



EMPLOYMENT TRIBUNALS

Claimant: Mr A F Mohamed Fazli

Respondent: Lidl Great Britain Limited

HELD AT: Liverpool (remote, by CVP)

ON: 14 & 15 July 2026
(& in chambers on 3
August 2026)

Before Employment Judge Johnson

REPRESENTATION:

Claimant: Unrepresented

Respondent: Ms Eleanor Wheeler (counsel)

JUDGMENT (Reserved judgment and reasons)

The judgment of the Tribunal is that:

- (1) The claimant was fairly dismissed by the respondent. This means that the claimant's claim of unfair dismissal was unsuccessful.

REASONS

Introduction

1. These proceedings arose from the claimant's employment as a shift manager with respondent and his dismissal on 16 June 2025 by reason of misconduct.
2. The claimant presented a claim form to the Tribunal on 22 November 2025 and brought a complaint of unfair dismissal. This was following a period of early conciliation with ACAS from 11 September to 23 October 2025.

3. The respondent presented a response and grounds of resistance on 18 March 2026. The case was listed for a final hearing and case management orders made relating to disclosure of documents, hearing bundle and exchange of witness statements.

Issues

4. The issues which the Tribunal has been asked to consider:

'Unfair Dismissal'

1. *Can the claimant prove that there was a dismissal?*

Reason

2. *Has the respondent shown the reason or principal reason for dismissal?*
3. *Was it a potentially fair reason under section 98 Employment Rights Act 1996?*

Fairness

4. *If so, applying the test of fairness in section 98(4), did the respondent act reasonably in all the circumstances in treating that reason as sufficient reason to dismiss the claimant?*
5. *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) *The respondent genuinely believed the claimant had committed misconduct;*
 - (2) *there were reasonable grounds for that belief;*
 - (3) *at the time the belief was formed the respondent had carried out a reasonable investigation;*
 - (4) *the respondent followed a reasonably fair procedure;*
 - (5) *dismissal was within the band of reasonable responses.*

'Remedy for unfair dismissal [if the claimant was unfairly dismissed]'

6. *Should the Tribunal order reinstatement and/or re-engagement? The Tribunal will consider in particular whether reinstatement and/or re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.*
7. *If there is a compensatory award, how much should it be? The Tribunal will decide:*
 - (1) *What financial losses has the dismissal caused the claimant?*
 - (2) *Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?*
 - (3) *If not, for what period of loss should the claimant be compensated?*

- (4) *Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?*
 - (5) *If so, should the claimant's compensation be reduced? By how much?*
 - (6) *Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?*
 - (7) *Did the respondent or the claimant unreasonably fail to comply with it?*
 - (8) *If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?*
 - (9) *If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?*
 - (10) *If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?*
 - (11) *Does the statutory cap of fifty-two weeks' pay apply?*
8. *What basic award is payable to the claimant, if any?*
9. *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?*

Evidence used

5. The respondent's case was presented first because the claim only involved a complaint of unfair dismissal where there was no dispute that a dismissal had taken place. They called the following witnesses:
- a) Nathan Harrison (Area Manager/Dismissing Manager)
 - b) Andrew Pattinson (Regional Head of Sales/Appeal Manager)
6. The claimant's case then followed, and he relied upon the following witnesses:
- a) The claimant's witness evidence
 - b) Muhammed Abdullah (former Lidl Bolton store colleague)
 - c) Alex Withington (former Lidl Bolton store colleague)

Mr Withington declined to attend the final hearing to give oral evidence under oath. While his statement is signed and dated, I explained to the claimant that without his oral evidence, Mr Withington's statement would have limited evidential value.

7. Documents were included within an agreed 266 page bundle which comprised of Tribunal documents such as the claim form and response, contractual documents and policies, general documents relating to the disciplinary process, remedy documents and some additional documents disclosed by the parties (presumably), following the agreement of the original hearing bundle.

8. CCTV evidence was provided in relation to 6 short films taken on certain dates in February and March 2025 and which the respondent said revealed suspicious behaviour by the claimant relating to till usage and making up discounted fruit and vegetable boxes. Ms Wheeler was helpfully able to share the video extracts and play them to the Tribunal on the CVP platform.

