2601175/2017
Case No:

EMPLOYMENT TRIBUNALS

Claimants: Mr Peter Fisher

Respondent: N&SA Fisher Limited

Heard at: Leicester Employment Tribunal On: 18 January 2018

Before: Employment Judge Dyal

Representation

Claimant: Mr Starcevic, Counsel

Respondent: Mr Brady, Counsel

JUDGMENT

1. The Claimant was unfairly dismissed
2. There is a 75% chance that the Claimant could and would have been dismissed in any event had the respondent acted fairly? but the date of dismissal would in that instance have been deferred by six weeks
3. It is just and equitable to reduce:
   a. any basic award by 60% pursuant to 5122(2) Employment Rights Act 1996:

   and

   b. any compensatory award by 60% by pursuant to s-123(6) Employment Rights Act 1996

REASONS

Issues

1. The Claimant complains of unfair dismissal contrary to s.94 and 98 Employment Rights Act 1996. The issues for resolution now are as follows:

   1.1. What was the reason for the dismissal?

   1.2. If the reason was a potentially fair reason, was the dismissal fair in all the circumstances having regard to s.98(4) Employment Rights Act 1996?

   1.3. If the dismissal was unfair:

   1.3.1 Should any basic and/or compensatory award be reduced on account of the Claimant's conduct?

   1.3.2 Should a *Polkey* reduction be made?

2. It was agreed that other issues of remedy would be deferred pending the tribunals adjudication of the above issues.

3. The tribunal records that, at the outset of the hearing Mr Starcevic identified that there was a challenge to the fairness of the procedure and that it would be said that the Respondent did not follow the ACAS Code of Practice No 1: Disciplinary and Grievance Procedures. Mr Brady objected to this submitting that those matters were not raised in the ETI. The tribunal did not consider the objection to be well founded It seemed to the tribunal that in a case of this sort, absent a concession from the Claimant that the procedure adopted was fair, the inquiry into the fairness of the dismissal would and must include an assessment of the fairness of the procedure followed since that is an integral aspect of the s.98(4) Employment Rights Act 1996 test. True it is that the ETI could have pleaded the case more fully, but it makes no such concession. Further, it twice refers to a 25% uplift which, in context} can only mean an uplift pursuant to s.207A Trade Union and Labour Relations (Consolidation) Act 1992, and in turn that could only be because of a failure to follow the ACAS Code. Notably, the ACAS Code is primarily (although not entirely) about procedure.

The hearing

4. Tribunal heard live evidence from the Claimant, and for the Respondent heard live evidence from Mr Tony Fisher and Mr Michael Fisher. The tribunal received into evidence the witness statement of Mr Paul Fisher. It did not hear live evidence from him, there was no need as there was no challenge to his evidence. The tribunal was presented with an agreed bundle running to 1 15 pages.

Findings of fact

5. The Respondent is a family business, It operates a motor garage that sells and repairs vehicles. The business has been going for at least 40 years and was originally owned and operated by the Claimant[3]s father and an uncle However; since around 2000 when the Claimant's father passed away it has been operated by the Claimant and his brothers. The shares of the business are owned by the Claimant, his brothers and their mother who are also the statutory directors of the business.

6. It is common ground that the Claimant was additionally an employee of the business He was employed in a multi-functional role and his duties were not specifically delineated. The business, like many small family businesses was informally and loosely organised. The Claimant’s employment commenced in around 1971. He therefore spent his entire career working for the Respondent. The Claimant’s brothers, Tony, Michael, Paul and in more recent times Norman, were also employees of the business.

7. In May 2015 the Claimant had a heart attack. He had several surgical procedures and needed an extended period of convalescence. He began his return work in around August 2016.

8. It is necessary to break from the chronology of the Claimant’s employment to record some events that happened in parallels. In around November 2015 serious issue arose between the Claimant's wife Mrs Beverley Fisher, who was an employee of the business, and the Respondent. Beverley Fisher alleged that she had been pushed down the stairs by Michael Fisher, the Claimant’s brothers the workplace

9. The allegation was denied and a protracted dispute followed. Beverley Fisher began a lengthy period of absence from work, the detail of which is not before the tribunal. On around 2 February 2017 Beverley Fisher was dismissed. The Respondent says that the reason for dismissal was redundancy. Mrs Fisher brought tribunal proceedings in respect of her dismissal. They were resolved by way of a settlement in autumn 2017. The tribunal is not in any position to make findings about the incident between Beverley Fisher and Michael Fisher nor about the reason for her dismissal.

10. In broad terms the Claimant took his wife's side in the dispute between Mrs Fisher and Michael Fisher and the Respondent took Michael Fisher's side. The dispute clearly ran deep but the details of it have not been put before the tribunal. Nonetheless, it is clear that at least partly as a result of this dispute the Claimant's relationship with his brothers deteriorated and upon his return to work relations were difficult.

11. In January 2017, there was a meeting of the brothers with the company accountant (who seems to have provided business advisory services). This was not an unpleasant meeting and efforts were made to scope out how the business would be taken forwards including, among other things, the broad nature of the Claimant's work and hours.

12. As set out above, on 2 February 2017, Mrs Fisher was dismissed. Unfortunately, the Claimant's relations with, and behaviour towards, his brothers deteriorated further and into acrimony.

13. The Claimant, who had a longstanding tendency to be rude and cantankerous in the workplace (this he more or less acknowledged in his oral evidence), developed a more abusive and aggressive edge. For example, on 8 February 2017 the Claimant shouted at Michael Fisher in the reception area: *"you fucking twat".* This was not banter and it was not said in jest. On 10 February 2017, he again shouted at Michael Fisher, this time in the parts department: *"Fucking grow up you wanker, Look me in the fucking eye"*. This was neither banter nor jest. It was pure enmity.

14. Michael Fisher made a note of these incidents (p 115) and the tribunal accepts he did so contemporaneously. The tribunal also accepts that these were not isolated incidents and that at around this time the Claimant would fairly regularly behave in something like this manner in the workplace albeit that the specifics of other incidents are not before the tribunal. The Claimant's brothers did not respond in kind.

15. At some point in February or early March 2017 the Claimant said in the workplace that Debbie Parr, receptionist was *'fucking useless'*. Ms Parr made a very informal complaint about this. Although the evidence before the tribunal of this incident was hearsay (it did not hear from Ms Parr) it is satisfied that the Clamant said words to this effect: The Claimant's denial of this allegation in cross-examination was totally unconvincing and the tribunal considers that it very much the sort of thing that the Claimant would say as a throwaway comment and that he in fact said it. The Claimant suggested for the first time in cross-examination that he had spoken Ms Parr after the allegation had been raised and that she confirmed to him that she had made no such complaint. The tribunal does not accept that evidences was delivered in an unconvincing way and if it were true It is a matter that the Claimant would surely have put in his witness statement but he did not

16. On 2 March 2017, a crunch meeting was held at which the Claimant confronted by his brothers, Michael, Norman, Paul and Tony. The meeting occurred in the family home. The meeting was very tense, tempers flared and insults were exchanged. Mr Tony Fisher covertly recorded the meeting and a transcript the meeting appears In the hearing bundle.

17. The Claimant somewhat ambushed by this meeting. His brothers obviously knew that the meeting had a very serious agenda in that the Clamant was going to be confronted, by all of them, with allegations of wrongdoing: it was a showdown, The Claimant did not anticipate this, but instead anticipated a routine meeting.

18. At the meeting:

18.1 The Claimant admitted that, when asked how he was by customer SH, he had said words to the effect of "bloody horrible" and implied that he would be better off retired because the working environment was horrible. He admitted that this had not been an acceptable way to talk to a customer. He further admitted that he had spoken like this because he was "pissed off'.
18.2 The Claimant stated that his loyalty was to his wife rather than to the Respondent. However, this was a generic statement that at such a high level of generality has little real meaning.
18.3 The Claimant indicated that he had resigned his directorship before making it clear that he would do so (although in fact he did not resign).
18.4 The Claimant admitted that he had said, to three employees, Jake, Mark and Stuart, that the other directors did not know what they were doing (one of those employees is his son). In his oral evidence he denied that putting a different gloss on events. However, the tribunal is more than satisfied both that the Claimant made this admission at the meeting (and this is the proper interpretation of the notes at p.30) and that he had indeed said that to those employees.
18.5 He admitted saying to Michael Fisher *'look me in the eye you fucking wanker'* 18.6 There was a bad-tempered exchange in which the Claimant came close to saying that he did not know what his role would be once he resigned as director (with the implication being that there was no role he could usefully serve). However, in the tribunal's view the Claimant was not in reality saying there was nothing for him to do; he was saying that none of his brothers wanted him there and that *they* would say there was no role for him.
18.7 In another bad-tempered exchange; the Claimant said he was *"not bothered'* if he was suspended, but in context this was obviously rhetorical and not literally true.
18.8 In yet another bad-tempered exchange when it was put to the Claimant that *"all the other directors and shareholders feel that you are not acting in the best interests of the company"* he answered *"of course I'm not".* This was an abstract and generic allegation and it is hard to assign any real meaning to the admission. In any event, in context it is clear that it was little more than the Claimant trying (and succeeding) to display a belligerent and an *"I couldn't care less what you think"* attitude to his brothers.
18.9 In yet another bad-tempered exchange, when asked what the company should do with the Claimant for the best the Claimant said, *"I don't know get rid of me"*. It would not be right to interpret this as an expression of what the Claimant wanted or what he thought was best. It was simply further belligerence and a display of the attitude referred to above.
18.10 The meeting ultimately descended into an ugly argument about whether the Claimant's wife was or was not a liar.
18.11 The meeting culminated in the Claimant being suspended. However, by this time he had left the house and the suspension was communicated by raised voices exchanged over the drive way.

19. That afternoon the Claimant attended the workplace and there was an ugly scene. He refused to leave the premises when asked and the police were called. The Claimant continued to de belligerent to the point of being a bit aggressive. This did include making raised arm gestures to Michael Fisher of a *'come on then!'* or *'What you gonna do about it'* sort. He said to the police officer who attended the scene words the effect that he would quite happily hit Tony Fisher if that is what it look him to be arrested and removed from the premises, Although the Claimant did not literally mean what he said the tribunal does not accept the Claimant's evidence that this was banter. It was an expression of serious enmity towards his brother in front of a police officer. The Claimant put it so high - referring to physical violence - for belligerent effect

20. By a letter dated 22 March 2017? the Respondent brought disciplinary charges against the Claimant which can be summarised as follows It was alleged that the Claimant had:

    - Charge 1: referred to Debbie Parr as being useless or similar;
    - Charge 2: used inappropriate language in the reception area even if customers were present;
    - Charge 3: said to customer SH that he would be a lot better once he'd got out of the company;
    - In relation to the meeting of 02.03.17 the Claimant had:
        - Charge 4(a): confirmed there was a conflict of interest with him deciding to support his wife instead of the company in breach of his duties as an employee and as a director;
        - Charge 4(b): confirmed he was not fit to serve and should not be serving as a director in any event;
        - Charge 4(c): did not know what the company should employ him as;
        - Charge 4(d): told Jake, Mark and Stuart that the board did not know what they were doing;
        - Charge 4(e): confirmed that he was not acting in the best interests of the company;
        - Charge 4(f): came and went as he pleased without communicating with the company;
        - Charge 4(g): invited the board to do what it wanted because he was not bothered and had had enough;
        - Charge 4 (h): said it would be best for the company to get rid of him,
    - Charge 5: all related to the afternoon of 02.03.17:
        - Charge 5 (a): came back to company property after being suspended;
        - Charge 5(b): goaded his brother Michael by making certain gestures;
        - Charge 5 (c): said that he would hit Tony if it was necessary for the Police in attendance to arrest him

21. On 29 March 2011 the Claimant attended a disciplinary hearing. The hearing was chaired by Tony Fishers Michael and Mark Fisher were also on the panel- The meeting was, again, acrimonious.

22. By a letter dated 27 April 2017, the Claimant was summarily dismissed with immediate effect. He was paid in lieu of notice but the letter made clear that the Respondent considered that it would have been entitled to dismiss without notice pay

23. There then followed some protracted correspondence regarding an appeal against dismissal. The Claimant did appeal but the hearing did not ultimately take place because certain disputes arose about the constitution of the appeal panel, There is no need to go into those matters as Mr Starcevic indicated that he was not taking any point about the appeal stage

Law

24. By Section 94 Employment Rights Act 1996 there is a right not to be unfairly dismissed. It is for the employer to show the reason for the dismissal and that the reason was a potentially fair one. If a potentially fair reason is shown, the fairness of the dismissal turns on the test identified at section 98(4), in relation to which the burden of proof is neutral.

25. In *BHS -v- Burchell* [1980] ICR 303, the EAT gave well known guidance as to the principal considerations when assessing the fairness of a dismissal purportedly

by reason of conduct. There must be a genuine belief that the employee did the alleged misconduct, that must be the reason or principal reason for the dismissal, the belief must be a reasonable and one based upon a reasonable investigation.

26. The *Burchell* guidance is not comprehensive, however, and there are wider considerations to have regard to in many cases. For instance, the severity of the sanction in light of the offence; mitigation; the ways in which other employees have been treated and procedural fairness are important considerations.

27. In *Iceland Frozen Foods -v- Jones* [1982] IRLR 439, the EAT held that the tribunal must not simply consider whether it personally thinks that a dismissal was fair and must not substitute its decision as to the right course to adopt for that of the employer. The tribunal's proper function is to consider whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted.

28. The range of reasonable responses test applies to all aspects of dismissal. In *Sainsbury's -v- Hitt* [2003] IRLR 23, the Court of Appeal emphasised the importance of that test and that applies to all aspects of dismissal, including the procedure adopted.

29. The basic and compensatory award can each be reduced on account of a claimant's conduct according to the different statutory tests at Section 122(2), Section 123(6) of the Employment Rights Act. The impugned conduct need not be unlawful so as to justify a reduction but it must be blameworthy, In the case of Section 123(6), the blameworthy conduct must also cause, or partly cause, the dismissal. See further *Nelson -v- British Broadcasting Corporation (No. 2)* [1980] ICR 110.

30. Guidance as to the *Polkey* exercise was given in *Software 2000 -v- Andrews* [2007] IRLR 568 which must be read subject to the repeal of Section 98A, but which otherwise speaks for itself- Similarly, in *Scope -v- Thornett [2007] IRLR 155*, Pill LJ said as follows at paragraph 34:

"… The employment tribunal's task, when deciding what compensation is just and equitable for future loss of earnings will almost inevitably involve consideration of uncertainties. There may be cases in which evidence to the contrary is so sparse that a tribunal should approach the question on the basis that loss of earnings in

the employment would have continued indefinitely but, where there is evidence that it may not have been so, that evidence must be taken into account…"

31. The tribunal had regard to the *ACAS Code of Practice 1: Disciplinary & Grievance Procedures* which it considered in full

Discussion and conclusions

Reason for the dismissal

32. Mr Starcevic submitted that the real reason for the Claimant s dismissal was essentially that a problem had arisen with the Claimant's wife, that she had been dismissed, that this created probems with the Claimant and that the simplest way to proceed was simply to dismiss him under the guise of disciplinary charges

33. The tribunal does not accept this. The dispute with the Claimant's wife was longstanding by the time of the Claimant's dismissal and efforts had certainly been made to welcome the Claimant back from sick leave nonetheless. The concerns about the Claimant's conduct, reflected in the disciplinary charges, were genuine and reflected a change in his behaviour in early 2017. They were the reason for his dismissal.

34. The tribunal considers that all of the allegations (which were all found proven) contributed to the reason for dismissal, although some were regarded as weightier than others. No thought was given to whether or not each charge individually justified dismissal.

35. It is true that one of the charges (charge 4(a)) did relate to the Claimant taking his wife's side in the dispute with the company. Whatever the merits of that concern it was a concern about the Claimant conducting himself in a way that put him in breach of his obligations to the company. Even that, then, was a concern about his conduct. However, it was but one of several concerns, and the tribunal accepts, in particular Tony Fisher's evidence, that the weightier concerns, were the allegations relating to the Claimant's behaviour towards employees, customers and the board (i.e. charges 1 3, 4(d) and 5).

36. It might be said that not every single one of the allegations related to conduct. For example, charges 4(c), (g) and (h) arguably did not. However, even if that is right the principal reason for dismissal was conduct. There was there was a genuine belief that the Claimant was guilty of the matters charged, they were at the least principally conduct issues, and they were cumulatively the reason for the dismissal.

The fairness of the dismissal

37. For the reasons set out below, the dismissal was unfair when measured against s.98(4) ERA applying the range of reasonable responses test.

Charge 1: Debbie Parr

38. This allegation was not raised at the meeting of 2 March 2017. At the disciplinary meeting the allegation was put to the Claimant, but no evidence was proffered for it. The Claimant denied the allegation and asked for proof of it He was told he would get some but he never did.

39. The tribunal is persuaded that there was a reasonable basis for the belief in the allegation. There was a reasonable belief that Debbie Parr had made the

complaint and the substance of the complaint was consistent with the Claimant's way of speaking and referring to peoples.

40. However, the investigation of the allegation was woeful and virtually non-existent. Obviously, there are various ways in which the matter might reasonably have been investigated. For instance, by taking a statement from Ms Parr detailing the incident and putting that to the Claimant. But nothing of that sort was done. There was no reasonable investigation of this issue and that was outside the band.

Charge 2: swearing in front of customers in reception

41. There was only the most cursory discussion of the charge at the disciplinary hearing. The allegation was put to the Claimant he denied it, he asked for evidence of it and matters instantly moved on.

42. The charge was not investigated at all. A reasonable investigation of this issue might have taken a number of forms, for example, obtaining some witness statements from employees who heard the Claimant swearing in front of customers. What actually happened is that a generic allegation was made, no evidence was presented or gathered in relation to it, the allegation was denied and the charge was upheld This was outside the band.

Charge 3: adverse comment in front of customer SH

43. At the meeting of 2 March 2017 the Claimant essentially admitted that he had said to Mr Hull that he was 'bloody terrible' and that he would be a lot better once he had got out of the company. However, at the disciplinary hearing the Claimant declined to admit the allegation. At that point he was told the Respondent had four witnesses that had heard what he had said to Mr Hull. He asked for their evidence in writing and was told he would be provided it.

44. In light of the Claimant's admission on 2 March 2017 the tribunal's first thought was no further investigation of this matter was required. However, once the allegation was disputed and once the Respondent indicated that it had four witnesses and that it would show that evidence to the Claimant, it was unfair (outside the band) for it proceed to uphold the charge without doing as it had promised and giving the Claimant a chance to respond.

Charge 4: Conflict of interest with you deciding to support wife instead of company; in breach of duties as an employee and as a director.

45. This allegation was far too vague for the Claimant to really understand what was being alleged and to have a fair opportunity to respond:

45.1 It did not particularise what it was that the Claimant had done by way of support for his wife that conflicted with the company's interest.

45.2 It did not identify what it was that was said to be in the company's interest, This was important because there was room for doubt and debate about what was and was not in the company's interest. For instance, in the abstract at least, it is not necessarily the case that supporting Mrs Beverley Fisher in her account of the incident with Michael Fisher, would be against the company's interests. *<u>If</u>*, for instance, it were true that Michael Fisher pushed Beverley Fisher down the stairs it is hard to see how it could be a breach of any duty owed to the company for the Claimant or anyone to support disciplinary action against Michael Fisher. (Again, it is repeated that the tribunal makes no

findings of its own about what happened in that incident and the foregoing is simply an example used to illustrate a point).

45.3 It did not identify what duties as an employee the Claimant was in breach of or how he was in breach (beyond the generic statement of that he had decided to support his wife).

45.4 It did not identify what duties as a director the Claimant was in breach of (beyond the generic statement that he had decided to support his wife).

46. In short, this was a legally and factually complicated matter to bring a disciplinary charge in respect of and it did not get the careful attention that such a charge would necessarily need in order to be sufficiently comprehensible to be: (1) understood by the Claimant; (2) adequately investigated; and (3) capable of adequate analysis to be fairly adjudicated upon.

47. The fact that the Claimant made a vague admission that he was loyal his wife over the company at the meeting of 2 March 2017 is no answer to the above. The admission could only be meaningful if it was made knowingly in response a meaningful and sufficiently comprehensible allegation, Further at the disciplinary hearing the Claimant denied that there was any conflict. This underlined the fact that the conflict needed to be properly identified and reasonably investigated before the Claimant could fairly be dismissed because of it. The way in which the Respondent dealt with charge was outside the band.

Charge 4(d): Said to Jake, Mark and Stuart that the board don t know what we are doing

48. The Claimant did, in essence, admit this at the meeting of 2 March 2011 However, he recanted on the admission at the disciplinary hearing. Given that the Claimant had been ambushed at the meeting of 2 March 2017 and that it did not have the designation of, or formality of, even an investigation meeting, once the Claimant disputed the allegation it was incumbent on the Respondent to conduct a reasonable investigation into the allegation. It did not do so.

Charge 4(f): Came and went as he pleased without communicating with the company

49. The main issue here related to the Claimant taking some holiday allegedly without notifying anyone that he was doing so. At the disciplinary hearing a dispute arose as to whether or not the Claimant had entered his leave in the work diary. The Claimant suggested he had but also later suggested that he had. No reference appears to have actually been made to the diary. It would have been simplicity itself to do so and any reasonable employer would have done so. This was in any event regarded as a minor charge by the Respondent.

Charge 4(b): confirmed not fit to serve and should not be serving as a director in any event
Charge 4(c): did not know what he should be employed as
Charge 4(e): confirmed that he was not acting in best interests of company.
Charge 4(g): invited the board to do what it wanted because he was not bothered
Charge 4 (h): said it would be best for the company to get rid of him

50. These matters could not possibly form a fair basis for dismissal in and of themselves. They all need to be set in context. At the meeting of 2 March 2017 the Claimant was, and felt that he was, ambushed by his brothers, It is obvious

that emotions ran extremely high at that meeting and much was said on the spur of the moment without due thought and reflection. The Claimant lost his temper and he was speaking out of belligerence and flippancy. Importantly, by the time of the disciplinary hearing the Claimant had recanted on his position on all of these matters.

51. **Further:**

51.1 Even if the Claimant was not fit to be serving as a director that was not necessarily a basis for terminating his *employment*. More specificity of the unfitness was needed before this could begin to justify dismissal;
51.2 Even if the Claimant was not acting in the best interest of the company, this was a matter of degree and more specificity was needed before this could begin to justify dismissal;
51.3 Although the Claimant said he was 'not bothered' and had had enough, it was entirely obvious that this was just a turn of phrase. He obviously was bothered about what happened to his employment - the only employment he had ever known;
51.4 Even if he admitted at one moment in time that it was best for the company to get rid of him, that did not mean that doing so would necessarily be fair within the meaning of s.98(4) ERA or fair howsoever the company went about it, 51.5. There was no genuine admission that there was no role for the Claimant the company, what he really said was that this would be his brothers' position with an implication that they in turn were disingenuous. But even if there was such a concession, and even if there was in fact a redundancy situation, the dismissal did not even begin to be a fair redundancy dismissal.

Charge 5 (a): Came back to company property after being suspended;
Charge 5(b): Goaded his brother by making gestures
Charge 5(c): Said that he would hit Tony if it was necessary for the Police in attendance to arrest him.

52. Charge 5 is described in the letter of dismissal as 'the last straw' It was not in the tribunal's view, an independent ground for dismissal nor would the Claimant have been dismissed if the misconduct found proven had been limited to these matters.

Polkey

53. The tribunal considers that there is little in charges 4(b, c, e, g, h) and that they essentially reflect hyperbole at a highly emotionally charged meeting. They are an inadequate basis for a *Polkey* reduction.

54. As for charge 4(a), the evidence before the tribunal is insufficiently detailed or cogent for the tribunal to understand whether or not there was really any wrong doing that might have a bearing on the employment relationship in relation to the putative conflict of interest. There is no sufficient evidential basis for a *Polkey* in respect of this matter.

55. However, the tribunal considers it very likely that had the Respondent acted fairly, and in particular had there been a fair investigation and disciplinary process, charges 1 3, 4(d) and 5 would very probably have been found proven, the Claimant would have been dismissed because of them and the dismissal would have been fair.

56. It is very likely that the allegations would have been found proven because, firstly, the Claimant had made a variety of admissions at the meeting of 2 March 2017 and/or secondly, once the matters had a good airing, as they did before the tribunal it was clear that the Claimant did not have much of a defence to them and that his denial of them was not convincing.

57. Together the matters were certainly, in the tribunal's view, serious enough to justify dismissal even for a very, very long serving employee in a family business. The allegations included seriously abusive behaviour in the workplace.

58. All in all, the tribunal considers that there is a 75% chance that the Claimant could and would have been fairly dismissed had the Respondent acted fairly. However; a fair procedure would have deferred the date of dismissal by a reasonable period of time. The tribunal considers that it is unlikely that matters would have moved quickly, there would have been various disputes and delays along the path to a fair investigation and disciplinary process and the effective date of termination would therefore have been deferred by about six weeks.

Contributory fauit

59. The tribunal is satisfied on the balance of probabilities that the Claimant behaved in the following way:

    59.1. At some stage in February or March 2017 the Claimant called Debbie Parr (receptionist) *'fucking useless'.*

    59.2. From January 2017 onwards the Claimant's behaviour In the workplace deteriorated and he became abusive. This was not banter, even allowing for the fact that the standards of tolerance between brothers in the workplace may be different to that between ordinary colleagues, the Claimant's conduct was, properly so called, abusive. Two specific examples are these:

        59.2.1. on on 8 February 2017 he shouted at Michael Fisher the reception area: *"you fucking twat"*

        59.2.2. on 10 February 2017 he again shouted at Michael Fisher, but this time in the parts department: *"Fucking grow up you wanker. Look me in the fucking eye".*

    59.3. At some stage in early 2017 the Claimant said to three sales staff that the Respondent5s board of directors had no idea what they were doing This was not a joke and was indicative of him undermining the Respondent in the eyes of those employees (one of whom was his son, the other two of whom were not relations).

    59.4. The tribunal is further satisfied that the Claimant was in the habit of venting his frustrations in the workplace in front of, and in at least one instance to, a customer. The tribunal accepts the Respondent's evidence that the Claimant would swear in front of customers. Although the tribunal also accepts the Claimant's evidence that this was an environment in which it was not unusual for the language to get "colourful", the Claimant was the only one who was routinely used foulmouthed language in front of customers.

    59.5. Having been suspended, the Claimant returned to the workplace knowing that this was contrary to the collective will of the board of directors (save for himself).

    59.6. The Claimant refused to leave when he was asked to do so but instead stayed in order to make a scene;

    59.7. The Claimant was belligerent when the police arrived and said words to the effect that he would quite happily hit Tony Fisher if it meant he would

get arrested and be removed from the premises. He did not mean these words literally} but they were not banter, and there was an element of aggression and threat to them.

60. This conduct was blameworthy and it also clearly contributed to the dismissal. The tribunal does consider however, that there is a degree of mitigation for the conduct Firstly, it must be acknowledged that emotions ran extremely high because this was a family business which the Claimant felt he was being pushed out of. Secondly, they ran extremely high because the Claimant genuinely believed, rightly or wrongly, that his wife had been mistreated by the Respondent and by Michael. This was probably the most important reason for his behaviour. Thirdly, positions were polarized and while there is no cogent evidence of the Claimant's brothers insulting the Claimant end his wife in a reciprocal abusive fashion, at the meeting of 2 March 2017 they certainly went further in impugning her honesty than was strictly necessary for the purposes of that meeting. All in all, the context is such that Claimant's conduct was a little less shocking than it otherwise would have been.

61. In deciding what is just and equitable, regard should also be had to the fact that the Respondent dismissed the Claimant, a very, very long serving employee in summary fashion that, even for a small business, came nowhere near showing the level of care required to meet the standard of a reasonable employer.

62. Altogether the tribunal considers that any basic award and any compensatory award should each be reduced by 60%

Employment Judge Dyal

Date: 30/01/2018

REASONS SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE