EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4104030/16

Held in Glasgow on 13, 14, 15 March and 7 April 2017

Employment Judge: F Jane Garvie
Members: Mr I Poad
Mr J Kerr

Mr R S Campbell — **Claimant**
Represented by:
Mr G Bathgate - Solicitor

British Airways PLC — **Respondent**
Represented by:
Ms G Hirsch - Counsel
Instructed by:
Mr M Stokes - Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that the claim should be dismissed.

REASONS

1. In his claim presented on 15 July 2016 the claimant alleges that there was an unlawful deduction of wages in terms of Section 13 of the Employment Rights Act 1996 (referred to as the 1996 Act) for which he seeks compensation.

2. The respondent lodged a response in which they dispute the claimant`s entitlement to a Personal Differential (referred to as a PD) or that it has

made unlawful deductions from the claimant`s wages as alleged. The respondent gave as their name British Airways PLC rather than British Airways Maintenance Group, that being the name provided in the ET1, (claim form).

3. The parties were informed that a Final Hearing had been arranged by Notices dated 17 October 2016. This was to be held on 12, 13 and 14 December 2016 and the parties were informed that the case would proceed before a Full Tribunal.

4. At the Final Hearing Mr Bathgate advised he had not been aware of the existence of the document at pages 306A and 306B and which the respondent proposed to add to the agreed joint bundle. He also referred the Tribunal to pages 289/295. He indicated that this document did not form part of the response, (the ET3). Following an adjournment it was agreed that the Final Hearing should be adjourned so as to allow the respondent to provide a written amendment by no later than 20 December 2015 and, if the claimant had any written response to do so by 16 January 2017. A Preliminary Hearing by way of a telephone conference call was arranged for 7 February 2017. It was also agreed that Final Hearing should still proceed before the currently convened Full Tribunal.

5. Following the telephone conference call a Note was issued in which Mr Stokes advised that his firm was now acting for the respondent. The grounds of resistance had been amended and the statement of claim amended to take account of that amendment. There was no objection to the amendment.

6. Notices were later issued for this Final Hearing to be held on 13 to 15 March 2017 inclusive.

7. It was agreed at the outset that the respondent's witnesses would give their evidence first, albeit this is a claim of alleged unlawful deduction from wages.

8. It had also been agreed that the parties would provide witness statements and, in accordance with the direction provided by Employment Judge Robert Gall, these would not be taken as read with evidence being taken by way of cross-examination but rather the witnesses would first read out their statements and answer any supplementary questions.

9. A chronology of events was provided together with a useful "*Who`s Who*".

10. Evidence was given on behalf of the respondent by Mr Alan Wallace. He is currently a Duty Manager for the respondent`s British Airways Maintenance Glasgow which is referred to by the acronym, "*BAMG*". Mr Gavin Shearer also gave evidence on their behalf.

11. The claimant gave evidence and Mr Dominic Hagerty gave evidence on the claimant`s behalf.

Findings of Fact

12. The Tribunal found the following essential facts to have been established or agreed.

13. The claimant received an offer of employment for a permanent position by letter dated 14 July 1999, (page 32). This indicated his appointment was to take effect from 17 August 1999. as a Material Supplier. The formal terms and conditions were set out in a further letter also dated 14 July 1999, (pages 33/37). At Clause 3 the words, "PERIOD OF EMPLOYMENT" appear which refer to the claimant`s contract having commenced on 17 August 1999 and that he had continuous employment from his initial start date on 17 August 1998.

14. In that offer of employment there was reference to "Collective Agreements And Employment Guide" at clause 7, (page 34). This refers to The Non-Craft Bargaining Unit Agreement and it states that this Agreement "*together with the Collective Agreements between the Company and Trade Unions"* which were incorporated into the claimant's contract, where appropriate".

15. The claimant continued in the role of a Material Supplier for many years. By way of background on 23 February 2011 the respondent and the various relevant unions agreed the terms of a document called the Glasgow Forum Agreement (referred to as the GFA), (pages 289/295). The final page of that document states:-

> "*THIS AGREEMENT AND ITS IMPLEMENTATION IS DEPENDANT UPON GLASGOW BEING NAMED THE MAJOR MAINTENANCE BASE FOR THE BA AIRBUS A318/319/320 FLEET"*

16. This was a locally negotiated and agreed Collective Agreement which applied only to specific staff at BAMG. It was introduced as the respondent was seeking to obtain greater cost efficiencies at BAMG. It documented various changes that had been agreed in relation to some of the BAMG employees, working practices and for some grades of employee, their pay structures.

17. Before this agreement took effect grade and pay structures had been agreed between the respondent and the trade unions through the relevant National Section Panels for various groups of employees and, specifically, for its regional bases in Manchester, Glasgow and Birmingham. Regional grade and pay structures had been agreed and were documented in four separate agreements, these being the A-Scale Agreement, (pages 101/288), the Technical Manager Grade (TMG) Agreement, the Craft Bargaining Unit Staff Agreement and the Non-Craft Bargaining Unit Agreement, (pages 40/100)

18. The A-Scale Agreement affected all BA admin staff and was negotiated and agreed through its own National Section Panel.

19. The remaining 3 agreements applied only to the Engineering Directorate. In 2011 the Engineering Negotiating Forum Agreement was introduced. It superceded the Craft and Non-Craft Agreements and consolidated aspects of the A-Scale agreement in relation to the engineering staff into a single Agreement, (pages 306C-306NN). This kept the distinction between the different categories of engineering staff. The pay scale applicable to A-Scale colleagues remained governed by the A-Scale Agreement.

20. In 2001 BAMG was responsible for the maintenance of two B737 aircraft lines one of which was being phased out. This left one maintenance line and therefore reduced the amount of work available in Glasgow. Since BAMG's staffing was under resourced at the time extra staff were taken on, albeit the future of BAMG was uncertain. BAMG needed to become more competitive in order to secure new work to replace the B737/200 maintenance work.

21. The Glasgow Forum Agreement, (the GFA, (at page 290) explained that the purpose of this Agreement was to :-

> "*Enable ratification at Glasgow of locally agreed initiatives to improve the business competitiveness and environment ensuring their compatibility with Maintenance activities at Glasgow*."

22. There is reference to the Forum holding quarterly meetings and the various trade union officials and management whose representatives would attend were listed. This Agreement was to deal with two key phases of work which began in February 2000.

23. Phase 1 concerned the engagement of 13 new mechanics for a fixed trial period to cover the resource shortfall and to ensure that maintenance on the

ongoing aircraft, (B737-200) which was being phased out was completed adequately while Phase 2 concerned the drive to secure replacement work and involved BAMG competing with other regional bases of the respondent in Manchester and Heathrow as well as other airlines for the A320 Airbus maintenance work.

24. During discussions around Phase 2 it became apparent that the anticipated cost savings that BAMG needed to demonstrate for the purpose of its bid for the work would not be achieved without changes to the terms of existing BAMG employees going forward through recruitment and promotion. The GFA therefore was agreed so as to ensure BAMG`s work was a competitive as possible to secure that work and avoid potential redundancies. The proposed changes were expressed to be contingent on that work being secured, (page 295).

25. There was a lengthy consultation period with all aspects of the two phases explained, negotiated and consulted on with members of the relevant trade unions. The proposals were approved by the ENF.

26. So far as Mr Wallace was concerned, it was a collaborative process between management and trade unions as it was recognised that measures were required to ensure the continued viability of BAMG and that job losses did not occur.

27. As a result of the GFA implementation, more competitive pay rates were introduced and BAMG ultimately secured the maintenance work with the new Airbus fleet. By comparison, the respondent's maintenance base in Manchester closed shortly after BAMG secured the Airbus work as it (Manchester) was not sufficiently competitive.

28. The GFA did not amend all the terms of the Collective Agreements which continued to apply, as varied by GFA, but it introduced certain changes in respect of certain categories of staff at BAMG to make it more competitive.

The most significant change introduced and on which most of consultation focused was the change to payscales for certain roles.

29. The GFA at page 5 of the Agreement, (page 293) set out Pay Scales under "E*xisting rates*" and "N*ew rates*" which applied to Material Suppliers, Mechanics, Technicians, and Licensed Aircraft Engineers, (LAEs1 and LAEs2). These categories were covered by the T & G Agreement, the Craft Bargaining Unit Staff Agreement and the Non-Craft Bargaining Unit staff. The GFA amended pay rates were only for those based at BAMG, Glasgow.

30. At the foot of that page, (page 7 of the agreement), (page 293) states:-

> "*All staff retain their existing grade and incremental scale. Promotions will be onto the new scale"*

31. There is also reference to Lead Technicians and that a premium payment will be made to them.

32. At page 6 of the GFA, (page 294) the Existing (i.e. Original) rates and the New ((BAMG only) rates which applied to A-Scale employees are set outs.

33. At the foot of page 6 of GFA, (page 294) it states:-

> *"All staff retain their existing grade and incremental scale. Promotions will be onto the new scale.*
>
> **Anyone in full time BA employment on 1st April 2000 who is promoted to A5 or A6 will carry the personal differential. Personal differential is pensionable and wage rises are applied to the combined sum. Overtime is calculated using the basic rate only. "*

34. At the time of this Agreement being implemented in February 2001 the claimant remained a Material Supplier and so his then pay scale i.e. the

existing and new rates where there was a change are as set out at page 293. So far as the claimant was concerned there was no change to his pay rates at that time since, as indicated above, he remained a Material Supplier.

35. Mr Wallace`s understanding was that an individual who was at the top of the regional A5 scale, (page 294) shown as having a pay rate at the time of £20,885 who was then promoted to a more senior A6 scale role after the introduction of the GFA would move to the new BAMG only A-Scale role rather than remaining on the old original pay scale which was £21,255.

