Case Number: 2301253/2016

EMPLOYMENT TRIBUNALS

Claimant: **Mr D Reid**

Respondent: **National Maritime Museum**

Heard at: London South On: 02, 03, 04 & 05 May 2017

Before: Employment Judge Freer
Members: Ms B C Leverton
Mr O Husbands

Representation
Claimant: Mr H Zovidavi, Counsel
Respondent: Mr N Siddal, Counsel

RESERVED JUDGMENT

It is the unanimous judgment of the Tribunal that:

1) The Claimant's Claims of automatic unfair dismissal by reason of having made protected disclosure and detriments in employment on the ground of having made a protected disclosure are unsuccessful.

2) The Claimant's claim of ordinary unfair dismissal is successful.

3) The Compensatory Award shall be reduced by 15% having regard to the *Polkey* principle and the Basic and Compensatory Awards shall be reduced by 10% having regard to contributory fault.

REASONS

1. By a claim form presented to the Tribunal on 04 July 2016 the Claimant claims ordinary unfair dismissal, automatic unfair dismissal by reason of having made a protected disclosure and detriments in employment on the ground of having made a protected disclosure.

2. The Claimant also claimed arrears of pay and accrued annual leave pay, which were dismissed upon withdrawal.

3. The Claimant gave evidence on his own behalf together with Mr Ryan Moore, and Mr Christopher King, both former work colleagues of the Claimant.

4. The Respondent gave evidence through Ms Karen Hayden, Health and Safety Adviser; Ms Jolita Dobrovolskiene, HR Officer; and Mr Anupam Ganguli, Director of Finance and IT. The Tribunal received witness statement from Mr Yogesh Sharma, Head of IT, and dismissing officer, who did not attend at the Tribunal to give live evidence and therefore weight was placed upon that statement as appropriate.

5. The Tribunal was presented with an agreed bundle of documents comprising 436 pages.

6. The parties agreed and provided to the Tribunal a written list of issues for determination and therefore these will not be repeated in this section of the reasons. It was also agreed at the outset of the hearing that the Tribunal would address liability and general remedy issues of the *Polkey* principle and contributory fault in the first instance.

7. The Tribunal apologises to the parties for the delay involved in providing this judgment and reasons.

A brief statement of the relevant law

8. Section 47B of the Employment Rights Act 1996 provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure. This section does not apply where the worker is an employee and the detriment in question amounts to a dismissal.

9. Section 103A of the Employment Rights Act 1996 provides that an employee will be regarded as unfairly dismissed if the reason (or if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

10. Part IVA of the Employment Rights Act 1996 contains provisions relating to protected disclosures.

11. Section 43A states that a protected disclosure means a 'qualifying disclosure' as defined by section 43B which is made by a worker in accordance with any of sections 43C to 43H.

12. Sections 43B, as amended from 25 June 2013 and applicable in this case, provides that a 'qualifying disclosure' means "any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of" prescribed circumstances set out in the subsections in s43B(1)(a) to (f) of the Employment Rights Act 1996.

13. It is irrelevant whether or not the information is correct, provided the worker reasonably believes it to tend to show one or more of the prescribed circumstances (**Darnton –v- University of Surrey** [2003] IRLR 133, EAT and also see **Babula –v- Waltham Forest College** [2007] ICR 1024, CA and **Korashi –v- Abertawe Bro Morannwg University** [2010] IRLR 4, EAT on reasonable belief – it is objective reasonableness).

14. Mere allegations are not enough, the disclosure must convey facts It can be sufficient where there is mixed allegation and fact (see for example **Cavendish Munro Professional Risks Management Ltd –v- Geduld** [2010] IRLR 38, EAT and **Kilrane –v- London Borough of Wandsworth** [2016] IRLR 442, EAT).

15. By virtue of section 43L(3), a disclosure of information shall have effect where the person receiving it is already aware of it.

16. Sections 43C to 43H provide the circumstances when a qualifying disclosure may be made sufficient to make it a protected disclosure.

17. In **Chesterton Global Ltd –v- Nurmohamed** [2015] IRLR 614 the EAT held the following with regard to what can be considered to be in the public interest:

> "The words 'in the public interest' were introduced to do no more than prevent a worker from relying upon a breach of his own contract of employment where the breach is of a personal nature and there are no wider public interest implications. . .
>
> In the present case . . . Whilst recognising that the person the respondent was most concerned about was himself, the tribunal was satisfied that he did have the other office managers in mind. . . All this led the tribunal to conclude that a section of the public would be affected and the public interest test was satisfied".

18. The Court of Appeal stated in **NHS Manchester –v- Fecitt** [2012] IRLR 64 **"…** section 47B will be infringed if the protected disclosure materially influenced (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower."

19. Pursuant to section 48 of the Employment Rights Act 1996, "it is for the employer to show the ground on which any act, or deliberate failure to act, was done". A detriment includes a disadvantage or deprivation of benefit.

20. In **Babula** (above) the Court of Appeal considered that an employment tribunal has to make three key findings: "whether or not the employee believed that the information he was disclosing met the criteria set out in one or more of the subsections in s43B(1)(a) to (f) of the Employment Rights Act 1996; whether or not, objectively, that belief was reasonable; and whether or not the disclosure was made in good faith".

21. With the removal of the necessity to consider good faith as part of a qualifying disclosure and the inclusion of public interest, that test can reformed to read: 'whether or not the employee believed that the information he was disclosing was (i) made in the public interest and (ii) met the criteria set out in one or more of the subsections in s43B(1)(a) to (f) of the Employment Rights Act 1966 and if so, whether or not, objectively, that belief in both (i) and (ii) was reasonable'.

