



EMPLOYMENT TRIBUNALS

Claimant: Mr A Mofunanya

Respondent: Caritas Anchor House

Heard at: East London Hearing Centre (by Cloud Video Platform)

On: 25 and 26 November 2020

Before: Employment Judge Allen QC

Appearances

For the claimant: Mr Yetman, Counsel

For the respondent: Mr Joshi, Employment Tribunal Advocate

This has been a remote video hearing which was not objected to by the parties. The form of remote hearing was V: video - fully (all remote) by CVP. A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing. The documents that I was referred to are in the tribunal file, and in the written statements, submissions, authorities and bundle of documents produced by the parties, which the tribunal had before it.

RESERVED JUDGMENT

- 1. The claim of unfair dismissal fails and is dismissed.**

REASONS

Claim

1. By ET1 claim form presented on 7 February 2020, the Claimant brought a claim against the Respondent for unfair dismissal.

Issues

2. The issues were addressed with the parties at the outset of the hearing. It was agreed that the Respondent's reason for dismissal was conduct, a potentially fair reason; and it was agreed that the Respondent genuinely believed that the Claimant

was guilty of misconduct at the time of the dismissal. The remaining questions for this hearing were:

- a. Did the Respondent have in mind reasonable grounds on which to sustain its belief that the Claimant was guilty of misconduct (the misappropriation of £3,248.83)?
- b. When it had arrived at that conclusion, had the employer carried out an investigation which was reasonable in all the circumstances?
- c. Was a reasonable process followed overall?
- d. Was dismissal a sanction within the range of reasonable responses?
- e. If the dismissal was unfair because of a procedural flaw, what were the chances that the Claimant would have been dismissed in any event had a fair procedure been followed and / or when would such a dismissal have taken place (*Polkey*)?
- f. Was any conduct of the Claimant before the dismissal such that it would be just and equitable to reduce the basic award and if so, by how much?
- g. Did any action of the Claimant cause or contribute to his dismissal to any extent? If so by what proportion is it just and equitable to reduce the compensatory award?
- h. Any uplift to the compensatory award for failure to follow the ACAS Code of Practice.

3. Given that the tribunal hearing time had been shortened from 3 to 2 days, it was agreed that remedy issues including re-employment, mitigation and precise calculation of compensation, would be dealt with at a separate hearing if the Claimant was successful.

4. I read witness statement evidence and heard oral evidence from the Claimant; and for the Respondent from: the Respondent's Finance Director, Siva Selliah (who conducted part of the investigation); the Respondent's Director of Frontline Services, John Lowery (who made the decision to dismiss); and Donna Chadbone (appeal decision maker), an employment law consultant from Moorepay, who are the retained HR advisors for the Respondent.

5. I was referred to documents in a bundle running to 244 pages. I refused a contested application by the Respondent, made after the Respondent's witnesses had given their evidence to the tribunal, to put a further document before the tribunal. The Respondent had given no good reason for the late disclosure of the document, which was produced too late in the proceedings. In arriving at my decision, I also took into account the failure to disclose other documents by the Respondent – as referred to below.

6. I heard oral submissions from both parties and both parties supplied written submissions to the tribunal in which they had an opportunity to comment on one another's submissions.

Findings of Fact

7. The Claimant was employed as a receptionist by the Respondent, a company limited by guarantee and a registered charity, between 11 July 2016 and his summary dismissal with effect from 21 October 2019. The ET1 claim form states that he worked a 37.5 hour week and that his gross pay was £366 per week.

8. The Respondent provides supported housing and educational services for vulnerable adults. It employs about 60 people. At the time of the Claimant's dismissal, the Respondent employed about 15 reception staff working on shifts. The Claimant's place of work was also the Respondent's head office. The receptionist role operates 24 hours a day and involves dealing with service users, members of the public and money handling, including rent payments and donations made.

9. The Claimant's normal working hours were the evening (aka 'late') shift - from 4pm to 12am. During his shift, the Claimant worked with another receptionist.

10. Large and small sums were paid, by debit or credit card and in cash, by service users for their accommodation (known as personal contributions 'PC') and other services. The Respondent's procedure was that when a receptionist took cash, it must be placed in the till at reception. A receipt was to be issued for any debit or credit card payment, with a copy kept in the receipt book. The receipts recorded the name of the receptionist who received the cash.

11. PC payments made by service users against their rent to top up any housing benefit received were also recorded in the Respondent's In-Form database which is where the data was obtained to generate the service users' statements. The Claimant was responsible for providing that information on his shift. Large cash payments were always or nearly always PC payments.

12. The till was kept at reception. No code was required to sign on to or access the till. It was possible to void transactions so that they did not appear on the Z readings at the end of each day. The Claimant was one of the people who knew how to do this. At 'till float' of £400 remained in the till.

13. The receipt book was not stored in a secure location.

14. The reception area was frequently accessed by other staff, contractors and service users.

15. The Respondent's reconciliation process involved twice daily taking of an X reading of the amount in the till: at 15:00 before handover between the day and evening shift; and at 22:00 before handover between the evening and night shift; and the daily taking of a Z reading - also taken at 22:00 which needed to be reconciled with the X readings. The idea was to ensure that the electronic, cheque and cash transactions received matched the till transactions. The X reading shows the running total of till transactions and the Z reading shows the sum total of all the daily transactions including cash and card payments.

16. When he was on duty, the Claimant was responsible for the Z reading. At the relevant times, the X readings were not retained. The Z readings were retained. The Claimant's position was that if there was a shortfall between the two readings, the practice was to make this up using additional funds kept in a 'safe float' stored in a safe. The keys to the safe were kept in the till. The Claimant's position was that a discrepancy should be raised if the Z reading did not match the amount of cash in the till.

17. The tribunal was not directed to any written process, policy or procedure in relation to the reconciliation of payments.

18. There were discrepancies from time to time between the readings and the amounts in the till. On previous occasions the Claimant had reported some discrepancies including on at least one occasion a surplus. In relation to the dates which formed the basis of the investigation, there was no evidence before the tribunal to suggest that the Claimant had raised discrepancies on those dates.

19. In March 2019, the Respondent became aware of a shortfall which totalled about £3,200 and which had been accruing during the previous 3 months. Because of the timing of the losses, the Respondent needed to investigate the Claimant and another employee who had worked on a number of the days when discrepancies had arisen.

20. The Claimant was invited to a meeting with Mr Lowery on 19 March, told that there were financial discrepancies at reception and that he was to be suspended on full pay during the investigation. He was sent a suspension letter on 21 April 2019 which for the first time in writing told him that the reason for suspension was an investigation into "Financial irregularities relating to cash handling". The Claimant accepted in his evidence to the tribunal that any investigation would inevitably have to include looking at his conduct, given the dates of the discrepancies being investigated.

21. The investigation took a very long time. The initial investigator was Jazmine Sandison. She interviewed the Claimant at an investigation meeting on 16 April 2019. She also interviewed other receptionists and prepared part of an investigation report before handing over to Mr Selliah on 4 July 2019 because she did not feel competent to analyse the financial records.

22. In the record of the Ms Sandison's interview with the Claimant on 16 April 2019, it can be seen that she asked the Claimant to comment on 8 specific dates when discrepancies were said to exist. There are a number of errors in the figures cited which do not match the figures in the documentation produced by the Respondent for the tribunal. Two of the days referred to (15 and 31 October 2018) were not subsequently replied upon as relevant examples by the Respondent and did not go forward to the disciplinary hearing.

23. The Claimant's suspension was extended – he was sent a letter to this effect on 11 July 2019.

24. A final report comprised of nearly 3 pages from Ms Sandison and then over 2 pages of analysis by Mr Selliah was produced dated 11 September 2019.

25. Ms Sandison’s section of the report outlined how suspicion had first been aroused – including making reference to a number of receipts being missing; and a comparison between the In-Form database and the Z readings showing that payments taken and recorded in the In-Form database totalled more than the Z reading figure for the daily income rung up and placed on the till; and she concluded as follows:

Jazmine carried out a review of the financial records, and concluded that the finance team would be required to complete this analysis as access to bank statements and confidential financial information would be required. Siva Selliah was appointed Investigating Officer on 4th July 2019, and has taken the investigation forward from that point.

Findings from Investigation meetings:

- Staff interviewed were able to demonstrate their understanding of the cash handling processes, though noted that documentation outlining processes did not exist.
- No staff were able to provide evidence of a colleague having been responsible, nor were any fingers pointed, with one exception.
- One member of staff suspected Anthony of being responsible - this was based on previous unrelated incidents, rather than any direct, related evidence.
- Anthony denied any knowledge or involvement in the many instances of discrepancies and missing cash.

