



EMPLOYMENT TRIBUNALS

Claimant: Ms L Pearson

Respondent: Tesco Stores Limited

Heard at: Midlands East Tribunal

On: 16 July 2026

Before: Employment Judge Brewer

Representation

Claimant: Ms R Judd, Lay representative

Respondent: Ms I Brown, Counsel

JUDGMENT

The judgment of the Tribunal is as follows:

1. The claimant's claim for unfair dismissal fails and is dismissed.
2. The claimant's claims for wrongful dismissal fails and is dismissed.

REASONS

Introduction

1. This case came before me for a one-day final hearing. The claimant claims unfair and wrongful dismissal.
2. The parties had agreed a bundle of documents, and I had witness statements and heard live evidence from the claimant and, for the respondent from Mr Joe Kennedy, dismissing manager and Mr Matthew Burke, appeal manager. I also had an opening note from Ms Brown.
3. At the conclusion of the evidence, I heard submissions from both representatives.

4. The evidence did not conclude until around 4.15 pm and therefore I reserved my judgment which I set out below.
5. I have taken all of the above into account in reaching my judgment.

Issues

6. The issues are as follows:

Unfair dismissal

- 6.1. the respondent says it dismissed the claimant for 'conduct', that is not disputed,
- 6.2. did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant considering,
 - 6.2.1. were there were reasonable grounds for that belief,
 - 6.2.2. at the time the belief was formed had the respondent carried out a reasonable investigation,
 - 6.2.3. did the respondent otherwise act in a procedurally fair manner,
 - 6.2.4. was the dismissal within the range of reasonable responses.

Wrongful dismissal

- 6.3. this requires a determination of whether the claimant actually committed a repudiatory breach of contract.

Law

7. I set out here a brief description of the relevant law. I refer to other case law below.

Unfair dismissal

8. The relevant statute law is set out in sections 94, 98, 119, 120, 122, 123, 124 and 124A Employment Rights Act 1996 (ERA). I need not set out the text of those sections here.
9. In terms of case law, the relevant test I have applied are set out in the following cases,
 - 9.1. **British Home Stores Limited v Burchell** [1978] IRLR 379,
 - 9.2. **Iceland Frozen Foods Limited v Jones** [1982] IRLR 439,
 - 9.3. **Sainsburys Supermarkets Limited v Hitt** [2002] EWCA Civ 1588.

10. I remind myself that I should not step into the shoes of the employer and the test of unfairness is an objective one.

Wrongful dismissal

11. It is generally accepted that gross misconduct must be an act which fundamentally undermines the employment contract (i.e. it must be repudiatory conduct by the employee going to the root of the contract) — **Wilson v Racher** 1974 ICR 428, CA.
12. Moreover, the conduct must be a deliberate and wilful contradiction of the contractual terms or amount to gross negligence — **Laws v London Chronicle (Indicator Newspapers) Ltd** 1959 1 WLR 698, CA, and **Sandwell and West Birmingham Hospitals NHS Trust v Westwood** EAT 0032/09.

Findings of fact

13. I make the following findings of fact (references are to pages in the bundle).
14. The claimant was employed by the respondent from 19 December 2005 until her summary dismissal on 12 September 2025. She had just short of 20 years' service. She was employed at a Tesco Extra store in Lincoln.
15. The claimant does not have an unblemished record. She received a warning in 2021 for misconduct, but that was spent by the time the events leading to her dismissal occurred.
16. The claimant's role at the relevant times was a 'Dot.com Picker'. Her line manager was Isobel Mumby (IM).
17. The respondent has detailed policies and relevant to this claim are the Disciplinary Policy [66 – 74], and the Anti-Bullying Policy [47 – 57].
18. According to the Anti-Bullying policy includes sections dealing with harassment and sexual harassment. Sexual harassment includes sexual comments and spreading sexual rumours about a colleague [51].
19. There was no dispute that the respondent operates a zero-tolerance policy towards the types of behaviours set out in the policy.
20. The Disciplinary Policy includes as an example of gross misconduct "An act of discrimination, harassment or bullying (Dignity at Work)" [73].
21. IM became the claimant's line manager on 28 April 2025. IM's partner was also one of the respondent's management staff.
22. On 29 April 2025, in the staff canteen, the claimant said to four of her colleagues that IM was a "slapper". The claimant agreed, and I find, that this word is intended to refer to a woman who sleeps around. It is in and of itself, offensive. The claimant did say in evidence that the term can apply to men as well as to women. I must say that in all my years as an employment solicitor and judge, and in life

generally, I have never heard that term used to describe a man. The claimant conceded under cross-examination that the word 'slapper' is akin to 'slut' or 'whore', again, words used to describe women.