Findings of fact

9. The parties should note that the Tribunal's findings of fact do not seek to deal with every point where the parties disagree, simply what is relevant to the issues which the Tribunal is being asked to consider. If the discussion of an incident or point is not referred to within these findings, it does not mean that it has not been considered by the Tribunal, simply that it is not relevant to the issues and the findings that we are required to make.
10. In terms of the findings that we make, the Tribunal has reached its decision on what it considers to be on balance of probabilities the most likely way/reason in which an incident arose.
11. Where page numbers are indicated in brackets, that relates to the page numbers of the hearing bundle unless otherwise explained.

The respondent

12. The respondent is a large UK supermarket chain with many stores across the North West region. It can be considered a large employer and has access to significant human resources (HR) support and advice. It also provides numerous policies and procedures which their employees are subject to. In this case, the following are relevant:
 - a) Disciplinary Policy (pp36-42)
 - b) Too Good to Waste (F&V) Procedure (pp43-46)
 - c) Cashier Till and Safe Procedure (pp47-60)
 - d) Notification of Employee Leaver Form (pp61-62)
13. The Too Good to Waste Procedure was designed by Lidl to reduce food waste and it focused upon perishable fruit and vegetables. Those items which included incomplete packets because one item of fruit had become mouldy or bananas that had become bruised. Staff would write off the product from normal sale price and add them to a mixed fruit and vegetable box with an approximate total weight of 5kg. The boxes would then be left at the packing bench by the tills and sold at the material time at £1.50 per box. A sticker would be added with a bar code indicating that the box was covered and priced according to this procedure.
14. I accepted that all Lidl shop based staff would be trained in this procedure and would be aware of the criteria to be applied and the times when it should be carried out. This would include the Fit For Sale time which took place before the store opened in the morning and Fit for Four time which took place at around 4pm in the afternoon. The stores typically closed at 10pm and any

stock suitable for Too Good To Waste labelling, would be processed the next day as part of the Fit For Sale activity at store opening time.

15. While it may have been a case that from time to time, staff may have boxed up more often during the day, most stores operated with a relatively small number of staff. Because the correct Too Good to Waste process took around 30 minutes to do properly, on balance, it was not something that staff would be carrying out every hour or so. It inevitably took time to properly check through the wide range of fruit and vegetables for sale, to scan and box them.
16. I also concluded that staff knew the procedure was primarily concerned with selling less than perfect fruit and vegetables to the customer with the purpose of avoiding food waste. This meant that only less than perfect items would be written off. It was not a procedure to enable staff to write off food for their own boxes to purchase and for them to purchase as customers themselves. They were not precluded from buying boxes, but they would not make them up for their own use when it suited them.
17. Mr Harrison gave a very credible explanation that deliberate and incorrect writing off outside of the procedure by staff, could be '*akin to theft*' because if full value items of say £11.50 were being written off, boxed and sold at £1.50, Lidl would be deprived of £10 income to which at that time, they would have been entitled.
18. The Cashier Till and Safe Procedure was another important process to ensure that no fraud took place but also to protect staff from accusations of such behaviour. Each colleague who could operate tills, would have their own operator number which they would apply when logging on to their designated till. The operation of Lidl's '*four eye*' principle involved two members of staff being present when tasks such as cashing up a till and collecting a till drawer were being carried out. Additionally, when staff wished to make purchases themselves from the store, they were expected to have another staff member scan the selected items and to request that they pay in the usual way, like any normal customer. Although it is understood that a staff discount was available, staff were not permitted to scan their own purchases.

The claimant and his workplace

19. The claimant was employed by Lidl from 9 November 2021. He worked in their Bolton store. At the time he was dismissed, he was employed as a Shift Manager which was a supervisory role. I understood that although each Lidl branch might employ numerous people, working patterns meant that on each shift, there might be only 4 or 5 members of staff, including one or more shift managers. The claimant typically worked the later shift beginning at 12:30pm to 2pm and ending work between 10pm and 11pm. He had a health issue which meant that his sleep patterns and energy levels were affected, and he found the later start to be easier to manage.
20. I accepted Mr Abdullah's evidence that the store had around 6 or 7 tills, but considering the staffing numbers, it was unlikely that they would all be operating at the same time.

