THE EMPLOYMENT TRIBUNALS

Claimant: Mr Peter McVay

Respondent: Pendragon Used Cars Limited

Heard at: North Shields **On:** 24 April 2018

Before: Employment Judge Bauer

Representation:

Claimant: In person
Respondent: Mr R Kohanzad of Counsel

JUDGMENT

It is the judgment of the Tribunal that the claimant was unfairly dismissed but he is not awarded any compensation in the form of a basic award or a compensatory award.

REASONS

Preliminary Matters

1. The claimant confirmed that his only claim was for unfair dismissal. Mr Kohanzad confirmed that whilst the trading name of the respondent was Evans Halshaw and that was the name disclosed on the ET1, the legal title of the respondent was Pendragon Used Cars Limited. By agreement with the parties, the respondent's correct legal title was confirmed as Pendragon Used Cars Limited and substituted in these proceedings accordingly.

2. The respondent's, Mr Neil Johnson - Head of Business and Mr Neil Pritchard - Sales Director, gave evidence of behalf of the respondent. The claimant gave evidence on his own behalf. An agreed bundle of documents running to 138 pages was provided, along with statements from the claimant, Mr Johnson and Mr Pritchard. In reaching this judgment, I have only referred to those documents to which I was referred during the hearing.

The Issues

3. The central role of the Tribunal is not to decide whether or not the claimant stole the fuel and/or the screen wash. The purpose is to determine whether there was a potentially fair reason for dismissal and whether that potentially fair reason was the reason for dismissal (the burden of proof is on the respondent here). If the respondent succeeds in demonstrating a potentially fair reason then the Tribunal is entitled to move on to determine, judged by reference to the range of reasonable responses and with the burden of proof being neutral, whether the dismissal was procedurally fair and whether the decision to dismiss itself was within the range of reasonable responses. If it was not fair then the Tribunal goes on to determine what compensation (if any) the claimant should be awarded. The claimant had not sought reinstatement or re-engagement.

The Law

4. In determining these issues, I have had particular regard to section 98 and particularly section 98(4) Employment Rights Act 1996 ("ERA") that sets out the statutory basis on which the fairness of the dismissal must be judged as follows:

"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.

(2)A reason falls within this subsection if it—

(a)relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b)relates to the conduct of the employee,

(c)is that the employee was redundant, or

(d)is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3)In subsection (2)(a)—

(a)"capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b)"qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he 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.

(6)Subsection (4) is subject to—

(a)sections 98A to 107 of this Act, and

(b)sections 152, 153, 238 and 238A of the Trade Union and Labour Relations (Consolidation) Act 1992 (dismissal on ground of trade union membership or activities or in connection with industrial action)."

5. In judging the fairness of the dismissal and in accordance with section 207 Trade Union and Labour Relations (Consolidation) Act 1992, I have also considered the ACAS Code of Practice on Disciplinary and Grievance Procedures which while not binding should be considered by tribunals when determining questions of fairness in unfair dismissal cases, particularly in relation to whether the procedures followed by the respondent were fair.

6. I have reminded myself that an employer is not obliged to follow the Code to the letter and that what is important is that the tribunal looks at the substance of the matters that are covered by the ACAS Code (**Sharkey v Lloyds Bank plc [2015] UKEAT/0005/15**).

7. In addition, I have reminded myself of the guidance in **British Home Stores Ltd v Burchell [1978] IRLR 379** which for the dismissal to be fair requires that at the time of dismissal the employer believed the employee to be guilty of misconduct, that the employer had reasonable grounds for believing that the employee was guilty of misconduct and at the time it held that belief that it had carried out as much investigation as was reasonable in the circumstances. The burden here is neutral (**Boys and Girls Welfare Society v McDonald [1996] IRLR 129 EAT)**.

8. In terms of the decision to dismiss for the alleged misconduct, I must decide whether the decision to dismiss fell within the range of reasonable responses that a reasonable employer in those circumstances and in the respondent's business might have adopted (**Iceland Frozen Foods Ltd v Jones [1982] IRLR 439**).

