THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		*Respondent*
Mr P Lee	**AND**	**Wm Morrisons Supermarkets Plc**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: **Teesside** **On: 9 & 10 February 2017**

Before: **Employment Judge Johnson**

Appearances

For the Claimant: **Mr J Morgan of Counsel**
For the Respondent: **Mr N Singer of Counsel**

JUDGMENT

1 The claimant's complaint of unfair dismissal is well-founded and succeeds.

2 The claimant's complaint of wrongful dismissal is well-founded and succeeds.

3 The claimant's complaint of unauthorised deduction from wages is dismissed upon withdrawal by the claimant.

4 A remedies hearing with a time estimate of three hours will be listed as soon as possible.

REASONS

1 The claimant was represented by Mr Morgan of counsel. Mr Morgan called the claimant to give evidence. The respondent was represented by Mr Singer of counsel who called to give evidence Mr Mark Collings (Regional Manager) and

Mr Gregor Douglas McIntosh (Regional Manager). There was an agreed bundle of documents marked R1, comprising an A4 ring binder containing 180 pages of documents. At the beginning of the second day of the hearing a further document, the respondent's disciplinary policy, was added to that bundle and marked R2. There is an agreed list of issues marked R3. In addition to the agreed documents, there was produced to the Employment Tribunal a CCTV recording of the incident involving the claimant which formed the subject matter of the disciplinary proceedings which ultimately led to the claimant's dismissal. The claimant and both witnesses for the respondent had prepared formal, typed and signed witness statements, which were taken "as read" by the Employment Tribunal, subject to questions in cross-examination and questions from the Tribunal Judge.

2 By a claim form presented on 20 October 2016, the claimant brought complaints of unauthorised deduction from wages, unfair dismissal and wrongful dismissal. At the beginning of this Hearing, Mr Morgan on behalf of the claimant formally withdrew the complaint of unauthorised deduction from wages and consented to that claim being dismissed. The remaining claims are of unfair dismissal and wrongful dismissal. The respondent defends those claims. In essence they arise out of an incident which occurred on 17 May 2016, when the claimant is alleged to have made "unwanted physical contact" with a work colleague, which contact the respondent categorised as "gross misconduct" and which led to the claimant's summary dismissal. The claimant maintains that any contact made could not reasonably be categorised as "gross misconduct" and that his dismissal for that conduct fell outside the range of reasonable responses open to a reasonable employer in all the circumstances. The respondent maintains that the claimant's physical contact with his colleague was such that it amounted to a breach of the respondent's disciplinary policy, and was justifiably categorised as "gross misconduct" and that its dismissal of the claimant was within the range of reasonable responses.

3 The two witnesses called by the respondent were Mr Collings ("the dismissing officer") and Mr McIntosh ("the appeal officer"). The "investigating officer" was Mr Dearing, who was not called to give evidence. Mr Singer on behalf of the respondent invited the Tribunal Judge to view the CCTV footage of the incident between the claimant and his colleague (Mr Bannister). The relevant CCTV footage lasts for approximately eight minutes. I enquired of Mr Singer as to why I was being asked to view the CCTV footage. I respectfully reminded both Mr Singer and Mr Morgan that in cases of unfair dismissal, the Tribunal Judge must be particularly careful not to substitute what he would have done had he been the investigating officer, the dismissing officer or the appeal officer. The test which the Employment Judge must apply is whether the employer acted reasonably throughout the entire process, which encompasses the investigation, the disciplinary hearing which led to the dismissal and the appeal hearing which upheld that dismissal. Both Mr Singer and Mr Morgan accepted that this "range of reasonable responses" test was the correct one to be applied. Mr Singer insisted that I should still view the CCTV footage, as he considered it an integral part of the respondent's case that the respondent's reasonable categorisation of the claimant's behaviour as "gross misconduct" could only be reasonably judged once the CCTV footage had been observed. I carefully enquired of Mr Singer as

to whether I would be required to make specific findings of fact as to what had actually happened during the incident shown in the CCTV footage, and thereafter whether any conduct displayed could reasonably be categorised as "gross misconduct" and thereafter whether a reasonable employer would have dismissed its employee in those circumstances. Mr Singer confirmed that it was indeed those findings which I was being required to make. At the beginning of his closing submissions, Mr Morgan on behalf of the claimant asked that I take particular care to record exactly what Mr Singer had invited me to do and that I should make those appropriate findings on a balance of probabilities. Mr Singer did not object to me so doing.

4 Having viewed the CCTV footage, having heard the evidence of the claimant and the two witnesses for the respondent, having examined the documents to which I was referred and having carefully considered the closing submissions of Mr Morgan and Mr Singer, I made the following findings of fact on the balance of probabilities:-

4.1 The respondent is a substantial company, which operates a large number of supermarkets throughout the country. It employs thousands of employees and has a dedicated HR department.

4.2 The claimant began his employment with the respondent in October 1992 and had over 23 years' continuous service with the respondent at the time of his dismissal. The claimant had a clean, unblemished disciplinary record with the respondent. In July 2001 he was promoted to the position of Store General Manager. In 2012 he was allocated to be the General Manager for the Berwick Hills Store in Middlesbrough. As General Manager, the claimant had overall responsibility for store standards, product availability, food hygiene, cleanliness, pricing policies, health and safety, staff development and welfare and store performance in relation to financial results, sales, waste, wages, stock results and cash losses.

4.3 A copy of the claimant's contract of employment appears at pages 36-46 in the bundle. At pages 47-48 is a copy of the respondent's disciplinary policy and at pages 46C-46E are examples of "misconduct". In particular at page 46A, the disciplinary policy includes "Examples of misconduct". Under the section headed "Examples of gross misconduct" it states:-

- Fighting, physical assault, verbal or physical abuse, violent, threatening behaviour or unwanted contact.

Under the heading "Examples of gross misconduct – general" it states:-

- An act of conduct so serious we no longer have enough trust or confidence that a working relationship can be maintained.

- Acts committed either inside or outside of work (including taking part in illegal activities) which makes the colleague unsuitable for continued employment. Usually this would be where the act committed has an adverse impact on:-

- the colleague's suitability for their position, or
- relationships with other colleagues, customers, suppliers etc.

