EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4113143/2018

Held in Inverness on 12 and 13 February, 7 and 8 March and 17 April 2019

Employment Judge: R King

Sheena Martin	**Claimant** **In Person**
Lifescan Scotland Ltd	**Respondent** **Represented by:** **Mr K Tudhope -** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the respondent did not make unauthorised deductions from the claimant's wages and that the claim is therefore dismissed.

REASONS

Preliminary Issue

1. At the outset of the hearing, the Employment Judge discovered that the respondent company had previously been part of the Johnson & Johnson group of companies during the period during when the disputed matters in the claim arose. In the circumstances he explained to the parties that while he had no personal connection to Johnson & Johnson and had never been instructed by them, the firm in which he is a partner was currently instructed in certain litigation matters by Johnson & Johnson. He therefore invited them to consider whether they had any objection to his hearing the case.

2. Having allowed the parties an opportunity to consider their respective positions, the Employment Judge noted they were both content for him to hear the case and he therefore decided to proceed on that basis.

The claim

3. The claimant's claim was that the respondent had made unauthorised deductions from her wages by virtue of an unfair assessment of her performance rating for 2017 and the consequent negative impact on her annual contractual bonus and salary awards.

4. The claimant gave evidence on her own behalf. The respondent led evidence from Ian Donald, a senior engineering manager based at Inverness. A joint bundle of documents was lodged, and both parties lodged written submissions at the conclusion of the hearing.

Findings in fact

5. Having heard evidence, the Tribunal considered the following facts to be admitted or proved.

Background

6. The respondent operates its business in Inverness from where it develops and manufactures blood glucose monitoring products for diabetics. It was formerly owned by the Johnson & Johnson healthcare group until 2 October 2018.

7. At the material time in relation to this claim the respondent was one of three Johnson & Johnson companies worldwide that manufactured Diabetes Care products for its Consumer Medical Devices business. The other two were Calibra (based in Puerto Rico) and Animas (based in West Chester and Chesterbrook, USA). The respondent therefore followed Johnson & Johnson policies and procedures dealing with performance and development of employees, including its policies on management of pay and bonus.

The Claimant's role

8. The claimant commenced employment with the respondent on 26 August 2002 and since 2015 she has been employed in the role of ‘Capex Lead’. In this role she is responsible for managing capital expenditure for the Diabetes Care part of the respondent’s business. Within the respondent's pay and grading scale she is on pay grade 26.

9. The claimant's responsibilities include (i) project engineering, (ii) capital budgeting, (iii) capital planning, (iv) project tracking for the Diabetes Care Supply Chain and (v) co-ordinating project management, cash flow and FTE requirements. She also provides training and support to the respondent’s project managers on capital matters. At the material time in relation to her claim she also had a role in managing capital expenditure for Calibra and Animas.

10. As of March 2017 the claimant's line manager has been Ian Donald, a senior engineering manager based at Inverness. However, since January 2016, the claimant's previous line manager, Scott Fife, had already devolved much of the claimants' day to day management to Mr Donald and therefore since then they have worked together on a regular basis. As her line manager, Mr Donald is responsible for assigning her annual performance rating.

Project Budgets

11. Each year the respondent sets an overall capital budget on the basis of Capital Appropriation Requests submitted by each part of its business. Such requests set out the capital investment needed to develop products, including the cost of the different elements of that project.

12. In response to each successful Capital Appropriation Request, the respondent will set a budget for the project. Thereafter, throughout the year, individual project managers are responsible for monitoring and managing the level of capital spending against the budgets that have been set.

13. The claimant's role in managing such projects within Diabetes Care is to support the project managers to manage their capital expenditure, to monitor and gather financial information and to report to the respondent's senior management team on the level of spending against the various budgets. However, the ultimate responsibility to deliver projects on budget rests with the project managers.

The bonus scheme

14. In common with all the respondents' employees, the claimant is subject to its discretionary bonus scheme. The relevant term of the claimant's contract in relation to performance related bonus is contained in the respondent's letter to her dated 15 September 2015 which provides: -

*"__**Performance bonus scheme**__*

You are eligible for inclusion in a discretionary bonus scheme. Any bonus award will be paid in cash and may be prorated depending on your start date in the calendar year."

