



EMPLOYMENT TRIBUNALS

Claimant: Sivapathasundaram Wijeyanathan

Respondent: John Lewis Plc

Heard at: South London (remote hearing by CVP) **On:** 7 October 2022

Before: Employment Judge B Smith (sitting alone)

Representation

Claimant: Sarah Forsyth (Lay Representative)

Respondent: Georgia Hicks (Counsel)

RESERVED JUDGMENT

1. The claim for unfair dismissal is not well-founded and is dismissed.
2. The claim for wrongful dismissal is not well-founded and is dismissed.

REASONS

Introduction

1. Mr Wijeyanathan ('the claimant') was employed by John Lewis Plc ('the respondent') until his dismissal without notice on 29 August 2021 with effect from 27 August 2021. His latest role was as a Unit Manager at the Waitrose and Partners shop and petrol filling station at Battersea.
2. The claimant claims that his dismissal was unfair within section 98 of the Employment Rights Act 1996 ('ERA 1996'). He also claims that the respondent breached his contract of employment by failing to give him the required notice of termination of his employment.
3. The respondent contests the claims. It says that the claimant was fairly dismissed for misconduct because he knowingly left the Unit that he was responsible for without a Duty Trained Partner (adopting the respondent's wording) or Keyholder present when this was required by internal

procedures. It was therefore entitled to terminate his employment without notice because of his gross misconduct.

Procedure, documents and evidence heard

4. The claimant was represented by Ms Forsyth, caseworker. He gave sworn evidence. No cross-examination was required of the claimant's witness Ramalingam Kumar. The respondent was represented by Ms Hicks of counsel. The respondent called sworn evidence from Daryl Wiseman, investigating officer, and Nigel Towse, appeals officer.
5. I considered the documents from an agreed bundle of 958 pages over two volumes which the parties introduced in evidence. The parties were informed that if any particular documents were relied upon the relevant page references should be provided to the Tribunal.
6. No preliminary matters arose. Neither party nor any witness required any adjustments to the hearing.
7. After the evidence was called the parties made oral submissions. The Respondent provided written submissions and the Claimant provided a list of case law relied upon.

Issues for the Tribunal to decide

8. The list of issues was agreed by the parties at the start of the hearing as follows:
 - (i) What was the reason or principal reason for the claimant's dismissal, namely the claimant's conduct?
 - (ii) Was the reason a substantial reason of a kind which can justify dismissal?
 - (iii) Was the dismissal fair or unfair applying the band of reasonable responses?
 - a. Did the respondent have a genuine belief in the claimant's misconduct?
 - b. Were there reasonable grounds for such a belief?
 - c. Had a reasonable investigation been carried out by the time of forming that belief?
 - d. Did the respondent act reasonably in treating the reason for dismissal as sufficient to dismiss the claimant in the circumstances, including the size and administrative resources of the respondent's undertaking?
 - (iv) Was there a likelihood of the claimant being dismissed in any event?

- (v) Was there any failure to comply with a provision of the ACAS Code of Conduct?
 - (vi) Should there be a deduction for contributory conduct on the part of the claimant?
 - a. Was there culpable or blameworthy conduct?
 - b. Did the conduct actually cause or contribute towards the dismissal?
 - (vii) Did the claimant do something so serious that the respondent was entitled to dismiss without notice?
9. For the claimant's claim of unfair dismissal the focus under section 98(4) was on the reasonableness of the respondent's decisions and it was immaterial what decision I would myself have made about the claimant's conduct. For the breach of contract claim I had to decide whether the claimant was guilty of conduct serious enough to entitle the respondent to terminate the employment without notice.
10. The principal challenges to the fairness of the dismissal made by the claimant during the hearing were that:
- a. the decision to dismiss was tainted by a second allegation of misconduct, namely participation in a theft of a wine bottle, which was inadequately investigated by the respondent;
 - b. the claimant's conduct was not misconduct because he had the authority to deviate from the policy; and
 - c. the sanction was disproportionate taking into account how two comparator employees had been treated who had committed the same or similar misconduct, and the respondent had failed to give adequate weight to mitigation in the form of the claimant's concerns about his brother's health at the time of the misconduct.