36. The respondent realised that there was a potential issue for someone moving from the existing A-Scale role by being promoted to the higher role on the BAMG only A-Scale could be financially disadvantaged. This could amount to a potential to dis-incentivise current A-Scale employees seeking promotion. During the course of negotiations a Ms Morag Reed suggested that there could be a Personal differential introduced, (referred to as a PD).

37. This had been used previously in re-deployment as set out in various Collective Agreements, (pages 307-311). The intention there was to compensate staff for financial losses resulting from a move to another area of the business on a lower salary as a result of re-deployment. Ms Reed`s suggestion was that a similar PD might apply in this context on a transitional basis to provide some pay protection for those A-Scale employees who would otherwise be financially disadvantaged, following promotion. The respondent acknowledged the potential impact on A-Scale promotions and so when this PD was proposed it was agreed by management.

38. The GFA was negotiated and consulted on over a two year period from the initial phase through to the conclusion when it was signed on 23 February 2001, (page 295).

39. During the course of this consultation process Mr Wallace worked with representatives of the trade unions and had monthly consultations with Glasgow staff. Staff updates were provided on Notice Boards and emails and a final form of the GFA was presented to staff before a vote was taken and final agreement reached. Mr Wallace was clear that the presentation referred to discussion about the PD at which it was explained that the PD was applicable to (current) A-Scale staff, (see page 6 of the GFA at page 294 of the bundle) and was separate from Craft/Non-Craft Pay Scales set out at page 5 of the GFA, (page 293 of the Bundle).

40. Mr Wallace was also clear that the asterisk at page 6 of the GFA (page 294 of the Bundle) related only to the A-Scale roles listed on that page and to those who, at 1 April 2000 were in the respondent's employment and on the relevant payscales roles until they were then subsequently promoted within the A-Scales.

41. He pointed out there was no such asterisk for the other Pay Grades on page 5 of the GFA or any note referring to a PD to Grades on that page (see page 5 of the GFA at page 293 of the Bundle).

42. Mr Wallace was not aware of conversations about the PD outside A-Scale pay rates because those governed by the Pay Scale on page 5, (at page 293 of the Bundle) would not be similarly disadvantaged if they were promoted.

43. With reference to calculations for the PD Pay Scales the figures on page 6 of the GFA, (at page 294 of the Bundle) show that an A5 promoted from the top of the A5 Pay Scale earning £20,885 and promoted to an A6 role, before the introduction of GFA would have expected to move to the next Pay Scale i.e. regional Pay Scale of £21,255 i.e. at the left hand column. The amount of the PD equated to the difference between the maximum earning potential of the existing A5/A6 Pay Scale under the new maximum earning potential in the new (BAMG only) rate which was £20,885 down to

£15,996 for A5 employees and £24,563 (regional rate) down to £19.609 for A6 employees.

44. Therefore, someone on A5 who was on the maximum spinal point earning £20,885 moving to £15,996 (the new BAMG only rate) would earn £15,996 but with a PD of £4,899 that individual would continue to earn the original salary of £20,885 (£15,996 + £4,899 = £20,885).

45. The amount of the PD equated to the difference between the maximum earning potential on the existing A5/A6 scales and the new maximum earning potential for each new (BAMG only) rate.

46. The calculation was to protect the incremental scales for the existing A-Scale employees at the time and was done so as not to discourage them from seeking promotion to a higher grade.

47. By contrast, the PD has no correlation to the Pay Scales set out at page 5 of the GFA, (at page 293 of the Bundle). The claimant at the time was a Material Supplier and so he was on the Pay Scales applicable as set out in the GFA at page 5 (page 293 of the Bundle).

48. So far as Mr Wallace was concerned, the PD was always intended to be a transitional measure. His position was that this was removed in 2008 following consultation when new Pay Scales were introduced and so the claimant was never entitled to receive the PD following his promotion in March 2015, (see below). The PD was introduced to mitigate the immediate effect the amended Pay Scales had on employees and their salary expectations at the time in the early part of the decade from 2001 onwards.

49. Mr Wallace was clear that the Pay Scales within the GFA were amended in February 2008 and the PD was then removed completely, (pages 306A/306B).

50. Therefore, the claimant`s contention that the wording of page 6 of the GFA, (page 294 of the Bundle) entitled him to a PD was made at a time when that Pay Scale was no longer applicable having ended in 2008. In any event the claimant was not on an A-Scale rate at the time of his promotion but remained on the Scale applicable for a Material Supplier.

51. Mr Wallace understood from Ms Reed that she had explained the financial value of the role to the claimant before he accepted the role as Logistics Co-Ordinator. He understood that she had a discussion with the claimant along with two other colleagues of his who were also interested in applying for a similar role. These were a Mr Auld and a Mr Docherty. He understood from Ms Reed that she explained to all three that the PD would not apply. The other two individuals withdrew their applications but the claimant pursued his application. It was therefore Mr Wallace`s position that the claimant knew the PD would not apply if he was successful in applying for a promotion.

52. Accordingly, Mr Wallace's view was that the applicability of the PD was only intended to operate in limited circumstances where an A-Scale employee would lose out, despite having been promoted which was not the position for the claimant since he received a pay rise following his promotion from a Material Supplier to a Logistics Coordinator.

53. The respondent operate an incremental increase in addition to annual pay increases whereby someone starting on the first spinal point of a grade moves annually up each of the increments. There are fewer increments in the new BMGA rates as opposed to the existing regional rates.

54. There was an Addendum to the Glasgow Negotiating Forum as at 1 February 2008, (Addendum Ref no GF-005), (at pages 306A and 306B of the Bundle). This sets out the existing roles of Material Supplier, Mechanic, Technician, Lead Technician, LAE2, A4, A5 and A6. At the foot of that page which is headed, "*Clarification of pay scales*" it states:-

"*The attached rates are correct at 1st February 2008. They are subject to amendment through the normal pay negotiations and agreements. The prevailing rates apply and are lodged with pay services."*

55. The claimant applied for promotion in early 2015. He was successful and was appointed as a Logistics Co-Ordinator with effect from 1 March 2015 based at BAMG. The promotion offer was set out in a letter to him of 20 February 2015 which he signed on 24 February 2015 and the respondent's Manager Heavy Maintenance, a Mr Stuart McMahon also signed for the respondent, (pages 38/39). There is no reference in that offer letter to the GFA. It does refer to "the Single Modern Agreement (SMA)".

56. The relevant part of the letter reads as follows:-

"*The grade for the job is A6. Your salary will be £23,480 per annum paid on a monthly basis into your bank account. In addition you will receive shift pay of £68.21 per week. Your holiday entitlement is 22 days per annum. Your salary review date will be 1st October 2015.*

In addition as you have moved into a role with a lower rate of shift pay you will receive a shift pay run down allowance as follows:-

1st six months - £41.38 per week

2nd six months - £20.69 per week

After this date your shift pay run down allowance will cease.

In addition to this letter, the terms and conditions applicable to your employment are set out in the SMA which is incorporated into your contract of employment and the Employment Guide which contains a number of contractual policies which are also incorporated into your

contract of employment. In particular, I draw your attention to the Dignity at Work policy, EG101: Dignity at Work – Diversity and Inclusion Policy, with which you must comply ".

57. Some months after this, the claimant sought to raise an informal grievance with the respondent and the relevant emails are set out at pages 312/314 covering 2 and 3 August 2015. A meeting was held on 3 August 2015 at which the claimant chose not to be accompanied and the grievance hearer, Ms Gail Brooks was also unaccompanied. In her letter of 19 August 2015, (pages 315-317) she explained why she did not uphold his grievance. She referred to the claimant having been promoted from a Material Supplier regional scale (2015 - £18,678 – £22,190) to the A6 BAMG scale (£2015 - £23,480 - £28,783). Her letter continued:-

"*The basic rate of pay is higher for your new grade as is your salary expectation so a personal differential is not applicable. The intent of the Glasgow Agreement, which you have raised, is to protect the salary expectation of individuals who are promoted from the regional A4 or A5 scale to the BAMG A5 or A6 scale. For example, individuals moving from the A5 regional scale (2015 £20,826-£30,656) to the A6 BAMG scale (2015 £23,490-£28,783) would potentially start on a lower basic rate of pay and will have a lower salary expectation. A personal differential is applicable where employees are promoted onto the new scale and have a lower basic rate of pay and a lower alary expectation (i.e incremental progression to the tope of the current scale)."*

58. There were further emails between the claimant and the respondent, (pages 318-322 inclusive.

59. The claimant was later invited to a formal grievance hearing, (pages 324-325). This was held by Mr Shearer and the claimant chose to have a Mr Eddie Duffy attend as his companion while a Miss Diane Slater attended for

the respondent. The notes record that there was a discussion about the informal grievance documents and the issue raised by the claimant regarding promotion from Material Supplier to Fleet Logistics Coordinator, (A6). The claimant referred to another colleague, a Mr Wayne Dumphy who he thought had been a Material Supplier promoted to A6 with a Personal Differential,(page 324). Mr Shearer undertook to look into this issue but indicated that he would not comment on individual pay scales and pay

60. There was discussion about the purpose of the GFA. Mr Shearer understanding was that someone moving from a regional Material Supplier scale to the Glasgow A6 scale would not lose money since the pay would be uplifted.

61. The claimant`s response was that the only people who lost future earnings were Material Suppliers and, while he accepted there was a pay uplift, this was capped so future pay was not protected; all other grades had protected pay and more opportunity to increase pay. The Glasgow Agreement did not specify that where someone had been promoted was relevant in order to have the Personal Differential applied, and he considered that whether to pay the differential or not was open to management interpretation, (page 325).