4.4 In 2015 the respondent introduced a new Store Operations Director, Mr Gary Mills. Shortly thereafter, the respondent sought to identify those stores and their managers whose performance fell short of a newly specified standard. In their evidence to the Tribunal, both Mr Collings and Mr McIntosh were reluctant to acknowledge this change of approach, particularly if it involved the respondent seeking to remove those managers who were felt to be underperforming. The Tribunal found their evidence in this regard to be unnecessarily evasive and less than persuasive. Both eventually conceded under robust cross-examination from Mr Morgan, that a number of managers had been offered severance packages as an alternative to what may have been a lengthy capability process. Approximately 17% of the respondent's General Store Managers in the claimant's particular region were "removed" by this process. Both Mr Collings and Mr McIntosh maintained throughout their evidence that the claimant was not and never had been one of those managers who was regarded as "underperforming", or one to whom any such offer was intended to be made. The claimant's evidence was that there was in existence some kind of "hit-list", the purpose of which was to remove as many of the older, highly paid managers as was possible, so that they could be replaced with younger, more aggressive managers. It was part of the claimant's case that the respondent's decision to dismiss him was in some way influenced by the respondent's policy of removing as many as possible of its long-serving managers. The evidence of Mr Collings and Mr McIntosh was that the respondent was not concerned about the claimant's performance and that he was not one of those to whom a severance package would have been offered.

4.5 As part of the respondent's more robust approach to the internal presentation of its stores, Managers were told that improvements were required in relation to cash loss through waste control. In particular, no "reduced price" food items were to be placed in any display bays before 5:00pm on any given day. The claimant was told by his Manager Mr Tim Dearing, that if the store had any reduced food items in the bays before 5:00pm, "it could be deemed as a career threatening action" and an "issue of conduct" for the claimant. The claimant's anxiety at this was further increased when he was told by Mr Dearing that he regarded the claimant as an "old style Morrison's manager on a high salary". It was Mr Dearing who informed the claimant that there was a "hit list" as a result of the new direction that the respondent was taking. The claimant was genuinely anxious about these comments, to the point of becoming distressed. The claimant became worried about his position and his evidence to the Tribunal was that this impacted upon his health. The claimant consulted his doctor and was diagnosed with a hiatus hernia, hiatus ulcers and reflux oesophagitis, which his doctor confirmed were stress-related. The claimant also suffers from rheumatoid arthritis.

4.6 On the morning of 17 May 2016, the claimant was conducting his routine inspection of the store with his Duty Manager Mr Andy Chambers. Upon arriving at the diary aisle, the claimant found a particular section to be "filthy from spilt yoghurt, full of empty milk cartons, a dirty mop bucket left out and other damaged equipment". Furthermore, the claimant found that a section of the bay "contained many reduced food items, despite it being approximately 7:45am." Whilst all of these matters were of concern to the claimant, the latter point was a clear breach of the new policy, which the claimant had been told was "an issue of conduct", a "career threatening action" and one which could result in the claimant being dismissed "on the spot".

4.7 The claimant expressed his dissatisfaction to his Deputy Store Manager Mr Chambers, who informed the claimant that Mr Jonathan Bannister and Ms Lindsey Belas were "supposed to be opening that section and that they were both fully aware of the new instruction, but that they had demonstrated resistance to the new instruction, with Lindsey labelling it as "daft".

4.8 It was not the claimant's role as General Manager to personally deal with such issues with shop floor staff. That was the role of the Team Leader, Mr Chambers. However, because of the seriousness of the incident, the claimant decided to discuss the matter directly with Mr Bannister and Ms Belas in the presence of Mr Chambers. Mr Chambers went to find both Mr Bannister and Ms Belas and brought them back to the particular aisle. The claimant asked them both why this section had not been cleaned up and why there were reduced items in the bay, contrary to the store's policy and to specific instructions given to them by Mr Chambers. The claimant considered the attitude and response of both employees as one of "I couldn't care less". Ms Belas specifically said that she did not agree with the new instruction whilst Mr Bannister's "body language and demeanour indicated that he did not take the new instruction seriously."

4.9 It is at this stage that the Tribunal sets out its specific finding on the CCTV footage. The footage was viewed by the Employment Tribunal Judge at the beginning of the hearing, in the presence of both counsel only. It was further viewed on the second day, whilst the claimant was being cross-examined by Mr Singer. The CCTV footage was played on a laptop computer provided by the claimant's solicitor. The footage lasts for just over eight minutes. Its start time is 7.42. and it ends at 7.48.32. From 7.42 until 7.46.20, the claimant stands passively beside Mr Bannister, with Mr Bannister on his left hand side and with his back to the left of the aisle, facing the right of the aisle. At 7.44.50 the claimant points to the right hand of the aisle and at 7.45.30 the claimant walks towards the right side of the aisle. At 7.46 he shows an item from the shelf to Mr Bannister. At 7.46.20 the claimant stands with both arms outstretched and points towards the right hand aisle. At 7.46.40 the claimant becomes more animated and at 7.47.04 he points upwards. At no point up until this time could the claimant be reasonably described as being "out of control". For most of the time he stands with his hands in his pockets.

4.10 At 7.48 the claimant walks towards Mr Bannister and with his right hand takes hold of Mr Bannister by the back of his left arm, just above the elbow. Mr Bannister's arm was at the time hanging vertically by his side. The claimant then leads Mr Bannister from the left hand edge of the aisle to the right hand edge of the aisle. At no stage is there any "jerking" movement of Mr Bannister's arm. At no time does the angle between Mr Bannister's left arm and his body, exceed 45 degrees. The contact lasts for approximately 4 seconds. No reasonable observer could describe the claimant's action as one of having "grabbed" Mr Bannister or having "dragged" or "pulled" Mr Bannister across the aisle. There was no resistance whatsoever from Mr Bannister as the claimant gently leads him across the aisle. No reasonable observer could fairly categorise the level of force used as more than minimal. No reasonable observer could fairly conclude that the level of contact between the claimant's hand and Mr Bannister's upper arm was likely to cause any kind of mark or bruise to Mr Bannister's arm through the clothing he was wearing.

4.11 After leading Mr Bannister across the aisle, the claimant's behaviour becomes more animated, as he points towards the display shelves. However, no reasonable observer could fairly categorise the claimant's behaviour as being "agitated" or "out of control". At 7.48.32 the claimant leaves the scene, walking backwards and away from Mr Bannister and the other two employees.

