Appeal No. UKEAT/0527/13/RN

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 13 May 2014

Before

THE HONOURABLE MRS JUSTICE SIMLER

(SITTING ALONE)

CITY FACILITIES MANAGEMENT (UK) LTD APPELLANT

MR M A BECKETT RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MR JONATHAN COHEN (of Counsel) In appearance: Messrs Eversheds Solicitors Eversheds House 70 Great Bridgewater Street Manchester M1 5ES
For the Respondent	MR MARTIN BECKETT (The Respondent in Person)

SUMMARY

UNLAWFUL DEDUCTION FROM WAGES

The Employment Judge found unlawful deductions from wages in relation to Claimant's London Weighting Allowance without first determining adequately or at all, or by reference to relevant and material findings of fact, what wages were properly due to him. The Employment Judge erred by having regard to wholly irrelevant considerations that post-dated the contract; and by failing to explain or determine how an internal, generic form not made available to the Claimant could affect his contractual entitlement to salary or other emoluments.

Despite the limited value of the case in relation to the Claimant alone, the case had potentially wide implications for the Respondent beyond the Claimant's case only. Given the fundamental failings, including the failure by the Employment Judge to make findings of fact relevant to the issues that required determination, it was proportionate and in accordance with the overriding objective to remit to a fresh tribunal to start again.

THE HONOURABLE MRS JUSTICE SIMLER

1. This is an appeal from a judgment of the Employment Tribunal sitting at Ashford, given orally following a hearing on 2 July 2013, with reasons sent to the parties on 10 July 2013. By that decision, the Employment Judge concluded that the Claimant had suffered unauthorised deductions from wages and awarded him the sum of £7,600-odd by way of compensation in respect of arrears of wages so withheld.

2. The principal issue raised on this appeal is that the employment judge erred in his construction of the Claimant's contractual entitlement to London Working Allowance ("LWA"). Critically, so far as the Respondent is concerned, it argues that the tribunal failed to appreciate that this allowance did not need to be separately itemised as a matter of contractual entitlement, nor was there any contractual entitlement to a particular rate and that the Claimant failed to established that a particular rate of LWA was accordingly properly payable. The Respondents argue that the tribunal failed to address or answer these fundamental questions.

3. In this judgment I refer to the parties as the Claimant and the Respondent, as they were before the Employment Tribunal. The Claimant appeared in person before the tribunal and continues to do so on this appeal before me; the Respondent was represented by Miss Muirhead, a solicitor. On this appeal the Respondent is represented by Mr Jonathan Cohen of counsel. Both the Claimant and Mr Cohen have made focused and helpful submissions, both in writing and orally for which I am grateful.

The facts

4. The Employment Judge set out from paragraphs 5 to 27 inclusive the material findings of fact made in this case. Those findings will not be repeated but, so far as material for this appeal, the tribunal found in summary as follows. The Respondent provides on-site cleaning, engineering and general support services to Asda. In 2006 the Respondent introduced LWA for engineering and regional management vacancies, referred to as "facilities management employees". Those vacancies did not include cleaning roles such as that occupied by the Claimant when he came to be employed. However, LWA was introduced for cleaning roles such as that occupied by the Claimant in 2007, but in a different way to that which applied to facilities management employees. The tribunal made no specific findings in this regard.

5. The Claimant commenced employment with the Respondent on 7 April 2009 as a store cleaning manager at Asda's Rushden store. His statement of Terms and Conditions of Employment included the following. Under the heading "Remuneration":

> **"Wages will be paid directly into your bank account by equal monthly instalments in arrears ... Your salary is basic salary £19,000 per annum ... Salary is paid in accordance with the company pay grading structure ...**
>
> **Entitlement to London Working Allowance ... is determined by place of work, currently inside the M25 and other designated areas. The allowance will only apply while work is carried out in the designated area and will be removed in the event of transfer to an area where the allowance does not apply. LWA will be paid as a percentage of base salary but will not be included in salary for overtime and pension purposes."**

6. It is quite obvious that this offer letter, which when accepted, was the Claimant's contract of employment, did not identify the percentage rate of LWA, nor was there any contractual provision as to how it would be paid once entitlement arose. So far as the tribunal's task was concerned, that document and that clause in particular would have to be construed by the tribunal against the knowledge of the parties' understanding at the time that the contract was entered into, in accordance with well-established contractual principles set out in the most well-

known case of **Investors Compensation Scheme Ltd v West Bromwich Building Society** [1998] 1 WLR 896 in the speech of Lord Hoffmann.