Performance measurement

15. For the purpose of the discretionary bonus scheme, performance is rated, firstly, by assessing an employee's achievements against his or her business goals (the 'What'), secondly, by assessing the extent to which an employee has demonstrated leadership behaviours consistent with its *'Credo'*, which represents its core values for just and ethical people management (the 'How'), and thirdly, by considering any 'other significant achievements or misses' by the employee. Managers will then apply their overall judgment against the relevant rating scale definitions, taking into account all of those factors.

16. The performance of employees against their goals and their leadership behaviours is assessed within a framework known as "meaningful conversations". As the name suggests, this process requires managers and their direct reports to have regular meetings about performance throughout the year dealing with the key components of objective setting, monitoring and assessment.

17. The key stages of the process are as follows -

*“**Planning***

- *Align on Goals (the “What’’)*
- *Align on Leadership Commitments (the “How”)*
- *Create Development Objectives*

Mid-year

- *Check in on progress*
- *Discuss feedback*
- *Adjust goals (if needed)*

Year-end

- *Assess results (the “What”)*
- *Assess leadership (the “How”)*
- *Discuss overall performance assessment.”*

Performance monitoring

18. The respondent’s guidance document provides that there should be a programme of 5 *‘Formal Conversations’* within this framework. The first such conversation should be in January and should deal with the creation of objectives for the coming year. Two Mid-year conversations should then take place in June/July for the purpose of reviewing progress against objectives. Finally, there should be two Year-end conversations in January or February of the following year, which deal with the final overall performance assessment. In addition, there should be informal *‘Ongoing Conversations’* throughout the year for the purpose of ongoing monitoring and checking on progress.

The claimant's objectives for 2017

19. Employees are generally empowered to set their own 'What' and 'How' objectives, and employees at the claimant's pay grade have a large degree of autonomy in setting their own objectives. As a general rule an employee's objectives will be acceptable to the respondent's business if they are in line with the respondent's overall business objectives. However, both the 'What' and 'How' elements of the objectives should normally include targets that are over and above an employee's normal day job and provide suitably stretching targets.

20. For 2017, the objectives chosen by the claimant were as follows: -

The 'What' –

(i) Deliver Presentations and end user data utilising Qlik Sense;
(ii) Excellence in Execution – Deliver Approved Capital 2016;
(iii) Excellence in Execution – Deliver CAPEX budgets 2017;
(iv) Excellence in Execution – Deliver Site's Capex 2017.

The 'How' –

(v) Credo Based - Team Building Day;
(vi) Leading with Purpose - Build Community Partnerships.

21. Although the claimant's first 'What' goal was a reasonably stretching target, the other three goals were closely linked to the claimant's day job to the extent that Mr Donald described them as *'business as usual'*. Her goals were not as challenging as those set for themselves by other employees on pay grade 26 who worked for Mr Donald. Nevertheless, he accepted that these were the 'What' goals that she had set for herself.

The 2017 Mid-year review

22. The claimant's first Mid-year review conversation (the second of the 'five conversations') with Mr Donald took place on 13 July 2017. Mr Donald's mid-year evaluation of the claimant's performance against her '*What'* goals was recorded as follows: -

"Control of our capital performance to budget and latest estimate is due to Sheena's diligence, attention to detail and financial experience. In the second half of the year she should try to transfer more of the responsibility to respective project leads and mentor them to deliver the same level of accuracy."

23. In relation to the "How" element, his mid-year evaluation was that: -

"Sheena connects with senior leaders and cross functional project leads at regular intervals. She influences the way capital is controlled and reported and she should ensure her "How" goals are aligned to the Leadership Imperatives in order to capture this activity effectively."

24. During their meeting Mr Donald explained to the claimant that, based both on his personal observations and on informal feedback from other managers, he was concerned that she had been doing project managers' capital expenditure work for them instead of developing a process that would enable them to perform that part of their role effectively.

25. This meant the claimant had spent a significant amount of her time resolving problems that the project managers were responsible for. He therefore told her to spend less time solving capital problems for them and to focus on developing a robust capital process they could use.

The second half of 2017

26. In August and September 2017, the claimant successfully delivered web based training to all project managers within Consumer Medical Devices on managing capital spend on their projects. She also provided face to face training with project managers based in Inverness. In addition, she introduced a new process for Capital Appropriation requests within Consumer Medical Devices. She did not however develop a capital expenditure process for project managers, such as Mr Donald had told her she should introduce.