The concerns identified during an internal audit

21. At some point during March 2025, an internal audit of the Bolton store resulted in concerns being identified relating to an unusually high number of Too Good to Waste fruit and vegetable boxes being sold at around the same period towards the store's closing time of 10pm. It was not clear initially what the reason was behind these sales, but when relevant receipts for these times were examined, it was noted that the claimant's staff account had been used, (pp64-79).
22. Although Lidl's CCTV records are erased once a certain period has elapsed, the audit had taken place relatively soon after the transactions under investigation. It was therefore possible to access the CCTV footage and extract copies of the recordings for those times. Several concerns were then identified concerning the way in which the claimant was working and which were as follows:
 - a) On 17 February 2025, the claimant was seen serving himself on a till and scanning items when a colleague should have been doing this for him.
 - b) On 21 February 2025, buying Too Good to Waste fruit and vegetable boxes on 21 and 22 February, 1 and 3 March 2025.
 - c) On 21 February 2025, preparing a Too Good to Waste box not long before store closure and outside of the normal pre shop opening or 4pm times. Once making up these boxes, he purchased them himself at the reduced Too Good to Waste price.

The Investigation Process

23. The Area Manager Alesha Panton was instructed to commence an investigation in accordance with the disciplinary procedure. She interviewed the claimant on 15 March 2025, and the interview ran for an hour, (pp85-91).
24. The conclusion of the investigation was that there was a case to answer and that the claimant should attend a disciplinary hearing. It was held in the afternoon which I understood to be at a time that better suited the claimant and consistent with his normal shift pattern.
25. During the investigation, the claimant confirmed that he was aware of the Cashier Till and Safe procedure and the requirement that he could not use another cashier's operator number or till. He explained that when making personal purchases, *'I need to get my receipt signed, four eye contact...'* but then said, *'...when its busy I've served myself.'* When challenged about this by Ms Panton, he conceded that he cannot serve himself on the till. He then qualified this by saying *'I have served on another till when a customer has argued with the cashier. Maybe I have used someone else's till im [sic] not sure.'*
26. The claimant was then shown the CCTV footage from 17 February 2025 with him being recorded at colleague Jacob's till, (till number 1). Ms Panton observed that the claimant served himself and she provided the receipts

confirming this transaction. When asked if he recalled this, the claimant said, *'maybe yes...don't know maybe he [Jacob] was busy, I was ahead in the night that's why.'* Ms Panton double checked that the claimant accepted he had served himself on Jacob's till and that he was aware it was a failure to follow the *Tills and Safe procedure*, (pp86-7).

27. Ms Panton then moved onto the Too Good to Waste procedure and the claimant confirmed that he was aware of this. He confirmed that he knew what food should go into the reduced sale box and that they would be completed in the morning and in the evening as well. When asked who the boxes were for, the claimant replied, *'for myself. Customers'*. Following further questioning, he confirmed that he would sometimes make himself a box and buy in the night. He then confirmed that as he worked 3 days each week, he would normally buy one on Monday and one on Saturday for himself.

28. When questioned about the weight he typically made boxes up to, he was initially vague. But when reminded that under the Too Good to waste procedure, they should weigh, he said he would, *'...normally make big boxes, maybe 7kg'*. He was then referred to the CCTV footage of him making up a box for himself on 21 February 2025, and which was supported by a receipt in respect of his purchase. He confirmed that he had made himself up a box rather than collecting a box previously made up for general sale to the public, (pp88-89). When asked whether he was following the procedure correctly, his answer was equivocal. On several occasions he was asked whether he set a good example given that he occupied a supervisory role and again, his answers were vague and did not respond to the question.

29. Following a short adjournment, the claimant was notified that he was being suspended on full pay while the investigation continued. The claimant signed the note confirming he did not dispute what had been recorded during the interview. A letter was sent to him confirming this decision, (pp101).

30. Ms Panton completed the respondent's formal disciplinary checklist and completed her investigation report which was dated 17 March 2025. She identified the following concerns:

- a) Concern 1 – Till Sharing and Serving themselves on the till. She recorded that the claimant confirmed he was aware that tills should not be shared and he should not serve himself. It was noted that the claimant did not dispute what had happened.
- b) Concern 2 – Manipulation of the Too Good to Waste box procedure on a number of occasions from 17 February 2025 to 10 March 2025. It was recorded that the claimant admitted making up boxes for himself and that they could be greater than the 5kg (approx) weight guidance. It was noted that he was unaware of the recommended weight.

