# EMPLOYMENT TRIBUNALS

**Claimant: Mr Asif Sahi Respondent: Iceland Foods Ltd**

**Heard at: London South by CVP On: 23 and 24 July 2026**
**Before: Employment Judge Martin sitting alone**

**REPRESENTATION:**

**Claimant: In person**
**Respondent: Mr Hignet - Counsel**

# JUDGMENT

1. The judgment of the Tribunal is that the Claimant was fairly dismissed.
2. His claim of unfair dismissal is dismissed.

# REASONS

**Introduction**

1. Reasons for the decision were given at the conclusion of the hearing. These written reasons are provided at the request of the Claimant.
2. This is the Claimant's complaint of unfair dismissal under section 98 of the Employment Rights Act 1996. The Respondent contends that the Claimant was dismissed for conduct, namely gross mismanagement of the Christmas changeover, failure to follow cost-control processes, failure to complete mandatory compliance documentation, and insubordination.
3. The Tribunal heard evidence from three witnesses for the Respondent:
    a. Ms Aneako Eshemokhai, Area Manager and investigating officer
    b. Mr Luke Rintoul, Area Manager and disciplinary chair

c. Ms Rachael Sutton, Specialist HR Case Manager and appeal chair

4. The Claimant gave evidence on his own behalf.

5. The hearing bundle ran to 688 pages. The Respondent provided a chronology.

**Preliminary Issues Claimant's Witness Statement**

6. On 25 March 2025 the Tribunal made an order that by 17 June 2025 the claimant and the respondent must send each other copies of all their witness statements. The order provided:

   *" A witness statement is a document containing everything relevant the witness can tell the Tribunal. Everybody who is going to be a witness at the hearing, including the claimant, needs a witness statement. Witness statements should be typed if possible. They must have paragraph numbers and page numbers. They must set out events, usually in the order they happened. They must also include any evidence about financial losses and any other remedy the claimant is asking for. If the witness statement refers to a document in the file it should give the page number."*

7. The Claimant served a 1-page witness statement on 30 March 2026, in compliance with the Tribunal's order. At 3pm the day before this hearing, he emailed a new 15-page witness statement to the Tribunal and the Respondent's solicitors. There was no explanation as to why it was sent at this late stage. It contained substantial new information and did not just correct errors in the original statement which would have been a different situation.

8. The Respondent objected, relying on the following cases:

   - **Barton v Wright Hassall LLP [2018] UKSC 12** which held that Litigants in Person (LiPs) receive no special treatment regarding procedural rules and submitting that late service deprived them of any meaningful opportunity to prepare cross-examination;
   - **Denton v Chief constable 2014 CA CIV 906,** which establishes a three-stage test for relief from sanctions:
     i. Assess seriousness/significance of the breach.
     ii. Consider why the default occurred.
     iii. Evaluate all the circumstances of the case, including the need for efficient litigation and compliance with rules
   - **Durrant 2013, Civ 2624**, which held that deadlines matter and case management orders were not optional as this results prejudice loss of preparation time.

9. When asked about this, the Claimant explained he had been seeking representation and his representative had suffered a bereavement the day before the hearing and could no longer represent him. He could not however

explain why the new statement was produced only the day before the hearing. From the case record it can be seen that his representative was on board by 14 July 2026. I refused to admit the late statement and explained the case management orders were made was to enable both parties to properly prepare for the hearing to ensure equality and a fair hearing for all. The Claimant having provided his second witness statement so late meant that the Respondent was unable to take instructions or prepare adequately. It was not in the interests of justice to allow the second witness statement. The hearing proceeded on the basis of his original 2-page statement.

10. I briefly considered adjourning the hearing to another date. However, given the current listing situation in London South it would not be heard until well into 2027 at the earliest. It was in the interests of justice for both parties that the hearing went ahead as listed.

**Claimant's representation**

11. The Claimant wrote to the tribunal on 14 July to advise that he had representation for the final hearing from a barrister. Regrettably this representation did not materialise as the barrister had a bereavement the day before. There was no application for an adjournment.

**Issues**

12. The issues for determination were:

(1) What was the reason for dismissal?

(2) Did the Respondent have a genuine belief in the misconduct alleged?

(3) Did the Respondent have reasonable grounds for that belief?

(4) Was the investigation reasonable?

(5) Was the disciplinary process fair?

(6) Was dismissal within the band of reasonable responses?

(7) If unfair, what would have been the outcome had a fair process been followed (*Polkey v A E Dayton Services Ltd* [1987] UKHL 8)?

**Findings of Fact**

13. I found the following facts on the balance of probabilities having heard from the Claimant and the Respondent's witnesses and considering the documents and submissions. These findings reflect those facts that are necessary to explain the decision reached and proportionate. Not all evidence heard is recited here, however it was considered when reaching my decision. These findings are limited to those fact which are necessary and proportionate to explain the decision reached.

**The Claimant's Role**

14. The Claimant had a long employment history with the Respondent having been employed in 2012. He had a clean disciplinary record.

15. The Claimant was Store Manager of the Streatham store (the store), a category 2 store. He was promoted to Store Manager in July 2023. Store Managers were responsible for operational standards, stock loss, cost control, safe and legal compliance, and team management. They were required to use the Process & Actions Diary daily and weekly. This is an important management tool. **The Christmas Changeover**

16. The Christmas changeover (Cycle 6 Phase 1) was the most important stock changeover of the year. All Store Managers were instructed to plan and implement the changeover outside trading hours so as not to disrupt normal trading. The Claimant booked annual leave from 3–9 November 2024, immediately before the 'go-live' date of 12 November.

17. Ms Eshemokhai, the Claimant's Area Manager, discussed this with him. She raised concerns about whether, given his holiday, he could complete the changeover in time. The Claimant assured her he had planned appropriately and would implement the changeover on his return, using the additional 50 hours allocated for this purpose. On this basis she approved his holiday request. **The Store Condition on 9 and 12 November**

18. Ms Eshemokhai and the Head of Stores, Mr Fensome, visited the store on 9 November 2024. They found it in a very poor condition with customers asking if the store was closing down. There were empty cabinets, incorrect layouts, stock piled in the cold store, out-of-date promotions, and evidence that the changeover was being undertaken during trading hours.

19. On 12 November, by which time the Claimant had returned from holiday, which was the 'go-live' date, the store remained in a brand-damaging condition. The changeover had not been completed. Products no longer in range were still on sale. Layouts were incorrect. Displays were wrong. The Process & Actions Diary had not been completed. The policy is that it should be completed daily by the Store Manager or in his absence by someone else, and the Store Manager is to review it each Monday.

20. I accept this evidence. It was consistent and supported by photographs. The Claimant accepted that the store was substandard.

**The investigation**

21. Ms Eshemokhai started an investigation following this store visit. At this time, there was a grievance which the Claimant had raised against her relating to other matters. Her evidence was that this did not affect how she undertook the investigation.

22. The investigation included interviews with multiple colleagues. Their accounts were broadly consistent in that:

    a. No written handover was left when the Claimant went on holiday.

b. No hours were scheduled outside trading time for the changeover.

c. Staff assumed the changeover was to be done during trading hours.

d. Hafiz felt unprepared and lacked training.

e. Hafiz believed the Claimant had told him to leave the changeover to Thomas.

f. The Claimant denied giving such instructions, but provided no documentary evidence to support his position. **Audit Scores and Cost Control**

23. Another issue within the store were the audit scores and costs control. The Claimant's store scored 7% and 0% on the stock loss audit of 14 November. The target was 100%. Area averages were 70–90%. The Claimant accepted responsibility for the audit results.

24. Nexus notes recorded by Ms Eshemokhai showed repeated concerns about stock loss, safe and legal compliance, and operational failures throughout 2024 which the Claimant had not acted on. This was therefore not a one-off situation

**Process & Actions Diary**

25. The investigation found that the diary had not been completed for significant periods. The Claimant accepted this. He attributed this to staff incompetence, but accepted he had not completed entries himself. Hafiz confirmed he had received no training from the Claimant on stock loss or diary use.

26. Ms Eshemokhai interviewed several witnesses and reviewed extensive documentation. She concluded there was a case to answer and referred the matter to a disciplinary hearing. **The Disciplinary Hearing**

27. The hearing was chaired by Mr Luke Rintoul, an Area Manager experienced in conducting disciplinary hearings and appeals. The Claimant was invited in writing, provided with the full investigation pack, and informed of his right to be accompanied. He was not accompanied to either the disciplinary or appeal hearing by his choice.

28. Significantly, during the hearing, the Claimant made several significant admissions. For example:

    a. He accepted the store was in a brand-damaging condition.

    b. He accepted he left no written handover.

    c. He accepted he scheduled only 11.5 of the 50 allocated hours for the changeover.

    d. He accepted he did not inform his Area Manager of delays.

    e. He accepted the diary had not been completed.

    f. He accepted audit scores had deteriorated under his management.

29. In cross examination he attributed responsibility for this to his team, but accepted he had not provided written instructions.

30. During the disciplinary hearing, Mr Rintoul said he found the Claimant's behaviour during the hearing erratic and emotional, though he did not allow this to influence his decision. He put this down to the stress of the disciplinary process rather than anything else.

31. Mr Rintoul adjourned to consider the evidence. He upheld all four allegations. He concluded that the Claimant had grossly mismanaged the changeover, failed to execute basic cost-control measures, failed to complete mandatory compliance documentation, and allowed changeover activity during trading hours.

32. The letter confirming the summary dismissal clearly states that he considered the Claimant's length of service and clean record, but also the seriousness of the failures, the commercial impact, and the Claimant's lack of insight. He states that sanctions short of summary dismissal were considered and rejected. He determined that trust and confidence had been irreparably damaged.

33. During his deliberation period, Mr Rintoul contacted Ms Eshemokhai to confirm dates of absence as the Claimant's explanation was that he had only been at the store for twelve weeks and other times, he was on paternity leave, sick leave holiday and assisting other stores. I am satisfied that the purpose of this contact was to establish the dates the Claimant was in store and it did not introduce new allegations or new substantive evidence. The investigation process continues throughout the disciplinary process and there is nothing wrong with Mr Rintoul seeking this information. **The Appeal**

34. The appeal was chaired by Ms Rachael Sutton, Specialist HR Case Manager. She conducted a detailed review of the disciplinary process and carried out further investigation, including two interviews with Hafiz who confirmed: a. he had not been pressured to give false evidence;
    b. his original statement was true;
    c. he had not provided any statement to the Claimant;
    d. he had received no training from the Claimant on stock loss.

35. Ms Sutton considered each ground of appeal carefully and concluded that none should be upheld. She confirmed the dismissal.

**Cross-Examination Summaries**

36. The Claimant challenged Ms Eshemokhai's evidence regarding:
    a. the grievance raised against her;
    b. her knowledge of Nexus notes;
    c. her decision to interview only certain witnesses;
    d. her handling of the Deliveroo incident;
    e. her belief that the Claimant allowed the changeover during trade.

37. I found her answers to be clear, consistent, and credible. She explained that:
    a. grievance investigations were handled by HR, not her and the fact of the grievance did not change her relationship with the Claimant;

b. Nexus notes can and should be recorded even when a manager is not physically present. The Claimant had alleged that they could not be;

c. she interviewed other Store Managers because they were responsible for changeover planning and she wanted to know what information they had received and what they understood about the changeover plans;

d. she acted appropriately regarding the Deliveroo incident (this was an incident when a security guard was seen at the till checking out a Deliveroo order which was against company policy) by informing his employer as he was a contractor;

e. she believed the Claimant left staff with no option but to conduct changeover during trade.

38. Mr Rintoul was challenged on:

a. whether he should have conducted further investigation after the disciplinary hearing;

b. whether he considered the Claimant's limited time in store;

c. whether he was aware of the grievance;

d. Whether he considered the Claimant's long employment and disciplinary history;

e. whether he considered staffing changes.

39. Mr Rintoul stated he reviewed all evidence in the pack and would have conducted further investigation only if necessary. He confirmed he considered the Claimant's time in store and staffing profile. His evidence was measured and credible.

40. Ms Sutton was challenged on:

a. her decision not to interview additional supervisors;

b. her decision not to interview Ms Eshemokhai;

c. her handling of the grievance;

d. her assessment of stock loss training.

41. Ms Sutton explained she attempted to contact additional witnesses but they did not respond. She reviewed the grievance documentation and found it thorough. She concluded she had sufficient information without interviewing Ms Eshemokhai. Her evidence was balanced and credible.

42. The Claimant made several concessions in his evidence including:

a. his witness statement did not comply with Tribunal directions;

b. he had extensive training (despite alleging he had received no training). His training log was in the bundle;

c. he knew dismissal was a possible outcome;

d. he did not schedule the required hours for the changeover;

e. he left no written handover or instructions when he went on holiday;

f. he did not complete the diary as required;

g. he accepted the store was in a brand-damaging condition;

h. he accepted instructions were not followed.

43. He maintained he did "*nothing wrong*" and blamed his team and Area Manager. He accepted no responsibility.

**Submissions Respondent's Submissions**

44. The Respondent submitted:

a. The reason for dismissal was clearly for conduct and that any suggestion that the Claimant may be making that this was a capability matter should be rejected.

b. The Claimant's failures were serious and went to the heart of the Store Manager role.

c. The investigation was thorough and within the range of reasonable responses.

d. The disciplinary process complied with the ACAS Code.

e. The Claimant made significant admissions.

f. The Claimant failed to plan the changeover, failed to complete the Diary, failed to manage stock loss, and failed to give instructions.

g. The Claimant accepted no responsibility and showed no insight.

h. Dismissal was within the band of reasonable responses.

i. Contributory fault should be assessed at 100% if the dismissal was found to be unfair.

**The Claimant's Submissions**

45. The Claimant emailed submissions which are summarised below. He did not elaborate on them orally.

a. The Claimant submits that his dismissal was unfair. His case is that the Respondent did not act reasonably or fairly in accordance with section 98 of the Employment Rights Act 1996.

b. He emphasises that he had worked for the Respondent for approximately 12 years, during which he was loyal, hardworking, and committed. He covered other stores, took on additional responsibilities, and supported the business. He says this background was not properly taken into account.

c. The Claimant's central submission is that the Respondent had effectively predetermined the outcome. He argues that the investigation was not impartial, balanced, or genuinely aimed at establishing the facts. Instead, he says it became a "rubber-stamping exercise" designed to confirm a decision already made.

d. He submits that the investigation was flawed because:

i. Evidence favourable to him was ignored or given little weight.

ii. Assumptions were accepted without scrutiny. iii. Explanations he provided were not properly explored. iv. Operational pressures and lack of support were not considered.

e. He argues that the Respondent placed all responsibility on him without acknowledging the wider circumstances in which he was working.

f. The Claimant further submits that the allegations did not amount to gross misconduct. He says there was no deliberate wrongdoing, dishonesty, or reckless behaviour. At most, the issues concerned management decisions made under difficult conditions, not conduct warranting summary dismissal.

g. He states that during the disciplinary process he answered questions honestly, but his explanations "*did not influence the outcome*." He argues that the Respondent was focused on confirming allegations rather than assessing whether dismissal was a reasonable response.

h. He also submits that the Respondent failed to consider:

i. his long and positive employment record;

ii. his 12 years of service;

iii. his commitment to the company; iv. the availability of lesser sanctions.

i. He argues that dismissal should have been a last resort, particularly for an employee with no comparable disciplinary history.

j. The Claimant says the Tribunal has heard evidence showing inconsistencies between the Respondent's witnesses and contradictions with contemporaneous documents. He submits that these inconsistencies undermine the reliability of the Respondent's case.

k. He concludes that the Respondent has not discharged the burden of showing it acted reasonably in all the circumstances. He says the investigation was flawed, the disciplinary process was unfair, and the decision to dismiss fell outside the band of reasonable responses.

**The Law**

46. Section 98 ERA requires the employer to show the reason for dismissal and that it is a potentially fair reason. Conduct is a potentially fair reason. Under *Burchell*, the Respondent must show a genuine belief in the misconduct; reasonable grounds for that belief; a reasonable investigation. The Tribunal must then consider whether dismissal was within the band of reasonable responses.

**Application of Law to Facts**

47. I find that the reason for dismissal was conduct. I am satisfied the Respondent has established this. Any suggestion by the Claimant that this was a conduct matter and not a disciplinary matter is rejected. I found the Respondent witnesses to be credible and accept their evidence.

48. I find that the Respondent had a genuine belief in the misconduct alleged. The Claimant made several admissions. Witness accounts were consistent and credible. There was substantial documentary evidence including photographs that corroborated the store condition.

49. I find that the Respondent had reasonable grounds for its belief. The evidence was substantial, contemporaneous, and credible.

50. An investigation does not have to be forensically perfect. It must however been within the range of reasonable responses open to a reasonable employer. My finding is that the investigation was thorough. It was not necessary for the Respondent to explore every contextual factor. The investigation focused on the matters directly relevant to the allegations which is entirely proper and to be expected.

51. There were no procedural irregularities. The Claimant did not submit the dismissal was unfair for this reason. For completeness however, I find that the Claimant was given the allegations, the evidence, the right to be accompanied and the opportunity to respond. The disciplinary hearing was conducted fairly. The appeal was independent and thorough.

52. It is not for me to say what I would have done in the same circumstances. My role is to consider whether the Respondent's acted within the range of reasonable responses. There was no dispute that the store was found in a condition that posed reputational and operational risks. The Claimant had not followed key processes, had not planned adequately for the changeover, and had not completed mandatory compliance documentation. He accepted many of these failures. The Respondent was entitled to conclude that trust and confidence had been lost and as such summary dismissal was within the range of reasonable responses.

**Conclusion**

53. The Respondent acted reasonably in all the circumstances. The dismissal was fair.

Approved by:

Employment Judge Martin

27th July 2026

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at https://www.gov.uk/employment-tribunaldecisions shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at www.judiciary.uk/guidance-andresources/employment-rules-and-legislation-practice-directions/