27. During the second half of 2017, Mr Donald received written feedback on the claimant's performance from two senior managers; namely Kimi Ramsay and

Liz Porter, from whom he had formally requested feedback via the respondent's 'Workday' system.

28. At that time Kimi Ramsey had a global financial role within the respondent's business and Liz Porter was the financial controller for Inverness. Throughout 2017, both had dealt with the claimant in relation to capital expenditure matters. Mr Donald sought their feedback because he reasonably believed they had sufficient working knowledge of the claimant's performance that they could provide meaningful and objective comment on her performance during 2017.

29. In the first place he received feedback from Kimi Ramsey (Consumer Medical Devices Capital Senior Manager) on 10 October 2017, which said: -

"Sheena needs to push herself outside her comfort zone. She will accept any challenge thrown her way but with her knowledge, could be self-initiating and influencing more."

30. On 10 October 2017, he also received feedback from Liz Porter (the respondent's Financial Controller at Inverness), which said: -

"Communication – I know there are tools out there but due to the time available, it would be good to get a monthly update report or slide sent out with where the projects are etc. to a wider group (I certainly don't see a regular one and would like to being from finance). I have always got when I have asked but it's not regular which I would like to be especially when reviewing CARs or POs."

31. Mr Donald had also discussed the claimant's performance with Kimi Ramsay throughout the year. Miss Ramsay shared his concern about the amount of time the claimant was spending resolving project managers' financial challenges.

32. At the end of 2017 the claimant had met all of her objectives for the year, both in relation to the 'What' and the 'How' elements. However, Mr Donald was concerned that she had not yet developed a capital expenditure process for

project managers and she had thus failed to address the area of criticism he had highlighted with her in July.

The distribution curve

33. Within the respondent's Performance and Development guidelines, provision is made for a recommended performance distribution curve. The relevant part of the guidance says that: -

"Differentiation of performance is important in order to elevate the performance of an organisation or team and enable managers to make decisions and send clear messages based on an employee's performance. It is used as a guideline only and must not be used as a forced distribution. The recommended performance distribution guidelines should be used for groups of 50 employees or more, as a tool during the quality check for differentiation by the Business Leader/HR Business Partner. Compensation planning budgets need to be managed by the leaders.

The extent to which ratings will align with the recommended distribution may vary depending on factors such as overall performance level within a group and group size (groups less than 50 are less likely to have ratings aligned with the recommended distribution)."

34. The respondent's guidance on the distribution guideline ranges at the material time was as follows: -

"Here are the recommended 2017 Year-end performance distribution guideline ranges:*

	RESULTS	***LEADERSHIP***
EXCEEDS	*20 - 25%*	*20 - 25%*
FULLY MEETS	*65 - 70%*	*65 - 70%*
PARTIALLY MEETS	*5 - 10%*	*5 -10%*
DOES NOT MEET	*1 - 5%*	*1 - 5%*

**The recommended distribution guideline ranges are the same as 2016. The extent to which ratings will align with the recommended distribution may vary depending on factors such as overall performance level within a group and group size (groups less than 50 or less likely to have ratings aligned with the recommended distribution).''*

Calibration of ratings

35. In order to ensure consistency of approach to performance assessment across teams each year, the respondent carries out 'calibration' exercises. The purpose of calibration is to enable managers to review and quality check with other managers the performance ratings they have completed for their teams and in so doing seek to ensure consistency in application of standards, objectivity, accuracy and differentiation.

36. At the end of 2017 Mr Donald carried out such a calibration exercise with Steve McIntosh, a maintenance engineering manager based at the Inverness plant. Between them, Mr Donald and Mr McIntosh managed 48 Inverness based employees in a variety of roles including engineers, chemists, IT specialists, a chemist and the claimant; the claimant being the only employee out of the 48 with a global role.

37. In common with Mr Donald, Mr McIntosh had a reasonable knowledge of the claimant's performance against her "What" goals as he had experience of working alongside her while carrying out the capital investment element of his role.

38. Mr Donald and Mr McIntosh therefore carried out a calibration exercise to quality check that their proposed performance ratings for their team members had been objectively assessed to the same standards.

39. As their combined group of 48 employees was not materially different in size from the recommended minimum group size of 50 employees to which the distribution curve should be applied they decided to apply the curve. They did so because they felt that was necessary in order to recognise the different

performance levels within the group and also to manage the financial impact on their available budgets for bonus payments and salary increases.

