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# EMPLOYMENT TRIBUNALS

**Claimant** **AND** **Respondent**

Mr D Cox

Royal Mail Group Ltd

**Heard at:** London Central

**On:** 6, 7, 8 and 12 December 2017

**Before:** Employment Judge Glennie

## Representation

**For the Claimant:** Mr A Karia, Counsel

**For the Respondent:** Mr I Hartley, Solicitor

## JUDGMENT

The judgment of the Tribunal is as follows:

- 1 The complaint of automatic unfair dismissal is dismissed.**
- 2 The complaint of detriment arising from protected disclosure is dismissed on withdrawal.**
- 3 The complaint of breach of contract (wrongful dismissal) is well-founded. The Respondent shall pay to the Claimant compensation of £542.68.**
- 4 The complaint of failure to pay holiday pay is well-founded. The Respondent shall pay to the Claimant compensation of £1,019.36.**
- 5 The total sum payable by the Respondent to the Claimant is £1,562.04.**

## REASONS

1. In this case the Claimant, Mr Cox, made complaints of automatic unfair dismissal, detriment arising from a protected disclosure (which has been withdrawn), wrongful dismissal (breach of contract) and non-payment of holiday pay, which has now been agreed. That meant that the remaining disputes were as to automatic unfair dismissal based on protected disclosure and wrongful dismissal.

2. I will say before I go any further in these reasons that I found the approach taken by both representatives in this case to be particularly helpful. Both have focused on the issues that I have had to decide and both have made realistic submissions and concessions where necessary.

3. The issues that have to be decided are these. In respect of unfair dismissal, first did the Claimant make protected disclosures, in which regard he relies on letters of 9 May 2016 to Mr Kitchen and 16 June 2016 to Mr Selby. That involves the following questions:

- (1) Did the Claimant make a disclosure of information?
- (2) Did the Claimant reasonably believe that the disclosure:
  - (i) tended to show that a criminal offence had been committed, was being committed or was likely to be committed; and
  - (ii) Was made in the public interest?
  - (iii) Was the disclosure made to the Respondent (that was not controversial);
  - (iv) Was the disclosure the reason or the principal reason for the Claimant's dismissal?

That last was really the main issue in terms of the evidence in the case before me.

4. As regards wrongful dismissal, the question is whether the Claimant committed a repudiatory breach of contract entitling the Respondent to dismiss him summarily.

5. I heard evidence from the Claimant, Mr Cox, on his own behalf. On behalf of the Respondent I heard evidence from Mr Brian Chapman, Delivery Office Manager at Camberwell, and Mr Alan Rostrum, Independent Case Work Manager. There was an agreed bundle of documents and page numbers that follow refer to that bundle.

6. The background is that Mr Cox began work for the Respondent as an agency worker in November 2014 and became an employee as an Operational Postal Grade Postman at Brockley Depot on 1 April 2015. By that time he was engaged to be married and in May 2015 he and his wife set the date for their wedding as 13 August 2016, a Saturday. They intended to go on honeymoon more or less immediately following the wedding and of course the Claimant would have known that he would need to arrange leave from work for that purpose.

7. The evidence from the Respondent regarding annual leave arrangements was that the leave year ran from April to March each year and that each

November a leave card was issued to employees so that they could apply for leave in the following year. None of that was controversial. Apart from the November round, employees could ask on an ad hoc basis for leave and manager would grant it or not according to the situation. It was also the Respondent's case that leave had to be managed so as to ensure that they always had a sufficient number of employees available to ensure that deliveries were made, and it seems to me that that must be true. August was a particularly popular choice for annual leave, which again seems to me to be what one would expect given the school holidays occurring at that time of the year.