26. Mr Selliah’s section of the report concluded as follows:

Methodology used for the analysis

- 1) Analysed all PC payments recorded on receipt books into cash payments and card payments.
- 2) Reconciled all card payments to the bank statement to ensure that card payments received have been recorded as such on the till and the Z reading. This process identified cash payments entered as card payments and vice versa, and established the correct cash PC payments received for each day without any ambiguity.
- 3) Compared the daily PC cash payments received against the Z reading completed by the Reception Staff and the daily takings recoded by the Finance Officer.
- 4) The difference between the cash payments received as per receipts issued to residents and the cash payments recorded on the Z reading is the amount that had not been accounted for on CAH records. Basically this is the missing cash amount, and an explanation must be provided by the staff who completed and signed the Z reading.

Findings:

- Reviewed financial records from August 2018 - March 2019.
- There were 18 instances where Anthony was responsible for the discrepancies (cash loss) totalling £3,248.83. The following is the breakdown showing the discrepancy for each day.

Date	Z reading signed by	missing
01 August 2018	Anthony Mofunanya	- 39.76
19 December 2018	Anthony Mofunanya	- 41.64
01 February 2019	Anthony Mofunanya	- 49.50
06 February 2019	Anthony Mofunanya	- 130.00
08 February 2019	Anthony Mofunanya	- 150.00
11 February 2019	Anthony Mofunanya	- 150.00
12 February 2019	Anthony Mofunanya	- 42.00
15 February 2019	Anthony Mofunanya	- 413.27
18 February 2019	Anthony Mofunanya	- 40.64
22 February 2019	Anthony Mofunanya	- 645.00

26 February 2019	Anthony Mofunanya	- 262.00
28 February 2019	Anthony Mofunanya	- 429.63
01 March 2019	Anthony Mofunanya	- 48.00
04 March 2019	Anthony Mofunanya	- 132.20
05 March 2019	Anthony Mofunanya	- 139.94
08 March 2019	Anthony Mofunanya	- 535.25
		-3,248.83

- These discrepancies were identified by cross checking the Z readings for each day with the corresponding receipt book entries, as described in the methodology used.

- The Z readings for the dates in question did not show discrepancies, as either the amounts had not been rung up on the till or adjustments had been put through to reduce the cash balance.

27. Mr Selliah's figures did not differ from the documentation supplied by the Respondent to the tribunal in any material way.

28. In summary, the analysis showed that cash payments had been received but not recorded in the Z reading (or ultimately supplied to the Respondent) on the days in question. It was reasonable to conclude that the cash had been taken by someone. The Claimant was a common factor – and he was responsible for supplying the Z reading.

29. For example, on 22 February 2019, the people on shifts preceding the Claimant's had taken £530, the Claimant took £700 during his shift but yet signed off a cash balance of £585.50, so there was £645 missing

30. Although the Z readings did not show some of the cash that had been received on these days, the Respondent's rent record on the In-Form database did show that the payments had been made by the service users and the service users accounts were updated with information supplied by the Claimant. Mr Selliah explained that if this had not been done, this would have aroused concerns very quickly because service users would have been chased for non-payment and then would have responded by stating that in fact they had made payment and could have supplied signed receipts showing who payment had been made to.

31. Mr Selliah was cross-examined before the tribunal in detail about each of the dates cited above. He accepted that he could not be certain in relation to some specific dates that the Claimant rather than a co-worker was responsible for the discrepancies. However he kept returning to the fact that the Claimant was present for all of these discrepancies and most importantly that on a number of occasions (6 February 2019; 15 February 2019; 22 February 2019; 26 February 2019; 28 February 2019) the Claimant himself is recorded as having received cash payments – some of them substantial - which were in excess of the amount of cash which the Claimant recorded in the Z reading at the end of the day – but that the Claimant had not raised a concern at the time in relation to any of those days and that in Mr Selliah's view, the Claimant could not have failed to have noticed that the Z readings must be incorrect – leading Mr Salliah to conclude that the Claimant must have misappropriated the funds.

32. Many of the questions put to Mr Selliah were based on a document referred in the index as 'Financial Statement' which was at pp 162-164 of the bundle. It was a spreadsheet showing the figures that formed the basis of Mr Selliah's analysis. In

cross examination, the Claimant initially accepted and then in re-examination, he denied that he had been sent this document during the internal process.