4.12 The claimant's witness statement at paragraph 31describes the incident in the following terms:-

> "At some point during my conversation with Andy, Jonathan and Lindsey I placed my hand loosely on Jonathan's arm as he was standing directly next to me and guided him towards the bay so that he could get a better look at the spilt yoghurt and reduced items we had just been discussing. I also needed Jonathan to take a close look at the damaged shelf edge as it was difficult to see from where he was stood. My hand was on Jonathan's arm for a matter of seconds and I did not use any kind of force or aggression. I would have been physically unable to use any kind of force because of my arthritis. My arthritis was particularly bad at this time and I had expressed my concerns about the conditions effect on my hands with the deputy store manager around that time. In addition Jonathan walked with me, alongside me, to the bay without any sign of resistance. At no point during the conversation did Any, Lindsey or importantly Jonathan raise any concerns."

4.13 Mr Chambers' version of the incident (subsequently given during the investigation role play) was as follows:-

> "As Paul moved to fixture with Jonathan he took hold of his arm - to the fixture".

Mr Chambers was asked, "What did the physical contact look like? Role play now. Closed hands – could he cause bruising from force?".

Mr Chambers replied:-

> "Don't know. Paul held Jonathan's arm. He moved him to the fixture. Jonathan was quiet and gave no resistance."

4.14 Ms Belas' interview during the investigation shows that when asked, "Can you tell us what you remember?", Ms Belas replied:-

> "Jonny was there – he asked him about procedures. Then he took him by the arm and took him to the protractor (shelf edge label)."

When asked "What happened later?", Ms Belas replied:-

> "He said he had a bruise on arm. A few days later saw him at lockers, crying."

4.15 Mr Bannister's version of events as given to Mr Dearing appears at pages 77-80 in the bundle. He describes the incident in the following way:-

> "Took me by arm across fixture pointing at bay. I felt manhandled – could have done this in another way. This affected me all day – couldn't confront him".

When asked "Did arm hurt/bruise?", Mr Bannister replied:-

> "No. Bruising yes."

4.16 Mr Bannister had in fact raised a written grievance by e-mail dated 20 May 2016 timed at 20:24pm. The relevant extract states:-

> "I was most dismayed at an incident that occurred in my store on May 17th at round 7:45am where the store manager grabbed me by the arm and pulled me to the other side of an aisle to show me something he was not happy with. As the day went on and what happened hit home with me, I got so annoyed and upset I could not believe what he had done. I was left with a bruised arm. If this had happened outside of work it could well have been classed as assault. How could a manager behave in this way? He seems to manage by intimidation and fear, always criticising, never giving any praise. I know there has to be discipline, but not bullying and belittling. I thought long and hard before writing this e-mail, but I am still so annoyed and upset that I have been left with no choice. I was also embarrassed that this was done in front of other staff as I had done nothing wrong. I would appreciate a meeting with senior management to discuss this matter on return from annual leave. The least I would accept is a sincere apology. I am a hard working young man who has always given my very best to Morrisons and

this is totally unacceptable. I have never been so annoyed, I never expected this to happen in my workplace. This whole incident has increased by anxiety and stress levels and is detrimental to my medical condition. I repeat, a full sincere apology is the least I would accept before I decide if I should take this matter further."

4.17 That letter was treated by the respondent as a formal grievance. It was as a result of that letter that Mr Bannister was interviewed by Mr Dearing on 6 June. At that meeting, Mr Bannister handed in the photographs which appear at pages 81 and 82 in the bundle. Those photographs are said to be of a bruise on Mr Bannister's upper arm. No one asked Mr Bannister when those photographs were taken. Mr Bannister informed Mr Dearing that his girlfriend had noticed the bruise and had taken the photograph. Mr Dearing did not ask Mr Bannister to show him the bruise. Mr Dearing did ask whether Mr Bannister had told anybody else about the incident. Mr Bannister (page 79) confirmed that he had "confided in a few people" and that "people were asking me what happened". Mr Bannister told them he had "been assaulted". Mr Bannister was asked "What does an outcome look like?" and he replied "Don't want to be near him – an apology is not enough."

4.18 The claimant was interviewed by Mr Dearing on 6 June. The interview lasted approximately one hour from 5:00pm to 6:00pm. A typed version of the interview notes appears at pages 89A-89B. Mr Dearing's opening comment is, "Investigation complaint made against you. This is a gross misconduct offence - if proven could result in dismissal." Mr Dearing then read out the letter from Mr Bannister and asked the claimant to provide "your view of the situation". Having read Mr Bannister's letter, the claimant "felt deeply saddened and remorseful and I explained that I was more than willing to offer my full and sincerest apology to Jonathan as requested in his letter". The claimant then gave his version of what had happened on 17 May. The claimant was then shown the CCTV footage. Whilst that was being played, Mr Dearing "repeatedly referred to [the claimant] as grabbing Jonathan by the arm and pulling him towards the bay". The claimant strongly denied that he had grabbed or pulled Mr Bannister and again explained that he had placed his hand on Jonathan's arm and guided him to the bay. The claimant "vehemently refuted that I had been forceful with Jonathan, or aggressive or violent".

4.19 At this stage of the investigation meeting, the notes at page 89B state, "TD – role played what the colleague said and actions". The claimant's evidence was that Mr Dearing asked him to stand up and face the wall, whereupon Mr Dearing then "grabbed me by the arm and pulled me forcefully towards the other wall." The claimant was extremely shocked by Mr Dearing's actions and when Mr Dearing realised how shocked he was, he told the note taker at the meeting to record that as being a "demonstration". Mr Dearing did not prepare a formal investigation report and was not called to give evidence before the Employment Tribunal. It was put to the claimant in cross-examination that, whilst he may not have specifically consented to this "role play", because he had not specifically

objected to it then he should be taken to have agreed to it. The claimant denied this. The claimant's evidence to the Tribunal was that the force used by Mr Dearing in grabbing him by the arm and pulling him across the room, far exceeded that which was shown to have been used by the claimant on the CCTV footage. The Tribunal accepted the claimant's evidence in this regard.

4.20 At the end of the investigation meeting, the claimant was informed that he was being suspended pending a disciplinary hearing. The claimant was extremely upset and shocked at this development and believed that Morrisons were intent upon removing him from the business and that he was now on their "hit list" of managers who were to be removed.

