EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mr M Williams	**AND**	Rail Gourmet UK Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT London Central **ON** 24 to 27 July 2018

EMPLOYMENT JUDGE Keith **MEMBERS** Ms E Champion
Mr D Kendall

Representation
For the Claimant: The Claimant represented himself.
For the Respondent: Mr M Ali, Counsel.

WRITTEN REASONS

1. The Tribunal previously gave an oral Judgment in the above case, with full oral reasons, on the final day of the Hearing, on 27 July 2018. The claimant requested written reasons on 30 July 2018, which, due to an administrative error, the Tribunal was not was not alerted to until 15 January 2019. The Tribunal has also become aware that a draft version of these written reasons, which was not approved by the Tribunal, was sent to the parties, also in error, on 15 January 2019. As a consequence, the Tribunal has concluded that the draft written reasons of 15 January 2019 should not stand as the authorised written reasons. Instead, these written reasons now provided replace the draft written reasons sent on 15 January 2019. These reasons also consider, and deal with, the claimant's request for reconsideration, which was made on 23 December 2018, to which the Tribunal was alerted on 15 January 2019.

Introduction

2. The claimant was employed by the respondent and predecessor companies with whom his continuous employment was preserved, from 19 March 2001 until his dismissal, with payment in lieu of his notice, on 11 January 2018.

3. The claim form was presented on 7 February 2018. In it, the claimant claimed unfair dismissal, an entitlement to a redundancy payment, and discrimination both during his employment and in respect of his dismissal.

4. A response was entered on 11 April 2018. A closed preliminary hearing took place before Regional Employment Judge Potter on 15 May 2018. The notes of the primary hearing recorded the issues as agreed between the parties and in response to which the respondent was permitted to present an amended grounds of resistance, which it did so on 15 May 2018. The amended grounds of resistance responded to more detailed allegations of direct race discrimination. The parties were directed in due course to file an agreed list of issues. The parties agreed at the beginning of the substantive hearing on 24 July 2018 those issues, which are set out below.

Issues

Unfair dismissal

5. Was the decision to dismiss the claimant for a potentially fair reason, namely some other substantial reason of a kind such as to justify the dismissal of the claimant, pursuant to section 98(1)(b) of the Employment Rights Act 1996 ('ERA')?

6. Did the respondent, in the circumstances, act reasonably in treating the above reason as a sufficient reason for dismissing the employee, determined in accordance with equity and the substantial merits of the case?

7. If, which is denied, the Tribunal finds that the dismissal was procedurally unfair, should any compensation be reduced on the basis that his dismissal was inevitable in line with *Polkey v AE Dayton Services Ltd [1987] ICR 142*?

8. Further and in the alternative, if the Tribunal finds that the dismissal was unfair, should any compensation awarded be reduced to reflect the claimant's contributory conduct? It was clarified with the claimant that he did not seek reinstatement or engagement so that the sole issue in respect of his unfair dismissal claim was an award of damages.

Race discrimination

9. Did the following amount to the respondent, because of the claimant's race, treating the claimant less favourably than it treated would treat others:

(a) not providing a copy of Eurostar's removal requests to the claimant;
(b) ignoring his comments in connection with the consultation meeting on 27 November 2017. The nature of these comments was provided in further detail in the claimant's witness evidence;
(c) being required to move after 18 years' service;
(d) the respondent asserting in its dismissal letter that the claimant

had refused a role at £8.20 an hour, when such role had not been offered the claimant;

(e) dismissing the claimant before the outcome of his grievance.

9. Did the claimant unreasonably fail to follow the ACAS code of practice on disciplinary and grievance procedures, by failing to actively pursue an appeal of his grievance so that any award should be reduced by up to 25% pursuant to section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992?

Redundancy payment

10. Was the claimant dismissed by reason of redundancy as defined by section 139 of the ERA?

The Hearing

11. We heard evidence from the claimant. For the respondent, we heard evidence from: Delia Cisalriu, HR officer; Ash Miah, service centre manager, who dismissed the claimant; Adam Blissett, Operations Manager, who considered the claimant's appeal against his dismissal, and Paul Owens, Operation, Security and Transport Manager, whom it was claimed by the respondent had discussed with Eurostar, one of the respondent's customers, about an alleged demand by them that the claimant be removed from involvement in providing services to them.

The Facts

12. The claimant worked for the respondent as a ramp coordinator, with responsibility for loading food provisions onto the train of the Eurostar services on the platform at St Pancras International railway station. He was an experienced ramp operator who had worked for the respondent and previous organisations for many years.

13. On 1 August 2017, the claimant was driving a catering loading vehicle which was connected to a loading ramp. It was said that as a result of his driving the vehicle without appropriate care, he caused damage to a door on the Eurostar train. This caused a 66 minute delay to the train service and the train needing to be repaired. The door was described as having been pulled out of its hinges. The claimant did not immediately report this incident to anyone. He accepted in oral evidence that he knew at the time of the importance of reporting any accident or damage, but suggested in oral evidence that he had not been aware of any damage to the train and had not contacted his colleagues, because he did not believe that he needed any assistance.

14. Eurostar's safety manager, Mr Broderick contacted fellow Eurostar colleagues on 8 September 2017 about the incident in August, explaining the delay in doing so because of the time it had taken to get relevant CCTV footage. Having reviewed the footage, Mr Broderick concluded that a catering

vehicle belonging to the respondent had damaged a door. He asked for his colleague, Mr Barton, to liaise with the respondent to ensure that appropriate corrective action would be taken. On 11 September, Mr Broderick contacted Mr Miah. Mr Miah reviewed the CCTV footage on 12 September 2017, attending Eurostar's offices. Mr Miah's initial impression was that the claimant had not driven the vehicle with appropriate due care and attention and he was concerned that the claimant had not made any report of the incident. The claimant had failed to disconnect the ramp and had caused the tractor to jack-knife and damage the door. Mr Miah believed that the claimant had noticed the incident, as he had to then manually remove the ramp before driving away.

15. Mr Miah also believed that the claimant knew that he should have reported the incident as all staff knew that any accidents involving damage had to be reported. There was some confusion as to whom an employee would report an incident to. While an excerpt from the respondent's handbook which referred to health and safety reporting [90] stated that employees were required always to report accidents, no matter however minor, to the line manager and to ensure they were recorded in the accident book, Mr Owens, in oral evidence, stated that the first person to whom incidents should be reported to would be the platform controller, particularly if there were a risk that a train would otherwise leave, for example, with a train door still open. The platform controller would be employed by Eurostar and then subsequently, an employee would expect to fill out a form with their line manager, possibly with a witness statement. Mr Miah also added that he did not believe that accidents of this nature were unusual but that it was the fact that the claimant had failed to report the incident which was more concerning. He believed that had the claimant reported the incident, that Eurostar may have taken a different approach. We regarded as realistic, given the safety and security priorities of the Eurostar train services, that there would be high standards expected by Eurostar of the reporting of any health and safety incidents by their subcontractors, including the respondent.

16. Later the same day, Mr Miah called the claimant into his office to discuss the incident. The claimant's initial response was that he could not specifically remember the incident, it being several weeks before, and he asked to see the CCTV footage.

17. The respondent undertook a disciplinary process and the claimant was issued a final written warning by his shift leader, Fausto Spaczil, on 28 September 2017. Mr Spaczil considered two disciplinary issues. The first was that the claimant had failed to report an incident. The second was that he had driven on the platform without due care and attention. The claimant recalled that the ramp was unbalanced and he had sought to rebalance it using the trailer. He recalled that the vehicle he was driving had jackknifed. The claimant specifically asserted that the issue was an ongoing one which had been reported a few times to the respondent about ramps being unbalanced. While Mr Spaczil accepted that the claimant believed that the respondent was generally aware of a problem with unbalanced ramps, he asked whether the claimant was aware that he had damaged the door at the

time. The claimant denied being aware of the damage at the time and so could not have accepted responsibility for it. Issuing the final written warning, Mr Mr Spaczil did not distinguish between the two disciplinary issues and instead simply issued a final written warning. He notified the claimant of his right to appeal that sanction, but the claimant did not exercise that right.

18. It was suggested by the respondent that in commenting that he accepted the final written warning and was thankful for it [104d], and the notes record that claimant accepted that the respondent had the right to dismiss him, the claimant had accepted that he had failed to report the incident when he should have done so and that he had caused damage. In oral evidence, the claimant is disputed this, saying that he had not exercised his right of appeal because he wished to move on. Given the summary nature of the decision-making process, which was brief and did not distinguish between the failure to report and the blameworthy driving, we accepted the claimant's explanation that in not appealing the respondent's decision, he did not, by implication, accept that his conduct had been blameworthy.

19. Nevertheless, in not appealing the decision, the respondent's decision that the claimant had been blameworthy stood. Eurostar asked for an update on what happened to the claimant. Mr Miah confirmed to Eurostar, on the same day as the disciplinary hearing, 28 September 2017, that the claimant had been given a final written warning which would be placed on his file for 12 months and that he would be fully retrained and tested. Mr Miah undertook to send a corrective action plan to Eurostar by the following week. It was unclear whether Mr Miah ever did so and the claimant's evidence, which we accept, was that the claimant was never in fact retrained and re-tested in his role.

20. Instead, Mr Barton stated in an email to Mr Owens, dated 29 September 2017 ([91]):

"*Hi Paul*
as discussed at Friday's meeting, this outcome does not meet our strong position on staff having accidents and not advising their operational managers at the time. To cause damage to our trains and potentially put lives at risk as they have not admitted the damage of the time is completely unacceptable and will not be tolerated. With immediate effect please remove this person from all EIL activity. Please notify the relevant bodies to cancel his pass to SPI [St Pancras International] and Euston."

21. The claimant alleged that this email was a forgery and had been manufactured by the respondent retrospectively in order to justify his dismissal without paying him a redundancy payment and on grounds of his race. The basis for the claimant's assertion was because of a delay in the respondent sending the claimant a copy of the email, which it eventually did so on 8 December 2017, having been previously requested by the claimant's union representative on 27 November 2017. We did not accept the claimant's assertion. While no one from Eurostar gave evidence, we accepted the evidence of Mr Owens and Ms Cislarui, who was later forwarded a copy of the

email that it was genuine. In addition, the genuineness of the document was corroborated by a separate note of the review meeting between the respondent and Eurostar on 31 October 2017, which referred to the train damage and the fact that Eurostar was not happy with the claimant staying 'on the account' as they had an issue with regard to the matter not being reported at the time [106c]. Not only would the respondent have had to forge the email which was a lengthy email chain with various different email addresses; but would also have had to similarly forge a review document. The review document also appeared genuine, with detailed issues raised around various aspects of the respondent's performance of its contract for Eurostar in providing travel food, and had every appearance of being a genuine document.

22. There was then a delay between 29 September 2017, and the claimant's subsequent suspension. In a loose email that was provided during the course of this hearing, Mr Owens forwarded the earlier email from Mr Barton to an HR business partner, Laura Alcindor, on 11 October 2017. Both emails referred to a discussion between Mr Owens and Ms Alcandor that day. The gap between Mr Owens receiving the email from Mr Barton and his forwarding on to the HR colleague was not explained. We find that the most likely explanation was a lack of speed on Mr Owen's part, which we found surprising in light of the seriousness of the matter and in particular, given his management of the relationship with Eurostar, but we did not go as far as to find, as the claimant claimed, that the delays in the process meant that the entire Eurostar complaint was fabricated. Rather the delay, which might not reflect well on Mr Owens, was merely because of his engagement in that issue.

23. However, Ms Alcandor then reacted with speed, responding the same day to Mr Owens, stating:

"*Following our conversation today, please suspend if there are no other roles available based on third-party pressure/client removal. Whilst we go through the right channels of finding alternative employment, please have him complete the alternative employment form attached for our records and have a look at the attached flowchart.*

1. *Review the employee's contract of employment to check the terms and conditions.*
2. *Complete the alternative employment form (the length of time taken to find redeployment will vary from case to case).*
3. *Find the employee alternative employment at another site - consider: temporary/permanent, suitability of job, pay rate, location.*
4. *Removal from site (see attached file: client removal flowchart).*

SOSR [dismissal for some other substantial reason] is used as a last resort. If we are unable to find an employee or an alternative position within RG/SSP [the respondent's parent company], employee should be formally invited to a final consultation/disciplinary meeting, if our client cannot be persuaded. If the employee has been dismissed due to SOSR third-party pressure, the employee should be paid his/her notice (depending on length of service) and any outstanding monies including holiday pay. An outcome letter of the

decision is to be sent to the employee, providing the right of appeal."

24. The email attached a flowchart, which began with the client requesting the removal. It then asked those dealing to ask for the request in writing and an explanation behind the request. If the client refused to do so they would then discuss the matter further with the client. If they then had received a confirmation from a client in writing, at that stage they would then need to explore alternative options to challenge the request, before making a final decision for example retraining and performance management. After that, the next stage was to formally invite the employee for an investigation meeting and to explain the reason behind the client request. Additional evidence may be gathered and at this stage suspension could then be taken. An alternative [was] to obtain feedback from the employee to pass on to the client. Once feedback was obtained it was to be passed to the client. Those implementing the policy would go through any vacancies or any potential redeployment options and to explain to an individual how they should express their interest, using a form to do so. The disciplinary process might be considered if there was no option available. The employee could be dismissed for 'some other substantial reason'.

