



# EMPLOYMENT TRIBUNALS

**Claimant:** Vikram Singh

**Respondent:** Gurdwara Siri Guru Singh Sabha

**Heard at:** North Shields

**On:** 29<sup>th</sup> 30<sup>th</sup> May 30, 31<sup>st</sup>

**August**

**Before:** Employment Judge AE Pitt

## Representation

**Claimant:** Mr Marfat Solicitor

**Respondent:** Mr Frew of Counsel

# RESERVED JUDGMENT

1. The claimant was unfairly dismissed
2. The claimant was wrongfully dismissed
3. The claimant did not suffer unlawful deductions from wage
4. The claimant is not entitled to compensation for any untaken holiday leave

# REASONS

1. The claimant Vikram Singh who was born on 2 July 1963 and is now aged 54 years of age makes claims for unfair dismissal unlawful deduction from wages and holiday pay he was employed by the respondent between 24 January 2010 and 18 August 2017. The effective date of termination 18<sup>th</sup> of August 2017. At that time his wage was £125 per week and he received trips in addition to that this sum.

2. The respondent is a charity run by a management committee of trustees. The respondent is Sikh temple providing religious and pastoral care within the Sikh community in Newcastle.

3. The tribunal heard evidence from Mr Vikram Singh, the claimant; Miss Parmjit Mattu, a member of the management committee; Mr Jaktar Singh, the President Sukhjinder Singh, Gianifor Singh; Tara Singh, a member of the committee. The Tribunal had before it a bundle of documents which included the pleadings stills from CCTV footage and a transcript of an audio recording of a meeting on 18 August 2017. With regard to the transcript it was in dispute that it was accurate

attempts were made by the tribunal to resolve it by first trying to get the parties to cooperate in the preparation of a joint transcript, secondly, by asking the claimant prior to the hearing to indicate where there were inaccuracies in the transcript.

### 3 The issues

#### Unfair Dismissal

1. is conduct the sole or principal reason for dismissal
2. is the reason for dismissal substantial
3. has a reasonable investigation being undertaken
4. was the claimant provided with all investigation material in advance of any disciplinary hearing
5. Was the claimant invited to an investigation meeting
6. was the claimant invited to a disciplinary hearing
7. the claimant given a right of accompaniment the disciplinary hearing
8. was the claimant provided with a right of appeal
9. based on the investigation, and based on the evidence, did the respondent have enough information to establish a reasonable belief in the claimant's guilt
10. was the decision to dismiss reasonable in all circumstances and within the band of reasonable responses
11. Should there be a 25% uplift be afforded to any compensation for the respondent's failure to follow process
12. should there be a contributory fault reduction to any compensation
13. is a Polkey argument advanced

#### Wrongful dismissal

Is the claimant entitled to notice pay

#### Unlawful Deduction from Wages

1. did the claimant work 56 hours per week and receive £125 cash per week
2. is the respondent is in breach of paying the national minimum wage
3. is the claimant owed holiday pay
4. is the claimant owed any outstanding wages.

#### The Facts

5.1 the respondent is a charitable organisation which is managed by an executive committee in accordance a written constitution. The purpose of the respondent is to administer to needs of the Sikh community in Newcastle. In order to do that, it has a temple, the Gurdwara. the Gurdwara is the heart of the community it provides opportunities for the community to come together in prayer, it also offers religious services for weddings, funerals and such other events. In order to operate the Gurdwara employs Gianni, or priests. Overseeing the priests is the head Gianni known as the Grantee. This was the role the claimant was employed in. The priests perform a number of services within the temple, some they are required to perform under their contracts of employment, others they perform as required by members of the congregation. For these they may receive payment

direct from the member of the congregation or the donation may be paid to the Treasures which is then distributed between all the priests.

5.2 Within the Sikh religion there are a number of tenets that must be followed; these include being honest and trustworthy; in addition members of the Sikh religion must perform Seva, this is voluntary work either within the temple or the wider community; as part of its role the Gurdwara offers to any person requiring it free food, this is known as Langar, each temple has within it a Langar Hall with a kitchen attached, and from here food is served to those requiring it. The food is donated by the Sevant, the congregation, this is part of their Seva. Further, members of the congregation will also make donations of money aswell as their time and professional services to the temple. It is a further tenet of the religion, that if a person asks for forgiveness they shall be given it.