7. During the course of his employment, the Claimant moved to Asda's Corby store and then on to the Swanley store. So far as the move to Corby was concerned this was not in the LWA area. The tribunal referred to a letter and an employee change form associated with that the Corby move. The letter to the Claimant was dated 10 February 2010, and confirmed his transfer in the role of Store Cleaning Manager, that his salary would be increased to £22,500 per annum with effect from 19 February and that all other terms and conditions of employment remained the same. The letter did not explain what the increase in salary represented or was in respect of.

8. At the time of the Claimant's move to Corby, an employee change form was completed. In a box headed "Salary review", it identified the effective date of the salary., a current salary of £19,700, an increase amount of £2,800, a new salary of £22,500 with an increase percentage overall of 14 per cent. Under the heading, "Transfer and/or promotion", there was entered into the relevant boxes the date of the “transfer and/or promotion” and the new position, but without identifying whether this was simply a transfer or a promotion. The form had a box within the "Salary review" box that could be ticked for the following, "LWA 11 per cent; SLA 5 per cent to be adjusted." The employee change form for the move to Corby did not have that box ticked. It is common ground that the Claimant was not given the employee change form. This was an internal, generic document prepared for internal pay purposes.

9. In September 2010 the Claimant moved again, this time to Swanley which fell within the LWA area. On his move to Swanley, the Claimant received a letter of appointment dated 10 September 2010 in extremely similar terms to those I have identified in respect of his move to Corby. The letter confirmed transfer as Store Cleaning Manager at Asda Swanley that the

move would take effect on 6 September 2010, that his salary would be increased to £25,000 per annum and that all other terms and conditions of employment would remain the same.

10. An employee change form in respect of the Swanley move was completed again for internal purposes, not given to the Claimant, and again in the box headed "Salary review", the current salary of £22,950 was recorded, the new salary of £25,000 was recorded and the box headed "Transfer and/or promotion" was completed without indicating whether or not this was a transfer or a promotion. Again, so far as the salary review section of the form was concerned, the box capable of being ticked in respect of LWA at 11 per cent, or SLA at 5 per cent to be adjusted, was not ticked.

11. It was the Respondent's case before the tribunal that the salary increase on transfer to Swanley in respect of the Claimant factored into his new salary his entitlement to LWA, albeit that the letter did not say so and that this was not explained at the time to the Claimant. Following his move to the Swanley store, the Claimant questioned whether or not he should be receiving a further payment by way of LWA in addition to the increased salary he had been receiving. By email dated 25 September 2012 from Annette Ainsworth, who was Head of Retail People for the Respondent, the tribunal recorded the fact that the Claimant was told:

> **"As the LWA was built into your salary when you moved to Swanley in 2010, it is part of your base salary now, even though it is not separated on your payslip that would only happen if you moved recently into an LWA store after the recent change."**

12. The change referred to was a decision in April 2012 whereby the Respondent decided to pay all Store Cleaning Managers LWA payments at a fixed rate of £2,500 per annum. The Claimant had not been notified of this change, however, and his contract of employment continued to state that his LWA entitlement was payable as a percentage of basic salary, albeit there was no obligation to separate this out and identify it separately on his payslips or by way of payment mechanism.

13. The Claimant was not satisfied with the explanations and responses he had received from the Respondent and he pursued a grievance. The grievance was determined by letter dated 3 December 2012, which concluded that his monthly pay did include his London weighting and that this had been the case since his transfer to Swanley. He lodged an appeal against that decision. That was rejected by letter dated 22 January 2013 and, ultimately dissatisfied with the outcome of that process, on 8 May 2013 he presented an originating application to the tribunal complaining of unlawful deductions from wages.