Ms Panton's recommendation was that the case should be referred to a disciplinary hearing because of the claimant's failure to follow the two procedures and concerns regarding dishonesty in a leadership role as a shift manager, (pp92-100).

Disciplinary Hearing

31. Nathan Harrison who is also an Area Manager, was appointed as the Disciplinary Hearing Manager. He invited the claimant to a disciplinary hearing by letter on 8 April 2025 and which was planned to take place on 11 April 2025. He was informed of the allegations, that they could be considered gross misconduct and that he could be represented by a co-worker or union representative, if he wished. The claimant was provided with a copy of the disciplinary policy and warned that if the allegations were proven, he could be dismissed, (pp102-3). This hearing was rescheduled upon the request of the claimant to 23 April 2025, (p104).
32. The disciplinary hearing began at 3:11pm on 23 April 2025 and ended almost two hours later at 5:07pm. The claimant was in attendance, with Mr Harrison chairing the meeting as decision maker and a note taker was present. The notes were available within the hearing bundle and signed by the claimant, (pp105-108). The claimant confirmed that he was happy to proceed without a co-worker or union representative. He confirmed that he had worked for the respondent for 3 ½ years and was a shift manager, being assigned to till 4.
33. The claimant asserted that he had made a genuine mistake when serving himself on till 1. He confirmed he had received relevant training concerning the use of tills. He attributed his use of till 1 to his colleague being too busy but when asked why he was not helping him if it was so busy, he said he had not had a break, and Ms Panton had makes things very tough in the store. The claimant described himself making a mistake and being confused and he knew that he could not buy stock after 10pm when the store closed. The claimant confirmed that he had used till 1, that he *now* knew it was against procedure and then said Jacob could not serve him as he was rushing to catch his bus. He then accepted that Jacob was able to take the payment after the claimant had served himself without Jacob being present.
34. The claimant then confirmed making up Too Good to Waste boxes of fruit and vegetables for himself. When asked how he had time to do this when things were so busy, he argued that when he was filmed making up boxes for himself, he was also doing a full quality check of all the fruit and vegetables, (as carried out during the Fit for Sale or Fit for Four checks). He conceded that he now knew this was not the correct way to make up fruit and vegetables boxes under the Too Good to Waste procedure but denied manipulating the system for his own benefit.
35. Mr Harrison provided his decision and confirmed in a letter dated 16 June 2026 and which sent by email to the claimant, (pp115-118). It noted that the claimant referred to previously having suffered a heart attack and receiving medication to treat this problem. He did not identify this as a cause or contributory factor in relation to the alleged conduct. He noted that the claimant admitted the conduct identified and that he had received all relevant training and summarised the evidence given by the claimant during the disciplinary hearing.

36. His conclusion was that the claimant had breached the Till and Safe procedure by serving himself and using another cashier's till and that he was sufficiently trained. He noted that the claimant said he used the till without Jacob because the team were rushing, but that he later conceded that Jacob could have served him. Additionally, he noted that the claimant had time to make up a fruit and vegetable box and which was scanned in this transaction. He concluded that the claimant chose not to follow the procedure and his explanation did not serve as mitigation for him breaching it.
37. Mr Harrison also found that the claimant had manipulated the Too Good to Waste Procedure. He noted that the CCTV footage revealed the claimant writing off stock at random to make up a box for his own use and he did not carry out a full check of all fruit and vegetables in accordance with the procedure.
38. His conclusion was that the claimant's conduct was unsatisfactory and he would be summarily dismissed for gross misconduct from 14 June 2025. He noted that the two procedures had been clearly breached and this was supported by CCTV evidence. He was concerned that the claimant had initially argued that Jacob served him on till 1, when he was only present at the actual payment part of the process. A right of appeal was offered, (pp115-118).