33. The Claimant was also cross-examined on the figures relating to these dates. He agreed that the paperwork available showed that on those days he had personally handled more cash – sometimes considerably more cash - that the cash figure on the Z reading which he provided at the end of the day. The Respondent said that the Claimant had not raised any discrepancy on any of those days. The Claimant stated that he could not say either way whether he had ever raised a discrepancy on any of the relevant days (because he had no access to his work email post suspension) but he did not say that he had raised a discrepancy on any of these days or even that he would have done - and he stated that no red flag would have been raised for him merely because the Z reading for cash on a particular day was lower than an amount of cash that he himself had received that day. He said that he hadn't been trained to do anything in particular in those circumstances and that he wasn't trained to do 'financial analysis'. This is consistent with what the Claimant is recorded as having told the disciplinary hearing which is:

JL asks you said you understand the procedures but there have been many discrepancies. On the 22nd of February 2019 you received £700 cash but on the Z reading only £585.50 cash rung up. Why didn't you raise that? AM replied when he prints out the Z reading and it matches the amount he's cashing up he doesn't question this. He doesn't have access to everything just the Z reading. He only sends an email if the Z reading doesn't match. These discrepancies don't show on the Z reading. JL counters, did you not link the two together that you received £700 cash but only £585 in the Z reading. Did this not ring a bell. AM said he just focuses on the Z reading he doesn't think about transactions during the day.

34. When it was put to him that that he must have voided transactions on the relevant days, the Claimant said that he would not have done so as he would inevitably have been the target of suspicion.

35. A co-worker who worked with the Claimant was also investigated and invited to a disciplinary hearing but she was not dismissed on the basis that she was not present on the same number of shifts as the Claimant when discrepancies arose and the other factors pointing towards the Claimant's complicity were not present in her case.

36. The Claimant was invited to a disciplinary hearing by letter dated 12 September 2019, which enclosed the following investigation documents: Final Rent Report¹, Till Summary, Invite to meeting - 18 March 2019, Suspension letter -19 March 2019; Invite to suspension Investigation - 26 March 2019; Notes of the suspension Investigations Meeting -16 April 2019; Notice of extension of suspension - July 2019; Investigations Report - 11 September 2019; and the Respondent's Disciplinary Policy.

37. The interview notes from the interviews with the other receptionist were not produced to the Claimant and they are not before the tribunal. Mr Lowery told the tribunal that he knew of their existence and that he may have seen them prior to the decision to dismiss and that he knew that he had seen them at some point.

38. The Claimant was informed in that letter that Siva Selliah would be presenting the case. The allegation was stated to be "Alleged misappropriation of charity funds, namely that the organisation has suffered a loss of £3,248.83 in missed payments that

¹ It is the Respondent's position that this is the Financial Statement at pp 162-164 of the bundle

you were ultimately responsible for". Prior to that date, the Claimant was unaware that Mr Selliah had taken over the investigation from Ms Sandison. He did not have an opportunity to object to the appointment of Mr Selliah prior to Mr Selliah carrying out his analysis. At the tribunal hearing it was suggested that he might have objected – given that Mr Selliah was ultimately responsible for ensuring that financial discrepancies did not arise and that the Claimant said that he had previously reported financial discrepancies to Mr Selliah, without eliciting a positive reaction. However the Claimant did not make those objections at the time after receipt of the 12 September 2019 letter, despite supplying a written response, and he did not make those objections at the subsequent disciplinary hearing, although he did assert that he had raised discrepancies with Mr Selliah and his team in the past.

39. The letter informed the Claimant of his right to be accompanied and he was invited to provide any documentation he wished to put forward and to inform the Respondent of the names of any witness he wished to call to the meeting. The letter did not state that dismissal was a potential outcome and it should have done. However the Claimant knew that he had been suspended for suspected misappropriation of funds. He cannot have been in any doubt that dismissal was a potential outcome and it is not credible that he would have acted differently if he had been expressly told that dismissal was a potential outcome.

40. The disciplinary hearing was postponed to permit the Claimant to be accompanied and it took place on 11 October 2019. Prior to the hearing, the Claimant supplied a 5 page written statement which provided a response to the allegation against him and included substantial material about his reputation in the community and at the Respondent.

41. At the hearing the Claimant gave his explanation for not having raised discrepancies on the relevant days (as outlined above). He also suggested that he was being targeted in the investigation and that he had been framed by someone who knew that he would be the target of suspicion. He suggested a that a much wider analysis of discrepancies would show that the whole system was problematic and unreliable.

