Case No: 2500686/2018

EMPLOYMENT TRIBUNALS

Claimant: **Miss R Buglass**

Respondent: **(1) BSD Hotels Limited**
(2) Mr Jagroop Dulal

Heard at: **North Shields** **On: 21 August 2018**

Before: **Employment Judge A.M.S.Green**
Mrs C Hunter
Mr M Ratcliffe

Representation
Claimant: In person
Respondent: Mr G Jamieson, Solicitor

JUDGMENT

The unanimous decision of the Tribunal is:

1. The claimant was automatically unfairly dismissed by the first respondent for reasons connected with her pregnancy.

2. The claimant was discriminated against by the first and the second respondents because of her pregnancy.

3. The first respondent did not provide the claimant with a written statement of particulars of employment as required under Employment Rights Act 1996, section 1.

4. The claimant having withdrawn her claim for breach of contract, said claim is dismissed by consent.

REASONS

1. The claimant worked as a receptionist at the Kings Arms Hotel in Berwick-upon-Tweed. The first respondent owns the hotel. The second respondent was the hotel manager. She started working at the hotel on 31 May 2017. She was dismissed with immediate effect on 2 November 2017.

2. By a claim form presented on 28 March 2018, the claimant brought complaints of automatically unfair dismissal for a pregnancy related reason, discrimination on the grounds of pregnancy and breach of contract (failure to pay notice pay). She subsequently withdrew her breach of contract claim.

3. The claimant's case is that she was dismissed without notice by letter dated 2 November 2017, in circumstances where the first respondent failed to follow any disciplinary process after the claimant informed them in July 2017 that she was pregnant. Having informed the respondent she was pregnant she was subjected to an unjustified disciplinary warning and ultimately dismissed. The respondents defended the claim. They maintain that the claimant was employed on a temporary basis to cover another employee who had gone on maternity leave. They say that the principal reasons for dismissing the claimant was a reason related to her conduct and that their treatment of the claimant was in no sense whatsoever influenced by her pregnancy. She had been given verbal and and one written warning about her performance and several breaches of company policy.

4. The issues to be determined are as follows:

   <u>Automatic unfair dismissal</u>

   a. What was the reason for the dismissal? The first respondent asserts that it was a reason related to conduct. The first respondent must prove that it had a genuine belief in the misconduct and that this was the reason for the dismissal.

   b. Did the first respondent hold that belief in the claimant's misconduct on reasonable grounds?

   c. Was the decision to dismiss a fair sanction, that is was it within the reasonable range of responses for a reasonable employer?

   d. Was the decision to discipline and ultimately dismiss the claimant in any sense whatsoever influenced by the fact that she was pregnant? If so, then the dismissal will be automatically unfair.

   <u>Pregnancy discrimination</u>

   e. Was the first respondent's decision to discipline and ultimately dismiss the claimant in any sense whatsoever influenced by the fact that she was pregnant at the relevant time.

   f. Did the first respondent treat the claimant as alleged less favourably than it would have treated a female employee who was not pregnant? Has the claimant proved primary facts from which the Tribunal could properly and fairly conclude that any difference in treatment was because of her pregnancy.

   g. If so, what was the first respondent's explanation. Does it prove a non-discriminatory reason for any proven treatment?

5. The parties filed and served a joint hearing bundle. The second respondent, Alexandra Doherty, Rocio Martinez-Linares and the claimant adopted their witness statements and gave oral evidence. Mr Jamieson and the claimant made closing submissions.

6. In reaching our decision, we have considered the oral and documentary evidence, the closing submissions and our record of proceedings.

7. The claimant must establish her claims on a balance of probabilities.

8. We have noted the following from the oral and documentary evidence and make the following findings of fact:

    a. There was an issue as to whether the claimant had been employed on a permanent or temporary basis as a day time receptionist. The first respondent says it was a temporary job to cover another employee's maternity leave for a period of between 9 and 12 months. The claimant says that she was engaged on a permanent basis for 16 hours per week. For the reasons given below, we found that the claimant did not have a written contract of employment which means that we must determine the issue on the available evidence. We have noted the Staff Starting Form [HB 72]. This shows a start date of 31 May 2017. Her contracted hours are stated to be 16, working 3 days per week. We have also seen the advertisement for the position of receptionist which we understand the claimant responded to [HB83]. It states "This position is a fixed term contract for 9 to 12 months to cover maternity leave". There was another job for a night receptionist but the claimant was not offered this. In his oral evidence, the second respondent stated that the claimant was employed to cover a period of maternity leave for between 9 and 12 months. The evidence does not support the claimant's claim that this was a permanent appointment. Having heard no evidence as to when her colleague who was on maternity leave returned to work, we find that she was employed on a fixed term and the longest period of time that she could have expected to work for the first respondent was 12 months. The contract would have expired on 31 May 2018 at the latest. It may be that evidence will be offered by the first respondent at the remedy hearing on when the maternity cover returned to work. This is relevant to determining the period of loss.