The Appeal

39. The claimant gave written notice of his appeal on 21 June 2025 raising several grounds of concern, (pp119-120). He said that in relation to the use of till 1, the CCTV evidence revealed that he did not serve himself, because his colleague Jacob completed the purchase and gave him proof of receipt, (identified as receipt number 9). He also argued that in relation to the fruit and vegetable box that was discussed during the disciplinary hearing, Mr Harrison had wrongly adjusted the weight/amount of items that had been added to the box. He said he purchased the box at the correct price, and he was allowed to do so. He argued that both the investigation and the disciplinary hearing were biased.
40. Andrew Pattinson who is the Regional Head of Sales, was appointed as the Appeal Hearing Manager and, in a letter, dated 30 June 2025, invited him to an appeal hearing on 4 July 2025, (p121).
41. The meeting took place on 4 July 2025 and in addition to the claimant and Mr Pattinson, a note taker was present. It was just under 1 hour in length. The claimant signed the notes at the end of the appeal meeting, (pp122-125). The claimant explained that he had started scanning on till 1 and Jacob completed the purchase. By giving the receipt to the claimant, he argued that Jacob completed the Four Eye process in the transaction. Mr Pattinson noted that in relation to the amount of items, there was an error concerning the weight that was recorded and this was annotated in ink, and this could be identified from the disciplinary note with a lower value being indicated, (p108). In relation to the boxes, the claimant said that he only used suitable items in terms of quality and he did not include items that were fit for normal sale.

42. The claimant argued that the disciplinary investigation and hearing were biased because Ms Panton failed to identify two transactions when he used till 1 and Mr Harrison did not consider this matter despite knowing that it was wrong. He did, however, accept that the first transaction was completed by Jacob, but the claimant himself scanned the items without Jacob being present, contrary to procedure. His argument was that the second transaction was carried out properly with Jacob present throughout.
43. Mr Pattinson said he would need to take time to reflect and the claimant then argued that till sharing was a common practice in the Bolton store, that he was being targeted as the only Asian in the store and argued that Lloyd the store manager would jump on the claimant's till and carry out transactions and thereby sharing the till while the claimant was logged in. Finally, he said that the decision was harsh because he was dismissed for making one mistake.
44. Mr Pattinson took the time to investigate the issues identified by the claimant. He reviewed the CCTV evidence, meeting minutes the relevant procedures. He also asked Ms Panton to carry out an investigation into the allegation on culture of till sharing within the Bolton store. She interviewed five members of staff and they all confirmed till sharing was not tolerate, the store manager had not been observed sharing tills. Each was asked to sign the note taken from their interview confirming what they had said to be correct. All were aware that it was considered a serious offence. All were considered to have displayed a good understanding of the Too Good to Waste procedure as well.
45. Mr Pattinson considered the appeal grounds and, in a letter, dated 8 August 2025, confirmed his decision as follows;

Allegation one – the claimant was identified scanning through items himself and that while a colleague was present at the time of payment, this did not validate the transaction. He noted that the claimant had previously confirmed being trained in the Till and Safe Procedure. This allegation was not found in his favour.

Allegation two – the claimant was found to have written off selected items of fruit and vegetables to place in a box that he subsequently paid for himself as a Too Good to Waste box. He noted that this was supported by the CCTV evidence and records of purchases.

Allegation three – the claimant was not considered to have been carrying out a full fruit and vegetable check when he made up his box. The CCTV footage revealed only a few lines being checked and the remainder not being checked. Consequently, it was concluded that the claimant was targeting specific lines for his own box which would enable him to purchase a box of fruit and vegetables at a reduced price without carrying out a comprehensive check of the lines under the procedure.

Allegation four – the witness evidence did not confirm that there was a culture of till sharing. However, CCTV evidence viewed by Mr Pattinson identified two

different colleagues using the same till and this would be investigated further. He therefore found this allegation in the claimant's favour.

His conclusion was the decision to dismiss was correct and this was because the claimant manipulated the Too Good to Waste policy to make a reduced price box for his own benefit and the till sharing incident. He recognised that any other colleagues who were found to have till shared, would be 'addressed', (pp138-142). This will be discussed below.