Findings of Fact

- 11. The claimant was employed by the respondent from 25 May 2003 until his dismissal without notice on 29 August 2021. His latest role was as a Unit Manager at the Waitrose and Partners shop and petrol filling station at Battersea ('the Unit').
- 12. The respondent is a large retailer which includes the supermarkets known as Waitrose and Partners. Some of these are attached to petrol stations. At the time of dismissal the claimant was a Unit Manager at the Unit. The claimant had worked as a unit manager at Shell (since 25 May 2003) and then Waitrose for 18 years in total.
- 13. The petrol filling stations are subject to specific procedures in part because they are open throughout the night shift (23.00 to 06.00) and are a high-risk environment. The respondent's '*Petrol Filling Station: Forecourt Controls and Management*' policy suggests that employees must be particularly alive to fire risks, vehicle movements, and use of chemicals.

14. Units must be manned by a “*competent Partner*” at all times; namely a Partner (employee) who has completed competency training and holds a certificate. Duty Managers and Keyholders are competent Partners. Duty Partners, in particular, are specifically trained in how to handle customer incidents, branch emergencies, and damage to property.
15. A Duty Partner is someone who has overall responsibility for the safe and legal training of a unit during opening hours. A Keyholder has the same responsibility as a Duty Partner save that they are not trained in dealing with customers or trade to the same extent as Duty Partners.
16. When doors are open to the general public it is mandatory to have a Duty Partner nominated to have overall control of that site to make sure all laws pertaining to function of supermarket or petrol filling station are being adhered to. Outside hours of trade if the site is still open (meaning if employees are still working there) it is a mandatory to have either a Duty Partner or a Keyholder present.
17. When onsite during a nightshift Duty Managers and Keyholders have to conduct hourly observational sweeps of the shop (*‘Security on Site of Trading Hours’, Branch Operating Procedures*):

‘When on site out of hours the Duty Manager / Keyholder is to complete hourly observational sweeps from inside the shop, looking for any suspicious activity outside the shop. Any suspicious activity must be reported to the police immediately’
18. This information is communicated in the Respondent’s policies and during training for Duty Managers.
19. The claimant’s role included being in charge of the Unit and he had overall responsibility for training staff. The staff rota was set by the claimant and two assistant managers. The claimant was senior to the assistant managers.
20. The claimant’s witness statement stated that rota errors which resulted in neither a Duty Partner nor Keyholder being present were rare but *‘when they did occur and I spoke to Ms Hart [the claimant’s line manager] she would always endorse my judgment and a common sense approach was adopted to avoid having to close the store altogether’*. The claimant’s witness statement referred to an incident in 2020 when no Keyholder or Duty Manager was available to cover a night shift. As a result the claimant stated that he had called the Operational Support Contact Centre because his line manager was not available.
21. The respondent’s disciplinary policy stated that the following acts were examples of behaviour that would warrant summary dismissal: serious breach of procedure, and negligence or serious error of judgment that is capable of causing serious loss, damage or injury to persons or property.
22. On 31 March 2021 the claimant was on duty as the Duty Manager at the Unit. His shift was due to end at 22.00. He left his shift 22.46, fourteen minutes before the night shift was due to start at 23.00. As a result of a rota

error the staff who had been allocated to the night shift did not include a Duty Manager or Keyholder. The claimant left two employees in charge, neither of whom was a Duty Manager or Keyholder, namely Yazan Hammad and Joanne Kemp. At the time the claimant had concerns about his brother's health as a result of Covid-19.