5.3.1 the claimant became a Gianni over 30 years ago and was invited to work for the respondent's in 2010. I have seen a document (47, 46) headed Employee Information and dated October 2010, this sets out the claimant's job title as a Minister of Religion, with earnings of £125 a week and living expenses of £200 per week provided for the claimant. his job description is 'preaching and performing pastoral duties in a religious order within a community. Pastoral duties include leading worship regularly and on special occasions giving religious education to children and adults by preaching or teaching; officiating at marriages and funerals; offering counselling and welfare support to members of the congregation; recruiting training and coordinating the work of local volunteers and lay preachers.' At the time the claimant's employment commenced he was provided accommodation within the Gurdwara itself

5.3.2 In 2015 the claimant was provided with new terms and conditions of employment which set out his working hours as 24 payable at £6.50 per hour and his entitlement for holidays sickness plus provision for termination of his services. On 1 November 2016 the claimant was provided with an updated set of terms and conditions of employment; this sets out his hours of work as 24 hours however it also provides that the your working hours will vary accordingly to the workload. you will be expected to work within these hours although the employer cannot guarantee the number of hours of work that will be offered " the document also sets out the following "in addition you are entitled to free accommodation and free meals at the gurdwara. this entitlement is for yourself and not any member of your family.". The document sets out "the gurdwara reserves the right to discipline or dismiss an employee with less than 12 months continuous service without following good procedures. If you are dissatisfied with any disciplinary or dismissal decision taken in respect of you may appeal to the management committee". These appear to be the only documents in relation to the employment I accept the claimant believes these to be contract of employment. The respondent does not have any formal written policy for disciplinary or grievance matters. I've not heard any evidence as to what rules of the Gurdwara might require in terms of a hearing. All these documents are in English; no reference has been made to the documents being given to the Claimant in Punjabi.

5.4 The claimant's wife and daughter joined him in this country. They were initially accommodated at the gurdwara either within the temple itself or in subsidised accommodation nearby. At sometime in 2015 the claimant obtained the tenancy of a council property in Newcastle. In addition to any sums he received from the respondent he was also in receipt of benefits; housing benefit child tax credits and child benefit.

5.5 During 2013 Mr Jagtar Singh tells me that he became aware that the claimant had a gambling problem they spoke together and because the claimant sought Mr Singh's forgiveness Mr Jagtar Singh did so forgive him. There is other evidence before me in relation to an ongoing gambling problem for the claimant he tells me that he no longer gambles and I've no reason to disbelieve that.

#### Working hours

5.6.1 The claimant says in his witness statement and his ET 1 that he works a substantial number of hours per week at the respondent's temple. his claim was clarified in his further and better particulars. within that document it is asserted that the claimant was to work 35 hours as head priest between the hours of 5 AM and 5 PM for which he would receive 125 sterling pounds. In his further and better particulars, the claimant asserts that he would work at a minimum 56 hours and was not recompensed for these hours; further that he did not take any annual leave and received no compensation for that. The respondent's case is that the claimant worked 24 hours per week for which he received the National minimum wage of £7.20. The respondent's case is that the claimant worked the following hours: –

(a) morning for 4.5 – 5 am and six – 6.30, six days a week

(b) afternoon for 4.00 – 4.30; 5.00 – 25.30; and 6.00 – 7.00 6 days a week

©Tuesdays and Thursdays extra two hours

(d) there were other events such as Akand Path at the temple for which the claimant receives separate payments