62. Following the meeting Mr Shearer made enquiries about the points raised. He looked at the GFA and what was said about the PD and how it had been applied, how other BA collective agreements define and apply PDs and what was the spirit and intent of the PD in the GFA. As part of the investigation Mr Shearer contacted Mr Wallace. He did so as he wanted to understand the background to the GFA and the reference to the PD. Mr Wallace explained the position as he understood it and also his knowledge about how the calculation worked as well as the historical context of the GFA. He explained that the PD was only intended to apply to those in the existing A Pay Scales. This was Mr Wallace's only involvement in the claimant`s grievance.

63. Mr Shearer also spoke to Mr Stuart McMahon, Ms Reed and Mr Wallace. He then wrote to the claimant on 18 November 2015, explaining he would require an extension to the usual timescale of 14 days, (page 335).

64. Once he had considered the documentation, the claimant`s representations and completed his own investigations he concluded that the claimant`s grievance was not well founded. He wrote to him to that effect on 3 December 2016, (pages 341-342).

65. He concluded that the reference to "*anyone in full time BAMG employment on 1 April 2000 who was promoted to A5 or A6*" was clear since he had been employed by the respondent since 1998 and he felt on a plain reading of the agreement this was sufficient to entitle him to PD. Mr Shearer concluded this single sentence was read out of context and was not consistent with how GFA had been drafted. Looking at the agreement it was clear the word appeared on a page that only related to the A-Scale pay grades.

66. He noted that the GFA amended aspects of four collective agreements and was those based at BAMG only and changed the pay structures applicable to different technical grades i.e. material suppliers, mechanics, technicians and licensed aircraft engineers and administrative staff (i.e. A/Scale employee).

67. Mr Shearer noted that the Pay Scales set out at page 5 of the GFA, (page 293 of the Bundle) were expressed to apply to the first group, namely Material Suppliers, Mechanics, Technicians and LAEs. Individuals to which these Pay Scales applied were covered by the TMG Agreement and the Craft and Non-Craft Bargaining Unit Agreements, as amended by the GFA. The claimant was a Material Supplier when the GFA was introduced so he was covered by the Pay Scales on that page.

68. He also mentioned the footnote that appeared on page 5 of the GFA, (page 293 of the Bundle). He noted on page 6 of the GFA,, (page 294 of the Bundle) the Pay Scales for the A-Scale grades were set out on a separate page and with a new table. His view was that this reflected the fact that the GFA was amending the Pay Scales which were originally set out in different collective agreements, applying to different grades of technical staff and A-Scale staff. As there were separate pages and separate tables for the different Pay Scales this maintained the distinction between technical and administrative staff.

69. The asterisk note on which the claimant relied appeared only at the foot of page 6 of the GFA, (page 294 of the Bundle).

70. Mr Shearer noted that the asterisk note was to apply to those employed by BA in an A-Scale role on 1 April 2000. The claimant was governed by the Non-Craft Bargaining Unit Agreement and therefore Material Supplier rates rather than the A-Scale rates in April 2000. Mr Shearer concluded that the note on page 6 of the GFA on which the claimant sought to rely did not apply to him.

71. Mr Shearer noted that there was some duplication between the notes on the two pages with reference to retention of grade and incremental Pay Scales and the applicability of new scales on promotion but there was no equivalent note relating to a PD on page 5 regarding Material Suppliers or for Mechanics, Technicians and LAE roles. This reinforced Mr Shearer`s view that the notes were only intended to apply grades and structures on the page on which they appeared, otherwise there would have bee no need to duplicate these common features on the two pages.

72. He concluded that it made sense on a plain reading of the Pay Scales. Promotions were to the new Pay Scales so that an existing A-Scale employee progressing from a lower ranking role in the existing Pay Scale which still applied at BA other regional bases could end up earning less on

a new GFA Pay Scale introduced in Glasgow despite being in a higher ranking role. He gave the example of an employee moving from an A5 role earning £20,885 promoted to an A6 earning a basic salary of £15,995. The Personal Differential of £4,889 referred to in page 6 of the GFA reflected the difference between that existing A5 basic salary and the new A6 basic salary rate. It seemed logical to Mr Shearer that the respondent would want to counteract the effect of this disadvantage. However, an employee moving from a Material Supplier role which was not an A-Scale role such as the claimant onto an A-Scale role would not be disadvantaged. This promotion even with the new lower Pay Scale set out in GFA would still result in a pay rise as it had done for the claimant. Mr Shearer checked how the PD had been applied in other cases and found its application was consistent with his reading of the GFA.

73. He reviewed 5 files, (page 334) and found only one colleague was in receipt of PD and that was someone who was promoted from a regional A5 to BAMG A6 rate. In his view, this was consistent with his reading of the text with the intention of offsetting less favourable pay terms following promotion.

74. He was not aware of there having been a challenge to the wording or application of the PD in the GFA.

75. He considered it was common knowledge in the respondent's workplace that a PD was designed to compensate staff when they were promoted or redeployed but onto a lower pay grade.

76. He also looked at how other BA collective agreements defined and applied PDs.

77. He concluded that the definition of a PD was applied consistently and expressed to relate to "*when employees are redeployed to jobs of lower basic rate of pay and a lower salary expectation, British Airways undertakes*

to safeguard current salary scale expectations … as `personal differential` … ". This was referred from the redeployment agreement, (pages 307/311) and the same wording in the A-Scale agreement (page 225).

78. This applied in relation to redeployment not promotions to believe that the consistency of the definition and its application throughout the respondent's business demonstrated an intention by the respondents over a number of years to pay a PD in order to protect pay where it would otherwise be less favourable as a result of a role change not to supplement pay.

79. His understanding was that the respondent was ensuring that the salary expectations of employees moving posts would be safeguarded and they would not suffer financial detriment as a result of a role move. In a promotions context in light of the Pay Scale reductions in the GFA the same level of protection would be required if an individual was promoted into a more senior role but lost out in terms of basic salary because the Pay Scale reductions affected them when promoted.

80. Since the claimant was moving to a higher pay grade with more earning potential his pay did not need such protection. He concluded that the PD would not apply to the claimant`s situation and was consistent with how the agreement was drafted and how it has been applied in the past. He also looked at the spirit and intent and having considered the plain reading of the agreement and the historical context and the term PD in other agreements he considered the specific circumstances which led to the introduction of the GFA and how it was intended to be applied. In doing this he spoke to the various individuals i.e Mr McMahon, Ms Reed and Mr Wallace.

81. He understood that there had been discussions in 2001 between management and the recognised trade unions about the cost efficiency programme which included Glasgow and Manchester. He himself had been based in Manchester in 2001 and he and other individuals were displaced.

82. He understood that in Glasgow, in order to avoid redundancies a pay and productivity review was conducted and in lieu of redundancies more competitive rates of pay and benefits were introduced to apply to new and promotion but only existing staff as documented in the GFA. It was introduced following consultation with the unions and was broadly seen as a positive measure because it resulted in BAMG securing the Airbus work and so reduced the need for redundancies in Glasgow. Its implementation was contingent on BAMG securing this Airbus work.

83. Mr Shearer's discussion with Mr Wallace confirmed that the intent was to protect the pay of people moving within A-Scale roles, not those being promoted from a non A-Scale role to an A-Scale role such as the claimant. Mr Wallace explained to Mr Shearer that, at the time, there was discussion with Non-Craft members about Pay Scales and the intent of the PD was to protect only those individuals currently then on A-Scale rates.

84. There had been consultation with members of each bargaining unit, including the claimant`s Non-Craft Bargaining Unit. This was not seen as particularly contentious. It was Mr Shearer's understanding that the trade unions who were consulted, accepted that BAMG needed to be cost competitive to survive, particularly in light of the redundancy process being undertaken at other regional bases. The GFA had secured work for Airbus at BAMG.

85. Having spoken with Mr McMahon and Ms Reed who had been involved on opposite sides of the negotiating table in 2000 and early 2001 this supported Mr Wallace`s understanding that the PD was never intended to apply to those who sat outside the A-Scale pay structure prior to their promotion.

86. Mr Shearer had no connection with the claimant since he was not involved in his direct line of work and he was therefore able to deal with the grievance and investigation impartially.

87. His conclusion was that it was apparent from the wording on which the claimant relied that this applied only to those employed in an A-Scale role as at 1 April 2000 and subsequently promoted within the A-Scale pay structures to a role which would have had a lower salary as a consequence of the introduction of the reduced payscale. The claimant did not fall into that category.

88. His reading of this agreement was reinforced by the consistent application of the definition of the PD to all relevant BA collective agreements as applying only to protect pay. He concluded, having spoken to the key figures involved in the GFA, that it was never intended either by the respondents or the trade unions that the PD would apply as a salary supplement that is to provide a further pay rise on promotion rather than as a protective measure.

89. Mr Shearer found no evidence to suggest that the PD had ever applied to someone who had been promoted from a non A-Scale role to an A-Scale role. There was evidence it had been applied to someone promoted from an A-Scale role to a more senior A-Scale role where that individual`s salary would have been lower on the new rate and this confirmed the understanding he had about the intent of the PD.

90. In his outcome letter to the claimant he set out the right of appeal and understood this was appealed with an appeal letter issued, (pages 349/351).

91. Mr Shearer was not involved in the final appeal.

92. Mr Shearer was not aware that the PD had been removed in 2008 since he was not based in Glasgow and was not covered by the GFA nor were any of the individuals for whom he had managerial responsibility and he was not party to the consultations in 2008.

93. The claimant appealed against the decision by email, (pages 343-344). He was invited to an appeal hearing, (page 345) dated 9 December 2015 and advised of his right to be accompanied, (page 346).