14. The Employment Judge, having set out the relevant findings of fact as just summarised, directed himself as to the relevant law. He set out (at paragraph 28) section 13 of the **Employment Rights Act 1996**. He did not identify any of the cases dealing with that statutory provision, and that was the extent of his self-direction. Having done so this, he concluded that the wages properly payable to the Claimant under section 13(3) were those sums payable under the Claimant's contract of employment, that is salary and LWA. He decided by reference to the Swanley employee change form to which I have referred, that the rate of LWA to which the Claimant was entitled was 11 per cent. As I have already indicated, that form was an internal generic from not provided to the Claimant and only seen by him, as he has frankly accepted before me, much later on. The tribunal did not explain on what basis it concluded that the employee change form constituted a contractual document or, if it constituted a contractual document, or upon what other contractual basis it was being relied upon here.

15. The Respondent's case was that the employee change form, so far as it related to the boxes concerning LWA and SLA, was inapplicable in its entirety. That section applied only to the facilities management side of the business and not to the cleaning management side. Those cleaning managers entitled to LWA were dealt with differently, as the tribunal observed at the outset, but did not reconsider when it came to consider this form. Moreover, the relevant section was unticked, both on the employee change form on the move to Corby and once again

on the move to Swanley. The Respondent contended that the fact that it was unticked was consistent with its case, either that this form and the approach to LWA that applied to the facilities side, was inapplicable to the cleaning manager side, or because it was consistent with the Respondent's case that the Claimant was not entitled to or being paid a separate sum for LWA over and above the total salary figure reflected on the employee change form and in the letter confirming his transfer to Swanley, but rather, LWA was factored into the total salary figure.

16. The tribunal was unconcerned by the fact that this box was not ticked and, at paragraph 34 of the decision, referred to the fact that it was not ticked and that the Respondent's case was that it was not applicable to the Claimant, but said this:

> **"...the form says nothing about to whom the rate of LWA applies and the form itself is about the Claimant. The Tribunal considered that it was not the ticking or not ticking of that box that was material here, but the percentage rate of LWA which is stated at 11%. Nowhere else was the rate stated as anything other than 11% and it was included under the heading 'salary review' which clearly relates to the Claimant's pay. There was nothing anywhere else to say that he was entitled to any different rate. Importantly, it was entirely consistent with the statement made by Kay Wright on 14 September 2012 that the Claimant's LWA was 11% of basic salary."**

17. The tribunal went on at paragraph 37 by reference to a number of matters to conclude that LWA had not been included in the Claimant's salary since his move to the Swanley store. Paragraph 37 reads as follows:

> **"The fact that LWA was not included in the Claimant's salary is supported by the following.**
>
> **37.1 The contract of employment refers to two separate types of payment, salary and LWA, but the Claimant's payslips refer only to salary.**
>
> **37.2 The letter of 10 September 2010 appointing the Claimant to the Swanley branch job refers to salary increase. There is no reference to LWA.**
>
> **37.3 The Claimant was neither consulted nor informed of the change of the rate of payment of LWA from a percentage rate to a flat rate in April 2012. This was a unilateral change of a fundamental term of service and is not therefore binding on the Claimant.**
>
> **37.4 The Tribunal found Mrs Holland's suggestion that a flat rate is also a percentage of pay to be disingenuous. Any sum is, with the appropriate calculation, a percentage of any other sum. A percentage rate is not the same as a flat rate. The two are very different.**
>
> **37.5 All the pay rises in 2011, 2012 and 2013 have been applied to the whole of the Claimants' pay, not just to the salary element to the exclusion of any other LWA element. If LWA was set**

> **at a flat rate, then it could not be subject to a percentage increase. Mrs Holland says this is another error but if so, it is another unexplained error.**
>
> **37.6 The statement made by Kay Wright, the Payroll Manager."**

18. At paragraph 38 the tribunal found that:

> **"... not only did the Claimant have a contractual entitlement to LWA at 11 per cent, but also there was no evidence that he had been paid LWA at any stage since he transferred to Swanley on 6 September 2010. Everything described above is consistent with the non-payment of LWA."**

19. It was on this basis, accordingly, that the tribunal concluded that there had been sums deducted from the salary properly payable to the Claimant since his move to the Swanley store by reference to 11 per cent of LWA calculated as a percentage of total salary identified in the letter to him of 10 September 2012.