4.21 The following day, the claimant was informed by telephone that he was required to attend a disciplinary hearing on 9 June. On 8 June the claimant received a bundle of documents, together with a letter inviting him to that disciplinary hearing to answer the allegation "that you pulled a colleague by his arm across an aisle whilst at work on 17 May 2016 at approximately 7:00am following a discussion around the standards of shop keeping and process in this area. This incident was highlighted via a grievance letter lodged with HR in Hilmore House. Physical contact is considered a gross misconduct offence which if proven may result in your summary dismissal". Enclosed with that letter were copies of the interview notes from the interviews with Jonathan Bannister, Lindsey Belas, Andy Chambers and the claimant.

4.22 The claimant was in fact due to attend his doctor on 9 June to receive results from an earlier endoscopy. The claimant therefore asked for the disciplinary hearing to be postponed and the respondent agreed to rearrange it for 16 June. Meanwhile the claimant obtained a letter from his GP, a copy of which appears at page 99 in the bundle. The letter states:-

> "Mr Lee tells me that he has been extremely stressed at work for at least the last six months though he hasn't specifically consulted with regards to this as he has been dealing with it himself. This has however had an impact on his general medical wellbeing. Mr Lee suffers from rheumatoid arthritis and has recently been diagnosed with a hiatus hernia and reflux oesophagitis. He also takes Warfarin (a blood thinner) for recurrent deep vein thrombosis. Mr Lee's Warfarin control has been relatively poor recently needing regular visits to the surgery to try and regain control of his anti-coagulation. For treatment of his rheumatoid arthritis Mr Lee is on methotrexate which is a toxic medication to suppress his immune symptoms (system). This also requires a regular monitoring with blood tests here at the surgery. Mr Lee feels that his general health has deteriorated over the last few months possibly due to issues at work meaning that he has not been able to concentrate fully on his medical needs. His current medication includes methotrexate 5mg weekly, folic acid 5mg weekly, Warfarin which is currently at a dose of 4.5mg with a review blood test to be taken in a week's time."

The claimant submitted this letter to the respondent at the disciplinary hearing on the basis that he believed that his work related stress may have impacted upon his behaviour on 17 May.

4.23 The disciplinary hearing was conducted by Mr Mark Collings. Laura Scales from HR was in attendance and the claimant was accompanied by Mr Craig Fenby, his fellow Store Manager. Notes of the hearing appear at pages 102-116 in the bundle. The hearing began at 10:10am and ended at 12:30pm. The claimant alleges that Mr Collings' opening comment was that he "wanted to get this sorted today". The claimant formed the impression that Mr Collings had already predetermined the outcome of the hearing. Mr Collings in his evidence to the Tribunal accepted that he had indicated that he hoped to conclude the proceedings that day, but that this was intended to assure the claimant on the basis that it was not in anyone's best interest for the matter to drag on any longer.

4.24 The CCTV footage was played. Mr Collings referred to the claimant as having "grabbed Mr Bannister and pulled him towards the fixtures". The claimant denied that and asked Mr Collings to closely examine the CCTV footage which the claimant said showed that his hand was "flat and loose". Mr Collings refused to view the CCTV footage again. Mr Collings referred to the claimant as having "manhandled" Mr Bannister throughout the hearing. On each occasion when it was put to him, the claimant denied that he had "grabbed", "manhandled" or "pulled" Mr Bannister across the aisle. The claimant denied that he had felt any physical resistance from Mr Bannister and maintained that Mr Bannister had made no objection whatsoever at the time. The claimant gained the impression that Mr Collings was unwilling to listen to his side of the story. Mr Collings then showed the claimant the photographs which had been produced by Mr Bannister. The claimant strongly denied that those bruises could have been caused by the level of contact he had made with Mr Bannister, as was displayed on the CCTV footage. The claimant also made reference to the fact that his grip was adversely affected by his arthritis and that he could not have gripped Mr Bannister's arm to the extent that any bruising was caused. The claimant also referred to the statement from Mr Chambers when he was interviewed when he said, "Paul held Jonathan's arm. He moved him to the fixture. Jonathan was quiet gave no resistance."

4.25 The claimant informed Mr Collings that he was extremely sorry for what had happened and was still willing to apologise immediately to Mr Bannister.

4.26 Mr Collings did not carry out any further investigation into the matters which had been raised by the claimant. In particular, he did not speak to any of the persons who were present on 17 May and in particular did not speak to Mr Bannister. Mr Collings did not show the CCTV footage to Mr Bannister or put to him the claimant's version of events, with particular regard to Mr Bannister's allegation that he was grabbed and pulled with

sufficient force to cause bruising to his arm. There was no investigation into Mr Bannister's allegation that the claimant was a "bully". No meaningful explanation was given to the Tribunal as to why that somewhat pejorative description was not investigated by questioning other members of the claimant's team.

4.27 Mr Collings' evidence to the Tribunal was that he regarded what the claimant had done as being "unwanted physical contact" and that he had been advised by HR that this could amount to "gross misconduct" and that he could therefore dismiss the claimant for that offence. Mr Collings accepted that it could not be proven that the bruises on the photographs produced by Mr Bannister had been caused by the claimant, although he maintained that they could have been. He accepted that he had not looked into how highly regarded the claimant was among his peers and team members. He insisted that his decision was based purely upon the CCTV footage, even though that was a one-off incident. Mr Collings maintained throughout his evidence that any unwanted contact amounts to gross misconduct according to the respondent's policy. He insisted that he had dismissed the claimant for "manhandling" Mr Bannister. The phrase he used to the claimant when delivering his decision was, "This is not a decision I have taken lightly but can't be in a position where a store manager is manhandling anybody". Mr Collings accepted that he never discussed with the claimant any alternative to dismissal, such as re-training, demotion or formal warnings. When asked about Mr Bannister describing the claimant as a "bully", Mr Collings accepted that he had not investigated that, but that this was not the reason that he had dismissed the claimant. The sole reason for dismissing the claimant was because he had "manhandled" Mr Bannister. Mr Collings was asked whether Mr Bannister's description of the claimant as a "bully" may have been exaggerated, and if so that Mr Bannister may well have been exaggerating the level of contact by the claimant on 17 May. Mr Collings did not consider that.