25. On 12 October 2017, Mr Miah asked the claimant to attend his office, which it turned out was to discuss the incident.

26. In terms of Mr Miah's recollection of events, we should add our general observations about Mr Miah's recollection in his oral evidence and the reliability which we attached to it. He was frequently uncertain as to when he had seen or considered documents and was prone to speculation. For example, when asked why there had been a delay in suspending the claimant until 12 October 2017, he essentially sought to blame the claimant, suggesting that the claimant had been on holiday when in fact, as we learnt on checking holiday records, the claimant had been absent for a single day. While we do not suggest that Mr Miah was deliberately untruthful, his recollection was poor and he speculated in circumstances where his comments were not reliable. We therefore attached limited weight to his evidence.

27. Mr Miah could not recall whether he had seen the CCTV footage of the claimant before or after his meeting with the claimant on 12 October 2017, at which he suspended the claimant. We think it more likely that Mr Miah had attended Eurostar's offices at Time House on 29 September 2017, with a colleague, Darren Crowley, which was referred to by the manager who investigated the claimant's subsequent grievance, Simon Davies [161g].

28. Mr Miah also could not recall when he had seen the process chart for employees where third parties were requesting their removal, and whether he had seen it before or after he suspended the claimant on 11 October 2017. He thought it more likely that he discussed the chart with Mr Owens after the suspension although when asked to go through his thought process between suspension and when he eventually dismissed the claimant, he was vague and hesitant in oral evidence. He had made no reference to the process chart in his witness statement and we find it likely that he paid scant attention to it.

29. On 11 October 2017, Mr Miah met with the claimant, with witnesses present, and confirmed orally that he was being suspended on full pay, with his suspension recorded as being because Eurostar had raised a health and safety issue; that Eurostar had asked the respondent to remove the claimant's pass from the Eurostar contract; and had said that he would not be permitted to work at St Pancras International station. There was no reference to his being prevented from working at Euston station. The station notes continued that the respondent would try to find the claimant another job in another unit in London and that he would be asked to attend an investigation meeting about which he would be informed. This was followed up by a suspension letter dated 2 October 2017, at [106].

30. Matters once again then slowed down. The claimant remained suspended on full pay and it was unclear what discussions were ongoing with Eurostar. In the meantime, Mr Miah telephoned the claimant, some time before 13 November 2017. He left a voicemail message for him and then sent him a text, which we were not shown, but in terms which were agreed, namely asking the claimant to work at the respondent's unit in Euston station. Mr Miah had not made any previous reference to this in his witness statement and was once again vague about the circumstances in which he had made the telephone call. He suggested that the respondent was short-staffed at the unit in Euston and that he had received a telephone call from the colleague there, Sylvia, who was the operations manager, who was asking for help. The claimant was issued with a key and a uniform. Mr Miah's explanation as to why the claimant was asked to work in circumstances where Eurostar had made it clear that he was not work for them, was that the claimant's situation was unique and difficult and that he had been trying to assist the claimant while they were continuing in dialogue with Eurostar. In reality, we do not accept that assertion as reliable. Mr Miah had a colleague who was asking for additional resource, and he filled that gap by asking the claimant to attend, in circumstances where Mr Owens, who was in charge of the relationship with Eurostar, knew nothing about the claimant being re-admitted to work in the Euston site. It was clear to us and indeed when the respondent's own representative had to take instructions, that the fact that the claimant had attended work on 13 and 14 November was not something which Mr Miah shared more widely. We find that once the short-term need had gone away, and Mr Miah realised the consequences of his actions, specifically in re-admitting an employee who was on suspension, he then asked the claimant not to attend further.

31. Mr Miah then met the claimant on 22 November 2017 to complete an alternative employment form [110a]. For the first time, the claimant informed Mr Miah that he had enrolled on a full-time college course and in terms of shift hours, he could only work Mondays, Wednesdays, Saturdays and Sundays. On Tuesdays, Thursdays and Fridays, he could not work and was only willing to work in London. He was willing to possibly consider a relocation to King's Cross. He also stated that if he was unable to get the days of work that he requested, that he would consider redundancy. He indicated that he was willing to consider roles other than the driver role that he had carried out,

including working in shops and customer services.

32. In the context of the claimant having enrolled in college, whilst he confirmed that he attended college three days each week, the claimant confirmed in oral evidence that his college course was full-time and that he had to study outside the days each week that he studied. He received a student grant of £11,000 and was enrolled on a course of healthcare management. The course lasted three years, with the first two years at college and the third year with a placement. The claimant had referred to the respondent being willing to consider flexible working requests. While we had not been provided with a copy of the flexible working request document, we accept that such policies are typical, but equally they would not normally grant an employee the right to insist on changes to a roster. The claimant's terms and conditions [40] referred to his being required to work five days out of seven with 40 hours on average but he was now clearly indicating that he could not work more than four days, albeit that he wished to retain full hours so that there was no reduction in his pay of £22,100.

33. While we accept that the claimant was entitled to enrolled in a college course without respondent's agreement, we do not find that the claimant was entitled to insist in a reallocation of his working hours from 5, down to 4 days, merely that he had a right to it being considered. We also find that practically, there was no realistic way that the claimant could have fulfilled a role in which he studied full time as a student, including three days study at college, and study outside college, whilst also working four days compressed, i.e. longer hours. We find that the claimant was aware of the unrealistic nature of his proposals and that in reality, upon enrolling in the college course as he did, and making express references to his employer about being willing to accept redundancy, that he had little intention of returning to any role with the respondent. We make this finding considering all of the circumstances, including the fact that the claimant continued to engage in a redeployment and grievance process, albeit that his engagement with that process was consistent with a lack of genuine intention to return to work.

34. Mr Miah invited the claimant to attend a consultation meeting by a letter dated 24 November 2017, with the meeting to take place on 27 November 2017. The letter referred to the option of a possible transfer to other areas of the business and advised him of his right of accompaniment but did not warn him that dismissal may be an outcome of the process.