9. The standard for judging the decision to dismiss and whether the investigation and dismissal process generally were fair is whether they were in the range of reasonable responses (**Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR23)**.

10. Among other things, this means that I must decide whether the investigation and the decision to dismiss were within the range of reasonable responses and not whether I would have investigated things differently or reached a different decision. I must not substitute my view in these matters for that of the respondent (**Foley v Post Office; Midland Bank plc v Madden [2000] IRLR 827).**

11. In determining what compensation should be due, the key statutory provisions applicable to this case are section 119 ERA for calculating the basic award and section 122(2) ERA that determines the statutory basis for any reduction to the basic award. Section 122(2) ERA states:

    "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."

12. In determining my approach to section 122(2) ERA, I have had regard to the principles in **Steen v ASP Packaging Limited 2014 ICR 56, EAT** in that I have identified the conduct which is said to give rise to the possible contributory fault, determined whether that conduct was culpable or blameworthy and decided whether it was just and equitable to reduce the amount of the basic award.

13. In terms of the compensatory award, the key statutory provisions in this case are sections 123(1) and (6) ERA that state:

    Section 123(1) ERA "*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."*

    Section 123(6) ERA "*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*."

14. In determining the level of the compensatory award, I have also reminded myself of the decision in **Polkey v AE Dayton Services Ltd [1987] IRLR 503** and the guidance in **Software 2000 Ltd v Andrews and others UKEAT/0533/06/DM**

that states "*The question is not whether the Tribunal can predict with confidence all that would have occurred; rather it is whether it can make any assessment with sufficient confidence about what is likely to have happened, using its common sense, experience and sense of justice*."

15. In determining the position on contributory fault, I have had regard to the fact that the claimant's conduct must be culpable or blameworthy, it must have actually caused or contributed to the dismissal and that the reduction must be just and equitable. (**Nelson v BBC (No.2) [1979] IRLR 346 (CA**).

16. I have also considered that the contributory fault does not have to be the main reason for dismissal as long as it was one of the reasons (**Robert Whiting Designs Ltd v Lamb [1978] ICR 89**).

Findings of Fact

17. The claimant was employed as a mechanic from 9 June 2012 to 30 October 2017 when he was summarily dismissed. Whilst the clear policy of the respondent as set out at page 44 was that repairs on personal vehicles were not permitted without consent and that personal vehicles should only be parked in authorised areas, it is accepted that these requirements were not always met. Further, despite the respondent's requirements not all work on staff vehicles was authorised by a job card as was expected.

18. No legitimate reason was given by the claimant why his vehicle was in the workshop on the day in question.

19. It was also found that the claimant did move two 25 litre barrels of fuel that were about two thirds full across the workshop on that day and was seen on CCTV moving them in the direction of his car. The claimant claims that he put those barrels in the parts department store.

20. Some weeks later the barrels were found to be empty and placed by the claimant's work area. The Tribunal does not need to determine what actually happened to the contents of the barrels and so makes no findings as to whether the claimant took the contents or not.

21. In terms of the source of the fuel both Mr Johnson and the claimant accepted that in the ordinary course of work there was no need for such large and dangerous amounts of fuel to be kept and stored on site and that there was a health and safety risk for them to be kept in the parts department store (if in fact they were kept there). Limited amounts of fuel were removed from cars on occasion such as when fuel filters were changed or when auction cars were sent off. However, these explanations did not explain why such large amounts of fuel had been collected and were being handled by the claimant. The Tribunal does not accept that it was due to the gradual accumulation of fuel and concludes that the fuel was gathered in a narrow timeframe and potentially from a single source.

22. In relation to the screen wash, in the claimant's testimony in his witness statement and at the hearing he accepted that he had put the screen wash in his car and taken it away (something that was caught on CCTV). However, the claimant maintained (paragraph 16 of his witness statement) that to his

knowledge the screen wash "would not have been the property of Evans Halshaw as it is not company policy to sell this product, and it had not been taken from stores". The basis of the claimant's denial that he was guilty of wrongdoing in this regard was that the screen wash that he took was not the property of the respondent.

23. In the investigation meeting (page 91) when asked why he was seen putting the company's screen wash into his car the minutes state of the claimant's response "laughing. You're taking the piss. How do you know it's the companies?". During the disciplinary hearing the minutes record the following exchanges - page 101 "It was also noted that you can be seen putting screen wash into your car on the CCTV. Can you advise where this screen wash came from?" The claimant replied "Does not know." Mr Johnson then responded "On the CCTV footage it shows you getting the screen wash from under the bench, where the companies screen wash was and still is kept." The claimant replied "As far as he is aware, company policy is Evans Halshaw do not put screen wash in car, does not know where it came from."

24. At pages 105 and 106, Mr Johnson stated "Obviously it was also mentioned the same day obviously you were seen putting screen wash in your personal car. Can you advise where the screen wash came from?" The claimant responded "I haven't got a clue. Evans Halshaw don't have screen wash." The claimant went on to say "I was advised when I first started working here Evans Halshaw don't put screen wash in cars. I've never put screen wash in a customer's car or a company car ever." Mr Johnson stated "Obviously it seems obviously on the same sort of obviously day the CCTV footage obviously shows you getting screen wash somewhere I think near where the grinder is and then put it back. Is Evans Halshaw screen wash kept there?" The claimant then responded "I don't know as I said we don't have it. As far as I'm aware of in company policy is not to put screen wash in. I was told this the day I started and I've never put screen wash in any car. Where it came from I really don't know."

25. Mr Johnson then stated "Right" and the claimant responded "There's no bull shit. As far as I'm aware, you can check with Kyle, as far as I'm aware they don't put screen wash in customer's cars." Mr Johnson stated "It's just the CCTV footage you know where the bench grinder thing is." The claimant replied "Yes I know where you're talking about. Where it's come from I don't know. Obviously we get the old stuff out of customer's cars if there's a screen wash or something in the back we'll take it out we have stuff lying around."

26. The claimant's responses to this issue in cross-examination were similarly evasive and disingenuous. However, the claimant did ultimately accept in cross-examination that the respondent did have screen wash on site and did own the screen wash that he took. It was accepted by the claimant (and accepted that it was shown on the CCTV) that he put the screen wash in his car.

27. I find that the reason for dismissal was the claimant's conduct and despite the previous complaints the claimant had made about data protection issues that Mr Johnson, when determining the reason for dismissal, genuinely believed that the claimant was guilty of the alleged misconduct. The claimant disputed this point and suggested, although did not press the matter, that a potential alternative reason for his dismissal was the data protection issues that he had previously raised. It was not clear why, if this explanation for his dismissal was accurate,

that the claimant would also have dismissed the other technician implicated in these issues. It is not accepted that the claimant's previous data protection complaint motivated the decision to dismiss.

28. It was also not accepted (as was also suggested by the claimant) that the respondent used the alleged misconduct to reduce the number of technicians to suit its wider business purposes. We heard evidence from Mr Pritchard that the respondent had recruited to replace both technicians who had been dismissed over this issue. One position had been filled but one remained unfilled and the respondent continued to advertise the post. Mr Pritchard's position (and it was accepted by the tribunal) was that if the respondent had the opportunity to recruit technicians at the respondent's level then it would do so.

29. In terms of the specific conduct that amounted to the reason for dismissal, in the dismissal meeting – at page 113 – Mr Johnson gives his reasons for dismissal as "For the probability of theft of fuel from the company" and then Mr Johnson went on to say in response to the claimant's challenge that the respondent did not have evidence of him taking anything "Theft of fuel and screen wash" thereby giving the theft of both the fuel and the screen wash as the reason for the dismissal.

30. The dismissal letter, at page 116, refers to theft and dishonesty in relation to the theft of company property but as pointed out by the claimant the letter then goes on to focus only on the issue of the fuel.

31. Mr Johnson at paragraphs 27 and 28 of his witness statement stated "The CCTV footage clearly showed Mr McVay take a container of screen wash from under a bench in the workshop and put in his car. Although Mr McVay questioned whether the screen wash belonged to the company, as he did not believe that the company used it for customers' cars, he did not suggest that the screen wash belonged to him and his denial therefore appeared nonsensical. I therefore believed that Mr McVay had taken screen wash that did not belong to him for his own personal use. Any fuel screen wash held on site or in company vehicles was considered as company property. As Mr McVay had taken fuel and screen wash without permission for his own personal use I believed that his actions constituted theft." Apart from the claimant's observation that the dismissal letter did not focus on the screen wash this evidence was unchallenged.

32. In the appeal Mr McVay raised at page 120, he addressed both the issues of fuel and screen wash. These issues were also addressed at the appeal meeting as detailed at page 123.

33. Therefore, it is found that the claimant was dismissed for theft of company property in the form of the fuel and the screen wash.

34. Regarding the alleged authority of the claimant to remove fuel, limited evidence on this point was presented and the evidence that was presented was to some extent conflicting. Paragraph 4 of the claimant's witness statement stated that "the previous site manager had authorised that fuel could be taken from auction cars for any purpose." However, in the investigation meeting, at page 91, the claimant stated that Mr Mike Davidson had said "we could do it about three years ago when we were at the other site. If I was taking it then I was authorised by Mike at the time." At page 101 of the disciplinary notes record the claimant as stating "advised Mike Davidson authorised fuel to be taken out of a van some

three years ago, says he has not taken any fuel since. The claimant's position in evidence was also clear in that since the fuel had been taken out of the van some three years earlier that he had never taken fuel from a vehicle. Page 105 also records the claimant as stating "I was making the point that if I was it was actually authorised by Mike Davidson. This was actually three years ago when we were at the other site we were taking fuel out of a van that was getting scrapped but they wanted the fuel taken out of he got me and Craig to do it and basically said to us at the time I don't really give a stuff what you take off the cars as long as it doesn't make them work less." At the disciplinary meeting at page 105 the claimant also then again clarified that he had not taken fuel from vehicles since the alleged authority given some three years earlier to take the fuel from the van.

35. The Tribunal does not find that the claimant or other staff had an existing blanket authority to remove fuel or take it away. The authority that the claimant alleges that was given of which the specifics were unclear and changed in the claimant's testimony during the disciplinary process was some three years earlier, on a different site and was not exercised since the date it was allegedly given. It was not found to be authority for the claimant or others to remove or use fuel for their own purposes.

Conclusions and reasons

36. I accept Mr Johnson's evidence that the reason for dismissal was conduct and not the data protection issue although there may have been bad feeling about the claimant's complaint and a desire to get back at him from other staff. Mr Johnson's evidence which was largely unchallenged and borne out by his view of the underlying evidence produced by the investigation and disciplinary process was that the claimant's conduct regarding the fuel and screen wash was the reason for the dismissal. Again, if the data protection matter had been the prevailing issue then it does not explain why another technician was dismissed for similar reasons. This reason for dismissal was conduct which is a potentially fair reason for dismissal as per section 98(2)(b) Employment Rights Act 1996.

37. I went on to consider the neutral burden concerning whether a fair process was followed noting that the standard here is whether the process was within the range of reasonable responses. The claimant's key criticism of the process (except for the overall outcome) was that the respondent did not adequately investigate the alleged authority from Mr Davidson that the claimant had authority to remove fuel.

38. As detailed above, the issue of this authority is referred to in the claimant's witness statement at paragraphs 4, 16 and 17. It was also raised by the claimant in the investigatory meeting (page 91), at the disciplinary meeting (pages 101 and 105) and in his appeal letter (page 125). The claimant alleges (page 105 and paragraph 17 of his witness statement) that some of the other witnesses he mentioned had referred to the possibility of Mr Davidson giving some sort of authority for the removal of fuel. He also alleges in the disciplinary hearing (page 109) that the paperwork that he had in error received in relation to Scott Storey indicated that in different circumstances and from a different manager that authority similar to that being alleged by the claimant may have possibly been given to Scott Storey.

