EMPLOYMENT TRIBUNALS

Claimant: Mrs K Singh

Respondent: East Midlands International Airport Limited

FINAL HEARING

Heard at: Nottingham **On:** 5 to 7 &
(deliberations in private) 8 November 2018

Before: Employment Judge Camp Members: Mrs C Hatcliff
Ms H Andrews

Appearances
For the claimant: Mr A Korn, counsel
For the respondent: Miss C Thenistocleous, solicitor

JUDGMENT

(1) The claimant was unfairly dismissed.

(2) If the claimant's remedy is compensation: the basic award and any compensatory award shall each be reduced by 35 percent, pursuant to sections 122(2) and 123(6) of the Employment Rights Act 1996 ("ERA").

(3) The claimant's complaint of direct race discrimination fails.

REASONS

Introduction

1. The claimant was employed by the respondent, part of Manchester Airports Group plc, as an Airport Security Officer ("ASO") at its airport in Castle Donington from 1 June 2009 until her summary dismissal with effect on 28 September 2017. The reason given for dismissal was gross misconduct, namely that on 20 August 2017 the claimant allegedly failed to follow the proper security procedures when dealing with passengers' luggage. Having gone through early conciliation from 4 to 27 October 2017, she presented her claim form on 30 October 2017. She has pursued two complaints only: unfair dismissal under the Employment Rights Act 1996 ("ERA"); direct race discrimination by dismissal

under the Equality Act 2010 ("EQA"), relying on her South Asian / Indian national origins.

2. We have not found it difficult to decide the claimant was unfairly dismissed but was not the victim of unlawful discrimination. There is not the slightest hint in the evidence of any racial prejudice towards the claimant by the people who decided she should be dismissed. Equally clearly, the claimant's dismissal did not come close to being fair, in our unanimous view.

3. Although we had very little hesitation in concluding that the claimant was unfairly dismissed, this has not been a straightforward case. Parts of our decision are the product of considerable debate between the three of us. Remedy issues, most of which – see below – we haven't decided yet, have been and (if not agreed between the claimant and the respondent) are likely to be particularly tricky. Although it would be best if the parties could agree all of those issues, the remedy hearing on 4 February 2019, which was listed in consultation with the parties after closing submissions but before our deliberations, 'just in case', is likely to be effective.

4. Superficially, this does not look like an unfair dismissal. Whatever else, an unchecked prohibited item – one or more bottles containing more than 100 ml of liquid, which could have been explosives or something like that – ended up on an aircraft in someone's hand luggage. The claimant failed to follow a – to us – reasonably clear written policy in relation to that piece of hand luggage. Had she done so, the prohibited item would almost certainly have been dealt with at security. The pilot was contacted during the flight and could have elected to do an emergency landing. The respondent's reputation will have been damaged as a result. The Civil Aviation Authority ("CAA") had to be informed. What the claimant had done fitted reasonably comfortably within one of the descriptions of the kinds of things potentially constituting gross misconduct in a list within the respondent's disciplinary policy. She was subjected to a standard disciplinary procedure, involving investigatory, disciplinary, and appeal hearings. She had trade union representation throughout. The respondent dismissed her and had dismissed at least one other person for doing something similar in the recent past.

5. There was, however, a fundamental failure on the respondent's part to engage with the claimant's defence to the main charges against her: a defence to the effect that her colleagues had been doing exactly the same as her. The evidence to support that defence was very strong; yet, on the – inadequate – material presented by the respondent to us on this point, the respondent hardly, if at all, looked into it. We aren't entirely sure why this was the case, but our strong suspicion is that, perhaps unconsciously, the respondent did not want to find out an uncomfortable truth: that the claimant and at least 20-odd colleagues had for years not been following proper procedures and that this had never been picked up, despite the respondent's much vaunted auditing processes.

Complaints and issues

6. In relation to unfair dismissal, there are in theory two main issues we have had to decide.

   - What was the principal reason for dismissal and was it a reason relating to

the claimant's conduct?

- Was the dismissal fair or unfair in all the circumstances, in accordance with equity and the substantial merits of the case, pursuant to ERA section 98(4)?

7. The following subsidiary issues potentially arise:

   7.1 did the respondent genuinely believe the claimant guilty of the misconduct alleged?

   7.2 did the respondent have reasonable grounds on which to sustain that belief?

   7.3 had the respondent carried out as much investigation into the matter as was reasonable in the circumstances at the final stage at which it formed that belief?

   7.4 did the respondent, in deciding that dismissal was the appropriate sanction and in relation to all other matters, including the procedure followed, act as a reasonable employer might have done, i.e. within the so-called 'band of reasonable responses'?

8. We used the phrase "*in theory*" above because in practice neither the first main issue nor the first subsidiary issue are 'live'. We are confident that the respondent's decision-makers acted without racism, malice or bad faith and that the reason for dismissal in their minds was a genuine belief that the claimant was guilty of gross misconduct.

9. Part of the way through the hearing, it was agreed that if we took the view that the claimant was unfairly dismissed, we would decide the following issues at the same time as deciding liability for unfair dismissal: if the remedy is compensation–

   9.1 would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to ERA section 122(2); and if so to what extent?

   9.2 did the claimant, by blameworthy or culpable actions, cause or contribute to dismissal to any extent; and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award, pursuant to ERA section 123(6)?

10. We debated with the parties whether the so-called Polkey issue should also be decided at this stage. That issue is: if the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would still have been dismissed had a fair and reasonable procedure been followed, in accordance with Polkey v AE Dayton Services Ltd [1987] UKHL 8 and paragraph 54 of Software 2000 Ltd v Andrews [2007] ICR 825? The claimant, through her representative, was reluctant to agree to this and it will, if necessary, be an issue for the remedy hearing, albeit an issue we have already had all the parties' evidence on.

11. The issues in the discrimination claim are: was the claimant's dismissal less favourable treatment in accordance with EQA sections 13 and 23?; if so, was the claimant dismissed because of her national origins?

12. In terms of the law, this is to be found, first, in the wording of the relevant sections of the ERA and EQA, which are substantially reproduced in the wording of the issues, above.

13. In relation to unfair dismissal, we also had in mind the well-known 'Burchell test', originally expounded in British Home Stores Limited v Burchell [1978] IRLR 379. We note that the burden of proving 'general reasonableness' under ERA section 98(4) is not on the employer as it was when Burchell was decided; the burden of proving a potentially fair reason under subsection (1) is [on the employer], but the burden is neutral under subsection (4).