Law

46. section 98(1) of the Employment Rights Act 1996, it is for the employer to show the reason for the dismissal (or if more than one the principal reason) and that it is either a reason falling within section 98(2) or for some other substantial reason of a kind such as to justify the dismissal of the employee holding the position he held. A reason relating to conduct is a potentially fair reason falling within section 98(2).
47. Under section 98(4) of the Employment Rights Act 1996, where the employer has shown the reason for the dismissal and that it is a potentially fair reason, the determination of the question whether the dismissal was fair or unfair 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 must be determined in accordance with equity and substantial merits of the case.
48. When determining the fairness of conduct dismissals, according to the Employment Appeal Tribunal in British Home Stores v Burchell 1980 ICR 303, the Tribunal must consider a threefold test:
 - a. The employer must show that he believed the employee was guilty of misconduct;
 - b. The Tribunal must be satisfied that he had in his mind reasonable grounds upon which to sustain that belief; and
 - c. The Tribunal must be satisfied that at the stage at which the employer formed that belief on those grounds, he had carried out as much investigation into the matter as was reasonable in the circumstances.
49. The requirement for procedural fairness is an integral part of the fairness test under section 98(4) of the Employment Rights Act 1996. When determining the question of reasonableness, the Tribunal will have regard to the ACAS Code of Practice of 2015 on Disciplinary and Grievance Procedures.
50. It is not for the Tribunal to substitute its own decision as to the reasonableness of the investigation. In Sainsburys Supermarkets v Hitt [2003] IRLR 23 the Court of Appeal ruled that the relevant question is whether the investigation fell within the range of reasonable responses that a reasonable employer might have adopted.

51. Nor is it for the Tribunal to substitute its own decision as to the reasonableness of the action taken by the employer. The Tribunal's function is to determine whether, in the particular circumstances of the case, the decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted. See: Iceland Frozen Foods v Jones [1982] IRLR 430.
52. Inconsistency of treatment between employees accused of the same offence is a factor Tribunals will take into account, although the respective roles each employee played in the incident, their past records, and their level of contrition may justify different treatment. The guiding principle is whether the distinction made by the employer was within the band of reasonable responses open to it.
53. In respect of certain claims, such as unfair dismissal and breach of contract, Section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 provides that where an employer or employee has unreasonably failed to comply with the Code of Practice, it may, if it considers it just and equitable in all the circumstances to do so, increase or reduce compensation awards by up to 25% (this does not apply to any Basic Award for Unfair Dismissal).
54. The Polkey principle established by the House of Lords in Polkey v Dayton Services Ltd [1988] ICR 142, is that if a dismissal is found unfair by reason of procedural defects, then the fact that the employer would or might have dismissed the employee anyway goes to the question of remedy and compensation reduced to reflect that fact.
55. Section 122(2) of the Employment Rights Act 1996 provides that where the Tribunal finds that any conduct of a Claimant before the dismissal was such that it would be just and equitable to reduce the amount of the Basic Award, the Tribunal must reduce that amount accordingly.
56. Section 123(6) of the Employment Rights Act 1996 provides that where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the Claimant, it must reduce the amount of the compensatory award by such proportion as it considers just and equitable.
57. The Tribunal must award compensation that is just and equitable. Even if the loss arising from the dismissal is substantial, the Tribunal can still award no compensation if it would be unjust or inequitable for the employee to receive it.

Discussion

Jurisdiction – unfair dismissal

58. The claimant had been continuously employed by Lidl at the date of dismissal for more than two years and in accordance with section 108 ERA 1996, the Tribunal had jurisdiction to hear an unfair dismissal claim.
59. He also presented his claim form on 22 November 2025 following a period of early conciliation from 11 September until 23 October 2025. As his effective date of termination was 16 June 2025, he was just in time to bring his claim, and time limits were not an issue in relation to his unfair dismissal claim