39. The respondent's position on this issue is set out in paragraph 26 of Mr Johnson's statement although this primarily focuses on why Mr Johnson did not believe that Mr Davidson would have given the relevant authority. However, limited evidence was given on why this line of enquiry was not investigated beyond the point in Mr Johnson's statement that he was "unable to investigate this point with Mr Davidson, who no longer worked the company." No evidence was given as to the specific basis of this decision or that any effort had been made to contact Mr Davidson.

40. The question I must answer is whether the overall process was in the range of reasonable responses. In reaching this decision I have considered the ACAS Code and the case law referred to above particularly **Sainsbury's v Hitt [2003] IRLR23**. The paragraph 4.12 of the guidance to the ACAS Code which although states "When investigating a disciplinary matter an employer should take care to be fair to the employee and to treat the employee in a reasonable manner. The nature and extent of the investigation will depend upon the seriousness of the matter and the more serious it is then the more thorough the investigation should be. It is important to keep an open mind and look for evidence which supports the employee's case as well as the evidence against." I also note that the expectations in **A v B [2003] IRLR 405** that an investigation should be particularly rigorous when charges are serious. I have also noted the guidance in **Shrestha v Genesis Housing Association Ltd [2015] EWCA Civ 94 t**hat it is not necessary for an employer to extensively investigate each line of defence advanced by an employee.

41. In considering this issue, I have noted counsel's points that the alleged authority was some three years earlier, was not a central part of the claimant's defence in that he denied taking the fuel in the first place and that the claimant was clear in his evidence that he had not acted upon this authority in the period since the authority was given some three years earlier.

42. However, there were allegations of theft here and that gross misconduct was alleged and found. It is also noted that the failure to follow up the line of enquiry with Mr Davidson or even attempt to do so as part of the investigatory process was compounded by Mr Johnson's apparent admission at page 105 of the bundle that other parties seemed to have given some support to the idea that Mr Davidson had given some sort of prior authority regarding the removal of fuel.

43. The minutes at page 105 state "Obviously we can't really discuss anything about that but the witnesses obviously we've had in since you been gone there was no concrete evidence to say that Michael Davidson said that. All the answers were "I think" which we can't take as gospel truth." "I think Michael Davidson said that" for example.

44. What the outcome of any attempt to make enquiries of Mr Davidson might have been (in terms of his response and whether he could be contacted) cannot be known but in light of the seriousness of the allegations against the claimant, the nature of his defence and the other evidence that had come out in the investigation on the issue of the alleged authority, in my view the failure even to try to look into this issue took the investigation outside the range of reasonable responses and so rendered the dismissal unfair.

45. Putting the issue of the failure to carry out a reasonable investigation to one side for the moment, I have considered the basis of Mr Johnson's decision more generally noting again that I am not here to decide whether the fuel was removed or not. The claimant has accepted that he removed the screen wash and in cross-examination at the hearing that it was the company's property and that he did so without permission.

46. My focus is primarily on whether the decision made by Mr Johnson was in the range of reasonable responses based on the evidence before him at the time. There was ample evidence to support Mr Johnson's conclusion that the fuel was removed and the claimant accepted that he had removed the screen wash. The CCTV shows the claimant handling significant amounts of fuel and moving towards his car (which had no legitimate reason to be in the workshop). I accept that the parts department was beyond his car and that he alleges that he was moving in that direction and did not remove the fuel. However, it is also accepted that there was a serious health and safety concern in storing such large amounts of fuel in the parts department stores and that this was not accepted or safe practice. There was no reason based upon the evidence given today for the claimant to be handling such large amounts of fuel.

47. The claimant's answers at the investigatory and disciplinary stage of the process were evasive in respect of both the fuel and the screen wash. Regarding the fuel he could simply have said "I didn't take it" but in fact his approach was to deny initially the number of containers (page 90) although he later accepted there were two involved. He focused on what could be seen on the CCTV rather than what had actually happened and similarly in his evidence at the hearing he was evasive on this issue.