94. Notes were taken at the appeal hearing, (pages 347/348). The appeal was heard by Mr Andy Bevan, Support Manager with the Support Unit. In his letter dated 22 December 2015, (pages 349/352) he set out his decision which was not to uphold the claimant`s appeal. The claimant then applied for a final grievance appeal and there is email correspondence (pages 352-355). The appeal was heard by Mr Max Sisson and notes prepared, (pages 357-/362).

95. By letter dated 28 January 2016, (pages 373/375) Mr Sisson who is the Operations Manager for the Longhaul New Fleet considered the appeal grounds looking at point two of the claimant`s request for the first appeal hearing where he had highlighted that there was no answer to his grievance that the GFA wording was plain and clear.

96. Mr Sisson concluded that the wording was taken on its own and out of context. It was specific in its wording and appeared to offer no qualification. However, having spoken with individuals involved in the writing of the agreement and gathering an understanding of the background and reason for it there was an intent to the statement that is clearly not written or defined.

97. He did not believe that the Personal Differential was intended to be a further salary adjustment for any grade, including Material Suppliers where, through promotion moved to a higher salary than was already been received in the original role.

98. In relation to the claimant`s third point, he noted that the claimant asserted that the PD was designed for employees redeployed into roles at a lower basic rate of pay but the definition of PD held true for the intent in the GFA

that an individual promoted from a regional A4/A5 to a BAMG A5 or A6, despite promotion, could be offered a lower basic rate of pay.

99. He did find a case where a PD had been granted in the correct circumstances but had not had reductions applied until the PD would no longer apply which he believed to be an error on the part of the leadership of BAMG and he would refer that back to the local site.

100. In relation to no proper answer being made to the claimant`s points about pay rise to others, Mr Sisson`s conclusion was that there had been promotions where employees remained on the existing regional rates and were not transferred to the new rates stipulated in the GFA. Again, he believed this to be an error on the part of the leadership team at BAMG. He concluded that Material Suppliers were not singled out in respect of a reduction in future earning potential, that the local leadership had confirmed that they had the same opportunities for personal progression as any other employee and that appropriate salary rates applied to recognised promotion.

101. His conclusion was that the PD within the GFA is not intended as a salary top up for all promotions but, as a means to protect basic pay rates of A4 and A5 employees, who achieved promotion to a BAMG A5 or A6 role with the starting rate lower than their existing rate. The claimant was offered and accepted an A6 role with a higher starting pay rate than he held as a Material Supplier.

102. Mr Sisson decided that it was not appropriate for the claimant to receive a Personal Differential on top of his existing salary and, as such, he did not uphold his grievance.

103. It had been agreed that Mr Wallace would be recalled to give further evidence in relation to documentation which he had referred to as being minutes of the local meetings in February and March 2008, (pages 400-

414). The minute for 20 February 2008, (pages 400-406) at page 406 indicates that the next meeting would be 19 March 2008 and under the section headed "*Pay Scales*" the following appears:-

> "*New rates produced for wage award in February 2008. GF folder to be updated."*

104. The date given was 20 February 2008 and the "owner" was given as Mr McMahon in that his initials appeared at the target date of March 2008.

105. There was then a further meeting on 19 March 2009, (pages 408-413).

106. On the final page of that document which refers to a further meeting on 16 April 2008 under the heading "Pay Scales" it refers as follows:-

> "*New rates produced for wage award in February 2008. GF folder to be updated. Pay scales amended."*

107. The date is given as 20 February 2008 and again Mr McMahon`s initials appeared and under this column "*Target*" the word "*Closed*" appears.

108. The GFA Addendum, (page 306A and 306B) bears to be a draft. At the foot of page 306B the words:-

> "*The attached rates are correct at 1st February 2008. They are subject to amendment through the normal pay negotiations and agreements. The prevailing rates apply and are lodged with pay services."*

109. This set out clarification of payscale for existing roles of Material Supplier, Mechanic, Technician, Lead Technician, LAE2, A4, A5 and A6 with the new rates applicable on various spinal points for those various roles.

110 .Mr Wallace could not specifically remember if the removal of the PD was discussed at either meeting but he accepted that it seemed to be indicated in the minute of March 2008 that the matter was treated as "Closed". Mr Wallace thought the minutes would have been prepared by the management side but they would have been read and signed by the conveners on the trade union side.

111. He explained that a member of staff in the HR Team would be present to take the minutes with the respondent's Manager chairing the meeting. In relation to recommendations that had been made in February 2000, Mr Wallace confirmed that the recommendation with the handwritten word, "Phased 1?" was his handwriting as were the ticks and questions mark and scores through under the heading, "*Phase2*", (page 311B). This referred to an amended Pay Scale for Craft and Non-Craft. There was no reference there to PD.

112. The information set out as page 377 sets out the various points about the claimant`s pay as at 1 January 2015 with his being on spinal point 09 and shown as having a salary of £22,190 and alongside that the words appear, *"* Sam was on this scale*".

113. Mr Wallace could not explain why there still seemed to be reference there to regional rates but he did not have anything to do with the wage structure.

114. In relation to the Addendum of 2008 the claimant was not aware of it in any specific way although he was aware that Pay Scales were adjusted as time went on. He had no recollection as a Unite member being consulted about the removal of the PD. He was absolutely clear about that.

115. The claimant was of the view that if he did not receive PD then it would damage his expectations. Of particular concern to the claimant was that this equated to a one third reduction in his current pensionable pay since he is

on a final salary scheme and so it would have the effect of reducing by one third his income on retirement.

116. The claimant accepted that he had chosen to be promoted from the role of Material Supplier but that with the PD not being applied to him, he has no realistic possibility of reaching the level of salary of £36,056. In his view, everyone else in the same role was fast approaching that level of salary.

117. The claimant disputed that Ms Reed had ever told him that he would not be eligible for a PD if he applied for promotion although he accepted that she had spoken to him and two other colleagues neither of whom had applied for promotion.

118. The claimant had not been in the habit of looking at collective agreements but his position was that everyone else who had been promoted had been paid, as he understood it, a Personal Differential.

119. He accepted that his offer letter set out the basic pay on promotion. He accepted there is no reference to PD in the offer letter.

120. The clamant accepted that if there was to be pay protection because the salary was a lower he would have expected to see that in the offer letter.

121. The claimant accepted that the change in role to an A6 grade meant that he received a 5% pay increase.

122. In relation to promotions, the claimant`s details appear showing his old rate of £22,190 as a Material Supplier with his new grade (AAE 2046) Logistics Co-Ordinator and a current rate of £23,480 on promotion as at 1 March 2015.

123. The other individuals whose names appear are Morag Reed who was a Planning Administrator and now is a Logistics Co-Ordinator with effect from

1 November 2013. Her salary was £29,380 at the old rate but the current rate for a Logistics Co-Ordinator was £26,508. She is shown as being on increment 02 whereas the claimant was on increment 00. Her promotion was on 1 November 2013 and there is a PD applied of £7,273.

124. The next name is Mr Wayne Dumphy who was a Lead Material Supplier. His old rate is shown as £32,807 with an additional £1,326 and as a Logistics Co-Ordinator on increment 13 with a salary of £36, 056 promoted 1 June 2005. The only person who has a PD on this list is Ms Reed.

125. Mr Raymond Lawson, a Material Supplier. now a Logistics Co-Ordinator. promoted on 1 May 2004 is on a salary of £36,056 as is a Mr Mark Gordon who is listed as a Lead Material Supplier moved to Logistics Co-Ordinator on 1 April 2004. There are three other names none of which were mentioned during the Hearing.

126. The reference to Mr Dumphy refers to his having been redeployed to Glasgow on the Material Supplier original rate with PD as at 5 April 2002 and an A6 permanent and regional rate at 1 June 2005. For Mr Lawson as a Material Supplier promoted to a Mechanic on a regional rate on 1 April 2002 and then returned to a Material Supplier on an regional rate on 1 March 2003, then an A6 secondment on a regional rate on 16 March 2004 followed by a permanent A6 on regional rate on 1 May 2004.

127. Mr Gordon`s information sets out a Lead Material Supplier moving to a Lead Material Supplier to A6 secondment on a regional rate on 10 June 2002 followed by on 1 July 2003 an A6 secondment at a regional rate and then on 1 April 2004 an A6 permanent on a regional rate.

128. Mr Hagerty did not understand that there had been any discussion about the removal of the PD. His understanding was that it was available for those who were employed when the GFA came into effect. Although he was not involved the negotiations in 2001 he did recollect that there were

discussions with the workforce and union members which were held in the then social club which was across the road from where he and his colleagues were worked. He was not present at the business meetings in 2008.

Respondent's Submissions

129. **INTRODUCTION**

(1) This case concerns the question of whether the Claimant had a contractual right to a "*personal differential*" ('PD') payment which had applied to the grade for his current role, from a collective agreement in 2001.

(2) The liability question is one of contractual interpretation. The tribunal will be mindful that it has no jurisdiction to find for the Claimant on the basis of '*unfairness*', or even that he has been treated less favourably than colleagues (albeit not contended to be on the basis of a protected characteristic).

(3) This case can, and should, be resolved on a straightforward interpretation of the Claimant's own contract of employment, which contains terms as to pay as set out in his offer letter, which unequivocally did not include an entitlement to the PD.

(4) If the applicability of the PD falls for consideration: throughout the case the Respondent has contended that the Claimant was never entitled to this PD under the terms of the collective agreements: both under the agreement from its inception in 2001, and additionally because the Respondent says that the PD was removed in 2008.

