

repair to which it related could not be located. Ms Lowes questioned the staff member who had handled the repair who said she recalled the ring arriving back in the store and passing it to Ms Gray to examine. She did not recall anyone else being present at the time, and was not aware that the ring had been taken out of the shop. The store manager, when spoken to by Ms Lowes, could recall nothing about the matter.

[3] Ms Lowes spoke with Ms Gray on 13 January. Ms Gray acknowledged that she had not yet paid for the repair and stated that the store manager concerned knew this. On 17 January Ms Lowes gave Ms Gray written notice that she was required to attend a disciplinary meeting on 20 January. Before proceeding with the meeting, Ms Lowes asked the store manager (who was to attend the meeting) what else she could remember of the matter. The store manager denied any knowledge of it at all.

[4] Ms Gray attended the meeting accompanied by her father for support. She agreed that she had taken the ring from the store without paying for the repair and claimed that she did so with authorisation from the store manager who had told her that she could pay later. Ms Gray said that such conduct was commonplace at the branch in question and she gave Ms Lowes an example of the store manager herself taking a personal job home before making payment for it.

[5] Ms Lowes told me that after the meeting she questioned the store manager about what Ms Gray had reported. The store manager denied any knowledge of the repair job let alone authorisation of its removal without payment. She also denied having personally taken an item without paying for it. Ms Lowes examined the documentation relevant to the store manager's personal job. This verified that payment had been made for the item and uncovered nothing to indicate that it was taken from the store beforehand.

[6] Ms Gray had identified the co-worker who had handled the repair as a witness to the relevant exchange between herself and the store manager. Ms Lowes had of course already spoken to this person and told me she decided against speaking to her again because she did not want to breach Ms Gray's privacy.

[7] On 21 January Ms Lowe convened a further meeting with Ms Gray and her father. She outlined her conclusions: that Ms Gray had removed the item without

payment and without authorisation, and that this amounted to serious misconduct. She then offered Ms Gray and her father the opportunity for an adjournment and to make representations about the appropriate outcome. They requested that a decision be made, and Ms Lowes proceeded to dismiss Ms Gray.

[8] At the time of the dismissal the bill for the repair (\$143.73) remained outstanding.

[9] Ms Lowes told the Authority that she took the following factors into consideration in making the decision to dismiss:

- i. The company had in place a series of formal policies to govern staff purchases. The removal of an item from the store without payment was in breach of these policies;
- ii. Ms Gray had signed off on these policies (indicating that she had read and understood them) as recently as April 2009; furthermore she had been promoted to assistant store manager in November 2007 and as such could be expected to have a good understanding of the effect of the policies she had signed off on;
- iii. Ms Gray's assertion that the removal was authorised was not supported by the accounts of the store manager and staff member and could not reasonably be preferred to those accounts, and
- iv. the respondent was a retail enterprise where trust was crucial. In the circumstances, the essential trust and confidence in Ms Gray had been broken.

Issues

[10] During the latter part of 2008 there had been issues between Ms Gray and her store manager which led Ms Gray to make a formal complaint to the regional manager

of the time (Ms Lowes's predecessor.) Ms Gray told the Authority that she did not believe that the dismissal was genuinely based on her failure to pay for the ring repair in a timely way but was: "*just an excuse to get rid of me especially because of the complaint I made ...before Christmas.*"

[11] For Ms Gray it is argued that:

- i. the process was rendered unfair by the store manager's involvement in it;
- ii. Ms Lowes did not conduct a sufficiently thorough inquiry in that she did not fully investigate Ms Gray's allegations against the store manager and failed to take into consideration the prior history of conflict between Ms Gray and the store manager, and
- iii. in all the circumstances as she put them to Ms Lowes, her conduct warranted only a warning and not dismissal.

[12] These submissions give rise to the issues for determination.

(i) The store manager's involvement

[13] From the time the store manager took over the branch where Ms Gray worked (in late 2007) she and Ms Gray had a difficult working relationship. In March 2008 Ms Gray received a formal warning from the store manager and in December 2008 Ms Gray and her father met with the then regional manager, Roy Turner, to discuss Ms Gray's allegations that the store manager was being abusive to her. Mr Turner's solution was to arrange Ms Gray's transfer to another store. This took place shortly before Christmas 2008 which was also just before Ms Lowes took over Mr Turner's role as regional manager. Ms Lowes told me that she knew that prior problems at the branch lay behind the transfer but Mr Turner did not brief her on the details.

[14] I was told that the manager of the store where the problems had occurred (and where the ring was repaired) sat in on the disciplinary meeting so that she could respond to matters as they arose. So did the manager of the store to which Ms Gray

had transferred. However Ms Lowes told me that she was solely responsible for determining the process, for running the meetings, and for making the decision to dismiss.

[15] Notwithstanding the fact that the decision to dismiss lay with Ms Lowes, I accept that it was inappropriate for the previous store manager to sit in on the process after it had been alleged that she was complicit in the misconduct. From that point she could no longer be disinterested and should have been treated as an interviewee in the inquiry, with any assistance Ms Lowes required being provided by the other store manager.

(ii) Was the inquiry sufficiently thorough?

[16] Ms Lowes told the Authority that she accepted that Ms Gray's assertions about the store manager needed to be investigated, and that she believed she did so as fully as possible. Her reasons for not re-interviewing the staff member who had handled the repair job have been recorded already.

[17] As for the prior history, Ms Lowes told me that she was not well acquainted with this because it was handled by her predecessor, and Ms Gray did not say much about it during the disciplinary process. After hearing more about it however she felt that she would still have preferred the store manager's word over Ms Gray's primarily because she had been backed up by the other staff member.

[18] I accept that Ms Lowes was genuine in her reasons for not re-interviewing the staff member who handled the repair. Nonetheless they were not good enough. The individual concerned should have been spoken to again in case hearing an alternative recollection of events refreshed her memory. The prior history of conflict was also relevant to the question of whose account should be preferred and should have been investigated by Ms Lowes. Ms Lowes failed to conduct a full inquiry.

(iii) The seriousness of the conduct

[19] Nothing has emerged, since the dismissal, to support a conclusion that the store manager told Ms Gray that she could take the item home and pay later but even

if it were the case that she had, I nonetheless consider Ms Gray responsible for her own actions. She had several years experience in retail work, was an assistant manager, and knew the company policies. It was not credible for her to say that she believed the store manager could authorise what she did. It remained serious misconduct to remove an item from the store, without payment, even if the store manager and others had done the same thing. The respondent's arguments regarding the inherent seriousness of the conduct are accepted in their entirety.

[20] It follows that, although they are not trivial in nature, the elements of unfairness in the process do not fatally undermine it. I am satisfied that the dismissal was justified in all the circumstances. I note also that if it were not, Ms Gray's conduct would in any event amount to 100% contribution towards the situation.

Costs

[21] This issue is reserved. Any application for costs should be made within 28 days of this determination.

Yvonne Oldfield

Member of the Employment Relations Authority