20. Against that conclusion, the Respondent now appeals, contending that the Employment Judge erred in law. Firstly, Mr Cohen argues that the tribunal's failure to appreciate that LWA did not need to be separately itemised led it into error. The tribunal never addressed or determined on a proper contractual basis what basic salary the Claimant was entitled to on his move to Swanley or what was properly payable on that transfer. Without determining that, the tribunal could not determine what was properly payable by way of LWA and whether or not what was payable reflected an unlawful deduction or not.

21. Secondly, Mr Cohen argues that, to the extent that findings were made by the tribunal, they were referable to post-contractual events that were, on proper contractual principles, irrelevant to the fundamental question the tribunal had to decide. Thirdly, on the question of the percentage rate, Mr Cohen submits that, absent any contractual entitlement to 11 per cent in the offer letter or any other contractual document, at best the Claimant's entitlement was to a "reasonable" sum by way of percentage or to a reasonable percentage only. On that basis, by

reference to the statute and to the case law relating to section 13, the tribunal had no jurisdiction to address this question.

22. The Claimant accepts that his contract was silent on the question of separate itemisation and on the rate of LWA that was payable. Nevertheless, he points to a number of documents which he says are powerful evidence that 11 per cent for LWA was widely payable or widely regarded as payable on the cleaning side as well as the facilities management side of the Respondent's business. He maintains that the salary increase he received on transfer to Swanley represented a promotional pay increase and was not referable to LWA, which he never received.

23. I deal briefly with the applicable legal principles, which are not in dispute. Given that the Claimant's employment was continuing, unless he could bring his claims within Part 2 of the **Employment Rights Act 1996**, the tribunal would have no jurisdiction to entertain them. In particular, any claim for unliquidated damages for breach of contract could not have been brought in the tribunal but would have had to be brought in the county court or the High Court as a breach of contract claim. Accordingly, the Claimant's claim had to be brought within section 13 of the **Employment Rights Act 1996**. The tribunal set out the provisions of the Act at paragraph 28:

> **"Right not to suffer unauthorised deductions.**
>
> **(1) An employer shall not make a deduction from wages of a worker employed by him unless—**
>
> **(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or**
>
> **(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.**
>
> **(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—**
>
> **(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or**

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."

24. The statutory provision requires that the first question that must be addressed in determining whether there has been an unauthorised deduction from wages under section 13, is what is properly payable to the employee by way of wages. In this regard, "wages" are defined at section 27 as:

"... any sums payable to the worker in connection with his employment, including -

(a) any ... other emolument referable to his employment whether payable under his contract or otherwise."

25. Immediately prior to his transfer to the Swanley store, the Claimant was, on the tribunal's findings employed at the Corby store on a salary of £22,950 without any entitlement to LWA. His move to the Corby store had been associated with a salary increase. The reason for this salary increase was not explained in the letter he received, as I have already indicated; the letter simply provided for an increase in salary, and the employee change form associated with this increase was in identical terms to the one generated internally following his move to Swanley. The Corby move form identified, just as the Swanley move form did, boxes that could be ticked to reflect an increase in salary by reference to LWA at a rate of 11 per cent, but neither was ticked. The tribunal found at paragraph 9 that the increase in salary on the move to Corby reflected in the letter was an increase that reflected the fact that Corby was a larger store than the Rushden store at which he had previously worked, and that this was, in effect, a promotion. By contrast, however, the tribunal made no finding that the Swanley store was a larger store than the Corby store, or that the Claimant was entitled to an increase in salary to reflect additional responsibilities by virtue of that move, or, if that was its conclusion, how much of the

increase or what amount of increase was referable to that promotion or additional responsibilities.

26. I note, so far as this is concerned, that there was conflicting evidence before the tribunal on this question. The Claimant in his witness statement at paragraph 3 contended that Swanley was a store of learning and that these stores were the highest graded stores to provide training and support to the area. This was a promotion for him and the salary increase reflected that promotion. On the other hand, Jill Holland, who gave evidence to the tribunal and whose witness statement I have read, particularly at paragraph 52, contradicts that and makes clear that, so far as the Respondent was concerned, this was not a promotion and the increase was not referable to any promotion or increase in responsibilities. The tribunal made no express findings on this issue and the documents that were available did not answer the point.