8. Mr Cox's evidence was that in December 2015 he asked the then Delivery Office Manager at Brockley, Mr Harrington, for annual leave for his honeymoon. Mr Harrington said that he was about to leave Brockley, as indeed he was, and that the Claimant should ask the new DOM when he or she arrived. The new DOM turned out to be Mr Sharif and Mr Cox's evidence was that he asked him in January 2016 for leave from 15 to 31 August. He said that Mr Sharif asked him to put those dates on an annual leave card, which he did and then left the card in Mr Sharif's office. The card came back to him authorised and on 11 January 2016 he booked his honeymoon travel as evidenced at pages 87-95. I can see from that that the flights and the accommodation cost nearly £4,000, that without all the other expenses that would be incurred during the honeymoon.

9. But then on 24 February 2016 Mr Cox suffered an accident in the course of his work which caused an injury to his knee, and he was signed off work by his GP as from 26 February. He remained off work thereafter, and there was some communication between him and Mr Sharif and Mr David Bloomfield-Jessop, the Delivery Manager for South East London.

10. Mr Cox's evidence continued that on 4 May 2016, while he was still off work, he received a phone call from Mr Sharif. He described this in paragraph 19 of his witness statement as involving Mr Sharif asking when he would be coming back to work. Mr Cox said that he was off work covered by a GP's certificate and that he was having physiotherapy, and Mr Sharif replied to this "Your doctor's notes do not mean anything. I will stop your pay if you don't come back to work" The Claimant's evidence was that he took issue with that, and eventually hung up the phone because he felt that he could not take any more of that sort of talk.

11. Then on the following day, 5 May, it is apparent that the Claimant received a text message from Mr Sharif. This was part of a series of messages and those that preceded it indicate to me that Mr Sharif was taking the view that Mr Cox should come in for a meeting about his sickness absence. Mr Cox offered the following Tuesday as a date, and that led to the following text from Mr Sharif:

"We need you to be available your working 5 days a week @home.now. We want you to come in tomorrow at 10.30 am and that won't change. You can either come in the office or we can visit you at home."

12 Mr Cox interpreted this as meaning that he was expected to come back to work and carry on with his duties, and that there was some sort of implied

threat about his being “visited” at home if he did not do that. I accept that this is how he understood it, but it seems to me that what Mr Sharif actually meant was that Mr Cox was expected to be at home during the working hours that were normally required and that therefore it was not appropriate for him to negotiate over when he might come in or be available for an interview. The observation about visiting at home, it seems to me, was intended to mean that if Mr Cox was not fit enough to come into the depot than the meeting could place at his home, rather than offering any sort of threat about the matter.

13 I will come back to what one might or might not make of that particular exchange in due course. But, as I have said, I accept that Mr Cox interpreted these exchanges as being somewhat threatening towards him. He took exception to them and on 9 May he had sent a letter to Mr Kitchen, who was two levels up in the management hierarchy from Mr Sharif, that letter being at pages 108-109. He said that he had decided to take out a grievance of bullying and harassment against Mr Sharif. He said that he had suffered the accident that I have referred to; he made a complaint about the Data Protection Act with which I am not concerned. But he then referred to the exchanges that I have described, namely the phone call and the text message, which he said were causing him great distress. He complained that Mr Sharif had sent him text messages to come back to work even though he had been signed off by his GP and had threatened to stop his pay if he did not return to work.

14 This is relied on as the first disclosure that Mr Cox advances in respect of his complaint of unfair dismissal. He did not immediately receive a response and on 2 June he wrote a letter (pages 110-113) to Mr Steven Selby, the Operations Manager.

15 On 3 June Mr Kitchen acknowledged the grievance and on 10 June Mr Cox wrote to Mr Kitchen again about the issues regarding his injury and absence. Then on 16 June (page 156) Mr Cox sent an email to Mr Selby which is relied on as the second disclosure. This I need not set out in detail, but it had attached to it documents that referred again to what Mr Cox was saying about Mr Sharif's conduct towards him, and so substantially the same information about that as he had sent to Mr Kitchen. Originally there was an issue about whether this email was in fact received, but Mr Hartley has, quite rightly in my view, accepted as a matter of probability that it must have been.

16 Meanwhile, Mr Cox had remained absent sick and on 14 June Mr Kitchen wrote to him indicating that what is described as a consideration for dismissal had been triggered under the Respondent's Sickness Absence Procedure, which I understand to be a standard procedure that operates in all cases in response to certain levels of sickness absence. Then, although I heard little about this in the course of the evidence, the first grievance, that is the one addressed to Mr Kitchen, was taken through stages 1 and 2 of the Respondent's grievance procedure, which potentially involves three stages.

17 Mr Cox's wedding took place as planned on 13 August, at which point and he was still signed off sick. As I have said, he was due to depart on his honeymoon on the 16<sup>th</sup>. On the 13<sup>th</sup>, that is the wedding day, Mr Cox received a letter from Mr Bloomfield-Jessop (page 181). That said that Mr Bloomfield-

Jessop recognised that this might be a difficult time. He was referring there, I am sure, to the Claimant's injury. There is no indication that he knew that this letter was going to arrive on the wedding day. But in any event, he said that he was inviting the Claimant to attend a meeting at Brockley on 15 August at 9.00 am. The purpose of that being to explore ways in which he could be helped to get back to work as soon as possible and to discuss what guidance and support the Respondent could give.

18 As events turned out, on 14 August the Claimant and his wife had to go to Accident and Emergency as an emergency case because it was feared that his wife might be suffering a miscarriage. They were told at A & E that they should go to the pregnancy unit at 8.00 am on 15 August. Turning to Mr Cox's witness statement, in paragraph 55 he said that he called Mr Bloomfield-Jessop at 8.57 am on 15 August and that a call took place lasting some 16 minutes in which he explained what had happened. In other words, he explained about his being at the hospital. I know that elsewhere Mr Bloomfield-Jessop had said that he did not receive any communication from the Claimant before the proposed meeting at 9 o'clock. It seems to me that is not necessarily inconsistent with what Mr Cox himself says, because one could be excused for thinking that 8.57 is not really much before 9 o'clock, and that possibly that is what Mr Bloomfield-Jessop meant. Be that as it may, I have no doubt that Mr Cox did indeed call Mr Bloomfield-Jessop at that time and told him what his situation was.

19 There was then some further conversation and a discussion about what was to happen about the meeting. The Claimant stated that Mr Bloomfield-Jessop said that he would be going into meetings all day and that the meeting was rearranged to take place at 2 pm, but no venue was confirmed. Mr Bloomfield-Jessop then spoke about his being on annual leave until the Thursday of that same week.

20 At paragraph 56 Mr Cox continued that neither contacted each other about the 2.00 pm meeting and he never heard back from Mr Bloomfield-Jessop on 18 August. He said then that he went on his honeymoon on 16 August. Then on 18 August, by which time of course Mr Cox was out of the country, Mr Kitchen wrote a letter at pages 189-190 in which he asked Mr Cox to attend a meeting at Camberwell on 23 August, in connection with his sickness absence. This letter was brought to Mr Cox's attention by his sister, who was looking after his correspondence while he was away, and he replied to Mr Kitchen saying that he was on annual leave.

21 All of that led to Mr Chapman being asked to undertake a disciplinary case involving Mr Cox. Mr Chapman's evidence was that he was asked to do this in September 2016. He said that he had not previously met Mr Cox. It is evident from paragraph 6 of Mr Chapman's witness statement that he was sent some papers in connection with the disciplinary matter, although it is true to say that there is nothing in the bundle to show what those papers might have been. Mr Chapman also said in cross-examination something that did not appear in his witness statement, which was that Mr Kitchen spoke to him about the case and outlined to him what it was about.

22 Following this at pages 199-200 on 16 September 2016 Mr Chapman sent a letter inviting the Claimant to a formal conduct meeting. This set out two allegations in the following terms:

“Gross misconduct in that you were dishonest in your reasons for your failure to attend a management meeting on 15 August 2016 with Mr David Bloomfield Jessop and again on 23 August 2016 with Mr Cory Kitchen.

“Gross misconduct in that you were dishonest in your assertion that you had been granted annual leave for this period of absence between 15 and 31 August 2016.”