22. In **Kuzel –v- Roche Products Ltd** [2008] ICR 799, the Court of Appeal, confirmed the following in respect of the burden of proof on dismissal:

> ". . . the burden of proof issue must be kept in proper perspective. As was observed in *Maund*, when laying down the general approach to the burden of proof in the case of rival reasons for unfair dismissal, only a small number of cases will in practice turn on the burden of proof. . .
>
> I agree that when an employee positively asserts that there was a different and inadmissible reason for his dismissal, he must produce some evidence supporting the positive case, such as making protected disclosures. This does not mean, however, that, in order to succeed in an unfair dismissal claim, the employee has to discharge the burden of proving that the dismissal was for that different reason. It is sufficient for the employee to challenge the evidence produced by the employer to show the reason advanced by him for the dismissal and to produce some evidence of a different reason.
>
> Having heard the evidence of both sides relating to the reason for dismissal it will then be for the ET to consider the evidence as a whole and to make findings of primary fact on the basis of direct evidence or by reasonable inferences from primary facts established by the evidence or not contested in the evidence.
>
> The ET must then decide what was the reason or principal reason for the dismissal of the claimant on the basis that it was for the employer to show what the reason was. If the employer does not show to the satisfaction of the ET that the reason was what he asserted it was, it is open to the ET to find that the reason was what the employee asserted it was. But it is not correct to say, either as a matter of law or logic, that the ET must find that, if the reason was not that asserted by the employer, then it *must* have been for the reason asserted by the employee. That may often be the outcome in practice, but it is not necessarily so.

> As it is a matter of fact, the identification of the reason or principal reason turns on direct evidence and permissible inferences from it. It may be open to the tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not that advanced by either side. In brief, an employer may fail in its case of fair dismissal for an admissible reason, but that does not mean that the employer fails in disputing the case advanced by the employee on the basis of an automatically unfair dismissal on the basis of a different reason".

23. As confirmed in **Serco Ltd –v- Dahou** [2015] IRLR 30:

> "If a tribunal rejects the employer's purported reason for dismissal, it may conclude that this gives credence to the reason advanced by the employee, and it may find that the reason was the one asserted by the employee. However, it is not obliged to do so. The identification of the reason will depend on the findings of fact and inferences drawn from those facts. Depending on those findings, it remains open to it to conclude that the real reason was not one advanced by either side".

24. In **Royal Mail –v- Jhuti** [2017] EWCA Civ. 1632 the Court of appeal held that in determining "the reason for the dismissal" under section 98(1) of the 1996 Act the tribunal is obliged to consider only the mental processes of the person or persons who was or were authorised to, and did, take the decision to dismiss. What the employer reasonably believes when dismissing the employee has to be determined by reference to what the decision maker actually knew, not what knowledge ought to be attributed to them.

25. With regard to the issue of 'manipulation', the Court of Appeal highlighted the statutory right not to be unfairly dismissed depends on there being unfairness on the part of *the employer*. Unfair or even unlawful conduct on the part of individual colleagues or managers is immaterial unless it can properly be attributed to the employer. The Court highlighted four examples:

i) Where a colleague with no relevant managerial responsibility for the victim procures his or her dismissal by presenting false evidence by which the decision taker is innocently and reasonably misled – the employer will not have acted unfairly.

ii) Where the manipulator is the victim's line manager but does not himself have responsibility for the dismissal – the employer will not have acted unfairly as long as a fair and thorough investigation has been carried out.

iii) Where the manipulator is 'a manager with some responsibility for the investigation', albeit not the actual decision taker – there may be an unfair dismissal. For example, manager A is given responsibility for investigating allegations of misconduct which are then presented in a misleading fashion to manager B as the factual basis for a disciplinary decision. In this scenario, there would be a strong case for attributing to the employer both the motivation and the knowledge of A even if the motivation is not shared by B. In such a case the conduct of the investigation is part of the decision.

iv) Where someone at or near the top of the management hierarchy - for example, the CEO - procures a worker's dismissal by deliberately manipulating the evidence before the decision-taker - there may well be an argument for attributing to the employer both the motivation and the knowledge of such a senior individual.

26. The legal provisions relating to ordinary unfair dismissal are contained in Part X of the Employment Rights Act 1996.

27. Section 98 provides that, where dismissal is not controversial, the Respondent must show that the reason for dismissal is one of a number of permissible reasons. The Respondent in this case relies upon a reason relating to the Claimant's conduct.

28. If there is a permissible reason for dismissal, the Employment Tribunal will consider whether or not the dismissal was fair in all the circumstances in accordance with the provisions in section 98(4):

> "the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case"

29. The standard of fairness is achieved by applying the range of reasonable responses test. This test applies to procedural as well substantive aspects of the decision to dismiss. A Tribunal must adopt an objective standard and must not substitute its own view for that of a reasonable employer. (**Iceland Frozen Foods –v- Jones** [1982] IRLR 439, EAT as confirmed in **Post Office –v- Foley** [2000] IRLR 234, CA; and **Sainsbury's Supermarkets Ltd –v- Hitt** [2003] IRLR 23, CA).

30. It is established law that the guidelines contained in **British Home Stores Ltd –v- Burchell** [1980] ICR 303 apply to conduct dismissals, such as in the instant case. An employer must (i) establish the fact of its belief in the employee's misconduct, that the employer did believe it. There must also (ii) be reasonable grounds to sustain that belief, (iii) after a reasonable investigation. A conclusion reached by the employer on a balance of probabilities is enough. Point (i) goes to the employer's reason for dismissal (where the burden of proof is on the Respondent) and points (ii) and (iii) go to the general test of fairness at section 98(4) (where there is a neutral burden of proof).

31. It is also established law that the **Burchell** guidelines are not necessarily determinative of the issues posed by section 98(4) and also that the guidelines can be supplemented by the additional criteria that dismissal as a sanction must also be within the range of reasonable responses (also a neutral burden of proof) (see **Boys and Girls Welfare Society –v- McDonald** [1997] ICR 693, EAT).

32. The Court of Appeal in **Taylor –v- OCS Group Ltd** [2006] IRLR 613 emphasised that tribunals should consider procedural issues together with the reason for the dismissal. The two impact upon each other. The tribunal's task is to decide whether, in all the circumstances of the case, the employer acted reasonably in treating the reason as a sufficient reason to dismiss.

33. This decision was echoed in **A –v- B** [2003] IRLR 405, EAT and the Court of Appeal in **Salford Royal NHS Foundation Trust –v- Roldan** [2010] ICR 1457 with regard to assessing reasonableness of the process and the decision to dismiss with the seriousness of the alleged conduct: "the relevant circumstances include the gravity of the charge and their potential effect upon the employee. So it is particularly important that employers take seriously their responsibilities to conduct a fair investigation where, as on the facts of that case, the employee's reputation or ability to work in his or her chosen field of employment is potentially apposite".