5.6.2 I have seen in the bundle documents (page 54 – 58, 159). The former which purport to be worksheet timetables dating from 1 April 2012 until 10 April 2015; they set out on a weekly basis whether or not the claimant was present at the temple a final column headed total time sets out the number of hours worked that week; there is a narrative at the conclusion of it which indicates the claimant worked 56 hours a week and had had no holidays and that the information had been checked and is formal and correct. The latter document is headed donations given direct to the Singh 2017. It sets out the sums paid by the respondent to the claimant for the period 9 April 2017 to 15 August 2017, a total of £2301. This document is on a blank piece of paper and is not signed. In his witness statement (Paragraph 67) Mr Jagtar Singh makes reference to the document at page 159, he does not say who compiled this document nor is there anything in the document to suggest who did compile it. In relation to the other documents produced by the claimant they purport to be signed by Tara Singh. Tara Singh is a member of the management committee, in his evidence before me Mr Tara Singh told me he had never seen these documents before, he didn't sign them, and he suggested the claimant had forged them; specifically, he says

he doesn't write in English. The claimant asserted that Mr T Singh was the author of these documents and first told me in evidence that they were prepared for the eventuality of the claimant going to another gurdwara work these documents would prove the work he had been carrying out at the Newcastle. under cross examination the claimant expanded on that and told me that the documents were also produced in order to assist with his immigration status.

### The events of July and August 2017

5.7 There are two ways in which donations may be made to the gurdwara; first donations may be made to a cashier, if a payment is made to the cashier a receipt is given to the donor and the donation is formally recorded; anonymous donations may be made by leaving monies in the Golak, this is a locked box in open sight located in the Durbar Hall near to the cashier, members of the congregation will place sums of money into this box. In addition, members of the congregation may also provide food and household goods to the temple. The Golak box is locked, and the key is kept in the cashier's desk in another locked box. The evidence from Jaktar Singh was that this second box had a faulty lock and could easily be opened.

5.7.1 The respondents having built their new gurdwara from donations, installed a state-of-the-art security and CCTV system. There are a number of cameras in the buildings which are operated from a separate room known as the control room this is located near to the lobby of the temple, there is a security panel in the lobby which permits the alarm system to be deactivated.

5.7.2 I have been shown still footage from the CCT which shows the claimant entering the building up of on 27<sup>th</sup> of July at 2335, 10<sup>th</sup> of August at 2243, 17 August 2250. It is the respondent's assertion that during these periods the claimant switched off the security system and the cameras entered the Durbar Hall and stole money from the Golak. In his witness statement Mr Jaktar Singh states that on 27 July a camera is switched off at 2336 and put back on 2344, a second camera is switched off at 2336 and is put back on at 2344. On 10 August the main hall camera was turned off between 20 to 45 2250. On 17 August the main hall camera is switched off from the 20 from 2252 to 2257. I have not viewed the entirety of the CCTV footage because the task I have to undertake today did not require me to do that.

5.7.3 On 6th August when the donation box was opened it contained £300. This was considered to be low especially as there had been a wedding when donations can sometimes be in the range of £900-£1000. as a result of that Mr Jaktar Singh decided to watch the CCTV footage he describes in his witness statement (paragraph 26) seeing Mr Vikram Singh coming into the gurdwara he does not specify the date upon which this is supposed to happen footage he refers me to relate to a number of dates, but this must be for 5<sup>th</sup> Aug

5.7.4. Mr Jaktar Singh then spoke to other members of the management committee, it is unclear exactly what it was he said however looking at

paragraph 38 he say, "I was devastated as I had found Vikram Singh entering the gurdwara when it was closed tampering with cameras coming in through the front entrance for, leaving by the fire exit and tempering with the security cameras for the main halls, significant money had gone missing at the same time. I notified some of the other senior members and told them what I have discovered. They were shocked and upset" I take it from that that is the date upon which he says the money was stolen although it is far from clear, as there are a number of dates referred to he goes on in his witness statement that he was satisfied the claimant entered the Durbar Hall specifically he was satisfied that he saw the claimant pulling out wires of the cameras for the first floor prayer room. On the evidence I have heard this cannot be correct as there are no cameras covering the control room; my understanding is that the respondents have concluded that it was the claimant tampered with the cameras because they were inactive shortly after he had entered the temple and walked in the direction of the control room. It was following days that he then viewed the footage 27 July. it is It is clear, to me, that Mr Jaktar Singh had made up his mind at that point that the claimant was responsible for stealing money. This information he relayed on to other members of his management committee. No action was taken at this time, although clearly it is a serious allegation.

