



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Ramos  
**Respondent:** Parfums Christian Dior Limited  
**Heard at:** Birmingham **On:** 14 August 2019  
**Before:** Employment Judge Gilroy QC

**Representation**

**Claimant:** In person  
**Respondent:** Mr G Anderson (Counsel)

## JUDGMENT

**The judgment of the Tribunal is that the Claimant's claim of unfair dismissal is dismissed.**

## REASONS

### Introduction

1 This is an unfair dismissal claim. Although there was some doubt about the matter given the contents of the Claim Form and subsequent correspondence, it was established at the beginning of the substantive hearing that the Claimant was not pursuing any claims of unlawful discrimination. Also at the beginning of the hearing there was a discussion as to whether the Claimant pursued a claim in respect of holiday pay, but as matters transpired, in the light of concessions made by the Claimant towards the conclusion of his cross-examination, there was, in fact, no such claim, and therefore this judgment deals wholly and exclusively with the single claim of unfair dismissal.

2 Dismissal was admitted by the Respondent. The Respondent contended that the reason for dismissal was the potentially fair reason of conduct, and further that dismissal was fair in all the circumstances. As dismissal was admitted, the Respondent presented its case first.

### Evidence and material before the Tribunal

3 The Tribunal heard oral evidence on behalf of the Respondent from Mr Andrew Woods, who is currently an Area Manager with the Respondent, although he has held other positions in the course of a 13 year career with the Respondent. The

Claimant also gave evidence. The Tribunal was provided with witness statements on behalf of both witnesses who gave live oral evidence. The Tribunal was provided with an agreed bundle of documents in 2 lever arch files [R1].

### **Request for Reasons**

4 The Tribunal gave full oral reasons for its decision at the conclusion of the hearing on 14 August 2019. After oral reasons were given, the parties were asked whether they required written reasons. Both parties declined. The Claimant subsequently wrote to the Tribunal, seeking written reasons.

### **Findings of fact**

5 The Tribunal made the following findings of fact.

#### **The Claimant**

5.1 The Claimant was employed by the Respondent as a Stockroom Controller within its concession unit at the Selfridges department store situated in the Bullring Shopping complex in Birmingham.

#### **The Respondent**

5.2 The Respondent is a substantial retailer operating in the luxury products sector.

#### **Reason for Dismissal**

5.3 The reason for dismissal, as set out in the dismissal letter dated 14 May 2018, was that the Claimant had demonstrated negligence in his role, which had contributed to £4,800 of stock loss to Selfridges and the Respondent. The Claimant was held responsible for the following:

- (1) Falsification of documents in relation to delivery of stock, resulting in missing stock.
- (2) Failure to report stock discrepancies, resulting in detrimental impact on stock loss.
- (3) Failure to manage current stock and deliveries, resulting in financial loss to the business.
- (4) Subsequent temporary loss of store approval and suspension effective from 13 April 2018 as a result of the above allegations.

#### **Background**

5.4 The Claimant was employed under a contract of employment that contained a job description setting out clearly what his role was. The job description contained a number of sections including a 'mission' statement and 'main responsibilities' section. It was said in the job description that as a

Stockroom Controller the Claimant was a brand ambassador for the Respondent and was responsible for supporting all aspects of the stock management process to support the retail business. Under the main responsibilities of the role were set out the following bullet points:

“STOCK MANAGEMENT:

- *To take ownership of the stock file for the account; admin, movement, security, replenishment, weekly and monthly audits, forecasting of stock and NSV.*
- *To pro-actively monitor deliveries of stock and NSV deliveries. The job description also contained general responsibilities for the post holder”.*

5.5 The reference to “NSV” is a reference to products of “no sale value”, essentially tester products which are made available in the store for customers as a means of encouraging sales.

5.6 On 30 August 2017, the Claimant raised a grievance. This was expressed in very brief terms in manuscript in the form of a handwritten letter and was followed up by e-mail on 1 September 2017. It is not necessary for the purposes of this judgment to dwell upon the detail of that grievance. It will suffice to say that the Claimant was complaining that he was suffering from harassment and bullying by an Assistant Counter Manager, and he cited a number of incidents which he regarded as undermining him in the performance of his role.

