

EMPLOYMENT TRIBUNALS (SCOTLAND)

Cases No: S/116084/11 Held in Edinburgh on 16 February 2011

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Employment Judge: Mr M A Macleod

Members: Mr F Russell

Mr J Reid

10

Miss Jade Miller
7 Glenshee
Whitburn
West Lothian
EH47 8NY

Claimant

Represented by:

Mr G A Bonelle

CAB

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Hair Division Ltd
25 Almondvale South
Livingston
West Lothian
EH54 6NB

Respondents

Represented by:

Mr K Limpert

Employment Law Clinic

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JUDGMENT

30 The judgment of the Employment Tribunal is that the claims are dismissed.

REASONS

35 Introduction

40 1. The claimant lodged an ET1 on 30 November 2011 in which she made a number of complaints against the respondents, for which she sought compensation from the Employment Tribunal.

2. The claimant's complaints were:

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- That she had been unfairly dismissed by the respondents on 28 October 2011;
- That she had been deprived of notice pay on the termination of her employment by the respondents;

- That she had been deprived of holiday pay in respect of annual leave accrued and untaken as at the date of termination of her employment by the respondents; and
 - That she had suffered a series of unlawful deductions from her wages throughout her employment with the respondents.
3. The respondents submitted an ET3 in which they resisted all claims by the claimant, and, while they admitted that the claimant had been dismissed, asserted that it was a fair dismissal on the grounds of gross misconduct, namely that the respondents held a reasonable belief that the claimant had stolen an item from the workplace, with the claimant being unable to provide a consistent or reasonable explanation, while acknowledging possession of the item. The respondents also submitted that they had followed a reasonable procedure, and had carried out a reasonable investigation, before reaching their decision to dismiss.
4. A hearing was arranged to take place on 16 and 17 February in the Employment Tribunal in Edinburgh, before a full Tribunal. Both parties appeared and were represented.
5. Both parties lodged documents. The Tribunal heard evidence from
- Ann Hendry, Salon Manager for the respondents, who suspended the claimant following the initial allegation of theft;;
 - Andrew Clelland, the respondents' director, who took the decision to dismiss the claimant;
 - Karl Limpert, Employment Law Clinic (the respondents' representative before us), who heard the appeal against dismissal and issued the decision to uphold the dismissal of the claimant;
 - The claimant
 - David Miller, the father of the claimant.
6. As dismissal was admitted the issues for the Tribunal to determine were whether or not, firstly, the respondents had satisfied the test imposed on them by section 98(1) of the Employment Rights Act 1996 ("ERA") to prove the reason for dismissal and, if they did, whether or not the dismissal was fair or unfair having regard to the requirements of section 98(4) of ERA, the onus being neutral in respect of that matter.
7. Based on the evidence which it heard and the documents to which it was referred the Tribunal found the following to be the facts material to the determination of those issues that were either established or agreed.

Findings in Fact

8. The claimant, whose date of birth is 7 May 1994, was employed by the respondents as an apprentice hairdresser from 26 June 2010 in their salon in Livingston Centre. She was summarily dismissed on 26 October 2011. That was the effective date of termination ("EDT") of her employment.

9. The reason for the claimant's dismissal was gross misconduct.

5 10. The claimant was employed under a Deed of Apprenticeship, which was produced by the respondents as an appendix to their main bundle of documents. Although the deed was not signed by the claimant she did not dispute that its terms applied to her. Appended to the deed was a set of terms and conditions, together with a document headed "National Hairdressers' Federation: Guidelines on Terms and Conditions of Employment in Salons", a standard document
10 published for the use of hairdressers' salons such as that operated by the respondents.

11. In paragraph 4 of the terms and conditions attached to the Deed of Apprenticeship, against the heading "Remuneration", the contract stated: "Salary
15 £95.00 payable each calendar week/month/lunar month by cash cheque or interbank transfer.... The Employee may be required to work a week in hand."