    b. Much of this case rests on the claimant's terms and conditions of employment and whether she was bound by the sickness procedure in the staff handbook. We heard conflicting evidence as to whether the claimant signed her statement of terms and conditions of employment which purport to incorporate the handbook by reference. In her evidence, the claimant maintained that she did not and she never received a written contract. The second respondent claimed that she had signed her terms and conditions and we were taken to these in the bundle [HB 65-68]. The second respondent told us that he had signed the document on behalf of the first respondent and he identified his signature. I asked him whether the claimant had signed the document – he said that as far as he was aware, she had. When he was shown the document, it was clear that she had not signed it. He then said that she had signed it at the hotel but he could not

remember whether anyone was present when she signed. He then said that she was sure that he and the claimant had both been present when she signed it. He then said "I would not have signed it without her being present". When I pointed out to him that she had not signed it, he said that he had posted the document out to her. He contradicted what he had just said. He then acknowledged that the hotel did not have a copy of her contract with her signature. Furthermore, in the dismissal letter that he wrote on 2 November 2017 he says, amongst other things "Due to lack of contract…and the nature of dismissal no notice period is required". This is another example of the second respondent contradicting himself. Clearly, on his own admission, the second respondent knew that the claimant did not have a signed written contract but then gave oral evidence to suggest that she had, only to concede that she had not signed the contract. We accept the claimant's account and find that she did not sign the contract. She did not have a written contract of employment and had not received any written particulars of employment. We also have serious concerns about the second respondent's credibility when he gave his evidence on this and his contradictions were such that we doubt that he was being generally credible. He was an unreliable witness.

c. There was an issue about whether the claimant had seen the staff handbook which contained the hotel's employment policies including things such as sickness absence, disciplinary and grievance procedures. In essence, the first respondent's justification for dismissing her was her failure to follow the sickness policy in the handbook. This deals with how sickness absences are to be reported, to whom and when. In paragraph 9 of his witness statement, the second respondent claims that the sickness procedure was part of the manual (i.e. handbook), which he says was given to the claimant and was part of the induction process.We note that the claimant accepted under cross examination that she had been trained and attended an induction but we were given no details of what the induction entailed. The second respondent said that all employees were given a copy of the handbook and they would sign a docket confirming that they had received it. The handbook exhibited in the bundle does indeed have a signing docket (albeit in blank form). However, he admitted that the hotel had no evidence of receiving a docket signed by the claimant. He said that a copy of the handbook was also kept in the office implying that the claimant was somehow bound by its terms because of that. We find that there is no evidence to show that the claimant received the handbook or had seen it in the office. There is no signed docket. Furthermore, in the absence of a signed contract of employment incorporating it by reference, it cannot be said that the handbook formed part of her contract and she was not bound by the sickness absence procedure.

d. The next issue is when the respondents became aware of the claimant's pregnancy. Once again, there was conflicting evidence on this which has a bearing on the disciplinary action. In her oral evidence, the claimant told the second respondent in July 2017 that she was pregnant. She thought it was about a week after she found out herself. In paragraph 13 of his witness statement, the second

respondent states that the claimant did not personally inform him that she was pregnant and that in August he became aware of a rumour that she was pregnant. Under cross examination, he said that he found out after she was issued with a disciplinary warning on 10 August 2017. In his statement he says that he knew for sure that she was pregnant when he saw a sick note. He also claimed to have carried out a risk assessment once he found out she was pregnant. There was no conflicting evidence about the risk assessment and we accept that it was done, but are unclear when. To whom should we give the benefit of the doubt about when the respondents first became aware of the claimant's pregnancy? Was it in July or some time after 10 August 2017? Given our concerns about the second respondent's general credibility, we prefer the claimant's evidence on this. We also note that Ms Doherty said that the claimant told her that she was pregnant and there was talk in the hotel amongst the staff about this. We find that the respondents knew that the claimant was pregnant from July 2017 and that there was subsequent discussion about it amongst other members of staff.

e. We now turn to the two instances of disciplinary action taken against the claimant in August and November 2017. The claimant received a written warning from the second respondent on 10 August 2018 [HB 4]. It said the following:

> *I am writing to you regarding your incompetence during your employment at The Kings Arms Hotel.*
>
> *On more than one occasion you have failed to do your duties as a receptionist, we have found multiple bookings without card details attached which you know is a requirement for a booking at our hotel. This acts as our insurance policy, for any reason a guest does not show up we would charge the card if card details are not available then the business would take a loss which is not acceptable.*
>
> *When writing reg cards you are not filling out all the information needed to check guests in smoothly, On one occasion you never filled out reg cards but had time to mop the floor this is not your duty. Although you may help other staff all of your assigned tasks must be completed before doing so and you must always be near the desk.*
>
> *You have had multiple sick days phoning in at the very last minute, we need at least 1 hour notice to be able to cover. This is not acceptable also.*
>
> *Please accept this as a written warning.*

f. In her witness statement, the claimant says that she came to work to find the warning letter. She had not been told about any failures in her duties. The second respondent had asked her to mop the floor when things were quiet at the reception desk prior to a large visit to the hotel. She had attended maternity appointments during her days

off because she was not allowed time off from work to attend. This suggests that she was being unfairly disciplined for sickness absences when in fact she was taking time off in her own time. Although she disagreed with the contents of the letter, she decided to do nothing about it because she did not want to draw attention to herself and she needed the job. She states that the second respondent said nothing to her at work and she got on with her job. Having assessed the evidence, it is clear that the claimant had received a formal written warning. That is not disputed. However, there is no evidence that she was subject to any form of disciplinary process before the letter was issued. This is very concerning because we would have expected the first respondent to have followed the ACAS code at the very least. The claimant should have been notified in advance about what the allegations against her were and given an opportunity to answer them before any decision was taken. There is no evidence of this happening. She was presented with a fait accompli. We accept the claimant's evidence on this. The fact of the matter was that this written warning came as a complete surprise to her and in our opinion this contravenes basic principles of natural justice. It was unfair to discipline her in such circumstances. Furthermore, given that the respondents already knew that she was pregnant, they had already started to discipline her for pregnancy sickness absences without giving her an opportunity to defend herself and provide an explanation.

g. We are also concerned about the purpose of the written warning because the claimant passed her three month probationary period which suggests that there were no serious concerns about her performance at work, despite her having received a written warning on 10 August 2017. Furthermore, in her evidence, Ms Doherty said that she did not have any concerns about the claimant's abilities before she went on maternity leave. Ms Linares told us that she was broadly happy with the claimant's performance at work. In our opinion, this undermines the rationale for the written warning.

h. The claimant had significant periods of sickness absence related to her pregnancy. She was off for 13 days between 29 August 2017 to 11 September 2017 [HB85]. For that period of absence her GP said that she had affective disorder pregnancy.There were other periods of absence some of which were not pregnancy related (e.g. when off with a migraine). In his oral evidence, the second respondent accepted that he knew that her absences related to her pregnancy. He also explained that the hotel had a policy that employees could be off work for up to three days before having to provide a sick note. Ms Linares confirmed that the claimant was frequently off sick in August and that she sometimes gave her notice of her absences but sometimes she did not. The claimant was off work on 28 and 29 October 2017. She claimed that her mother called the hotel to let them know she would not be coming in. None of the witnesses at the hotel had any recollection of such a conversation. We have no reason to doubt what they said. We accept that and find that the claimant had not notified the hotel that she would not be coming into work. The claimant was taken off the rota for week beginning 30 October 2017.

i. The second respondent's oral evidence was to the effect that the hotel had lost patience with the claimant over her failure to follow procedures, her sickness absences and her use of a mobile phone and her kindle whilst on duty. On 25 October 2017, this culminated in the second respondent writing to the claimant inviting her to a disciplinary hearing on 1 November 2017 [HB 71]. The letter states, amongst other things:

> *Once again just we are disappointed to note that you have not turned in for work or have any explanation as to why this is so. We have no record of a sick note and your constant behaviour with regard to not calling in either at all or at the very last minute is unacceptable that puts the hotel constantly under staffed to the detriment of the hotel guests.*
>
> *We have also checked CCTV and despite your written warning you are still operating your kindle during working hours. Whether it's quiet or not in the hotel is of no consequence because there are always plenty of tasks to do in the hotel.*
>
> *We are also yet to receive your maternity paperwork. If there is any maternity leave during the time of your contract then we would have to cover that.*
>
> *…*
>
> *We must inform you now that all options with regard of your further employment will be considered if there is found to be a further breach of your employment position.*

j. It is noteworthy that the second respondent is threatening the claimant with disciplinary action, amongst other things, for failing to provide her maternity paper work. We fail to see how this is a disciplinary matter. However, it is clearly a threat of disciplinary action relating to her pregnancy. The letter also refers to the written warning and suggests that she had been warned about using her kindle. We have quoted the written warning above; it says absolutely nothing about her kindle use. At best this is carelessness on the part of the the second respondent in failing to check what she had already been warned about. At worst, it suggests a pattern of threatening and unfair behaviour and making allegations to mask the respondents' real motivation: putting pressure on the claimant because of her pregnancy. It is clear that the weight of the letter points to concerns about her sickness absence record and her failure to notify her employer of the fact that she would not be able to come into work. The reference to CCTV footage of the claimant reading her Kindle is, in our opinion, of secondary importance.

k. There was conflicting evidence about whether the claimant received the letter of 25 October 2017. She claims that she did not and knew nothing of the disciplinary hearing. The second respondent said that

she had received it but also claimed that there were problems with delivering mail to the claimant's flat. He said it in his oral evidence that she lived in a tenement which had an electronic door entry system and letters could not be delivered. The claimant said that the door entry system had not been installed at the time when the letter was written meaning that it could have been delivered. Furthermore she only lived 50 yards from the hotel and the letter could have been hand delivered. Ms Linares states in her witness statement that she discussed the meeting which she describes as being connected with "work performance". The claimant is alleged to have been dismissive about this when it was raised. Given our concerns about the second respondent's general credibility, we prefer the claimant's account. We do not accept that she received the letter inviting her to a disciplinary hearing. Despite what Ms Linares said in her statement, a discussion about "work performance" cannot be construed as meaning disciplinary action. It could cover many things such as competency, training etc…

l. The claimant came into work on 30 October 2017 unaware of any disciplinary action against her. Her colleague Sigourney was running late. Consequently, the claimant worked from 07:00 to 07:45 until Sigourney came in. The claimant then left the hotel and returned at around noon. At that juncture, Ms Linares told her that she was no longer needed. There was conflicting evidence about the reason for this. The claimant said that she believed that Ms Linares said that it because she had been placed on maternity leave. Ms Linares had not put her onto the work rota. Ms Linares said that because the claimant had been off sick the previous week and had not been in touch, she assumed that she was not coming in the following week. Ms Linares knew that the disciplinary hearing was scheduled for 1 November 2017 although there is no suggestion that she told the claimant about it other than her vague reference to a discussion about "work performance". We preferred Ms Linares' evidence on why she had taken her off the rota. She believed that she was off sick but had not been told when she would be returning. She had a rota to plan and needed to cover for the claimant. Furthermore, it is implausible that the claimant would have been placed on maternity leave prior to her producing the MATB1 form. By our reckoning, the earliest date that she could have gone on maternity leave under the statutory regime was 11 November 2017 this would tally with the claimant coming into work on that date to deliver her MATB1 (see below).

m. The disciplinary hearing was held in the claimant's absence on 1 November 2017. She was subsequently dismissed by a letter dated 2 November 2017. The second respondent wrote the letter. The reasons for dismissal were:

> *…on several occasions, whilst monitoring CCTV, I have witnessed you having personal phone calls during your shifts. I have also witnessed you reading your kindle while on duty. For the last few weeks, you have been phoning in sick, giving us on a few occasions short notice. Members of staff including myself have seen you outside work while allegedly too sick to work. As*

a result of this, not only has the Hotel been affected but also other members of the Staff, as I'm sure you understand this is not acceptable and will no longer be tolerated.

Due to lack of contract, the maternity temporary agreement and the nature of the dismissal no notice period is required.

n. The reasons for dismissal given in that letter go beyond the charges that she had to answer as set out in the letter dated 25 October 2017. That is unfair and immediately raises suspicions about the motives behind this behaviour. For example, the letter refers to claims that she had been seen on CCTV using her mobile phone as well as a her kindle. However, the letter of 25 October says nothing about mobile phone usage. Another purported reason for dismissing her was because she had been seen outside work when she was signed off sick. This was not mentioned in the letter of 25 October either. Furthermore, we question the relevance of this. There is nothing to suggest that the claimant was immobilized whilst she was off sick. The implication is that she was somehow being dishonest by being seen outside work. If, for example, the claimant had been signed off work because she needed to recover because of back problems and had been seen coming out of her local gym, then the first respondent could have legitimate concerns about whether she was telling the truth about her absence. That is not the case with the claimant. We regard these differences between the two letters as fundamentally undermining of the integrity of the disciplinary process to the extent that we cannot accept that respondent's claim that she was dismissed for misconduct. This is part of a pattern that started with the warning letter and culminating with her dismissal. We find that reasons for dismissal have been fabricated to obscure the operative reason why she was dismissed. The one area where there is consistency is the first respondent's concerns about her pregnancy related sickness absence and her failure to notify it. This leads us to conclude that this was the operative reason for her dismissal. The other references to CCTV, mobile phone, kindle etc… are attempts to bolster an otherwise untenable position or to disguise the real reason for dismissing the claimant.

o. We are also concerned that the disciplinary hearing was conducted in the claimant's absence. As a basic matter of procedural fairness, we would have expected the respondents to have made reasonable enquiries as to whether the claimant actually knew about the hearing. Given that she lived 50 yards away from the hotel, the second respondent or someone else could have called round to see her. Alternatively they could have telephoned her. We also note that the claimant was used to sending texts to her colleagues about work related matters [HB 76]. They could have sent her a text about the hearing to make sure that she knew about it. There is no evidence that this was done. We accept that the claimant was offered a right of appeal by being referred to the employee handbook. This is set out in a separate covering letter of 2 November 2017 [HB 6]. Given that we do not accept that she had received or was aware of the handbook, it is unclear what she could be expected to do.

p. The claimant came to work on 11 November 2017. Under cross examination she said that she handed in her MATB1 form and wanted to discuss when she was going to start her maternity leave. As already mentioned, by our reckoning this was the earliest date she could have done that. She said that she wanted to start her maternity leave on 27 November 2018. When she arrived at the hotel, she looked through her file and found the dismissal letter. We have no reason to doubt her evidence.

q. The claimant wrote to the second respondent on 6 December 2017 regarding her dismissal [HB12]. In effect, this was her appeal against the decision. We note that she refers to being handed the dismissal letter on 11 November 2017 which suggests that she had not received it previously. She states that there was no proper procedure followed for either the earlier written warning or the subsequent disciplinary action. For the reasons given above, we agree with the claimant.

r. The second respondent replied to the claimant on 7 December 2017 refuting the various points raised in her letter of 6 December [HB 77]. We did not propose to rehearse what was said in that letter although we note that the second respondent enclosed "their contractual terms outlining disciplinary, appeals and grievance procedures". It is then stated that she was given the responsibility of familiarising herself with these when accepting employment. For the reasons given above, we do not accept that she was subject to these terms. Furthermore, good industrial practice would have lead to the respondents sending the claimant the disciplinary procedure prior to the disciplinary hearing. That did not happen. Finally, they deny that they dismissed her for pregnancy related reasons. They refer to contacting the claimant several times concerning the disciplinary hearing but to no avail. We have seen no evidence of that.

9. Having made our findings of fact, we now turn to the law. The Employment Rights Act 1996, section 99(1) ("ERA") provides that an employee shall be regarded as having been unfairly dismissed if the reason or the principal reason for the dismissal is of a prescribed kind, or the dismissal takes place in prescribed circumstances. "Prescribed" in this context means prescribed by regulations. ERA section 99(3) sets out the prescribed reasons or set of circumstances caught by these provisions, which expressly include reasons related to "pregnancy, childbirth or maternity" (ERA, section 99(3)(a). An employee who has been dismissed under such circumstances will be regarded as automatically unfairly dismissed if the dismissal is connected with the pregnancy of the employee. The automatically unfair dismissal provisions relating to pregnancy overlap with the pregnancy and maternity discrimination provisions in the Equality Act 2010 ("EqA"). Any dismissal found to be automatically unfair for any of the inadmissible reasons will almost certainly also amount to pregnancy and maternity discrimination, or sex discrimination.There is nothing to stop a person bringing a claim under both heads, as the claimant has done. Compensation for discrimination is not subject to the statutory ceiling that applies to unfair dismissal and the Tribunal has the power to make an award for injury to feelings.