35. The notes and nature of the discussions in the meeting on 27 November 2017 are disputed. The respondent stated that handwritten notes were made on the day of the meeting and are at [116] to [120] and were followed up by typewritten notes at [112] to [115]. The claimant alleges that the omission from the notes of material aspects of his concerns was because of his ethnicity, specifically because he is a black person. The claimant in fact went further in this Tribunal and asserted that the handwritten notes were a fabrication. In making this assertion, he relied on the fact that on the first page of the notes, the page numbering is typed, at [116], and that the final page has a phrase 'page number', albeit that the numbering itself is

handwritten, while the three middle pages merely have a handwritten number on each page. The claimant contrasted this with notes of a later meeting on 6 December 2017 which he had not attended at [131c] to [131d] where both phrases had the typed phrase, 'page number'.

36. The respondent's explanation was that the notetakers were different; the notes of the second meeting were in fact of abortive notes; that the phrase 'page number' was from a template which may be carried forward to a second or final page depending on the formatting of the person printing off the pro forma sheet on which handwritten notes could be made. The respondent also pointed out that the claimant's own trade union representative, Angela Short of the RMT, have responded to the initial manuscript notes. She had not suggested that they were forgeries but instead have provided various comments, albeit as a respondent characterised them, minor ones. The claimant's response to this was that Angela Short was part of the conspiracy to fabricate the notes. The claimant himself had taken no notes. When he was asked to clarify what comments had been omitted, he provided two alternative explanations. The first was that his comments related to having raised concerns about issues with the ramp historically, with Mr Owens in the canteen; alternatively, he referred in closing submissions, not in oral evidence to his schedule of loss at [36], to 5 items, specifically: Ms Short asking Mr Miah if he had tried to persuade Eurostar to change their minds and if so whether there were any notes of those meetings; that Mr Miah had admitted breach of the claimant's data protection rights; that there had been a meeting with Mr Owens; that the ramp had been changed three times; and that a colleague of the claimant had witnessed and helped the claimant remove the ramp which had been stuck on the train.

37. The claimant added in oral evidence that there was a difference between the typed version of the notes, in particular a sentence, at [113] where the respondent had referred to Eurostar approaching the respondent a month after the accident and requesting that action be taken for failing to report damage to the train door; whereas there was no such reference in the manuscript note [117]. Ms Cislarui's explanation, while she did not take the notes herself, was that it was typical for notes to be circulated if requested to those who had attended, who could then add remarks which they believed might have been omitted, to seek agreement on the final notes. She believed that this is what would have happened in this case.

38. We considered whether there were material omissions as reported by the claimant, and whether the reason for those omissions was deliberate, and was because of the claimant's race. On the one hand, we concluded, on the basis of the additional wording in the typed version of the notes, which was supportive of the respondent's position, which referred to Eurostar's concerns about the claimant's failure to report that the damage, that they had not merely been a transcription of the handwritten notes and that there had been input afterwards. We also accepted that the notes were not verbatim and that, as we have experienced, when the claimant became forthright and impassioned in his views, he spoke extremely quickly; and was prone to interrupt others which would have made notetaking challenging, even for an

experienced note-taker. We concluded that any omissions were identified by Ms Short and were set out in her schedule, which included the corrections at [121]. Ms Short attached the amendments to an email to Ms Cislarui which stated:

"I do agree with Moses [the claimant] that the typed notes seem to missing some pertinent points. This can happen sometimes for various reasons and I acknowledge that you have asked Moses for his amendments."

39. Ms Short's amendments included, at [121] a reference to whether the respondent had sought to change Eurostar's mind; and there was no reference to a meeting with Mr Owens at which previous concerns had been raised. There was a reference to data protection, but not that Mr Miah accepted that there had been a breach of the Data Protection Act. Instead, Ms Short's notes stated:

"*AS suggests we adjourn for a short time so I can confer with Moses and see if AM and DC can copy the customer removal request and ensure dialogue for us.*

DC [Ms Cislarui] responds that there may be data issues. AS points out that Moses has a right to see the customer removal request."

40. In summary, only one of the issues identified by the claimant had also been referred to by Ms Short, namely finding evidence of the discussions with Eurostar; the data protection issue was put in very different terms from that alleged by the claimant and the other items were not referred to at all. We considered whether Ms Short might be part of the conspiracy. The logic to this was that because she had not identified the same issues as him, that she must have been deliberately omitting those comments. There was no other basis for the assertion. However, and noting ourselves the challenges of taking notes and as of also communicating with the claimant who, when he became impassioned would frequently speak quickly; interrupt others, and cease listening; and when he himself had no contemporaneous notes, we do not find that the omission of the issues as alleged was deliberate, taking into account as well the transparency of the process, i.e. that the claimant was sent notes a couple of days after the initial meeting, which would have meant that there was little point in seeking to fabricate those notes. What we find more likely was that the notetaker had had difficulty in recalling everything that was said, specifically in relation to the one missing point; and in addition, that for example by talking over others in the meeting at which he was present, the points that the claimant may have wished to have made may well have been missed.

41. A particular concern of the claimant's was that in signing the notes, he had agreed to the accuracy of them. This was specifically identified as an issue by Ms Short in her email and we accept that after signatures by all parties, it was added that the signatures were to confirm that they were present at the meeting. We did not conclude that the fact of the added statement about what the signatures mean, supported the claimant's assertion

that most of the notes had been fabricated.

42. It was agreed at the end of the meeting on 27 November that there would be a follow-up meeting on Wednesday, 6 December. In the meantime, Mr Owens had a further discussion with Eurostar. This was reflected in an email chain at [122] to 124]. On 30 November, Ms Cislarui stated:

"Hello again Paul, further to my previous email and although I know you have already discussed alternatives with the client, please could you have a final word with the client. During our meeting Moses raised the fact that there were similar incidents with other colleagues, they weren't removed from the contract and he feels that he was discriminated. We have explained to him that the fact he didn't report the incident made a very big difference for the client however I feel we need to inform the client of what has been covered during her meeting just to put them in the loop. Also, Moses has been with us for 16 years and will struggle to find a role that will pay the same, as up to now the client has been willing to cover the difference in pay. I'll give you a call shortly and try again tomorrow morning if I cannot get hold of you to discuss this further."

43. Mr Owens, who we found to be a straightforward and honest witness, candidly accepted that he had not read the contents of the email in detail, specifically with regard to alternatives. However, he did specifically have a conversation with Eurostar and stated:

"Sorry Delia, been in meeting all day. I spoke to the client on Friday morning and he does not want any names from this company put forward. He was quite amazed at why I was asking the questions. All he said was that he does not have a contract with the staff member, we do, and that they will not issue a pass to the staff member or allow him on the premises. He also mentioned that we have not been charged for the damage to the train or charged for delaying the train."

