**Case No: 2200057/2017**

# EMPLOYMENT TRIBUNALS

**Claimant:** **Mr H. Elaadouli**

**Respondents:** **Hats (H2S) Ltd**

**Heard at:** **London Central** **On:** **11,12 May 2017**
**Before:** **Employment Judge Goodman**

**Representation**
**Claimant:** in person
**Respondent:** Ms L. Broom, Head of Human Resources

**JUDGMENT** having been sent to the parties on 15 May 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. After being summarily dismissed on 28 September 2016, the claimant on 11 January 2017 presented claims for unfair dismissal, unpaid wages, failure to provide written reasons for dismissal, and notice pay. The claims were defended on the basis that the claimant had been guilty of gross misconduct for insubordination on several occasions; there was no pleading as to the arrears claim.

**Evidence**

2. The Tribunal heard evidence from the claimant, Hassan Elaadouli, from his union representative, Patsy Ishmael, and from Ms Lysette Broom, the respondent's head of human resources. There was a small bundle of documents.

3. The live evidence was all heard on the first morning. The Tribnunal then adjourned to the second day to enable Ms Broom to access her [ayroll records and bring it to the heating, as there was dispute on whether the claimant had been paid in August or September 2016, or had been issued with P45 or P60 as Ms Broom said. At the same time the claimant was to produce his bank statements for the disputed period; he took the opportunity to bring the payslips for his post dismissal employment. After taking some

further evidence related to this new material, each party made a submission. The claimant's submission was made in written form by a personal friend, Alfred Alexander, who attended the tribunal to assist him.

4. Judgment was given with reasons in Tribunal on the second day.

**Findings of Fact**

5. The respondent contracts with local authorities to drive pupils with special educational needs to and from school. It employs around 350 people in 5 depots.

6. The claimant's employment as a driver began 1 August 2002, working for London Borough of Hammersmith and Fulham. He transferred to the respondent under TUPE on 24 April 2014. Other than the matters to be discussed below, which were referred to at the time of dismissal, he had a clean record.

7. The claimant was employed to drive 25 hours per week in term time, so 38 weeks per annum. On each school day he worked 2.5 hours in the morning and 2.5 hours in the afternoon. He was paid £13,422.12 per annum, spread over 12 months.

8. The contract of employment provides that after 5 years of service the claimant is entitled to 6 months full pay and 6 months half pay if he is unable to work because of sickness or injury. For absences up to 7 days through illness or injury employees are required to complete a self-certification form, and if longer than that, produce a medical certificate signed by a doctor. Failure to comply "will result of in non-payment of sickness allowances shown above and may also lead to disciplinary action".

9. On 24 September 2015 the claimant did not report for work and was sent a letter reprimanding him very report that he was going to be away. The letter complains that he had been in and out of work over the last couple of days, and had only given an explanation when requested. The letter acknowledges that his wife just had a baby and he was entitled paternity leave, but he should have applied for it giving 21 days' notice. He was required to attend and explain. There is no mention of disciplinary action. The claimant says he called at 7 a.m. when his wife was at term and had eclampsia (a rare but potentially fatal complication of childbirth). She was in hospital in intensive care. In the event he was away for 3 days, unpaid. In evidence to the tribunal, when he got the 24 Setember letter he remonstrated with Enya that he had in fact called to say that he would not be coming in because his wife was sick, Enya had replied that he could not understand his English, which the claimant took as an insult, and decided there was no point in going to the office. This may explain the email report by the office to HR a few days later, of what they considered to be insubordination on the claimant's part. On 20 and 29 September 2015 he had come to the door to ask if his school was operational, and when told it was not, he had left. On 30 September he did not come to the door, and was telephoned to ask where he was. He said that he was in the yard outside waiting for his escort, and was not going to come in to the office because "you lot couldn't even be bothered to tell me my school wasn't going". He said of HR: "they sent me a letter saying that not going to pay me, I don't fucking care if they don't fucking pay me, they can keep the money". His

behaviour was described as aggressive and he was sent home, but there is no record of any meeting or warning about this behavior.