12. Throughout her employment with the respondents, the claimant was paid £95 per week.
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13. Paragraph 5 of the terms and conditions attached to the Deed of Apprenticeship was headed "Hours of Work", and provided that the "normal working hours (excluding overtime)" were 9am to 6pm on a Monday, Tuesday and Friday; 9am to 8pm on a Thursday; 9am to 5pm on a Saturday; with Wednesday and Sunday
25 designated as days off. The terms and conditions also confirmed that "the Employee is allowed a rest break of 30 mins to be taken between 12pm and 2pm. Rest breaks do not form part of working time."

14. Throughout her employment with the respondents, the claimant worked a regular
30 9 to 5 working day, with occasional days on which she had to stay behind in order to assist with a longer procedure. She was given a half hour break for each working day, unpaid in line with the contractual terms and conditions except for Saturdays.

35 15. The Handbook attached to the Deed of Apprenticeship also referred to hours of work in paragraph 2, and both parties made reference to this document. Paragraph 2.1 was of particular interest: "The standard working week is five working days. You are entitled to a rest period of at least eleven consecutive hours between each day (twelve hours for employees under eighteen years of
40 age). Each standard working day consists of eight working hours and one rest break of at least twenty minutes in any six hour period of work (thirty minutes for any four and a half hour period of work for any employees under the age of eighteen). The working day for an Employee aged 16 or 17 will not exceed eight hours. Flexi breaks are to be taken at a time convenient to the management."
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16. On 20 April 2011, a stock take by the respondents showed that 2 bottles of TruZone peroxide were missing from the respondents' salon in Livingston centre. No investigation was carried out following this discovery. A copy of the computer printout confirming the missing stock was produced at R1.

17. Shortly before 18 October 2011, the respondents' director, Andrew Clelland, had cause to speak to the claimant about postings which she had put up on her personal page on the social networking site Facebook. Mr Clelland was not a "friend" of the claimant on Facebook, but the claimant had not placed any restrictions on her privacy settings on the website, and as a result Mr Clelland had been able to view comments which she had posted on her page. Those comments made reference to a celebrity client who had been in the salon on a particular date. Mr Clelland reminded the claimant of her responsibility to maintain confidentiality with clients in the public eye when they come to the salon.

18. As a result of having had that conversation with the claimant, Mr Clelland was in the habit of checking the Facebook page of the claimant, as well as of other employees of the salon. When he checked the claimant's Facebook page on or just before 18 October 2011, he saw a photograph of the claimant in what appeared to be her room at home, showing a number of bottles of hair products. One of the bottles in particular caused Mr Clelland concern. Although he could not identify the label on the bottle as it was obscured by other bottles next to it, he noted the shape of the bottle as very distinctive – a "Boston round", as he described it to us – and considered that the contents on display in the bottle meant that this was a product which may have come from the salon called Truzone Peroxide.

19. The claimant being an apprentice and not fully qualified was not permitted to use peroxide within the salon, and Mr Clelland was concerned that she was using a dangerous substance without training and that she had taken it from the salon without asking.

20. Mr Clelland notified the salon manager, Ann Hendry, and asked her to speak to the claimant about the photograph. An expanded colour copy of the photograph was obtained for this purpose, a copy of which was produced at R23 before the Tribunal.

21. Ms Hendry then spoke to the claimant on 18 October 2011, and noted the terms of that conversation in a document produced by both parties, but lodged by the respondents as R2. The document was headed "Reminder Notes" followed by "Jade Suspended". It was written by Ms Hendry on the same day.

22. The claimant admitted that the photograph was taken by her in her own room at home. Having discussed rollers which were in the picture, Ms Hendry went on to ask the claimant about other products which were visible, and the claimant shrugged her shoulders and made no attempt to answer the question. Ms Hendry then notes that "I then went on to explain that the other bottle was a bottle of TruZone Peroxide that could only have been obtained from our salon stock or HD Direct." HD Direct is the name of a hair products wholesale supplier run by Mr Clelland, from which the respondents obtain, inter alia, their peroxide. The claimant responded "at length" by saying that the bottle of peroxide had been given to her by her friend Angie Stewart. Ms Hendry asked the claimant if Angie Stewart is a qualified stylist and what salon she worked in, but the claimant

replied that she did not know. When asked why Angie Stewart would have given her peroxide, the claimant replied that she did not know, other than that she knew that the claimant was training to be a hairdresser.