5.7.5 On 10 August there was a special service in temple attended by a number of members of the congregation; according to Mr Jaktar Singh when the donation box was opened on the following day there was only £75 within it. Mr Jaktar decided to count the number of people who entered temple from 3 pm on Sunday, 6 August to Thursday 10<sup>th</sup> August, he counted 616 people. He concluded from this that there should be a minimum of £616 within the donation box on the basis that each person putting 1 pound. Again, no action was taken.

5.7.6 In his witness statement Mr Jaktar states "it was agreed that as Vikram Singh had been entering the gurdwara, switching off cameras, switching them back on after a time plus money going missing that we would have an informal chat with him ascertain what was going on." Despite his assertions that this matter could not be delayed it was delayed until 18 August 2017 when it was decided that the claimant would be spoken to that evening when he was on duty.

5.7.7 The claimant was invited into a room which according to the two witnesses from whom I heard, he entered in his usual relaxed manner, in particular he did not question why he was being asked to meet with members of the committee. I have two documents in the bundle from that meeting the first are a set of minutes taken by Miss Mattu, the second a transcript which was produced by the respondents, this is the document in dispute referred to above are. The evidence I have about that meeting is that it lasted for about an hour. prior to the meeting Mr Singh was not informed the reason for the meeting nor was he, at the commencement of the meeting told why he was there or why there was a need to tape the meeting or take minutes. As noted above the claimant disputes some of

the minutes, from the evidence I have heard from Miss Mattu I have concluded that this meeting was somewhat chaotic. The evidence of Miss Mattu was it was at times difficult because people were talking across one another and therefore I am satisfied there will be some inaccuracies. According to the transcript the claimant made admissions that his working week was for 4am to 6:30 am and 4 pm to 7 pm six days a week, on Tuesdays and Thursdays 4 pm to 9:30 pm and on a Sunday 9:30am to 3:30pm. It is only at this point that the respondent refers to irregularities and the claimant entering the building after it is closed. He then makes an admission that he has come to the gurdwara to take milk and tomatoes. he made denials at the beginning as to being in the CCTV control room and kitchen wires. He stated he had not been into either of the prayer halls, (Durbar). When asked why he didn't take the foodstuffs during the day he says because people are looking they would gossip, 'I was wrong to take things I should have told the committee.' It is then put to him that he entered on 27<sup>th</sup> July, 5<sup>th</sup> August and 10<sup>th</sup> August, it is at this point that it is suggested to the claimant that he was stealing from the golak . The claimant continues to make denials about touching the cameras and attempts to explain his actions. On a number of occasions members of the committee say words such "then you we can conclude here or it'll have to go to the police, let's finish this, stop this headache" another member says "not good to go to the police" It is difficult to ascertain at what point the claimant changed his account but at some point he appears to have agreed his hands may touch the wires, there is a further comment "we are trying to help you. We just want you to tell the truth otherwise as you say when sangat find out like police our reputation will be tarnished." The claimant indicates that he has never taken anything from the temple except for some household items and food. Indeed, at one point the comment is made by the transcriber "everyone starts to speak at once refuting what VS has said". one of the comments from the claimant reads as follows "yes I want to ask you want to forgive someone and on the other you are talking about solicitors what is your role". It is clear at some point that for that lawyers were referred to despite the respondent's witnesses making denials on this. Near the end of the meeting Jarnail Singh the secretary says this "why are you causing trouble conflict making it difficult for yourself. You're going round and round in circles just be straight if you have made a mistake say so". the claimant was dismissed at the conclusion of the meeting

15.7.8 Following this meeting a number of other meetings took place with the other committee members, it seems these were small separate meetings there was never one meeting of all of the committee, I am uncertain as what was said to each of those members, or how they reacted in the manner they did. In any event the outcome of those meetings was that the claimant's employment was terminated. A letter was sent to him on 23 September to confirm he was dismissed on the grounds of gross misconduct. It reads

"as you are aware you were informed that the meeting there we check CCTV footage as we had suspicions you had misappropriated Gurdwara

congregation funds. During this meeting at first you offered no explanations as to why you had entered the gurdwara when it closed and had proceeded to switch off particular CCTV cameras which are located in the sound room.

However, during the course of the meeting, you admitted to stealing and misappropriating a number of food products, dry products and household goods. When we asked you a number of times to view the CCTV footage you refused.

As a consequence of our investigations the consideration of the CCTV footage, your admission you had stolen gurdwara property we concluded that you had committed an act of gross misconduct namely theft and dishonest conduct we therefore dismissed you with immediate effect. Furthermore, as you can appreciate there was a breakdown of trust and confidence considering your esteemed position of head grantee – head priest.”

The respondents contacted the police and the claimant was interviewed under caution, no further action was taken for a lack of evidence.

#### Submissions

6.1 The claimant's case is there are a number of inconsistencies in the respondent's case for example it was originally asserted that the donation box was opened on a Sunday during cross examination it was clear it was also opened on a Friday. Mr Marfat has also pointed out that there is no policy as to who can enter the temple and that the investigation had never looked at how much money had actually been donated and receipted into the temple at the times when it's alleged the claimant had stolen items. He went on that the footage we have seen does not show that he tampered with CCTV and therefore it is unreasonable to say that he did. In essence that the lack of the investigation carried out most floor deeply and there is no evidence to suggest that the claimant was guilty of theft the claimant is a person of standing was worked at the temple 7 ½ years. Turning to working hours why was he required to sign in and opt out form of the working Time regulations it was not anticipated as those with work over 48 hours and that is our suggested in the document at page 66 of the bundle were not disputed by the respondents in their reply to that letter.

6.2 Mr Frew on behalf of the respondent invited me to find that the claimant was a blatant unsophisticated and scandalous liar, the respondent is a religious community which operates on trust, the head priest is the pinnacle of that position. looking at the issue of Polkey he invites me to say that there is a 100% chance that the claimant would be dismissed if for no other reason his admissions in the interview to tampering with the TV cameras. looking at contribution again there must be a contribution because of the nature of the allegation. turning to holiday pay and the respondents are quite clear that they owe the respondent the claimant paste they don't think he was working 56 hours to sum up that it's potentially an illegal contract which cannot be relied upon accommodation that can be taken into account but after he was given a council property his hours were reduced in order to obtain.



## The law

7 Section 98 Employment Rights Act 1996 sets out the law in relation to unfair dismissals. It is for the respondent to show the reason for the dismissal; the conduct of an employee may this may entitle a respondent to dismiss. If the respondent is able to establish that conduct was the reason for the dismissal the tribunal was then going to consider whether “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 military administrative resources of the employer’s undertaking the act the employer acted reasonably or reasonably in treating it as sufficient reason in dismissing the employee, and

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

Where an Employee is found to have been dismissed unfairly the tribunal must go on to examine what remedies may be appropriate; section 118 Employment Rights Act sets out how an award of compensation is to be calculated. If the tribunal makes an award of compensation shall consist of a basic award and a compensatory award. Section 119 Employment Rights Act 1996 sets out how a basic award shall be calculated; section 122 Employment Rights Act 1996 provides for reductions in the basic award; in particular where the tribunal considers any conduct of the complainant before the dismissal was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

Section 123 Employment Rights Act 1996 makes provision for the calculation of the compensatory award specifically the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal insofar as that loss is attributable to the employer.

Section 123(6) Employment Rights Act 1996 where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

Section 207 trade Union and Labour Relations (Consolidation act 1992) provides that any code of practice issued by ACAS is admissible in evidence before an employment tribunal. Section 207A of the act provides where an employer unreasonably fails to follow the code an employment tribunal may increase an award if it is just and equitable to do so; that shall be by no more than 25%.

In relation to any reductions the following case law is relevant Polkey v AEDayton Service Ltd 1988 ICR 142; this case establishes that procedural fairness is at the heart of the determination of reasonableness under the Employment Rights Act 1996. Procedural fairness however does not automatically render dismissal

unfair. Lord Bridge indicated in that case that where misconduct is the reason for the dismissal the employer shall investigate fully and fairly and here any explanation or mitigation from the employee. It is however possible for an employer to argue that if he had conducted a proper procedure the dismissal would be fair that is to say if using a proper procedure, a reasonable employer could reasonably have concluded that the employee was guilty of misconduct the dismissal will be fair the House of Lord documents ds also pointed out that such cases should be exceptional.

British Home Stores Ltd. Burchell 1980 ICR 303; this case sets out the steps in determining whether an employer has established the reason for dismissal was misconduct the employer was sure that you believe the employee to be guilty of misconduct; that the employer had in mind reasonable grounds for that belief; and at the point where that belief was formed the employer had carried out such investigation into the matter as is reasonable in all circumstances. It is worth pointing out here that the employer does not have to have conclusive proof of guilt of misconduct, no such proof as will be required in the criminal courts that is to say they were satisfied so they were sure. Further it is not for this tribunal to determine whether the claimant was guilty of misconduct; this tribunal purpose is to review the actions of the employer and not substitute its own view is that of the employer.

in the case of AB 2003 IRLR 405 held that what is a reasonable investigation will be determined by the seriousness of the charge against the employee and its potential impact upon that employee ; allegations of dishonesty which may lead to an employee being unable to secure new employment as a result needs to be rigorously investigated. You one of the matters which may determine the investigation is the question of whether dismissal may lead to deportation'

Having determined that conduct led to the dismissal tribunal must consider whether dismissal fell within the range of reasonable responses for such for such an offence is committed by the employee.

The ACAS Code of Conduct sets out a basic procedure to be followed; it should include dealing with issues promptly; carry out investigation to establish facts informing employees of the basis of the problem giving an employee an opportunity to state their case allowing employees to be accompanied at a disciplinary meeting and allowing an employee to hear. The code of conduct expands upon those basic principles setting out what a disciplinary procedure should contain the keeping of records; in relation to investigating cases it is; "it is important that disciplinary action is not considered at investigation meeting." "The nature and extent of the investigation will depend on the seriousness of the matter and the more serious it is then the more thorough investigation should be. It is important to keep an open mind and look for evidence which supports the employee's case as well as evidence against.

## **Discussion and conclusions**

8.1 it is clear from the evidence that the claimant was dismissed, the first question to be to be determined is the reason for the dismissal. It is for the

respondent to establish the reason for the dismissal, the claimant alleges that his dismissal was for unlawful reasons namely that he was aware of occasions when Mr Jaktar Singh, the chairman of the management committee, had also taken monies from the Sangat; therefore, Mr Singh wanted to be rid of the claimant. Having heard from Mr Singh and Miss Mattu I do not accept this assertion, in particular because, other than a bold assertion the claimant can point to no evidence to support his allegation. I am satisfied that the reason for the claimant's dismissal was the alleged misconduct.

8.2.1 Having determined that the reason for dismissal was alleged misconduct and therefore may be a fair dismissal. the Tribunal then have to consider the principles under section 98(4) Employment Rights Act 1996 . In determining this issue, the Tribunal had regard to the principles in Burchell as set out above. I am satisfied that Mr Singh and Ms Mattu believed that the claimant had stolen from this the temple. However, upon close examination it is clear that the investigation carried out was very poor. The investigation consisted of counting the money in the Golak, viewing video footage to see how many people had entered the temple, viewing CCTV footage of the claimant entering the temple at night and apparently turning off cameras. this led to them concluding that the claimant was guilty of theft. Theft, or any matter of dishonesty requires the employer to undertake a thorough investigation to establish the guilt of the employee. In this case this was not done. It is not clear to me on which of the occasions the claimant was within the temple at night it is alleged he stole from the Golak,

8.2.2 The respondents failed to follow even a basic procedure as set out in the ACAS code of conduct, they rely heavily on admissions made by the claimant during the meeting they held with him to discuss their concerns. However, as they had failed to carry out an investigatory meeting, a formal investigation or to invite the claimant to a meeting at which he could explain his actions, giving him the option to be accompanied by a colleague, the tribunal is not satisfied that those admissions to removing of foodstuffs are reliable. That is ,leaving aside whether the notes of evidence of that meeting are themselves reliable; if they are this tribunal does not consider that any comments made by the claimant during that meeting can be relied upon the following reasons; he was invited to the meeting by being called upstairs by Ms Mattu, upon arrival he was confronted by a number of members of the management committee, it is clear that during that meeting the claimant was bombarded by questions by various people present. In fact, Ms Mattu told me in evidence that she couldn't always faithfully interpret the tape because so many people will take talking at once. To be confronted in such a way on such a serious allegation without any support mostly to the conclusion that the claimant may say almost anything.