14. In relation to ERA section 98(4), we considered the whole of the well-known passage from the judgment of the EAT in Iceland Frozen Foods v Jones [1982] IRLR 439 at paragraph 24, which includes a reference to the "*band of reasonable responses*" test. That test applies in all circumstances, to both procedural and substantive questions.

15. Hand in hand with the fact that the band of reasonable responses test applies is the fact that we may not substitute our view of what should have been done for that of the reasonable employer. We have guarded ourselves against slipping "*into the substitution mindset*" (London Ambulance Service NHS Trust v Small [2009] IRLR 563 at paragraph 43) and reminded ourselves that only if the respondent acted as no reasonable employer could have done was the dismissal unfair. Nevertheless (see Newbound v Thames Water Utilities Ltd [2015] EWCA Civ 677): the band of reasonable responses test is not infinitely wide; it is important not to overlook ERA section 98(4)(b); Parliament did not intend the tribunal's consideration simply to be a matter of procedural box-ticking.

16. On the issue of fairness under ERA section 98(4), we also take into account the ACAS Code of Practice on disciplinary and grievance procedures, at the same time bearing in mind that compliance or non-compliance with the Code is not determinative of that issue.

17. In relation to ERA sections 122(2) and 123(6), we seek to apply the law as set out in paragraphs 8 to 12 of the decision of the EAT (HH Judge Eady QC) in Jinadu v Docklands Buses Ltd [2016] UKEAT 0166_16_3110.

18. In terms of case law relevant to the discrimination claim, our starting point is paragraph 17, part of the speech of Lord Nicholls, of the House of Lords's decision in Nagarajan v London Regional Transport [1999] ICR 877. We also note the contents of paragraphs 9, 10 and 25 of the judgment of Sedley LJ in Anya v University of Oxford [2007] ICR 1451.

19. So far as concerns the burden of proof, a summary of how [the predecessor to] EQA section 136 operates is provided by Elias J [as he then was] in Islington Borough Council v Ladele [2009] ICR 387 EAT at paragraph 40(3), which we adopt. One is looking, first, for "*facts from which the court could decide, in the absence of any other explanation*" that unlawful discrimination has taken place. Although the threshold to cross before the burden of proof is reversed is a relatively low one – "*facts from which the court* could *decide*" – unexplained or inadequately explained unreasonable conduct and/or a difference in treatment

and a difference in status[1] and/or incompetence are not, by themselves, such "*facts*"; unlawful discrimination is not to be inferred just from such things – see: Quereshi v London Borough of Newham [1991] IRLR 264; Glasgow City Council v Zafar [1998] ICR 120 HL; Igen v Wong [2005] IRLR 258; Madarassy v Nomura International Plc [2007] EWCA Civ 33; Chief Constable of Kent Police v Bowler [2017] UKEAT 0214_16_2203. Further, section 136 involves the tribunal looking for facts from which it could be decided not simply that discrimination is a possibility but that it has in fact occurred: see South Wales Police Authority v Johnson [2014] EWCA Civ 73 at paragraph 23.

20. Generally, in relation to the burden of proof, we have applied the law as set out in paragraphs 36 to 54 of the decision of the Court of Appeal in Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913.

21. As to whether there was less favourable treatment, we note that this is not the same as whether there was unfavourable or bad treatment. We have to be satisfied that the claimant was treated worse than someone else was or would have been treated in a comparable situation. That someone else is a real or imaginary person, not of South Asian / Indian national origin.

The facts

22. A number of our findings of fact are not set out in this section of these Reasons; they are set out in the sections headed "*Decision on the issues*". Similarly, in this section we have made a few observations that form part of our decision on some of the issues in the case.

23. We heard oral evidence from the following witnesses: the claimant; two of her former colleagues – Mrs Perrie and Mrs Bainbridge, both ASOs – who gave evidence in support of her; Mr Maltby, then a Security Duty Manager, who was the dismissing officer; Mr Quinney, then Head of Security, who dealt with the claimant's appeal against dismissal; and Ms Austin-Jones, the respondent's Head of Human Resources, who dealt with a grievance the claimant raised after she was dismissed.

24. We accept everyone who gave evidence before us was an honest witness and believed they were telling us the truth. But it does not necessarily follow that everything they told us was true. People routinely mistake what they see and hear; they misremember things afterwards; memories change over time; all of us have some false memories; and none of us can tell the difference between our accurate memories and our inaccurate, mistaken ones.

25. ASOs search passengers and their luggage. Anyone who has flown is familiar with them. When you 'go through security', they are the security people – those who x-ray hand-luggage and so on. There are a number of roles around the search area and ASOs do all of them, moving from role to role throughout a shift. This case concerns bag searches rather than searching passengers and two roles in particular: the x-ray operator and the bag searcher. At the time of the alleged misconduct for which the claimant was dismissed – between 5.55 am

[1] i.e. the claimant can point to someone in a similar situation who was treated more favourably and who is different in terms of the particular protected characteristic that is relevant, e.g. is a different age, race, sex, is not disabled etc.

and 6.08 am on 20 August 2017 – she was the bag searcher and the x-ray operator was someone who we shall refer to as JD.

26. The x-ray operator sits with their back to the bag searcher, some distance from them. Their job is to look at the x-ray images of the hand-luggage and other items on trays going through the x-ray machine, identifying potential threats and prohibited items. If they see something that needs further inspection, such as a laptop that hasn't been taken out of a bag and put in its own separate tray, or what looks like a bottle containing more than 100 ml of liquid, they reject the item and it is sent down a rejected bag lane. When they do so, the x-ray image of the item is sent for the bag searcher to look at on a screen, using software called SMART View, with the potential threat or prohibited item identified. What the bag searcher should then do depends on the item and the reason for rejection, but may involve ensuring the item is re-screened and conducting a hand-search.

27. Sometimes, due to technical problems: the x-ray machine will reject an item that its operator has cleared (apparently some x-ray machines were very prone to doing this); no image of a rejected item – rejected by the operator or by a faulty machine – is sent to the bag searcher's screen.

28. Unrejected items, unless randomly selected for hand-searching, are simply returned to their owners.

29. Airports are tightly regulated and search procedures are partly set down by the CAA in accordance with international standards. The search procedures with which we are concerned are set out in Standard Operating Procedure ("SOP") 40, which relates to bag searching. We have seen two versions of SOP 40: one introduced on 1 November 2016 and one introduced on 24 July 2017. We are told there are no material differences between them and have worked from the 2017 version, which was in place at the time of the claimant's alleged misconduct.