23. It was also alleged that the claimant said that IM had got to where she had with the respondent by 'sleeping' her way up or 'to the top', or words to that effect.
24. The claimant admits that she called IM a slapper, but she denies that she referred to IM sleeping her way up.
25. Along with the claimant, those present on 29 April to hear the claimant's comment were Kim Gatricks, Joanna Gill, Claire Dickson and Shona Carty. In her evidence the claimant said that she felt comfortable with this group as they were friends.
26. At some point, and it is not clear precisely when, IM became aware of the comments about her and the matter was escalated to a disciplinary investigation conducted by Ashton Grimbles. The investigation commenced with an initial interview with the claimant on 18 July 2025. The invitation to the meeting was given to the claimant on 17 July 2025 [163]. Mr Grimbles said he was investigating an allegation that the claimant made

"remarks surrounding team manager [IM] to your colleagues which do not fall in line with our Bullying and /Harassment Policy"

27. The claimant attended the meeting accompanied by her USDAW representative Natalie Read.
28. During the meeting on 18 July 2025, the claimant accepted that she had repeated remarks including the word "slapper" in relation to IM to a number of colleagues [176]. The notes of the meeting start at [172].
29. The claimant said in her evidence that she only made the comment once, however, that was not the case. Her own claim form says she may have repeated the comment to another colleague, Julie Busby, and in the meeting notes at [176] the claimant confirmed that *"I think I have told Julie Busby"*.
30. In terms of the investigation, Mr Grimbles interviewed:

- IM on 3 July 2025,
- the claimant twice, on 18 July and 5 September,
- Jess Bontoft on 19 July 2025
- Joanna Gill on 19 July 2025,
- Claire Dickson on 19 July 2025,
- Julie Busby on 22 August 2025 and 30 August 2025
- Kim Gatricks on 29 August 2025,
- Debbie Jugg on 29 August 2025 and
- Shona Carty on 4 September 2025.

31. In her meeting, Ms Bontoft did not recall the slapper comment but did tell Mr Grimbles that the claimant had told her the IM had "slept her way up" [181].

32. Ms Gill said that she did not recall any untoward comments [183 – 184].
33. Ms Dickson recalls the claimant making both the slapper comment and about IM sleeping her way up [186].
34. In her first meeting Ms Busby said she had no recollection of any of the alleged comments [187 – 189], but she reflected and asked to meet Mr Grimble again. Notes of the second meeting are at [195 – 196]. Ms Busby had recalled that it was the claimant who called IM a slapper or something very similar.
35. Ms Gatrack said she heard the slapper comment [190 – 191].
36. Ms Jugg recalls the claimant saying that IM had slept her way up [192 – 194].
37. Ms Carty said she had no recollection of the slapper comment.
38. As the claimant had admitted the slapper comment, the only issue to be determined in the investigation was whether she also said that IM had slept her way up, or words to that effect. Mr Grimble concluded that on balance, she had made both comments.
39. I find as a fact that the claimant did refer to IM sleeping her way up or words to that effect. The claimant's case is that those who say they heard this were part of a conspiracy against her but she produced no evidence, and no credible argument as to why that was the case.
40. On 11 September 2025 the claimant was handed a letter inviting her to a disciplinary hearing [219]. The allegation put to her was,
- “Making Remarks surrounding team manager Isabel Mumby to your colleagues which do not fall in line with our Bullying & Harassment Policy”*
41. The respondent concedes that the specific wording of the comments was not set out in the allegation. The notice also said that,
- “As this hearing may result in disciplinary action being taken against you, up to and including your dismissal from the Company, you are entitled to be represented at the hearing. This can be either a Tesco colleague or an authorised Trade Union representative”*
42. At this point the claimant had not been provided with the respondent's evidence.
43. The hearing was due to take place the following day giving the claimant 24 hours' notice which is in line with the respondent's Disciplinary Policy.
44. Mr Kennedy was asked to chair the hearing. He took advice from the respondent's Colleague Relations Team before the hearing as is usual.