10. Protection in relation to a pregnancy related dismissal is very wide and the phrase "connected with her pregnancy" certainly covers ante-natal care, miscarriages and pregnancy related illnesses. We have seen that the claimant had periods of pregnancy related illness during her employment of which her employer was aware.

11. In this case, there have been periods of persistent absenteeism. The first respondent dismissed the claimant because of her absenteeism and failure to notify it of her sickness absences. We also note that in the dismissal letter, the second respondent refers to the detrimental impact that her absence has on the hotel and its other staff implying it was adversely affecting its business. We are reminded that in **Louis v INP Ltd t/a Initial City Link** ET case no.: 1501415/03 the Tribunal held that the impact of the business, no matter how harsh, did not affect the fact that L had been dismissed due to her pregnancy-related absences. The dismissal was automatically unfair and amounted to sex-discrimination.

12. We have no hesitation in finding that the claimant's dismissal by the first respondent was due to her pregnancy-related absences and was automatically unfair. We now turn to the second claim as to whether she suffered pregnancy related discrimination.

13. In this case, the claimant has brought an action against her employer, the first respondent and their employee, the second respondent, the hotel manager. For the purposes of EqA section 109(1), anything done by an employee in the course of their employment is treated as having also been done by the employer regardless of whether the employee's acts were done without the employer's knowledge. An employer can be vicariously liable for discrimination committed by an employee in the course of their employment. In this case, the second respondent was a clearly acting in the course of his employment when managing the claimant, disciplining and ultimately dismissing her. There is nothing suggest that the first respondent took all reasonable steps to prevent the second respondent from doing the discriminatory acts and this defence has not, in any event, been advanced by the first respondent. EqA section 110 also makes employees personally liable for unlawful discrimination committed by them in the course of their employment.

14. Under EqA section 18, pregnancy and maternity discrimination occurs where an employer treats a woman unfavourably during the protected period, because of her pregnancy or because of an illness suffered by her as a result of her pregnancy but before going on maternity leave. The protected period under EqA is the period which starts when a woman's pregnancy begins and ends. For the employer to be liable, it must know that the employee was pregnant.

15. In this case, it is claimed that the claimant suffered discrimination during her pregnancy and before she went on maternity leave. In deciding whether the claimant has been discriminated against because of her pregnancy the test is whether she has been treated unfavourably rather than less favourably and therefore there is no need for a comparator. Unfavourable treatment means to place a hurdle in front of, or creating a particular difficulty for, or a disadvantaging a person. Unfavourable treatment will frequently take the form of demotion, dismissal or denial or training or

promotion because a woman is pregnant or on maternity leave. In this case we believe that the unfavourable treatment was her dismissal.

16. The claimant's pregnancy does not have to be the only or even the main reason for the unfavourable treatment. We believe this to be the case here. Whilst other reasons were given for the dismissal, the claimant's pregnancy related absences materially influenced the first respondent's decision. It is discriminatory and automatically unfair to dismiss a woman because she is pregnant or because of any reason linked to her pregnancy, such as pregnancy-related illness. For the reasons given above, the first respondent discriminated against the claimant by dismissing her because of her pregnancy.The second respondent is also liable because he was instrumental in dismissing the claimant which was something which, because of section 109 of the EqA 2010, is treated as having been done by his employer, the first respondent under the principle of vicarious liability. The doing of that thing by the second respondent amounts to a contravention of the EqA 2010 by the employer. The second respondent is personally liable.

17. Finally, as discussed above, we are satisfied that the claimant was not provided with written particulars of employment pursuant to ERA section 1. This triggers a claim under ERA section 11. If an employer fails to provide a section 1 statement and the employee has brought a successful claim in the Tribunal, the employee may be eligible for compensation in respect of that failure. The claimant has brought a successful claim. In such circumstances, Employment Act 2002, section 38 provides that in such circumstances the Tribunal must make a minimum award (two weeks' pay) subject to the statutory cap and a maximum of four weeks' pay if it is just and equitable.

18. Having upheld the claimants' claims, the question of remedy will have to be determined at a separate hearing.

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Employment Judge Green

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Date 8 September 2018