Unfair dismissal – substantive complaint

60. There was no dispute that there was a dismissal and the respondent terminated the claimant's employment on 16 June 2025.
61. Moreover, there was no dispute that the respondent relied upon conduct as the reason for the dismissal and this is a potentially fair reason under the ERA 1996.
62. Moving onto the question belief in this reason, the employer must show that he believed the employee was guilty of misconduct. As the decision maker is Mr Harrison, my focus is upon his evidence and the reasons behind his belief that gross misconduct existed.
63. When he heard the disciplinary hearing on 23 April 2025, he had read the detailed investigation report prepared by Ms Panton and observed the cross referencing of the findings in the report with the available CCTV footage together with the claimant's admissions regarding the till and the fruit and vegetable boxes.
64. Mr Harrison's evidence and the available documents persuaded me that he had not made up his mind before the disciplinary hearing began and he allowed the claimant to make submissions during the hearing and the note clearly shows an engagement between them. He placed great reliance upon the CCTV footage, which showed the claimant on 17 February 2025 serving himself at Till1. CCTV footage for 21 February 2025 showed that the claimant was not carrying a routine fruit and vegetable check but was selecting items for his own box which bought at the reduced price under the Too Good to Waste procedure. It was noted that the claimant accepted that this was contrary to the procedure and that he prepared the box for his own purchase.
65. Consequently, it was reasonable for Mr Harrison to believe that the claimant had committed gross misconduct which was identified within the disciplinary hearing which led to his dismissal.
66. It is this detailed investigation, the convincing CCTV evidence and receipts together with the claimant's admissions which demonstrated to me that Mr Harrison had reasonable grounds upon which to sustain the belief that the claimant was responsible for the gross misconduct that was identified.
67. I then considered whether at the time when Mr Harrison formed his belief of the conduct in question, he had carried out as much investigation into the matter as was reasonable in the circumstances. In this case, there was a disciplinary procedure which involved an investigating manager (Ms Panton), who had prepared a detailed report with evidence in support, and which included contemporaneous CCTV footage of the incidents in question together with a record of the claimant's initial interview. Considering the nature of the allegations, this was appropriate and reasonable and objectively revealed a case that could proceed to a disciplinary hearing. The claimant was however, allowed a full disciplinary hearing where he could participate

and provide additional evidence that might provide a different context relating to the evidence already available.

68. In terms of procedure, I concluded that the respondent complied with the requirements of the ACAS Guide: Discipline and Grievances at Work (2020) where an investigation was carried out to establish the facts. A suspension was properly ordered and was treated as a neutral act, being on full pay. The disciplinary process was not unduly long, and a full investigation report was produced, considering the evidence then available and concluding that a case to answer existed.
69. A disciplinary meeting was held with reasonable time being allowed for the claimant to be prepared and identifying the allegations together with a copy of the investigation report being provided. The claimant was warned that the allegations could if proven amount to gross misconduct and result in dismissal. He was notified that he could be accompanied and was under no illusions as to the gravity of what was happening. The meeting followed a clear structure dealing with each allegation in turn and allowing the claimant time to answer and provide his views concerning the matters which he was expected to answer. There was a break before the decision was reached and a full detailed explanation was included within the dismissal letter of what had happened and why a decision to find gross misconduct and summary dismissal had been made.
70. The claimant was allowed a right of appeal, and a full review of his grounds of appeal were considered by Mr Pattinson with an investigation taking place into those matters that the claimant raised. This was not a perfunctory exercise and included an investigation into wider failures alleged by the claimant. However, the decision to uphold the appeal and to largely reject the grounds raised was clearly explained. Mr Pattinson was not involved with the disciplinary matter before the appeal and conducted this part of the process fairly and transparently. His evidence was credible and reliable.
71. Correctly, Ms Panton confirmed to the claimant that at the initial investigatory meeting, he did not have a right to be accompanied by a trade union representative or co-worker. As confirmed in the ACAS Guide: Discipline and Grievances at Work (2020), this right exists in a formal disciplinary hearing where a formal warning or dismissal could be imposed. This right was offered by the respondent at the disciplinary hearing and appeal.
72. I did consider the claimant's challenge that Ms Panton and Mr Harrison were too close to be independent of each other in the process. However, having considered the papers available and having heard the evidence of Mr Harrison, I did not identify anything concerning. They were both Area Managers but operated in different roles within the process and Mr Harrison did not simply follow Ms Panton's investigation report but followed a proper role as a disciplinary hearing manager. I accepted that he read the investigation documents carefully and while accepting there was a case to answer, that was a reasonable conclusion for anyone to reach. But the disciplinary hearing was properly convened and a full independent consideration of the evidence took place.

73. In terms of the sanction, which was imposed, genuine concerns were raised in the dismissal decision about the trust that the respondent could have in the claimant. This was based upon the matters under investigation and the findings reached. There were clear material breaches of the respondent's procedures in relation to the use of tills when making personal purchases and the purchasing of reduced-price fruit and vegetable boxes where they are created for the employee's own purchase rather than taken from those available following an earlier Fit for Sale or Fit for Four check earlier in the day. The criteria that an employee would apply when making up a personal, bespoke box would be based upon items that they liked and with a bias towards selecting items as being suitable because they were wanted rather than because their inferior quality required selection. This could result in an employer being deprived of the full value payment on certain items of fruit and vegetables because of an employee's desire to get a box that suited their needs and which might be heavier than the usual 5kg guidance. The respondent was reasonable in concluding that this was gross misconduct in relation to the claimant.
74. Both respondent witnesses felt that the conduct in relation to the vegetable boxes was akin to theft. This was not an unreasonable decision to reach given the effect of self-selecting fruit and vegetables for a lower priced box under Too Good to Waste. It could permanently deprive the employer of the full value of the items on display, and which had not been scrutinised as part of an impartial Fit for Sale or Fit for Four process, where no personal purchase was at stake.
75. I did consider the till sharing procedure existed for the very clear need for store activity to be correctly audited with each employee's activities being evidenced and attributable to them alone. This protected not only the respondent as a retailer but also the employees from incorrect suspicion of dishonesty.
76. I also considered the question of whether the till sharing was a common practice and any impact on this case. I accepted that following Mr Pattinson's instruction during the appeal, Ms Panton investigated the CCTV footage available and found an example of till sharing taking place. This involved the claimant's colleague Jacob and an unnamed member of staff. On balance I accepted that both employees were subject to a disciplinary investigation. Jacob received an unspecified sanction and the other employee left before any disciplinary process could be concluded.
77. While I considered the evidence of the claimant's witness Mr Abdullah, I did not find it to be particularly helpful. I appreciated that with a relatively small number of staff in each store, it could be a busy and high-pressured working environment. He recalled staff buying reduced fruit and vegetable boxes. However, the actual purchase of these items was not forbidden providing they were taken from those already made up and on general sale. His evidence regarding till sharing seemed to be that it was happening without much thought and completely contrary to procedures. But his evidence was not very

specific in terms of names, incidents and evidence in support. Overall, it lacked credibility as evidence supporting the claimant's case.

78. There was also documentary evidence of one manager in another store being summarily dismissed in July 2023 for allowing a culture of till sharing and a deputy store manager in July 2023 being given a final written warning for the same reason. They both occupied management roles. There was also another instance of an employee being summarily dismissed in November 2025 for constructing a Too Good to Waste box using items not yet written off for the employee's personal use and which was considered gross misconduct. I noted that in the case of the claimant, he occupied a management role, was properly trained and was found to have done both till sharing and improper writing off of items for Too Good to Waste boxes. The claimant's sanction of summary dismissal was not disproportionate and fell within the range of responses available to disciplinary hearing manager making a finding of gross misconduct.
79. The respondent's had a clear procedure concerning till sharing not being allowed, the evidence was that staff broadly understood it and when discovered by management, it would be dealt with as a disciplinary matter with significant sanctions being imposed where found to have happened. There was no evidence of inconsistent treatment of these behaviours across the stores. The claimant was not treated in a disproportionate and inconsistent way.
80. Consequently, and considering the reasonableness of the decision reached by Mr Harrison, I concluded that the decision to dismiss fell within the band of reasonable responses available to a disciplinary hearing manager. While the claimant did not seek to bring a discrimination complaint on grounds of race, in relation to this unfair dismissal claim, I did not hear or see any evidence that suggested the real reason for the dismissal was something other than conduct and that underlying prejudices may have affected the sanction imposed. This was clearly a disciplinary process and dismissal arising from the claimant's conduct and nothing else.
81. This means that the claimant was fairly dismissed and following a fair disciplinary process. It is therefore unnecessary to consider the impact of Polkey or a reduction for contributory fault. However, for the avoidance of doubt, a clear breach of procedure occurred which justified a disciplinary process and findings of gross misconduct.

Conclusion

82. Accordingly, the claimant's sole complaint of unfair dismissal is not well founded and is dismissed.

EJ AJohnson

Employment Judge Johnson

Date 3 August 2026

JUDGMENT SENT TO THE PARTIES ON
15 September 2026

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

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Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>