42. At the end of the disciplinary hearing Mr Lowery considered the evidence and came to his decision. The Claimant was sent an outcome letter dated 21 October 2019 informing him that he was to be summarily dismissed and setting out the reasoning for that decision, concluding that on balance of probabilities that the Claimant was responsible for the misappropriation of the £3,248.83 and that this warranted summary dismissal. The reasoning included that the Claimant was present on all of the dates identified in the investigation report; he was responsible for the Z readings; he did not raise discrepancies on the dates in question; he could not have failed to have noticed that the cash received by him was greater than the cash on the Z reading on a number of occasions – sometimes by hundreds of pounds; but yet he could provide no satisfactory explanation; and that the frequency of discrepancies in February and March 2019 suggested a systematic approach to defraud the Respondent. The contentions raised by the Claimant that he had been framed and that there were systemic problems were addressed as were the Claimant's extensive submissions as to his reputation.

43. The Claimant was offered a right of appeal, which he took up. The Claimant was not sent a record of the disciplinary hearing. An appeal hearing chaired by Ms Chadbone took place on 13 November 2019. The Claimant was 'accompanied' by Mr Dooley – who attended by conference call, having suffered a spinal injury. The appeal outcome letter dated 19 November 2019 dismissed the appeal, setting out reasons for rejecting the appeal points raised by the Claimant.

Relevant Law

Unfair Dismissal

44. The relevant parts of sections 94 and 98 Employment Rights Act state:

94 The right

(1) *An employee has the right not to be unfairly dismissed by his employer.*

...

98 General

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

...

(b) relates to the conduct of the employee,

...

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case

45. I was referred by the Claimant's counsel to *Stoker v Lancashire CC* [1992] I.R.L.R. 75; *A v B* [2003] IRLR 405; *Crawford and another v Suffolk Mental Health Partnership NHS Trust* [2012] IRLR 402; *London Ambulance Service NHS Trust v Small* [2009] IRLR 563; *Steen v ASP Packaging Ltd* UKEAT/23/11.

46. I was referred by the Respondent's representative to *UPS Ltd v Harrison* UKEAT / 0038/11/RN; *Royal Bank of Scotland v Donaghay* UKEATS/0049/10/81; *Vodafone Ltd v Nicholson* UKEAT/0605/12/SM; *Tayeh v Barchester Healthcare Limited* [2013] EWCA Civ 29.

47. I reminded myself that the hearing before the tribunal is not a re-hearing of the disciplinary and that it was not for me to step into the shoes of the employer and substitute my own views.

48. In order to assess the fairness for the dismissal, it is necessary for me to answer the questions outlined in the list of issues.

49. Guidance as to what constitutes reasonableness in the context of a dismissal for conduct was given in the case of *BHS Ltd v Burchell* [1980] ICR 393. The guidance suggests that the tribunal should consider whether the employer had a genuine belief in the misconduct alleged and whether that belief was held on reasonable grounds formed after a reasonable investigation.

50. I will also consider whether the sanction of dismissal fell within the range of reasonable responses open to a reasonable employer.

51. The band of reasonable responses test applies to all aspects of the dismissal process including the procedure adopted and whether the investigation was fair and appropriate: *Sainsburys Supermarkets Ltd v Hitt* [2003] IRLR 23.

52. As part of my decision making, I will consider whether there were any procedural flaws which caused unfairness by looking at the fairness of the whole of the disciplinary process. I will determine whether, due to the fairness or unfairness of the procedures adopted, the thoroughness or lack of it of the process and the open-mindedness (or not) of the decision-maker, the overall process was fair, notwithstanding any deficiencies at a particular stage.

Conclusions

Dismissal – reason for dismissal

53. It was clear from the evidence of the dismissal decision maker, Mr Lowery and the other witnesses for the Respondent that the reason for dismissal was misconduct. It was also clear that all of the Respondent's witnesses genuinely believed on the balance of probabilities that the Claimant was guilty of the misappropriation of funds. In any event, those matters were not contested by the Claimant.

Reasonable grounds for belief in misconduct, reasonable investigation, fair process

54. These issues were intertwined. I address them separately at the end of this section but there are a number of common considerations.

55. There were procedural flaws. The investigation took nearly 6 months – that is too long and much longer than the Respondent's policy aims for. The written communications from the Respondent to the Claimant about his suspension and its renewal were not sent in a timely manner. The initial suspension letter post-dated the first investigation meeting. To have complied with the Respondent's policy, the Claimant should have been sent letters about the extension of his suspension every 4 weeks and the letter that he was sent on 16 July 2019 failed to explain why the suspension was being extended. The Claimant was not informed that the investigator had changed in July 2019 until he received the investigation report in September 2019 (however the Claimant did not object to Mr Selliah's involvement once he was informed – albeit that he did make reference to the fact that he had reported discrepancies to Mr Selliah and his team in the past). The invitation to the disciplinary hearing should have made reference to dismissal being a potential outcome (albeit that this was obvious). Mr Lowery, in his evidence to the tribunal, acknowledged these failings. However, unimpressive though this all was, none of those flaws had any impact on the fairness of the decision to dismiss.