8.2.3 Indeed the failures go further than that, following that meeting Mr Jaktar Singh and Ms Mattu then speak to other members of the management committee, there are no notes taken of these meetings or conversations, the respondent cannot even tell me when they took place, although it seems that the claimant was dismissed at the meeting the dismissal was formally ratified following these further meetings.

8.2.4 Finally, the respondents did not offer the claimant any appeal from the decision of the management committee.

8.2.5 From the evidence I heard there was no investigation and the respondent failed to follow any procedure, in the circumstances, applying Burchell I concluded that the respondent had not carried out a reasonable investigation upon which to base their belief.

8.2.6 For all of those reasons the tribunal conclude that the claimant was unfairly dismissed.

### **Polkey**

9.1 I am invited to consider, whether despite the dismissal being unfair, the claimant would still have been dismissed if a fair procedure had been followed. As noted in the case of AB such allegations as those faced by the claimant require a rigorous investigation. In coming to my conclusions, I have considered the kind of investigation the respondents might have undertaken. First, there should have been an investigatory meeting with the claimant in which he would be able to set out his account of his actions in particular setting out why he was in the temple at night. The respondent could also have spoken to the treasurer to identify how many donations were made formally and recorded at this particular time, the respondents produced oral evidence that they had spoken to the security company as to the regards the CCTV footage and cameras being turned off this tribunal would have expected that to be conducted in a formal basis for the purposes of the investigation in particular for the security company to establish by examining the system in person to establish there was no the cause for the cameras being switched off. Clearly having conducted an investigation the claimant should then have been invited to a hearing in front of a nominated panel selected from the management committee, this panel would be invested with the power to discipline the claimant. He should have been allowed to be accompanied. Prior He should have been offered the opportunity to view the footage compiled with his companion and review any other evidence the respondent had gathered. If the panel concluded that the claimant was to be dismissed, he should hve been offered him an appeal; the appeal panel should be another select group from the management committee perhaps including the chairman himself.

9.1.2 The tribunal considered whether the admissions made by the claimant of themselves would have been sufficient for a Polkey argument to succeed. Leaving aside the comments above as regards the claimant's apparent admissions, the tribunal is not so satisfied. This is for the following reasons, first the items taken were small items of foodstuffs which the claimant had asked for them he may well have been provided with; secondly the clear evidence of Mr Singh was that if the claimant had made an admission and sought his forgiveness he, Mr Singh, would have forgiven him for that. Clear therefore that even on the basis of those

submissions the claimant may not have been dismissed. The same reasoning applies to the comments about touching wires.

9.1.3 I have also considered the nature of the allegations, that is to say dishonesty which led to a breach of the implied term of mutual trust and confidence, with regard to this, it is not a foregone conclusion that an employee would be dismissed, although, however in this particular case I bear in mind that the respondent cannot identify how much money was allegedly stolen and Mr Jaktar Singh's comments about forgiveness.

9.1.4 In looking at this issue, I have to consider the percentage chance that the claimant would still be dismissed; if the claimant was dismissed for stealing the foodstuffs and a proper procedure conducted I do not consider he would have been dismissed; even coupled with the allegation of 'touching wires' I did conclude the claimant would be dismissed. Turning to the issue of money is being stolen, because of the total failure to follow any procedure I am unable to establish whether the claimant would have been dismissed or not. This is because there are so many variables that I cannot comment upon which may have exonerated the claimant, in particular I am thinking here of the failure to speak to the treasurer of the CCTV company. For those reasons I am not satisfied that the claimant would have been dismissed following a full thorough and rigorous investigation.

### Contribution

10.1 Contribution must be considered in two stages, first the basic award. In order to reduce the basic award, the Employment Rights Act requires I look at any conduct of the claimant was such that it is just and equitable to reduce the award. I note that the claimant was in the temple at night, the respondent would also rely on the claimant's admission to taking food and touching wires. The former of itself is not such conduct as I consider make it just and equitable to reduce the award. Turning to the admissions, as I have concluded that the admissions of themselves are unreliable I don not consider that it is just and equitable to reduce the award on this basis

10.2 In order to reduce the compensatory aware the Employment Rights Act requires that if I were to conclude that the dismissal was caused or contributed to by the claimant by any action of the claimant I shall reduce the award as I consider just and equitable. Whilst ~I accept that the claimant was in the temple at night, on at least one occasion he had a legitimate reason to be there, that is to bring food for one of his colleagues, in those circumstances, I do not consider that it is just and equitable to reduce the award.

### ACAS Uplift

11 This is one of those cases where the phrase 'runs a coach and horses' through the principles of fairness in conducting a disciplinary hearing. The respondent did not conduct any kind of procedure, and I am satisfied carried out

the interview with the claimant in an intimidating and bullying manner. I will make an uplift of 25%

### Wrongful Dismissal

12 Turning to the issue of wrongful dismissal tribunal must consider whether the claimant had acted in such a way to entitle the respondent to terminate the contract of employment summarily. This of necessity involves a review of the circumstances leading to the dismissal. The facts, which are not in dispute, are as follows; the claimant was in the temple at night, on one occasion he visited and another priest in the temple. Issues in dispute include whether the claimant turned cameras off whether he stole monies from the golak whether he stole foodstuffs. I am not satisfied that on the evidence I have heard that the respondent was entitled to terminate the contract. Going on from that position I considered how long it would have taken the respondents to undertake a proper investigation and if they were satisfied of his misconduct dismiss him lawfully I estimate this would be six weeks.

### Unlawful deductions from wages

13.1 This part of the claimant's case is based upon his assertion that he worked 56 hours per week. In order to support his case, he produced documents purporting to have been made by Mr T Singh. The respondents deny the hours worked and indeed called Mr Singh to say that the document was a fraud. One of the reasons the respondents maintained this, is the alleged purpose for which the document was produced; the respondent's case is there is no need for this document to be produced at all. One of the arguments advanced by the claimant, although this was far from clear is that it was produced for the purposes of his immigration status. A second argument he advanced was that the document was him to establish his working pattern if he wished to move to another temple. although this second argument seems to have little merit the first argument put forward has a ring of truth to it. In particular that the claimant was being assisted by a friend to ensure he was able to remain within the UK. I cannot accept that the claimant who is an intelligent man would be so foolish as to produce this document if it had not been given to him. However, if I find that it is a true document then I must dismiss the evidence of Mr Singh. I am not prepared to do that; however, I cannot be sure as to the true nature of this document and therefore I can place no reliance upon it.

13.2 I therefore have to assess the evidence of the claimant on this point, he told me in detail of the hours he worked, in particular that he worked from early in the morning covering morning prayers and late into the evening. Having heard from Mr Jagtar Singh I am satisfied that although the claimant was usually present in the temple he was not required to be so present. Indeed, a room was provided for the priests in order for them to rest, away from the congregation and therefore not available for any duties. I concluded that although the claimant was often present at the temple from early in the morning till late in the evening these were not his working hours his working hours was those with no set out by the respondent. If he carried out duties outside of those hours these were duties he undertook of his own accord for which he was paid separately to the wages given to him by the respondent. I conclude therefore that there were no unlawful deductions from his wages.

Holidays

14. I heard evidence from the respondent that Mr Singh was able to take his holidays as he wished, the claimant did not challenge this evidence. It is for the claimant to establish that he was either not paid or unable to take his holidays. Holidays. On the evidence I have heard I am not satisfied that the claimant was due any outstanding holiday pay

Conclusion

15. The claimant was unfairly dismissed. There will be no reduction due to Polkey. There will be no reduction for contribution of either the basic award or the compensatory award. The claimant was wrongfully dismissed. The claimant is di not suffer any deductions from wages, either because of his working hours or for compensation for untaken annual leave.

Employment Judge **Pitt**

Date 26<sup>th</sup> October 2018