23. Joanne Kemp was not a trained as a Key Holder or Duty Partner. Yazan Hammad had undertaken some training but had not completed the required assessment to become a Key Holder or Duty Partner.
24. The claimant's witness statement stated that *'I felt confident both partners could manage the shift between them. If any issues arose they both had my contact number and Mr Kumar's. I should have called either Ms Hart or Mr Dexter Bradley, who was taking over Ms Hart's role, but didn't want to call Ms Hart as our mediation hadn't been arranged, I felt it was quite late to call Mr Bradley and I knew that the cover I had arranged was fine and would have been approved'*.
25. The evidence was unclear as to whether or not a deviation from the respondent's policy on the presence of a Duty Manager or Keyholder could in fact be authorised by a line manager. However, it was not suggested by the claimant that on the night in question he did in fact receive such authorisation, and in the passage above it was accepted by the claimant that he should have called a line manager. Daryl Wiseman gave oral evidence, which I accept, that if the required staff were not present the normal procedure would be to seek support from other stores in the first instance.
26. An investigation was commenced following a 'Record of Concern' being filed against the claimant by another colleague. The concerns raised included that the claimant and another, namely Ramalingam Kumar, had breached procedure by leaving the Unit 15 minutes before it was due to close and that two other employees had been left to work the night shift without a Duty Manager or Keyholder present. Further, it was alleged that Ramalingam Kumar had stolen a wine bottle and that the claimant had been complicit in this.
27. After an investigation which ran from 14 May 2021 to 8 June 2021. The investigation officer was Daryl Wiseman. Daryl Wiseman has been in managerial roles since 2012 and has conducted investigations, disciplinaries, and grievances for 11 years.
28. During an investigatory interview on 8 June 2021 the claimant did not deny leaving the Unit without a Duty Manager or Keyholder present. The claimant acknowledged during this interview that because the Unit is a 24-hour site that between 11pm and 6am there should be cover by a Keyholder or Duty at that time. He accepted that the rule was in place for personal safety reasons. He also stated that Tracy's [his line manager] expectation was that there needs to be a Keyholder or a duty partner at all times. The claimant raised in mitigation that his brother was unwell at the time.
29. Daryl Wiseman reviewed CCTV footage supplied by a colleague and interviewed that colleague, the claimant and Ramalingam Kumar. He also visited the store and met with Yazan Hammad. Yazan Hammad stated that

he would have felt confident dealing with any normal type of incident but would have to call someone, and would not have felt confident dealing with other matters, such as a fire, oil leak, card fraud, safety or security.

30. The claimant was sent to an invitation to a disciplinary hearing dated 10 August 2021 which stated that the alleged serious misconduct was '*putting the branch and Partners at risk, by leaving the branch with no Keyholder or duty Partner present. Also on suspicion of participation in theft of Partnership property.*' The letter included that dismissal was a potential sanction.
31. A disciplinary hearing was held on 27 August 2021. The disciplinary hearing was held by Mark Wiley and the claimant was accompanied at the hearing. During the hearing he did not deny leaving the Unit without a Duty Manager or Keyholder present. The claimant stated that line managers generally say it was ok [to deviate from the policy] as long as he was happy with it. He accepted that he had left the Unit without seeking approval from anyone on that occasion to deviate from the policy. The claimant stated that he was worried about his brother at the time.
32. The claimant was dismissed for gross misconduct. The dismissal letter dated 29 August 2021 stated that '*The reason for this decision is your serious misconduct namely, knowingly leaving a Partnership unit that you were responsible for, without a duty trained Partner or Keyholder present.*'
33. The claimant appealed against his dismissal on 1 September 2021. The issues raised in the appeal included the claimant's allegation that the situation had been engineered by a former manager named Tracy Hart and the fact that the original CCTV used in the investigation of the wine theft allegation had been deleted, and the respondent had relied instead on a copy taken by way of a camera phone. He stated that on the day of the incident the proper night cover did not attend due to a rota error. He stated that he was going through stress at the time because his brother was seriously ill with Covid-19. He stated that, in the past, the store had been open during the overnight shift without the required cover which was well known to his line manager Tracy Hart (Regional Manager). His appeal documentation referred to a named comparator who had run an overnight shift without the required cover who had not been dismissed for serious misconduct.
34. The named comparator was an individual in a similar situation to the claimant who became aware that his branch did not have the required cover. This individual was not on site at the relevant time and within 90 minutes returned to the site to correct the problem. This comparator had health issues at the relevant time which were treated by the respondent as mitigation. The respondent treated the incident as a performance issue. The comparator received a final written warning, however the incident did not form grounds for imposing the warning.
35. A second comparator was named by the claimant. However, the respondent's searches did not find any records supporting existence of the comparator on the information available to it.

36. The claimant attended an appeal hearing on 23 September 2021. He was accompanied to that hearing.
37. The appeal officer was Nigel Towse. He has previously held HR roles and has been employed by the respondent for 11 years. He was one of six appeals managers who are independent of management and has been in that role for 8 years, having conducted approximately 50-60 appeal hearings against dismissals and grievances each year.
38. Further investigatory steps taken for the appeal included an interview with Mark Wiley, Daryl Wiseman, and others. During the interview with Mark Wiley, he stated that although he was not satisfied with the claimant's explanations about the wine the reason for the claimant's dismissal was putting the Unit at risk. Tracy Hart was not interviewed because she was no longer employed by the respondent.
39. During the appeal hearing the claimant stated it was permissible for him to deviate from the policy in an emergency situation.
40. It was accepted by the claimant throughout the investigation, disciplinary and on appeal that on the night in question he did not call his manager or anyone else for support, guidance, or authorisation to deviate from the policy.
41. The appeal was dismissed on 4 October 2021. The appeal outcome letter was dated 4 October 2022. Relevant extracts from this letter include:

I have watched the CCTV footage submitted by the Partner who raised the issues and have spoken at length with Mark. Having done so I agree with him that your behaviour and that of Kumar, one of your Partners who was with you that night, is highly suspicious. Mark explained to me that although he did not dismiss you for your part in the theft of the wine he had a 'reasonable belief that you were involved in the wine theft'.

