty card for other customer's purchases but referred to another customer doing this so she didn't think it was a problem. She said she couldn't clarify the issue over charging Mr Moore for a point of Guinness. She also suggested that Mr Simpson investigate everybody else's shifts because other people have had free drinks on shifts when she had not been working.

54. Later on 23 January 2025, Mr Simpson sent a letter to the Claimant confirming his decision to dismiss her. He referred to "... many instances of discrepancies. These cannot be accounted for in any other way, even

checking historically” He did not provide any further explanation of his decision to dismiss or the specific discrepancies which he had found were caused by the Claimant’s wrongdoing. Mr Simpson referred to involving the Police and giving them full access to the till system and CCTV footage. He also referred to informing the Pubwatch group. Mr Simpson did not notify the Claimant of any right of appeal.

Relevant post-dismissal events

55. On 24 January 2025 Mr O’Shea visited Mr Simpson at The Rising Sun. Mr O’Shea informed Mr Simpson that he and others had received free drinks from another bartender on New Year’s Eve and on another occasion.
56. Mr Simpson did report his beliefs regarding the Claimant’s actions to the Police. They did not prosecute the Claimant.
57. Mr Simpson did also report the Claimant’s to the local Pubwatch group. Those making the decision did not place the Claimant on the Pubwatch list.
58. Mr Simpson investigated the other members of staff at The Rising Sun to see if he could spot similar discrepancies in their till transactions but he did not identify such discrepancies and he took no disciplinary action. This included investigating the member of staff identified by Mr O’Shea on 24 January 2025 but Mr Simpson did not identify any such discrepancies and he took no disciplinary action. The Claimant and Mr O’Shea disputed that Mr Simpson investigated anyone else but that was on the basis that they were not aware of any investigation or of any disciplinary action being taken. MR Simpson gave evidence that he can explore other members of staff but found no similar discrepancies. The member of staff whom Mr O’Shea identified to Mr Simpson was unhappy that this accusation had been made against her.
59. On 19 December 2025, the Claimant was out socially when she met the same member of staff from The Rising Sun whom Mr O’Shea had identified to Mr Simpson on 24 January 2005 as the member of staff giving him free drinks. The member of staff confronted the Claimant and said to her “*you threw me under the bus, you did*”.

The Law

Unfair Dismissal

60. The test for the complaint of unfair dismissal in so far as is relevant is found in **s.98 Employment Rights Act 1996** (“ERA”) which provides as follows:
 - (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—

...

(b) relates to the conduct of the employee,

...

(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.

61. The burden of proof is on the employer to establish the reason for dismissal and that it was a potentially fair reason pursuant to s.98(1) and (2). **Gilham and ors v Kent County Council (No.2) 1985 ICR 233, CA**: "The hurdle over which the employer has to jump at this stage of an inquiry into an unfair dismissal complaint is designed to deter employers from dismissing employees for some trivial or unworthy reason. If he does so, the dismissal is deemed unfair without the need to look further into its merits. But if on the face of it the reason could justify the dismissal, then it passes as a substantial reason, and the inquiry moves on to S.98(4), and the question of reasonableness."
62. **Associated Society of Locomotive Engineers and Firemen v Brady 2006 IRLR 576, EAT** - it is for the employer to show, on the balance of probabilities, that the principal reason was one of the potentially fair reasons, and it is then open to the employee to adduce some evidence that casts doubt on whether the reason put forward by the employer was indeed the real reason for dismissal. If this happens, the employer will have to satisfy the tribunal that its proposed reason was in fact the genuine reason relied on at the time of dismissal. **London Borough of Brent v Finch EAT 0418/11**, the EAT emphasised that if an employee wishes to cast doubt on an employer's seemingly fair reason for dismissal, he or she must adduce some evidence in this regard.
63. The reason for dismissal is 'a set of facts known to the employer, or it may be beliefs held by him, which cause him to dismiss the employee'. (**Abernethy v Mott Hay and Anderson [1974] ICR 323, CA**.) In a more recent analysis in **Croydon Health Services NHS Trust v Beatt [2017] ICR 1240, CA**, Underhill LJ said that the 'reason' for dismissal connotes the factor or factors operating on the mind of the decision maker which causes them to take the decision. It is a case of considering the decision-maker's motivation.

64. The Tribunal may only take account of those facts or beliefs that were known to the employer at the time of the dismissal: **W Devis & Sons Ltd v Atkins (1977) ICR 662**.
65. In misconduct dismissals, there is well-established guidance on fairness within section 98(4) in the decisions in **British Home Stores v Burchell [1978] IRLR 379; [1980] ICR 303, EAT** and **Post Office v Foley 2000 IRLR 827**. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide, without there being any burden of proof on either party, whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. As a result, there are three stages to follow:
- (a) did the respondent genuinely believe the claimant was guilty of the alleged misconduct?
 - (b) did they hold that belief on reasonable grounds?
 - (c) did they carry out a proper and adequate investigation?
66. Tribunals must bear in mind that whereas the burden of proving the reason for dismissal lies on the respondents, the second and third stages of Burchell are neutral as to burden of proof and the onus is not on the respondents (**Boys and Girls Welfare Society v McDonald [1996] IRLR 129**).
67. The tribunal should not substitute its own factual findings about events giving rise to the dismissal for those of the dismissing officer (**London Ambulance NHS Trust v Small [2009] IRLR 563**).
68. In the case of **Iceland Frozen Foods Limited v Jones 1982 IRLR 439**, the EAT gave guidance that the function of the employment tribunal was to decide whether in the particular circumstances 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. Again, It is not for a tribunal to substitute its own decision of what decision should have been made.
69. In the case of **Sainsburys Supermarket Ltd v Hitt [2003] IRLR 23, CA**, the Court of Appeal gave guidance that the band of reasonable responses applies to both the procedures adopted by the employer and the sanction or penalty of the dismissal.
70. It is a fundamental part of fair disciplinary procedure that an employee knows the case against them. The Court of Appeal in **Sattar v Citybank NA and another [2020] IRLR 104, CA** said:

'It is obviously an elementary principle of justice that the employee should know the case he or she has to meet. It is equally obvious that it is the employer's obligation to put that case so that on a fair and common sense reading of the relevant documentation, the employee could be expected to know what charges he or she has to address. That duty is not met if the employee has to speculate what may be in issue and what may not. The question is not what charges the employer may have been entitled to charge on the material provided to the employee; it is what charges have in fact been made. There may

be potential charges which, for one reason or another, are not being pursued. What the ET must be satisfied about is not that the charges actually made in general terms could be read as entailing specific charges not specifically identified; it is whether it can properly be satisfied that an employee would understand from the way the case is put that these charges were actually being made; and any doubt about that question should be resolved in the employee's favour, given that the burden is on the employer to make the charges sufficiently clear.'

71. The charge against the employee must be precisely framed **Strouthos v London Underground [2004] IRLR 636**.
72. The employer should be even handed and focus on potential evidence which exculpated the employee as much as evidence directed towards proving the disciplinary charges (**A v B 2003 IRLR 405**).
73. The Tribunal must look at the circumstances in the round, including the appeal stage, and procedural imperfections do not automatically render dismissals unfair (**Taylor v OCS Group Ltd 2006 ICR 1602**). Minor procedural defects may not be material to an assessment of reasonableness (**D'Silva v Manchester Metropolitan University and ors EAT 0328/16**). In **Sharkey v Lloyds Bank Plc EATS 0005/15** Mr Justice Langstaff, then President of the EAT, observed that it will almost inevitably be the case that in any alleged unfair dismissal a claimant will be able to identify a flaw, small or large, in the employer's process, and that it is therefore for the tribunal to evaluate whether that defect is so significant as to amount to unfairness. Langstaff P stated: 'Procedure does not sit in a vacuum to be assessed separately. It is an integral part of the question whether there has been a reasonable investigation that substance and procedure run together.' Therefore it is important for tribunals to consider the reasonableness of the whole procedure, including the decision to dismiss, in the round.
74. The Tribunal has to ask whether, in the circumstances of the case, the claimant was unduly prejudiced by any procedural failings of the employer. Only faults which are likely to have an impact on the employer's decision to dismiss are likely to affect the reasonableness of the procedure. For example the Tribunal should ask itself whether the employer's actions prevented the employee from putting forward mitigatory material at a hearing (**NHS 24 v Pillar [2017] UKEATS/0005/16**).
75. The degree of thoroughness required for an investigation to be reasonable is, according to the EAT in the case of **ILEA v Gravett [1998] IRLR 497**:

"infinitely variable; at one extreme there will be cases where the employee is virtually caught in the act and at the other there will be situations where the issue is one of pure inference. As the scale moves towards the latter end, so the amount of inquiry and investigation which may be required, including questioning of the employee, is likely to increase. At some stage, the employer will need to face the employee with the information which he has. That may be during an investigation prior to a decision that there is sufficient evidence upon which to form a view or it may be at the initial disciplinary hearing".

76. In reaching their decision, tribunals must also take into account the **ACAS Code of Practice No 1 on Disciplinary and Grievance Procedures** (the “ACAS Code of Practice”). By virtue of **section 207 of the Trade Union and Labour Relations (Consolidation) Act 1992**, the ACAS Code of Practice is admissible in evidence and if any provision appears to the tribunal to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question. However, compliance or non-compliance with the ACAS Code of Practice is not necessarily determinative of the claim.

77. The ACAS Code of Practice sets out the basic requirements of fairness that will be applicable in most cases. It provides as follows:

77.1. *“... whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly. There are a number of elements to this:*

- ...
- *Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.*
- ...
- *Employers should allow an employee to appeal against any formal decision made. (Paragraph 4)*

77.2. *In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing. (Paragraph 6)*

77.3. *If there is an investigatory meeting this should not by itself result in any disciplinary action. Although there is no statutory right for an employee to be accompanied at a formal investigatory meeting, such a right may be allowed under an employer's own procedure. (Paragraph 7)*

77.4. *If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification. (Paragraph 9)*

- 77.5. *The notification should also give details of the time and venue for the disciplinary meeting and advise the employee of their right to be accompanied at the meeting. Hold a meeting with the employee to discuss the problem. (Paragraph 10)*
- 77.6. *The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case. (Paragraph 11)*
- 77.7. *Employers and employees (and their companions) should make every effort to attend the meeting. At the meeting the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be given an opportunity to raise points about any information provided by witnesses. Where an employer or employee intends to call relevant witnesses they should give advance notice that they intend to do this. (Paragraph 12)*