10. The next episode which was referred to the time of dismissal was in April 2016. The claimant was absent from work having an operation to repair an inguinal hernia. He submitted a sick note from his doctor dated 8 April saying that he would be unfit for work until 22 April 2016. The claimant said he had handed to a work colleague, Aron, who delayed a week before handing it to the office. On 18 April 2016 Ms Broom sent a letter reprimanding him for failing to notify absence by telephone on the first day and continuing to do so until fit note was issued, And for failing to tell his line manager if you would be returning to work on the date set now expired. The medical certificates, dated 8 and 25 April 2016 are in the bundle, covering absence up to 9 May. The claimant says he attended work and was put on standby for 3 days then asked to go home. There is then a further certificate for 10 May to 10 June, saying that by reason of diabetes he was "unable to drive as his driving licence has been revoked because of medical reasons – awaiting assessment". The claimant says that he met Ms Broom on 11 May and she said that they could find another job as an escort and she would let you know. He was told to return on 5 June.

11. Because of the claimant's condition he had to have an annual medical assessment and for some reason it had not been carried out in time, resulting in the revocation. There was a meeting in the office about this on 5 June 2016. The claimant was allocated non-driving duties as a passenger escort. The claimant says he worked for month of June, while Ms Broom denies this, saying he only worked a few days, amended to ½ weeks.

12. In May 2016, £327.20 was deducted from the claimant's pay because he had not complied with the requirements for reporting sickness absence in April.

13. The claimant discovered from this June payslip that he was being paid a lower rate as passenger escort.

14. On 1 July 2016 claimant produced a medical certificate for 2 weeks, being unfit for work because of nervous debility.

15. On 11 July he attended a meeting, with his Unison (trade union) branch secretary, May Greer, to discuss deductions from pay. Later that day he telephoned Ms Broom to say that he had received his driving licence from the DVLC in the post, and he was asked to produce this to the compliance officer at W10. On 12 August 2016 Ms Broom wrote to the claimant saying that they had not seen the driving licence, and if he did not explain within 7 days, she would be considering taking disciplinary action.

16. The claimant was off sick covered by a fit note to 15 July 2016, which was the end of school term. The claimant as noted, does not work in school holidays, and he went to Morocco, then Hungary (his wife is Hungarian) to stay with family.

17. On 1 September 2016 Ms Broom wrote to the claimant saying that the respondent "is considering dismissing you". The reason was the lack of communication from 11 July 2016 onwards, despite request for an update on

his fitness for work, and a copy of his new licence. He was to attend a meeting on 12 September 2016. This meeting was postponed because his trade union representative was not available, and took place on 28 September.

18. Term started on 4 September 2016. From evidence taken in tribunal it appears that the PSV driving licence was produced to the respondents on 4 September. The licence issued by DVLC in June or July 2016 had in error omitted to state that the claimant was licensed to drive a public service vehicle. This had then been rectified. When giving evidence Ms Broom said she was aware there was a defect in the licence issued in July but was not sure what it was.

19. He also produced a further doctor's certificate, dated 5 September 2016, saying that he had been fit for work from 15 July 2016. The claimant says that he was told by the office staff not to come to work until the disciplinary meeting had taken place.

20. At the meeting on 28 September the claimant was accompanied by Unison representative, Patsy Ishmael, who made some notes of the meeting but did not bring them to tribunal. The respondent did not make notes. Challenged about what keeping them informed, the claimant said that he did not have to notify the respondents about his fitness or otherwise for work during school holiday, because he would not be working them anyway, and that he had in fact been abroad. He also said that he tried to produce the licence to the fleet manager on site at W 10. Ms. Broom's evidence was that the fleet manager told the claimant to go the compliance officer in the office, but the claimant would not go into the office. Her understanding was that the compliance team got the licence just before 1 September 2016. Ms Broom's recollection was that the claimant said he did not want to speak to anyone in the office because relations with the office staff had broken down. The claimant says they mocked his accent. Ms Broom did not recall discussing is physically office on 5 September all that he had been sent home then.

21. The claimant was told he was dismissed without notice for gross misconduct in failing to comply with the respondent's instructions notifying when he was returning to work, and failing to show the compliance officer his driving licence.

22. In the documents bundle is a letter from Ms. Broom to the claimant dated 13 October 2016 saying that despite the absence of a warning on his record, he was being dismissed without notice by reason of gross misconduct. His conduct was unsatisfactory because he had failed to notify the compliance team that his licence had been revoked, failed to inform his employers of his absence or date of return to work, despite several reminders of his contractual obligations. He would not be paid any notice, and his final instalment payment will be make 30 September. He would be getting a P 45. He was also told of the right of appeal.

23. Ms Broom insists that this letter was sent. The claimant however denies he ever received it, in fact delayed find another job because he wanted to appeal. On 30 November, still waiting for the letter, the claimant sent Ms Broom a text asking for the dismissal letter. Ms Broom agrees she received

this text, and that she did not reply. The tribunal concluded that the letter, whenever drafted, had not in fact been sent to the claimant. If it had, it is hard to explain his text; other evidence about the documents on termination suggests some administrative disarray (the leaver form completed by Ms Broom on 26 October 2016, two weeks after the ostensible date of the dismissal letter, gives as reason for leaving "dismissed SOSR", not misconduct), and Ms Broom, after stoutly insisting the claimant had been paid in August 2016 in the face of his denials, has had to concede, on checking, that he had not, so demonstrating that her evidence is not always reliable.

24. In answer to questions from the tribunal, Ms Broom said that she had not asked anybody else about the facts of the claimant's reporting of his licence. She knew he had been absent, and that contact not been made.

25. In submissions she denied that he had been in the country on the 4 or 5 September, because his bank statements, as produced on the second day of hearing, showed foreign payments out of his account on those dates. The claimant countered he had flown back to the UK on 1 September. The tribunal comments that foreign payments do sometimes show up late in bank statements, and that it might be difficult for claimant to get the doctor's certificate if he was not in country on the date of the certificate. This submission is interesting as an indication of Ms Broom's mindset towards the claimant's account.

26. On unpaid wages, on the first day of hearing Ms Broom maintained that the claimant had been sent his August payslip (in the bundle) by post, and that payment August salary had been made to his account, though the claimant denied this. On the second day of hearing Ms Broom conceded, after checking payroll that the claimant had not in fact been paid in August. She also agreed that he had not been sent P45 on termination, as she had said the previous day, when the claimant challenged her that he has had to go onto emergency coding in his next job.

27. The respondent agrees the claimant was not paid for September. This was because he was considered to be absent without leave for the whole month.

**Relevant law**

28. The right to claim unfair dismissal is conferred by section 98 of the Employment Rights Act 1996 which says that it is for the employer to prove that there was a potentially fair reason for dismissal, and that it is then for the tribunal to decide, having regard to the reason shown by the employer, whether the dismissal was fair or unfair, which 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 shall be determined in accordance with equity and substantial merits of the case.

29. Dismissal for conduct is potentially fair, and what a reasonable employer should do is clarified by the decision in **British Home Stores v Burchell (1978)** IRLR 376. The tribunal must consider whether the employer had a genuine belief that the employee was guilty of the conduct, and whether that

belief was founded upon such investigation as was reasonable in the circumstances. Tribunals must not substitute their own opinion on whether they would have dismissed without reason, but must consider whether dismissal was within the range of responses of a reasonable employer that conduct as found on investigation.

30. Tribunals should however make their own assessment of whether there has been a breach of contract in failing to give notice of termination, and so whether the claimant's conduct was so gross as to justify the employer in treating the contract as at an end.

31. The ACAS Code on Discipline and Grievance sets out a minimum procedure employers should follow. The investigation stage need not include a meeting with the employee, but such a meeting is usual. If it is necessary to suspend while investigating, it should be made clear that this is not disciplinary action. The employee should be notified with sufficient information about the alleged misconduct to enable him to prepare for the disciplinary meeting, and the should normally include copies of any written evidence. After the disciplinary meeting, any disciplinary action must be notified in writing. It is said to be "usual" to give warnings for misconduct or unsatisfactory performance, though some facts, termed gross misconduct, are so serious that they may call for dismissal without notice for a first offence, subject to following procedure. Gross misconduct can include serious insubordination. Employees should be offered a right of appeal.

32. Under section 92 of the Employment Rights Act, an employee is entitled to be provided with a written statement giving particulars of the reasons for the employee's dismissal, provided he has requested one, in which case it must be provided in 14 days. If the tribunal concludes that an employer has unreasonably failed to provide such a statement the tribunal shall make an award equal to 2 weeks pay.

33. Where a worker is not paid, unpaid or underpaid wages can be claimed from the Employment Tribunal under section 23 of the 1996 Act. Deductions may only be made where authorised by a written term of the contract, or where the making of the deduction has been authorised in writing before it is made. A deduction means that the amount paid on any occasion is "less than the total amount of the wages properly payable by (the employer) to the worker". Claims under the Act should be made within 3 months of the deduction.