Written warning - 11 September 2017

5.7 Coincidentally and essentially running in parallel tracks to the grievance, on 11 September 2017, the Claimant received a written warning for (1) falsification of time sheets; (2) wasting company time and resources, and (3) unauthorised absence from 13 to 18 July 2017. Again, it is not necessary to dwell on the detail of that matter but it is an important milestone event in the case given that this warning was still “live” as of the time of the events which led to the disciplinary proceedings which culminated in the Claimant’s dismissal, and it was indeed a matter relied upon by the dismissing officer, Mr Woods, in his decision to dismiss.

5.8 Essentially, the allegations which formed the basis of the written warning were that the Claimant had falsified time sheets in terms of his hours of work, he had been wasting company time and resources on the basis that stock and NSV products were not organised in the stockroom, and there was an issue about unauthorised absence between 13 and 18 July 2017. All of this was history by the time of the matters the Tribunal was principally concerned with, but it is important to record the existence, basis and timing of the written warning.

Training - November 2017

5.9 It appeared to be common ground that the Claimant needed some form of training in stock management in the latter part of 2017, and on 6

November 2017, he attended a stock management training session with a manager, Mr Stuart Smith.

5 April 2018 - Issues raised concerning the Claimant

5.10 On 5 April 2018, Ms Kim Turner, a Department Manager employed by Selfridges, informed managers of the Respondent of certain issues that had arisen at the Birmingham store in relation to the stock-take that had just taken place. The stock-take conducted by Selfridges takes place on a twice-yearly basis, and a stock-take had just taken place at the beginning of April 2018. Ms Turner complained about serious stock issues and the finger of suspicion immediately pointed at the Claimant given the nature of his role. Ms Turner said that she did not have the precise figure to hand at the material time but that she was *“...“around 3.2k loss vs 1k LFL<sup>1</sup>”, and the “biggest issues” had “come from where Jose has checked off the delivery manifest and signed to say that the stock has arrived, however, when it has come to variances today, the majority of the stock that is missing is coming from 2 of those manifests”.*

12 April 2018 - Claimant suspended

5.11 It was the above e-mail correspondence which precipitated the investigation which ultimately led to the Claimant's dismissal, and on 12 April 2018 he was suspended pending the completion of that investigation.

5.12 The matters complained of by the Respondent occurred within a very short time of the Claimant attending his training with Mr Smith.

5.13 The Respondent was placed in possession of manifests which demonstrated a number of matters. In certain instances, stock had been checked in by the Claimant but did not appear in the stock-take, and this involved a substantial amount of property. Secondly, certain products had been delivered to the premises but the Claimant had recorded that none had arrived. All of this gave rise to a number of issues. Obviously, the integrity of the stocktaking system is fundamental to the efficient management of a business such as the Respondent's, and the control of profit and such matters as stock loss/shrinkage. The matter was obviously one of some seriousness, particularly given the level of deficiencies that were revealed by a perusal of the manifests.

5.14 Other issues that were thrown up were the failure to report stock discrepancies and the failure to manage stock.

5.15 For the sake of completeness, on 15 November 2017, the Claimant was informed that his grievance had been dismissed. He raised a second grievance in March 2018, but that did not feature at all in the evidence in this case. It was withdrawn within a fortnight. In his case before the Tribunal, the Claimant did not seek to rely on any aspect of either of his two grievances.

5.16 Returning to the relevant disciplinary proceedings, the Claimant was invited to a disciplinary meeting which was to take place on 10 May 2018,

---

<sup>1</sup> Like for like.

and he was sent a substantial pack of documentation by e-mail and recorded delivery on 1 May 2018.

Temporary removal of Claimant's store approval

5.17 On 1 May 2018, Selfridges temporarily removed the Claimant's store approval with immediate effect.

5.18 Returning to the relevant disciplinary proceedings, the Claimant was invited to a disciplinary meeting which was to take place on 10 May 2018, and he was sent a substantial pack of documentation by e-mail and recorded delivery on 1 May 2018.

Disciplinary hearing - 10 May 2018

5.19 The Claimant attended his disciplinary hearing before Mr Woods on 10 May 2018. Mr Woods, who has considerable experience in the trade and was himself a Stockroom Controller for the Respondent at Selfridges in London some years ago, listened to the Claimant's explanations and concluded that in fact he was guilty of, essentially, gross negligence, and he upheld all of the allegations. Mr Woods concluded that the only suitable sanction, particularly bearing in mind the previous written warning, was dismissal.