44. The claimant suggested that this email was a fake document in line with earlier documents. However, noting Mr Owens' willingness to concede the points which were not necessarily in the company's favour, particularly the fact that he had not read through all of the contents of the email in detail, and also noting that a follow-up conversation with Eurostar was consistent with the impasse in which the respondent found itself, namely by continuing to employ the claimant and being unable to redeploy him at St Pancras or Euston, which was owned by Eurostar, there would have had to have been a follow-up conversation. We find that this stage, regardless of any further conversations that Mr Owens or anybody within the respondent would have had with those within the Eurostar organisation, that Eurostar were adamant that the claimant was not permitted to work for them or at their premises, which included both St Pancras and, by virtue of their owning the unit, Euston station as well.

45. Prior to the follow-up meeting on 5 December 2017, on 3 December 2017, the claimant raised a grievance about his unlawful removal [126]. While a version of his complaint was in an email which he emailed to himself on that

date, the claimant must have raised a grievance as it was acknowledged by the respondent's HR team on 5 December 2017 [128]. In his grievance complaint he referred to having been disciplined, only to be re-suspended. He alleged that Mr Miah's failure to provide the email correspondence from Eurostar amounted to a breach of the Data Protection Act and so he demanded that Mr Miah himself be suspended and that he be paid £100,000. He also demanded that the notetaker at the meeting on 27 November 2017 should also be investigated.

46. The claimant failed to attend the redeployment meeting on 6 December 2017. He has suggested in oral evidence that this was because he had already indicated that he would not attend, but we did not find that is accurate and there was no clear statement prior to 6 December that he would not attend any further hearing. The respondent acknowledged his absence and wrote to him again on 6 December [131b], inviting him for a further hearing and indicating that the they had found a possible role on 11 December 2017. The letter, from Ms Cislarui, enclosed copies of vacancy lists for both the respondent and its parent company and an application form in which to express interests. We find that the claimant's failure to attend the meeting reflected his lack of any genuine engagement in the redeployment process. We do find that by this stage he had no desire to engage with the respondent, other than to seek money from them. In terms of the vacancies, we accept Ms Cislarui's evidence that the claimant had the opportunity to review the details of the jobs on the internal website and that looking at the vacancy list [131g] and [131h] these contained a number of team leader roles. The claimant was also informed about a so-called 'poet driver' role which could accommodate the claimant's working requests, at £7.50 an hour albeit, as we have already found, we find it practically it would not have been possible for the claimant to fulfil this role and his full-time college studies.

47. Due to the unavailability of Ms Short on 11 and 12 December, the redeployment meeting was rescheduled for 13 December. Ms Alcindor invited the claimant to this meeting in an email on 8 December 2017 [139] to which the claimant responded as follows:

"Laura thank you for your email. The 27 October meeting we discussed in principle and redeployment awaiting my removal letter to be produced before any negotiation can go further. But the only way forward now is to go to court awaiting my grievance meeting outcome for my data breach and redundancy package. Redeployment won't stop my data breach. So the question now is do Moses still want to work with your company? My answer is capital NO. So am requesting redundancy £38k and a ransom of £100k for my data breach. If my demands are not accepted on Monday 11th then we will [need to go] to court. My three claims in court would be as follows: one, redundancy; two: data breach; three: Eurostar discrimination. My reasons for redundancy; company not following due procedures evicting me on 11 October illegal, my meeting on 27 November was fraudulent by Delia and RMT representative connive secretly working for the company instead of her representing me in order to prevent justice by sabotaging all my issues raised as concern. All the evidence in the missing letter and the original document will be submitted to

the Judge as evidence so Delia and Angela might step down due to their behaviour of meeting fraudulent. Thirdly, my discrimination case against Eurostar, all my points and evidence will be raised to the Judge. All these my next steps if all attempts fail to resolve it on Monday's meeting."

48. This email was consistent with the claimant having no intention of returning to employment and instead demanding as a resolution of his grievance, and resolution by a Tribunal, a substantial amount of compensation. Ms Alcindor responded on 8 December disputing that there was a redundancy situation; and that the respondent was trying to find alternative role in the business, but the claimant was refusing to attend redeployment consultation meetings further. Ms Alcindor confirmed that a copy of the Eurostar email, redacted had been brought to the previous meeting on 6 December, which the claimant not attended. Ms Alcandor disputed that Eurostar had been discriminatory and asserted that the reason for the claimant's treatment was because of damage and a failure to report the incident.

49. The rescheduled redeployment meeting took place on 13 December 2017 [143]. Mr Miah referred to a role as 'poet driver' at King's Cross station, which paid £7.50 an hour. The claimant repeatedly indicated that if he was to move to a different location and not be made redundant, unless any role paid the same money, it 'would not work'. Whilst the claimant rejected the offer, Ms Alcandor asked the claimant to consider the role for a few days and also look at the vacancy lists. The claimant was also advised that he had an opportunity to discuss it with his union representative as well as ACAS. He asked about the letter from Eurostar, which the respondent confirmed that it had sent to the claimant.

50. Following this meeting there was a follow-up meeting to which the claimant was invited [146], which was was then rescheduled because of Mr Miah's holiday, rescheduled for 27 December 2017 [148]. In the meantime, the claimant had also been invited to grievance hearings on 11 December and 14 December. He had failed to attend the grievance meeting on 14 December without explanation. The claimant said that he did not keep a diary of why he could not attend. We find it likely that the claimant's repeated failure to attend various meetings was because of his college course, and that he was not candid or willing to admit this. Nevertheless, the grievance meeting was re-scheduled again for 19 December 2017.

The grievance hearing

51. The claimant attended a meeting to discuss his grievance with Simon Davies on 19 December 2017 [150a]. Mr Davies was concerned that the claimant's grievance was in fact an appeal against his final written warning, which the claimant clarified that it was not. The claimant complained that he had asked for literal proof that Eurostar had complained and he had still not received a copy of the email. The claimant asserted that he should be permitted to attend a meeting with Eurostar to try and sort matters out. Mr Davies summarised the complaint was about the investigation in relation to

the initial disciplinary hearing; the postponement of driver refresher training; the circumstances around the Eurostar meetings and the redeployment issue. The claimant indicated that he was not discussing redeployment until he had seen the removal letter from Eurostar.

Final redeployment meeting

52. The claimant did not attend the redeployment meeting on 27 December 2017. It was re-scheduled and took place on 8 January 2018 [158]. The claimant reiterated that he wanted to know why Eurostar would not allow him to work at St Pancras. He alleged that the letter from Eurostar was not 'valid' as it was not on company-headed notepaper. He would not accept the redeployment offered because it was on less money. The notes record that he then shouted at 'Delia' (Ms Cislarui) and wanted to be 'paid off' if an alternative role could not be found. Ms Cislarui was recorded in the notes [158] as asking the claimant stop shouting and calm down. We accept her evidence that the claimant would, when feeling impassioned, shout and indeed even stand-up. The respondent asserted that that there was a team-leader position at King's Cross which paid more. Ms Cislarui referred specifically to a role with an hourly rate of £8.20, although the respondent accepted that the specific figure was not referred to in the notes. The claimant contended that had he been told of the specific figure, that he would have definitely accepted the job offer. We find that Ms Cislarui did mention the amount of £8.20. We also find that the claimant would not, as he contended, have been willing to accept the job offer. We made the finding based on the fact that it would have made no sense for the respondent to mention the job vacancy without the amount, when referring to more money; the lack of reference in the notes to the specific amount reflected a heated discussion; and that it was the claimant's comment that he would not accept anything less than £10.46 per hour which was in response to the offer of a job at £8.20 an hour [159]. Once again, we did not find that the claimant was genuine in his desire to return to work.

53. The claimant sought to criticise his subsequent dismissal on 11 January 2018 on the basis that he was unaware and did not believe that having raised a grievance, he was then at risk of dismissal. However, this was expressly referred to in the letter at page [156] where it stated:

"If, following this meeting, it is felt that you have not showed interest in any of the job roles proposed to you or none of our current vacancies are suitable for you, the company may decide to terminate your employment in accordance with notice provisions contained in your contract of employment."

54. The dismissal letter dated 11 January 2018 [160] referred to Eurostar's insistence that the claimant was not to be permitted to work in any of its facilities due to the seriousness of the health and safety breach and in not advising his operational manager at the time. The letter referred to the hourly rate offered of £8.20 per hour plus bonuses. If the claimant had not been aware of the offer at the earlier meeting, there was no doubt that on receipt of the letter of 11 January, he was and yet made no indication that he would be

willing to accept that job offer, other than his oral assertion in this Tribunal, which we did not find reliable.

55. The letter also referred to several requests to Eurostar to ask them to reconsider their request, as well as discussing alternatives to the claimant's redeployment; including creating a corrective action plan and moving him to another unit in a role where he would have no contact with trains. As Mr Owens candidly admitted, there was a misunderstanding between him and HR as to the extent of his discussions about alternatives. He had raised on at least two occasions the possibility of the claimant not been removed and he sensed from the robustness of Eurostar's response that they were unwilling to countenance any further discussion, and to do so would damage the commercial relationship between the respondent and Eurostar. The reason for the inclusion of discussions about alternatives in the letter was, we find, because the first draft had been prepared by HR colleagues which Mr Miah then reviewed and once was happy, confirmed the decision to dismiss the claimant. Mr Miah made no independent enquiries of his own beyond his discussions with HR and this was indicative of his lack of communication with colleagues more widely in reaching his decision. Nevertheless, we accepted that Eurostar were adamant that the claimant should not return and we accept as genuine the respondent's assertions that it believed it had done everything it could to find alternative positions at a similar rate of pay.

56. The respondent took the decision not to terminate the claimant's employment on notice, but, further to his contract of employment, to make a payment in lieu of notice so that his employment attended that day. We accept the respondent's evidence that the reason that it chose to make a payment in lieu of notice, rather than to retain the claimant's employment was that it believed that the claimant had entirely disengaged from any redeployment process and there was little point in continuing employment in the hope that alternative roles would be found. The dismissal letter referred to the right of appeal and it also considered and rejected the claimant's assertion that he was entitled to a 'guarantee' payment, which applied in situations such as layoffs on a temporary basis.

57. On receiving his dismissal letter, the claimant wrote to Ms Cislarui as well as the RMT, threatening legal action including against the RMT for what he regarded as its deliberate attempt to prevent justice and seeking a 'ransom' or compensation. He regarded the respondent as failing to match his current wages for redeployment and so he was entitled to redundancy. He referred in passing to discrimination and sought to exercise his right of appeal. Ms Cislarui asked for further details of the basis of his appeal, but the claimant merely reiterated that he wanted to appeal [161d].

Grievance decision

58. In the meantime, Mr Davies sent the claimant his decision on the claimant's grievance in a letter dated 22 January 2018 [161f] in which he rejected the grievance. He considered four issues in the grievance: first, that during the investigation which resulted in the claimant's final formal warning,

the respondent had failed to interview a senior customer service team leader colleague. Mr Davies discussed this with the named service team leader and concluded that the matter had been discussed with him. Mr Davies considered the second issue of a delay in the investigation being carried out, which had resulted in the final formal warning. Mr Davies concluded that the respondent only became aware of the incident from Eurostar on 8 September 2017, following a discussion between Mr Owens and Eurostar. Mr Davies considered a third issue as to whether Mr Miah had breached the Data Protection Act in failing to provide the Eurostar removal instruction straightaway. Mr Davies noted that during the redeployment meetings, Ms Alcindor had provided the claimant with the removal request on 13 December 2017. Finally, Mr Davies considered the lack of retraining. Mr Davies concluded that the tractor retraining was put on hold until the issue of the claimant's removal had been resolved. As Mr Davies did not uphold the grievances, the claimant was provided with a right of appeal against the grievance decision, which he did not exercise.

The claimant's appeal against his dismissal

59. The claimant elaborated on his appeal against dismissal in an email of 28 January 2018 [161h]. The gist of his appeal was first of all, his concern about meeting minutes and the absence of a removal request. He sought £20,000 for this breach. In respect of his unlawful dismissal, he sought £138,000 although the basis of this calculation is not explained. He reiterated his concerns about the documentation relating to his removal and asserted that his rights under the Data Protection Act had been denied. He claimed race discrimination for which he sought £50,000 and asserted that no one else had been told to leave the site due to an accident on the platform whereas other accidents had happened in the past. He was a long serving employee. He claimed £38,000 as a redundancy payment and £200,000 for the termination of his employment. He reiterated that he had not been offered a job of £8.20 an hour and the number of redeployment meetings was 2 and not 3. He demanded a total of £358,000.

60. Mr Blissett conducted a number of meetings in relation to the claimant's appeal. He met with Mr Miah on 2 March 2018, the notes of which were at 161[aa]. He met the claimant on 31 January 2018. In the appeal meeting, the claimant did not indicate that he was willing to accept a job at £8.20 merely that he had never been offered a job of that amount. He referred to his entitlement to redundancy payment because he was on an hourly rate of £10.86 per hour. His grievance was still being investigated when he was dismissed and he asked to see the removal request which had been refused. The claimant asserted that he had been discriminated against as a long serving employee when others had not been disciplined. The claimant reiterated his demand for £358,000. He did not however expressly retract his previous assertions that he would not return to work the company.