'I will now turn to your decision to leave the unit before 11pm. I have established that the reason why this act is regarded as so serious is because it meant you left the unit without making sure it was locked and therefore secure. The fact that this was only for five minutes is not the issue, your decision to leave before 11pm put the unit, Partners and customers at added risk during that time. Moreover you also decided, without checking with your line manager, to leave two untrained Partners in the unit overnight. You are an experienced Unit Manager and you were able to articulate during the investigation what the correct procedure should be in terms of closing the unit and who should be responsible for the Unit once it has ceased trading. For reasons which I have not been able to establish you decided not to follow the laid down procedure.'

'Your mitigation for leaving early was that your brother was ill with covid. Firstly Mark told me it was your brother in law and not your brother but secondly I do not accept this was any reason for you not being able to tell the time or was a reason why you had to leave the branch before 11pm.'

'I have looked into the allegation you have made that Tracy Hart has led a conspiracy to dismiss you from the Partnership. As Tracy has left the

Partnership I have not been able to speak with her. I have however had access to the detail from the individual who raised concerns about the events of 31 March 2021 and I have not found any evidence that Tracy had any influence in the allegation, its investigation or the decision taken by Mark to dismiss you.'

42. After an ACAS early conciliation period (6 October to 16 November 2021) the Claimant submitted his claim.

Relevant law

43. I was provided with a number of authorities by the claimant and respondent. I have considered all of them but only refer to them as is necessary to explain my decision.
44. Section 94 ERA 1996 confers on employees the right not to be unfairly dismissed. The respondent admits that it dismissed the claimant within section 95(1)(a) ERA 1996. Section 98 ERA 1996 deals with the fairness of dismissals. The employer must show that it had a potentially fair reason for the dismissal within section 98(2) ERA 1996. If so, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.
45. Misconduct is a potentially fair reason under section 98(2)(b) ERA 1996.
46. Section 98(4) ERA 1996 provides that the determination of whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend 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 this shall be determined in accordance with the equity and the substantial merits of the case.
47. Following the guidance in *Burchell* 1978 IRLR 379 and *Post Office v Foley* 2000 IRLR 827 the Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on genuine grounds and after carrying out a reasonable investigation. In deciding whether the employer acted reasonably or unreasonably within section 98(4) ERA 1996 the Tribunal must decide whether the employer acted within the band of reasonable responses open to an employer in the circumstances in all aspects of the case, including the investigation, grounds for belief, penalty imposed and procedure followed. It is immaterial how the Tribunal would have handled the events or what decision it would have made and the Tribunal must not substitute its view for that of the reasonable employer: *Iceland Frozen Foods Limited v Jones* 1982 IRLR 439.
48. In considering procedural fairness I take into account all of the circumstances of the case, including the size and administrative resources of the employer and the principles of natural justice, including: whether the employee knows the case against him; whether there has been undue delay at any stage; whether the employee has had a chance to put his case; whether the employee is given a fair hearing and has the opportunity to be accompanied to the hearing; whether, where possible, the disciplinary

hearing is held by independent third parties with sufficient seniority; and whether the employee is given a right of appeal.

49. Procedural defects in the initial disciplinary hearing may be remedied on appeal provided that in all the circumstances the later stages of a procedure are sufficient to cure any earlier unfairness: *Taylor v OCS Group Ltd* [2006] EWCA Civ 702.
50. In ascertaining the reason for a dismissal the Tribunal will often need look no further than the reasons given by the appointed decision maker. However, if that is an invented reason, it is the Tribunal's duty to penetrate through the invention rather than allow it to affect the Tribunal's own determination: *Royal Mail Group Ltd v Jhuti* [2019] UKSC 55.