34. If the claim of underpayment arises from the contract of employment, the tribunal can in the alternative award of damages for breach of contract in respect of a shortages outstanding on termination, under the Extension of Jurisdiction Order 1994.

**Discussion and Conclusion**
**Unfair Dismissal**

35. The respondent's purported reasons for dismissing the claimant are set out in the letter of 13 October 2016, even if the claimant did not receive it. The conduct is the failure to inform the compliance team that the licence had been revoked, and failing to inform the office that he was going to be absent or

when he would return. It acknowledged that there was no warning on the file. It is not disputed that only the unexpected absence in September 2015, and the unexpected production of fit notes for the hernia operation in April 2016, were considered blots on the claimant's otherwise satisfactory 14 years of service. Although these previous episodes are not mentioned in the dismissal letter, they are discussed in the 80s we response to the claim as successive episodes of insubordination. In the context of dismissal, they are relied on as evidence that the claimant had been reminded of his duty to notify absence: "he failed on several occasions to take directions or instructions from his superiors".

36. Serious insubordination can be grounds for dismissal. Would a reasonable employer have concluded after carrying out an investigation, including hearing what the claimant had to say, have concluded that there have been serious insubordination justifying dismissal?

37. The investigation was minimal. Ms Broom relied on her recollection, which did not include relevant conversations with the claimant, nor any check with staff at the depot of when he had or had not attended work, or when and to whom he produced the driving licence with and without the PSV extension. For reasons already set out, this recollection may be faulty, and is also illustrated by a discrepancy in her written witness statement, where she stated that on 15 July the claimant telephoned to say he had received his reinstated driving licence, but in the contemporary letter to the claimant, this is recorded as having happened "not long after" the meeting on 11 July. Nor did she investigate whether there was any background to the claimant's recent reluctance to speak to office staff, rather than line managers in the yard, or his saying that at 7:30 a.m. there was no time to go to the office because he had to start his round or the children will be late for school. She seems to have taken it for granted that he was rude to the office staff without reason, without checking whether there were two sides to the story, even when the claimant mentioned this in disciplinary meeting. If the claimant was angry in 2015 because the office staff had dismissed his telephone call about his wife's hospital admission by making fun of his English, that migh not excuse rudeness, but it does explain it, and might be considered by a reasonable employer when deciding whether to dismiss a long serving and usually satisfactory employee.

38. Ms Broom appears to have accepted that the claimant did produce his driving licence when it became available, and did have medical certificates covering his absence. The respondent's complaint is in essence that he produced the driving licence to a yard manager, not a compliance officer in the office, and he did not communicate with the office about when he was likely to be off work, or be resuming, though there was evidence that he spoke to the yard staff about this.

39. A reasonable employer might take into account not only that if the claimant was agitated it was against the background of a deduction of pay of September 2015 when he had phoned to report absence, but that unsympathetic treatment of his genuine illness in April 2016, as a result of which he lost pay even though certificated, plus an unnotified pay cut in June, may have made him less cooperative with office staff.

40. A reasonable employer might also take into account that over the 6 week

school summer holiday, when the employee was not required to attend work, he might be away from home and so not answer requests for information in letters. Ms Broom seems to have been told on 28 September that the claimant had been away, but still took the view that he should have answered during the school holiday. In Tribunal she disputed, without checking, that the school term ended on 15 July at the claimant's school. Nor does she seem to have credited the claimant with producing a sick note or driving licence at the start of term, or considered that if he had not attended work in September it was because on the first day of term he had been sent home until after the disciplinary hearing. With the benefit of hindsight, there must be a suspicion that this was because a decision had already been made that the claimant was to leave, without hearing his explanations. If it is correct that a decision had already been made, it fits with the lack of investigation or checking of documents, either before or after the disciplinary meeting when the claimant gave his explanations.

41. An employer who has to make sure that children are collected for school on time is entitled to insist on reliable notification of when an employee may or may not be available for work. The respondent did not give evidence about what cover arrangements it has when drivers do not attend work for any reason, though evidently there were some, because it could accommodate the claimant as an escort when he was without a PSV licence, and on occasions sent him home when he was ready to work. This is relevant to the seriousness of the misconduct for this employer, and whether it justified dismissal without warning.

42. However, this employer, when giving reasons, did not cite the claimant's unreliable conduct and its effect on the operation of the service, only that he notified absence and produced his licence in ways other than Ms Broom specified. This may have been irritating, and administratively inconvenient, but the evidence suggests that his managers did know when he was coming to work, even if the office did not.

43. The Tribunal concludes that while the claimant may have been guilty of misconduct, in failing to communicate with the office staff as requested, preferring to speak to the yard managers instead, it was not, in the context of the respondent's operation, serious misconduct justifying dismissal without notice.

44. Further, it is doubtful that it justified dismissal even if notice had been given. Against a background of satisfactory conduct for 14 years, with some explanation of why the claimant had been rude in September 2015, and no previous warnings that his conduct was unsatisfactory or required improvement, it is hard to see that any reasonable employer would have dismissed for this reason.

45. The Tribunal concludes that the claimant was unfairly dismissed by the respondent, and to dismiss him without notice was in breach of contract.

**Remedy for unfair dismissal**

46. Basic Award. The claimant was born 19 August 1961, and in 2002 when he started working would have been 41. At the dismissal he had 14 years service, and his week's pay was below the statutory cap, so the basic award

is 14 x 1.5 x £1118.51/52 x 12, £5,420.31.

47. The Tribunal notes that on day 2 Ms Broom said that the claimant in fact started in 2009, not 2002, but she did not produce a document or explanation, the claimant was not challenged on it, and in fact the September 2002 start date is the date the respondent entered on ET 3.

48. Compensatory Award. The statutory notice based on length of service is 12 weeks in the claimant's case. He is entitled to gross pay for this period. In January 2017 he found work, again driving a school bus for handicapped, but as an agency worker. He pays £15 per month to a management company retained by the agency which makes tax but not NI deductions. The claimant's evidence was that he made an extensive search for another job, including looking for work as a private chauffeur, but he had not thrown himself into it while waiting for a dismissal letter because he hoped to get back to work with the respondent. He fell into arrears with the mortgage, now standing at £3,589.25, and on 24 May 2017 faces a County Court hearing for repossession. The claimant did not act unreasonably in seeking to mitigate his loss.

49. For the notice period the loss is 12 x £258.18, £3,097.41. (There was an error in the figure delivered in Tribunal, which counted 14 weeks notice period).

50. From then (7 December 2016) until mid May 2017 he would have earned £5,098.17 but for the dismissal (£1,052 per month after deductions x12/52 x 21 weeks).

51. From this should be deducted his earnings from employment: £3,570.16 to the end of March, and £950 for April, and £606 in May, total £5,131.16, so over the whole period there is no loss, but the claimant has lost job security, as even now he does not have employment rights, though he hopes to get a permanent contract, and there is an award of £400 for loss of employment rights. The total compensatory award is £3,497.41. (This is £486.17 less than the amount awarded in the hearing, and arises from the error as to the length of the notice pay period).

**Failure to provide written reasons for dismissal**

52. The claimant was promised written reasons. When he did not get them he chased and asked for them. Had the respondent answered the text he sent Ms. Broom would have realised the letter had not been sent and sent it. No reason is given why the text went unanswered. An award of 2 weeks pay is made, so £516.22.

**Increase of Award for Breaching ACAS Code**

53. By virtue of section 207 the Trade Union and Labour Relations (Consolidation) Act 1992, where it appears to the employment tribunal that there is a code of practice relevant to a claim and the employer has unreasonably failed to comply with that code, it may increasingly award by up to 25% if it considers that to be just and equitable in all the circumstances.

54. In this case there were relevant breaches: there was no investigation in

the sense of putting together some facts, let alone interviewing anyone else, the claimant was told only that he had not provided a fit note despite requests, and had not seen copy of the new licence, without mentioning gross insubordination, or sending any documents considered relevant, such as previous reprimands or evidence of calls or letters relied on, which impeded the assistance that could be offered by his trade union representative who had not previously dealt with him was not sent a letter confirming the outcome, and he was not offered the right of appeal. None of these steps are too demanding of the resources of an operation employing 350 people in 2016 and with a specialist HR function. If it was an administrative error not to send the draft dismissal letter, it is one that could have been put right had Ms Broom acted on the claimant's chasing text, and she has no explanation for this omission. The claimant will have spent weeks after dismissal in a state of considerable uncertainty while he waited for a letter explaining the reasons for offering him an appeal, and his chasing up, whether by text or through ACAS, was ignored by the respondent. Weighing these factors, there were relevant breaches, the breaches were unreasonable, it resulted in injustice and unfairness, depriving the claimant the opportunity of appeal, instead forcing him to take the time to tribunal, and it is just and equitable to uplift it was unfair dismissal and failure to provide written reasons by 20%.

**Unpaid wages**

55. In May 2016 the claimant's wages were reduced by £370.27 for unpaid leave. In June 2016 there was a reduction on the same ground of £399.17. In August 2016 the respondent issued a payslip for £1,052.02, but accepted on day 2 that in fact they made no payment. In September 2016 the claimant was paid nothing, on the basis that he had been absent without leave. Presumably that would have been another £1,052.02.

56. On the evidence, the claimant was never absent without leave, as he had fit notes for those dates. The contract states that failing to comply with self-certification and medical certification will result in non-payment of the sickness allowances shown, but it has not been demonstrated in evidence that the claimant did fail to comply. Further, contract are subject to the implied duty of confidence. It is not suggested by the employer that the claimant was swinging the lead, the doctor certified that he had an operation and in the context of an otherwise conscientious employee he should unpaid.

57. As for the period in June when the claimant was paid a lower rate of salary (£776.16, rather than £1181.51, a drop of £405.35), the contract of employment specifies the claimant's pay grade, but does not provide that in the event that he is unable to do one job and assigned on a temporary basis to another his pay is to be reduced.

58. In June and September he attended for work (on occasions even when covered by sicknote) and was sent home, and then unpaid. The employment contract does not provide for unpaid suspension from work.

59. The Tribunal concludes that the sums are due under the contract of employment and awards £3,278.79. (This is £106.03 more than the figure awarded in tribunal. It is not possible to track the source of the error).

60. The award for underpaid wages has not been uplifted because the

claimant did not make a grievance about most of the payments, and there was a meeting about one set of deductions, so no breaches of Code.

**Fees**

61. An award is made for refund of £1,200 fees under rule 78(c) as the claimant has succeeded.

**Provision of written reasons**

62. Reasons were given orally in tribunal and recorded. On the day, neither side asked for written reasons when prompted. On 1 June 2017 the respondent wrote asking for written reasons. The request was passed to me on 14 June and next day the audio file was uploaded to the tribunal system and the typing team asked to transcribe it. On 31 July the typing team reported back that they could not find the audio file. Since then a search was a made of other audio files to see if it was mislabelled, and of the dictating machine itself; no dictation from before July 2017 remains there.

63. On 2 January 2018 I was handed a batch of emails from the parties asking for the reasons (13 September 2017, 24 September 2017, 22 October 2017, 21 November 2017 and 21 December 2017). Apologies are due to the parties firstly for no action having been taken when ongoing enquiries as to the whereabouts of the audio file drew a blank, (though there has been very heavy listing of cases from July to the end of the year), secondly, for the chasing emails not having been referred on to me by the administration.

64. These written reasons have been prepared from the notes on file from which the oral reasons were delivered on the day, and after rereading the documents, witness statements, and handwritten record of evidence and submissions to refresh my memory of detail.

**Reconsideration**

65. In the course of the calculations I have noted arithmetic errors and have made the changes noted in parenthesis in paragraphs 49-51 (error computing the notice period) and 59 (error adding up wage arrears). Formally these are to be treated as reconsideration of the Judgment under rule 73. It is therefore open to the parties to make written representations on these adjustments to the calculation.If either party wishes to object or comment on the revised figures in these paragraphs they should write within 14 days of these reasons being sent to them.

66. Summarising the effect of these revisions:

Unfair dismissal award: the figure in the judgment for compensatory award decreases by £486.17 to £3,497.41. This reduces the total award after increase of 20% to **£10,701.26** (old figure £11,284.66, reduction of £583.40).

Unpaid wages: increase of £106.03 to **£3,278.79**.

67. Since judgment was given the Supreme Court has declared fees in

Employment Tribunals unlawful. I have not reconsidered the decision on fees because the administration has now set up a system to refund fees to claimants. I understand that the respondent need not pay it.

68. I note with concern from an email from the claimant saying that the respondent has not (or as of 24 September had not) paid any of the judgment, not even the August wages admitted to be due. The respondent has now instructed solicitors, who will be aware that interest at the judgment rate runs on the award from the decision day, which date is not altered by any later reconsideration or appeal, though if reconsidered interest is due on the revised, rather than the original amount.

Employment Judge Goodman on 9 January 2018