34. In **Burdett -v- Aviva Employment Services Ltd** [2014] UKEAT/0439/13 the EAT, confirming Supreme Court authority, held:

> "What is meant by "*gross misconduct*" – has been considered in a number of cases. Most recently, the Supreme Court *Chhabra v West London Mental Health NHS Trust* [2014] ICR 194 reiterated that it should be conduct which would involve a repudiatory breach of contract (that is, conduct undermining the trust and confidence which is inherent in the particular contract of employment such that the employer should no longer be required to retain the employee in his employment. . . In *Chhabra*, it was found that the conduct would need to be so serious as to potentially make any further relationship and trust between the employer and employee impossible. . . The characterisation of an act as "gross misconduct" is thus not simply a matter of choice for the employer. Without falling into the substitution mindset . . . it will be for the Employment Tribunal to assess whether the conduct in question was such as to be capable of amounting to gross misconduct. . . . Failure to do so can give rise to an error of law: the Employment Tribunal will have failed to determine whether it was within the range of reasonable responses to treat the conduct as sufficient reason for dismissing the employee summarily. The reason for a dismissal will be determined subjectively: what was in the mind of the employer at the time the decision was taken. Whether the dismissal for that reason was fair, however, imports a degree of objectivity, albeit to be tested against the standard of the reasonable employer and allowing that there is a margin of appreciation – a range of reasonable responses – rather than any absolute standard. So if an employer dismisses for a reason characterised as gross misconduct, the Employment Tribunal will need to determine whether there were reasonable grounds for the belief that the employee was indeed guilty of the conduct in question and that such conduct was capable of amounting to gross misconduct (implying an element of culpability on the part of the employee). Assuming reasonable grounds for the belief that the employee committed the act in issue, the Tribunal will thus still need to consider whether there were reasonable grounds for concluding that she had done so wilfully or in a grossly negligent way".

35. The statutory provisions relating to remedy for unfair dismissal are set out in sections 112 to 127 of the Employment Rights Act 1996.

36. It is well-established law that the principle contained in **Polkey –v- A E Dayton Services Ltd** [1987] IRLR 503, HL, applies to the consideration of the just and equitable element of the Compensatory Award. A Tribunal may reduce the Compensatory Award where an unfairly dismissed employee may have been dismissed fairly at a later date or if a proper procedure had been followed.

37. There is no need for an 'all or nothing' decision. If the Tribunal thinks there is a doubt whether or not the employee would have been dismissed, this element can be reflected by reducing the normal amount of compensation by a percentage representing the chance that the employee would still have lost his employment.

38. In **Software 2000 Ltd -v- Andrews** [2007] IRLR 568*,* the EAT reviewed the authorities and set out some guidance, such as:

> "If the employer seeks to contend that the employee would or might have ceased to be employed in any event had fair procedures been followed, or alternatively would not have continued in employment indefinitely, it is for him to adduce any relevant evidence on which he wishes to rely. However, the Tribunal must have regard to all the evidence when making that assessment, including any evidence from the employee himself".

39. By combination of Section 207A and Schedule A2 of the Trade Union and Labour Relations (Consolidation) Act 1992 and section 124A of the Employment Rights Act 1996, where a claim by an employee is made under any of the jurisdictions listed in Schedule A2 of the 1992 Act and is also one to which the ACAS Code of Practice on Disciplinary and Grievance Procedures applies, where a party has failed to comply with that Code in relation to that matter, and that failure was unreasonable, the Tribunal may, if it considers it just and equitable in all the circumstances to do so, increase or decrease any compensatory award by no more than 25%.

40. Such an adjustment shall be applied immediately before any reduction for contributory fault and any adjustment under section 38 of the Employment Act 2002 for a failure to provide employment particulars.

41. By virtue of section 122(2), a Tribunal may reduce the basic award where the conduct of the employee before the dismissal was such that it would be just and equitable to do so. Also, by virtue of section 123(6), the Tribunal may reduce the compensatory award by such proportion as it considers just and equitable where the dismissal was to any extent caused or contributed to by any action of the employee.

42. The Respondent's written Skeleton Argument also cited a number of further authorities, which the Tribunal has taken fully into account.

Facts and associated conclusions

43. The Claimant commenced work with the Respondent on 02 July 2001 in the Respondent's Technical Operations Department. His job title when first employed was described as Display Technician.

44. This case revolves around two main incidents, one occurring on 09 February 2016 in the Queen's House Tunnel on the Respondent's estate and a second incident that occurred on 11 February 2016 regarding an event to be held on the Cutty Sark.

45. With regard to the incident in the Queen's House Tunnel, the Claimant complained to Mr Sharma, his line manager, about the attitude of Mr Martin Whittaker, a Security Manager, who the Claimant contends was unduly aggressive and angry regarding the Claimant's attendance in the Queen's House Tunnel on that day.

46. Mr Sharma had a conversation with Mr Whittaker and asked him to provide his own account. Mr Whittaker sent Mr Sharma a written account by e-mail dated 09 February 2016 (page 144 of the bundle).

47. That e-mail states: "This morning whilst I was in the Queen's House Tunnel, I saw both Danny Reid and Ryan Moore who walked past me. Both were carrying a coffee and sandwich bag that I assume that they had purchased in the SOW and were making their way back to the EW. I made a comment to them both about using the Tunnel for such purposes and asked them to desist. Ryan apologised immediately. However, Danny stated that he had the right to be in the tunnel as they had some cupboards in there. I told him that it was clear that they were using the tunnel as a shortcut, not opening any cupboards. He refused to acknowledge that this was the case. Although not happy in his response, I was satisfied that the message got across, and was prepared to leave it at that. I understand that Danny has spoken to you about this incident and as a result of our subsequent conversation, I have found my records show that the following members of the TOT's team have historically been issued with a Submaster key *[three members of staff are named]*. I would ask that all these keys are returned as soon as possible. In future Submaster keys can be drawn via the Traka system by all members of your team"

48. Nothing further occurred following this incident until the second event happened on 11 February 2016 when the Claimant attended a meeting with Ms Eleanor Mottram, Theatre and Events Manager and personnel from Stage Electronics, contractors hired by the Respondent. Mr Christian Clifford-Weston, an employee of the Respondent assisting Mr Sharma, was also present. The events lead to an e-mail from Ms Mottram to Mr Sharma (see page 145 of the bundle).