30. We note the following about SOP 40:

    30.1 it does not envisage there being any verbal communication between the x-ray operator and the bag searcher;

    30.2 it states that, "*Where SMART View has not recorded an image the bag searcher will take the tray back to the load and re-inject the tray for re-screening.*" In other words, whenever an item is rejected but no image appears on the bag searcher's viewer, they should ensure the item is re-screened;

    30.3 where a bag searcher is to hand-search a bag, a flow chart within the SOP suggests that the bag's owner should open it but that the bag searcher should "*take control*" and tell the owner that they must take over. It is stated that, "*Passengers will be denied unsupervised access to the contents of their tray / cabin baggage that has not yet been searched to the screener's* [i.e. bag searcher's] *satisfaction*". The use of the word "*unsupervised*" suggests that passengers may have supervised access to the item before it has been searched to the bag searcher's satisfaction. However, everyone agreed in evidence that there is a rule to the effect that passengers should not be allowed <u>any</u> access to an item being searched, e.g. should not have their hands inside their bag, until the search is

complete. There is, then, at least one practice ASOs are expected to follow that isn't explicitly written down in SOP 40.

31. In practice, it can be very difficult indeed to stop passengers, who may well be in a rush and/or cross about being – in their eyes – suspected of being a smuggler or a terrorist, from trying to 'help' with a bag search. Passengers are often difficult with ASOs, who do not have police powers. Other passengers may genuinely and innocently be trying to help, not realising that they aren't allowed to, and may resent being told to stop helping with sufficient firmness actually to get them to stop. A passenger may complain that an ASO has been rude towards them when all the ASO has done is try to implement the rules to the best of their ability, and an ASO may be taken to task by their manager as a result. This had happened to the claimant.

32. Possibly the most important factual dispute in this case is whether, in practice, staff followed SOP 40 where an item had been rejected but no image of it appeared on the bag searcher's viewer, in circumstances where the x-ray machine was one that had a tendency to reject items its operator had cleared. As already explained, SOP 40 states that in that situation the item should be fed back through the x-ray machine. What the claimant did in that situation – and what many colleagues of hers, including her witnesses Mrs Perrie and Mrs Bainbridge, claimed they did too – was to check with the x-ray operator whether they had rejected the item or whether the x-ray machine had rejected it. If they understood from the x-ray operator that the item had been rejected by the machine, they would simply allow the passenger to collect the item as if it had not been rejected. The respondent's case is that only the claimant was not following SOP 40 in this respect and that her colleagues were lying when they told the respondent something to the effect that they weren't following it either.

33. ASOs get a short period of induction and training at the start of their employment. When the claimant started, it was a week. During that week, she would have been trained on the equivalent of SOP 40 that applied at the time, amongst many other things. We don't know from the evidence we have how different it was from the versions of SOP 40 that applied in 2016 and 2017.

34. At the relevant time (and, as far as we know, this hasn't changed), when a new SOP, or a new version of an existing SOP, was introduced, ASOs were expected to take time out of their working day to read a copy of it that was made available to them. There was just one copy for all of them to read, one after another. No one had a copy they could take away and read at their leisure. They then signed a "*read & sign sheet*", to "*certify that* [they] *have read*" the SOP in question. The claimant, Mrs Perrie and Mrs Bainbridge all signed the read & sign sheet for the version of SOP 40 that applied from 1 November 2016 to 23 July 2017, at least.

35. In relation to how staff are introduced to new SOPs, the respondent's witnesses were only really in a position to tell us how things were supposed to be in theory. Their evidence gave us no reason to doubt what Mrs Perrie and Mrs Bainbridge had to say about what happened in practice. The evidence of Mrs Perrie and Mrs Bainbridge was that when they were asked to read a new SOP and then sign to say they had done so, there were often time pressures, with supervisors saying things like, "Nothing's changed; just sign it and get back to work". The priority seems to have been to get signatures on the read & sign sheet rather

than to ensure that ASOs had actually understood the new SOP. We have not been made aware of any specific training on, or testing of comprehension of, any relevant SOP; and there is no evidence that the claimant or any of her colleagues received any specific training on the relevant part of SOP 40, as it was in 2016/2017.

36. SOPs were not left lying around for staff to re-read. Although we were told that in theory staff could ask to look at a particular SOP if they were confused about any aspect of it, there was no evidence of staff actually doing so; and, of course, staff who don't know they are getting something wrong and aren't told they are getting something wrong would have no reason to ask to see an SOP. There is no evidence that there were, at any relevant time, information posters or checklists or similar reminding staff of the fundamentals of SOP 40, nor of anything else that would have told them the right way to do anything within SOP 40 that they had got into the habit of doing differently.

37. Essentially, the respondent expected its staff to have memorised and understood completely each new SOP on one reading. To make matters worse, when the new SOP was a new version of an existing one rather than being brand new, the changes from the previous version were not highlighted. ASOs were seemingly supposed to remember, word for word, what the previous version had said – a previous version they might well not have read for years – and to be able to spot the differences by comparing the remembered version with the new version on a single reading. We note that even with the 2016 and 2017 versions of SOP 40 in the trial bundle in front of us, what had changed was not at all obvious and, had we needed to do so, it would have taken us a considerable amount of time and effort to identify the changes.

38. There is, in fact, only a small amount of significant factual dispute about what occurred on 20 August 2017. The claimant was working a 3.30 am to 8 am shift. Shortly before 6 am, a particular bag containing an over-sized liquid was rejected. No image appeared on the bag-searcher's – the claimant's – viewer. The bag was returned to the passenger as if it had been cleared, without being re-screened or subjected to a hand-search. The passenger boarded their plane with the over-sized liquid still in their hand luggage and the plane took off.

39. Some time after 6 am – exactly how long afterwards no one can say, but too late for the passenger to be stopped from boarding the plane or for the plane to be stopped from taking off – JD reported a concern to management to the effect that the claimant might not have searched a passenger's bag properly, potentially resulting in one or more prohibited items getting through to what is known as the 'Critical Part' of the airport, i.e. the part beyond security.

40. The Duty Manager checked the CCTV and x-ray records (copies of all x-ray images are kept electronically for a time; images are available on the electronic record even if the image in question did not appear on the bag-searcher's viewer) and flight information and had ascertained that the claimant had permitted a bag with an oversized liquid in it to be returned to a passenger and that the passenger was in the air.