Conclusions

(i) Reason for dismissal

51. I find that the reason for the claimant's dismissal was his conduct, namely leaving the Unit and other employees at risk by leaving the Unit with no Duty Manager or Keyholder present. This is because of the evidence found in the dismissal letter dated 29 August 2021, the interview with Mark Wiley, and the appeal outcome letter dated 4 October 2021. I do not consider that the evidence demonstrates that the claimant was dismissed for any other reason or that this was an invented reason of the type considered in *Jhuti*.
52. I find that the reason was a substantial reason of a kind which can justify dismissal, namely the claimant's conduct. I therefore find that the respondent has satisfied the requirements of section 98(2)(b) ERA 1996.

(ii) Was the dismissal fair or unfair?

53. In considering whether the dismissal was fair or unfair, applying the band of reasonable responses, I make the following findings.
54. I find that the respondent had a genuine belief in the claimant's misconduct. This is because of the evidence in the dismissal letter, the appeal outcome letter, the evidence of Mr Wiseman, Mr Towse, and the lack of evidence to suggest otherwise.
55. I find that there were reasonable grounds for the respondent's belief. This is because the fact that the claimant left the premises in the circumstances that he did was accepted by the claimant and I accept on the documentary evidence and the oral evidence of the respondent's witnesses that this was contrary to the respondent's policy. In addition, a colleague filed a report of concern regarding health and safety incidents as a result of the claimant's conduct, and the claimant did not deny leaving the Unit without a Duty Manager or Keyholder present in his investigation interview or his disciplinary hearing.
56. I find that a reasonable investigation had been carried out by the respondent by the time of forming that belief. This is, in part, because the relevant principal underlying facts were not in dispute. Further, I find that Darryl Wiseman carried out a reasonable level of investigation into what had

happened. This is because Darryl Wiseman reviewed CCTV footage supplied by a colleague, and interviewed that colleague, the claimant and Ramalingam Kumar. He also visited the store and met with Yazan Hammad. In addition, I find that the appeal process by Nigel Towse included an interview with Mark Wiley, the dismissing officer, on 24 September 2021, Daryl Wiseman, and others as part of the appeal process.

57. I do not find that there was any unfairness in the procedure applied by the respondent. I consider that the claimant knew the case against him (this is set out in the invitation to the disciplinary hearing dated 10 August 2021), there was no undue delay, and that the claimant had an opportunity to put his case both during investigation, the disciplinary hearing, and on appeal. I consider that the claimant was given a fair hearing and had the opportunity to be accompanied at any relevant hearing. I find that the disciplinary hearing and appeal hearings were held by a sufficiently independent third party with sufficient seniority. The claimant was also warned that a potential outcome of his disciplinary hearing was dismissal. The claimant also submitted grounds of appeal which led to further investigation being carried out. The evidence demonstrates, in my judgment, that he was able to fully take part in all aspects of the procedure.
58. The claimant submitted that the procedure was unfair because it was tainted by the allegations of assisting another with the theft of wine. However, I do not consider that this is supported by the evidence. I do not find on the evidence that the dismissal was tainted by the fact that the claimant was also investigated for alternative misconduct. I consider that the evidence for the reason for dismissal to dismiss is clear; this states that the reason for dismissal was knowingly leaving the Unit the claimant was responsible for without the relevant cover in place. I consider that this is supported by the appeal outcome letter which confirms that Mark Wiley did not dismiss the claimant due to the wine theft allegations. There is no evidence which clearly establishes, in my judgment, that this decision was tainted by the other investigations into the claimant. Whilst I accept that the appeal outcome letter refers to the wine theft activity being highly suspicious, I consider that it was necessary for the appeal to consider the wine theft allegations because they were raised as part of the appeal. However, I do not consider that the fact the appeal process involved looking into other matters at the request of the claimant shows that its decision making was tainted or otherwise unfair.
59. I do not consider the respondent's reliance on a copy of CCTV footage in relation to the wine theft allegation amounted to an unfair procedure or level of investigation into the claimant. This is because in my judgment the wine theft allegation did not form the reason, or part of the reason, for the claimant's dismissal. I also do not find on the evidence that this secondary allegation played a role in the respondent's determination of sanction.
60. Although the point was not clearly pursued during the hearing, I do not find that the claimant's suggestion during his appeal that the situation had been engineered by a claimant's former line manager, Tracy Hart, was made out on the evidence.
61. I find that the respondent acted reasonably in treating the reason for dismissal as sufficient to dismiss the claimant in the circumstances. Whilst

the respondent is a large employer, I consider that the respondent was reasonable in concluding that the claimant's conduct amounted to a serious health and safety risk and was contrary to the respondent's policies. This is because the Unit was a petrol station which clearly required staff with additional training and experience in order to deal with situations which might arise overnight, such as an accident, crime, and fire risks. This is supported by the evidence of Yazan Hammad's interview. The fact that the Unit was a petrol station also meant that it was subject to additional legislative provisions which needed to be complied with, such as relating to health and safety.