45. The disciplinary hearing took place as planned. The claimant attended and was represented by Ms Read. The notes of the meeting start at [224].
46. Mr Kennedy made introductions and Ms Read asked to see the statements taken as part of the investigation. These were provided (save for IM's statement) with some redactions and anonymisation. There was an adjournment for the statements to be read. On resumption the claimant said that she had enough time to go through the statements and was ready to continue.
47. During the hearing the claimant maintained her position that whilst she did use the word slapper to describe IM, she did not say that IM had slept her was up or words to that effect.
48. At the conclusion of the hearing Mr Kennedy adjourned to consider his decision which he delivered when the hearing resumed. He determined that both comments were made by the claimant and that this constituted gross misconduct, and that the claimant was summarily dismissed. Mr Kennedy provided his written outcome on the same day [232].
49. The claimant appealed against her dismissal on 7 October 2025 [234].
50. The claimant raised 23 appeal points [235 – 239].
51. Mr Burke was asked to chair the appeal hearing which he fixed for 4 November 2025 [246]. The claimant asked if she could be represented by Ms Judd but as is common, the respondent's policy only allowed for representation by a Union representative or colleague and so the request was refused.
52. The appeal took place as scheduled. The notes start at [261].
53. By way of an aside, the claimant also raised a grievance but as this related to the disciplinary process Mr Burke dealt with it as part of the appeal. Nothing in my view turns on that.
54. The appeal was adjourned and reconvened on 21 November. The notes start at [296]. At the end of the hearing Mr Burke adjourned to consider his decision.
55. The appeal outcome was delivered at a further meeting on 26 November 2025, the notes of which start at [306]. In short, Mr Burke rejected the appeal and upheld the dismissal. Mr Burke answered each appeal point [see 301 – 304]. He confirmed the appeal outcome in writing on 28 November 2025 [312] which included his detailed findings [313 – 314].
56. The claimant commenced early conciliation on 1 December 2025. She received her EC certificate on 14 January 2026.
57. The claimant presented her claim to the Tribunal on 15 January 2026.

Discussion and conclusions

58. This case concerns both unfair dismissal and wrongful dismissal.

59. I shall deal first with unfair dismissal.

60. Dismissal is conceded and there was no challenge to the stated potentially fair reason for dismissal – conduct.

61. The claimant's case rests on three bases,

61.1. procedural faults,

61.2. bias of Mr Grimble, Mr Kennedy and Mr Burke, and

61.3. that dismissal was an unreasonable sanction.

62. I shall deal with each of these in turn.

63. I remind the parties and indeed myself that the test I have to apply is an objective one – was the procedure within the band of reasonable responses. As Ms Brown put it in submissions, no procedure is perfect, and it does not have to be. It has to be reasonable.

64. The procedural concerns may be summarised as follows:

64.1. the witness statements were accepted without question,

64.2. the allegation as put in writing to the claimant was vague,

64.3. there was no warning that the allegation might be construed as gross misconduct,

64.4. the claimant was not provided with all the witness statements before, or during the disciplinary hearing,

64.5. the claimant had insufficient time to prepare for the hearing.

65. My conclusions on each of these is as follows.

Witness evidence

66. Ms Judd seemed to argue that each of the witness statements taken by Mr Grimble had to have corroborating evidence. But this rather misses the point that most of what is in these statements is accepted by the claimant, and certainly the key point that she called IM slapper. The only actual issue for the respondent to conclude on the investigation was whether the claimant also said that IM had slept with her.

67. Ms Judd also failed to understand that the witness statements relate to the slapper comment largely corroborate each other. They are not identical, and some

witnesses recall things others do not, but nothing turns on this because, again, the misconduct is admitted.

68. As to the second comment, that was heard independently by Ms Bontoft, Ms Jugg and Ms Dickson. The claimant's evidence about this was that either these witnesses were mistaken or lying. The claimant said that Ms Dickson was upset because a mutual friend she had with the claimant had fallen out with her but not with the claimant and this explains why she lied. The first time this was raised was at this hearing and it borders on the incredible. But even if Ms Dickson was lying (and my conclusion is that she was not) this does not explain the evidence of Ms Bontoft and Ms Jugg.

69. In my judgment the respondent was perfectly entitled to find that, on balance it is more likely than not that the claimant said words to the effect that IM had slept her was up.

70. I should add that in any event Mr Grimble did not merely accept what the witnesses told him. He cross-referred to and analysed each statement before determining that the case ought to proceed to a disciplinary hearing.

Vague allegation

71. The allegation was consistently put as,

"Making Remarks surrounding team manager Isabel Mumby to your colleagues which do not fall in line with our Bullying & Harassment Policy"

72. Whilst that did not include the offending wording, the reality was that at all times the claimant was aware of the two comments she was accused of making which were the cause of concern.

73. I should add that under cross-examination the claimant was asked about this and she agreed that by the time of the disciplinary hearing she was clear what the allegation was. My own view is that she was or ought to have been clear from the outset.

Warning of potential gross misconduct

74. The invitation to the disciplinary hearing makes it plain that "this hearing may result in disciplinary action being taken against you, up to and including your dismissal from the Company". I agree that the respondent does not use the term gross misconduct but that, it seems to me, is irrelevant. What an accused person needs to know is how serious the allegation is and the respondent's reference to potential dismissal told the claimant that the matter was considered to be very serious.

75. Whether dismissal would be summary, by notice or by pay in lieu of notice does not change the fact that dismissal was a possibility and that is what the claimant needed to and did know.

Provision of witness statements

76. There is no absolute right to see witness statements in any case. The question in each case, and this is true of each part of the procedure adopted by a respondent, is whether fairness requires a particular procedural step to be taken.
77. Given the detailed disciplinary investigation meetings with the claimant it is apparent that at the date of the disciplinary hearing she was well aware of the evidence. Putting it in the round, she knew, and accepted that some colleagues with whom she was sitting on 28 April 2025, heard her call IM a slapper, something she readily admitted. She also knew some other colleagues told the respondent that effectively she said IM had gained her managerial position using sex. She did not need to see the witness statement to deny and continue to deny that she said this.
78. In any event the statements were provided, they were read and when that was done there was no objection from the claimant or Ms Read to continuing with the hearing, presumably because nothing they read in the statements made any difference to the claimant's case.
79. I should mention the witness statement of IM which was never provided to the claimant. It was not provided because it was irrelevant. IM never heard the claimant make any comments and so she added nothing to the case against the claimant.
80. It is also worth remembering that if this was a procedural fault it was cured on appeal which, on any reading of the papers was a thorough reconsideration of the entire case (see **Khan v Stripestar Limited** EATS 0022/15 and **Taylor v OCS Group Limited** 2002 EAT 8).

Time to prepare

81. The complaint here is that the claimant had just 24 hours' notice of the disciplinary hearing which was insufficient time to prepare for the hearing.
82. This is nonsensical. The claimant had known about the disciplinary investigation and therefore a potential hearing for 12 weeks before the hearing. She knew the detail of the allegation and she knew what her response was, so what preparation was there to do which required more time? The claimant simply gave no evidence about this.
83. Further, she did not seek an adjournment of the disciplinary hearing, or did Ms Read. I reject the claimant's contention that made in cross-examination that neither she nor Ms Read knew they could ask for an adjournment. Mr Kennedy specifically asked the claimant and Ms Read if they were ready to proceed once they had been given time to read the witness statements and they said they were. They could have said they were not ready, and I accept Mr Kennedy's evidence that if they were not ready to proceed, he would have given them further time.

84. This is not a case where there are complex allegations with a lot of detailed evidence and in my view 24 hours' notice was reasonable.

Alleged bias

85. The claimant's case, at its very highest on this was that all the managers are friends and so none of Mr Grimble, Mr Kennedy or Mr Burke were impartial.

86. If such an allegation is to be upheld it requires evidence and, put simply, the claimant provided none. The claimant did not refer to any part of the detailed contemporaneous documentation where evidence of bias is apparent or from which it might be inferred. She brought no witness evidence to substantiate this allegation.

87. I conclude there was no evidence of bias in the respondent's processes in this case.

Unreasonable sanction

88. In her submissions at the conclusion of the hearing, Ms Judd said that at worst the respondent should have given the claimant a final written warning.

89. There are many cases dealing with inappropriate language, discriminatory language, abuse and so on.

90. This respondent is in a highly competitive market where reputation matters, and this goes a long way to explaining why it takes a zero-tolerance approach to what was gross discriminatory language.

91. The claimant readily conceded at this hearing that the word slapper is a sexual comment that it is similar to slut or whore, and she said she would not want it said about her.

92. The words used must also be seen in context. So, for example words that may be acceptable on a construction site may be unacceptable in an office. Tribunals judge the offence complained of in the light of the commonly accepted standards of the particular work environment in which the language was used.

93. The respondent's detailed Anti-Bullying Policy sets out the standards it applies and there is no doubt that the respondent acted reasonably in concluding that what the claimant said was well beyond that which is acceptable to them. The Disciplinary Policy clearly signposts the potential for dismissal in this type of case.

94. I pause to note that the claimant said in evidence that she had never seen either of these policies. There are two [points to make about that. First, she could have looked at them had she wished to. They are readily available on the respondent's intranet. Second, I have no doubt that Ms Read would have received considerable training by USDAW and would be familiar with the relevant policies.

95. Employers have at their disposal a range of reasonable responses to matters such as the misconduct in this case. This may span summary dismissal down to an informal warning. It is inevitable that different employers will choose different options. In recognition of this fact, and in order to provide a 'standard' of reasonableness that Tribunals can apply, the 'band of reasonable responses' approach was formulated. This requires Tribunals to ask: did the employer's action fall within the band (or range) of reasonable responses open to an employer?

96. Only if no employer, acting reasonably, could have dismissed, would dismissal fall outside the band.

97. This approach was approved by the Court of Appeal in **British Leyland (UK) Ltd v Swift** 1981 IRLR 91, CA, where Lord Denning MR stated:

'The correct test is: Was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair. But if a reasonable employer might reasonably have dismissed him, then the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness, within which one employer might reasonably take one view: another quite reasonably take a different view.'

98. In deciding whether to dismiss, Mr Kennedy took into account the claimant's length of service, her relatively unblemished record and her loyalty to the respondent. He weighed against that the seriousness of the language used and the context in which it was used measured by the respondent's expected standards of behaviour set out in its policies.

99. I have no doubt that given the nature of the employer, the clear policies it has in relation to discriminatory language (among other things) dismissal was within the band of reasonable responses in this case.

100. In summary I conclude on the unfair dismissal claim as follows:

100.1. the respondent genuinely and reasonably believed that the claimant called IM a slapper and said that she had slept her way up, or similar wording,

100.2. the respondent carried out as much investigation as was reasonable in all the circumstance,

100.3. the decision to summarily dismiss the claimant was within the band of reasonable responses,

100.4. the procedure followed by the respondent fell within the band of reasonable responses.

101. For those reasons the claim for unfair dismissal fails and is dismissed.

Wrongful dismissal

102. An action for wrongful dismissal is a common law action based on breach of contract. It is very different from a complaint of unfair dismissal. The reasonableness or otherwise of the respondent's actions is irrelevant; all I have to consider is whether the employment contract has been breached by failing to give notice. If it has, then dismissal is wrongful.
103. To put the key question in a nutshell, it is: was the claimant guilty of conduct so serious as to amount to a repudiatory breach of the contract of employment entitling the respondent to summarily terminate the contract?
104. Given all of my findings above I am satisfied that the claimant calling her line manager a slapper and spreading a rumour that she had slept her way to her position is clearly a repudiatory breach of contract, if nothing else it constitutes a breach of the implied term of trust and confidence.
105. For those reasons the claim for wrongful dismissal fails and is dismissed.

Employment Judge Brewer

Date: 17 July 2026

JUDGMENT SENT TO THE PARTIES ON

24/08/2026

J. Woolley

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