5.20 Mr Woods concluded that the two manifests which formed the basis of the disciplinary case had clearly been signed off incorrectly. He concluded that the Claimant either thought that the information was incorrect or had failed to take any steps to verify their contents. Either way, this was a serious issue. It amounted to a stock loss approaching £5,000. Secondly, regardless of how the stock loss had occurred, it was Mr Wood's view that the Claimant had had ample opportunity to correct any errors but he had not done so, despite receiving weekly reports detailing what items and how many units were in stock. As far as the allegation concerning failure to manage current stock levels and deliveries resulting in financial lost in business was concerned the Claimant had explained that he was not the only person able to order testers but he did admit that he did not report a large amount of the NSV products. He simply unpacked them and put them away. The NSV products were stored in a lock up. There was a dispute as to the failure to keep the lock up area tidy, and who would be responsible for that. Mr Woods was provided with photographs of the lock up and considered that within it there was a lack of organisation, and a fairly random array of products that was depicted in those photographs. It seemed to the Tribunal that had that been the only matter of complaint against the Claimant, the disciplinary proceedings might not have taken the course that they did, but it was a matter of complaint, and it was something that was taken into account by Mr Woods in his decision to dismiss. Finally, the allegation of subsequent loss of store approval and suspension as a result of the allegations was something that Mr Woods took a serious view of. It is the practice of certain retailers who operate with concessions within their retail premises to deny access to employees or contractors of concession businesses within their premises if circumstances arise which give them cause for concern as to the presence of such individuals within their store premises. It is a matter of embarrassment

and damaging to the reputation of concession businesses such as the Respondent in this case to have its members of staff who are charged with responsibility for looking after stock to have their authority to enter the premises temporarily removed. Mr Woods concluded that the Claimant's actions amounted to gross misconduct, and at the conclusion of the disciplinary hearing he informed the Claimant that he was dismissed with immediate effect.

#### 14 May 2018 - Dismissal confirmed by letter

5.21 By letter dated 14 May 2018, Mr Woods confirmed to the Claimant that he was dismissed with immediate effect.

#### Appeal

5.22 The Claimant appealed against his dismissal on 15 May 2018. The appeal was held by Mr Mark Gray. The appeal was dismissed. Mr Gray is employed by the Respondent in the position of Regional Manager. Mr Gray did not give evidence before the Tribunal, but the Tribunal was provided with minutes of the appeal hearing which took place on 12 June 2018. The Tribunal took the view that this was not one of those cases where anything material turned upon the appeal itself and formed the conclusion that the fairness or otherwise of this dismissal stood or fell on the basis of the Respondent's treatment of this matter, effectively, at first instance ie the decision made by the dismissing officer, Mr Woods.

5.23 The Tribunal was provided with a very brief statement produced by Mr Smith in relation to the training he provided to the Claimant in November 2017. The statement was dated 27 June 2018 and was therefore not available until after the Claimant's disciplinary hearing or appeal. In his statement, Mr Smith said that the topics covered in the training included how to evaluate an SKU<sup>2</sup> detail report, open order reports, OOS<sup>3</sup> reports, counter meet ups, mini audits, highlighting delivery discrepancies, how to check off the manifest, when deliveries discrepancies are adjusted, when SKU adjustments are made, when to request transfers, and how to do transfers.

#### Submissions for the Respondent

6 The Respondent provided a skeleton argument, and Mr Anderson, Counsel for the Respondent, spoke to that document. He essentially submitted that this was a gross misconduct dismissal with the consequence that the Tribunal had to apply the well known test in the case of **BHS v Burchell [1978] IRLR 379**. He referred to the relevant milestone events in the case and contended that this was a case involving a reasonable investigation with a conclusion that was merited on the basis of the facts as found by the employer, a reasonable belief that serious misconduct had occurred, a proper outcome that was within the band of responses, a proper appeal against that outcome, which had been properly considered by the Respondent and appropriately dismissed. It was further submitted on behalf of the Respondent in the alternative that if the Tribunal concluded that dismissal was in any way procedurally unfair, the Claimant would

---

<sup>2</sup> Stock Keeping Unit.