4.28 Mr Collings was further asked about Mr Bannister's first indication that he would have accepted an apology from the claimant. Mr Collings' evidence to the Tribunal was that the claimant's apology at the disciplinary hearing had come too late. It was put to Mr Collings that the claimant had immediately offered to apologise as soon as the matter was raised with him at the first investigatory interview. Mr Collings could not explain why he had not investigated with Mr Bannister the reason why he had indicated at first that he would accept an apology, but had later decided that he would not do so. Mr Collings accepted that, had he done so, then it might have made a difference to his decision. Mr Collings was asked whether Mr Bannister's description of being "dragged" across the aisle was also an exaggeration. Mr Collings accepted that the word "dragged" is worse than "pulled". However, he maintained that Mr Bannister's description of having been "dragged across the aisle" was not an exaggeration. Mr Collings insisted that his view of the CCTV footage was that the claimant had taken Mr Bannister and "dragged him across the aisle and I think caused the bruises". When pressed, Mr Collings

accepted that the claimant had been neither violent nor aggressive, but that he had "never seen a store manager act in such a way".

4.29 Mr Collings was asked by Mr Morgan for the claimant about the "role play", when the claimant was interviewed by Mr Dearing. Mr Collings had not been present. He was of course aware that Mr Dearing had demonstrated on the claimant how he interpreted the CCTV footage. Mr Collings insisted to the Tribunal that, because this was a role play scenario, then the claimant should be taken to have consented to Mr Dearing's actions. His reply was to the effect that because the claimant had not objected, then he should be taken to have consented. Mr Collings accepted that Mr Dearing had not been disciplined in anyway for behaving towards the claimant in a manner which was perhaps as bad, if not worse, than that displayed by the claimant towards Mr Bannister.

4.30 After a short adjournment, Mr Collings informed the claimant that he was being summarily dismissed because "handling a colleague in an unwanted way is unacceptable". That conduct was "highly unacceptable and should not condone at any time." The outcome was confirmed in a letter dated 17 June 2016, the first version of which appears at page 116A in the bundle. A number of matters are missing from that letter. Mr Collings' evidence to the Tribunal was that this was an error on his part, which arose from the letter having been drafted with the assistance of HR and that somehow details of the relevant dates and specific allegations had been omitted from the template letter. The corrected version was sent out two days later. The letter says, "You then grabbed Jonathan's arm and pulled him towards the side of the aisle. You stated that when touching Jonathan's shoulder you were not aggressive and you were not bullying him. You admitted that you were animated throughout the discussion however as that is part of your character. I referred you to page 63 of the colleague handbook where it references behaviour that is deemed gross misconduct. This includes verbal or physical abuse and threatening behaviour or unwanted contact. Given the letter of complaint we received following this incident, it is evident that the contact was unwanted. It is highly unacceptable for any colleague to handle anyone, particularly a store manager who has a duty of care to the colleagues in their store. Actions like this should not be condoned at any time. With this in mind I can confirm I have made the decision to summarily dismiss you."

4.31 Under intense cross-examination from Mr Morgan, Mr Collings accepted that unwanted contact of itself does not mean automatic dismissal. Mr Collings insisted that each instance has to be taken on its own merits, but that in the claimant's case, he took the view that the claimant's contact on Mr Bannister was "absolutely unwanted." Mr Collings further insisted that he was aware that gross misconduct does not man that the employee must be dismissed. He was specifically asked, "Is unwanted contact always gross misconduct?", to which he replied "That is what the handbook says". He was then asked what was his own personal view and he replied that all unwanted contact was gross misconduct. It was then suggested that a work colleague might place his arms around another to

console that other in the case of a family bereavement, or that an employee may accidentally bump into another employee. Mr Collings then conceded that all unwanted contact may not be misconduct. Mr Collings also accepted that some employees do act differently and that some are more prone to complain about minor things than others. He was asked whether matters such as this could have been fairly and reasonably dealt with by way of a warning. Mr Collings' answer was that the claimant had put himself at risk and that a warning would be inadequate and therefore that dismissal was correct. Mr Collings felt that the claimant had "underplayed what had taken place, that he had not placed his hand on Mr Bannister's shoulder but had grabbed him by the arm". Mr Collings insisted that the claimant "did not get the seriousness of what had taken place". Mr Collings felt that this matter was so severe it was beyond the re-training sphere. Mr Collings' evidence was, "I feel I could not have confidence it would not happen again". Mr Collings insisted that he did not believe that any medical condition impacted upon the claimant's behaviour and that if the claimant had been suffering from stress the claimant should have informed the respondent before the incident occurred.

4.32 The claimant submitted an appeal by letter of 24 June (page 120-123). The grounds of his appeal were:-

(1) I do not believe that a thorough investigation had been carried out prior to the disciplinary hearing. Key witnesses had not been interviewed and the CCTV evidence had not been carefully examined.

(2) I believe that the punishment does not fit the crime – the sanction is too harsh and is not consistent with those applied for similar incidents.

(3) I believe that the decision to dismiss me had been made prior to the hearing taking place.

(4) I do not believe that my 25 years of service and previously clean disciplinary record and the fact that I am a trained appeals and grievance officer who has advised on similar incidents, has been taken into account, or that any alternative to dismissal was considered.

The claimant also made a reference to the "role play" incident at his investigatory meeting. He also referred to his medical condition and to the fact that he remained willing to apologise, as he had been from the outset.

4.33 The appeal was heard by Mr McIntosh. His evidence was that he looked at the claimant's grounds of appeal and considered whether they were good grounds to overturn the original decision. Mr McIntosh insisted that nothing he had heard in the evidence from Mr Collings, changed his view that the outcome of his appeal was correct and that it should be

dismissed. Mr McIntosh was similarly evasive as Mr Collings, in terms of the respondent's policy of reducing the number of store managers at the relevant. He accepted that all of those managers whose performance was being questioned had now been replaced as a result of a policy of a "combination of more stringent and assessment of management standards which led to the buying out of those managers instead of a lengthy performance management process". He accepted that none of the managers had been formally notified of the change in policy. He accepted that the respondent implemented a low tolerance of poor performance. He insisted that the new policy had no impact whatsoever on the dismissal of the claimant, even though he agreed that there was to be a lower tolerance of poor management performance.