(5) It is accepted that the Respondent's witnesses had differing perspectives as to the basis for this denial. For Mr Wallace the

primary point was that the PD was only ever intended to apply to those who were within the A Scale at the time the PD was first introduced. For Mr Shearer the primary reason was that the PD was introduced to prevent employees having to suffer a pay cut when they were in fact being promoted.

(6) It is accepted by the Respondent that there have been anomalies in how the PD has been applied or not. In some cases there were reasons for that, in other cases it may have been an error in favour of the employee affected. The existence of those anomalies does not affect the interpretation of the contract.

KEY FACTS

(7) The Claimant commenced employment with the Respondent as a Material Supplier and 17 August 1999 [32[1]] – although he said in evidence that he believes he joined in 1998. That was not pursued as nothing turns on it in this case.

(8) His contract incorporated the collective agreement for the "Non-Craft Bargaining Unit" [34/7].

(9) As of 23 February 2001 the Craft, Non-Craft, TMG and A-scale grades were incorporated in the "Glasgow Forum Agreement" [290] in order to deliver cost efficiencies. It is common ground between the parties that there were separate bargaining groups for the A Scale as opposed to the Craft, Non-Craft, and TMG employees.

(10) The fact that the A Scale trade union representatives were conscious of protecting their own members' interests, to a higher level of protection than the employees covered by the other bargaining group, was vividly illustrated by the Claimant's oral evidence that

GMB convenor Morag Reed told him, in the context of telling him and others from outside of the A Scale, that if they took a job within the A Scale they would not be entitled to the PD: "*I looked after my girls, and no one was looking after you*." A point to the effect that Morag Reed was saying that she, as a trade union representative for the A Scale, had bargained the PD with the intention/on the understanding that it would only be payable to employees who were already within her bargaining unit – i.e. already on the A Scale – was put to the Claimant in cross-examination. His response was affirmative ("*Pretty much*").

(11) On 20 February 2008 a 'local business meeting' between management and the unions took place [400-407] and, amongst other things, considered the pay scale proposal (document at [306A-B], minuted at [406]). The pay scales were agreed to be amended in line with that document as per the minute of the following meeting [413]. The amended pay scale thereafter did not include the PD (although it is accepted that it continued to apply to those already in receipt of it, who had not since changed jobs). To be clear: the removal of the PD from that scale just meant that it would not be applied to anyone taking a new job on the A Scale (whether by way of promotion or otherwise).

(12) Morag Reed was the lead GMB representative within BAMG A Scale at the time the Claimant applied for the Logistics Co-ordinator role. She informed the Claimant and two others about the salary pay scales and the (non-)applicability of the PD (as per the unchallenged evidence of both of the Respondent's witnesses). The Claimant admitted in oral evidence that she did so. He expressed suspicion of her motives; however, his speculation is not evidence of her lying and thus the tribunal should make findings of fact both that (i) the Claimant had been made aware, before signing his job offer letter, that the PD would not apply to him, and (ii) that the PD for the A

Scale was not intended to be applied to anyone not already on that scale at the time the GFA was agreed.

(13) By letter dated 20 February 2015 the Claimant was offered the role of Logistics Coordinator on job grade A6 [38]. He accepted the unequivocal offer letter unequivocally by signing it without adding any words of equivocation. In this role he was covered by the aspect of the Glasgow Forum collective agreement applicable to administrative staff ("A Scale").

(14) The Claimant was employed on the A6 Scale from 1 March 2015, and paid according to the terms of his offer letter.

THE LAW

(15) It is accepted that the law of Scotland applies to the contractual questions in this case.

(16) In Scottish contract law a binding contract is formed where there is unqualified acceptance of an unqualified offer and an intention to create legal relations. Unlike in England, there is no requirement for consideration.

(17) Under the *Contracts (Scotland) Act 1997* extrinsic evidence is admissible to rebut the presumption that the written document which appears to contain all the express terms of a contract does not contain the complete terms.

(18) Where an employment offer letter contains terms as to salary, those terms will be incorporated into the employment contract, albeit subject to change in line with any subsequently negotiated collective agreements which are applicable to the contract.

(19) If the terms of the contract or collective agreement are in dispute the true meaning of the contractual terms will be assessed by reference to case law on contractual interpretation.

(20) Collective agreements, negotiated between trade union representatives and employer representatives, through a process of collective bargaining which is not the same as the more legalistic process in the negotiation of commercial contracts, are not interpreted by reference to the requirements for complex commercial contracts. Accordingly a factual assessment of the intention of the parties when the agreement was entered in to is key to interpreting collective agreements.

(21) Although a court will not easily accept that linguistic mistakes have been made in formal documents, if the context and background leads to the conclusion that something has gone wrong with the language of a contract, the law does not require the court to attribute to the parties an intention which a reasonable person (having all the background knowledge which would have been available to the parties at the time of the contract being entered into) would not have understood them to have had (*Chartbrook Ltd v Persimmon Homes Ltd [2009] 1 AC* (House of Lords)).

(22) The object of all construction of the terms of a written agreement is to discover, from the written terms of that agreement, and from all available factual background, the meaning of the agreement.

SUBMISSIONS ON LIABILITY

Offer and acceptance exclusive of PD

(23) The job offer letter [38 – 39] explicitly stated the salary and shift pay for the role in numerical money terms, not merely by reference to a

grade/scale. Accordingly the job offer was explicit as to salaried income and did not include the PD.

(24) The Claimant does not say that the offer was in any way equivocal, or that his acceptance was. Accordingly the offer letter formed a binding contract as to those terms under Scottish contract law

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(25) In putting his case the Claimant ignores the pay protection provision[2] that was included in his offer letter. The existence of that provision is further contextual evidence that the offer did not contain any additional form of pay protection that was not mentioned in the letter.

(26) The burden of proof is on the Claimant, whether or not he seeks to rely on extrinsic evidence, to prove that the terms of the contract he entered into for the new role were different from those set out in the letter, at least in relation to his claim to entitlement to an additional form of pay protection on top of that already stated in the letter, i.e. the PD. (The Respondent accepts that the collectively agreed pay rises would apply to the terms of the letter on the collective pay risk/increment dates). He has come nowhere near discharging that burden.

(27) Furthermore, the cross examination of the Respondent's witnesses focussed on whether the PD applied to the Claimant, by reference to the collective agreements. It was not put to the Respondent's witnesses that the Claimant had not accepted the salary terms of his A Scale role as per the offer letter for that role.

(28) The Claimant did not raise the issue of PD until some months later. The fact that he had seen reference to a PD at his job grade in an old Scale document was not a sufficient basis to amend that existing and

finalised agreement for him to do work for the explicit contractual payment for that work.

(29) The construction of the offer letter is a sufficient basis for the tribunal to dispose of this claim.

(30) The following submissions are made in the alternative and are not mutually exclusive.

What was the intention of the parties at the time, and thus what is it reasonable to believe they meant by the wording of the agreement at p.294?

(31) The wording of the pay scales as per the original GFA, are at [293-294]. It is accepted by the Respondent that the wording is not ideal, as if the wording is read on its own, without knowledge of the negotiations or their purpose, it is open to the misinterpretation that the Claimant gives it – for example treating the PD figures as immutable lump sums. However this wording should not be approached as one would approach a contract between equal negotiating parties who each have a legal team to advise. The wording must be approached as the product of a collective agreement – a process in which the introduction of lawyers may fuel distrust and hinder the scope for compromise.

(32) There is uncontested evidence that the GFA rates were reduced (and, consequentially, the PD was introduced) with the intention of both parties to make BAMG more competitive. In the pay scale context that obviously meant saving costs overall.

(33) The application of the PD, as evidenced by the Respondent's witnesses - to prevent existing A Scale employees losing out financially when promoted - is in accordance with that aim. The

Respondent's failure to apply it on a consistent basis does not change that[3].

(34) Mr Wallace's evidence of Morag Reed having suggested the use of a PD shows that unions, as well as management, during the negotiation of the GFA, were concerned to deliver the savings in order to save jobs. The fact that the introduction of the PD was the sweetener that allowed the union to agree to the reduction in the wage rates going forward, is further support for that interpretation.

If the PD applies to the Claimant, in what way does it apply?

(35) While this question would appear to be premature in this skeleton argument, it is relevant at this stage because examining the application of the Claimant's contention for how it should apply to him, shows that the wording on page 294 cannot be interpreted literally, and that in turn affects other aspects of the liability questions.

(36) The Claimant contends that he is entitled to the full PD figure stated on page 294 re the A6 grade, only amended to take in to account the company's annual pay awards.

(37) The Respondent contends that the stated PD figure was the maximum PD which could apply for the scale shown, and in most cases the PD would be lower, because it would be calculated by reference to the regional rate less the new GFA rate, or, when the GFA rate had reached the limit of its increments, the PD would increase to the extent that the employee would have been entitled to additional increments under the regional rate.

(38) The Respondent accepts that the annual pay awards affect the PD sum, to the extent that the PD is determined by the difference between the GFA rate and the regional rate for a particular band/spine point. As the rates are increased by the annual award, so, by virtue of how it is calculated, is the PD.

(39) Thus it is common ground that the A6 PD figure shown on [294] as £4,995, became £7,273 [378] by the time the 2015 scales were produced as at [376-378].

(40) The Claimant's approach would have increased costs with no efficiency or productivity benefit. In fact it would likely have caused widespread discontent and inefficiency if it had the effect, as per the example that the Claimant was taken through in cross examination, to put him on the equivalent of a regional rate A6 spine point 9 at a point when he was employed as an A6 spine point 01. Therefore on the balance of probabilities the Respondent's case on the true meaning and application of the PD should be preferred to that of the Claimant, and the collective agreement interpreted accordingly.

If the PD was still in existence at the relevant time, did it cover the Claimant?

