



EMPLOYMENT TRIBUNALS

Claimant: Mr Giresse Mbala

Respondent: Harrods Limited

Heard at: London South (by CVP)

On: 27, 28 April & 10 June
2026

Before: Employment Judge Richter

REPRESENTATION:

Claimant: In person

Respondent: Mr H Dhorajiwala (Counsel)

JUDGMENT

The judgment of the Tribunal with reasons is as follows:

Adjustments and Procedural matters

- 1) At the outset of the hearing, which was originally listed for two days 27 and 28 April 2026, the Claimant, Mr Mbala, made an application for his niece, Ms Glory Phija, to support and assist him. Mr Mbala explained that English was not his first language and he had suffered an eye injury and so needed some assistance in finding and reading documents.
- 2) When questioned Mr Mbala explained that he had lived and worked in England for many years, with around 20 years' service for the Respondent. He described his English as being at an 'intermediate' level but he made clear that he did not wish for the assistance of a formal interpreter. It was clear from the initial stages of the hearing that Mr Mbala understood English well and was fluent in conversation. His

language was structured and complex and as the hearing progressed he was eloquent in describing events, making arguments and responding during the proceedings. Mr Mbala explained that his eye injury would necessitate breaks in the hearing so he could apply eye drops and he also asked for some extra time to be allowed so he could absorb information and process it.

- 3) In the circumstances I permitted Ms Phija to assist her uncle. Ms Phija assisted diligently throughout the hearing and helped on a number of occasions to find and read documents to her uncle and, particularly when he was being cross examined, she repeated the questions to him which allowed Mr Mbala to better comprehend them and respond to them. I was entirely satisfied throughout the proceedings that Mr Mbala understood what was being said/asked and it was obvious that he was responding thoughtfully and appropriately. At the conclusion of the hearing Ms Phija assisted in writing out, at her uncle's direction, a closing statement which she read to the Tribunal. Ms Phija very properly did not advance argument herself or otherwise intervene in the proceedings on her uncle's behalf. She conducted herself entirely appropriately throughout and I commend her for her assistance and conduct. Regular breaks were taken during the course of the proceedings to enable Mr Mbala time to attend to his medication and to allow some time for comprehension and reflection.
- 4) Also at the outset of the hearing the Respondent explained that it was unable to call any witnesses 'live'. Although three witness statements had been served one witness no longer worked for the Respondent and the other two were out of the jurisdiction at the time of the hearing. In October last year the Respondent had applied for the date of the final hearing to be postponed but the application had simply stated that the witnesses had 'pre booked commitments' and as such the application was refused with the invitation to provide more detail of the difficulties. The application was not renewed.
- 5) The Respondent acknowledged the difficulties presented by not being able to call witnesses but did not seek any witness orders to try and secure attendance nor did they seek to call any evidence from abroad. The Respondent invited the Tribunal to proceed to hear the claim and did not seek a postponement. The Respondent acknowledged the likely reduced weight which could be given to witness evidence which was unsupported by oral testimony but the Respondent submitted that there was good quality contemporaneous evidence from the Respondent which the Tribunal could consider and rely upon.

- 6) When the position had been set out Mr Mbala also did not seek for the hearing to be postponed to secure the attendance of any Respondent witness and he was clear he wished the hearing to proceed although he indicated he would have wanted to ask questions of the Respondent's witnesses if they had attended. The hearing then proceeded to hear Mr Mbala's evidence which in due course occupied the majority of both 27 and 28 April 2026 and did not leave sufficient time for closing submissions or any deliberation or the consideration of any remedy if that were to be appropriate.
- 7) Given that the case had to be adjourned part heard enquiries were made as to whether any Respondent witness would be available for the resumed hearing date of 10 June 2026 and it appeared Mr Baillie would be.
- 8) I considered Tribunal Rule 41(1) which permits the Tribunal to regulate its procedure provided a fair hearing is conducted. Whilst Mr Baillie would be giving evidence after the Claimant had done so in the circumstances I was satisfied that it would be appropriate and fair to permit Mr Baillie to give evidence on the resumed hearing date. Mr Mbala had always indicated that there were questions he wished to ask Mr Baillie and in the knowledge that Mr Baillie was likely to be available to be called Mr Mbala was able to properly prepare his questions in the time between the hearing dates. I was satisfied that giving Mr Mbala the chance to cross examine Mr Baillie contributed to a fair hearing being conducted allowing him the opportunity to test the Respondent's case and providing the tribunal with a chance to assess the Respondent's witness. I considered if there was any disadvantage caused by Mr Baillie giving evidence after Mr Mbala but I was satisfied that Mr Mbala would continue to make his closing submissions at the end of the hearing, after Mr Baillie had given evidence and so he would have the opportunity to provide a response to any new matters elicited from Mr Baillie in evidence. Mr Baillie was therefore permitted to give evidence at the resumed hearing on 10 June 2026.
- 9) To further assist Mr Mbala given he is a litigant in person and his request for extra time to consider and reflect upon matters when the hearing was adjourned part heard I directed that Mr Dhorajiwala, Counsel for the Respondent, prepare a brief summary of his likely final submissions in writing which were to be provided to the Claimant in advance of the resumed hearing date. This enabled Mr Mbala to better consider and prepare to respond to the points which were likely to be advanced by the Respondent in argument.

The claims, the law and the issues

- 10) By an ET1 claim form submitted on 16 February 2025 Mr Mbala brought complaints of wrongful and unfair dismissal.
- 11) Although initially resisted by the Respondent by the end of the hearing the Respondent accepted that the complaint of Wrongful Dismissal was well founded. It was accepted that the Claimant's notice period extended to 12 weeks. The Claimant was ultimately dismissed 'with notice' by the Respondent and they accept only 8 weeks have been paid to Mr Mbala in lieu of his notice period. The Respondent accepts that the equivalent of 4 weeks' notice pay remains outstanding to Mr Mbala and accordingly I give judgment to that extent as set out at the end of this judgment.
- 12) The principal claim brought by Mr Mbala however was a claim of unfair dismissal.
- 13) There is considerable agreement between the parties as to the basic facts underlying the claim. Mr Mbala commenced work at the Harrods department store in the October of 2005 as a Kitchen Porter. There is no dispute that he was ultimately dismissed 'with notice' in the January of 2025 for misconduct. At the point of his dismissal he had been promoted to the role of 'Sous Chef' in the 'Tom Kerridge' food outlet kitchen which specialized in fish and shellfish.
- 14) Leading to his eventual dismissal are two separate incidents of conduct for which Mr Mbala was subject to internal investigation and then disciplinary proceedings.