48. Mr Johnson was entitled to take account of his knowledge of the practices of the respondent, of the CCTV footage (although it did not show the full story) and of the fact that the fuel was missing though limited weight could reasonably have been given to this issue on the basis that it was some five weeks later when the empty containers now by the claimant's workstation were examined. Mr Johnson was also entitled to take account of the claimant's evasive answers regarding the fuel during the investigatory and disciplinary meetings.

49. Regarding the screen wash, the claimant's position was that the screen wash was not the respondent's property. This was his initial position within the investigatory and disciplinary meetings and therefore he argued that it was not wrong for him to take it. This response was unconvincing. The claimant in cross-examination in the end accepted that the screen wash was the respondent's property. During the investigation and disciplinary process the claimant accepted that he did take the screen wash and this in itself was clear and serious wrongdoing and a legitimate consideration for Mr Johnson to take into account when deciding whether or not to dismiss. The claimant's attitudes and responses to the situation generally including the fact that he clearly took screen wash that was not his and that belonged to the respondent also entitled Mr Johnson to reach certain conclusions in respect of whether or not the claimant had removed the screen wash.

50. The question is whether Mr Johnson's decision was in the range of reasonable responses and in the light of the evidence available to him at the time I conclude

for the reasons set out above that his decision was within the range of reasonable responses.

51. In terms of compensation, I find that the flaw in the investigation process that rendered the dismissal unfair, whilst a line of enquiry that I believe (for the reasons set out above) would have been reasonable for the respondent to follow up would ultimately have been highly unlikely to have made a difference to the overall outcome. The alleged authority, and we are not clear on what Mr Davidson would have said had he been interviewed, was, by the claimant's admission, given some three years earlier in relation to a different site and had not been acted upon by the claimant in the intervening period. It cannot be said to be an existing permission even presuming that Mr Davidson had supported the claimant in any evidence he gave. In addition, it is clear that the removal of the screen wash was unacceptable in its own right. It was the respondent's property and was removed without consent and judging by the claimant's responses in circumstances where he knew he was wrong to take it. Further, as detailed above, it formed part of the grounds for dismissal.

52. The basic award would have been based on the claimant being 35 years old at the point of dismissal and having completed five years' service and would have come to 5 weeks at his gross basic pay of £1,815 worked out to a weekly amount of £418.85 making a basic award of £2,094.25. However pursuant to section 122(2) Employment Rights Act the Tribunal is entitled to take into account the conduct of the claimant before dismissal if that conduct was such that it would be just and equitable to reduce the basic award. It is clear that the claimant's conduct in removing the screen wash itself was culpable or blameworthy conduct that would support a dismissal in its own right and so regardless of the issue with fuel, would have justified the claimant's dismissal. It is clear (as detailed above) that the respondent considered the removal of the screen wash to amount to theft. On this basis and in light of the nature of the claimant's conduct and the fact that it was his conduct that resulted in his dismissal, I consider it just and equitable to reduce the basic award to zero.

53. In relation to the compensatory award and pursuant to section 123(1) and (6) ERA and the principles in **Polkey v AE Dayton Services Ltd [1987] IRLR 503,** I find that even if the investigation had covered Mr Davidson's evidence that the claimant would have been dismissed in any event. The points made above regarding the screen wash apply to the compensatory award in the same way as set out above in relation to the basic award. Further, the position in relation to the screen wash means that regardless of any authority given in respect fuel that I find that the claimant would have been dismissed event and so that the failing in respect of the investigation made no difference to the overall outcome. In addition, the alleged authority related to a period three years earlier, to a different site, had not on the claimant's own admission been exercised in that three year period and did not extend to the issue of the screen wash which the claimant accepted was the respondent's property and which he took without permission. Therefore, I conclude that even if the respondent had not carried out a defective investigation thereby rendering the dismissal unfair that the dismissal would have still gone ahead in the same way and on the same date and therefore I conclude that it is just and equitable to make no compensatory award in the circumstances. Finally, the conduct of the claimant (in relation to the screen wash in its own right)

meant that he made a 100% contribution to his own dismissal and this is a further basis upon which no compensatory award is made.

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EMPLOYMENT JUDGE BAUER

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON

4 May 2018

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