56. Some matters raised by the Claimant did not amount to procedural flaws. It is not unfair in general and was not unreasonable in this case not to tell an employee what allegations are being looked into in the letter inviting them to a meeting at which an employer is contemplating suspending them. To do so would potentially put an investigation at risk. This is a charity with a small management team. It was not inappropriate in this case for Mr Lowery to have suspended the Claimant and then subsequently to chair the disciplinary hearing. It was not inappropriate for Mr Selliah to have taken over the investigation (it might have been less appropriate for him to have been the decision maker – but that didn't happen). It was reasonable that if Ms Sandison did not feel competent to perform necessary financial analysis that the Finance Director should take over the investigation. It was reasonable for the Respondent not to feel that the fact that Mr Selliah was responsible for the system as a whole and that discrepancies had been raised by the Claimant with him in the past did not rule him out in such a small organisation as a person with the relevant skill and authority to undertake this part of the investigation. It was not unreasonable for him to seek the assistance of his team in analysing the numbers.

57. The absence of a written cash handling policy and the failure of the Respondent to keep the X readings are relevant circumstances, which I took into account, but they do not amount to unfairness in themselves.

58. Some matters could have been fatal flaws in other circumstances – some of the figures used at the 16 April 2019 meeting and put by Ms Sandison to the Claimant were not consistent with the documentation before the tribunal – however that could not be said of Mr Selliah's subsequent figures and it was Mr Selliah who presented the investigation report to Mr Lowery. There were an additional 2 discrepancies in October 2018 which were asked about at the 16 April 2019 meeting but which did not go forward to be part of the investigation report but it was not part of the Respondent's reasoning that the Claimant had never previously raised discrepancies or that all discrepancies which arose on all of his working days were necessarily individually indicative of him misappropriating cash or that the investigation might not have been able to answer some of the queries initially raised. It was reasonable for the Respondent to restrict its investigation to those dates set out in the investigation report. Mr Lowery was aware of the records of interviews of the other receptionists – but these were not produced to the Claimant (nor were they before the tribunal) albeit that they were summarised in the investigation report. Mr Lowery said that this is because the Respondent was "concerned about repercussions". That is not a good enough reason to withhold them from the Claimant in their entirety – they could have been redacted. However their content does not appear to have played any part in Mr Lowery's decision making. The record of the disciplinary hearing was not sent to the Claimant. However, again, the content of that record does not appear to have influenced Ms Chadbone and her analysis on the appeal points raised by the Claimant was adequate and took into account the arguments that he was making.

59. I was troubled by issue of whether the Financial Statement spreadsheet setting out the figures which formed the basis for Mr Selliah's analysis had been sent to the Claimant. The Claimant stated to the tribunal in oral evidence both that he had and that he had not received it. However the Claimant was professionally represented throughout and he did not state in his witness statement that he had not received it,

despite it clearly being an important document. On balance I determined that the Claimant had received this document.

60. The Claimant's evidence that over and over again in a short period of time, no red flag would have been raised for him if the amount of cash recorded on the Z reading as being in the till at the end of the day was less – even substantially less – than cash he had himself received was difficult to accept. More relevantly to my decision making, it was reasonable for the Respondent not to accept it. This was the matter at the core of the Respondent's decision and it was returned to over and over during the evidence before the tribunal. For the Claimant to state (as he did before the tribunal) that he wasn't trained to do financial analysis of this kind was not a good answer to this issue – given that this is not something that requires 'financial analysis'. Combined with the Claimant's presence on the days on which discrepancies arose and his role in providing the Z readings, the Respondent had reasonable grounds for its belief in the Claimant's misconduct.

61. I need to look at the investigation and the process followed as a whole – in light of the resources of the Respondent. For the reasons stated above, on balance the Respondent's investigation overall was reasonable – although hardly flawless; and on balance the process followed by the Respondent overall was reasonable – although again hardly flawless.

Dismissal – reasonable sanction

62. Dismissal is a reasonable sanction for misappropriation of funds.

Dismissal – other issues

63. It follows that the Claimant was fairly dismissed and therefore the other issues of Polkey, conduct and / or contribution and breaches of the ACAS Code do not arise.

**Employment Judge Allen QC
Date: 28 December 2020**