



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Lee Ellwood  
**Respondent:** Coca Cola European Partners Great Britain limited  
**Heard at:** Ashford **On:** 12 July 2019  
**Before:** Employment Judge Cheetham QC

## Representation

**Claimant:** in person  
**Respondent:** Ms G Hirsch (counsel)

## JUDGMENT

1. The claim of unfair dismissal is dismissed.

## REASONS

1. This was a claim for unfair dismissal, which – according to the Respondent - was on the ground of gross misconduct.
2. At the start of the hearing, at which the Claimant represented himself, I had concerns about the extent to which he had prepared his case. Witness statements had been sent to him by email 3 days previously; a soft copy of the bundle had been sent 10 days previously and a hard copy the day before the hearing. Therefore, there had been adequate time for the Claimant to read everything, but it became apparent that he had not done so (or at least he had not read very much).
3. Therefore, within the space of this hearing, the Claimant was given additional time to read and prepare questions (which he had not done either). Also, I heard the Respondent's evidence first, even though the Respondent's evidence would usually be heard first in an unfair dismissal claim such as this. This allowed the Claimant to get some understanding from the questions asked of him exactly what was in issue. As I explained to him, it made no difference at all in terms of the weight of the evidence and, in any event, there was no

dispute that this was a conduct dismissal. In the event, the Claimant asked very few questions.

4. The issues in the case were these:
  - (i) What was the reason for the Claimant's dismissal and was it a potentially fair reason? As stated above, the reason advanced by the Respondent, which was not disputed, was conduct.
  - (ii) Was the dismissal fair, by reference to the fact of the employer's belief in the misconduct, the reasonable grounds to sustain that belief and whether there was a reasonable investigation?
  - (iii) Was the dismissal procedurally fair?
  - (iv) Was dismissal a reasonable sanction in all the circumstances?
  - (v) If the dismissal was unfair, would a fair procedure have made any difference to the outcome?
5. I heard evidence from the Claimant and, for the Respondent, from Simon Steward (Senior Manager, Customer Hub – dismissing officer) and Clare Bottle (Associate Director, Warehousing – appeal officer).

### **Findings of fact**

6. The Claimant commenced employment on 20 October 1997 and worked as a Technical Representative (known as a "Tech Rep"). The Tech Reps were field based, which meant that they did not have a fixed place of work to attend each day. Rather, they would spend their working day at various customer sites. Some of this work could be described as reactive, for example, where a customer required repairs on dispensing machines (sometimes urgent repairs); other work was proactive, for example, carrying out audits on machinery and preventative maintenance.
7. The Tech Reps used an application called ServiceMax to assist the management of their workload. This app shows the Tech Rep any requests for repairs ("Work Orders"), but also allows them to assign to themselves proactive work, if there are no Work Orders listed.
8. A key requirement of ServiceMax is to record start and finish times for jobs and what the Tech Rep is working on through the day, together with the location. The app needs to be used "live" and accurately, in other words, it is not meant to be completed at the end of the working day. The Respondent went to some lengths in its evidence to stress the importance of accurate use of the app and I accept that it was an important requirement, primarily to allow the Respondent to have an accurate record of what Tech Reps were doing and when and where they were doing it. Importantly, I also accepted that Tech Reps, including the Claimant, understood its importance.
9. There was an issue over the training received for ServiceMax. The Claimant was extremely disparaging about both its quality and quantity. I found that there had been training on the use of the app, which the Claimant had attended,

although I could not make any useful finding on its quality. What seemed more important to me – as this was a key factual issue – was whether the Claimant knew how to use it.