49. Ms Mottram's email states: "In advance of our meeting this afternoon, I wanted to give you some feedback of my experience with Danny Reid of Tech Ops and our meeting with Stage Electrics yesterday. The team from Stage

Electrics are excellent - professional, asking lots of questions and incredibly keen to ensure the best event possible, even in somewhat awkward circumstances. I am entirely confident that they will provide an excellent service the event on 28th February. Danny arrived 20 minutes late, by this point Christian and I had taken Stage Electrics down to the intake room to start showing them the equipment stored in there. Danny turned up with no knowledge of the purpose of the meeting had a negative attitude about the ship, the theatre and how they both operate throughout the meeting. At one point he said something along the lines of "with the theatre you've just got to expect the worst and hope it turns out better than that". He also criticised ex-colleague Matt in the way that he had run the ship. He made a comment as well that I knew more about how the theatre works than he did. Alex from Stage Electrics made reference to his behaviour after Danny had left, saying there was clearly negativity. Danny's attitude overall was negative, unprofessional and unacceptable in a meeting with an external contractor. I do not currently feel that I could trust him to be involved in any future events that I manage after this incident".

50. On the basis these two e-mails Mr Sharma made the decision to both suspend the Claimant and to invite him to a formal disciplinary meeting.

51. The Claimant was invited to a disciplinary hearing by a letter dated 22 February 2016 (page 147 of the bundle). The letter states: "I have received two separate complaints regarding your behaviour on 9 and 12 February 2016. I am writing to request your attendance at a disciplinary hearing on Thursday, 25 February 2016 at 9:30 am in HR. The matters to be discussed involve the meeting with Stage Electrics at the Cutty Sark on 11 February 2016 and an incident in the Queen's House basement tunnel on 9 February 2016 with the Security Manager. On both occasions it is alleged your attitude and behaviour were not acceptable".

52. The Claimant was informed that if found proven these matters could constitute gross misconduct and potentially lead to dismissal. Mr Sharma informed the Claimant that he would chair the meeting, with Ms Dobrovolskiene present as HR representative. The Claimant was notified of his right to be accompanied.

53. The Claimant wrote a long statement relating to the events and presented that to his trade union representative (see pages 148 to 154). This was reduced to a slightly more condensed version at pages 156 to 161 of the bundle and that document was presented to Mr Sharma at the disciplinary hearing.

54. On 23 February 2016 Mr Moore, who was also present in the tunnel incident with Mr Whittaker and the Claimant, sent an email to the Claimant's trade union representative giving his version events. This email was also placed before Mr Sharma at the disciplinary hearing (see page 166).

55. The disciplinary hearing took place on 25 February 2016, conducted by Mr Sharma with Ms Dobrovolskiene in attendance. The Claimant was represented by his trade union representative Ms Jane Wilson, Storage and

Movement Manager. The notes of the meeting are at 168 to 172, and the Claimant's amended version at pages 173 to 180 of the bundle.

56. The meeting ended with Mr Sharma stating: "There are some other points raised today that I need further clarification on, so I'm not able to reach my decision today. I shall let you know early next week". Ms Dobrovolskiene also confirmed that the Claimant would get copies of any further statements.

57. Ms Dobrovolskiene took instructions from Mr Sharma and undertook interviews with both Mr Whittaker and Mr Moore, which are at pages 181 to 184 of the bundle. Mr Whittaker's statement was taken on 25 February 2016 Mr Moore's statement on 26 February 2016.

58. The disciplinary meeting was reconvened on 04 March 2016 at which the statements were considered. The notes of the meeting at pages 186 to 189 of the bundle.

59. At the conclusion of the meeting Mr Sharma confirmed: "I carefully considered the facts and uphold the allegations on behaviour and attitude, I have no confidence that your behaviour will improve and therefore with regret it is my decision to dismiss you with immediate effect. I will write to you outlining my decision and you have the right to appeal my decision". Ms Wilson asked why Mr Sharma considered that the Claimant's behaviour would not improve, to which Mr Sharma responded: "Due to the fact he still has a live warning on the file for the same behaviour". Ms Wilson replied: "He has a first written warning, so he should receive the second letter now" to which Ms Dobrovolskiene replied: "This case is gross misconduct, which itself is a dismissal matter, regardless of what is on file".

60. The Claimant received confirmation of the dismissal by a letter dated 08 March 2016 at pages 194 to 196 of the bundle. That letter states: "In conclusion I uphold both allegations and I feel that there is no other option but to terminate your employment with immediate effect on grounds of gross misconduct". Mr Sharma set out his conclusions relating to the events.

61. The Claimant appealed against that decision by letter dated 17 March 2016 at pages 197 to 200 of the bundle.

62. The Claimant emailed a further statement to Ms Patterson of the Respondent's HR on 03 April 2016 at pages 203 to 200 for the bundle.

63. The appeal hearing took place on 04 April 2016 conducted by Mr Ganguli, Director of Finance and the Claimant was again accompanied by Ms Wilson, his trade union representative. The notes of the appeal hearing are at pages 205 to 212 of the bundle.

64. The appeal outcome was provided to the Claimant in a letter dated 12 April 2016 at pages 213 to 214 of the bundle which confirmed that the Claimant's appeal had not been upheld.

65. The Claimant's protected disclosure claims can be addressed in a reasonably summary decision.

66. The Claimant has not established as fact that the first disclosure, of April 2014, was made as alleged - that there had been the disclosure of the alleged information. Therefore this does not amount to a protected disclosure in law. It was accepted in the Claimant's submissions that there was a lack of material evidence.

67. It was accepted by the Respondent that with regard to the second alleged disclosure of April 2015 regarding potential asbestos dust, the disclosure of information had been made. The Tribunal concludes that the information on asbestos dust was sufficient to contain facts and which the Claimant reasonably believed tended to show that the health and safety of any individual has been, is, or is likely to be endangered and is in the public interest.

68. There was no evidence to demonstrate that Mr Ganguli, who heard the disciplinary appeal was aware of either of the alleged protected disclosures and accordingly the decision to dismiss the Claimant could not have been for that reason.

69. Indeed, it was not put to Mr Ganguli in cross-examination that he knew or had been motivated to uphold the Claimant's dismissal by reason of the alleged protected disclosures.

70. Even though the Tribunal has found that the dismissal was unfair for the reasons stated below, the Tribunal concludes that Mr Ganguli did not so act because of the alleged disclosures. The Tribunal has found that the appeal process was objectively unfair, but that of itself is not sufficient to raise any inference that the causation was the protected disclosures. There needs to be something more. It was not explained by the Claimant in evidence, or suggested during the cross-examination of Mr Ganguli, or set out in submissions, how the causation is said to have arisen.

71. The Tribunal also concludes that Mr Sharma did not present the case to Mr Ganguli in any misleading fashion as to the factual basis for the disciplinary decision because of the protected disclosures. Again, even though the Tribunal has found areas of unfairness the Tribunal concludes that there is the absence of the something more that demonstrates any causation with the protected acts. In fact one of the Claimant's arguments with regard to the unfairness of the dismissal was because of the complaint made by the IT and Tech Ops Team against Mr Sharma, which was not a protected disclosure argued by the Claimant.

72. Further, the Tribunal is entirely satisfied and concludes that even if both disclosures are made out in law, the decision to uphold the dismissal was not by reason of them. The reason was because of the perceived conduct issues.

73. With regard to the detriments in employment of suspension and disciplinary proceedings, the Tribunal arrives at a similar conclusion. Even if the alleged disclosures are protected disclosures in law, the Tribunal concludes there are no facts to establish that the conduct of Mr Sharma regarding these matters was on the ground of the protected disclosures. The Tribunal concludes that it was not.

74. The Tribunal concludes that the tunnel and Cutty Sark incidents were the genuine reason for the disciplinary matters.

75. It was not raised by the Claimant during the internal process that Mr Sharma had made his decisions because of the alleged protected disclosures. However, the Claimant had been able to raise an issue that Mr Sharma was conflicted because of the complaint made about him from the IT and Tech Ops Team. The Tribunal concludes that had the Claimant thought that there was a link to any act of whistleblowing he would have raised it at the appeal stage of his disciplinary process. The same observation is made by the Tribunal regarding Mr Ganguli's involvement in the process. There was no argument advanced by the Claimant that he only realised retrospectively of any causation because of later received facts or advice.

76. The Tribunal also concludes that the Claimant's dismissal was not by reason of redundancy. At that stage the circumstances were simply that the Respondent considered the Department may be reduced over time and replaced by two full-time members of staff. There was no specific decision to do so and no plans in place.

77. The Tribunal concludes having regard to all the circumstances that Mr Sharma and Mr Ganguli held a genuine belief in the Claimant's conduct.

78. With regard to a reasonable investigation, Mr Sharma placed the matter into a disciplinary hearing with no investigation in circumstances when the Claimant had made a verbal complaint against Mr Whittaker, Mr Whittaker had provided a brief summary of the event by e-mail and upon receipt of the single email from Ms Mottram. On the basis of that information Mr Sharma placed the matter into a disciplinary hearing on a potential charge of gross misconduct and dismissal with no further investigation.

79. The Respondent's disciplinary policy states under the heading 'Investigations': "(1) The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary allegations against you, before deciding whether to proceed with the disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. . . (3) Depending on the circumstances of the case, you may be invited to attend an investigatory interview. . . (4) If appropriate following investigation, the Museum reserves the right to dispense with an investigatory interview and proceed directly to the formal disciplinary hearing".

80. The ACAS code of practice on disciplinary and grievance procedures provides: "It is important to carry out necessary investigations of potential

disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing"

81. The case of **A -v- B**, as supported by **Roldan**, confirmed, in essence, that the more serious the charge and its potential effect upon the employee, the more particular importance employers take seriously their responsibility to conduct a fair investigation.

82. The Claimant had 14 years of service with the Respondent and was placed on a disciplinary charge potentially leading to summary dismissal without any preliminary investigation into a dispute over events on 09 February 2017 and having received an e-mail from Ms Mottram that does not set out with a great deal of specificity what is alleged to have been said and the context.

83. The Tribunal concludes that an objective reasonable employer in the Respondent's circumstances would have undertaken an investigation stage.

84. The Tribunal arrives at this conclusion given the nature and context of the conflicting views before Mr Sharma of the tunnel incident:- the account from the Claimant was verbal and undocumented by Mr Sharma, Mr Whittaker was requested to put his account in writing, but not the Claimant or Mr Moore, and Mr Moore was not even approached for his account.

85. Also, Mr Sharma had received the single e-mail from Ms Mottram that particularised one paragraph of complaint with regard to the Cutty Sark incident, had not asked the Claimant for his provisional account, or asked Mr Clifford-Weston for his account.

86. The Tribunal received no evidence from Mr Sharma on why he abandoned an investigation stage. He stated at the disciplinary hearing: "I looked through the e-mails the matters are very straightforward, so I felt no further investigation was needed".

87. The evidence to the Tribunal from Ms Dobrovolskiene, HR Officer, was that an investigation is typically undertaken by the Respondent and also by an independent person.

88. Given the terms of the Respondent's Disciplinary Policy regarding investigations; the general terms of the Acas Code; Ms Dobrovolskiene's evidence that an investigation is typically undertaken by the Respondent and also by an independent person; the partial information available to Mr Sharma; and the relative ease by which there could have been a reasonable collation of information by obtaining the formal accounts of the Claimant and other employee participants to assess the incidents from all sides; the Tribunal concludes, objectively considered, that the Respondent's lack of an investigation process falls outside the range of reasonable responses.

89. The Claimant raised an issue regarding Mr Sharma in his appeal letter dated 17 March 2016 where he states: "Given the issues flagged by the Team about my line manager, I do not believe he has acted in the best interests of myself or the RMG. The first hearing was conducted in a less than professional way. It was based on two emails from the Theatre and Events Manager, Cutty Sark and the Security Manager and it was clear a thorough investigation the matters had not been carried out".

90. The evidence of Mr Ganguli in cross-examination was that he considered this letter to be the Claimant's grounds of appeal.

91. This issue was also raised again in the appeal hearing. The Claimant stated that: "Yogesh is under investigation himself. His behaviour is being monitored . . So you can see how I feel when I am then dragged into a disciplinary and sacked by Yogesh".

92. This leads from ten team members of the IT and Tech Ops Team filing a complaint about Mr Sharma resulting in his performance being monitored. It was not challenged in Mr Ganguli's evidence to the Tribunal that there had been a complaint.

93. This matter was not raised by the Claimant or his representative at the initial or reconvened disciplinary hearing. It was an argument raised on appeal.

94. The appeal outcome does not address the issue, but as stated above it was raised in both the Claimant's written appeal and in the meeting itself.

95. Mr Ganguli stated in cross-examination that he did not consider Mr Sharma's ability to undertake the investigation. It is not addressed in the appeal outcome letter.

96. As stated above, it was the evidence of Ms Dobrovolskiene that an independent person would typically have considered the investigation stage of a disciplinary matter. Mr Sharma, the Claimant's direct line manager, had made the decision to place the matter directly into a disciplinary hearing without a full investigation

97. The Tribunal has carefully considered all the circumstances and concludes that even though the issue was not raised by the Claimant at the disciplinary stage, an objective reasonable employer would have recognised the potential for bias as a consequence of the complaint and for Mr Sharma to be recused from the disciplinary hearing and it is outside the range of reasonable responses in the circumstances for Mr Sharma to conduct the disciplinary hearing.

98. Although there had been no investigation into the tunnel incident, at the conclusion of the disciplinary process the Respondent had reasonable evidence on the issue of the Claimant's attitude and behaviour towards Mr Whittaker the Security Guard. Mr Sharma had received the Claimant's account and obtained more evidence in clarification, which was put to the

Claimant for comment. Accordingly, that particular flaw was remedied at the disciplinary stage.

99. However, it was clear from the evidence given by the Respondent that the *use of* the Queen's House tunnel formed part of the reason for dismissal. As Ms Dobrovolskiene put it in cross-examination and with reference to the dismissal letter: "It was the use of the tunnel as a thoroughfare with tea and coffee on an uneven floor because it was a breach of the Safety Policy . . . . It was the use in the first instance and then attitude. The use of the tunnel had more weight". When it was put to Ms Dobrovolskiene by the Tribunal whether she was sure that was the basis upon which Mr Sharma reached his decision Ms Dobrovolskiene confirmed that it was and stated: "We definitely had a discussion about how he felt". Ms Dobrovolskiene further confirmed that the gross misconduct found was using the tunnel in the first place.

100. However, the Tribunal agrees with the Claimant's submissions that it has never been the Respondent's case that the Claimant was disciplined for his use of the tunnel, the tunnel use was merely the context for the conversation with Mr Whittaker. As set out in the Respondent's Response "It was the Claimant's behaviour and attitude towards the Security Manager that was unacceptable and considered to be gross misconduct". That is mirrored in the Disciplinary hearing invitation letter, the outcome given verbally at the disciplinary hearing and the disciplinary outcome letter: "What was under consideration was your attitude when challenged by the security manager" and a conclusion of gross misconduct was reached in this respect.

101. The dismissal letter also addresses the view of Mr Sharma that the Claimant was not in the tunnel for work purposes and was using it as a thoroughfare. However, he does not record a conclusion on this matter in the letter, but the evidence from Ms Dobrovolskiene was clear that it was a matter upon which more weight had actually been placed.

102. This was not a disciplinary allegation of which the Claimant had advance notice and/or had been informed that it could amount to gross misconduct and/or lead to his dismissal. The alleged breach of the 'safety policy' was also not identified or put to the Claimant.

103. This was continued through on appeal and Mr Ganguli confirmed in evidence that he considered that using the tunnel as a throughfare was a disciplinary matter that had amounted to gross misconduct.

104. Further, it was the evidence of Mr Ganguli under cross-examination that he also considered the Claimant's gross misconduct to include a serious breach of health and safety rules. In so doing he had found against the Claimant on an entirely new allegation in respect of which the Claimant had not received any notice.

105. Mr Ganguli confirmed in questions from non-legal member Ms Leverton that his dismissal was upheld on three grounds: the use of the tunnel, the attitude and behaviour to Mr Whittaker and the Cutty Sark incident. Mr Ganguli

confirmed that he considered Mr Sharma had dismissed on two grounds as set out in his witness statement at paragraph 22 (insubordination and Cutty Sark) and that he had expanded the reasons for dismissal and the Claimant would not have known he was doing that.

106. The Tribunal concludes that it was outside the range of reasonable responses for the Respondent at both the disciplinary and appeal stages to take a matter into consideration (the use of the tunnel; a breach of the safety policy and/or a serious breach of health and safety rules) when making the decision to dismiss or to uphold the appeal when the Claimant had not received notice or warned it could lead to his dismissal.

107. With regard to reasonable belief, the best case for the Respondent's reasonable belief regarding the Claimant's behaviour and attitude towards Mr Whittaker in the Queen's House Tunnel was the statement of Mr Whittaker himself. The factual exchange was given as follows:

" MW . . . I saw Danny and Ryan going through the tunnel carrying coffee and sandwiches.

JD: What did he say to them?

MW: I made a comment to both about using the tunnel for such purposes, I said "Guys, you both know that you are not meant to be down here". Danny replied "Are you the guardian of the tunnel?" Which I thought was quite humorous, but I replied "I am not, you should not be here". As I was walking away from them I heard Ryan saying "I am sorry". Danny said "I have every right to be here. I have a key". I then replied "but you are not using it for this purpose you have a coffee and sandwich so you are using it as a thoroughfare". I could see that Danny was getting agitated and I didn't want to have an argument. I said "if you cannot accept that I will have to take it further".

JD: Did you raise your voice.

MW: I might have done, but only because I was about 30 feet away, as I was walking away from them toward East Wing, but I told them that I may have to take it further. It was not in an aggressive way. Danny started to twiddle with a locker at the time. . . ."

108. That is the factual entirety of the exchange in the tunnel recounted by Mr Whittaker.

109. There followed a discussion on the use of the tunnel. Mr Whittaker was then further questioned of his views of the Claimant's behaviour:

"JD: What was Danny's reaction to your comments?

MW: It was verging on insubordination, he did not have regard to me as a security manager he had an attitude.

JD: When you were walking away did you have a sense that he was rude?

MW: I was furious because he was rude and defensive, but I was sure he got the message".

110. In his initial e-mail to Mr Sharma Mr Whittaker briefly summarises the exchange and stated that he was "prepared to leave it at that".

111. Ryan Moore's account in his statement to the disciplinary hearing was similar to that of the Claimant and states:

"RM: We saw Martin *[the Security Manager]* halfway and said hello. Martin said "you know you should not be here" I was puzzled; Danny said "we have access so we can be here". Martin said "no you should not be here". Danny said "we have storage facilities here, which I'm going to use". Martin raised his voice and said "you should not be using this tunnel to carry your teas and coffees".

JD: Danny never mentioned storage facilities, can you remember when he told you about them.

RM: no I cannot remember, maybe was when we are in the tunnel already.

JD: when you had this conversation were you standing in front of each other or was Martin walking away?

RM: he started to walk away towards the end of the conversation.

JD: how far away was he when you had this the conversation.

RM: he was about 20 feet away from us when we spoke, his face expression was angry and he said "this is not up for discussion and that is the end of it, you should not be here" he stormed out. I said to Danny "wow he must have had a bad day". Just to say that when he was talking about coffees and teas I apologised.

JD: did Danny apologise?

RM: I do not think so, but I cannot remember.

JD: did Martin say "if you do not agree you will have to take it further".

RM: I cannot remember as it was an argument, not just speaking – raised voice and angry.

JD: do you think that Martin may have raised his voice due to the fact he was about 20 feet away from you?

RM: no he was angry and frustrated, and the look he gave us was frustrated"

112. The dismissal letter conclusions state: “When challenged on your inappropriate use of the tunnel, rather than apologise, you argued that you had the right to use the tunnel as you had a store room there. Overall your attitude towards the Security Manager was unacceptable and qualifies as gross misconduct”.

113. The Tribunal concludes that there was clearly a dispute of fact about the events and it is difficult to assess why Mr Sharma and Mr Ganguli should prefer the single account of Mr Whittaker as opposed to the accounts of both the Claimant and Mr Moore.

114. However, even if that is a weight balancing exercise for the decision makers in respect of which the Tribunal should not interfere, the Tribunal concludes that the factual account of the actual exchange by Mr Whittaker does not on any objective analysis amount to gross misconduct.

115. Further, it does not correlate with the non-exhaustive list of gross misconduct examples in the Respondent’s disciplinary policy. That policy refers to “serious acts of insubordination”, not simply insubordination or “verging on insubordination”, as was Mr Whittaker’s assessment of the exchange (although, of course, it was Mr Sharma’s decision). The Tribunal concludes that on an objective consideration, the factual exchange itself as given by Mr Whittaker, which is the highest the incident can be considered, does not amount to serious insubordination as argued by the Respondent, in particular Mr Ganguli in cross-examination.

116. On the information available to the Respondent the Tribunal concludes that a belief by the Respondent in the Claimant’s gross misconduct objectively falls outside the range of reasonable responses.

117. With regard to the appeal process the Respondent did not take the Claimant's written statement into account when formulating the grounds of appeal. He considered it to be “an emotive piece of correspondence” and the Claimant confirmed at the appeal hearing that there were not any extra factors in it. Mr Ganguli’s evidence was that he considered the letter of 17 Match 2016 as the grounds of appeal and only took into account those matters raised orally in the meeting. Ms Wilson stated on behalf of the Claimant at the conclusion of the appeal hearing: "Thank you to both of you for allowing DR to put his case fully".

118. Therefore the Tribunal concludes overall that the Queen’s Tunnel finding of gross misconduct was unfair because it was outside the range of reasonable responses for Mr Sharma to have undertaken the disciplinary hearing, but even if the Tribunal is wrong on that issue it was outside the range of reasonable responses for the Respondent to take the additional disciplinary matters into consideration and it was also outside the range of reasonable responses for the Respondent to believe in all the circumstances that the Claimant’s conduct amounted to gross misconduct. Each one of these matters of itself makes the decision to dismiss unfair.

119. With regard to the Cutty Sark incident, the Respondent had an account from Ms Mottram by e-mail and did not obtain further information for the disciplinary hearing to place the matter in context and ascertain what precisely was alleged to have been said by the Claimant and the context.

120. At the disciplinary hearing the Claimant accepted saying “if you expect to have worse on the day you will be pleasantly surprised how well it can turn out”. He also stated that he did not comment on Mr Matthew Garrett as a person and had stated to Ms Mottram that some things Mr Garrett had done was against advice.

121. He stated: “I’m sorry if I came across rude and negative but I really felt that I had to point out all the quirks – I felt it’s my duty to tell them about the problems, so I am sorry if I sounded negative”.

122. The Claimant also stated “I didn’t really get a chance to apologise because the meeting had already started and they were discussing equipment”. The Claimant disputed that he arrived twenty minutes late and considered it was five minutes late.

123. Mr Sharma did not explore the nature of the alleged negative attitude with those others who had been present. Mr Ganguli confirmed in cross-examination that, at the appeal stage, he had not looked at the investigation process and that, for example, he did not know what comments had actually been made about Matthew Garrett, but had factored the matter into his decision and saw no value in getting any information from Mr Clifford-Weston.

124. Ms Wilson stated at the appeal hearing: "Looking at the two matters the Cutty Sark seems more serious and that doesn't seem to have been investigated. DR would have expected EM to be interviewed. Eleanor is saying she is giving feedback. As part of the disciplinary process of I would have expected her to be interviewed. Then the process would have been balanced as all of the key players would have been interviewed".

125. Mr Ganguli considered the matter and concluded: “You also felt the both Eleanor and Christian Clifford-Weston should have been interviewed. I note that Helena Mottram had already provided evidence which was used at the hearing so I am not sure what would have been gained by such an action. Christian, who was a witness at the *Cutty Sark* did not provide any evidence, I and I am not convinced there would have been any value in this. In relation to the incident at the *Cutty Sark*, there was no dispute as to the key facts, i.e. that you were late, that you did not apologise for this, and that you made some negative comments, it is interpretation that is in dispute. As the facts are not disputed I see nothing to be gained by formally interviewing Christian and I do not believe it would have made any material difference to the outcome.

126. In his evidence to the Tribunal Mr Ganguli accepted that the Claimant was duty bound to inform Stage Electronics of any ‘quirks’ and that it was his

responsibility to tell them, but the difficulty was the manner in which it was done. However, there was scant, if any, evidence before both Mr Sharma and Mr Ganguli about the 'manner' in which the conversations had occurred other than a general accusation of negativity from what the Claimant had actually said.

127. Further the dismissal letter does not refer to the 'manner' in which matters were said. The dismissal letter, upheld by Mr Ganguli states: "Negative comments about the museum and your colleagues have a damaging effect on the Museums' reputation, especially if they are made in the presence of external partners or contractors". Accordingly, the Claimant was dismissed for what he said even though it was accepted by Mr Ganguli that the Claimant was "duty bound" and "had a responsibility" to inform the contractors of potential 'quirks' or difficulties.

128. The Tribunal concludes that the initial lack of investigation into the Cutty Sark issue continued and was not remedied at the disciplinary and appeal stages and falls outside the range of reasonable responses, particularly taking into account the guidance from the authorities of **A –v- B** and **Roldan** regarding the gravity of the offence (here gross misconduct and summary dismissal of an employee with 14 years of service) and the Respondent's responsibility to conduct a fair investigation.

129. The dismissal letter concludes that the Curry Sark incident constitutes a serious breach of the Museum's "code of conduct". This was not put to the Claimant as part of the allegation. The precise point in the code of conduct that had been breached was not identified by Mr Sharma in correspondence. Ms Dobrovolskiene could not recall Mr Sharma ever looking at the Code. Mr Ganguli did not identify the provision that had been breached.

130. The Respondent through re-examination of Ms Dobrovolskiene appeared to rely upon paragraph 7 of the Code of Conduct which states: "The public is entitled to expect the highest standards of conduct and service from the staff at the Museum. Staff of the museum who deal with the affairs of the public are to do so sympathetically, efficiently, properly and without bias or maladministration". The evidence of Ms Dobrovolskiene was that this extends to contractors although, as stated above, she could not recall Mr Sharma referring himself to the Code.

131. The Tribunal therefore also concludes that on an objective consideration of all the information before the Respondent, a reasonable employer would not consider this matter of itself to amount to gross misconduct.

132. The Tribunal does not accept that the comments made by the Claimant during the dismissal process was him conceding that he was culpable for all of the allegations, or that it was only sanction that was being challenged by him.

133. In the appeal letter the Claimant states: "I believe a final written warning would have been appropriate and I request RMG reverts to this or another sanction

other than dismissal" and at the appeal hearing the Claimant stated: "My appeal is against a harsh penalty – I have lost my job".

134. However, it is quite clear from the appeal letter and the hearing notes that although the Claimant mentioned that he was challenging sanction, the content of what was actually being said demonstrated that he was challenging more than this.

135. For example, in the appeal letter (with surrounding narrative) he states: "It was quite clear a thorough investigation of the matters had not been carried out"; "I believe I complied with the Museum's Code of conduct for staff"; "The Museum would have been potentially liable if I had not pointed this out"; "He stated my attitude and behaviour warranted gross misconduct and I believe that the inconsistencies in the evidence diminish this".

136. The notes from the appeal hearing demonstrate that the Claimant was challenging the precise nature of the allegations and the interpretation of the evidence and/or the lack of it.

137. At the appeal hearing the Claimant stated: "I am sorry if I have caused offence and if I have offended anyone in any shape or form. I really did not think that this would happen". Ms Wilson stated at the appeal hearing: "He could have thought a bit more about what he said but it was not malicious – we all do it" and the Claimant stated: "I am not saying I haven't done anything wrong and I am not taking it lightly".

138. The Tribunal concludes that it is not objectively reasonable to take those comments as the Claimant's acceptance of misconduct, as was stated in re-examination by Mr Ganguli. Indeed, Mr Ganguli did not confirm the misconduct to which the Claimant was apparently admitting.

139. The Claimant had lost his job of 14 years that he stated he loved on a number of occasions during the internal process. It is quite clear that at the appeal stage the Claimant was trying to save his employment and therefore it is of no surprise that comments from him are conciliatory. If similar conciliatory comments had not been made the Claimant would likely be accused of lack of remorse and insight into the circumstances.

140. Therefore the Tribunal concludes that the Cutty Sark finding of gross misconduct was unfair because it was outside the range of reasonable responses for Mr Sharma to have undertaken the disciplinary hearing, but even if the Tribunal is wrong on that issue, both the investigation into the circumstances and the belief in the Claimant's conduct individually fell outside the range of reasonable responses.

141. With regard to overall sanction, the Tribunal concludes that even when the two events are considered together a sanction of dismissal falls outside the range of reasonable responses when the matter is considered objectively.

142. Dismissal was decided upon by the Respondent without reference to the earlier final written warning. The Tribunal has objectively concluded that a reasonable employer would not reasonably believe the tunnel event amounted to gross misconduct with regard to the Claimant's behaviour and attitude towards Mr Whittaker (the use of the tunnel did not form part of the allegation against the Claimant). The Tribunal has also reached the same objective conclusion regarding the Cutty Sark incident and that the Respondent also did not hold a reasonable belief that the matter amounted to gross misconduct.

143. Once one, or both, of these conclusions is reached the decision to dismiss, which was made combining both events as gross misconduct matters, falls outside the range of reasonable responses of an objective reasonable employer.

144. The Tribunal concludes that had the procedural flaws not occurred the Respondent would be unlikely to come reasonably to the conclusion that these matters amounted to gross misconduct. The Tribunal concludes that the chances of the Respondent reasonably concluding that once a fair procedure had been followed the events coupled with the earlier warning amounted to dismissal is 15%. It cannot be ruled out, but it is unlikely that a fair dismissal would follow, principally due to the difficulties with objective reasonable belief.

145. No party argued in submissions that there should be any adjustment to the Compensatory Award relating to the application of the ACAS Code on Disciplinary and Grievance procedures.

146. With regard to contributory fault, the Tribunal concludes that the Claimant's lateness to the Cutty Sark meeting and the comment along the lines of 'prepare for the worst and hope for the best' in so far as they are culpable and blameworthy conduct contributed to a minor degree to the dismissal and it is just and equitable to reduce the Basic and Compensatory Awards by 10%.

147. Finally, it is confirmed for the avoidance of doubt that where the Tribunal has referred above in terms such as it being 'the conclusion of the Tribunal', the Tribunal has been extremely mindful that it should not substitute its view for that of a reasonable employer. The Tribunal has reached its conclusions on the unfair dismissal claim by always applying the objective standard.

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Employment Judge Freer
Date: 31 October 2017