(41) The PD was never intended to apply to someone in the Claimant's position in any event. This is for two separate, and not mutually exclusive reasons. Both reasons are in themselves sufficient to deny the Claimant the PD.

The PD was only ever intended to protect employees from suffering a pay cut on changing jobs/being promoted

(42) The intent of the PD in the Agreement was to protect the salary expectations of those who were already A Scale employees and

who, as a result of the changes set out in the Agreement (which only applied on promotion), would be financially disadvantaged in terms of their basic salary by a subsequent promotion within the A Scale. This is because certain existing A Scale employees progressing up the A Scale would otherwise start on a lower basic rate of pay following their promotion. The PD was to counteract that impact, which would otherwise deter employees from seeking promotion.

(43) If the language of the agreement at [293-294] does not make that sufficiently clear, then the tribunal should interpret the meaning in light of the relevant background knowledge (i.e. the context of both negotiating parties' desire to deliver cost efficiencies in order to save jobs) and thus interpret the collective agreement as meaning that it was only ever intended to protect employees from suffering pay cuts on taking promotion, but not so as to provide any employee with a pay increase above the pre-cut ('Regional') rate.

(44) It is not in dispute that the PD was first introduced in the context of new, lower pay grades, being introduced as part of the GFA. It is obvious that the unions only agreed to the new lower grades because they were concerned to save jobs. Therefore there can be no credible dispute as to the contention that the PD was only introduced to protect employees from suffering a pay cut on change of grade, and that the PD should not operate to give them a higher payment than they would have received on the pre-GFA grade.

(45) It is accepted that at one point in cross-examination Mr Wallace may have appeared to deny this purpose in the course of his emphatic evidence that the Claimant was not entitled to the PD because the Claimant was not employed on the A Scale at the time the GFA was agreed. Viewed in the context of all the evidence this statement should not be taken as meaning that the avoidance of employees suffering pay cuts on promotion was not a primary purpose of the

PD. The method of questioning of Mr Wallace allowed Mr Wallace's answer to confuse the purpose of the PD (to protect from pay cuts on promotion) with the constituency basis of entitlement to the PD (i.e. A Scale only, or all BAMG employees).

(46) This intention is part of the relevant context at the time the collective agreement was entered into, and thus should be taken into account in interpreting the explicit and implied terms as to the applicability of the PD.

(47) The Claimant received a pay rise of over 5% when he moved on to his A Scale role. He accepts that was a larger rise than the annual pay rises at the time. It would have been entirely contrary to the purpose and logic of the GFA to give any PD to someone in his circumstances.

(48) The Claimant denied in cross-examination that the PD was designed to prevent people losing out financially. He tried to assert some other vague purpose linked to 'protecting expectations'. It is submitted that his version is both too vague (and unsubstantiated by any documentary or other evidence) to form the basis for the interpretation of the collective agreement, *and* it calls in to question his own bona fides[4] in that it appears to be a deliberate attempt to 'adapt' his factual account in order to avoid the implications of admitting that the purpose of the PD was to avoid employees losing money as per the Respondent's case.

(49) **The PD was only ever intended to apply to those working within the A Scale bargaining unit at the time the PD was introduced**

(50) At the time the GFA was agreed, the Claimant was not working on the A Scale. He was working within a bargaining unit whose pay

scales reached far higher levels than those within the A Scale if he had chosen to remain and progress within that bargaining unit. (While it is accepted that would have required some training and development, there was unchallenged evidence from Mr Wallace that there was nothing to prevent him doing so; others have done so.)

(51) Mr Wallace gave direct evidence from the GFA negotiations that the PD on the A Scale page was only ever intended to be applied to those working on the A Scale at that time. The Claimant's oral evidence as to Morag Reed's words about negotiating for her 'girls' supports that evidence. No positive evidence was adduced to contradict that contention.

(52) The relevant parts of the Agreement drew a clear distinction between craft and non-craft graded roles (which included the Claimant's role before his promotion) and A Scale roles (the grade to which the Claimant was more recently promoted). In particular:

a. The existing and new rates of pay for each of the above grades were listed entirely separately on different pages of the Agreement. These were set out on page 5 [293] for the craft and non-craft graded roles and, entirely separately, on page 6 [294] for A Scale graded roles.

b. Explanatory notes were set out at the bottom of each of those two pages. There was some repetition in their content (both stated "All staff retain their existing grade and incremental scale. Promotions will be onto the new scale").

c. This supports the Respondent's contention that the information on each page applied only to the roles listed on that page.

d. If the wording regarding the PD sum was overly concise (failing to spell out its true meaning that the sum varied according to which pay entitlements it was leveling), then the interpretation of the wording about 'all staff' can be taken as a second example of the same union/management collective agreement shorthand, which really meant 'all staff now working within this bargaining unit' or words to that effect.

(53) The asterisked note upon which the Claimant seeks to base his claim (which states "*Anyone in full time BA employment on 1 April 2000 who is promoted to A5 or A6 [roles] will carry the personal differential*"):

a. appeared only on page 6 of the Agreement in relation to asterisks marked against certain A Scale roles listed on that page; and, therefore,

b. on the face of the Agreement, it applied only to those who, as at 1 April 2000, were both (i) in BA's employment; and (ii) in the relevant A Scale roles, and who were then subsequently promoted within the A Scale.

The PD was never part of the Claimant's contractual entitlement because it was removed in 2008

(54) The Respondent contends that the PD was removed for people who were not already on it, in February 2008, as reflected in the relevant pay scale at page 306B. The minutes support Mr Wallace's evidence that 306B was tabled and adopted at the said meetings. There is no requirement in law for all aspects of a proposed contract to be discussed between parties before their agreement can be relied upon. It was not put to either Respondent witness that the company had misrepresented the pay table or misled the negotiations. The

acceptance of the scale was clear and unequivocal; a reflected in the minutes and as reflected by the fact that there is no evidence of any 'failure to agree' or other industrial dispute or active voicing of discontent by the unions at the time.

(55) The phasing out of the PD protection was explained in the Respondent's witness evidence, and is in line with the approach taken to the "run down allowance" mentioned in the Claimant's offer letter [38]. In that context it likely would have been an uncontroversial change – even though Mr Hagerty says otherwise in the context of this case.

(56) The Claimant gave evidence that he had never been consulted about the removal of the PD. However that proves nothing, because (i) the union would not necessarily have consulted its members, and (ii) even if it did, the Claimant was not in the relevant bargaining unit (i.e. for the A Scale) at the time of the removal, so would not have been consulted.

(57) The PD was negotiated at a time when the Claimant was covered by the Non-Craft collective agreement terms, not the A Scale collective agreement. Accordingly the PD was not incorporated into his contract of employment at the time it was introduced.

(58) By the time the Claimant was employed on the A Scale the PD no longer applied to that scale because it had been removed in 2008.

(59) Accordingly the PD was never part of the claimant's contractual entitlement because it was not part of the collective agreement relevant to his employment at any relevant time.

CONCLUSION ON LIABILITY

(60) The Claimant's oral evidence indicates that his case is really based not on specific contractual entitlement, but on a general belief that other colleagues are getting the PD and he is not, and that this is unfair. That is not a contractual claim, nor is it the basis for a statutory claim for unpaid wages. His 'they get it so I should' argument is no basis for his articulated claim to succeed.

(61) The Claimant was aware that the PD was not intended to apply to his situation before he even applied for the role, and now brings this claim as a purely opportunist exercise, relying solely on a literal reading of a single page from a document, out of its proper context, which amounts to a misreading.

Offer Letter

(62) The Claimant's contract of employment was formed when he unequivocally accepted the unequivocal offer letter. He had the opportunity to mark his acceptance with words to indicate his belief in, or conditionality upon, receipt of the PD. He did not do so. In law that means that his contract is as per the offer letter and incorporated documents. In relation to pay only the collectively agreed pay rises were incorporated. The term as to pay in his first year, and his grade, were explicit on the face of the offer and thus conclusive.

(63) Prior to accepting the terms of that offer letter the Claimant was already on notice from Morag Reed that he would not be entitled to the PD.

(64) On his own oral evidence he did not specifically believe that he had an entitlement to the PD at the time of the formation of that contract: his belief was at best a vague thought that he would get what others

would get. That belief was not sufficient to form a term in his contract. It was not indicated by him to the Respondent until after the formation of that contract and thus did not affect the terms of the contract.

(65) Thus the Claimant's case fails at this stage on the basis of his contractual rights, and should be dismissed.

Not entitled because not on A Scale when the GFA agreement was reached

(66) Mr Wallace's evidence, and the Claimant's oral evidence of Morag Reed's comment to him about looking after her "girls", are both extrinsic evidence to support the Respondent's contention that the wording at the bottom of p.294 about its application to "all employees" in fact meant "all employees currently employed at BAMG on the A Scale". If that is accepted then the Claimant was never entitled to the PD, and his claim fails.

Not entitled because would not have had a pay cut in the absence of the PD

(67) The Claimant was not disadvantaged on taking his new role in 2015; in fact, he benefitted from a basic salary pay rise. Neither the unions nor the company envisaged the PD applying to someone in his situation at the time they introduced it to their collective agreement. Even if (which is disputed) the PD was applicable to roles taken in 2015, it would not have been applicable to the Claimant's promotion.

(68) It would appear that if the GFA was applied throughout as the Claimant interprets it, there would have been little if any efficiency savings and a huge number of jobs may have been lost, including the Claimant's (before he ever went on to the A Scale).

(69) The overwhelming weight of the evidence indicates that the PD was only intended to apply to those who would otherwise suffer a pay cut on promotion. This was not the case for the Claimant. On the contrary: he received a pay rise at the time of over 5%.

5

Not entitled because the PD was removed in 2008

(70) It is accepted that the removal of the PD in 2008 is not as clearly and unequivocally evidenced as ideally would be the case, particularly in
10 the context where the PD appears to have been applied in some cases where it should not strictly apply.

(71) However this should be weighed against the industrial logic and reality as evidenced by Mr Shearer as to why it would be phased out
15 anyway. Also, its removal was unlikely to be something that would be welcomed by union members, and was therefore the kind of thing that senior union negotiators may well have agreed or allowed to pass in a negotiating meeting if they agreed with the underlying logic but did not want to be seen as openly embracing it.

20

(72) It is accordingly submitted that there are four independent grounds for the tribunal to dismiss the claim on the basis that the Claimant was not contractually entitled to the PD.

25 **REMEDY** – IF APPLICABLE

(73) The Respondent's witness evidence, and the documentary evidence, and Claimant's acceptance of the PD being created as part of a process intended to make BAMG more efficient and thus secure
30 future orders and save jobs, is relevant extrinsic evidence that the contract at p.294 contained implied terms to the effect that the stated PD was not a permanent lump sum, but was to be applied by

reference to the individual new and old rates, as per the Respondent's evidence.

(74) Given the context of the introduction of the PD, the balance of probabilities weighs heavily against the assertion that the PD would have been intended to provide new entrants with a windfall, putting them on higher pay than those already on the A Scale, which would be the effect if the full PD was payable to anyone on the relevant rate, as contended by the Claimant. This was put to the Claimant in cross examination, showing that the sum he claims actually equates to an increase of 8 spine points on the old regional scale.

(75) If the tribunal finds that the Claimant is entitled to the PD, the tribunal is invited to accept the Respondent's evidence that the PD was only to equate to the difference between the new GFA rate and the pre-existing regional rate (AW/32).

(76) At the time of writing the Respondent expects to produce a revised table showing what that equates to over the period from the Claimant's promotion to the date on which he issued his claim.

Claimant`s Submissions

130. As a result of our discussion if the Tribunal finds for the claimant in respect that he is entitled to PD and he is entitled to it in its entirety rather than as a bridge between the new Glasgow Rate and the new regional rate the figure was agreed is unlawful deductions amounting to £10,128.45 for the period from 1 March 2015 to the date of lodging of the claim on 15 July 2016. That is a gross figure and it is accepted by the parties that in that event the Tribunal judgment requires to narrate that any national insurance and tax would then have to be deducted from that figure.

131. In the event the claimant succeeds and is entitled to PD but the measure of the deduction is qualified he is entitled to a figure between the BAMG and regional salary for the same period which amounts to £1,256. Ms Hirsch confirmed that those figures were agreed between the parties.

132. Mr Bathgate then referred the Tribunal to the decision of the Supreme Court in ***Arnold –v- Britton & Others [2015] UKSC36***.

133. The claimant`s case is predicated on the principals applicable to the constitution of collective agreements and in his submission the settled law on the construction of commercial agreements and the principals pertinent thereto which are the same as to the construction of all other contracts. Mr Bathgate directed attention of paragraph 17 in Arnold as follows:-

> "*17 First, reliance placed in some cases and commercial common sense and surrounding circumstances (e.g in Chartbrook [2009] AC 1101, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps for a very unusual case, that meaning is more obviously to be gleaned from the language of the provision*."

134. Next he referred the Tribunal to paragraph 20 as follows:-

> *"20. Fourthly, while commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight*."

135. Accordingly, the wording requires to be looked at rather than the circumstances that led to there being written into the agreement.

136. It is trite law that words be given their ordinary meaning, so in regard to page 294 it says:-

> "* Anyone in full time BA employment on 1 April 2000 who is promoted to A5 or A6 will carry the personal differential. Personal differential is pensionable and wage rises are applied to the combined sum. Overtime is calculated using the basic rate only/"

137. The PD is shown with an asterisk and then provides a figure, for A5 the figure is £4,889 and for A6 £4,995.

138. We submit in a plain reading of the contract there was no requirement of precondition that the person being promoted must come from an A grade.

139. Evidence of common sense in the surrounding circumstances give no relief if the meaning of the words are clear.

140. He would now run through a few facts.

141. In general the factual matrix is agreed. Two material ones are not.

142. We say that it is established that the claimant`s rate of pay is governed by the GF Agreement which was a collective agreement between the unions and the company and we evidence it demonstrates that is determinative of what the claimant is paid.

143. The claimant was promoted on 1 March 2015 and he then established that he was not being paid the PD. He was paid on what was described the new rate in the GF Agreement. All other employees in Glasgow who were

promoted following the inception of the 2001 agreement were not paid in the same way or manner as the claimant.

144. Four other employees in the same circumstances as the claimant was either paid under the old regional scale or the new role with a full PD. All other promoted employees have superior pay terms to that of the claimant.

145. Page 379A demonstrated that. Everyone on the page is paid differently to the claimant.

146. We say the PD was not done away with by subsequent agreement following consultation as is asserted by the respondents. The evidence underpins this.

147. Mr Hagerty was clear and unequivocal there was no agreement as to its removal. There is no detail on the Addendum or the minutes. Mr Wallace in his evidence does not recall any agreement or discussion on its removal. There is no mention of it at all throughout the grievance procedure that the claimant invoked despite Mr Shearer speaking to Mr Wallace and Mr Stuart McMahon. In one instance in a promotion post in 2008 the PD has been paid and in its entirety.

148. If the underlying premise for PD was to ensure that those promoted would not suffer as a loss of wages the removal of the PD undermines that premise, so going from the regional rate to the new rate means the employee suffers a loss of earnings so nobody would want to be promoted.

149. The statement of 2001 where the PD is paid is clear and unequivocal. Unambiguous and unqualified.

150. Where the PD has been paid since 2001 on one occasion it was paid in full and not as submitted by the respondents as a bridge between the new Glasgow rate and the regional rate. The figures demonstrate this (see page

379A and page 378). The salary paid to Morag Reed shows that she received the full PD of £7,273 (her promotion was 1 November 2013) not an amount to a rate detailed in the regional rate.

151. The move from Material Supplier to Logistics Co-Ordinator was a natural career progression and following on from that the claimant`s salary expectations have been compressed and without it the move from Material Supplier has become inferior to all the other classes in the agreement.

152. Normally a Material Supplier would never reach the top spinal point of the old regional rate. This affects not only salary but also pension.

153. The respondents case in Ms Hirsch`s skeleton arguments suggest that the claimant`s offer letter earned acceptance obviates the operation of the GF. Mr Bathgate said this was contrary to the evidence. The evidence was there was a collective agreement and that the claimant`s pay is regulated by the GF Agreement. It is not part of the respondents pleaded case that the claimant`s claim should be defeated by the offer and acceptance in the bundle.

154. The assertion that the PD was to deal with the difference between regional and BAMG rates requires the Tribunal to write words into the agreement and has previously highlighted the terms of the agreement are clear and unambiguous.

155. In its closing submissions the respondents seeks to make a point of the distinction between the claimant and Morag Reed but in Mr Bathgate`s submission that distinction is of no relevance to consideration of this application. Morag Reed was not authorised on behalf of the company to give advice to anyone as to what was or was not part of the employee`s pay package. What she did or did not tell the claimant is not relevant to the resolution of this dispute in the Tribunal`s decision.

156. What matters is the interpretation of the collective agreement.

157. The claimant has been described by the respondents as opportunistic, we say any such description is disingenuous. He is in a minority of one by not having the agreement applied to him. He with four others was promoted in the same circumstances as himself and they have the protection.

158. As the respondents have said the case is not about fairness but the legality and interpretation of the agreement.

159. Mr Campbell clearly advanced his argument in relation to the agreement because he believes the agreement supports him. However, it is something that exists that the respondents assert that the agreement was to make Glasgow more competitive but if they ignore what the wording says what should happen when a person is promoted that person should be paid in accordance with it.

160. Mr Bathgate invited the Tribunal to find for the claimant and to find that there had been an unlawful deduction of wages and to award the sum of £10,128.45 and in the alternative if it finds in a proper construction of the contract that the PD is the difference between the regional rate and the BAMG then the amount sought is £1.256.

161. Ms Hirsch then replied. She first dealt with the offer and acceptance and the fact that this is not pleaded. To her knowledge this was the first time this had been raised. She directed the Tribunal`s attention to page 24 at paragraph 5 which reads:-

> "*With effect from 1 March 2015, the Claimant was promoted to the position of Logistics Co-Ordinator based at its Maintenance facility at Glasgow Airport. That role was graded A6 and the Claimant`s salary increased to £23,480 per annum*."

162. The rest of the grounds of resistance are focused on the argument raised in the claim, the grievance and appeal and therefore on the relevant meaning of the collective agreement. The pleadings do not have to set out all the legal arguments.

163. The claimant has been aware since the December Hearing when they were handed her (opening) skeleton argument and it was clear that the offer and acceptance were important as a basis for the respondents defence. Mr Bathgate had not reacted at the time nor in the case management discussion in February. The claimant would suffer no disadvantage if it is not properly pleaded. There has been ample time to know particulars of the case and to respond to it. In these circumstances she would ask that if the Tribunal believed an amendment was necessary that it make this as follows:-

> "*The respondent relies on the offer and acceptance contained in the job offer letter as being a full answer to this claim*."

164. The Judge intervened to ask if Ms Hirsch was seeking to have that inserted after paragraph 5 of the ET3. Mr Bathgate responded that it was too late for that. He could not dispute that the respondents opening submission had been provided but his position is that pay rates are governed by the collective agreement and it is that document which the Tribunal needs to interpret.