10. This was explored in the Claimant's cross examination. The Claimant accepted that he knew how to operate the app and that he knew what was meant by recording data in "real time". This was also evidenced by his Performance and Development Reviews. Therefore, I found that the Claimant did know how to use ServiceMax, by which I mean that he understood how to enter data and when that was meant to be done.
11. In October 2018, an issue arose when the Claimant called his manager over a problem with a fuel card. When the manager looked into this, he saw that the Claimant had recorded that he was on a customer site at the time of the call in a different part of London. The manager called the customer site and was told the Claimant had left 2 or 3 hours earlier.
12. That led to a meeting with the manager, when the Claimant said that he sometimes forget to enter "work began" (i.e. record the starting time of a job) and then had to "backtrack" an entry to fix the problem. He also volunteered that he sometimes "stretched" days, in other words exaggerated the time he was at a site.
13. Unsurprisingly, this led to an investigation of the Claimant's ServiceMax records (on 9 October) and various discrepancies were discovered. These included the Claimant recording work at sites which he had not attended or which he would not have been able to access; work at sites where there was no longer any equipment; falsifying the amount of time ("stretching"). The Claimant accepted "stretching" times, but said that he had done this out of fear of being made redundant – in other words, he wanted to appear busier than he was. However, this also had the effect of the Claimant claiming overtime in respect of time not actually spent working.
14. The investigatory meeting was reconvened on 17 October, at which further examples of "stretching" were considered, but the Claimant either could not recall or was unable to provide an explanation.
15. The Claimant was asked to attend a disciplinary hearing. He faced allegations that he had falsified his time accounts for actual times and work completed and that he had been dishonestly claiming overtime payments. Specific examples were provided.
16. The hearing was arranged for 31 October, but postponed because of the Claimant's health. He had told his manager at the investigation meeting that he was struggling with depression and so Mr Steward – who was conducting the disciplinary hearing – wanted advice from Occupational Health on what he should do. The OH report did not state that the Claimant was unfit to attend; in fact, it said that a delay in holding the meeting could be detrimental to the Claimant's health.
17. The report recommended holding a meeting in a neutral venue, so Mr Steward decided to hold it in a private room at a different office. It also recommended allowing a representative to answer questions on the Claimant's behalf, but Mr

Steward did not agree with that, because these were allegations of dishonesty and he therefore needed to hear from the Claimant himself to gauge his responses. The report also suggested that the Claimant should not attend the meeting, but provide written answers to questions, but Mr Steward disagreed for the same reason. I found that it was reasonable for Mr Steward to want the Claimant to attend if he could (and the OH report said he was fit to attend) and to answer questions himself.

18. The hearing took place on 16 December 2018 and the Claimant attended with a companion. The Claimant admitted the first allegation, namely that he had falsified the records. The overtime allegation he described as a “grey area”, as he said he had not claimed overtime in the previous 3 months. He also gave Mr Steward documents relating to his health, including a statement from the Claimant that he was not well enough to attend. After taking time to consider these documents, Mr Steward discussed continuing the meeting with the Claimant and it was agreed that the hearing should proceed.
19. In terms, the Claimant continued to accept that he had falsified the records and, eventually, also accepted that he had claimed overtime to which he was not entitled. Mr Steward therefore concluded that the allegations were made out, that this amounted to gross misconduct and that the Claimant should be summarily dismissed. In fact, despite what might be thought to be overwhelming evidence, given the Claimant’s clear admissions of guilt, Mr Steward evidently took great care in checking through the records and all of the evidence before reaching his decision.
20. He particularly weighed up the questions raised by the Claimant’s health and the evidence that he had, at times, panicked, as these were mitigating factors. However, he concluded that the clear evidence of dishonesty went to the heart of the employment relationship and, unfortunately, the Claimant could no longer be trusted.
21. The Claimant brought an appeal against the dismissal on 19 November 2018. In summary, there were three grounds of appeal: he had new evidence about his overtime claim; there were mitigating circumstances over his health; and the outcome was unfair.
22. The appeal hearing took place on 25 February 2019 and was chaired by Clair Bottle, a senior manager. As a result of issues raised about his health at that meeting, Ms Bottle carried out some further investigation and spoke to the Claimant’s manager and also Mr Steward. However, she then concluded that there was nothing to suggest that the Claimant’s depression had caused him to act as he did (the Claimant having said it caused him to do “stupid things”). Taking everything into account, Ms Bottle decided not to uphold the appeal.
23. At the end of this hearing, I heard submissions from Ms Hirsch, who had also provided written submissions. The Claimant also summarised his case.

## **Conclusion**

24. This was a sad and unfortunate case, because the Claimant had worked for over 20 years with this employer. He has also suffered from ill health, namely depression that arose from some personal issues.

25. However, as the Claimant himself recognised, during the disciplinary process, he had accepted that he had falsified his time accounts for actual times and work completed and that he had been dishonestly claiming overtime payments. In those circumstances, it is not difficult to conclude that the Respondent had reasonable grounds for believing that – in terms - he had acted dishonestly. There was a proper investigation and I can find no fault with the disciplinary and appeal process.
26. The issue in this case was whether dismissal was a reasonable sanction, given the Claimant's long employment history and also his health issues. However, I am satisfied that both decision makers took these matters into account when reaching their decision and that the sanction of summary dismissal was reasonable in all of the circumstances of the case.
27. The claim of unfair dismissal is therefore dismissed.

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Employment Judge Cheetham QC

Date: 4 August 2019