- 5 23. Ms Hendry concluded the meeting by advising the claimant that she would require to be suspended in the meantime, that the contractual procedures which had been explained to her the previous week would now be followed, and that there was nothing to worry about at this stage. She then sent the claimant home.
- 10 24. Ms Hendry then advised Mr Clelland that she had suspended the claimant and explained the contents of the note. Mr Clelland decided that it was appropriate to conduct a disciplinary hearing into the circumstances of the claimant obtaining a bottle of TruZone peroxide. He wrote to the claimant on 21 October 2011 (produced as R4) inviting her to attend at a disciplinary meeting on 25 October 2011. The letter explained that "At this meeting, the question of disciplinary action against you, in accordance with the Company Disciplinary Procedure, will be considered with regard to misappropriation of company property. I must stress that the possible outcomes of this review include dismissal."
- 15 25. Mr Clelland wrote that letter without having come to any final conclusion about the outcome of the hearing. He was concerned to give the claimant the opportunity to explain herself. He confirmed in the letter her entitlement to be accompanied by another work colleague or a trade union representative.
- 20 26. The disciplinary hearing took place at 11am on 25 October 2011 in the respondents' premises in Livingston Centre. Mr Clelland chaired the meeting; Ms Hendry attended in order to take notes of the meeting, produced at R5 and R6; the claimant attended and brought with her Cathy Dempster, union representative, of Unite Union. The notes are a reasonably accurate record of that meeting.
- 25 27. Mr Clelland asked the claimant if she was aware of the reason for the meeting, and the roles of all concerned. Following a short adjournment, Mr Clelland advised that Ms Dempster was to be there in the role of a companion, and would not be permitted to ask questions on behalf of the claimant. As it turned out, she did ask questions and made a number of comments and representations on behalf of the claimant, and was not prevented by Mr Clelland from doing so.
- 30 28. Mr Clelland produced the colour photograph, R23, and asked the claimant if she could explain who was in the photograph and where it was taken. The claimant replied that it was her, and that it was taken in her room at home. Mr Clelland then asked the claimant where she had acquired the products in the photograph, and in particular the large white bottle which appears among other bottles in the bottom left hand corner of the photograph. At this point, Ms Dempster produced a carrier bag and emptied its contents on to the table, asserting that the products in the bag were those in the picture. A disagreement on this point ensued.
- 35 40 45 29. Mr Clelland then asked the claimant if she stood by her previous comment that someone had given her the peroxide, and the claimant replied by saying that her

previous replies were a lie, because she had been put on the spot by Ms Hendry, and knew that it was against the rules for her to have peroxide.

5 30. Mr Clelland asked the claimant where she had purchased the bottle, and the claimant's reply was that she had bought it at Sally's (another wholesaler of hair products). When Mr Clelland suggested that Sally's do not stock this particular brand of peroxide, the claimant changed her position and said that her peroxide was not in the picture but further along the shelf.

10 31. Mr Clelland then put to the claimant that she would not be able to buy peroxide, and Ms Dempster responded by saying that "her dad bought it". After some further discussion, the claimant then stated that her father had not bought it for her but had accompanied her to buy it for her, and Ms Dempster observed that she must have misunderstood the situation.

15 32. A discussion then ensued about the claimant's wages during her suspension, she having understood that she was to be paid in full. Mr Clelland explained that wages are kept for the staff at the salon, and so since she had not been in to collect them, they were still waiting for her. He gave the claimant her wage envelope.

20 33. The claimant challenged Mr Clelland as to what she was being accused of. Ms Dempster asserted strongly that the claimant had never lied and emphatically denied removing products from the premises. Mr Clelland said that stock shortages had been identified and had to be investigated.

25 34. Following the hearing, Mr Clelland gave consideration to the evidence which the claimant had provided in response to the questions put before her by Ms Hendry on suspension and at the disciplinary hearing. He wrote to the claimant on 28 October 2011, in which he conveyed to her his decision to dismiss her on the grounds of gross misconduct. He stated "...my conclusions are that you have failed to give a satisfactory explanation for being in possession of the products in the photograph which you admitted was taken in your room. At the meeting you also admitted that you had lied when initially asked about your possession of the products."