23 Mr Chapman said that he formulated the allegations in the letter. He said that he considered that there was a case to answer and that if well-founded it could amount to dishonesty and thus to gross misconduct. What he said in paragraph 9 of his witness statement was slightly and perhaps subtly different because he wrote this:

“If it was the case that Daniel Cox had not in fact been granted leave during this period then his assertion that he had would have been an act of dishonesty and so could have amounted to gross misconduct.”

The difference being that in the witness statement Mr Chapman was saying that it would amount to gross misconduct rather than it could do.

24 On 21 September Mr Chapman had a meeting with Mr Cox, who was assisted by his union representative, Mr Lee Wendham. Mr Chapman made notes of the meeting (pages 222-225). Mr Cox was covertly recording the meeting and the transcripts of that recording are at pages 203-220. Some points that were made in the course of the meeting were as follows. On page 204 Mr Cox said that on 15 August he was at the hospital, as indeed he was, and that when he spoke with Mr Bloomfield-Jessop they arranged another time, namely 2 o'clock that afternoon. He then referred to the failure to get back to him on the Thursday of that week. On page 205 Mr Cox said that he was at the hospital for his wife and later Mr Chapman said, “so you agree the meeting at 2 o'clock in the afternoon”. Mr Cox said that was right, and Mr Chapman queried why then would Mr Bloomfield-Jessop need to phone him back. Mr Cox said, “because I needed to know where we were meeting. He did not tell me where we were going to meet. I did not know if it was at depot. If it was at my house. I did not know”.

25 Then they moved on to 23 August. Mr Chapman asked: “Why didn't you attend the meeting?” and Mr Cox said:

“I was on annual leave. Annual leave that I booked back in January. For some reason it is not on the system. I don't know. Again that is not for me. It's not my job to input things on the system. I'm not a manager nor do I have authorisation for that but I booked that annual leave. It was agreed.”

Mr Chapman asked, "who did you book it with" and Mr Cox said "Ahmad." [Mr Sharif]. Mr Chapman then asked "have you got a copy of the annual leave card", referring to the card that would be returned showing the leave as granted. Mr Cox said he did not have it. When Mr Chapman asked why not he said: "I probably left it on the frame. I've no idea, it was back in January."

26 There was further discussion about that. Mr Chapman made the observation that, "if you have an annual card that effectively shows the grant of the leave than that stops the matter here and now." Then he said that he had a printout of the card and that it did not have any annual leave booked for the current year.

27 Finally on this aspect, Mr Chapman said that he had checked the August period on the manpower plan: that is the plan that ensures that there are sufficient operatives to cover all the deliveries. He said that the period was full, meaning as I understand it that Mr Sharif could not or would not have granted the leave concerned. Mr Chapman said that it would have been full straightaway. That then unfortunately led to the beginning of a breakdown in the meeting. I can see from the transcript that it became somewhat heated. There was a dispute about the medical certificate and the meeting ended angrily as one can see on pages 215 and 216.

28 Mr Chapman's evidence continued that he asked Mr Bloomfield-Jessop what Mr Cox had said about 23 August and he received an email which was sent on 21 September (page 202). In that email Mr Bloomfield-Jessop said that there had not been any indication that Mr Cox was away on honeymoon and that he had not mentioned that he was getting married, but that he had received a text on 22 August from Mr Cox saying that he had booked the leave with Mr Harrington and with Mr Sharif.

29 Mr Cox sent further observations to Mr Chapman on 25 September at pages 227-233. Following this Mr Chapman's evidence was that he met and interviewed Mr Bloomfield-Jessop on 12 October; Mr Harrington on 14 October and Mr Sharif on 18 October. He said that he wrote out what these individuals said in their interviews and they then signed statements that he typed up which can be found at pages 328, 240 and 242 respectively. Mr Karia challenged Mr Chapman over two at least of these apparent statements. He compared the signature on Mr Sharif's statement to that on another document at page 99. They are clearly different but that does not mean, in my judgment, that the signature on the statement is not genuine.