62. I find that the wording of the respondent's policy includes that behaviour that would warrant summary dismissal includes serious breaches of procedure, and negligence or serious error of judgment that is capable of causing serious loss, damage or injury to persons or property. I find that both of these provisions were capable of being engaged by the claimant's conduct.
63. In support of the above findings is the fact that the claimant acknowledged during his investigatory interview that because the Unit is a 24-hour site that between 11pm and 6am there should be cover by a Keyholder or duty at that time. He accepted during that interview that the rule was in place for personal safety reasons. It is plain from the evidence that he was aware of the rules and policy in place.
64. I find that the respondent acted reasonably in not accepting the suggestion by the claimant that he was able to authorise a deviation from the written policy. This is because the claimant's evidence on this changed during the process. During the claimant's investigatory interview he stated that Tracy's expectation was that there needs to be a Keyholder or a Duty Partner at all times. However, during his disciplinary hearing he stated that line managers generally say it was ok [to deviate from the policy] as long as he was happy with it. He accepted that he had left the Unit without seeking approval from anyone on that occasion to deviate from the policy. In addition, he suggested that it was permissible during his appeal hearing but only in an emergency but did not evidence that he was acting in an emergency situation. I find that the oral evidence of Nigel Touse clearly showed that the claimant was under a duty in the circumstances to call his manager in the circumstances he was in. The claimant accepted that he did not do so.
65. I find that the claimant's arguments on this point are contrary to the evidence. This is because Daryl Wiseman was clear as to what the correct policies were and this is supported by the documentary evidence.
66. I find that, although the claimant did have some mitigation available to him in the form of concerns he had as to his brother's health at the time of the misconduct, the evidence clearly shows that the respondent took this into account and gave it sufficient weight in its decision making. This topic was covered in the disciplinary hearing and I find that it was investigated to a reasonable degree by the respondent taking into account its relevance to the conduct of the claimant. I do not find that the respondent acted outside of the range of reasonable responses, or otherwise unreasonably, in not treating the circumstances as they were as an emergency situation.

67. The claimant submitted that the sanction of dismissal was unfair on the basis of how two comparator individuals were treated. However, I do not accept that these show that the respondent acted unfairly. This is because there are distinguishing features between those cases and that of the claimant. For example, the first comparator was not on site when a rota issue left his branch without the required staff. When he discovered this was the case he promptly made his way to the site and that branch was only left without the requisite cover for 90 minutes or less. The claimant's branch was not properly staffed for a significantly longer period. In addition, the comparator relied on health issues in mitigation.
68. I find that there is no evidence to support the second comparator advanced by the claimant. The respondent has searched for records based on the information provided to it by the claimant to see if this was the case and have been unable to find any evidence to support the claimant's contention.
69. I do not consider that any breaches of the ACAS Code of Conduct were established on the evidence.
70. In light of my conclusions above, I find that the dismissal was fair. Accordingly, the claim for unfair dismissal is not well-founded and is dismissed. In light of this conclusion it is not necessary for me to determine issues of contributory conduct or the likelihood that the claimant would otherwise have been dismissed following a fair procedure.

Wrongful dismissal

71. I find that the Claimant fundamentally breached his contract of employment by virtue of his conduct on 31 March 2021. I find that he failed to ensure the store for which he was responsible was covered by a Duty Manager or Keyholder for the night shift and that in doing so he was in breach of his contract by failing to follow clear procedures and the implied term of trust and confidence. I find that this was serious misconduct which put the Unit and its staff at risk. I find that the staff on duty were not sufficiently trained, assessed, or otherwise confident in being able to deal with the range of incidents which might arise at a petrol station during the night. I find that the Respondent accepted the claimant's breach by summarily dismissing him.
72. In light of these findings, the claim for wrongful dismissal is not well-founded and is dismissed.

Employment Judge **Barry Smith**

07 November 2022