<sup>3</sup> Out Of Stock.

have been dismissed in any event had a fair procedure been adopted (*Polkey v AE Dayton Services Ltd [1987] UKHL 8*) and in the further alternative it was contended that if this was an unfair dismissal, the Claimant had substantially contributed to that outcome.

### **Submissions for the Claimant**

7 The Claimant made oral submissions. He essentially submitted that he is a family person who had always performed his role properly. He considered that he had been singled out, that he had been unfairly treated and ultimately, that he had been unfairly dismissed.

### **The Tribunal's approach**

8 The Tribunal approached this case with the following broad propositions in mind. It is for a Respondent to show the reason or if more than one, the principal reason for dismissal and that such reason or reasons was or were potentially fair within the meaning of s.98(2) of the Employment Rights Act 1996 (ERA") (conduct being such a reason). If the Tribunal is satisfied that dismissal was for a potentially fair reason, it then considers the reasonableness of the Respondent's decision, applying s.98(4) of the ERA. Where an employer purports to dismiss an employee on the grounds of conduct, it is not the function of the Tribunal to determine whether the employee was indeed guilty of that conduct, rather the Tribunal asks itself whether at the time the decision was taken to dismiss; (1) the employer genuinely believed the conduct complained of had taken place; (2) that belief was based upon reasonable grounds; and (3) the decision was made after a reasonable investigation (the *Burchell* test referred to at paragraph 5 above). In the context of its consideration of the reasonableness or otherwise of the decision to dismiss, it is not the function of the Tribunal to substitute its own view for that of the employer, rather, it has to determine whether the employer's decision fell within the range of reasonable responses. If the Tribunal concludes that there was procedural unfairness, it asks itself the *Polkey* question (again, see paragraph 5 above) and whether there was contributory conduct on the part of the Claimant.

### **Conclusion**

9 The Tribunal was satisfied that dismissal was for the potentially fair reason of conduct. The Tribunal was satisfied that the Respondent had a genuine belief that the Claimant had been guilty of the conduct complained of when the decision to dismiss was made. The Tribunal was satisfied that the Respondent had reasonable grounds to reach that conclusion, it having conducted a reasonable investigation. The Claimant was invited for an investigatory interview. He was given every opportunity to comment on the case against him. He was provided with all of the relevant evidence. All material issues were investigated and, at the disciplinary hearing, adequate reasoning was given to the Claimant for the decision to dismiss him. He was left in no doubt as to what the rationale behind the decision was. A proper rationale was provided for the dismissal of the appeal. In short, the Tribunal was satisfied that dismissal fell within the band of reasonable responses, particularly in the light of the Claimant's written warning of 11 September 2017.

10 One of the difficulties of the case articulated by the Claimant, namely that of being “singled out”, is that although that is a contention which is put both in the Claim Form and his witness statement, nowhere in either of those documents does he actually say that the reason he was put through the disciplinary proceedings which led to his dismissal was because he was being singled out. There was no attempt by the Claimant to make any such connection. The failure to articulate such a connection obviously has significance in terms of the findings the Tribunal is able to make as far as that issue is concerned. In any event, the disciplinary proceedings leading to dismissal were initiated because of issues raised by a department manager employed by Selfridges, not one of the Claimant’s colleagues who worked for the Respondent, and not one of the colleagues about whom he made specific complaints in his 2017 grievance.

11 It was fair in all of the circumstances for the Respondent to dismiss, the conduct was sufficiently serious. It led to a financial loss, it led to the withdrawal of the Claimant’s store approval. It demonstrated a lack of willingness on the part of the Claimant to perform the central tasks of his role, despite the fact that (i) he had been given a prior written warning, and (ii) the errors which formed the basis of the disciplinary proceedings occurred within a matter of days of the training given to the Claimant by Mr Stuart.

12 For all the above reasons, the Tribunal concluded that the Claimant was not unfairly dismissed.

---

**Employment Judge Gilroy QC**

---

**Date 27/10/2019**

**JUDGMENT & REASONS SENT TO THE PARTIES ON**

.....30/10/2019.....

---

**FOR THE TRIBUNAL OFFICE**