4.34 Mr McIntosh accepted that he did not look beyond the evidence of those persons who had been present in the aisle when the incident occurred on 17 May. He "did not interview any of those persons, as he did not consider it necessary". His evidence was that, "Based on the CCTV footage and my review of the papers I believed that the claimant had committed gross misconduct". Mr McIntosh did speak to Mr Collings, Mr Dearing and Debbie Temple (Regional People Manager). Those enquiries related to the investigation and disciplinary hearings. Mr McIntosh accepted that, having spoken to those three persons, the claimant was not given an opportunity to comment on what they had said to Mr McIntosh. Mr McIntosh accepted that the claimant should have been given the opportunity to do so. Mr McIntosh confirmed that the reason for the claimant's dismissal was the unwanted contact with Mr Bannister and that neither the gravity nor effect of that contact was mentioned in the dismissal letter and that thus it was difficult if not impossible for the claimant to refer to those in his letter of appeal. Mr McIntosh was asked about the claimant being "manhandled" by Mr Dearing at the investigatory meeting. Mr McIntosh was aware of that incident and confirmed that no disciplinary action had been taken against Mr Dearing. It was Mr McIntosh's evidence that, because the claimant did not openly object to the role play, then he should be taken to have consented to it. He accepted that Mr Dearing's behaviour was "inappropriate". Mr McIntosh stubbornly refused to concede that Mr Dearing's contact with the claimant had been "unwanted". He insisted that because the claimant had never objected then he should be taken to have consented. Mr McIntosh accepted before the Tribunal that he had not looked into any of the claimant's health issues, as he did not consider them to be relevant. When asked about the potential impact upon the claimant's behaviour of his health issues, Mr McIntosh conceded that, on reflection, investigation into the claimant's health may have made a difference to his decision and that he should have considered that possibility at the time.

4.35 Mr McIntosh was asked about the claimant's willingness to apologise. It was put to him that the claimant had been consistent throughout the entire process in his willingness to provide an unequivocal and unreserved apology to Mr Bannister. Mr McIntosh insisted that the claimant had not shown any proper remorse at the appeal hearing and that he considered

the claimant's offer to apologise not to be genuine. Again, Mr McIntosh somewhat reluctantly accepted that the documents and notes in the bundle clearly show that the claimant had remained willing to apologise throughout the entire process.

4.36 By letter dated 20 August 2016, Mr McIntosh dismissed the claimant's appeal, saying "I still believe that your actions fell well below those expected of a store general manager. I do not believe that handling a colleague in any way is appropriate and it was unsolicited and unwelcome in this instance and is both inappropriate and unacceptable in a leader in our business".

4.37 The claimant presented his complaint to the Employment Tribunal on 20 October 2016.

5 A summary of the Tribunal's relevant findings of fact is as follows:-

5.1 The claimant had over 23 years unblemished service with the respondent.

5.2 At the time of the incident on 17 May 2016, the claimant was suffering from ill health and stress. Neither of these are likely to have impacted on the claimant's behaviour on 17 May to any relevant extent.

5.3 At no time during the incident on 17 May could the claimant reasonably be described as being "out of control".

5.4 For the vast majority of the time, the claimant was stood passively, although he did become somewhat animated towards the end of the incident.

5.5 The claimant took hold of Mr Bannister by the upper arm and gently led him across the aisle. He did not "grab" Mr Bannister. He did not "drag" Mr Bannister or "pull" Mr Bannister.

5.6 It is highly unlikely than any contact made upon Mr Bannister by the claimant would cause any mark or bruising.

5.7 It was reasonable for the investigating officer, dismissing officer and appeal officer to conclude that the claimant's contact with Mr Bannister was "unwanted" by Mr Bannister.

5.8 During the role play incident at the investigatory meeting with the claimant, the level of force used by Mr Dearing upon the claimant equalled or exceeded that which had been used by the claimant upon Mr Bannister.

5.9 The claimant maintained throughout the investigatory, disciplinary and appeal process that he had not used any unreasonable force upon Mr Bannister but that his contact with Mr Bannister had been inappropriate.

5.10 The claimant had genuinely and sincerely offered to apologise to Mr Bannister as soon as he had seen the CCTV footage. That willingness remained throughout the procedure.

The law

6 The relevant statutory provisions engaged by the complaints brought by the claimant are set out in sections 86, 94 and 98 of the Employment Rights Act 1996:-

Employment Rights Act 1996

86 Rights of employer and employee to minimum notice

(1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—

(a)is not less than one week's notice if his period of continuous employment is less than two years,
(b)is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and
(c)is not less than twelve weeks' notice if his period of continuous employment is twelve years or more.

(2) The notice required to be given by an employee who has been continuously employed for one month or more to terminate his contract of employment is not less than one week.

(3) Any provision for shorter notice in any contract of employment with a person who has been continuously employed for one month or more has effect subject to subsections (1) and (2); but this section does not prevent either party from waiving his right to notice on any occasion or from accepting a payment in lieu of notice.

(4) Any contract of employment of a person who has been continuously employed for three months or more which is a contract for a term certain of one month or less shall have effect as if it were for an indefinite period; and, accordingly, subsections (1) and (2) apply to the contract.

(6) This section does not affect any right of either party to a contract of employment to treat the contract as terminable without notice by reason of the conduct of the other party.

94 The right

(1) An employee has the right not to be unfairly dismissed by his employer.

(2) Subsection (1) has effect subject to the following provisions of this Part (in particular sections 108 to 110) and to the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 (in particular sections 237 to 239).

98 General

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show--

(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it--

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
(b) relates to the conduct of the employee,
(c) is that the employee was redundant, or
(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)--

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) Where the employer has fulfilled the requirements of subsection (1), 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 administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case.

7 Helpful guidance as to the application of section 98 was given by Lord Justice Aikens in **Orr v Milton Keynes Council AT/2009/2700**, when he said:-

"The case law on the interpretation and application of section 98 is vast – indeed, it could be said that the section has become encrusted with case law. I think that the relevant principles established by the cases are as follows:-

(1) The reason for the dismissal of an employee is a set of facts known to an employer, or it may be a set of beliefs held by him, which causes him to dismiss the employee.

(2) An employer cannot rely on facts of which he did not know at the time of the dismissal of the employee to establish that the "real reason" for dismissing the employee was one of those set out in the statute or was of a kind that justified the dismissal of the employee holding the position he did.

(3) Once the employer has established before the employment tribunal that the "real reason" for dismissing the employee is within what is now section 98(1)(d) ie that it was a "valid reason", the employment tribunal has to decide whether the dismissal was fair or unfair. That requires first and foremost, the application of the statutory test set out in section 98(4)(a).