41. The Duty Manager reported this to the then Head of Security, Mr Quinney. It was decided to contact the pilot of the plane, so that they could choose what to do. We accept that this would, at the very least, have been highly embarrassing for

the respondent; and in all probability damaging to its reputation amongst its airline customers. We think the pilot continued to their destination.

42. Mr Quinney then viewed the CCTV footage and helped prepare an internal mini-report on what had happened, known as a 'hot debrief', as well as speaking to senior management about it. The respondent has not disclosed the hot debrief or any other documents that were prepared about this incident for the benefit of management or regulators. Potentially, they would be very relevant to the claimant's case because they might suggest it had already been concluded, before any significant investigation, that the claimant was guilty of misconduct. If such a view were expressed, or were implicit, in any document Mr Quinney had had anything to do with, this would be particularly significant because Mr Quinney was the person who decided the claimant's appeal against dismissal.

43. The following day, the claimant was suspended as soon as she arrived for work. This is the respondent's standard process in these kinds of cases and we found nothing concerning in it. She was given a letter stating that the reason for her suspension was "*Negligence in bag search duty, and not applying standard operating procedures to bag search process, at 05:58 on Sunday 20th August 2017*". Although she was apparently shown some evidence when she was suspended (she told us so in re-examination), she didn't really know what it was all about, nor what in particular she was accused of having done wrong.

44. An investigation was conducted, which a Ms Bull was in charge of. Amongst other things that were done during the investigation, JD was interviewed on 30 August 2017 and the claimant was interviewed on 7 September 2017. Notes were taken of both interviews / meetings and we refer to them. JD was not interviewed by Ms Bull and possibly she was interviewed as part of a separate investigation into herself, but whether or not this was so, her evidence was relevant to, and taken into account in relation to, the claimant's case. The claimant did not see the notes of the interview with JD until they were disclosed in these tribunal proceedings.

45. According to the notes, which we have no good reason not to accept, the things JD said during her interview included this: "*Machine* [x-ray machine] *was a glitch one where* [when] *you pull one* [tray] *off* [it pulls] *a couple of additional* [trays off] *after as well randomly … shouted to* [a colleague] *who was loading* [i.e. feeding trays with items in them into the x-ray machine], *to let* [the claimant] *know that I had only kicked one of those bags off the search … there was three bags and one was definitely full of fluids … I doubted myself and wasn't paying full attention to her* [the claimant] *as was on x-ray … thought I must have missed her doing* [a check of the bag with over-sized liquid in it] *… It wasn't until I went on my break that I thought she definitely didn't have time to search it and I couldn't not say anything …*".

46. The claimant was accompanied to her investigatory meeting by an experienced trade union representative. She was asked about bag search procedures and was shown eight x-ray images. She said something along these lines, "*When the machine kicks off bags and not the operator, give the bag back to the passenger. That's what everyone does. … If any tray with no image I always ask the x-ray operator if they have rejected it or not. If they haven't we always give them straight back.*" She admitted to not preventing passengers getting involved in a manual bag search. She said something like this: "*Sometimes it's hard,*

especially with some passengers stating that we are being rude. We get no support from anyone. … I know I should be more firm with passengers when I am searching."

47. The claimant's suggestion that she did what "*everyone does*" was not investigated to any extent by Ms Bull, so far as we can tell on the evidence. At some stage, the respondent conducted some kind of audit, which included some consideration of the claimant's colleagues' practice. The details are very vague – we are not sure when it took place, other than it seems to have been before the claimant was dismissed; we don't know, except in the most general sense, what it entailed. The respondent did not tell the claimant about it during the disciplinary process. It is not mentioned in the response form. The only thing in the respondent's witnesses' statements that may be a reference to it is Mr Quinney's suggestion that, "*at the time of the incident a security audit was being undertaken*" and a similar suggestion in paragraph 28 of Mr Maltby's statement.

48. The respondent was unable to take us to any documentation relating to the audit; it appears that none has been disclosed; the respondent's failure to disclose relevant documents in this and other respects was substantially unexplained. This non-disclosure is surprising and in breach of the tribunal's case management orders, given the apparent reliance of the respondent at the time on the alleged fact that the results of this audit undermined the claimant's case. What little we know about the audit comes from the oral evidence of the respondent's witnesses; they did not explain in any detail at all what was done. Mr Maltby and Mr Quinney concluded, largely on the basis of the audit, that the claimant was the only ASO not following the proper procedure when no image appeared on the bag searcher's screen of an item that might have been rejected by the x-ray machine rather than by the operator. Given the paucity of the respondent's evidence about the audit, and the failure to disclose documentation relating to it, we are not satisfied that it was a reasonable basis for the respondent to reach that conclusion.

49. By the end of the investigation, there were 11 allegations against the claimant – 11 items or sets of items in relation to which the claimant had allegedly not followed the proper procedure, each of which has an x-ray image to match. The one that ended up on a plane is number 2.

50. The claimant alleges it was unfair, i.e. was outside the band of reasonable responses, for her not to be given more information before the investigatory meeting. We disagree. We are not particularly critical of anything that happened at or in relation to the investigatory meeting. An investigation has to start somewhere; that claimant had a trade union representative who could (and presumably would) have intervened to stop things if he felt the claimant was confused and didn't understand; the important thing is that the case against the employee is clear before any disciplinary hearing.

51. On 8 September 2017, the claimant was invited to a disciplinary hearing with Mr Maltby. The invitation letter referred to the disciplinary charge using the same words as had been used in the suspension letter, referred to above. The letter warned that the charge was gross misconduct and that dismissal was a possible outcome. Before the disciplinary hearing took place, the claimant was sent a table identifying and summarising the 11 allegations, the notes of the investigation hearing and the disciplinary policy. A submission has been made

on her behalf that she did not understand what she was accused of before the disciplinary hearing. We reject it: the table summarising the allegations is reasonably clear. However, she was never provided with the following important information: JD's investigatory meeting notes, or, at least, a fair summary of what JD had said; a copy of SOP 40, or at least the text of the parts of it she was alleged to have breached; any information at all about the audit that had been undertaken – she wasn't even told it had taken place.