30 35. He went on: "In the absence of a satisfactory explanation, my conclusions are that you are more likely than not to have misappropriated company property, and you have breached the trust which must be in place between employer and employee. For these reasons, my decision is to dismiss you for gross misconduct." The letter proceeded to confirm that she was dismissed without notice, and confirmed that her last day of employment was 28 October 2011. It also confirmed that she had a right of appeal against dismissal, and set out what she had to do if she wished to appeal.

40 36. Mr Clelland's reasoning was that the claimant had been photographed with a bottle which, in his view, clearly contained TruZone peroxide, of a kind which had been found, in a stock take some months earlier, to have been missing from the salon in Livingston; that when confronted with that allegation she had initially said

that she had obtained it from a friend, Angie Stewart; then admitted that that was a lie, and that she had bought it at Sally's, a wholesaler which does not stock it; then suggested, through her representative, that her father had bought it for her; and finally that she had bought it herself, but that her father had accompanied her to buy it with her.

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37. He was of the view that he was entitled to consider that she had taken the bottle of peroxide from the salon; and that her admitted lying, and changing of her story thereafter, undermined the essential relationship of trust and confidence between an employer and an employee.

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38. The claimant did submit an appeal letter to the respondents, and an appeal was convened on 14 November before Mr Karl Limpert, of Employment Law Clinic, who provides Human Resources advice and assistance to small businesses, including the respondents. At the appeal, the claimant was unrepresented, but made a statement to Mr Limpert, a copy of which was then handed to him and was produced to the Tribunal at R10.

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39. In that statement, she advises that "my dad bought it for me months ago for me to do my family members hair." She went on to state that the product was widely available to any member of the public rather than to trade only, and implies that she had not hitherto been aware of what bottle the respondents had been referring to. She denied that she was a thief and a liar.

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40. The hearing proceeded, and notes are produced at R11, which are a reasonably accurate note of the appeal hearing. Mr Limpert pressed the claimant as to whether she was insisting that she had obtained the bottle from a friend, or that her father had taken her to Sally's to buy the peroxide. The claimant confirmed that she was not. She then asserted that her father had bought the peroxide online, and that she had been confused previously and had thought that the respondents were referring to a different bottle which had not been in the picture. She produced a pile of website printouts which showed the products available for sale on various websites, but could not say which website her father had purchased the peroxide from. Mr Limpert suggested that an online purchase would generate an email or a receipt from the website concerned, or show up on bank statements. He concluded the meeting to give her and her father the opportunity to look out any such receipts and forward them to him by email as soon as possible.

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41. Having waited a week or so, and having received no contact from the claimant with any further evidence, Mr Limpert took the view that he could make his decision on the basis of the information available. He decided that the appeal should not be upheld. He wrote to the claimant to confirm the outcome, having telephoned her to advise that in the absence of any further evidence he could not uphold her appeal. His letter, dated 23 November, is produced at R13.

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42. Since her dismissal, the claimant obtained short term employment with Lee Milne, a hairdressing salon, working from 11am to 5pm as an apprentice

hairdresser from 14 November 2011 until Christmas 2011. She is currently unemployed and is receiving no benefits.

43. The respondents provided the claimant with her pay envelope, of £95, which related to the week ending 22 October 2011, at the end of the disciplinary hearing on 28 October 2011.

44. Subsequent to her dismissal, the respondents sent a cheque to the claimant for a further £95, relating to the week to dismissal.

45. There was insufficient evidence of a week in lie, which was referred to by the claimant's representative, on which the Tribunal could make any findings in fact.

46. No evidence was presented to the Tribunal in relation to the claim for holiday pay, and no findings are made in that regard.

Submissions

47. For the respondents Mr Limpert made a short submission to the effect that the decision to dismiss the claimant was both fair and reasonable in all the circumstances. The respondents had reasonable grounds on which to conclude that the claimant had both taken the bottle of peroxide and subsequently lied about it, changing her story on several occasions. They were entitled to believe that she was guilty of gross misconduct, and dismissal was within the range of reasonable responses open to a reasonable employer.

48. The claim for arrears of pay in respect of the week in lie had been dealt with. The cheque sent to the claimant for £95 after the dismissal hearing meant that she was paid up to the date of dismissal and nothing was owing.

49. With regard to the claim for arrears of pay in respect of the disparity between her contractual hours (38) and her actual hours (asserted either to be 48 or 44 by the claimant), the claimant had not been required to work beyond 5pm on a regular basis and she had only worked her contracted hours. There was no unlawful deduction of wages claim open to the claimant on that basis.

50. Mr Limpert indicated that the holiday pay claim appeared to have been withdrawn.

51. For the claimant Mr Bonelle commenced his submission by suggesting that since theft was the allegation, the test for unfair dismissal was whether or not the employer could prove beyond reasonable doubt that the claimant was guilty of the theft of the bottle of peroxide, and his submission was that they fell far short of that standard.

52. When reminded by the Tribunal of the proper test in an unfair dismissal case, Mr Bonelle simply asserted that the respondents did not have reasonable grounds for a genuine belief that she had been guilty of gross misconduct, and that the

dismissal was therefore unfair. He pointed to the evidence given by Mr Miller that he had bought the bottle on the internet.

5 53. Mr Bonelle argued that the claimant has, since her dismissal, only had one short period of employment, for eight weeks earning £95 a week, which would require to be taken into account. He asked the tribunal to consider making an award of compensation for future loss of earnings, but did not propose a particular level at which that should be made.

10 54. With regard to the claim for notice pay, this follows the unfair dismissal claim.

55. Mr Bonelle then asserted that the week in lie remained outstanding and that the claimant was due £95 for that week.

15 56. He went on to argue that the deed of apprenticeship demonstrated that she should not be working more than 38 hours a week, and that since her average hours were 44 hours a week, and her hourly rate £2.50 an hour (a matter on which no evidence had been led), she was due £15 over the period of her employment, that is 65 weeks.

20 57. With regard to the claim for holiday pay, Mr Bonelle confirmed that having conferred with his client over the lunch interval, that claim was withdrawn.

25 58. Finally, a payment of £300 should be made for loss of statutory rights.

Discussion and Decision

30 59. There were a number of conflicts in the evidence all of which the Tribunal resolved in favour of the evidence given by the respondents witnesses. Ms Hendry, Mr Limpert and particularly Mr Clelland impressed the Tribunal as honest and straightforward witnesses who gave their evidence in a clear and simple fashion. By contrast, the claimant and her father were less reliable in their evidence. Mr Miller initially stated in examination in chief that he had only bought one bottle of peroxide over the internet and insisted that he had not bought any peroxide in a shop, but then in cross examination appeared to suggest that he had in fact gone to a shop with his daughter to buy two more bottles of peroxide. The claimant left the Tribunal entirely unclear as to her position in relation to the question of whether she had bought the peroxide on the internet, in a shop or obtained it from a friend; and indeed it was not clear to us whether she actually denied that she had in her possession at any stage a bottle of TruZone peroxide. She could offer no convincing explanation, either before us or in the internal proceedings, why she had changed her story or how she had come to possess a bottle of peroxide as an unqualified hairdresser.

45 60. Further the Tribunal was unimpressed by the different versions of events provided by the claimant to her employer and to the Tribunal. Her final position was that the bottle had been bought over the internet, a position she only adopted in the appeal hearing. If that were the true position before the

disciplinary hearing, it is inconceivable that she would not have given that explanation, but she did not.

5 61. Having considered the factual findings, the Tribunal turned to consider the issues before it. The Tribunal had no difficulty in finding that the respondents had satisfied the onus placed on them by section 98(1) of ERA.

10 62. The Tribunal found that the respondents had established that the reason for dismissal was the claimant's conduct. At the point of testing the reason as against the requirements of section 98(1) the Tribunal needed only to consider the subjective view of the decision maker. At that stage it did not require to consider whether the reason was objectively correct – it could be factually incorrect – provided it was what the decision maker actually believed. In the present case the Tribunal was unanimous in its view that based on the evidence
15 before it that the respondents had discharged the onus on them under section 98(1).

20 63. The Tribunal accordingly turned to consider the requirements of section 98(4) of ERA which sets out the general test of fairness as expressed as follows:

“Where the employer has fulfilled the requirements of sub-section (1), the determination of the question whether the dismissal was fair or unfair (having regard to the reason shown by the employer) –

25 (a) depends on whether in the circumstances (including the size and administrative resources of the employers undertaking), the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and

30 (b) shall be determined in accordance with the equity and substantial merits of the case.”

35 64. Although not referred by parties to any authorities, in determining the issues before it the Tribunal had regard to, in particular, British Home Stores Ltd v Burchell [1978] IRLR 379 and Iceland Frozen Foods v Jones [1982] IRLR 439. These well known cases set out the tests to be applied by Tribunals in considering cases of alleged misconduct.

40 65. Burchell reminds Tribunals that they should approach the requirements of section 98(4) by considering whether there was evidence before it about three distinct matters. Firstly was it established, as a fact, that the employer had a belief in the claimant's conduct? Secondly, was it established that the employer had in its mind reasonable grounds upon which to sustain that belief? Finally, that at the stage at which that belief was formed on those grounds, was it established that
45 the employer had carried out as much investigation into the matter as was reasonable in all the circumstances of the case?

5 66. The case of Quadrant Catering Ltd v Ms B Smith UKEAT/0362/10/RN reminds us that it is for the employer to satisfy the Tribunal as to the potentially fair reason for dismissal, and he does that by satisfying the Tribunal that he has a genuine belief in the misconduct alleged. Peter Clark J goes on to state that "the further questions as to whether he had reasonable grounds for that belief based on a reasonable investigation, going to the fairness question under section 98(4) of the Employment Rights Act 1996, are to be answered by the Tribunal in circumstances where there is no burden of proof placed on either party."

10 67. The Tribunal reminded itself, therefore, that in establishing whether the Respondents had reasonable grounds for their genuine belief, following a reasonable investigation, the burden of proof is neutral.

15 68. The Tribunal bore in mind that it was not relevant whether the Tribunal itself would have shared the employer's view. The test is one of the reasonableness of the employer's view, and the Tribunal's examination must be confined to that.

20 69. Accordingly in reaching its conclusions the Tribunal bore in mind that, properly understood, it was for Mr Clelland, the respondents' director, to make an assessment of the information before him. The Tribunal must not substitute its own assessment for that assessment if it was established that he, acting reasonably and fairly in the circumstances, could properly have accepted the facts that he did.

25 70. The Tribunal further took into account that it was not necessary to establish as a fact that the claimant had committed the act of misconduct complained of. What the Tribunal required to consider was whether or not there was evidence before it that Mr Clelland was entitled to regard that act as misconduct.

30 71. Applying all of that to the case before it the Tribunal unanimously concluded that the dismissal was fair and reasonable in all the circumstances. There was more than enough before Mr Clelland for him properly to have had a reasonable suspicion amounting to a belief in the guilt of the claimant. The Tribunal was satisfied on the facts that not only did Mr Clelland genuinely have that belief but
35 that there were reasonable grounds to sustain that belief. Although no criticisms were made of the investigation or of the procedure adopted by the respondents, the Tribunal was of the view that both the investigation and the procedure gave the claimant every opportunity to defend herself and give a proper explanation for her actions, if one existed, and that no unfairness accrued to the claimant in the
40 procedure followed. Indeed, given the size of the respondents' organisation, which employs 10 staff, the procedure was comprehensive and open, to the extent of having an independent consultant hearing the appeal.

45 72. He had before him evidence that the claimant had in her room at home a bottle of peroxide which, because of the distinctive shape of the bottle, alerted him to the belief that it was a bottle of TruZone peroxide stocked by the salon where the claimant worked; he also had the evidence of Ms Hendry as to the conversation with the claimant on 18 October 2011 in which she said that she had been given the bottle by a friend; and on his own consideration of the matter, he had the

different explanations provided by the claimant, and her companion, at the disciplinary hearing. The Tribunal considered it clear that Mr Clelland had a genuine belief that the claimant had not only taken the bottle of TruZone peroxide but damaged irreparably the necessary relationship of trust and confidence between employer and employee. He was fortified in his belief by the admission by the claimant that she had lied when the matter was first raised by her by Ms Hendry, and by the fact that her changing stories at the disciplinary hearing further undermined his confidence in her truthfulness.