The appeal decision

61. Mr Blissett reached a decision to reject the claimant's appeal. He

confirmed this in correspondence of 23 March 2018 [162]. In his letter, Mr Blissett considered the assertion that the claimant had not received evidence to prove that Eurostar had asked for his removal. He rejected that ground of appeal. He considered the concerns about missing points that had been raised in the redeployment meeting on 27 November 2017. The letter did erroneously refer to 29 November but we accept that that was a typographical error. Mr Blissett considered that there had been an additional amendment sheet, which we had reviewed; and that Mr Miah had considered both the original meeting notes and the amendment sheet. Mr Blissett also rejected the claimant's assertion that he was redundant, as there was still a role at St Pancras, merely one that the claimant could not carry out. Mr Blissett rejected the assertion about the meetings in which the respondent had been willing to discuss redeployment. He considered finally and specifically similar incidents had occurred and whether this amounted to discrimination. Mr Blissett had considered Mr Miah's assertions that these related to external contractors and delivery drivers, who had been removed from the contract at the request of Eurostar, which he accepted was reliable and that the particular concern in this case was the claimant's failure to report the incident at the time, coupled with the seriousness of the matter, which resulted in a train delay of over 60 minutes.

The Law

Unfair dismissal

62. The right not to be unfairly dismissed is contained within the provisions of Section 94 of the ERA. Section 98 sets out the potentially fair reasons for dismissing an employee and one such reason relates to some other substantial reason of a kind such as to justify the dismissal of the claimant holding the position which he held. The burden is upon a respondent to satisfy us that they had a potentially fair reason to dismiss and the Tribunal must also be satisfied ultimately that the respondent acted fairly and reasonably in dismissing for that reason, the test in that regard being outlined below, but is now a neutral burden. Section 98 of the ERA states:

"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits

of the case."

63. In addition, Sections 122 and 123 of the ERA state:

"*122 Basic award: reductions*
(2) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

123 Compensatory award
(1) Subject to the provisions of this section and sections 124, 124A and 126, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.
(6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding."

64. It was not for us to substitute our view as to what we would or would not have done faced with the circumstances with which the respondent was faced. The only yardstick by which the respondent's actions were to be judged was that of a reasonable employer and specifically whether the respondent acted within the band of reasonable responses open to it. We were also required to consider whether the respondent acted in accordance with the guidance provided in the ACAS Code of Practice on disciplinary and grievance procedures. A failure to follow the Code, could, but would not inevitably of itself, lead us to the conclusion that the dismissal was unfair. We also considered whether, looked at as a whole, any defects in a procedure could remedy specific defects, if the procedure looked at as a whole was nevertheless fair.

The claim to a redundancy payment

65. Section 139 of the ERA sets out the circumstances in which a dismissal is taken to have been by reason of redundancy. We considered the extent to which the respondent's need for work of a particular kind had ceased or diminished, with the burden on the respondent to prove the reason for the claimant's dismissal.

The claim of discrimination

66. Section 13 of the Equality Act 2010 defines direct discrimination as *"if, because of a protected characteristic, A treats B less favourably than A treats or would treat others*", in this case, the claimant's race. In making the comparison, Section 23 confirms that there must be no material difference between the circumstances relating to each case. In turn, Section 39 prohibits

discrimination by employers against employees, by dismissing them or subjecting them to any other detriment.

67. Section 136 includes a provision that if there are facts from which the court could decide, in the absence of any other explanation, the person contravened the provision concerned, the court must hold that the contravention occurred. That provision, however, does not apply if the alleged perpetrator shows that it did not contravene the provision.

68. A two-stage process remains the starting point. The claimant would need to prove facts from which we could conclude in the absence of an explanation that the respondent had committed an unlawful act, from all of the evidence. The second stage would require the respondent to prove that it had not committed the unlawful act, although we were conscious that it should not be a mechanical exercise.

69. We reminded ourselves also that in order for the claimant's claim to succeed, it was not necessary for us to conclude that the claimant's race was the sole or even principal reason for the treatment complained of. It is sufficient if we conclude that it was a material reason contributed to his treatment. Direct discrimination can occur both consciously and subconsciously. Where, as in this case the claimant alleges that there had been a number of incidents of this kind of conduct, we needed to look at the wider picture, drawing and all of our findings of fact. Whilst, in our findings, we have set out our conclusions in relation to each of the distinct complaints, we drew on our findings of fact and the overall picture emerging from them as a whole.

Conclusions

Unfair dismissal and redundancy

70. We considered first, whether the respondent had proven the reason for its dismissal of the claimant, i.e. pressure from a third party, specifically Eurostar. Based on our findings, we accepted that the respondent genuinely believed that Eurostar would not permit the claimant to work either on a Eurostar contract or at premises owned by Eurostar, i.e. either St Pancras International or Euston. We also accept as proven that the respondent had been genuine in attempting to find alternative employment for the claimant, so that the reason for his dismissal was some other substantial reason, namely Eurostar's insistence that the claimant should not work on their contract and the lack of availability of other work.

71. We went on to consider the procedure which the respondent adopted. We accepted the submission that we should consider whether the respondent had done everything it reasonably could to dissuade Eurostar from its insistence and second; had the respondent done everything it could in respect of alternative employment. In this context, we noted that the claimant was an employee of 18 years' service and other than his final warning, there was no suggestion that he had anything other than an unblemished record; and was a

hard-working and punctual employee.

72. We considered the process chart which was produced on the first day of the Tribunal hearing and which Ms Alcindor had sent to Mr Owens. It was suggested that this process document might not even be company policy, but in any event it was the advice of Ms Alcandor as an HR professional in relation to the claimant's case. As we have already found, we concluded that Mr Miah gave limited consideration to this process. Specifically, the process included an opportunity for the claimant's views to be considered and passed on to the third party to try and calm a situation down. We considered this in the context of the final formal warning which the claimant had received. As we found, there was no distinction between the damage to the train initially or the failure to report that damage. This was troubling in the context that the final formal warning notes themselves indicate that the disciplining manager accepted the claimant's assertion that there was an ongoing issue with ramps and that there might have been a general awareness of that issue amongst the respondent. It was exactly that issue that the claimant himself reiterated to this Tribunal.

73. Had the claimant's views been sought and reflected back to Eurostar, namely that there was an ongoing issue with regard to the ramps, even in circumstances where that may have been a difficult message for Mr Owens to convey where the claimant had been previously disciplined, we believe that Mr Owens, as an honest witness, would have done so and we find that if presented with circumstances where there was a wider ongoing issue, rather than in relation to an individual, and a person believed that there was a general awareness of the concerns, which would explain why he had not raised concerns again on a specific occasion, Eurostar may well have been willing to reconsider their insistence that the claimant be removed from their premises. We find that this lack of reflection and conveyance of the claimant's views meant that by the time Mr Owens had later discussions, positions had become entrenched and, as we found, Eurostar were unwilling to consider any alternative.

74. We concluded that the respondent's failure to engage with the claimant earlier went to the heart of the process and meant that the claimant's dismissal was procedurally unfair. We have considered whether the respondent's subsequent attempts, which we concluded were genuine and in good faith had rectified the situation, to the extent that the overall process was fair, but concluded that whilst the redeployment process was genuine and extensive, the reality was that had the respondent followed a fairer process at the earliest stage, the claimant would never have been placed in a situation in which he was and would have remained in his role at St Pancras.

75. We considered the claimant's lack of engagement in the redeployment process. As referred to at page [160], the claimant was unwilling to discuss positions including those which we find were on equivalent terms and conditions to the claimant and within short distance from where he worked. There was a reference to a team leader role which paid an hourly rate of £8.20 per hour plus an additional discretionary bonus payment of an extra 50p

per hour and an additional £1.50 per hour for unsocial hours. The claimant had a previously unblemished record and was regarded as a hard-working and reliable employee. In the circumstances, we concluded that had he been willing to engage in the process, he would have found alternative internal work with the respondent with no additional financial loss to himself.

76. The consequence for this in terms of the awards we made for unfair dismissal were as follows. In respect of the basic award, we consider that the claimant's unwillingness to engage in the redeployment process will have been in part been caused by his frustration by the situation in which he was placed. However, we also accepted that his refusal to be engaged went beyond that and despite genuine attempts to find alternative employment, his outspoken emails where he referred to never intending to return to the company's employment, in capitalised letters, were blameworthy and directly contributed to his dismissal. In essence, he responded unreasonably to a situation in which he should not have been put. We therefore concluded that it was appropriate to reduce the basic award by 50%.

Award calculation

77. The claimant's gross weekly pay was referred to at page [35] as £447.04. Multiplying this by 17 (as he had 17 years continuous employment from 19 March 2001 to 11 January 2018), this totalled a potential basic award of £7,599.68. However, we reduced this by 50% so that it was £3,799.84.

78. We also awarded a loss of statutory rights of two weeks of £894 (£447.04 x 2).

79. The total award (basic award and loss of statutory rights was therefore £4,693.92. The claimant confirmed that he had not been in receipt of benefits since his dismissal, so that the Recoupment Regulations did not apply.

80. We made no award for a compensatory award on the basis that we concluded that the claimant failed to mitigate his loss prior to his dismissal because of his refusal to engage in the redeployment process and that therefore he should have no compensatory award.

Redundancy claim

81. On the basis that the respondent dismissed the claimant because of Eurostar's insistence that it did so, rather than because of a redundancy situation, which we do not find exists, we concluded that the claimant was not entitled to a redundancy payment.

Race discrimination

82. In terms of the claims of race discrimination, the claimant had claimed that he was treated differently when the respondent failed to provide a copy of his removal request. As already found, the respondent did in fact provide a removal request in December 2017, in direct response to the claimant's

request at the end of November and we find that the delay in doing so was following discussions between the respondent in Eurostar about redacting the names from the removal notice. We do not find that there was a failure to provide a copy and we do not find that the delay was on account of the claimant's race.

83. We do not accept the respondent had deliberately ignored the claimant's comments in relation to the consultation meeting on 27 November 2017. The failure, if any, to record all points was explained by the fact that the notes were not intended to be verbatim; were in the context of heated discussions where the claimant was prone to talking loudly, quickly and to interrupt others. The process was transparent and the claimant's own union representative provided additional comments afterwards. We find there was no sense in which the respondent's actions were because of the claimant's race.

84. With regard to the claimant being required to move after 18 years' service, as already found, we find that this was because of the respondent's genuine belief that Eurostar insisted on his move. We accepted the respondent's evidence that other sub-contractors employees had been removed on occasion and whilst there had been previous incidents, any employees who were not removed were distinguished because of Eurostar's perception that the claimant had failed to report the matter. Once again we find that the claimant's treatment was not on account of his race.

85. We did not accept that the claimant was not offered the opportunity to apply for a role at £8.20 an hour. While this was different from an offer of employment, we accept that the summary in the dismissal letter intended to refer to an opportunity to apply, rather than an offer of employment. We do not find that the wording in the letter was in the any sense related to the claimant's race.

86. We did not accept that the dismissal of the claimant before the outcome of his grievance was because of his race. We found that the reason for the dismissal was because the dismissal process related to redeployment roles, with which the respondent concluded that the claimant was refusing to engage, and so there was no point in delaying the dismissal process for resolution of the separate grievance process.

87. In summary, we find that the claimant was not discriminated against on grounds of his race. We do not find that the claimant failed to follow the ACAS procedure in relation to his dismissal (he appealed) so that there should be no reduction to the unfair dismissal award to reflect his failure to appeal his grievance, which on the respondent's account was a separate process.

Reconsideration application

88. On 23 December 2018, the claimant applied for a reconsideration by the Tribunal of its decision, having earlier, in an email to a law firm, Pannone

Corporate LLP date 30 July 2018, expressed dissatisfaction with ‘deduction remedy’ (sic) in the Tribunal’s award to the claimant, which it copied in to the Tribunal. The claimant has provided no further specific details of the basis of the request for reconsideration, and the Tribunal has treated the reconsideration as relating to the reduction by 50% of the basic award, pursuant to section 122(2) of the Employment Rights Act 1996, namely where, because of the conduct of the claimant prior to dismissal, it would be just and equitable to reduce that amount.

89. We have already set out at paragraph [76] of these written reasons the basis on which we made the reduction. We are conscious that the claimant’s conduct did not have to have caused or contributed to his dismissal; and that such a reduction may also apply in cases of dismissal wider than on grounds of conduct, such as here, where ‘dismissal was for some other substantial reason.’ We concluded that the claimant’s conduct had been blameworthy, as already noted; and there is no reasonable prospect of the original decision in relation to the reduction being varied or revoked, simply because the claimant has expressed a dissatisfaction with the award. The application for reconsideration is therefore refused.

Written reasons and reconsideration response signed by

on 25 January 2019

Employment Judge Keith

Reason and reconsideration response sent to Parties on

29 January 2019