40. In early 2017 a redundancy exercise had taken place and a number of lower performers within the teams managed by Mr Donald and Mr McIntosh had left the business. Accordingly, any employees whose previous performance had been rated as Fully Meets but close to the borderline with Partially Meets were, if their performance had not improved, more likely to find themselves being assessed as 'Partially Meets' when the recommended distribution curve was applied to the new population. Unbeknown to the claimant, her 2016 'Fully Meets' rating for her 'What' goals had been at the lower end and close to the borderline with 'Partially Meets'.

41. The respondent's guidance on *'Year-End: Assessing Performance'* at the material time provided that -

"To determine your overall rating on Results (the ''What"), your manager will:

- *evaluate your goals based on the outcomes you've achieved*
- *consider whether or not you've had other significant achievements or misses*
- *use the rating scale definitions and apply judgment to assign an overall rating on Results (the "What")"*

The "What" (Results)

*Does Not Meet – Achieved **poor** results. Most goals have been missed. Needs improvement in many areas.*

*Partially meets - Achieved **mixed** results. Some goals have been missed. Needs to improve in one or more areas.*

*Fully Meets - Achieved **strong** results. All goals have been met or most met and some exceeded.*

Exceeds – Achieved outstanding results. Most goals have been exceeded"

The claimant's 2017 performance rating

42. In 2017 a key element of the claimant's role was to introduce robustness into the capital system in order that it would function properly with project

managers taking on full responsibility for measuring and managing their capital expenditure. During her mid-year review Mr Donald had told the claimant she needed to introduce a capital expenditure process for project managers that would allow them to perform that part of their role. He had also made it clear that she should stop doing their capital expenditure work for them.

43. However, the claimant had failed to heed his words and she had not delivered that process. As a result, the claimant had continued to spend excessive time doing project managers' capital expenditure work for them. That had in turn thrown a veil over their failure to manage their own capital expense budget, which had been unhelpful to senior management as it had disguised failures within their operation. It had also meant she had spent inadequate time on other matters that she should have been focussing on, such as the desired monthly reports referred to in the feedback from Liz Porter.

44. Therefore, while Mr Donald agreed that the claimant had achieved her 'What' goals for 2017 because she had delivered on her capital budgets, his judgment was that she not had achieved them by the respondent's desired means.

45. In deciding on the claimant's overall performance rating, Mr Donald therefore had regard to her failure to be sufficiently proactive in developing a capital expenditure process for project managers.

46. He also took account of the fact that the claimant's 'What' goals had mainly reflected her day job and had been less stretching than the goals set and achieved by the majority of the other employees in the group to whom the distribution curve was applied.

47. Even though she had met her goals, his judgment was that when applying the distribution curve to the group (bearing in mind she had previously been at the lower end of 'Fully Meets' prior to the redundancy exercise) her overall rating in relation to the 'What' should be 'Partially Meets' and for the 'How' should be 'Fully Meets'. Mr McIntosh agreed with his assessment.

48. All of the performance ratings proposed by Mr Donald and Mr McIntosh were subsequently reviewed and verified by their manager Mr Lawless, who was in agreement with the claimant's final rating.

49. Because of the application of the recommended distribution for 2017, several other employees within the group also moved from a previous Fully Meets rating to a Partially Meets rating in respect of their performance against the 'What' goals.

50. Mr Donald was however satisfied that the claimant had earned a 'Fully Meets' rating in relation to the 'How' element of her overall performance assessment, having regard to the leadership behaviours she had demonstrated. In particular she had shown commitment to the charity Tour de Cure event, which she had played a key role in organising and that had contributed not only to local charities, but also had a positive impact on employee's well-being.

51. In the circumstances, Mr Donald's overall evaluation of the claimant's performance for 2017 was recorded in her Year-end Review as follows: -

"Partially Meets / Fully Meets

Sheena has delivered the capital plan for 2016 and is on track to deliver the plan for 2017 despite a very dynamic year in terms of changes and has prepared and submitted the BP18 capital plan. She delivers what is asked of her including reports at short notice, standardising the contingency part of the CAR process, Qlik training and reconciliation of Litespeed spend.

Sheena is extremely knowledgeable and experienced but needs to be more proactive in the potential application of this knowledge to influence more significant change.

This year Sheena again played an instrumental role in the management of the very successful Tour de Cure for which she received a well-deserved Standards of Leadership award."

52. Mr Donald met with the claimant on 9 January 2018 to deliver her overall performance rating and his detailed reasons for his final assessments, including the impact of the application of the recommended distribution curve. The claimant expressed strong disagreement at the rating she had been given. Her belief was that she should have received a rating of Fully Meets for her 'What' goals. She had delivered exactly 100% on her capital spend goal. She could not accept that such a performance could be improved upon. In those circumstances she believed it was unfair for Mr Donald to rate her performance as only 'Partially Meets'.

53. As a result of the claimant's final year rating of Partially Meets / Fully Meets, she received a pay rise of £800, which was 1.6% of her base annual salary, thus increasing her salary to £50,600 per annum. She also received a bonus payment of 7.2% of her base annual salary, resulting in a bonus of £3,600.

54. As a band 26 employee, the claimant's bonus of 7.2% of base annual salary was the same as all band 26 employees within the respondent's organisation who received an overall rating of Partially Meets / Fully Meets.

55. Had she achieved an overall performance rating of Fully Meets / Fully Meets the claimant would have earned a bonus of 12% of her base salary and a pay rise of up to 2.61%.

56. In due course the claimant raised a formal grievance about her treatment relative to her performance rating and its effect on her pay and bonus. That grievance was ultimately rejected.

57. During 2017 the claimant had asked Mr Donald if she could have project management, portfolio management and asset management training. Mr Donald did not authorise those requests, but accepted that this training would have enhanced the claimant's skills in those areas. However, Mr Donald did not believe that this training would have corrected the performance failings he had commented upon or made any difference to the overall performance rating he gave her.

Submissions

The claimant's submission

58. The claimant lodged a lengthy written submission. In summary, her position was that in applying its performance appraisal system, the respondent had a duty to act honestly and in good faith but that it had failed to do so. She submitted that the respondent had failed to observe its own principles of treating its employees with fairness and respect in line with its Credo.

59. She had never been told that she had been previously assessed at the lower end of Fully Meets in relation to her performance goals and she did not accept that this had ever in fact been the case. During 2017 she had never been told during any of the "five conversations" that her performance was off track.

60. In her submission, it had been unfair to withhold from her the additional training that she claimed would have allowed her to develop to the standard the respondent expected of her.

61. Her final performance assessment had been the result of the respondent applying a "forced distribution" of performance ratings. That had not been consistent with the respondent's policy, which states that the distribution curve should only be applied with teams of 50 or more and in circumstances where any performance assessment should be based on "individual goals".

62. The respondent had acted dishonestly and without integrity. It had failed to act in good faith. In all the circumstances, her performance appraisal and the resultant impact on her pay and bonus had resulted in unauthorised deduction from her wages.

63. The claimant referred the Tribunal to ***Braganza v BP Shipping & Another 2015 UKSC 17*** and ***Horkulak v Cantor Fitzgerald 2004 IRLR 942.*** She claimed that the respondent had failed to exercise its judgment *'honestly and in good faith'* or *'fairly and rationally'* as those cases had established it was bound to do.

The respondent's submission

64. The respondent also provided a lengthy written submission. In summary, the respondent's position was that it had acted reasonably in exercising its discretion to award the claimant a Partially Meets / Fully Meets performance rating and it had acted reasonably in allocating an appropriate pay award and financial bonus having regard to that rating.

65. The claimant's contractual entitlement to a bonus was in accordance with the discretionary bonus scheme operated across the Johnson & Johnson family.

66. The claimant's goals for 2017 had been viewed by Mr Donald as sufficient but not challenging. He had been entitled to take that view. Mr Donald had a good working knowledge of the claimant given their interaction in the Inverness office. He had also received informal and formal feedback in relation to the claimant's performance.

67. Her performance for the year had been discussed at a calibration meeting between Mr Donald and Mr McIntosh and thereafter with Mr McIntosh and Mr Wallace. All three had agreed the performance rating to be assigned to the claimant.

68. Mr Donald and Mr McIntosh had applied the respondent's recommended distribution cover in reaching the final performance ratings for their respective teams. Although there were only 48 employees in the pool to which the distribution curve was applied, that was a reasonable tool to use in seeking consistency and separately allowing for legitimate financial planning.

69. It had not been unreasonable to apply the distribution curve to a group of 48 employees in circumstances where the guidance referred to that normally only applying to groups of 50 or more.

70. Mr Donald had genuine and legitimate reasons for allocating the claimant a "Partially Meets" rating in relation to the "What" element of her goals for 2017. He had come to this judgement fairly in doing so. He had gone through a detailed process and had reached this judgement reasonably. His actions

had not been perverse, and the Tribunal should not exercise its discretion to interfere with the decision that Mr Donald had reached.

71. Mr Tudhope referred the Tribunal to various authorities in a lengthy passage from Harvey on Industrial Relations and Employment Law, his submission on those authorities being that the law required the respondent to exercise its discretion reasonably and rationally and that the respondent had done so and had therefore acted lawfully.

Relevant law

72. Section 13 of the Employment Rights Act 1996 provides as follows: -

"13. Right not to suffer unauthorised deductions.

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion."

Section 27(1)(a) of the 1996 Act provides that "wages" includes: -

"any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise".

73. In ***Mihlenstedt v Barclays Bank International Limited 1989 IRLR 522,*** the Court of Appeal held that when an employee is required to form an opinion as part of a contractual obligation, it must do reasonably and in good faith.

74. It follows therefore that where a bonus scheme provides for a bonus to be payable on the achievement of certain performance conditions, the employer may have a certain amount of discretion to decide whether those performance conditions have been met but that discretion must be exercised reasonably and in a *bona fide* manner.

Discussion and decision

75. The Tribunal finds that the respondent concluded reasonably that while the claimant had met all her performance goals for 2017 in relation to the 'What' element of her overall performance, her overall performance had lacked an essential element of proactivity, by virtue of her failure to develop a capital management process to be applied by project managers.

76. The Tribunal accepts that the claimant failed to introduce such a process, even though in July 2017 Mr Donald had specifically informed her that this would benefit the business by shifting responsibility for capital expenditure to the project managers and resulted in her no longer spending her time doing their capital expenditure work for them. That practice had negative consequences for the business; both because it did not make best use of the claimant's skills, but also because it disguised weaknesses in the project managers' own performance. In the circumstances that failure amounted to a *'significant miss',* which Mr Donald was entitled to take into account in applying his judgment to her overall rating.

77. The Tribunal accepts that Mr Donald therefore acted reasonably and in good faith when he awarded the claimant a rating of 'Partially Meets' for her performance against her 'What' goals even though she had met all of her goals. It was reasonable that he based his overall judgment not just on that

achievement, but also the manner of it in circumstances where she had failed to introduce a capital process for project managers. He was also entitled to take into account that her 'What' goals were not stretching, either relative to her day job or when compared to the goals set and achieved by other employees at her grade within the calibration group to whom the distribution curve was applied.

78. Mr Donald's decision was based on his own observations and on feedback that he received formally and informally from senior finance managers with whom he dealt and with whom the claimant dealt on a regular basis. The Tribunal accepted that the feedback he had received about the claimant from those senior managers was consistent with his own personal observations. The Tribunal also finds that the amount of feedback obtained by Mr Donald was adequate in the circumstances and that he acted reasonably in selecting Miss Ramsay and Miss Porter for that purpose.

79. The feedback Mr Donald received was also consistent with the view held by Steve McIntosh with whom he conducted the exercise in calibration and quality checking and decided on the application of the distribution curve of performance ratings across their teams.

80. The Tribunal also finds that it was fair and reasonable for Mr Donald and Mr McIntosh to conduct the calibration exercise and to apply the recommended distribution curve to ensure consistency of performance scoring across their teams and allow for financial planning having regard to the cost of providing bonuses and pay awards.

81. The Tribunal also accepts the respondent's submission that the group of 48 employees to whom the distribution curve was applied was not materially different from the recommended minimum group size of 50 employees and that it was reasonable to apply the distribution curve to that particular size of group.

82. The Tribunal was not persuaded that it would have made any material difference to the claimant's performance and to her overall performance rating, had she received the training she had requested but Mr Donald had

not authorised. Such training was not related to, and therefore would not have addressed, the particular concerns that Mr Donald had about her performance.

83. In all the circumstances, the Tribunal is satisfied that the respondent acted honestly and in good faith in its assessment of the claimant's performance for 2017 and in its resultant allocation of her performance rating and consequent pay and bonus awards.

84. The Tribunal therefore finds that the respondent did not make unauthorised deductions from the claimant's wages and her claim is therefore dismissed.

Employment Judge: **Robert King**
Date of Judgment: **30 May 2019**
Entered in register: **05 June 2019**
and copied to parties