30 Ultimately in submissions Mr Karia did not press the point particularly hard, but so far as it is relevant I note that it can also be said that Mr Cox's signature on document 99 is substantially different from the one that appears on his witness statement for this hearing, but there is no suggestion that either is not genuine.

31 Mr Karia did press the point that he made about Mr Harrington's statement. As I have said, Mr Chapman's evidence was that he wrote down what Mr Harrington said, then typed it up and asked Mr Harrington to sign it, all on 14 October. Mr Karia pointed out that the statement was identical to an email

of 22 October (page 195) that Mr Harrington evidently sent to Mr Bloomfield-Jessop and to Mr Sharif. It is identical even down to an incorrect capital "I" in the word "if". Mr Chapman nonetheless denied copying and pasting the statement from the email. Mr Karia put it to him and submitted that the witness statement was a fabrication created after 26 October, which is the date on which the email from Mr Harrington to the others was forwarded to Mr Chapman.

32 On that point it seems to me to be inescapable that the witness statement was indeed copied and pasted from the email and Mr Hartley rightly conceded as much. But that does not mean that Mr Chapman forged the witness statement, and I reject the suggestion that he did. Clearly someone has copied and pasted the email into the statement.

33 Mr Chapman's evidence about writing down what Mr Harrington said and then typing it up cannot be a correct explanation of how the statement came into existence. It seems to me to be more likely that Mr Chapman has forgotten that this statement was created in a different way from the other two and that either he or Mr Harrington used the email of 22 August to create the statement and Mr Harrington then signed it, as he evidently did, on 14 August. But whatever it is exactly that has happened, it seems to me that there would be no reason for Mr Chapman to take the highly dangerous step of faking a statement from Mr Harrington when there was no need to do so. The position was that Mr Cox had told Mr Chapman that it was Mr Sharif who had approved the leave, not Mr Harrington, and in his evidence to this Tribunal Mr Cox agreed that Mr Harrington's email, and therefore the statement that is derived from it, was correct, in that he was not saying that Mr Harrington had granted him the leave.

34 Then on 25 October Mr Kitchen asked Mr Cox to attend a meeting on 27 October, which he did. In the course of this meeting Mr Kitchen asked Mr Cox whether he would be returning to work the next day. This might seem a rather curious thing to do, but it is in the context of Mr Cox still being off sick from the February injury. Mr Kitchen was suggesting that Mr Cox had not been co-operating with efforts to get him back to work and so the question "Are you coming back tomorrow" was perhaps something of a challenge over his willingness to co-operate.

35 On the same day (page 260) Mr Kitchen sent an email to Mr Cox which read in part:

"I asked you to meet with me today to confirm as you stated in an email to me a few days ago that you were now co-operating to the above. However you have still refused to return to work on a rehab plan....."

and he concluded

"I would have been really happy for you to return to work on a rehab plan and to let us support you with your injuries but it is clear you have continued to fail to co-operate with us."



36 Whether or not Mr Cox was co-operating and whether or not Mr Kitchen was taking a reasonable attitude to that is not something that I have to decide, but, as I will explain, that meeting and that email are of some significance to the issues that I do have to decide.

37 Then, moving on to 29 October, Mr Chapman sent the three witness statements to Mr Cox. He did not ask for any comments on them and indeed he did not give any opportunity for such comment because on the same date he sent his decision in the matter with a report that explained his reasons (all of that is at pages 271-275). He found that there was gross misconduct in that the Claimant was dishonest in his reasons for failing to attend the two meetings and also that he was dishonest in his assertion that he had been granted annual leave from 15 to 31 August.

38 In the decision report giving the reasons, Mr Chapman said that he did not believe Mr Cox's stated reason for his non-attendance at the meeting on 15 August and said that he believed that he had been dishonest in suggesting that it was because he did not know the location where it would take place. Then in relation to the annual leave, Mr Chapman said that there was evidence that Mr Cox was away abroad on his honeymoon during the period, and that all of the available evidence suggests that no annual leave for those dates had been booked. Therefore he believed that Mr Cox had been dishonest in the explanation that he had given as to his reasons for not attending on 23 August, the stated reason of course being that he was on annual leave.

39 The case that was put to Mr Chapman was that he was acting on the instructions of Mr Kitchen, and that the latter had told him that he should dismiss the Claimant essentially for being a trouble-maker in raising the grievances. Mr Chapman denied being contacted by Mr Kitchen in this way at all, and at all times when it was put to him he denied that he had been acting on his instructions as suggested.

40 Mr Cox appealed against Mr Chapman's decision, and that appeal was heard by Mr Rostrum. It was not suggested that Mr Rostrum was suborned by Mr Kitchen in that way that was put to Mr Chapman, but rather that he was taken in by the evidence produced by Mr Chapman, and that this induced him to reject the appeal.

41 In the event Mr Rostrum heard the appeal on 22 November and that hearing was attended by Mr Cox with a union representative, Mr Nelson. There are notes of that meeting and at page 295 Mr Rostrum recorded that he asked for an outline of the grounds of appeal. Mr Nelson said that Mr Cox's character had been brought into disrepute and he had been branded a liar and Mr Cox said that there was an on-going Tribunal case at the time and he believed that this was part of an attempt to discredit his name before the Tribunal. That is a reference to earlier Tribunal proceedings with which I have not been concerned.

42 Then, by way of a particular complaint, Mr Cox said that there should have been a fact finding meeting, and that had not happened, so he did not

believe that there had been a proper investigation into the matter. There followed a discussion of the two charges and Mr Cox repeated his explanations.

43 Mr Rostrum sent his decision on 22 December (page 348). Again, he produced a report giving his reasons for the decision, which was that the appeal should be dismissed. In those reasons (page 353) Mr Rostrum said that, as regards the 15 August meeting, he believed that it was more likely that Mr Bloomfield-Jessop would be waiting to see if Mr Cox had finished at the hospital rather than Mr Cox's view that he was waiting for confirmation of the venue for the meeting. On page 354 Mr Rostrum said with regard to the question of the annual leave, that he was concerned from an honesty and integrity point of view. In other words, he did not believe what Mr Cox said about that. He said there were statements from several managers confirming that no leave had been booked. He also said this that the fact that Mr Cox had covertly recorded the meeting with Mr Chapman without his permission added to his view that Mr Cox had been less than honest.

44 That then is the chronology of events and I turn to the claims and my conclusions about them. I will deal first with the complaint of automatic unfair dismissal.

45 Section 103A of the Employment Rights Act states that:

*"An employee who is dismissed shall 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."*

Then section 43A provides that a protected disclosure means a qualifying disclosure as defined by section 43B. That section provides as follows:

*(1).....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 the following –*

*(a) that a criminal offence has been committed, is being committed or is likely to be committed.*

46 As I have said, the main focus of the hearing was as to the reason for the dismissal, and I will take that issue first and ask and consider whether the grievances raised by Mr Cox, whether or not they amounted to protected disclosures, were the reason or the principal reason for his dismissal.

47 In answering that question I have not found that I needed to rely on the burden of proof, because I find that the evidence shows that the grievances were not the reason or the principal reason for the dismissal.

48 Mr Karia pointed to a number of suggested defects and anomalies in the disciplinary process and invited me to draw the inference that something other than the stated reason was the reason for the dismissal, and that the other reason involved was the raising of the grievances. I therefore looked at the

points that Mr Karia has raised and asked whether they do lead me to draw such an inference.

49 The first of these is the suggestion that Mr Chapman had concocted one or more of the witness statements. As I have found, he did not do that. I rejected that suggestion.

50 Secondly, it was suggested that the outcome of the disciplinary process was pre-determined. In that connection Mr Karia relied on paragraph 9 of Mr Chapman's witness statement and beyond that suggested that it was all pre-determined and that really there was no escape from the outcome. If that is right, and bearing in mind what I have said about paragraph 9 of Mr Chapman's witness statement, that does not suggest to me that Mr Chapman had some other reason for dismissing Mr Cox. Rather, it suggests to me that Mr Chapman thought that if the evidence showed that Mr Cox had not obtained approval for the relevant leave, then he was being dishonest.

51 As I shall explain, in my view the situation is not necessarily as straightforward as that. But this is not in my judgment an indication of there being some other reason lying behind the dismissal. Similarly, it seems to me that Mr Chapman's failure to give Mr Cox the opportunity to comment on the witness statements from the three managers might be taken as indicating a view that the case was open and shut, and that there was nothing to say about it once the managers had said that the leave had not been granted: but it does not suggest to me that Mr Chapman had some different reason for his decision.

52 So far as failing to hold a fact finding meeting is concerned, that is not compulsory under the Respondent's procedure and again it seems to me that if, as I find he did, Mr Chapman took the view that this was a fairly straightforward case, then the failure to have a fact finding meeting is not in my judgment of any great significance.

53 Those then are the reasons why I do not find that the anomalies, if they are such, lead to the drawing of any inference about the reason for the dismissal, and I find that Mr Chapman's reason for dismissing the Claimant was the one that he gives, namely the view that he took that Mr Cox had committed gross misconduct. I find that essentially for the following reasons:

53.1 I find that decision understandable in the circumstances. I find it understandable that Mr Chapman decided as he did on the evidence that he had been given, and there is no need of a conspiracy to explain why he might take the view that Mr Cox should be dismissed. I can see why Mr Chapman was unimpressed with the explanation that Mr Cox gave about 15 August, and I can see why he concluded that Mr Cox had not booked the annual leave, and that he knew he had not.

53.2 As I have already said, I find that the submission about inferences does not work in the sense of pointing to an alternative reason.

53.3 I find the suggestion that Mr Chapman was acting on the instructions of Mr Kitchen and everything that followed from that to be inherently implausible. It is in my judgment implausible that Mr Chapman would “set up” a postman whom he did not know, that he would concoct evidence so as to convict him of gross misconduct, not knowing whether he had actually committed it or not, and would have done so as was suggested to him with a view to deceiving the appeal officer in the event that there was an appeal; and finally that Mr Chapman would be prepared to lie on oath about all of those matters, because Mr Kitchen had asked him to do that. That I find is essentially an implausible scenario.

53.4 Finally, Mr Kitchen’s meeting on 27 October just does not make sense if he knew that Mr Cox was about to be dismissed on his instructions. It would not make any sense to have a meeting of that nature and to say what he clearly did say about the return to work and the issues about Mr Cox’s sickness absence.

54 All of that means that the complaint of automatic unfair dismissal fails, but I will, however, add my findings on whether or not there was a protected disclosure. The first question is whether Mr Cox genuinely believed that the information that he disclosed tended to show a criminal offence. I find that he did genuinely believe that. I have his evidence to that effect and that is supported by the fact that he made a report to the police about the matter which suggests that he had that genuine belief.

55 Was that belief reasonable? I have already referred to what Mr Cox said in his witness statement about the conversation with Mr Sharif and to the content of the text message. Looked at objectively I find that it was not reasonable to believe that all of that tended to show the commission, whether actual or potential, of a criminal offence. I have been referred to Blackstone’s Criminal Practice (2017), which sets out the provisions of the Protection from Harassment Act, sections 1 and 7 being material as to the prohibition of harassment and on what amounts to a course of conduct. The commentary in Blackstone is helpful in this regard because it says that a course of conduct which is unattractive and unreasonable does not of itself necessarily constitute harassment. There must be unacceptable and oppressive conduct such that it should sustain criminal liability.

56 Looked at objectively, and given the understanding of the text message in particular which I think that objectively bears, it would not be reasonable to believe that what Mr Sharif did reached the level of criminal liability.