165. Ms Hirsch responded that the Tribunal rules and the overriding objective would have to be applied and while it would be late in the day to make the amendment it can be made at this late stage to give clarity of the respondents case. She accordingly moved the amendment and submitted that it would be an injustice not to allow it to be made.

166. Turning to the substance of the case in her closing submissions she had stated on page 2 at paragraph (7) that the claimant`s employment

commenced on 17 August 1999. This was incorrect and it was accepted that he had been employed since 1998.

167. In relation to the GFA it is specified at paragraph (9) by the claimant that the point of the GFA was to make Glasgow more competitive in line with the respondents aim to deliver efficiencies. It was only Mr Hagerty who bizarrely disputes that. The Tribunal should note his position and put low weight on his evidence.

168. In relation to her paragraph (11) (her page 3) the local business meeting considered the payscales. She had put to Mr Hagerty that the union had not questioned the absence of the PD and he did not disagree. He did not assert that the union had questioned it. There was discussion about the pay increase which comes from national bargaining. Nor does the respondents dispute Mr Hagerty`s answer to Mr Poad that the minutes deal with payscales rather than pay increases.

169. With that in mind page 306B is explained that it is about local payscales so together with the minutes in February the case was closed and these minutes were placed on the shared drive in March 2008.

170. Ms Hirsch accepts that the respondents had no positive evidence so the respondents are not positively pointing out the PD was removed or that it gave notice to the workforce of that.

171. The number of people on the A/Scale was very small so it would affect only a small number of people. Mr Shearer`s evidence was that the PD had run its course – it had withered on the vine and so its removal. This may have been a reference to there being no more people on the A/Scale for whom it would apply.

172. This brought it to the question that it only applied to people who were already on the A/Scale.

173. Ms Hirsch asked the Tribunal to accept on the evidence the difference between unions and in the context of Ms Reed`s comments which tie in with there being cuts with the various unions involved and she was fighting for protection for her own union members, those in her group. This all the more supports the logic that the PD was not there anymore for those who would the move into the A/Scale.

174. Ms Hirsch referred to Scots Law because the union did not query the absence of the PD on the sheet of the minute in February 2008. They agreed the minute accepting. It had been tabled for the collective meeting. It withdrew the PD and this was incorporated into the 2008 minute even if it was not subsequently loudly trumpeted to the workforce.

175. Ms Hirsch accepted the point about the 2001 agreement. The workforce was consulted. She fully accepted the position regarding pay cuts or annual pay rises except the union consulted with its workforce. In her submission for something such as the removal of the PD it was not necessary for the union to want to trumpet it as they were giving up something so the union representatives accepted this. Mr Hagerty had a different view on these things.

176. In relation to the law Ms Hirsch accepts the position set out in Arnold in relation to reasonable interpretation but in her submission this did not apply in this case.

177. She pointed out at page 1621 that this was a dispute over leases. One would expect that there commercial bargaining with lawyers involved and the court expectation of equality of bargaining powers. However, there was no adjustment of the law in relation to the inequality of bargaining powers in the circumstances set out there. In particular she referred the Tribunal to paragraph 70 where there was reference to ***Chartbrook Ltd –v- Persimmon Homes Ltd [2009] AC 1101*** where a definition which

"*contained a grammatical ambiguity, made no commercial sense if interpreted in accordance with the ordinary rules of syntax*".

178. Here there was a collective agreement between management and unions. Lawyers are often inimical of process, therefore to have much higher requirements for extrinsic evidence and on that point ***Arnold*** could be distinguished because it applied English law. She referred again to Scots Law and the Contract (Scotland) Act 1997 which provides extrinsic evidence is admissible to rebut the presumption that the written document which appears to contain all the express terms of the contract does not contain the complete terms, (see paragraph 17 of her written submissions).

179. The other authority to which she wished to refer the Tribunal was ***Autoclenz –v- Belcher [2011] ICR 1157*** where individuals were made to sign a contract that they were self employed and it was held that because of the inequality of the bargaining power not only had the clause but the whole agreement to be disregarded as a sham contract.

180. Ms Hirsch did not say so here but that the collective agreement should be interpreted in light of the different circumstances in the employment contract.

181. Mr Bathgate reiterated that the removal of the PD undermines the respondents logic that it was there to protect for pay cuts. He said that it was back to the point of the A/Scale only and through job changes and iterations had run its course.

182. Turning to the heads of defence the offer and acceptance argument, it was accepted for the claimant that the collective agreement applies to pay rises and we say that the offer letter clear at the point of engagement. It was only on salary and the fact the letter specifically mentions the difference about overtime pay that it is not meant to include the offer of paid protection.

183. Mr Bathgate submitted that Ms Hirsch`s approach should not be accepted in relation to the PD as it did not make any sense and there was no direct knowledge of managers rather than opinion evidence.

184. The respondents approach only makes sense in the very important context of trying to save over 200 jobs.

185. Ms Hirsch continued that in her written submission she had not necessarily made it clear that if the claimant`s approach was accepted by the Tribunal he would have to move onto spine point 9 rather than spine point 2 in the old rates. How would the workforce react to that – his colleagues would be quite annoyed and it would cause chaos for people wanting to change jobs to get a PD. It made no commercial sense and there was no reason to think it was intended to operate just to give pay? because of a change in job.

186. For the claimant to be on a contract with a pay increase of 5% for him to secure more because he had changed job for the role for which he had applied. On the A/Scale some aspects of the written agreement as set out in page 10 of the submissions were not put to the claimant`s witnesses but suggested they are an aid to interpretation of the arguments.

187. In terms of the evidence the claimant was most compelling in relation to Ms Reed`s comments to him.

Relevant Law

188. The relevant law is set out at Sections 13 and 23 of the 1996 Act.

> "***13. Right not to suffer unauthorised deductions***
>
> *(1) An employer shall not make deductions from wages of a worker employed by him…"*

189 The remaining subsections of section 13 are not applicable in this case. And at:-

> *"23 Complaints to employment tribunals*
>
> *(1) A worker may present a complaint to an employment tribunal*
>
> *(a) that his employer has made a deduction from his wages in contravention of Section 13 …. "*

Observations on the Witnesses

190. The Tribunal considered that the interpretation placed on the terms of the GFA both by Mr Wallace as well as by Mr Shearer was a reasonable one to reach in all the circumstances. Mr Shearer's analysis was straightforward and took account of the results of his detailed investigations. The Tribunal also noted that Mr Wallace had the added advantage of being involved in the GFA, having been one of the parties engaged in the negotiations with the respondent.

Deliberation & Determination

191. The Tribunal was very grateful to the representatives for their helpful closing submissions and for drawing attention to the various authorities on which they each relied. They are set out in full, in the order in which the representatives addressed the Tribunal at the end of the Hearing.

192. The Tribunal noted that the claimant received a 5% pay increase on his promotion to the post of Logistics Coordinator. The Tribunal concluded that the terms of the offer letter to the claimant dated 20 February 2015 were significant in that it clearly set out that with his move to a new role the claimant would receive a lower shift pay and there was to be a shift pay run down allowance over a phased period of 12 months. The claimant was

moving from a Materials Supplier Role, (see page 5 of the GFA at page 293 of the bundle). The GFA sets out two foot notes at page 5/293 of the bundle while page 6 of the GFA at page 294 of the bundle has two different foot notes for the three roles set out on that page, these being A4, A5 and A6.

193. The Tribunal concluded that these two pages have to be read in the context of the GFA as a whole document. It was a document signed by the parties on 23 February 2001 and it was produced as the result of lengthy and detailed negotiations between the respondent's management team and the recognised trade unions. It therefore sets out a collective agreement between the contracting parties. The Tribunal also considered it was significant that, at the time the GFA was signed, the claimant was a Materials Supplier and so covered by page 5/293 of that Agreement. The claimant was not promoted to an A6 role until many years later in 2015. Mr Wallace was very clear that there were no conversations about the PD applying outside the A-Scale pay rates because those governed by the pay scales on page 5/293 of the GFA would not be similarly disadvantaged if they were promoted which is, of course, what happened many years later in 2015 with the claimant. Further, the PD was always intended to be a transitional measure. The Tribunal was satisfied that what happened in 2008 was that the need for the PD was no longer there. The minutes of the meetings refer to it being treated by the respondent as "*Closed*" and there was no evidence to suggest that the union representatives who were involved in the meetings in 2008 dissented from that decision.

194. The Tribunal considered that it was important to note that there is no reference to the PD for A-Scale 4 employees, only A-Scale 5 and 6 on page 6/294. There is no reference at all to PD for employees such as the claimant on page 5/293. The offer letter to the claimant also made it clear that the claimant was to receive a pay increase so had he been entitled in addition to a PD that would have amounted to a supplement to his salary rather than pay protection. The Tribunal concluded that, in all the circumstances, the

claimant failed to demonstrate that he had an entitlement to a PD on his promotion to the role of Logistics Coordinator.

195. The Tribunal noted that there did appear to be some inconsistencies as to how the PD had been applied in earlier cases and the respondent appeared to recognise this was had happened. However, the Tribunal was not satisfied that this could be interpreted as entitling the claimant to a PD where he was promoted to the new role in 2015.

196. In all these circumstances, the Tribunal concluded that Ms Hirsch was correct in her submission that the claimant did not have a specific contractual entitlement to a PD and, while it noted that the claimant considered this was unfair to him, that is not the issue before the Tribunal. Accordingly, applying the law to the above findings of fact the Tribunal concluded that the claimant did not have a contractual entitlement to a PD and the claim is therefore dismissed.

Employment Judge: F Jane Garvie
Date of Judgment: 11 April 2017
Entered in register: 12 April 2017
and copied to parties