(4) In applying that subsection, the employment tribunal must decide on the reasonableness of the employer's decision to dismiss for the "real reason". That involves a consideration at least in misconduct cases, of three aspects of the employer's conduct. First, did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case; secondly, did the employer believe that the employee was guilty of the misconduct complained of and, thirdly, did the employer have reasonable grounds for that belief.

(5) If the answer to each of those questions is "yes", then the employment tribunal must then decide on the reasonableness of the response of the employer.

(6) In doing the exercise set out at (5), the employment tribunal must consider by the objective standards of the hypothetical reasonable employer, rather than by reference to its own subjective views, whether the employer has acted within a "band or range of reasonable responses" to the particular misconduct found of the particular employee. If it has, then the employer's decision to dismiss will be reasonable. But that is not the same thing as saying that a decision of an employer to dismiss will only be regarded as unreasonable if it is shown to be perverse.

(7) The employment tribunal must not simply consider whether they think the dismissal was fair and thereby substitute their decision as to what was the right course to adopt for that of the employer. The employment tribunal must determine whether the decision of the

employer to dismiss the employee fell within the band of reasonable responses which a "reasonable employer might have adopted."

(8) The employment tribunal must focus its attention on the fairness of the conduct of the employer at the time of the investigation and dismissal (or any appeal process) and not on whether in fact the employee has suffered an injustice."

8 The "range of reasonable responses" test applies not only to the decision to dismiss, but also to the procedure by which that decision was reached. (**J Sainsbury Plc v Hitt [2003] ICR 111**). The investigation does not have to be perfect and a minute examination of every possible detail – it only has to be reasonable in all the circumstances of the case. Nevertheless, it was established in **A v B [2003] IRLR 405** by the Employment Appeal Tribunal, that in determining whether an employee carried out such investigation as was reasonable in all the circumstances, the relevant circumstances include the gravity of the charges and their potential effect upon the employee. Serious allegations, where disputed, must always be the subject of the most careful and conscientious investigation and the investigator carrying out the enquiries should focus no less on any potential evidence that may exculpate or at least point towards the innocence of the employee, as on the evidence directed towards proving the charges.

9 As was said by the Court of Appeal in **Newbound v Thames Water Utilities Limited [2015] EWCA-Civ-677**;

> "The band of reasonable responses has been a stock phrase in employment law for over 30 years, but the band is not infinitely wide. It is important not to overlook section 98(4)(b) of the 1996 Act, which directs employment tribunals to decide the question of whether the employer has acted reasonably or unreasonably in deciding to dismiss "in accordance with equity and the substantial merits of the case". This provision indicates that in creating the statutory cause of action of unfair dismissal, Parliament did not intend the tribunals consideration of a case of this kind to be a matter of procedural box ticking. An employment tribunal is entitled to find that dismissal was outside the band of reasonable responses without being accused of placing itself in the position of the employer. It is right that the employment tribunal should respect the opinions of the experienced professionals who had decided that summary dismissal was appropriate, but having done so it is for the employment tribunal to decide whether those views represent a reasonable response to the employee's conduct."

10 It was also said in **Newbound v Thames Water Utilities Limited**, that an employer is entitled to take into account, not only the nature of the conduct and the surrounding facts, but also in mitigating personal circumstances affecting the employee concerned. The attitude of the employee to his conduct may be a

relevant factor in deciding whether any repetition is likely. An employee who admits the conduct proved is unacceptable and accepts advice and help to avoid a repetition, may be regarded differently from one who refuses to accept responsibility for his actions, argues with management or makes unfounded suggestions that his fellow employees have conspired to accuse him falsely.

11 Further guidance was given by the Court of Appeal in December 2016 in **Adesokan v Sainsbury's Supermarkets Limited** when the court was asked to consider whether the claimant in that case had committed gross misconduct so as to justify summary dismissal. It was suggested in that case that it is sufficient for the employer if he could, in all the circumstances, regard what the manager did as being something which was seriously inconsistent – incompatible – with his duty as the manager in the business in which he was engaged. The relevant conduct should be of such a grave and weighty character as to amount to a breach of the confidential relationship between master and servant such as would render the servant unfit for continuance in the master's employment and give the master the right to discharge him immediately. The focus should therefore be on the damage to the relationship between the parties. The determination of the question whether the misconduct falls within the category of gross misconduct warranting summary dismissal involves an evaluation of the primary facts and an exercise of judgment.

12 In the present case the Tribunal was invited to make specific findings of fact about the claimant's behaviour as shown on the CCTV footage. Those findings of fact are set out in paragraph 4.9 – 4.11 above. The Tribunal found that Mr Bannister's description of what had happened, in his grievance letter, was not consistent with what is clear from the CCTV footage. The Tribunal found that Mr Bannister's description of what had happened was at the very least exaggerated. The Tribunal found that no reasonable investigating officer would have accepted Mr Bannister's description of the incident, had there been a visible comparison of Mr Bannister's letter, his evidence at the investigatory interview and the CCTV footage. No reasonable investigating officer could have concluded that Mr Bannister had been "grabbed", "dragged" or "pulled" across the aisle. No reasonable investigating officer would have concluded that the contact made between the claimant's hand and Mr Bannister's upper arm could have resulted in any bruising. No reasonable investigating officer would have accepted Mr Bannister's description of the incident as one which "had it been outside of work would have been categorised as an assault". The claimant's description of what had happened was quite simply a far more accurate version, when compared with what can clearly be seen on the CCTV footage. No reasonable investigating officer could have accepted Mr Bannister's version without going back to him and putting the claimant's version alongside the CCTV footage. No reasonable investigating officer would have omitted to investigate Mr Bannister's general complaint that this incident was one which reflected the claimant's attitude as a "bully".

13 The Tribunal found that it was not unreasonable for the respondent to decline to obtain any further medical or occupational health information about the claimant's medical condition. The Tribunal found that the claimant had failed to establish

that there was a reasonable prospect of any such medical condition having impacted upon his behaviour on the day in question.

14 The Tribunal found that it was unreasonable for the respondent not to have further investigated with Mr Bannister the claimant's immediate, genuine and sincere offer to apologise. It was unreasonable for the respondent not to investigate Mr Bannister's apparent change of heart from his first letter of grievance, to his comments during the investigatory meeting. It was unreasonable for the respondent to conclude in these circumstances that the claimant had not been remorseful during the disciplinary process. The Tribunal found that the claimant had throughout the entire process been genuinely and sincerely willing to offer an apology to Mr Bannister. Had that been done, there was a reasonable prospect that the outcome of the process may have been different.