57 The remaining question is whether Mr Cox reasonably believed that he was making the disclosures in the public interest. Really that leads to the same answer as the point about tending to show a criminal offence, because the argument about public interest depends on the argument that the public would have an interest in Royal Mail employees not being subjected to harassment. For the same reason essentially as I have given in relation to the issue as to a criminal offence, I find that it would not be reasonable to believe that the disclosures were made in the public interest.

58 So, quite apart from the point about the reason for dismissal, I would also find that these were not protected disclosures in any event.

59 Finally, I turn to the complaint of wrongful dismissal. This involves the question whether as a matter of fact Mr Cox committed a fundamental breach of contract. Essentially, in the context of this case, was he dishonest or not in the respects that the Respondents have found that he was.

60 I have to decide for myself on the evidence that I have heard, on balance of probabilities, whether that is the case or not. The question is not whether Mr Chapman and Mr Rostrum made reasonable decisions on the evidence that was before them. It would be quite possible for a Tribunal to believe that they did make reasonable decisions while reaching a different conclusion of its own on the evidence that has been given. In that regard, I have heard evidence over two days and I have had the benefit of skilled legal representation on both sides, a rather different situation from that which Mr Chapman and Mr Rostrum had to contend with.

61 I have looked again at the two charges that that were raised against Mr Cox. His explanation for the situation on 15 August is that he did not attend the meeting with Mr Bloomfield-Jessop because he did not know where he should attend. I accept Mr Cox's evidence that when he spoke to Mr Bloomfield-Jessop the venue for the 2 o'clock meeting was not specified. It might be said that, with the benefit of hindsight, perhaps it was not a very sensible view to take at the time, and that Mr Cox could have asked about the venue or could have assumed it was at the depot and gone there and taken matters from there. It is perhaps easily said now, but the circumstances on the day were, I find, circumstances of considerable emotion. Mr Cox had just got married and he was about to go on his honeymoon. He must have been very worried indeed about his wife and I can understand why attending the meeting would not have seemed much of a priority at the time.

62 I believe that Mr Cox made a misjudgement about how to deal with the meeting, but if he was not thinking straight in taking the point about not knowing the venue, then in the particular circumstances he can be forgiven for that, and I find that he was not dishonest in that regard.

63 That leaves the question of the annual leave, and again the question is whether Mr Cox was being dishonest about his belief that he booked that annual leave. In other words did he know perfectly well that he had not done it? I mentioned in connection with Mr Chapman's evidence the issue of whether a particular idea would be implausible. Mr Cox clearly did book his honeymoon in January 2016 and he incurred nearly £4,000 just on the initial costs.

64 I find it implausible that he would have done that if he did not believe that he had the necessary leave arranged, otherwise he would be risking either losing all of the money and upsetting his wife over the honeymoon, or he would risk losing his job by just going off on honeymoon without permission, which he would not want to do, especially not when he had just got married.

65 There are ways in which there could have been an error or misunderstanding about this. I am not saying that any of these necessarily happened, but I give these examples. Mr Sharif could have replied to Mr Cox's request in a way that Mr Cox interpreted as meaning yes, but which did not actually mean that. It was, after all, what he wanted to hear. Mr Sharif might have said yes in the first instance, possibly thinking to himself, of course you can have leave for your honeymoon, and then having thought about it, changed his mind and communicated that in a way that was not understood or was not clear. Possibly even did not even say it, but just handed back a blank leave card and hoped that the message would get through.

66 I cannot say with any certainty what happened, but I find it probable that there was some sort of miscommunication, or that Mr Cox has made some sort of mistake about whether he was granted the leave or not. I find that more likely than the proposition that Mr Cox recklessly booked the honeymoon, knowing that he did not have the necessary leave, and then lied about it, first to Mr Chapman, then to Mr Rostrum, and ultimately on oath in this hearing. I do not believe that is what has happened and I therefore find that Mr Cox was not dishonest in that regard either. It follows therefore and I find that Mr Cox did not commit a fundamental breach of contract and that the complaint of wrongful dismissal is well-founded.

67 Following the giving of these reasons, the parties agreed on the sums payable by way of compensation for non-payment of holiday pay and for wrongful dismissal.