The Law

- 15) S.94 Employment Rights Act 1996 ("ERA") provides that an employee has the right not to be unfairly dismissed by their employer.
- 16) So far as is relevant S. 98 ERA 1996 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—

- (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."

17) Conduct may then form a fair basis for dismissal but in the leading case of *British Home Stores Ltd v Burchell* [1980] ICR 303 (EAT) it was held that for the dismissal to be fair the employer must have;

- i) a genuine belief in the misconduct; and
- ii) reasonable grounds for that belief; and
- iii) carried out as much investigation as was reasonable in the circumstances.

18) I am also reminded by the Respondent that:

- the Tribunal can only take account of those facts or beliefs that were known to those who took the actual decision to dismiss at the time of dismissal; and the employer cannot know everything known to its employees (*Orr v Milton Keynes Council* [2011] EWCA Civ 62, [2011] ICR 704, paras [58]-[59]).

- the nature of the investigation that must be done will turn on the strength of the *prima facie* case against an employee; in *ILEA v Gravett* [1988] IRLR 497 (EAT), para [15]:

“[15] ... 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, including questioning of the employee, which may be required is likely to increase. The sufficiency of the relevant evidence and the reasonableness of the conclusion seem to us to be inextricably entwined. However, it may be that some further inquiry is clearly necessary before the relevant evidence can be considered sufficient.”

- as to procedural fairness, this forms part of the reasonableness test as articulated in s 98(4) ERA 1996 (*Polkey v A E Dayton Services Ltd* [1988] AC 344 (HL)); and in the context of a conduct dismissal, “*in the case of misconduct, the employer will normally not act reasonably unless he investigates the complaint of misconduct fully and fairly and hears whatever the employee wishes to say in his defence or in explanation or mitigation*” (*Polkey* at 364D-E); and
- as to whether a reasonable procedure has been adopted will also be subject to the range of reasonable responses test (*Sainsbury's Supermarkets Ltd v Hitt* [2002] EWCA Civ 1588, [2003] ICR 111, para [30]).

19) Importantly, when considering the dismissal, I note that the Tribunal should not substitute its own decision as to what was the right course to adopt for that of the employer. I must instead consider if the decision to dismiss the employee falls within the ‘band of reasonable responses’ which a reasonable employer might

have adopted and that “*in many, though not all, cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another*” (*Iceland Frozen Food Ltd v Jones* [1983] ICR 17 (EAT) at 24-25).

The Issues

20) Given the settled legal position the key considerations in respect of liability for the Tribunal are therefore:

20.1 Did the Respondent genuinely believe that the claimant had committed misconduct?

20.2 Did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the Claimant?

20.3 In resolving those issues I will in particular have regard to whether:

- there were reasonable grounds for the belief in misconduct;
- at the time the belief was formed the respondent had carried out a reasonable investigation;
- the Respondent otherwise acted in a procedurally fair manner; and
- dismissal was within the range of reasonable responses.

Background

21) As set out above there was no dispute that Mr Mbala had commenced work at the Harrods department store in October 2005. He worked in the kitchens of various restaurant settings within the Respondent. He had undertaken a variety of positions until the events which underly this claim occurred, by which time he had been promoted to the role of Sous Chef in the Tom Kerridge food outlet. This outlet specialized in fish and shellfish dishes.

22) In his evidence Mr Mbala accepted that the role of Sous Chef was a management position in the kitchen. He accepted that together with the Head Chef for the establishment he was responsible for running the kitchen and supervising the junior kitchen staff.

- 23) Mr Mbala accepted that compliance with food safety rules, regulations and best practice was important in the kitchen, particularly with fish and shellfish, which had the potential to seriously affect the health of members of the public. He accepted that reputational issues were engaged in working in the kitchens given the Respondent's status and that of the 'celebrity' endorsed kitchen he was working in.
- 24) When he was taken to them in cross examination Mr Mbala accepted he was aware of the company's behaviour policy – see p.183 of the hearing bundle and the People Management Policy – see p.186 of the hearing bundle.
- 25) Throughout his long period of employment no other concerns regarding his food handling or any food safety issues have arisen that I am told about other than those which are the subject of this claim.
- 26) I have had regard to a hearing file of material running to some 574 pages. I have read the witness statements of Mr Mbala and for the Respondent, Mr Ward (executive chef), Mr Baillie (Security Manager) and Ms Frawley (Employee Relations Specialist). I have had careful regard to the written submissions provided by both Mr Dhorajiwala and Mr Mbala.
- 27) As set out above I have heard oral evidence from Mr Baillie who ultimately made the final decision to dismiss Mr Mbala on his appeal from the initial findings of a disciplinary process. I am invited by the Respondent to treat Mr Baillie's involvement in this case as substantial given that the appeal was in reality a 're-hearing' of the initial disciplinary meeting and given that Mr Baillie did reach notably different conclusions from the original process. In the circumstances of this case I am satisfied that those are valid observations and I accept the submission that Mr Baillie's evidence is of considerable importance in this case given that he ultimately determined Mr Mbala's dismissal.
- 28) I have had close regard to the evidence of Mr Mbala who has given an extensive account of events and his actions.
- 29) It is of note that there has only been one witness called by the Respondent and that witness ultimately dealt with the final appeal hearing. I have kept carefully in mind that no witness as to the primary facts has been called by the Respondent and I therefore have to view with particular care the documentary evidence where factually it is challenged by Mr Mbala.

- 30) With that said there is, in my view, excellent quality contemporaneous material provided by the Respondent which does detail the stages of the investigation, the disciplinary process and the appeal in this case. The fact that the meetings of significance have been recorded and unchallenged transcripts have been prepared provides clear evidence of what occurred. In any event there is considerable acceptance by Mr Mbala of many of the underlying facts.
- 31) This claim focusses then on two principal incidents - the first led to the issue of a final written warning to the Claimant and the second ultimately led to his dismissal.

The Final Written Warning

The Facts

- 32) Mr Mbala does not dispute that in the morning of 15 February 2024 a food safety team employed by the Respondent made an inspection of the Tom Kerridge outlet.
- 33) The team identified what they alleged were deficiencies in food handling and storage. These were alerted to the Head Chef - Mr Grey - who asked that an investigation was commenced and attached photographs which he said had been taken by the food safety team – see email p.163 of the Bundle.
- 34) Mr Mbala accepts that he had been the senior chef on duty on the night before - 14 February. He was not present on the morning shift of 15 when the inspection occurred.
- 35) In his evidence Mr Mbala explained that 14 February was Valentines' Day and as would be expected, the evening shift had been extremely busy. The restaurant had had its busiest night of the year.
- 36) Mr Mbala gave evidence that normally the kitchen would operate with 5 members of staff but that evening there were only 3 on duty. He explained that he was the last person on shift and was responsible for closing the restaurant. He detailed that he had only 30 minutes to do so after the last orders were served.
- 37) In his evidence Mr Mbala said that before he left he asked a junior staff member named Connor to check the fridges and to confirm that food items were properly stored. He said that Connor had reported to him that the food was properly stored but that there was a leak from one of the fridges. Mr Mbala explained that he had

looked at the fridges and had then spent time reporting the leak to the maintenance department.

38) The inspection on 15 February identified what were alleged to be four deficiencies:

- 1) A dish of dirty water was incorrectly stored in a fridge – In evidence Mr Mbala accepted that this was brining liquid and should have been disposed of. Mr Mbala said that he did not see the dish in the bottom of the fish fridge. He explained that the fridge was very full because of the level of Valentines' stock and so in order to see the item he would have needed to unload all of the contents of the fridge which was simply not an option open to him in the time available. In his evidence Mr Mbala also raised the possibility of this having been placed there by morning staff before he arrived.
- 2) A dish of Dover Sole was defrosting uncovered and sitting in its own liquid. It did not have a processing date label on it. – In evidence Mr Mbala explained that there was nothing unusual in respect of liquid being present in a dish holding defrosting fish. He detailed that the fish had to defrost for two days and as it did so the ice of course turned to water. Mr Mbala says those opening the restaurant in the morning should have checked the dish and poured away the defrosting water. He did not know why the fish was uncovered, it should have been. The processing labels he explained, as they were paper regularly moved off of the items they should be attached to and often were found in the defrosting water.
- 3) A dish of lobsters was in the fridge wrapped in paper and sitting in their juices – again in his evidence Mr Mbala explained that there was nothing unusual in this. He gave a detailed account of how the lobster was prepared in two stages, firstly by cooking and covering with paper and then later stuffing the shells at which point they are covered with a blue cloth.
- 4) Poorly vacuum sealed scallops were left defrosting with no label on – As set out above Mr Mbala explained that the labels frequently fell off defrosting produce because they were paper.

39) Considerable evidence, as very briefly summarized above, was given about these matters which form the basis for the final written warning issued to the Claimant. I am reminded by the Respondent that the approach I should take to a final written is clearly set out in a number of authorities. In general the position can perhaps be summarized as being that 'The Tribunal can only look behind the Final Written

Warning where it is suggested that it was not issued in good faith, there was no prima facie basis for imposing it, or the sanction was manifestly inappropriate' – see *Davies v Sandwell Metropolitan Borough Council* [2023] EWCA Civ 135.

40) With that in mind and to the extent necessary to determine those matters, I have had regard to the underlying evidence which Mr Dhorajiwala has cross examined Mr Mbala upon.

41) In summary I note that:

41.1 Ms Valentia Maschio (Head Chef) was appointed as the investigation manager. She interviewed all staff members from the 14/2 shift (Ms Sonila Spyropali p.165 of the bundle, Connor Smith p.169 of the bundle and the Claimant p.196 of the bundle)

41.2 In his interview the Claimant said he had checked the fridge the night before and the labels and all was fine. He said however the fridge was packed and that a leak had to be reported. He later said he might not have checked that there was a label on the Dover Sole which was found defrozing. He did not know why it was uncovered and suggested it might be from a different fridge, He did not know why the lobster had been left on paper and did not have a blue cloth on the top, he said he kept telling staff to put a cloth on them. He suggested that maybe the morning staff had left the lobster as it had been found on the inspection.

41.3 On 20th July 2024 the Claimant was invited by Michael Grey to a disciplinary meeting. The allegations were set out as were the alleged breaches of company policy and procedure. Mr Mbala was told he could be accompanied to the meeting, he was informed the allegations could lead to dismissal or written warning and the evidence relied upon was attached to the invitation – see p.180 of the bundle.

41.4 The meeting took place on 30th July 2024 and was conducted by Mr Grey – See transcript beginning p.221 of the bundle - In the meeting Mr Mbala said he had not seen the container with dirty water as the fridge was packed and it was not possible for him to have seen it. He maintained that the lobster should have had a blue cloth on top and could not say why it was shown on paper, he said he would have seen it if it had been left that way the night before. Mr Grey said the photographs had been taken first thing the next morning after the claimant had closed the restaurant the

previous day. When asked if he could have done anything differently Mr Mbala said if he had gone on further checking he maybe could have found the tray of dirty water.

41.5 Mr Grey found that the breaches had occurred. He found they constituted gross misconduct. He accepted the Claimant's mitigation that the shift had been busy and the kitchen short staffed and so mitigated the sanction from dismissal to a final written warning. This was confirmed in a detailed letter setting out Mr Grey's reasons on 7th August 2024 – see p.236 of the bundle.

41.6 Mr Mbala appealed the decision by letter on 15th August 2024 see p.245 of the bundle - in the letter he did not ask for the sanction to be removed entirely but asked that it be replaced with a first written warning. He set out that he had felt pressured at the disciplinary meeting and could not give his full account. He said he was being treated differently from other staff who also had a significant role in the deficiencies. He cited he had worked for 18 years without a single disciplinary incident for food safety and drew attention to the fact that other staff he said had recieved only a first written warning.

41.7 Mr Mbala was invited to an appeal meeting on 27th August 2024 see p.250 of the bundle- The meeting was held on 30th August 2024 conducted by Mr Keown a development chef at the Respondent. A transcript of the meeting starts at p.257 of the bundle and Mr Mbala set out his account. He accepted that he may have made errors due to tiredness after a busy shift.

41.8 Mr Keown sent a detailed letter explaining his deicion on 7th September 2024 see p.252 of the bundle - He was satisfied that the breaches had been made out and that the final written warning was the appropriate sanction given Mr Mbala's management postion.

Issues raised at this hearing and findings of fact

42) Bias and an agenda to dismiss - Mr Mbala argues that the procedure set out above was unfair as Mr Grey was both the initiator of the investigation and the initial decision maker. Mr Mbala also asserts that the Respondent had 'an agenda to dismiss him'. I have considered those submission but I am satisfied and find as a fact that the procedure was a fair one and not tainted by any preconceived determination for the following reasons;

- 42.1 Mr Grey was the senior chef receiving the complaint from the food safety inspection on the morning of 15 February and as such he was bound to commence the process of investigation;
- 42.2 having commenced the process Mr Grey was not the investigator;
- 42.3 the appointed investigator properly interviewed the relevant people including Mr Mbala;
- 42.4 Mr Mbala was properly invited to a disciplinary meeting and given a full opportunity to present his explanation;
- 42.5 importantly Mr Grey did not dismiss Mr Mbala but instead imposed a final written warning having heard and considered the mitigation;
- 42.6 a route to appeal from Mr Grey's decision was provided;
- 42.7 The appeal was conducted by Mr Keown about whom no complaint of bias is made;
- 42.8 The appeal provided a further opportunity for Mr Mbala to fully provide his explanation.

43) Failure to provide evidence - During the course of his cross examination before me Mr Mbala has disputed that the photographs which now appear in the hearing bundle at p. 201 – 205 are the photographs he was shown and relied on as evidence during the course of the Respondent's investigation and disciplinary processes. Mr Mbala explained in evidence that in respect of the photograph of the Dover sole the photograph he was shown had more liquid in the dish and the fish did not have ice still present upon it, as far as the photograph of the lobster was concerned he says he was shown photographs of lobster flesh that was rotting.

44) Whilst there is no evidence from the Respondent to rebut Mr Mbala's account I am satisfied and find as a fact that no procedural unfairness flows from it. Mr Mbala accepts that he was shown, through the investigation and disciplinary process, photographic evidence of the deficiencies which the food safety team had identified. If there has been an error in providing those photographs to this Tribunal that does not in my view effect the fairness of the disciplinary process that occurred. This is particularly given that the photographs Mr Mbala now describes establish potentially more serious breaches of food safety than the photographs which are now included in the bundle and relied upon by the Respondent. In my judgment this seems entirely counter to Mr Mbala's assertion that there remains an agenda to dismiss him as, if so, clearly the more damaging photographs would have been included.

- 45) Further Mr Mbala questions the timing of the taking of the photographs and queries whether staff who were opening the restaurant in the morning had interfered with the fridges and caused the identified deficiencies before the photographs were taken.
- 46) There is no evidence before me as to the timing or conduct of the inspection team however I note the assertion by Mr Grey in the records that the food safety team attended first thing the next morning. I further observe that had the inspection occurred when the day shift were already working it seems obvious that they would have been the subject of investigation as opposed to the members of the night shift on 14 February. Further, as set out in the notes from his investigation and disciplinary meetings, Mr Mbala did accept that there were deficiencies in the handling of the food stuffs outlined on the night in question. In particular Mr Mbala accepted his failure to identify the tray of brining liquid left in the fridge and he also accepted that he had an overall responsibility for ensuring that standards were maintained.
- 47) Cross examined on those aspects Mr Mbala's made clear that his position has changed and he now accepts no fault for the deficiencies found. This he explained was because of the enormous pressure generated the night before by the lack of staff and the pressure of Valentine's night. Further Mr Mbala said he felt he did not have a proper opportunity to present his arguments at the hearings and he felt he needed to apologise for what had happened as the kitchen staff work as a team. Mr Mbala said he only asked for revision of his sanction on appeal (and not its complete removal) as he knew that he would receive some sanction as he was a senior member of staff and more junior staff had received written warnings in connection with the deficiencies.
- 48) I do accept Mr Mbala's evidence about the enormous pressure of the shift on 14 February and the shortage of staff which clearly presented a very challenging working environment. However I am satisfied that such an environment was highly likely to contribute to the making of errors in food handling and storage such as those identified by the food safety inspection. I am overall, having considered the evidence with care, satisfied that the food handling errors which were identified on 15 February 2024 did occur on the claimant's shift and that he was at least in part responsible for them.
- 49) In that regard I am satisfied that the investigation and the disciplinary proceedings were conducted in good faith. I am satisfied that there was a prima facie basis for

issuing the final warning which was equally issued in good faith after a fair procedure had been conducted.

50) I note that the dirty dish of brining liquid, the uncovered and unlabeled Dover sole, lobster and scallops did all present risks to food safety which in the context of the business was serious and that the Claimant was in a position of management responsibility when these issues arose. These could properly underly a finding of gross misconduct and dismissal.

51) I accept however that the Claimant was working in very challenging conditions which properly could, should and were considered in mitigation and I can not say that the issue of a final written warning was manifestly inappropriate.

The Dismissal

The Facts

52) Again there is considerable agreement about the underlying facts which are set out in the written material and which Mr Dhorjwallia has cross examined extensively upon. Given that the procedural fairness of the Respondent's approach is challenged I set out in some detail the process followed.

53) On 13th September 2024 Mr Mbala was invited to attend an investigation meeting the next day by Luke Truelove the Chef de Cuisine of the Tom Kerridge outlet – see p. 276 of the bundle.

54) The meeting related to events which had occurred in the July of 2024 but the investigation process had been delayed because Mr Mbala had been on an extended period of sick leave because of a physical health condition.

55) At the meeting on 14th September Mr Mbala was interviewed by Mr Truelove and Mr Serefynski Head Chef and on 18th September Mr Mbala was suspended by Mr Truelove for an investigation to be conducted – see p.277 of the bundle.

56) On 28th September Mr Truelove submitted a package he described as evidence to the HR department of the Respondent namely – purchase orders, photograph of frozen monkfish and wastage reports – see p.279 of the bundle. On 1st October Mr Truelove obtained a statement from a Mr Edgar Salvador in relation to the Claimant allegedly washing spoiled monkfish in vinegar.

57) On 3rd October 2024 Mr Mbala was invited to attend a disciplinary meeting on 8th October – see p.296 of the bundle. The letter set out 3 allegations:

- 1) an order of Monkfish was delivered on 9th July and not frozen until 17th July when it had spoiled – it was also alleged that the Claimant had washed it in vinegar;
- 2) an order of 10 Kgs of Lobster (valued at around £250) was delivered on 16th July and by 23rd July the lobster had not been processed and had spoiled;
- 3) an order for 150 Scallops (valued at around £435) were delivered on 18th July and by 23rd July they had not been processed and were spoiled.

58) The invitation included the following documents:

- Harrods' Behaviour Policy
- Harrods People Management Policy - Part A
- Investigation Meeting Notes dated 14th September 2024
- Witness Statement from Edgar Salvador, Kitchen Supervisor
- Luke Truvelove (statement from Edgar Salvador and further concerns redacted) – 1st October 2024
- Screenshot of PO 4503036711, delivered on 16th July 2024 (Disciplinary evidence document Figure 1)
- Screenshot of PO 4503038492, delivered on 18th July 2024 (Disciplinary evidence document Figure 2)
- Screenshot of PO 4503036703, delivered on 9th July 2024 (Disciplinary evidence document Figure 7)
- Picture of frozen monkfish, delivered on PO 4503036703 (Disciplinary evidence document Figure 6)
- Screenshot of Week 24 Fish order (Disciplinary evidence document Figure 3)
- Copy of wastage form, relating to scallops, monkfish and lobster (Disciplinary evidence document Figure 8)
- Copy rota, week commencing 14th and 21st July 2024 (Disciplinary evidence document Figure 4/5)

- Copy Final Written Warning, dated 6th August 2024
- Suspension confirmation – dated 18th September 2024
- Investigation meeting invite – dated 13th September 2024

59)The letter informed Mr Mbala that he could be accompanied to the meeting and warned him that dismissal was a possible outcome of the disciplinary process.

60)On 10th October the disciplinary meeting took place chaired by Mr Andrew Ward Executive Chef of Restaurants at the Respondent. A transcript of the meeting starts at p.312 of the bundle. The Claimant gave a detailed explanation for each of the allegations.

61)The meeting adjourned and reconvened on 18th October 2024 and on that day Mr Ward made the decision to dismiss the Claimant without notice. He gave oral reasons for doing so – see transcript commencing p.369.

62)There followed a delay in preparing written reasons but in a letter dated 19th November 2024 Mr Ward set out his reasons in writing – see p.406. In essence in relation to the allegations Mr Ward found the following:

- 1) Monkfish – Mr Ward accepted that Mr Mbala had worked a late shift on 9th July when the fish was delivered and so he accepted he would not have had access to it. Mr Ward found however that the Claimant had worked between 10th – 15th July when he was the most senior member of staff in the kitchen. Mr Ward found that during that period Mr Mbala had had time to identify and process the Monkfish so that it should not have spoilt.
- 2) Lobster – Mr Ward found that this was delivered on 16th July when the claimant was not present but the Claimant had worked a day shift on 17th July when he could have identified and processed the lobster. Mr Ward found that due to a miscommunication between Mr Mbala and Mr Truelove the lobster was not processed. Mr Ward found that the perished lobster was not identified in a stock take conducted by the Claimant which had occurred on 23rd June when it should have been.

- 3) Scallops – Mr Ward found that these had been delivered on 18th July when the Claimant was not working but he had worked on 19th July and was most senior chef on duty. Mr Ward found Mr Mbala did not identify or deal with the scallops that day so they perished and they were not identified in stock take of 23rd July

Overall Mr Ward upheld the monkfish and scallops allegations and partially upheld the lobster allegation given the miscommunication. He found that these elements constituted Gross Misconduct and in all the circumstances he was satisfied that dismissal without notice was the appropriate sanction.

- 63) On 25th November Mr Mbala wrote a detailed letter appealing the decision and explaining where he disagreed with Mr Ward's findings. See P.413 – 428 of the bundle.

- 64) An appeal hearing was arranged and on 10 Jan 2025 Mr Mbala met with Mr Jeff Baillie who had been appointed as the appeal manager. See p.439 for transcript of the meeting.

- 65) On 23 January 2025 Mr Baillie wrote to Mr Mbala with his decision and gave his reasons – see p.535. He found as follows in relation to the allegations:

- 1) Monkfish – having listened to the representations made by Mr Mbala he found the allegation to be unsubstantiated;
- 2) Lobster – Mr Baillie maintained that this was partly upheld because of what Mr Baillie characterized as a failure on the part of the Claimant to check that the lobster had been prepared;
- 3) Scallops – Mr Baillie upheld this allegation as he was satisfied Mr Mbala could have been identified this stock and processed it to prevent it from going bad.

- 66) Ultimately Mr Baillie was satisfied that the allegations he had upheld were procedural errors in the kitchen which constituted misconduct but he found not gross misconduct. Nevertheless Mr Baillie had regard to the Claimant's final warning for food safety breaches, his management role in the kitchen and the potentially serious impact of the errors that he had identified and he was satisfied that the sanction should be dismissal but varied to dismissal with notice.

Evidence at this hearing

67) At this hearing Mr Mbala has given evidence largely in line with his explanations to Mr Baillie. I provided Mr Mbala with an opportunity to give oral evidence in chief over and above his full witness statement which he also adopted. Mr Mbala took the opportunity to explain in detail the operation and management of the kitchen and his response to the allegations made against him. Mr Mbala was fully and carefully cross examined on the documentary material set out and again provided clear and detailed responses to the issues he was asked about.

68) Mr Mbala gave evidence passionately and at length about all aspects of this claim. He is a witness clearly emotionally affected by the events, which is not surprising given his lengthy employment with the Respondent and the lack of any suggestion of poor performance until the allegations in this claim. Whilst I have no doubt that Mr Mbala was doing his best to be accurate in his evidence I am satisfied his account on some core aspects has changed over time. This is for example demonstrated by the passages he was taken to in the bundle where his earlier explanations and acceptances in relation to the conduct behind the final warning are recorded. He now does not accept any failure in relation to those events now. Overall these features do effect the quality of his evidence which I have otherwise been able in large part to accept.

69) Of particular relevance during the course of his evidence both in chief and in cross examination I noted the following matters. Mr Mbala:

- 1) Accepted that he ran the kitchen together with Mr Truelove who was the Chef D' Partie;
- 2) Accepted he was 2nd in charge and had a senior position in the kitchen;
- 3) Accepted that he was responsible for the members of staff below him;
- 4) Accepted that working in the kitchen was being part of a team and that people supported one another;
- 5) Accepted when Mr Truelove was not present that he ran the kitchen and was in charge of it;
- 6) Accepted food hygiene risks were high with fish and particularly shellfish;
- 7) Accepted that failures in stock control and processing in the kitchen could give rise to a risk to the health of customers;
- 8) Accepted that reputation of Tom Kerridge restaurant was important to maintain.

70) In relation to the practical set up and operation of the kitchen Mr Mbala detailed in his evidence:

- 1) Access by staff to the fridge where stock was being processed ends at 17:00;
- 2) The kitchen was supposed to operate with 5 members of staff but frequently there were fewer and Mr Mbala was often working under pressure;
- 3) In his evidence Mr Mbala maintained 3 members of staff were the minimum number required to operate the kitchen (although in his closing submissions Mr Mbala maintained that 4 were required although in my view nothing material turns on the precise number given the thrust of Mr Mbala's account which was that the kitchen was frequently short staffed and was effectively 'operating at its limit').
- 4) that incoming stock was delivered in the mornings and would be accompanied by a delivery note;
- 5) although stock on a delivery note was sometimes missing and not delivered items that had not been delivered would not appear on a kitchen wastage report;
- 6) if scallops or lobster were delivered then they would remain in the fridge until they were processed and frozen.
- 7) the delivered stock would be prepared throughout the morning shift;
- 8) Two people would open the restaurant with one dedicated to processing the deliveries one more generally 'setting up';
- 9) By 11:30 a.m. both members of staff would then focus on preparing for service which was then the pre-occupation of the kitchen through rest of day until close

71) Mr Mbala gave evidence about his working relationship with Mr Truelove. He described that there was a poor working relationship between them:

"Luke did not treat me as a sous chef, he treated me as a junior - I don't know what I did to him – I was going to senior chef Mr John and he said he would speak to him. I even went to Michael Grey but he and Luke...are both friends."

72)Mr Mbala also commented : *‘I don’t have power to say anything to Luke it would be rejected..he was like a bully and it happened many time – in front of customers he would shout at me like a young boy*

73)In relation to the specific allegations Mr Mbala gave a full account which I again summarise the salient points for the purposes of this judgment:

1) Given that the alleged incident with the monkfish was not found to be substantiated by Mr Baillie and it is not relied upon by the Respondent before me I have no regard to the evidence which has been adduced about it in any way negative to Mr Mbala – indeed his evidence about the circumstances has been accepted.

2) In relation to the lobster Mr Mbala gave evidence that:

- He started work at 5pm on 16th July when the lobster had been delivered and so by that time he would not have had access to the fridges and been able to deal with the lobster that night.
- On 17th July he did work an early shift and he identified the lobster needed to be processed. He discussed it with Mr Truelove and Mr Truelove told the Claimant that he would process the lobster.
- The Claimant accepts that later on he did not check if that had been completed. He explained firstly that Mr Truelove was his ‘senior’ and as such he did not feel it was necessary or appropriate for him to check on his work. Secondly he explained that on 17th he had a huge amount of fish of his own to process which took him until 3pm when he took a break before moving straight onto service. He said as far as the lobster was concerned:

“there were 3 people upstairs and I ask them to do it. In my mind they never came back to me”

- On 18th July Mr Mbala explained he was not working but he said he became aware that the lobster had not been processed because he saw on a workplace ‘chat group’ on his mobile telephone that Mr Truelove asked for the lobster to be brought to him for processing.

- On 19th July Mr Mbala was working but he says he did not see any lobster and as such he assumed it had been processed. He says he could not have missed a large box of lobster in the fridge. It would have been too late by now to process it in any event.

3) In relation to the scallops:

- Mr Mbala explained he was not working on 18th July when the scallops were delivered;
- On 19th July Mr Mbala started at 12pm and was the senior member of staff on duty throughout that day. He says he did not see the scallops and was not told that there were any scallops for processing.
- He was not working on 20th July but was on shifts on 21st, 22nd and 23rd July and he did not see the scallops which had been delivered on 18th July and which required processing.

74) One feature running through these allegations is a purported failure by the Claimant not to include the relevant orders of lobster and scallops on a stock-take which was completed on 24 July and a 'pre-count' Mr Mbala did as part of that exercise on 23 July.

75) In his evidence Mr Mbala explained that as he was not working on 24 July he did not complete the actual stock-take or submit the paperwork. As far as the 23 July was concerned Mr Mbala explained that he did not conduct a stock-take but a 'pre-count'.

76) Mr Mbala was asked about the process of a 'pre-count' and said:

"A pre-count you put on small [piece of] paper. It is up to the manager to count and check it. I do the pre-count by myself and the pre-count is not an official document."

77) Mr Mbala was asked how thorough the pre-count was and he responded *"we only check the basics we don't do everything"*. When he was asked if that meant he was 'physically in the fridge and counting' Mr Mbala confirmed he was.

78) Mr Mbala was asked *'If 10kgs lobster were in the fridge and scallops were in fridge you would have seen it'* Mr Mbala replied *"yes that is why I saying if it was I would"*

have counted it, but it is not an official document and it is up to the Head Chef and the stock take to check it and be official.”

- 79) For the Respondent Mr Baillie gave evidence. He was clearly a careful and considered witness. He adopted his witness statement and relied on the documentation produced from the appeal procedure. He properly acknowledged the limitations in his own knowledge and experience as set out below. I found Mr Baillie to be accurate and credible in his narrative.
- 80) He explained how he had come to be involved in hearing Mr Mbala's appeal as he was of the correct grade but was completely unconnected to Mr Mbala or the staff who had conducted the initial investigation or disciplinary interview. He accepted when he was cross examined that he was not a chef and had limited kitchen experience, although he described that he had once worked in a professional kitchen environment. Mr Baillie did not accept that his lack of professional training or experience in a kitchen environment hampered his ability to fairly address the allegations, he explained he had spent sometime preparing for the hearing and had placed great weight on the Claimant's explanations which he had considered with care, accepting his specialist knowledge.
- 81) Mr Baillie set out how he had conducted the appeal hearing as a complete 're-hearing' of the allegations and had considered the evidence and explanations from Mr Mbala afresh as opposed to conducting simply a review of the procedures so far.
- 82) Mr Baillie disagreed that there had been any agenda to dismiss the Claimant and highlighted that he had made different findings from the earlier investigation and he had accepted in significant part the Claimant's account. Mr Baillie set out however that the records he had been presented with demonstrated that there had been wasted stock of lobster and scallops. Mr Baillie detailed how he was satisfied that the Claimant had, at least in part, been responsible for that wasted stock. Mr Baillie detailed how each stock item at the Respondent has a unique reference code and as such the records showing the order delivery and then the wastage report showing that same number satisfied him that the same items had had to be disposed of because they were spoiled.
- 83) Mr Baillie explained that although he had found only some of the allegations established and he was satisfied that these did not constitute gross misconduct, he was satisfied that the appropriate sanction was dismissal. Mr Baillie maintained that the Claimant had failed in his management role within the kitchen and as such

errors had occurred which had led to significant wasted stock and a potential health risk. Mr Baillie had noted that the Claimant had committed similar errors before in the conduct which had led to the final written warning. Given those features of gravity in the instant allegation and similarity with the previous conduct Mr Baillie said he had concluded that dismissal with notice was appropriate.

Findings of fact

84) It is firstly necessary to make determinations on the underlying allegations as they are contested by Mr Mbala before moving to make findings in relation to the arguments presented on the investigation and disciplinary process.

85) I am satisfied, given the documentary evidence, that lobster and scallops were delivered to the kitchen on 16th and 18th July respectively – see p. 306 and 307 of the bundle.

Lobster

86) The delivery of lobster was seen by Mr Mbala on 17th July as he accepts it was and he says that Mr Truelove was to process it. I do accept the evidence from the wastage sheet p.311 of the bundle, with the unique number of this delivery, that ultimately this lobster was not processed and had to be wasted.

87) Whilst I accept Mr Mbala was not the senior chef on duty on 17th July and was completing his own tasks I am satisfied that as a member of the management team he did have some responsibility to check that it had been processed that day.

88) I accept that Mr Mbala saw messages on the 'group chat' about the lobster on 18th July and again given it was later wasted it can not have been prepared that day. As the lobster was still not prepared it must have remained present in the fridge when Mr Mbala returned to work on 19 July.

89) Although I accept that by 19 July the lobster was already past the time for processing I observe that the claimant maintains he did not see or deal with the order of lobster although I find that it was present and should have been seen.

Scallops

- 90) I am satisfied again from the clear evidence of purchase and wastage that the scallops were present in the fridge on 19th July when Mr Mbala was the senior member of staff in the kitchen and had the proper opportunity to see and arrange for the processing of these items.
- 91) Given that the scallops would have been stored in the fridge on 19th July I am satisfied that the Claimant failed to detect or address them which is a failure on his part.

Failure to include these items in the 23 July 'Pre count'

- 92) Although not listed as a separate disciplinary allegation significant evidence has been given about the issue of Mr Mbala's 'failure' to include the lobster and scallop orders on the stock-take/pre-count. I make clear that I am not satisfied that this alleged failure is made out.
- 93) Firstly I am satisfied Mr Mbala did not complete the official stock-take paperwork. Secondly whilst Mr Mbala highlights that the actual record he completed of the pre-count is not produced in evidence I do observe that his evidence has always been to the effect that he never saw either the scallops or the lobster (after the 17 July). As such it is clear he would not have included them in any count. However there is no evidence as to exactly when the scallops and lobster orders were 'wasted' and as such I can not be satisfied that they remained present and available to be seen by the Claimant on 23 July and so I disregard any suggestion that Mr Mbala failed to include them in a count.

Procedural Fairness

- 94) Turning then to features identified by Mr Mbala as affecting the fairness of the process adopted by the Respondent and the findings made.
- 95) Failure to provide CCTV – Mr Mbala has explained that he sought CCTV recordings from cameras in the kitchen which were not obtained and that this has the effect of undermining the fairness of the investigation and disciplinary proceedings. As set out above there was a delay between the incidents giving rise to these allegations and the investigation/disciplinary process due to the Claimant's ill health. I am therefore satisfied that the issue of CCTV was not raised by the Claimant (as it could not have been) until after period during which

recordings are kept. I am told (and it was not challenged) that this is a 30 day period. Importantly however the CCTV material was primarily sought by the Claimant in relation to the allegation made about the treatment of the monkfish. Ultimately, as set out above, this was not substantiated against him. In my assessment the provision of CCTV would have provided very limited material in the context of the other two allegations in any event. Overall I am satisfied that the absence of CCTV does not detract significantly from the overall completeness of the investigation which was conducted in this case which largely produces the contemporaneous business records.

96) Initial presence of Mr Truelove as the investigator – I note that both Mr Ward and Mr Baillie were later to conclude that Mr Truelove also bore responsibility in respect of the deficiencies which had occurred. It appears clear that had he remained employed by the Respondent he may well have been subject to disciplinary proceedings too. This does then properly raise concerns as to his initial role in investigating the Claimant. I have assessed that claim with care and I observe that in fact the ‘evidential’ material which Mr Truelove produced is principally the documentary evidence of business records such as the purchasing and wastage sheets and the rota. This then in my judgement is distinct from the situation which might have arisen had Mr Truelove taken extensive witness statements or produced in evidence one of his own. The only statement Mr Truelove took concerned the ‘monkfish’ allegation which as I have set out ultimately was found to be unsubstantiated. I note that Mr Truelove did not have any involvement in the disciplinary process beyond investigation and he was not involved in the decision making. Overall I am satisfied that the initial involvement of Mr Truelove has not tainted the investigation which appropriately produced the relevant material. I am satisfied that he played no role in the disciplinary process itself which allowed for a full testing of the evidence which had been gathered.

97) Bias by Mr Ward – the Claimant alleges that Mr Ward was biased against him and he should not have had conduct of the initial disciplinary meeting. In particular the Claimant highlights a TEAMS messages in which Mr Ward says Mr Mbala was ‘wrongly promoted’ to the Tom Kerridge outlet and he considered him a risk to the business – see p.529 of the bundle. I note however that those messages arise in the context of the appeal proceedings from Mr Ward’s decision. The comments made therefore are clearly at a time after he had made his determination against Mr Mbala. Mr Mbala has not given any other evidence explaining why he believes Mr Ward was biased against him. I am satisfied that the comments, coming as they do after Mr Ward had made his decision, do not give rise to an inference of

bias during the actual hearing itself. I have looked again at the transcript from the recording of the conduct of the disciplinary hearing and at Mr Ward's detailed and reasoned decision letter. In my view neither demonstrates any apparent bias on Mr Ward's part, on the contrary they demonstrate Mr Ward giving the Claimant a full chance to answer the allegations.

98) Delay - Mr Mbala further highlights that there was a delay between his dismissal on 18 October 2024 and the provision of the letter from Mr Ward setting out the reasons for his dismissal which was dated the 19 November – see p.406. This then is outside the period of 10 working days which is set out in the People Management Policy – see p.192 and Mr Mbala draws attention to the ACAS code which suggests 7 days might be an appropriate timescale. I note however that the Respondent's policy sets out that 10 days is the anticipated timescale 'where practicable' and that should there be a delay then the same should be notified and the affected employee kept updated.

99) In this case I observe that Mr Mbala was given a letter explaining the outcome of the meeting on 18 October see p.402 and that on 5 November the Respondent notified Mr Mbala that there would be a delay with the provision of the letter giving reasons. That communication also reassured the Claimant that the time to lodge any appeal would run from ten days following the receipt of that letter – see p.403. Whilst of course it is beneficial for matters to be addressed promptly and in accordance with the timescale envisaged in policy, I am satisfied that no prejudice was caused by the delay. It is clear Mr Mbala was updated about the delay. He was informed that his right to appeal the decision would run from receipt of the decision letter. Mr Mbala was able to submit his appeal notification following the 19 November letter which was accepted and a full appeal hearing was held. I am satisfied that such delay as there was does not in my analysis have any bearing on the fairness of the process conducted.

Conclusions

100) Given my findings – I return to the core issue in this claim of unfair dismissal. Firstly did the Respondent genuinely believe that the Claimant had committed misconduct? I am satisfied that it did. Both Mr Ward and Mr Baillie have produced detailed decision letters setting out the grounds for their belief and Mr Baillie has given evidence to me in regards to his findings. They each formed the belief after conducting hearings which tested the evidence gathered and gave the Claimant a chance to respond to the allegations.

- 101) Did the Respondent act in a procedurally fair manner. I am satisfied that it did. The Claimant was given a proper opportunity to answer the allegations in a fair process which was conducted by separate managers and detailed records of the proceedings were made and maintained. The Claimant was properly provided with the evidence underlying the allegation and was provided with the information needed to ensure he understood the gravity of the process and its conduct. I am satisfied that having followed that process Mr Ward and most important Mr Baillie did genuinely believe that the Claimant had committed misconduct and had made errors in food handling.
- 102) I next consider if the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? In particular I must ask if dismissal was within the range of reasonable responses?
- 103) I am satisfied that the misconduct found concerned the handling of food items which do present real risks to public health. I am satisfied that Respondent was therefore entitled to treat the breaches as contravention of the Respondent's Behaviour policy and categorize them as misconduct. Although the Claimant was not solely responsible for the breaches I am satisfied that the Claimant's position as a manager in the Kitchen environment was an important factor in establishing his liability.
- 104) I can well understand the Claimant's position that other staff may well also have been at fault and that some of the events, such as deliveries of products, occurred when he was not on shift but ultimately as I have set out above I must address the core issues in the case with a focus upon 1) the Claimant's conduct and 2) the overall fairness of the Respondent's process.
- 105) In the Claimant's case then two sets of allegations were found to be established against him by the Respondent, one occurring in February 2024 and the second occurring in July 2024. It is right to observe that the process which led to the 'Final Warning' had not yet commenced before the second breaches occurred and I have had regard to this element when considering the overall fairness of sanction. I note however that ultimately two separate incidents of similar misconduct had occurred. The Claimant's failures had led on two occasions to two sets of food products spoiling which had caused wasted costs to the business and

had brought potential food safety risks. The sanction for the first breaches had been mitigated to a final written warning because of the mitigation advanced by the Claimant as to the circumstances of 14 February, but no such mitigation presented itself in relation to the July incidents. Examining the matter overall I can not say, even with the Claimant's long and satisfactory work record, that on the facts dismissal falls outside of the band of responses which a reasonable employer could have adopted.

106) I can well understand why the Claimant, after a long history of employment without a single disciplinary issue, finds it impossible to accept that he was at fault in two sets of incidents which occur within close proximity. Ultimately however, for the reasons I have set out, I am satisfied that the complaint of unfair dismissal is not well founded and must be dismissed.

107) As set out above however I am satisfied that that complaint of wrongful dismissal is well founded and the Respondent is in breach of contract. The Respondent is ordered to pay the Claimant the sum of £4,024.15 being damages for breach of contract. This figure has been calculated using gross monthly pay to reflect the likelihood that the Claimant will be taxed upon it as Post Employment Notice Pay.

Employment Judge Richter

3rd July 2026

Judgment sent to the parties on

14th July 2026

For the Tribunal Office

Note

Reasons for the judgment were given orally at the hearing. Written reasons will not be provided unless a party asked for them at the hearing or a party makes a written request within 14 days of the sending of this written record of the decision.

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