15 The Tribunal found that Mr Dearing, Mr Collings and Mr McIntosh all shared the same view, namely that any unwanted contact amounted to gross misconduct and that such gross misconduct justified summary dismissal. The Tribunal found that the claimant's behaviour on 17 May did not constitute a serious breach of the respondent's policy in this regard. There was contact, and that contact was unwanted. However, the Tribunal found from viewing the CCTV footage that the level of contact and any "force" was minimal. The Tribunal found that such conduct was not capable as a matter of law, of amounting to gross misconduct justifying summary dismissal. The contact made by the claimant was not so egregious as to warrant the epithet "gross". It was not something which the respondent could fairly and reasonably regard as being inconsistent or incompatible with the claimant's duty as the manager in the business in which he was engaged. It could not reasonably be categorised as conduct of such a grave and weighty character as to amount to a breach of the confidential relationship between master and servant, such as would render the servant unfit for continuance in the master's employment and give the master the right to discharge him immediately.

16 The Tribunal found that the respondent's decision to dismiss the claimant was one which fell outside the range of reasonable responses open to a reasonable employer in all the circumstances of this case. For someone with such long and unblemished service, who immediately offered a sincere and genuine apology, to have been dismissed summarily for such a minor incident, was a decision at which no reasonable employer could have arrived. No reasonable employer in those circumstances could have come to the conclusion that the claimant had by his conduct shown that he no longer intended to be bound by the essential terms of his contract. No reasonable employer could have come to the conclusion that it could no longer trust the claimant to do so.

17 For those reasons, the Tribunal finds that the claimant's complaint for unfair dismissal is well-founded and succeeds. Furthermore, the Tribunal found that the claimant had not by his conduct on 17th May, committed a fundamental breach of contract, so that the respondent was not by law entitled to dismiss the claimant without notice. The claimant's complaint of wrongful dismissal is therefore well-founded and succeeds.

18 In their respective closing submissions, both counsel properly dealt with the question of whether the claimant had by his conduct in some way contributed towards his dismissal to such an extent that any compensation payable to him should be reduced to reflect that contribution. For conduct to be the basis of a finding of contributory fault under section 123(6) of the Employment Rights Act 1996, it has to have the characteristic of culpability of blameworthiness (**Nelson v BBC [1980] ICR 110**). The basic principle is that it cannot be just and equitable to reduce a successful claimant's compensation unless the conduct on his part was culpable or blameworthy. In the present case, the claimant has readily acknowledged throughout that his contact with Mr Bannister by taking him by the arm and leading him across the aisle was "inappropriate". It was technically a breach of the respondent's policy on unwanted contact. The claimant's evidence to the investigating officer, dismissing officer and indeed to the Employment Tribunal was that he was "horrified" when he saw the CCTV footage and was himself upset when told of Mr Bannister's formal complaint and how distressed Mr Bannister had been after the incident. The claimant accepts that he could have made clear his feelings and instructions to Mr Bannister, without making any physical contact with him. It was the claimant's physical contact with Mr Bannister that led to the complaint, which in turn resulted in these disciplinary proceedings. The Tribunal found that the claimant was aware of the respondent's policy about unwanted contact. The Tribunal found that in all the circumstances of this case, the claimant had committed an act of blameworthy conduct, which gave rise to a situation in which he was dismissed. That conduct contributed to his dismissal. **(Gibson v British Transport Docks Board (1982 IRLR 228**). The Tribunal must then decide as a matter of fact and degree as to whether there should be a deduction and if so in what amount. The statute states that any deduction should be "such proportion as the Tribunal considers just and equitable having regard to its findings". In all the circumstances of this case, the Tribunal is satisfied that a just and equitable reflection of the claimant's contribution towards his dismissal is that there should be a reduction of one third in any compensation payable to him.

19 The respondent has challenged the extent to which the claimant has attempted to obtain alternative employment and thereby mitigate his loss. The claimant in fact obtained alternative employment on 13 August 2016. His current salary is £2,083 per month, whereas his salary with the respondent was £4,200 per month. Mr Singer challenged the claimant's attempts to obtain alternative employment at a rate of pay equivalent to that which he enjoyed with the respondent. The claimant explained that, before his summary dismissal, he had an excellent reputation and employment record, but now has to explain to any potential employer that he had been summarily dismissed for gross misconduct. The Tribunal accepted the claimant's evidence that he had put his CV on a number of recruitment websites, but that few companies are recruiting managers of his level, at the present time. The Tribunal accepted the claimant's evidence hat he had applied for two similar positions to that which had been vacated by him. Those were the only two which had a salary in excess of £50,000 per annum.

20 The Tribunal reminded Mr Singer that, if the respondent wishes to allege that the claimant has failed to mitigate his loss, then the respondent must provide some evidence that he has done so. In the present case, the respondent has failed to provide evidence of any vacancies for which it says the claimant could reasonably have applied, or that there were indeed any vacancies available which would have meant that the claimant's loss was less than that which he now alleges. The Tribunal found that the claimant had used his best endeavours to obtain alternative employment and that he continues to do so.

21 The Employment Tribunal was asked to assess the length of time it is likely to take for the claimant to obtain alternative employment at a salary which equals or exceeds that which he enjoyed with the respondent. Using the Tribunal's knowledge of the local labour market, the Tribunal found that the claimant should reasonably be able to obtain alternative employment of a similar salary within the period of 18 months, commencing from the date when the claimant's normal notice period would have expired on 16 September 2016, namely 16 March 2018.

22 Having been provided with the Tribunal's judgment on liability, contributory conduct and the length of time which it would take the claimant to find similar employment, counsel agreed to use their best endeavours to negotiate and hopefully agree relevant figures for the basic award, compensatory award and damages for wrongful dismissal. If agreement cannot be reached, then a remedies hearing with a time estimate of half a day will be listed as soon as possible.

EMPLOYMENT JUDGE JOHNSON

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 9 March 2017

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JUDGMENT SENT TO THE PARTIES ON

13 March 2017 .....

AND ENTERED IN THE REGISTER

P Trewick .....

FOR THE TRIBUNAL