Gross Misconduct

78. **Brito-Babapulle v Ealing Hospital NHS Trust 2013 IRLR 854, EAT** - A finding of gross misconduct did not automatically mean that a dismissal would be justified as a reasonable response. An employer should consider whether dismissal would be reasonable after considering any mitigating circumstances.
79. When applying s98 ERA, the Tribunal has been cautioned about attaching labels such as "gross misconduct". In **Hope v British Medical Association [2022] IRLR 206** the EAT held that whether or not dismissal by reason of conduct is fair or unfair within the meaning of s98(4) depends not on the label attached to or characterisation of the conduct as gross misconduct, but 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.
80. **Sandwell and West Birmingham Hospitals NHS Trust v Westwood UKEAT/0032/09** - As well as an employer's reasonable belief that an employee had committed misconduct, a finding of gross misconduct justifying dismissal required that the conduct alleged was capable of amounting to gross misconduct. The conduct had to be a deliberate contradiction of the contractual terms or had to amount to gross negligence.
81. **Eastland Homes Partnership Ltd v Cunningham EAT 0272/13** - In determining the reasonableness of a summary dismissal, the tribunal must have regard to whether the employer had reasonable grounds for its belief that the employee was guilty of gross misconduct.

Adjustment relating to the principle within the 'Polkey' case

82. Section 123(1) ERA provides

“Subject to the provisions of this section and sections 124, 124A and 126, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.”

83. The cases of **Polkey v AE Dayton Services Ltd [1987] UKHL 8**, **Software 2000 Ltd v Andrews [2007] ICR 825**; **W Devis & Sons Ltd v Atkins [1977] 3 All ER 40**; and **Crédit Agricole Corporate and Investment Bank v Wardle [2011] IRLR 604** provide the principle that where a tribunal finds that a claimant was unfairly dismissed, it may reduce the compensatory award to reflect the likelihood that an employee could have been dismissed at a later date or if a fair procedure had been followed. Therefore, where the dismissal is unfair on procedural grounds, the tribunal must also consider whether, by virtue of **Polkey v AE Dayton Services [1987] IRLR 503, HL**, there should be any reduction in compensation so that it is just and equitable as per s.123(1) ERA to reflect the chance that the claimant could still have been dismissed had fair procedures been followed.

84. In **Ms M Whitehead v Robertson Partnership UKEAT 0331/01** the following guidance was provided when considering any 'Polkey' deduction:

- (a) What potentially fair reason for dismissal if any might emerge as a result of a proper investigation and disciplinary process?
- (b) Depending on the principal reason for any hypothetical future dismissal, would dismissal for that reason be fair or unfair. If conduct is the reason might the respondent have reasonable grounds for their belief in such misconduct?
- (c) Even if a potentially fair dismissal was available to the respondent would he in fact have dismissed the claimant as opposed to imposing some lesser penalty and if so would that have ensured the claimant's continued employment?

85. **Hill v Governing Body of Great Tey Primary School [2013] IRLR 274** held that a tribunal needs to consider both whether the employer could have dismissed fairly and whether it would have done so. Furthermore, the enquiry is directed at what the particular employer would have done, not what a hypothetical fair employer would have done.

Adjustment relating to non-compliance with the ACAS Code of Practice

86. **Section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992** provides that where it appears to the employment tribunal that the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies, the employer had failed to comply with the Code in relation to that matter, and the failure was unreasonable, the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase the award it makes by no more than 25%.

Adjustment relating to 'contributory fault'

87. **S.122(2) ERA** provides that “*Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly*”.
88. **S. 123(6) ERA** provides that “*Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.*”
89. In **Nelson v BBC (No.2) 1980 ICR 110, CA**, the Court of Appeal said that three factors must be satisfied if the tribunal is to find contributory conduct:
- (a) the conduct must be culpable or blameworthy
 - (b) the conduct must have actually caused or contributed to the dismissal, and
 - (c) it must be just and equitable to reduce the award by the proportion specified.
90. In **Hollier v Plysu Ltd [1983] IRLR 260, EAT**, the EAT suggested that the contribution should be assessed broadly and should generally fall within the following categories: wholly to blame (100 per cent); largely to blame (75 per cent); employer and employee equally to blame (50 per cent); slightly to blame (25 per cent).
91. However, a finding that an employee’s conduct is the sole cause of his or her dismissal will not inevitably result in a nil compensatory award. In **Lemonious v Church Commissioners EAT 0253/12** the EAT said that even where a tribunal finds no reason for dismissal other than the employee’s conduct, it might still have to modify the percentage reduction in light of what is just and equitable.
92. In **Rao v Civil Aviation Authority 1994 ICR 495, CA**, the Court of Appeal rejected the contention that the making of both deductions would amount to a double penalty for the employee. The Court held that the proper approach in these circumstances is first to assess the loss sustained by the employee in accordance with S.123(1), which will include the percentage deduction to reflect the chance that he or she would have been dismissed in any event, and then to make the deduction for contributory fault.
93. When deciding the extent of the employee’s contributory conduct and the amount by which it would be just and equitable to reduce the award for that reason under S.123(6), the Court of Appeal in **Rao** (above) made it clear that the tribunal should bear in mind that there has already been a deduction under S.123(1). Comments to similar effect were made by the EAT in **Grantchester Construction (Eastern) Ltd v Attrill EAT 0327/12**. Hearing an appeal against an employment tribunal’s remedies decision, Mr Justice Langstaff (then President of the EAT) referred to the Court of Appeal’s

decision in **Rao** (above) before noting that it may be '*appropriate to moderate what would otherwise be the degree of contributory fault that would reduce an award because there have been matters of conduct taken into account in assessing the chances of a fair dismissal*'. Were this not so, he continued, '*it might be in effect double-counting to impose upon the claimant a further reduction by way of contributory conduct*'.

The analysis – application of facts to law to determine the issues

What was the reason or principal reason for dismissal?

94. The Respondent's case was that the Claimant was dismissed for her conduct (which it categorised as 'gross misconduct'). That conduct in question was the Claimant putting what Mr Simpson believed to be incorrect transactions through the till system or failing to enter a transaction which should have been entered. Mr Simpson believed the Claimant's purpose in doing this was to obtain benefit for herself by (a) taking products without paying for them, (b) adding credit to her account in respect of drinks which hadn't actually been paid for by customers, and (c) obtaining loyalty points which could each be redeemed for goods. The incorrect transactions in Mr Simpson's mind were those listed at paragraphs 35.1 to 35.9 above. This was the set of 'beliefs' or 'factors' which caused Mr Simpson to dismiss the Claimant as per the cases of **Abernethy** and **Beatt (above)**.
95. The Claimant said that she believed there were other reasons but did not put forward any other reason or adduce any evidence to support any alternative reason as required in **Finch (above)**.
96. In the absence of any evidence of another reason, the Tribunal accepts that the Respondent's reason for dismissing the Claimant was the Claimant's conduct as described at paragraph 94 above.
97. This is a potentially fair reason for dismissal within the meaning of s98(2) ERA.

Did the Respondent have a genuine belief in the Claimant's misconduct?

98. The Respondent's actions when giving notice of summary dismissal and Mr Simpson's subsequent actions in reporting the issue to the Police and to the Pubwatch scheme are all consistent with the Respondent's case that it genuinely believed the Claimant had carried out the acts of misconduct.
99. The Claimant did not challenge the Respondent's position that Mr Simpson genuinely believed that she had committed the misconduct in question. In cross examination the Claimant accepted that it was possible that she may not have done the things of which she was accused and yet Mr Simpson might still genuinely believe that she had done them.
100. Whilst the Tribunal does not need to make findings as to whether the alleged misconduct took place or whether it did or did not amount to gross misconduct, in this case it does need to consider whether the alleged conduct

for which the Claimant was dismissed was capable of amounting to gross misconduct.

101. In the words of HHJ Hand at para. 111 of **Sandwell (above)** "*Gross misconduct justifying dismissal must amount to a repudiation of the contract of employment by the employee...So the conduct must be a deliberate and wilful contradiction of the contractual terms.*"
102. The Tribunal did not place emphasis on the label of gross misconduct applied by the Respondent but instead it focused on whether the Respondent acted reasonably or unreasonably in treating this conduct as a sufficient reason for dismissing the employee as per **Hope (above)**.
103. In accordance with **Cunningham (above)**, the Tribunal was satisfied that the conduct of an employee who deliberately failed to enter information or entered false information into a till so as (a) to take products without paying for them, (b) to add credit to her account in respect of drinks which hadn't actually been paid for by customers, and (c) to obtain loyalty points which could each be redeemed for goods (even though the value of the loyalty points was very low) would amount to a repudiation of the contract of employment and amount to a type of misconduct which justified dismissal.

Was that belief held on reasonable grounds?

104. At the point in time when Mr Simpson formed the belief on behalf of the Respondent that the Claimant was guilty of gross misconduct, he did so on the grounds that the transactions listed at paragraphs 35.1 to 35.9 showed the Claimant had improperly processed transactions on the till system which did not appear to match the CCTV footage which he had cross referenced to the dates and times of those transactions.
105. The Claimant had disputed taking the roll and crisps deliberately. She said it was a mistake and she had intended to pay for them but Mr Simpson didn't find her explanation credible because the CCTV footage showed her entering the information on the till whilst Mr Simpson was in the bar area but then cancelling the transaction once he left the bar area.
106. The Claimant had also disputed adding credit to her account in respect of drinks which hadn't actually been paid for by customers. She insisted the drinks she entered onto her account had been bought for her at other times) but Mr Simpson was unable to find any purchases of that nature going back as far as 21 December 2024 which would explain the drinks added to her account in January 2025.
107. The Claimant said to Mr Simpson that other people were doing the same thing (which the Claimant clarified was the misuse of the loyalty card). It was therefore evident to the Respondent at the time that the Claimant was misusing the loyalty card scheme in a way which meant that other customers who should not have received the loyalty card discount paid a lesser sum and so the Respondent received less 12% less income on those purchases. At the same time this meant that the Claimant and Mr O'Shea received loyalty

points on their account to which they were not entitled under the loyalty card scheme.

108. The Tribunal considers that Mr Simpson had reasonable and objective grounds at the time on which he could form his belief that the Claimant had committed the alleged misconduct.

Was that belief held after carrying out a reasonable investigation?

109. The Tribunal noted the small size and minimal administrative resources available to the Respondent as a very small employer with no HR function, and, with only a bar manager and Mr Simpson in any sort of managerial role. The Tribunal set its expectations of what was 'reasonable' according to that context.
110. Mr Simpson gave evidence that he was aware of the ACAS Code of Practice at the time of the disciplinary process and he said that he was trying to follow it at the time. Therefore, the Respondent did have the content of the ACAS Code of Practice available to guide the Respondent's actions.
111. The Tribunal noted that Mr Simpson indicated in his letter of 21 January 2025 that there would be an investigation meeting. The next meeting which took place was the meeting on 23 January 2025.
112. The Tribunal notes that Mr Simpson only spent approximately 15 minutes with the Claimant. This was the first time that Mr Simpson described any of the specific details of any allegations to the Claimant for the first time. This was the only occasion when Mr Simpson attempted to show the Claimant any evidence. This was not a reasonable investigation because The Respondent did not provide the Claimant with fair or reasonable opportunity to understand the precise individual allegations against her, to process and reflect on those allegations or to consider whether she could evidence her response to the allegations. The flawed nature of the investigative process is illustrated by the fact that on 29 January 2025 the Claimant texted Mr Moore to ask him whether she had charged him for a pint of Guinness rather than a Carling over the last two weeks and Mr Moore replied that he knew that she hadn't done so. This highly relevant evidence from Mr Moore wasn't taken into account in the Respondent's decision-making because Mr Simpson only provided the Claimant with 15 minutes or so in which to consider and respond to allegations and he then made his decision within 2 hours. The Respondent's approach to investigation is outside the range of reasonable investigatory procedures in the circumstances as per **Hitt (above)**.

Did the Respondent act in a procedurally fair manner?

113. The Tribunal considered the reasonableness of the whole procedure, including the decision to dismiss, in the round as per **Sharkey (above)**.
114. As stated above, the Tribunal had noted the very small size and minimal administrative resources available to the Respondent as a small employer with no HR function, and, with only a bar manager and Mr Simpson in any form of management position. The Tribunal's expectations of what was

'reasonable' was set against this context. Again, the Tribunal noted that Mr Simpson gave evidence that he was aware of the ACAS Code of Practice at the time of the disciplinary process and he was trying to follow it.

115. In accordance with **s. 207 of the Trade Union and Labour Relations (Consolidation) Act 1992**, the Tribunal took the ACAS Code of Practice into account in determining the question of whether the Respondent acted in a procedurally fair manner.
116. The Tribunal noted the following elements of the overall process:
 - 116.1. Mr Simpson acted as both the investigating officer and the decision maker. (This amounts to a breach of paragraph 6 of the ACAS Code of Practice.)
 - 116.2. The only meeting at which the Claimant was able to give any response to any of the allegations against her was a brief meeting on 23 January 2025 which ended within approximately 15 minutes. The Claimant was highly distressed during the meeting which is likely to have reduced her ability to follow and understand the detail of what was happening and her ability to respond effectively to the allegations.
 - 116.3. The Respondent did not provide to the Claimant in advance of the meeting on 23 January 2025 written notification of the details of each of the nine allegations set out in paragraph 35.1 to 35.9 above which Mr Simpson subsequently took into account when he made the decision to dismiss. Similarly, the Respondent did not provide the written or CCTV evidence relating to those allegations to the Claimant in advance of the only meeting on 23 January 2025. As a result, the Claimant was not reasonably prepared to answer the allegations against her at the only meeting which took place. (This amounts to a breach of paragraph 9 of the ACAS Code of Practice.)
 - 116.4. At the meeting on 23 January 2025 Mr Simpson only orally described the four issues set out in paragraphs 47.2.1 to 47.2.4 above he did not orally describe the nine allegations set out in paragraph 35.1 to 35.9 above. The Respondent did not provide the evidence to enable the Claimant to prepare to answer the case at this meeting. (This amounts to a breach of paragraph 9 of the ACAS Code of Practice.) Also, the allegations against the Claimant were not precisely framed as per **Strouthos (above)** and the Claimant did not know all of the precise allegations as required in **Sattar (above)**.

- 116.5. The Claimant was in a distressed and emotional state during that 15 minute meeting but denied wrongdoing but the Respondent did not allow her time to compose herself or offer to conduct the meeting at another day or time when she might be more able to deal with the issues. It is evident that Mr Simpson's mindset on behalf of the Respondent was to get the issue sorted out "as quickly as possible" even though that compromised the Claimant's ability to respond to the allegations. (This amounts to a breach of paragraph 11 and 12 of the ACAS Code of Practice.)
- 116.6. Mr Simpson did not leave copies of any evidence with the Claimant at the end of the meeting so that she could consider the evidence of the discrepancies and any explanation for them in her own time and whilst she was less upset and more able to focus. (This amounts to a breach of paragraph 11 of the ACAS Code of Practice.)
- 116.7. Less than 2 hours after returning from the investigation meeting to The Rising Sun, Mr Simpson had carried out any further exploration and made his decision to dismiss the Claimant. (This amounts to a breach of paragraph 7 of the ACAS Code of Practice.)
- 116.8. The Respondent did not organise and invite the Claimant in writing to attend anything which was identified as a "disciplinary hearing". The Respondent did not tell the Claimant that she had the right to be accompanied at that disciplinary meeting. Instead, the Respondent met the Claimant, whilst she was alone and in an emotionally vulnerable state. The Respondent ambushed her with the allegations and only provided oral details of some of the allegations. The meeting was very short. The Respondent did not provide a reasonable opportunity for the Claimant to properly consider the relevant evidence. The wholly unreasonable timescale set by Mr Simpson meant that the Claimant couldn't reasonably gather evidence or call witnesses to support her version of event and nor could she reasonably prepare her response to the allegations. (This amounts to a breach of paragraphs 9, 10, 11 and 12 of the ACAS Code of Practice.)
- 116.9. The Claimant was not given any right of appeal at all. (This amounts to a breach of paragraph 4 of the ACAS Code of Practice.)
117. The Respondent had a bar manager who could have conducted the investigation which would have left Mr Simpson free to make the disciplinary decision. However, given the seriousness and sensitivity of the issues in the case, it is not unreasonable for Mr Simpson to want to investigate these issues himself. In view of the Respondent's small size and minimal resources

the Tribunal does not consider the failure to have a different person act investigating manager and decision maker as per paragraph 6 of the ACAS Code of Practice meant the process was outside the range of reasonable processes. This procedural imperfection was not so large or impactful on the fairness of the process as whole so as to make the process unfair and did not automatically render the dismissal unfair as per **Taylor (above)**.

118. In contrast, the other failures described above (including the failure to comply with paragraphs 4, 7, 9, 10, 11, and 12 of the ACAS Code of Practice) are basic and fundamental failures to act reasonably. The Tribunal finds that no reasonable employer of similar size and administrative resources would have followed that flawed process in the same circumstances. The absence of any reasonable disciplinary hearing and the failure to offer some form of appeal are particularly serious failures. The defects described above are so numerous and so significant when assessed as a whole, that they did render the dismissal unfair as per **Taylor (above)**.

Was dismissal within the range of reasonable responses?

119. The Tribunal did not determine whether it would have dismissed the Claimant and substitute its own decision. Rather it determined whether the Respondent's decision to dismiss fell within the band (or range) of reasonable responses open to an employer in the particular circumstances of the situation as per **Small (above)**.
120. The Respondent did not provide a disciplinary policy which forewarned the Claimant that misconduct for which she was dismissed would lead to dismissal. However, the Tribunal is satisfied that it would be apparent to the average person and it was apparent to the Claimant that if she deliberately took bar snacks without paying for the and she deliberately entered false information on the till to add credit to her account in respect of drinks which hadn't actually been paid for by customers then this could lead to dismissal. The Tribunal considered that it would not be apparent to the average person and it was not apparent to the Claimant that if she used her loyalty card for other person's purchases then that conduct alone was so serious that it could lead to dismissal. This was partly due to the incident that she had witnessed with a customer in or around 2023 when Mr Simpson did not treat misuse of the loyalty card system as a major issue (even though he did dislike that misuse and seek to avoid it).
121. The Tribunal considers that the factors relevant to the reasonableness of the sanction were:
- 121.1. Deliberately taking goods without paying for them would be theft.
 - 121.2. Deliberately adding the value of drinks to an account if they haven't been paid for would be a form of fraudulent activity
 - 121.3. The Claimant's till transactions appeared to be inconsistent with the CCTV footage on multiple occasions within the window examined; it was not a one-off event.

- 121.4. The Claimant's misuse of the loyalty card system meant that the Respondent lost 12% of the value of those purchases when customers shouldn't have received the loyalty discount thereby causing loss to the Respondent. The Claimant and Mr O'Shea were receiving a small benefit in the form of loyalty points for doing this.
- 121.5. The importance of trust in a relationship between the Respondent and those employees who handle money on its behalf.
- 121.6. The Claimant was required to handle money on behalf of the Respondent in her role as were all of the Respondent's employees.
- 121.7. A belief that the Claimant had committed theft and/or another form of fraudulent activity would make it extremely difficult for the Respondent to maintain the level of trust in the Claimant required for her to perform her role and handle money on behalf of the Respondent.
- 121.8. There appeared to have been inconsistent implementation of the loyalty card scheme.
- 121.9. There was no suggestion of any previous disciplinary issues or sanctions in respect of the Claimant.
122. Considering the above factors the Tribunal determined that the Respondent's decision to dismiss the Claimant would be within the range of reasonable responses open to an employer who had a genuine belief that the Claimant had failed to pay for some bar products she had taken and had deliberately put incorrect transactions through the till so as to add credit to her account in respect of drinks which hadn't actually been paid for by customers, and, to obtain loyalty points which could each be redeemed for goods (as listed at paragraphs 35.1 to 35.9 above).

Is there a chance that the Claimant could have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason? If so, should the Claimant's compensation be reduced? By how much?

123. The Tribunal must consider whether any adjustment should be made to any compensation on the ground that, if the Respondent had followed a fair process when dealing with the Claimant's case, the Claimant might have been fairly dismissed, in accordance with the principles in the case of **Polkey (above)**.
124. In its written submissions the Respondent invited the Tribunal to find that that the Claimant's award should be reduced by 100%. The Claimant did not explicitly address this issue in its written submissions.
125. The Tribunal finds that, if the Respondent had carried out a fair procedure and taking into consideration all the relevant factors, it could have fairly dismissed the Claimant. This is because the Claimant admitted several elements of the alleged wrong-doing notably allowing other persons to use her loyalty card on multiple occasions contrary to the Respondent's rules. She also admits taking the sausage roll and crisps without paying for it. Whilst she states that she

intended to pay for it later and forgot to do so, the Respondent is unlikely to accept that explanation because she deleted a transaction which she had already entered onto the till which was ready to process at the time. Also, the discrepancies between the CCTV footage and the Claimant's till transactions when crediting drinks to her account can most easily be explained by the Claimant deliberately processing drinks as being bought for her when they had not actually been bought. (The Tribunal explicitly does not make a finding that this has happened, but rather the Tribunal does find that it would be open to the Respondent to decide on the balance of probabilities that this is what happened.)

126. Dismissal would have been a reasonable option available to a reasonable employer in such circumstances, taking into account the factors summarised above.
127. The Tribunal considered whether this particular Respondent would have fairly decided to dismiss in accordance with **Hill (above)**. In this case it would be heavily dependent on the explanation and supporting evidence which the Claimant may have provided if she had been given a reasonable and proper opportunity to consider the full detail of each of the alleged incidents, to reflect on her explanation and to identify what evidence could have been identified and obtained to support her version of events.
128. The Tribunal noted that after her dismissal on 23 January 2025 the Claimant was able to secure confirmation from Mr Moore on 29 January 2025 that she had not wrongly charged him for a pint of Guinness. In cross examination Mr Simpson said that he accepted that Mr Moore's statement was true. This shows that with time the Claimant may have been able to produce evidence to support her version of events. However, the Tribunal also noted the number of inconsistencies between the Claimant's till transactions and the CCTV footage which the Claimant could not adequately explain, and also, the lack of a convincing explanation for canceling the transaction she had ready to submit on the till for the sausage roll and crisps she took and then not paying for them in any way. After considering this Respondent's strong views on the type of conduct involved and the implications for the trust relationship required of those who handle money on its behalf, the Tribunal is satisfied that the Respondent is more likely than not to have dismissed the Claimant.
129. Taking into consideration all of the factors outlined above, the Tribunal finds that there was a 75% chance that the Claimant would have been fairly dismissed after a fair process in any event.

If the Claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?

130. The Tribunal must also address the issue of contributory fault.
131. In its written submissions the Respondent also invited the Tribunal to find that that the Claimant's basic and compensatory awards should be reduced by 100%. Again, the Claimant did not explicitly address this issue in its written submissions.

132. The Tribunal may reduce the basic or compensatory awards for culpable conduct in the slightly different circumstances set out in sections 122(2) and 123(6) of the Employment Rights Act 1996.
133. The Tribunal adopted a systematic approach when considering a deduction to the basic or compensatory award: first, it identified the conduct which is said to give rise to possible contributory fault; second, it decided whether that conduct is blameworthy; third, under section 123(6), it considered whether the blameworthy conduct caused or contributed to the dismissal to any extent; and fourth, it decided to what extent it is just and equitable for the award should be reduced.

(i) The relevant conduct

134. The relevant conduct is the conduct identified in paragraphs 35.1 to 35.9.

(ii) Is the conduct blameworthy?

135. The Claimant admitted in evidence that she did let other customers purchase drinks using her and Mr O'Shea's loyalty card. This meant that other customer's purchases were allocated to that loyalty card and the customer received a 12% discount on the drinks bought. The Claimant said that she didn't do it for financial advantage. She also said that she thought it was ok to do this because of an incident in approximately 2023 when a customer was allowed to do this even after she challenged him on it. She also said lots of other people did the same thing. Mr Simpson said he gave that customer a warning about this. The Claimant gave evidence that the same customer continued to use the other person's card and when she raised this with Mr Simpson, he told her to just swipe the card the wrong way around so that it didn't register the points on the account. The Claimant's own evidence on this issue indicates that she knew that Mr Simpson did not want loyalty cards used to generate loyalty points by anyone other than the relevant customer card holder (even if his suggested method to avoid falsely attributing loyalty points was by trickery rather than a direct refusal). The Claimant said that she had told Mr Simpson that other people were doing *the same thing*, which is admission that she was doing this. It is therefore clear that the Claimant was misusing the loyalty card scheme in a way which meant that other customers who should not have received the loyalty card discount paid a lesser sum and so the Respondent received less 12% less income on those purchases, and, at the same time the Claimant and Mr O'Shea received the benefit of loyalty points on their account to which they were not entitled.
136. The Claimant admitted that the CCTV footage of 11 January 2025 does appear to show her deleting the transaction she had entered for her purchasing the sausage roll and the packet of crisps, even though she still took the sausage roll and crisps. She said that she didn't think it was urgent to record the transaction and it was her mistake, she should have paid for the sausage roll and the and the crisps. The Claimant also accepted that whilst she sought to explain some other transactions as taking place because she had been too busy to process them on the till at the time, that explanation did not apply to the sausage roll and the crisps because that transaction took

place at the end of her shift and there was no time saved by deleting a transaction which she had set up on the till but then deleted. The Claimant also accepted that by the time of her suspension on 21 January 2025 (and therefore also by the time of the meeting on 23 January 2025) the Claimant had not paid for the sausage roll and crisps by any means. The fact that the Claimant had credit on her account by which she could have paid for the sausage roll and crisps does not change the fact that she had not taken products and she had not paid for them.

137. Mr O'Shea also accepted that he wouldn't have bought drinks for the Claimant to put on her account. He also accepted that he wasn't in The Rising Sun on 9 January 2025 to have used his loyalty card or bought drinks attributed to him by the Claimant.
138. The Tribunal finds that the Claimant's conduct in processing the incorrect till transactions, using her loyalty card for other people's purchases, attributing drinks to her account that could not be corroborated, and taking the sausage roll and crisps without paying for them were culpable and blameworthy conduct.

(iii) Did the conduct cause or contribute to the dismissal?

139. The Tribunal finds that the Claimant's conduct did cause or contribute to the dismissal because this conduct was explicitly the conduct which was under investigation and for which the Claimant was dismissed.

(iv) If so, would it be just and equitable to reduce the Claimant's basic and/or compensatory award? By what proportion?

140. In the context of this case, the Tribunal determined that the Claimant's conduct described above was largely responsible for the dismissal and the Respondent's flawed process was only slightly responsible. Therefore, in accordance with the proportions suggested in **Hollier (above)**, the Tribunal determined that it would ordinarily be just and equitable in the circumstances of this case to reduce the compensatory award by 75%.
141. However, The Tribunal carefully considered the combined effect of the 'Polkey' reduction and the 'contributory fault' reduction on the compensatory award in order to avoid the injustice of an excessive and disproportionate reduction and to ensure that the outcome was just and equitable as per **Rao (above)** and to ensure there was no double counting as per **Attrill (above)**.
142. The Tribunal determined that, after taking into account the 'Polkey' reduction of 75% and noting the overlap in the factors relevant to both a Polkey reduction and a contributory fault reduction, no further reduction to the compensatory award would be just and equitable beyond 75%. Therefore, the Tribunal considers it just and equitable in the circumstances of this case to restrict the overall total reduction to any compensatory award to 75%.

143. In respect of the basic award, the Tribunal determined that the Claimant's blameworthy conduct was largely responsible for the dismissal as a result of her conduct in paragraphs 35.1 to 35.9 but the Respondent was slightly responsible due to the flaws in the process. Therefore, again in accordance with the proportions suggested in **Hollier (above)**, the Tribunal determined that it would also be just and equitable in the circumstances of this case to reduce the basic award by 75%.

Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

144. In this case, which concerns a complaint of unfair dismissal arising from the Claimant's dismissal for misconduct, the relevant ACAS Code of Practice is Code of Practice No 1 on Discipline and Grievance procedures.

Did the Respondent or the Claimant unreasonably fail to comply with it?

145. As stated above, the Tribunal found that the Respondent failed to comply with paragraphs 4, 6, 7, 9, 10, 11 and 12 of the ACAS Code of Practice as outlined above.
146. As also stated above, the Respondent had a bar manager who could possibly have conducted the investigation leaving Mr Simpson free to make the disciplinary decision. However, given the seriousness and sensitivity of the issues in the situation, it is not unreasonable for Mr Simpson to want to investigate and decide upon these issues himself. In view of the Respondent's small size and minimal resources the Tribunal does not consider the failure to have different persons act as investigating manager and decision maker as per paragraph 6 of the ACAS Code of Practice to be an unreasonable one in the circumstances of this case.
147. The other breaches of paragraphs 4, 7, 9, 10, 11, and 12 of the ACAS Code of Practice are basic and fundamental failures of the ACAS Code of Practice. Mr Simpson was by his own admission aware of the ACAS Code of Practice and its relevance when conducting the process on behalf of the Claimant. This means he had the benefit of the straightforward guidance within the Code. These requirements of the ACAS Code of Practice did not require significant resources or depend on organisational size; they only required the Respondent to be clear about each allegation so that the Claimant understood the allegations she faced, and, to give her a reasonable opportunity to consider the allegations and the evidence so that she could then prepare her response. The Tribunal considers the Respondent's failure to comply with the ACAS Code of Practice in these respects to be unreasonable.
148. The Respondent failure to comply with the Code of Practice as set out in paragraphs 116.3 to 116.9 above was unreasonable.

If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

149. The procedure followed by the Respondent was unreasonable for the reasons outlined above. This is not a case where no procedure at all was followed. The Respondent did conduct an investigation, and it held a short meeting with the Claimant when it invited her response to a summary of the allegations. However, this took place in a very short meeting when the Claimant was effectively ambushed with partial information, she was distressed, she was not able to be accompanied, and she had to give an instantaneous response. The Respondent failed to provide any reasonable opportunity for the Claimant to consider and respond to the allegations during the investigation stage, it also failed to provide a meaningful form of disciplinary meeting as envisaged by the Code of Practice. The Respondent also failed to provide any form of opportunity to appeal. When determining the percentage uplift, the Tribunal also takes into account that the Respondent is a very small organisation with no specialist HR resources to provide guidance. However, it also takes into account that the Respondent was aware of the ACAS Code of Practice at the time but failed to comply with its basic requirements. The Tribunal finds that it is just and equitable to increase the compensatory award by 15% because of the very fundamental nature of the Respondent's failures in that context.
150. The amount of the awards will be determined subject to the percentages above at the listed remedy hearing.

Approved by:

Employment Judge Ost

13 June 2026

JUDGMENT SENT TO THE PARTIES ON

15/06/2026

J. Woolley

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.

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