73. Having reached the conclusion that the claimant had committed an act of gross misconduct, Mr Clelland was, in our unanimous view, entitled to conclude that dismissal was an appropriate sanction. In so determining the Tribunal reminded itself that if there was a reasonable basis for the conclusion that there was misconduct, provided the decision to dismiss fell within the band of reasonable responses the Tribunal would err if it interfered with that decision (per Iceland Frozen Foods).

74. The Tribunal would not be permitted to substitute its own view for the view of a reasonable employer. Instead it must consider what the respondents actually did and determine whether that decision was one that was open to it.

75. The band of reasonable responses contemplates a situation where one employer might take one decision where another will come to a different view, both based on the same facts. However the fact that different decisions are open to them does not render one decision correct and the other wrong. Both are available options provided that they are ones that a reasonable employer could take in all the circumstances.

76. It is for an employer to decide, within reason, what is important to them. Here this employer concluded that the claimant had not only removed from its premises a bottle of TruZone peroxide, a dishonest act, but had undermined their trust and confidence in her by taking a dangerous substance which only trained hairdressers, within the salon, were entitled to use and which she was therefore not allowed to use (something she was aware of and admitted). Further, she lied when she was confronted with this by Ms Hendry. Her explanation for having lied is that she was put under pressure. Mr Clelland, in his evidence, explained convincingly why he considered that that undermined trust in itself; as he put it, if a client whom the claimant is treating comes to another hairdresser complaining that she is in pain due to an act of the claimant, and when confronted by her manager the claimant, under pressure, lies to protect herself, the client could suffer the consequences of that lie, and that would be unacceptable to a business such as a hairdresser's which trades entirely on its local reputation.

77. The Tribunal was therefore unanimous in reaching its conclusion that, having regard to the requirements of section 98(4), overall, the dismissal was both fair and reasonable.

78. It follows that the claims for notice pay, compensation for unfair dismissal and loss of statutory rights all fall away and are dismissed.

79. The claimant's representative made it clear during the proceedings that the claim for holiday pay was withdrawn.
- 5 80. The two outstanding payment claims therefore related to the week in lie and to the accrued loss of earnings over the entirety of the contract of employment on the basis that the claimant was underpaid for the hours she worked.
- 10 81. Dealing first with the claim for the week in lie, no evidence was put before the Tribunal which would enable us to make a decision about this. The claimant did not suggest that she had had a week's pay withheld from her when she started her employment, which is what the Tribunal understands by such a term, and in the absence of confirmation that she was contractually due such a payment, that claim fails.
- 15 82. A more significant claim was made in relation to the claimant's hours of work. Section 13(3) of the Employment Rights Act 1996 states that "where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this part as a deduction made by the employer from the worker's wages on that occasion".
- 20 83. The Tribunal was puzzled by this claim. Essentially, this is a matter of contract, so we asked ourselves what the claimant's entitlement to pay under the contract actually amounted to. Paragraph 4 of the terms and conditions of the Deed of Apprenticeship stated unequivocally that the claimant was due to be paid £95 per week. The claimant accepted in evidence that she was paid £95 per week. Her representative suggested in his submission that the number of hours she worked affected her rate of pay, and calculated her alleged loss accordingly. However, the evidence of the claimant herself, of the respondents, and of the contract of employment, all made it clear that the pay she was due as an apprentice hairdresser was £95 a week. When she moved to a different job, she was paid £95 a week. Although we heard no evidence about this it may be that this is an industry standard sum for an apprentice hairdresser. Be that as it may, the claimant was paid throughout her employment at the sum set out in her contract.
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84. The Tribunal therefore concluded that there was no unlawful deduction of wages as the claimant had received her contractual pay. That claim also therefore falls to be dismissed.

85. Having considered all of these matters, the Tribunal therefore reached the decision that the claimant's claims all failed, and that the claim is in its entirety dismissed.

Employment Judge: *Andrew Head*

Dated: *21 February 2012*

Entered in Register/Copied to Parties: *21 FEB 2012*