27. There was no dispute before the tribunal that from 6 September 2010, on his move to the Swanley store, the Claimant became entitled to an allowance for London weighting or LWA. However, it is clear, and indeed not contested, that entitlement to LWA did not require the Respondent to separately identify the LWA figure. A total salary figure, which was what the Claimant was given on his transfer, was capable, accordingly, of including a London weighting element, consistent with his entitlement to LWA. It was at least possible, accordingly, that the increase in salary itself reflected a LWA increase reflecting a move to a store within the M25. However, nowhere in the decision did the tribunal consider the salary of £25,000, and in particular the increase reflected in that new salary and make findings of fact as to what that salary represented, what level of increase there had been, and whether that level of increase or part of that level of increase, reflected an LWA element or some other element, such as would reflect an increase in responsibilities or a promotion.

28. Instead, at paragraph 37 (quoted above) by reference to a number of considerations, the tribunal identified facts it considered supported a conclusion that LWA was not included in the £25,000 salary. As set out below, and dealing with each of these matters in turn, I am persuaded that these considerations were irrelevant to the question the Employment Judge was required to answer. As to the first, the fact that the contract of employment referred to two separate types of payment, namely salary and LWA, but the payslips referred only to salary, did not support a conclusion that LWA was not included in the Claimant's salary. That was to confuse questions of entitlement with the mechanics of calculation of that entitlement. It did not answer the question. Secondly, the fact that the letter of 10 September 2010 referred to a salary increase but made no reference to LWA was, at best, neutral. The letter also did not refer to a promotion, nor did it otherwise explain what the salary increase reflected.

29. Thirdly, the fact that the Claimant was neither consulted nor informed of changes to the way LWA was paid from April 2012 was irrelevant. It could not affect what was properly payable with effect from 6 September 2010. Fourthly, nor for the same reason was Miss Holland's evidence relevant to that question. Fifthly, the same point applies in relation to the pay increases in 2011, 2012 and 2013.

30. Sixthly, so far as the statement by Kay Wright, the Payroll Manager was concerned, this was potentially relevant, not as a means of altering the contractual position between the parties, but as reflecting what was actually agreed. She replied to a query from the Claimant dated 14 September 2012 asking how his London Weighting Allowance would show on his wage slip, if it was being paid, and answered as follows:

> **"Hi Martin, it would show as London Weighting on your payslip and it would be 11 per cent of your basic salary."**

However, on its own and without a proper explanation or contractual analysis, it was an inadequate basis for the tribunal's conclusion and did not justify its ultimate finding.

31. Moreover, the post-contractual documents, as I have already indicated, could not have altered the construction of the Claimant's contract. The Employment Tribunal failed to have regard to this important principle of contractual construction. The contract would have to be construed, as I have indicated, by reference to the knowledge and understanding of the parties at the date it was entered into and not by reference to what happened afterwards. I agree with Mr Cohen that the tribunal failed to make important findings as to what the Claimant's base salary was on his move to Swanley. In this regard, the Respondent's evidence was that there were no formal salary bandings within its organisation and different stores attracted different salaries reflecting market forces in the particular area. Looking at the Claimant's salary on transfer to Swanley, namely £25,000, given that the Respondent had complete discretion as to what to pay its managers, it does not follow that, simply because the Claimant received £22,950 at Corby, that this was the base salary for his move to Swanley.

32. Unless the tribunal could work out what his base salary was at Swanley before coming to the question of LWA, it was impossible to say that LWA was not included within that salary, still less was not included at a rate of 11 per cent. Accordingly, I am satisfied that the tribunal's failure to make critical findings and to identify, consider and determine what was properly payable with effect from 6 September 2010 fatally undermined its conclusions on this question.

33. There is a further point raised on this appeal in relation to the conclusion that the Claimant had an entitlement to LWA at 11 per cent. There can be no dispute that the Claimant's contract did not entitle him to be paid this allowance at any specific rate. The tribunal found an entitlement to LWA at 11 per cent on the basis, as I have indicated, of the internal generic employee change form. That document, as already described, was an internal

document never issued to the Claimant. It was a pro forma document, not drawn up with the Claimant specifically in mind. The Respondent's evidence, given by Miss Holland at paragraph 25, was to the effect that the part of the form relied upon by the Employment Judge ordinarily related to the Respondent's facilities management employees and not to those employed on the cleaning side of the business, which is where the Claimant's role fell. I am told that there was no evidence contradicting this.

34. It is undoubtedly the case that the employee change form did not form any part of the contract between the Claimant and the Respondent in this case. It was not found to constitute a variation of the contract; it was not found to be incorporated by reference into the contract. It was not a circular or a memo issued to employees including the Claimant. The tribunal did not even begin to perform the exercise of analysing how or why the employee change form became contractually effective in this case. Moreover, as I have indicated, since it was not provided to the Claimant at the relevant time, it cannot aid the exercise of construction by reference to the principles identified by Lord Hoffmann in the **Investors Compensation Scheme** case.

35. Absent a specific rate and the employee change form was the only document relied on by reference to which the rate of 11 per cent was inferred by this tribunal, at best the Claimant could only have been entitled to a reasonable rate on the basis of his employment contract.

36. This leads to Mr Cohen's final point. If the Claimant was only entitled to a reasonable rate of LWA and not to an identifiable rate, the Employment Tribunal had no jurisdiction to consider this claim: see the discussion at paragraphs 50 to 58 in **Coors Brewers Ltd v SP Adcock & Ors** [2007] EWCA Civ 19. Mr Cohen has pointed to documents and evidence that explain the references to 11 per cent as the rate for LWA within the facilities management side of the business, but which limit that rate, both historically and to

the facilities management side and not the cleaning side of the business. Mr Cohen may be right about this. My difficulty is that the tribunal made no findings either way.

37. If the tribunal was -- and I observe this was not the tribunal's approach -- to use this sort of material to establish what a reasonable rate of LWA was by way of contractual entitlement, that would not be permissible under section 13, and the tribunal would have no jurisdiction to determine such a case. But if the Claimant's case was, in reality, that 11 per cent was so widely used and so widely known throughout the Respondent organisation as to be certain and notorious so that 11 per cent was capable of being implied into his contract as the rate payable for LWA, that would be a matter that the tribunal would have jurisdiction to determine.

38. Although the Respondent's case on this point appears promising, I feel unable to conclude that there is only one possible answer to this question. There is conflicting evidence on this question highlighted by Mr Cohen in his reply in favour of the Respondent and by the Claimant in the course of his helpful submissions which supports his case. In the absence of any findings made by the tribunal which point to one conclusion or the other. I have come to the conclusion that this matter must be remitted to the tribunal.

39. For the reasons given above the tribunal erred in law in two fundamental respects: in relation to the question what was properly payable by the Respondent to the Claimant in terms of entitlement to LWA; and so far as the identification of the rate. These questions should have been addressed on the application of well established principles of contractual construction before the tribunal could consider the question whether unlawful deductions from salary had been made.

40. Although the possibility that I could substitute my own conclusions for the tribunal's findings was floated in the Grounds of Appeal, I am not persuaded that this is appropriate in the

circumstances of this case given the conflict of evidence I have identified. I have therefore decided that the matter must be remitted, and the only remaining question is whether the matter should be remitted to the same tribunal to reconsider these questions or whether this is a case that should be remitted to a different or differently constituted tribunal.

41. I have reminded myself of the guidance given in **Sinclair Roche & Temperley (A firm) v Heard & Anr** [2004] UKEAT 0738/03/2207. In particular, I have considered questions of proportionality, passage of time, whether there is a real risk that the tribunal will have forgotten about the case, and whether there is a risk of pre-judgment dependent upon the extent to which the tribunal's decision is flawed.

42. I have considered the fact that the amount at stake in this case is limited, but I am persuaded by Mr Cohen that the amount at stake in respect of this Claimant is not the correct consideration here. This is a case where the Respondent employs many Store Cleaning Managers and the implications are potentially widespread accordingly. The fact that the Respondent has pursued this appeal is some indication of the seriousness with which it regards the decision. The matter is accordingly not to be looked at by reference only to the amount at stake in the Claimant's particular case.

43. Given the passage of time, I am not confident that the tribunal will remember the facts and evidence and further findings will have to be made on a range of issues not yet addressed In my judgment accordingly,, the safest course that is both proportionate and accords with the overriding objective, is to remit this matter to a fresh tribunal to grapple with these matters afresh, and to start again.

44. Accordingly, that is what I propose to order.