52. The disciplinary hearing was on 13 September 2017. The claimant had the same trade union representative as she had had at the investigation hearing. We refer to the hearing notes. The claimant was questioned, and dealt with those questions, in much the same way she had previously. She was shown CCTV and taken through x-ray images. She repeated her allegation that, "*When the x-ray rejects it, everyone gives it back*", and that she always checked with the x-ray operator whether they or the machine had rejected the item. She also spoke again about the difficulties of dealing with passengers who persist in involving themselves with a manual bag search, stating, when discussing a particular allegation: "*He* [the passenger] *was getting annoyed with me. After a while I let him do it. If I would have been more forceful I would have got told off … They* [management] *don't back you up in those situations … they* [passengers] *often take the item out before you get a chance to do it.*"

53. At the end of the hearing, the claimant was dismissed. The reasons Mr Maltby gave at the time focussed on allegation 2 and an allegation, which has been referred to as number 3, relating to a bag containing an item identified as a liquid threat that was simply handed back to the passenger by the claimant. He said, "*It appeared on both occasions that you made no contact with the x-ray operator to confirm the status of each bag*". The dismissal was confirmed in a letter dated 15 September 2017, which speaks for itself and the core of which is very similar to what Mr Maltby had said when giving his reasons at the disciplinary hearing.

54. On or around 15 September 2017, on their own initiative, Mrs Bainbridge, Mrs Perrie and nineteen colleagues provided the claimant with a letter, drafted by Mrs Perrie, addressed "*To whom it may concern*", stating, "*there is no SOP set out for dealing with trays rejected by a faulty machine. … The normal practice that we all have adopted in this situation is to ask the Xray operator if the tray that has no image projected onto the screen was rejected by them, it is only when any doubt comes into the equa*[t]*ion that the tray is re-screened*". In other words, twenty-one of the claimant's colleagues, some of whom had longer service than the claimant: were, like the claimant, unaware that SOP 40 required the re-screening of all rejected trays when no image of the item appeared on the bag-searcher's screen; were stating that they followed the same practice the claimant had said she did.

55. The claimant appealed against her dismissal by a letter of 20 September 2017. Her two main points were, "*After viewing the CCTV footage … it cannot be clearly identified that I communicated with the x-ray operator …* [the] *assumption has incorrectly been made that there appeared to be no communication*" and that there was, "*an unwritten rule … that if a tray is rejected by the x-ray machine but not by the operator, as there was not any threat items present, it would be acceptable to hand it straight back to the passenger. … I feel that I have been singled out for doing something which has been done by the majority.*"

56. The claimant provided the letter from her colleagues to the respondent. It was given to Mr Quinney at the appeal meeting, if not before. The respondent did not investigate it or take any other action in relation to it. Not one of the twenty-one signatories was even spoken to about it, so far as we can tell. It was, for all intents and purposes, ignored. Mr Quinney's evidence in his witness statement was, "*if anyone was working under an 'unwritten rule' … they would be disciplined in the same way she was. No one else was identified as doing the same thing though*". Even at the end of his evidence before us, we could not understand how he felt able to tell us this, given that there were, to his knowledge, twenty-one people who had freely identified themselves as doing the same thing.

57. As already mentioned, the respondent alleges that Mrs Bainbridge and Mrs Perrie are, and that they and the nineteen others were, lying about the existence of what the claimant called the "*unwritten rule*". We found this part of the respondent's case almost preposterous; the evidence overwhelmingly pointed and points the opposite way.

    57.1 There is nothing inherently implausible about one or two colleagues being prepared to lie to their employer to get the claimant out of trouble, but for twenty-one of them to be prepared to do so is another matter entirely.

    57.2 The idea that twenty-one people would lie to help a colleague appears particularly fanciful to us when we bear in mind that the 'lie' was to the effect that those twenty-one people routinely did something that the respondent deemed gross misconduct and that the respondent has just sacked the claimant for doing. Writing and signing the letter could directly have led to them being disciplined and dismissed, just like the claimant, and they must have known this.

    57.3 In the case of Mrs Bainbridge and Mrs Perrie, even if they were prepared to lie to their employer and risk their jobs by doing so, would nothing more than their work friendship with the claimant really cause them voluntarily to perjure themselves in the employment tribunal?

    57.4 On the evidence – the detail of which we shall come onto shortly – the claimant followed her unwritten rule at least four times between 5.55 am and 6.08 am on 20 August 2017. It would be rather strange for her suddenly and spontaneously to have done this, after working in her job for 8 years or so, but never to have done it before. Yet that is the respondent's case – its case being that people (including the claimant) cannot have been following this practice or it would have been picked up at audit well before 20 August 2017.

    57.5 What JD said at interview very strongly suggests that she thought the unwritten rule was the correct practice – she, "*shouted to* [a colleague] *who was loading to let* [the claimant] *know that I had only kicked one of those bags off the search*". If she was expecting the claimant to follow SOP 40, why would she make a point of letting the claimant know which bags she had 'kicked off', i.e. rejected, and which had been rejected by the x-ray machine? This comment of JD's is yet another thing that was unreasonably not followed up by the respondent.

58. In relation to the respondent's suggestion that the claimant's unwritten rule can't have been general practice or it would have been picked up at audit:

    58.1 first, as above, the respondent's evidence as to what the audit or audits consisted of is insufficient for us to be able to judge how likely or unlikely it is that any such general practice would have been picked up;

    58.2 secondly, also as above, no audit picked up the claimant doing this before, and she must have been doing it before;

    58.3 thirdly, if the claimant herself had been following this practice for some time, as we think she had, others would have noticed and had they thought she was doing anything wrong, they would surely have reported her and taken her to task before 20 August 2017.

59. We conclude that the respondent's faith in its auditing process was seriously, and unreasonably, misplaced.

60. Mr Quinney also stated in his witness statement that he had "*reviewed all the CCTV in full and no contact was made with the x-ray operator*". Another of the respondent's evidential failures in these proceedings – failures to put before the tribunal material the respondent itself relies on to some extent – is the failure to preserve and show us any part of this CCTV, as video or as 'stills' or in some other way. The respondent cannot expect us simply to take Mr Quinney's word for what is or isn't shown in the CCTV, or even for what Mr Quinney (rightly or wrongly) could reasonably have concluded it showed, when there is a dispute about this and when the CCTV itself ought to be available to us, given that the respondent relied on it.

61. We shall now make more detailed findings about what happened – what the claimant did – on 20 August 2017, going through each allegation in turn. We shall at the same time think about what out of those events was and was not important to Mr Maltby when he decided the claimant should be dismissed. In relation to this, we think the best insight into what was of concern to the respondent at the time and what was in Mr Maltby's mind at the time is provided by what he said during the disciplinary hearing and what is set out in the dismissal letter.

62. Allegation 1 concerned a rejected bag in relation to which no image was displayed and which, instead of being re-screened, was searched by hand. In his witness statement, Mr Maltby suggested that this was one of the occasions where passengers were allowed access into their own bags during a bag search. We are not satisfied that that was the case and we note that it was not an allegation ever put to the claimant or that was made in the table summarising the allegations.

63. Allegation 2, as explained above, concerned a bag containing a prohibited item – "item 2" – that ended up on a plane. During the course of our deliberations, we realised something potentially very important in relation to this allegation that had apparently been overlooked by everyone during and prior to the hearing. Mr Maltby's uncontradicted evidence in his statement was that this bag was rejected not by JD, the x-ray operator, but by the machine ("*it appeared the bag was rejected by the equipment not the operator*"). That is consistent with what was said during the disciplinary hearing, "*… the second* [allegation / image]*, the*

equipment pulled it off", and with the following from the dismissal letter: "*you had handed one bag back to a passenger after the machine had rejected the tray*". It must follow from this that JD missed it and/or failed to follow the correct procedure for rejecting it. It may well be that the person who investigated JD did not realise this and just assumed that the item JD had rejected that the claimant allowed to go back to the passenger – the thing to which allegation 3 relates – was the one that had ended up on the aeroplane, but this was not so.

64. This brings us to our findings about what, if anything, passed between the claimant and JD. We don't think the claimant can actually remember whether she did or did not communicate with JD in relation to item 2. There is no reason why she should be able to remember. From the totality of her evidence – her confusing and at times contradictory oral evidence and what she said during the disciplinary hearing – we think what she was really telling us was that: she believes she would have spoken to JD because that would fit with her general practice; at times, she watched the machine herself to see whether items were being rejected by the operator or by the machine and only asked the operator whether she had rejected something when she was in doubt – in other words, at times she didn't even follow the unwritten rule but did something riskier. The scope for something to go wrong was considerable.

65. We are not satisfied either way, on the evidence we have, as to whether there was communication between the claimant and JD in relation to item 2. The respondent could have satisfied us there wasn't by producing the CCTV for us, but has failed to do so. But we note that this is something of a red herring in relation to item 2. This is because, had there been communication – if the claimant had asked JD whether she had rejected this item – JD would have told her, truthfully, that she hadn't rejected it. It was pure luck that the machine rejected a bag that had a prohibited item in it. If the machine had been working properly, the prohibited item would still have ended up on the plane because it had not been spotted by JD. It seems to us – and would in our view have seemed to any reasonable employer in the respondent's position – that JD was more blame for this item ending up on the aircraft than the claimant was.

66. Allegation / item 3: this concerned a prohibited liquid that was spotted by JD in a bag the claimant simply allowed the passenger to take away. It is inherently highly unlikely that the claimant would have been told by JD that she had cleared this bag when she had, in fact, rejected it. (At least to some extent, the claimant seems to be suggesting this is what happened.) Why would JD do such a thing? If JD did such a thing to get the claimant into trouble, why would JD wait before reporting the claimant, potentially getting herself into trouble and potentially allowing an item that could be a bomb to get onto a plane? We are satisfied that in relation to this item, even ignoring any failure to comply with SOP 40, the claimant made a mistake with potentially very serious consequences. The mistake she made over and above not following SOP 40 was deciding for herself that this item had been rejected by the machine when it had in fact been rejected by JD. It is easy to see how such an error could occur – which is presumably one of the reasons why SOP 40 says what it says about re-screening rejected bags where no image appears on the bag-searcher's viewer.

67. Allegation / item 4: the evidence in relation to this is very unclear. We note the criticisms of the claimant made in relation to it in Mr Maltby's witness statement,

but during the disciplinary hearing, he said, "*the fourth, this one was fine the image was ok*". Whatever he may be saying about it now, it appears to have been a non-issue at the time.

68. Allegation / item 5: this was a largish infant's drinks bottle containing what could possibly have been more than 100 ml of liquid. Again, the evidence is rather confusing, but what we think happened was that a bottle probably containing 100ml or less of liquid was not in a liquids bag because it was too big to fit in one. During the disciplinary process, the claimant conceded that she should have tested the liquid in a machine. She said something to the effect that she didn't do so because the machine was not readily available to her and she used her discretion, knowing it was an infant's drink and being able to estimate the volume of liquid, to allow it through.

69. Allegation / item 6: the thing that was discussed in relation to this at the disciplinary hearing was that a passenger was allowed inside their own bag during a manual bag search. We assume from this (and because the only thing mentioned in the dismissal letter potentially related to this item is "*passengers gained access on bags before they had been cleared*") that the claimant's other alleged failures to comply with proper process in relation to this item were of no great concern to Mr Maltby at the time.

70. Allegation / item 7: as for allegation 6.

71. In relation to allegation / item 8, the evidence is contradictory and therefore inconclusive. In his witness statement, Mr Maltby refers to an LEI (large electrical item), but in the documentary evidence and during the disciplinary hearing, what is referred to is a liquid. The only potential non-compliance by the claimant that is made out here and that we are satisfied was relevant to Mr Maltby's decision-making is, once again, that the claimant permitted a passenger access to their own bag during a manual bag search.

72. Allegation / item 9: in relation to this item, no image appeared on the claimant's viewer and she didn't feed the tray back into the machine in accordance with SOP 40. Again, the evidence is inconsistent. In his witness statement, Mr Maltby criticised the way in which the claimant searched this bag. However, during the disciplinary hearing, he said that it, "*didn't get searched*". We are not satisfied that at the time, anything was deemed important in relation to this item other than the fact that the claimant did not reinsert the tray.

73. Allegation / item 10: this was another instance of the claimant failing to reinsert the tray when there was no image on the viewer and doing a manual bag search instead. She also didn't do Explosive Trace Detection as she should have done.

74. Allegation / item 11: Mr Maltby alleges that, "*this tray and image were not discussed within the disciplinary hearing in error and no disciplinary action was therefore taken in relation to this*". However, it does appear to have been taken into account by Mr Quinney on appeal.

75. Bearing all that in mind, we ask ourselves what the basis of Mr Maltby's decision was – what the claimant was dismissed for. He confirmed in his oral evidence that he was principally concerned with allegations / items 2 and 3. This fits with what is in the dismissal letter, where only those two allegations / items are specifically referred to. In relation to other allegations, all the dismissal letter

says is: "*processes were not followed on following bag searches where passengers gained access on bags before they had been cleared and you appeared to have made no attempt to mitigate this.*" We are not satisfied that anything else was in Mr Maltby's mind when he decided to dismiss. In other words, the only things in his mind were allegations 2 and 3 and some instances where passengers were not prevented by the claimant from getting involved in a manual bag search.

76. What were the allegations concerning passengers accessing their own bags during a manual bag search that Mr Maltby took into account? In relation to this, he referred in his witness statement to "*four occasions where passengers were allowed to search their own bags*". He was cross-examined about this and suggested the four occasions were in relation to items 1, 7, 8, and 9. However, for items 1 and 9, that is not consistent with what was discussed during the disciplinary hearing and we refer to the findings we have already made about those items and their corresponding allegations.

77. Taking into account, in particular, what was said at the disciplinary together and the contents of the dismissal letter, the only items we are satisfied were significant to Mr Maltby at the time he took his decision are items 2, 3, 7 and 8.

78. The appeal meeting / hearing with Mr Quinney took place on 28 September 2017. The meeting consisted of him going through the claimant's points with her and her trade union representative. Mr Quinney gave his decision rejecting the appeal at the end of the meeting, stating, "*… there is no new evidence that has been brought today. Based on this, I am going to uphold the original decision.*" We refer to the meeting minutes and to his letter of 2 October 2017 confirming and explaining the decision.

79. On 8 October 2017, the claimant raised a grievance, part of which was an allegation that her dismissal was discriminatory. This was dealt with on paper by Ms Austin-Jones. She looked at information about all the security staff who had been involved in a disciplinary process over the previous 18 months, focussing on the nine people whose cases involved security breaches. The gist of her evidence, which the claimant was at this hearing in no position to challenge and which we accept, was that there was no evidence of South Asian staff being treated more harshly than others. The claimant named three individuals in her grievance. One was JD, who is white. The reason she was not disciplined is that the respondent – wrongly, it seems to us, but genuinely – formed the view that JD's only potential misconduct was not raising her concerns about the claimant's actions sooner. Her circumstances were quite different to the claimant's. The same goes for the second of the claimant's specific comparators – a black British man whose disciplinary case had nothing to do with security procedures. The third person mentioned by the claimant was not even the respondent's employee.

80. None of the people the claimant mentioned to Ms Austin-Jones was a valid comparator under EQA section 23. Ms Austin-Jones rejected the claimant's grievance by a letter of 25 October 2017.

81. The claimant was not able to come up with a valid named comparator before us either.

Decision on the issues - discrimination

82. We start with the race discrimination complaint, because that is straightforward.

83. In short, there was nothing in the evidence that suggested to us that: the claimant was, when she was dismissed, treated differently from the way in which someone of a different race, in exactly the same situation as her, would have been treated; any less favourable treatment had anything to do with her race. No facts were established from which we could have decided, in the absence of any other explanation, that the respondent had directly discriminated against her. And in any event, we were entirely satisfied that: the reason Mr Maltby and Mr Quinney decided the claimant should be dismissed was a genuine belief that she was guilty of gross misconduct; they were uninfluenced by any conscious or unconscious racial bias – there was not the slightest hint in the evidence of racial prejudice towards the claimant.

84. We therefore dismiss the discrimination claim.

Decision on the issues – unfair dismissal

85. In relation to whether the claimant was unfairly dismissed, it is not necessary or desirable for us to go mechanistically through the Burchell test. There are many reasons why this dismissal was unfair in accordance with ERA section 98(4) and we shall focus on the most significant ones. In this section of our reasons, what we mean by a "*source of unfairness*" is something the respondent did or failed to do that was outside the band of reasonable responses.

86. The first source of unfairness is, as above, that the respondent relied to a significant extent on information and evidence that was not provided to the claimant for her to comment on, in particular: the relevant parts of SOP 40; JD's evidence (which Mr Quinney, at least, read and took into account); any details of the audit apparently carried out around 20 August 2017.

87. There does seem to have been a lack of appreciation on the part of claimant and her trade union representative that there was anything wrong with following the unwritten rule. A major reason for this was, we think, the respondent's failure to provide the text of the relevant parts of SOP 40 to the claimant during the disciplinary and appeal process.

88. We note, in passing as it were, that if the respondent had provided this, it would (or should) have realised that SOP 40 did not say what it thought it did in relation to manual bag searches. As explained above, the SOP suggested passengers could have supervised access to their bags, or, at the very least, was ambiguous in this respect. There were, then, practices and procedures ASOs were expected to follow which were not written down and an ASO could get themselves into trouble if they simply did what was written down. This was significant in the context of a case where

89. The second source of unfairness, also already mentioned, is the failure, as part of the disciplinary process, to investigate to any significant extent the claimant's and her colleagues' allegations about an 'unwritten rule'.

90. We think Mr Maltby ought to have looked into it. However, if that were the only criticism we had of the respondent, we might well have decided, on the basis

that it was only mentioned in passing during the investigatory and disciplinary hearings, and bearing in mind that he did not have the benefit of hindsight, that he just about acted within the band of reasonable responses when he decided not to investigate it. The same cannot be said of Mr Quinney.

91. Having received the signed letter from 21 individuals, it beggars belief that the respondent did not take steps properly to investigate the claimant's allegation that there was this unwritten rule. This is particularly so when we bear in mind that the respondent by this stage had the evidence from the interview with JD which strongly supported the allegation that it was general practice for follow the unwritten rule.

92. Instead, the respondent, corporately, seems to have shut its eyes to the possibility that their various audits, internal and external, might not have picked up the unwritten rule being followed. This approach to the information provided by the claimant's 21 colleagues – and by the claimant and, indirectly, by JD – is inconsistent with the respondent's professed concern for security issues. As a result, the fact that there was, on the evidence before us, a long-standing failure to comply with procedures which we are told put in place CAA regulations has never been properly investigated. The respondent didn't just fail to take reasonably adequate account of the letter, it ignored it completely.

93. Had this issue been investigated properly – which would, as a reasonable minimum, have involved speaking to those who were on the same shift as the claimant on the morning of 20 August 2017, including JD, and (if they were not all on the same shift) at least a handful of the signatories of the letter – we think any reasonable employer would have discovered the unwritten rule was being followed by a large number of ASOs and had been for years. This would have put a completely different complexion on the level of the claimant's culpability.

94. We should say we do not rule out the possibility that the claimant could still have been fairly dismissed had everything been done properly. We express no view on that either way. If there is a remedy hearing, it may be something the parties wish to address us on.

95. That feeds directly into the third reason why this dismissal was unfair: inconsistency of treatment.

    95.1 There was inconsistency with the 21 people who admitted in writing to following a practice the respondent deemed it gross misconduct to be following. None of the three of us has ever previously encountered a situation where such a large group of people have been prepared to sign what amounts to a confession of gross misconduct. It is unprecedented in our experience.

    95.2 There was inconsistency with the treatment of JD. The evidence we have does not explain why it was that JD was never taken to task for not spotting the liquid to which allegation 2 relates. Bearing in mind that the claimant's dismissal letter states in terms that that bag was rejected by the

machine – and therefore not by JD – this really calls for an explanation.[2] None has been provided and this inconsistent treatment is therefore a source of significant unfairness.

96. There are other sources of unfairness connected with the appeal too.

96.1 Mr Quinney should not have been dealing with the appeal at all. It is not his fault – he was presumably following HR guidance – but he had viewed CCTV of the main incident on the day and had made a report about it. He told us in his oral evidence that at the time he had formed the view that there had been a breach of procedure and that the claimant was involved. The respondent could – and should, it seems to us – have disclosed (with redactions if necessary) the internal written communications, in particular Mr Quinney's part of those written communications, about the incident. If they were completely innocuous in terms of casting blame on the claimant, we might have reached a different conclusion. However, based on the evidence we have, and taking into account the respondent's failure to disclose relevant documents in this respect, we think Mr Quinney had already decided, on 20 August 2017, that the claimant's failure to follow SOP 40 by having the relevant bag re-screened was the cause of the prohibited item ending up on a plane; and therefore, by implication, that the claimant was guilty of misconduct. Even if that was just a provisional view, he was not an appropriate person to deal with the appeal because of the danger of so-called 'confirmation bias' – not, at least, when other people could have dealt with it, something he admitted in his own oral evidence. In the particular circumstances, it was outside the band of reasonable responses for him to have done so.

96.2 Having examined the appeal notes with care, we also think that Mr Quinney probably had made up his mind as to the claimant's guilt before he started the hearing. There was no malice involved in this. It was simply that he knew she had, by her own admission, failed to follow SOP 40 and for him that was the beginning and the end of it.

96.3 Mr Quinney also, by his own admission, took into account all eleven allegations in making his decision when the claimant had, as we have already found, been dismissed because of only four of them.

97. The final source of unfairness we think is significant is that, from the evidence put before us, no clear instruction or direction, in training or otherwise, was ever given to the claimant and her colleagues to the effect that a failure to follow the relevant parts of SOP 40 was gross misconduct in and of itself. This is a relatively minor point, but is nevertheless a separate and independent source of unfairness in its own right.

Decision on the issues – contribution & fault

98. The first remedy issue is: should there be a reduction for contribution to any compensatory award, pursuant to ERA section 123(6).

[2] It does not call for an explanation pursuant to EQA section 136 because there is nothing in the evidence to suggest that the difference in treatment had anything to do with the claimant's or JD's race.

99. We note that Mr Quinney, on appeal, was not re-taking Mr Maltby's decision from scratch but was only reviewing that decision, with particular reference to the claimant's grounds of appeal; the respondent's reasons for dismissal were Mr Maltby's. We have already found that the only allegations that contributed significantly to Mr Maltby's decision were: allegations 2, 3, 7, and 8; in relation to allegations 7 and 8, the failure to prevent passengers from having any access to their bags during a manual bag search.

100. In relation to allegation 2, the respondent has failed to satisfy us that there was no communication between the claimant and JD. We are accordingly not satisfied that, in relation to this item, the claimant did any more than to follow the correct procedure as she (and her colleagues) understood it to be, i.e. the unwritten rule. We don't think there was any relevant blameworthy conduct.

101. In relation to allegation 3, we have already decided that the claimant followed neither SOP 40 nor her unwritten rule, and made a mistake with potentially very serious consequences, in that one or more prohibited items may well have ended up on a plane as a result. We would certainly characterise this as blameworthy; and it was one of the two allegations that were most important to Mr Maltby's decision to dismiss.

102. In relation to allegations 7 and 8, although everyone agreed that in practice, the policy was that customers should not be allowed into their own bags at all, we again note that SOP 40 refers to "*unsupervised*" access and that, at the very least, the written policy is ambiguous. We also note from the evidence of the claimant and her two witnesses – which accords with our own experience and doesn't seem to be substantially disputed by the respondent – that passengers going into their own bags, either out of a misguided attempt to help or from impatience and/or irritation – is common.

103. In practice, it is impossible to stop passengers accessing their own bags, at least initially. In other words, there are times when it is impracticable to prevent technical non-compliance with the unwritten part of this policy. It is evidently a difficult situation to deal with; it is hard to strike a balance between the security and customer service aspects of the role of an ASO in this respect. It is possible that in relation to bags 7 and 8, the claimant did something that we would view as not merely technical non-compliance but something more serious. However, we don't have the CCTV evidence to judge this for ourselves. In those circumstances, we are not satisfied that the claimant did anything blameworthy.

104. The only allegation that engages ERA section 123(6) is, then, allegation 3. Taking into account, in particular, the seriousness of what the claimant did, but also the fact that it was another allegation – allegation 2 – that was the main reason for dismissal and that this was far from a merely technically unfair dismissal, we think a reduction to any compensatory award of 35 percent would be appropriate.

105. Turning to the basic award – ERA section 122(2) – we propose to make the same reduction of 35 percent. In theory, it could be a higher reduction because we could take the other seven allegations into account. However, when we examine the other seven allegations, we are, once again, not satisfied that the claimant did anything blameworthy – anything worse than technical non-compliance with SOP 40 and following her unwritten rule.

CASE MANAGEMENT ORDERS

Employment Judge Camp, on his own initiative, makes the following orders:

i. If either party wishes to rely on any evidence at the remedy hearing that was not before the tribunal at the hearing in November 2018, they must, by **14 January 2019**:

(a) provide the other party with copies of the document(s) / statement(s) in question;

(b) unless the other party agrees that the tribunal may take that evidence into account at the remedy hearing, make a written application to the tribunal for permission to rely on it, the application to include their explanation as to why that evidence was not before the tribunal at the hearing in November 2018 (which was listed as a final hearing dealing with all issues in the case, including remedy) and their submissions as to why it would be in accordance with the overriding objective for the application to be granted.

ii. The other party must provide to the tribunal, in writing, any objections they have to any such application by **24 January 2019**.

Employment Judge Camp

16 December 2018

Sent to the parties on:

For the Tribunal: