



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Annetts

Respondent: Marks and Spencer Plc

Heard at: Nottingham

On: Tuesday 7 May, Wednesday 8 May and Thursday 9 May 2019

Before: Employment Judge Evans (sitting alone)

Representatives

Claimant: Mr R Jones of Counsel

Respondent: Mr J Crozier of Counsel

JUDGMENT

JUDGMENT having been sent to the parties on 1 June 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Preamble

1. The Claimant was dismissed with effect from 8 November 2017. She submitted a claim of unfair dismissal to the Employment Tribunal by a claim form on 22 March 2018. The hearing of her claim took place before me in Nottingham between 8 and 10 May 2019. Before the hearing the parties had agreed a bundle between them running to 283 pages. The Claimant had prepared a witness statement for herself. The Claimant also provided witness statements for Karen Jennifer Halifax and Lorraine Patricia Hill. However those two witnesses did not attend the hearing. I have therefore given very little weight indeed to the content of their witness statements because the Respondent did not have the opportunity to cross examine them.

2. The Respondent called the following witnesses in the following order:

a. Mandy Thompson, the Store Manager at the Respondent's

Spalding Springfield outlet store (which I shall refer to as “the Outlet Store”);

- b. Avril Jones, a Manager of the Respondent who was the investigator of the disciplinary allegations against the Claimant;
- c. Simon Howe, a Marks and Spencer Store Manager who took the decision to dismiss the Claimant and;
- d. Martin Kirkpatrick, a Marks and Spencer Store Manager who heard the Claimant’s appeal against dismissal.

3. The evidence was concluded by around 1:30 pm on the second day of the hearing. I heard submissions from the parties’ representatives beginning at 2:30 pm and those finished at around about 3:30 pm. I then gave judgment with these extempore reasons on the morning of the third day of the hearing.

The Issues

4. The issues that I was required to decide were discussed at the beginning of the hearing and agreed to be as follows:-

4.1 Has the Respondent shown the reason for dismissal? In a misconduct dismissal this requires the Respondent to show that it believed the Claimant was guilty of misconduct and this is what the Respondent contends. The Claimant contends that in fact she was dismissed because the Respondent regarded that as a way of resolving underlying issues in the Spalding Food Store of the Respondent including issues between herself and Mandy Thompson.

4.2 Was the reason for dismissal a potentially fair reason?

4.3 Was the dismissal fair pursuant to Section 98(4) of the Employment Rights Act 1996 (“the 1996 Act”) which would include consideration of the following issues:-

a) Whether the Respondent had reasonable grounds for its belief in the Claimant’s guilt. The Claimant says there was insufficient evidence to warrant a finding of gross misconduct.

b) Whether at the stage at which the belief in the Claimant’s guilt was formed on those grounds the Respondent had carried out as much investigation into the matter as was reasonable in the circumstances. The Claimant contends the investigation was not reasonable because Mr Carl Ruty was not interviewed.

c) Was the dismissal within the range of reasonable responses? The Claimant says that it was not because:-

(i) The penalty was too severe in light of the nature of the allegations.

(ii) Insufficient weight was given to an unblemished prior disciplinary record.

(iii) Insufficient weight was given to long service.

(iv) There was no proper consideration of alternative sanctions.

4.4 If the dismissal was unfair should compensation be reduced as a result of the Polkey principle i.e. to reflect the chance that the Claimant might have been fairly dismissed if a fair procedure had been followed or in any event?

4.5 If the dismissal was unfair whether the compensatory award should be reduced because the Claimant contributed to her dismissal and whether the basic award should be reduced in light of the Claimant's conduct prior to dismissal?

5. It was agreed that other matters would need to be decided if the claim was upheld and that they would be dealt with separately. These reasons do not therefore deal with remedy.

6. In the discussion at the beginning of the hearing the Claimant also raised other issues including various alleged failures to comply with the Respondent's own procedures and the alleged illegibility of interview notes. Her representative also alleged that Zoe Briggs and Brendan Kelly should have been but were not interviewed. Further it was alleged that the Respondent had unreasonably failed to comply with the ACAS code in various ways. However in his closing submissions Mr Jones for the Claimant indicated that these points were not pursued and that accordingly it was not argued that they were relevant to the issues of liability or remedy. I have not therefore dealt with them below.

The Law

7. Section 94 of the 1996 Act gives an employee the right not to be unfairly dismissed. Section 98(1) of the 1996 Act provides that when a Tribunal has to determine whether a dismissal is fair or unfair it is for the employer to show the reason for the dismissal and that such reason is a potentially fair reason because it falls within Section 98(1)(b) or Section 98(2). The burden of proof to show the reason and that it was a potentially fair reason is on the employer. A reason for dismissal is a set of facts known to or beliefs held by the employer which cause it to dismiss the employee.

8. If the Respondent persuades the Tribunal that the reason for dismissal was a potentially fair reason, the Tribunal must go on to consider whether the dismissal is fair or unfair within the meaning of Section 98(4) of the 1996 Act. This requires the Tribunal to consider whether the decision to dismiss was within the band of reasonable responses. Section 98(4) applies not only to the actual decision to dismiss but also to the procedure by which the decision is reached. The burden of proof is neutral under Section 98(4).

9. In considering this question the Tribunal must not put itself in the position of the Respondent and consider what it would have done in the circumstances. That is to say it must not substitute its own judgment for that of the Respondent. Rather it must decide whether the decision to dismiss the Claimant fell within the band of reasonable responses which a reasonable employer might have adopted.

10. When the reason for the dismissal is misconduct the Tribunal should have regard to the three part test set out in British Home Stores Limited v Burchell [1980] ICR 303. First the employer must show that it believed the Claimant was

guilty of misconduct. This is relevant to the employer establishing a potentially fair reason for the dismissal under Section 98(1) and the burden of proof is on the employer. Secondly the Tribunal must consider whether the employer had reasonable grounds upon which to sustain its belief in the employee's guilt. Thirdly the Tribunal must consider whether at the stage at which that belief was formed on those grounds the employer had carried out as much investigation into the matter as was reasonable in the circumstances. The second and third parts of the test are relevant to the question of reasonableness under Section 98(4) and the burden of proof in relation to them is neutral.

11. Turning to the issue of Polkey, Section 123(1) of the 1996 provides:

Subject to the provisions of this Section and Sections 124, 124A and 126, the amount of the compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal so far as that loss is attributable to action taken by the employer.

12. I have therefore considered whether the compensatory award should be reduced to reflect the chance that the Claimant might have been fairly dismissed at a later date or if a fair procedure had been used.

13. Turning to the question of contributory conduct, section 123(6) of the 1996 Act requires the Tribunal to reduce the amount of the compensatory award by such amount as it considers just and equitable if it concludes that the Claimant caused or contributed to their dismissal. In addition Section 122(2) requires me to reduce the basic award if I consider that it would be just and equitable to do so in light of the Claimant's conduct prior to dismissal.

Findings of Fact

14. In making these findings of fact I do not of necessity refer to all of the evidence before me but I have taken all of it into account.

15. The Claimant's employment with the Respondent began on 2 April 1984. She was originally employed as a Sales Adviser. She was promoted over time to being the Store Manager at a store of the Respondent in Spalding and later Stanford. Later she stepped down to being a Section Manager and returned to Spalding where she was the Section Manager of the Respondent's food store there from 2010. I shall refer to that store as "the Food Store". The Claimant had therefore completed 33 years' service when she was dismissed. At the time of the dismissal she was working at the Food Store.

16. In October 2017 Ms Thompson, the Manager at the Outlet Store, became aware of allegations against the Claimant. This was partly because staff who had previously worked at the Food Store moved to the Outlet Store. It was also partly because she had covered the Claimant's role at the Food Store for one day. The Claimant was at that point in time in effect the acting Manager of the Food Store because the actual Manager was off sick and the Claimant was the number two in the Food Store.

17. As a result of those allegations on 19 October 2017 Ms Thomson conducted interviews with:

- a. **Tracy Russell:** Ms Russell reported that Sandy Williams had said that after a meeting with Chris Bloor, the Boston Store Manager of

the Respondent who was covering the Food Store to some degree at that time, the Claimant had said when upset "I can't wait to get away from you lot and this fucking place". It was said that Ms Williams had also described the Claimant as a nightmare.

- b. **Craig Clarke:** He had reported to Ms Thomson that the way that the Claimant had treated him made him feel bullied. He gave as an example of this a discussion and the subsequent events in relation to a form on which temperature checks relating to food were recorded. The form in question was unsigned. The Claimant had asked why. Mr Clarke reported that he had chuckled and said "I am not psychic", meaning that he had not been at work on the day in question and therefore did not know why the form was not signed. The Claimant had then left him but he was told subsequently by Zoe Briggs and Sharon Purt that the Claimant had, when leaving the area, said "bastards, bastards" apparently referring to him. Mr Clarke also told Ms Thomson that he had been told by Lee Nicholls that the Claimant had said to him about Mr Clarke "I hate that bastard with a passion". Finally Mr Clarke reported to Ms Thomson that the Claimant had made a Facebook post in which she had suggested that he had not in fact been ill when he had been absent from work as a result of pain that he was suffering because of an abscess.
- c. **Lee Nicholls:** He told Ms Thomson that the "bastards, bastards" comment had been reported to him by Ms Purt and Ms Briggs, that the Claimant had said "I fucking hate that place" in relation to Mr Clarke on another occasion and, also, that the Claimant had said to Ms Purt that she hated Charlie Putterill.

18. On 19 October Ms Thomson suspended the Claimant from work. Ms Jones was then tasked with carrying out an investigation in relation to the allegations made against the Claimant. On 23 October she conducted an interview with Mr Clarke who repeated the allegations he had made to Ms Thomson. On the same day she conducted an interview with Mr Nicholls. He repeated the allegations that he had made to Ms Thomson. He also raised a further matter. He said that another employee, Mr Carl Ruddy, could do no wrong so far as the Claimant was concerned and that they were "touchy, feely, really unprofessional with one another". He said that they threw paper at each other and slapped each other's backsides and ruffled one another's hair. It was "a bit cringey".

19. On 24 October Ms Jones interviewed the Claimant. The Claimant denied the "bastard, bastard" comment but did say that on the day in question Mr Clarke had laughed at her when she had raised the issue of the incomplete sheet. She denied saying "I can't stand that fucking bloke" in relation to Mr Clarke whilst accepting that she did not like him. She denied saying "I fucking hate her" in relation to Ms Putterill. So far as the "I can't wait to get away from you lot and this fucking place" comment was concerned she denied making that comment but said that she had been upset as a result of the conversation with Mr Bloor. This was because she had understood from it that she would be required to leave Spalding and work in one of the Respondent's other stores.

20. So far as the Facebook post in relation to Mr Clarke was concerned, she said that the comment was just "banter" that it had already been dealt with by a previous Manager, Mr Kelly. She said that as a result of the conversation with Mr

Kelly she had amended the way that she dealt with Facebook by unfriending colleagues in the store where she worked.

21. In relation to the Carl Ruddy allegation the Claimant said that Mr Ruddy had slapped her backside before but she had asked him to stop. She also accepted that he had ruffled her hair because he knew that it irritated her. She denied reciprocating in relation to either of these behaviours. She described Mr Ruddy's behaviour as being harmless fun.

22. On 24 October Ms Jones interviewed Ms Russell. The record of the interview did not reveal any new information.

23. On 26 October Ms Jones interviewed Ms Pert. Ms Pert confirmed the "bastard, bastard" comment. She also confirmed that she had heard the Claimant say "I fucking hate that bloke" in relation to Mr Clarke a few months ago. No precise date was provided. She also confirmed that she had heard the Claimant say "I fucking hate her" in relation to Ms Putterill but could provide no date.

24. So far as the allegation in relation to Mr Ruddy was concerned, Ms Pert confirmed that she had seen the ruffling of hair and the throwing of bits of paper. She had never seen bottom slapping. She commented that the Claimant "says she doesn't encourage it [meaning the behaviour of Mr Ruddy] but she does".

25. Ms Jones also interviewed Sally Williams. Ms Williams said that when the Claimant had left the meeting with Mr Bloor she had heard her say "I will be glad to see the back of it here and all the backstabbers". Ms Williams could not recall having heard any swearing.

26. Ms Jones after concluding her investigation wrote to the Claimant on 26 October 2017 inviting her to attend a disciplinary hearing. The letter was at page 132 of the bundle. It described the misconduct as follows:

The alleged misconduct as well as from the investigation and detailed in the Investigation Report attached to this letter.

That report said, which was at page 134 said that the allegations were:

Employee has sworn at or to a colleague in store, mis-used social media to post an inappropriate comment on a colleague's page and taken part in inappropriate behaviour.

27. The report itself was fairly discursive and not entirely clear in relation to the detail of all of the allegations which were being investigated. However in its Response, which the Respondent did not at any point apply to amend, the Respondent had recorded that the Claimant had committed the following acts of misconduct and I find that this is in fact an accurate summary of the allegations put to her:-

a) **Swearing** - on 9 October 2017 the Claimant said "bastards, bastards" to a colleague in relation to another colleague; in a team brief the Claimant said "I fucking hate that bloke" to colleagues in relation to another colleague; the Claimant said to a colleague on the shop floor "I fucking hate her" and the Claimant said to a colleague "I can't wait to get away from you lot and this fucking place"

b) **Social media post** - the Claimant made the following online

comment on a colleague's facebook page in response to a post that a colleague was sick from work with an abscess: *"Nothing wrong with him. Christine just wants an extra week's hols or he knows it puts the shop in the shite with no ops!! Or it's shite organisation!!!"*.

c) **Inappropriate behaviour in relation to Carl Rutty** - the Claimant behaved flirtatiously with Carl Rutty, a customer assistant, and they repeatedly slapped each other's bottoms.

28. The Claimant then attended a disciplinary hearing with Mr Howe on 8 November 2017. At that hearing with Mr Howe the Claimant denied the swearing charge. The Claimant said that the Facebook post was "banter" but that in any event it had previously been dealt with by Mr Kelly and on his advice she had "unfriended" colleagues. So far as the Carl Rutty allegation was concerned, the Claimant said that he had slapped her on the bottom once but she had pulled him to one side and explained that that was not appropriate and that it could lead to disciplinary action if repeated. She accepted that he had ruffled her hair but not vice versa. She accepted that on one occasion when he had thrown paper at her she had thrown it back. She denied that her behaviour was flirtatious.

29. At the conclusion of the hearing Mr Howe summarily dismissed the Claimant. His notes record that he said that this was because he had a "reasonable belief that the allegations of swearing and inappropriate behaviour have taken place". He referred to "inappropriate behaviour, your interaction with Carl, your management of the situation". The charge in relation to the Facebook post was in effect dismissed because it had previously been dealt with by Mr Kelly.

30. There was a letter which confirmed the decision at page 171 of the bundle which was dated 13 November 2017. There was considerable discussion during the hearing in relation to whether the findings of Mr Howe in relation to Mr Rutty had included that the Claimant had slapped Mr Rutty on his bottom and that therefore this had played a part in his decision. I find that his findings had included this because:-

- a) The response at page 32 is only consistent with that understanding of the evidence;
- b) That is what Mr Howe ultimately said in his oral evidence; and
- c) Neither the decision letter nor his written statement expressly say that it was not.

31. I therefore find that the reason for the decision to dismiss was Mr Howe's belief that the Claimant was guilty of:-

- a) Swearing; and
- b) Inappropriate behaviour with Mr Rutty as set out in the unamended Response at page 32 of the bundle.

32. On 17 November 2017 the Claimant appealed the decision to dismiss with the assistance of solicitors. The grounds of appeal were submitted including a denial of the conduct with Mr Rutty and a concern that Mr Rutty had not been interviewed. The Claimant's position was that he should be interviewed.

33. The appeal was heard by Mr Kirkpatrick on 7 December 2017 and rejected by a letter dated 29 December 2017. The decision considered individually the issues raised by the Claimant in her written appeal. Mr Kirkpatrick did not interview Mr Ruty before reaching his decision. I find, given the nature of the appeal and the way in which it was conducted by Mr Kirkpatrick, that at its conclusion, that is to say when it was rejected, the Respondent's reasons for dismissing the Claimant remained those of Mr Howe as set out above.

Conclusions

34. **Has the Respondent shown the reason for the dismissal?** Yes. In light of the findings of fact that I have made above I conclude that the reason for dismissal was Mr Howe's belief that the Claimant had:-

- a) Sworn; and
- b) Behaved inappropriately with Mr Ruty,

in each case as summarised in the Respondent's Response at page 32 of the bundle.

35. In reaching this conclusion I have rejected the Claimant's assertions in relation to the reasons for dismissal. I find that the relationship between the Claimant and Ms Thomson was poor but the investigator, Mr Howe and Mr Kirkpatrick were all outsiders and that there was no evidence of consequence that Ms Thomson had successfully manipulated the process to achieve a particular end. Equally I reject the suggestion that the Claimant was dismissed simply as a way of resolving underlying issues in the Food Store.

36. **Is that dismissal a potentially fair reason?** Yes. It is a potentially fair reason because it related to the Claimant's conduct

Section 98(4): Reasonable grounds for belief in Claimant's guilt after a reasonable investigation

The swearing allegations

37. I consider first whether the Respondent had reasonable grounds for its belief that the Claimant had sworn as alleged and whether there had been a reasonable investigation in relation to those allegations.

38. I conclude that the Respondent had reasonable grounds for its belief in the guilt of the Claimant after a reasonable investigation for the following allegations:

- a. **The "bastard, bastard" comment made in relation to Mr Clarke:** Ms Briggs and Ms Purt had both given evidence that this was made and Mr Nicholls' reporting of their comments to him about it reinforced that evidence. The decision maker was entitled to prefer the evidence of those witnesses to the blank denial of the Claimant because:-

- a) The Claimant had not put forward to the decision makers a convincing reason for the various witnesses to lie; and
- b) The decision maker was entitled to conclude that the Claimant's own credibility in relation to this matter had been damaged by her contention that she never used language of

that kind or treated colleagues with disrespect. Her credibility in relation to this denial had been damaged by the Facebook post.

There was much discussion about the CCTV evidence which was in the end shown to me at the beginning of the second day of the hearing. I find that this did not help the decision maker make a decision either way.

- b. **The “I hate that fucking bloke” comment made in relation to Mr Clarke:** Mr Nicholls and Ms Purt had given evidence that it was made. The decision maker was entitled to prefer their evidence to the blank denial of the Claimant for the same reasons.
- c. **The “I fucking hate her” comment made in relation to Ms Putterill:** This was reflected in the evidence of Ms Purt. Again the Respondent was entitled to prefer the evidence of Ms Purt to that of the Claimant.

39. However my conclusion is different in relation to the allegation that the Claimant said “I can’t wait to get away from you lot and this fucking place”. I find that the Respondent did not have reasonable grounds for its belief in the Claimant’s guilt in this respect. The only eye witness was Ms Wright. She said that in fact the Claimant had said “I will be glad to see the back of it here and all the backstabbers”. When asked quite specifically she had said that she could not remember any swear words being used. There were as such no reasonable grounds for the belief that the Claimant had said this because the evidence that the Respondent relied on was a second hand report of what Ms Wright had said which contradicted her own first hand report.

40. Overall, however, in relation to the investigation of the swearing allegations, there were no other witnesses who should sensibly have been interviewed and no other obvious sources of evidence and as such the investigation was reasonable.

The Carl Rutty allegations

41. The charge in relation to Carl Rutty and the findings made in relation to that charge I have found above included that the Claimant had behaved flirtatiously with him and slapped his bottom. I find that the Respondent did not have reasonable grounds for its belief that the Claimant was guilty as charged because it had two very conflicting accounts. First there was the very brief account of Mr Nicholls given in his interview with Ms Jones (he had not raised the issue previously when interviewed by Ms Thompson). There was no other witness who had seen the bottom slapping incident although there was some support in relation to other behaviours concerning Mr Rutty from other witnesses. However even that evidence was not unambiguous. For example, Ms Purt accepted that the Claimant had said that she did not encourage the behaviour of Mr Rutty but went on to say that she, Ms Purt did not accept that denial. Secondly, there was the evidence of the Claimant. In contrast to her blanket denials in relation to the swearing allegations, her evidence was detailed and nuanced. She accepted that Mr Rutty had ruffled her hair and slapped her bottom. She denied that she had reciprocated. She said that after he had slapped her bottom she had taken him to one side and warned him of possible disciplinary action if he did that again. She had said these things in the disciplinary interview hearing with Mr Howe.

42. I find that, when comparing the two differing accounts, the damage done to the Claimant's credibility as a result of her blank denial of the swearing allegations was simply not a sufficient or reasonable basis for the evidence of Mr Nicholls to be preferred to that of the Claimant. The evidence supporting the allegations against the Claimant was in the end vague and sparse.

43. Further and separately, in relation to the Carl Rutty allegation I find that the Respondent had not carried out as much investigation as was reasonable. Given the Claimant's denials and the more nuanced account that she gave, a reasonable investigation required as the Claimant suggested that Mr Rutty was interviewed. This was a point that the Claimant had specifically raised. However Mr Rutty was not interviewed. The Respondent, if it had conducted a reasonable investigation, would in particular have wished to ask Mr Rutty if the Claimant had taken him to one side as she claimed and warned him about his behaviour. This was quite obviously not something that the Respondent's other witness would have known about because the Claimant's point was that she had taken him to one side. That is not the kind of conversation that is held in front of other colleagues. Having interviewed Mr Rutty the position in relation to the allegations made concerning him might have appeared very different indeed.

44. Overall, therefore, given that one of the reasons for the Claimant's dismissal was her alleged behaviour with Mr Rutty, the facts that the Respondent (1) did not have reasonable grounds for its belief in her guilt in relation to that allegation and (2) had not conducted a reasonable investigation in relation to it, mean that the dismissal was unfair (and, indeed, each of these matters was sufficient alone to make the dismissal unfair). It was not within the range of reasonable responses to dismiss in these circumstances.

Polkey Issues

45. I reach the following conclusions in relation to the position if a fair procedure had been followed. I conclude that the Respondent would have found that the Claimant had indeed rebuked Mr Rutty for his behaviour and had not herself either slapped his bottom or ruffled his hair. I so conclude because I find, having heard the Claimant's evidence, that as a middle-aged and experienced female manager it is most unlikely that the Claimant would have left unchallenged Mr Rutty, a more junior employee, slapping her bottom in view of colleagues or, indeed, that she would have done the same to him.

46. Further, in relation to the hair ruffling, I find that the Respondent would have been likely to so conclude because I accept the Claimant's evidence that Mr Rutty is both very tall and has a shaved head.

47. I further conclude that it is likely that having completed this more thorough and reasonable investigation the Respondent would have concluded that the Claimant's responsibility for Mr Rutty's inappropriate behaviour more generally was limited by the fact that she was not his line manager. I therefore find that it is likely that the Respondent would have concluded that the Claimant was not in fact guilty of the allegation recorded in the Response that the Claimant had "behaved flirtatiously with Carl Rutty, a Customer Assistant and they repeatedly slapped each other's bottoms".

48. In these circumstances I conclude that there would have been just a 25% chance that the Claimant would have been fairly dismissed for the remaining swearing allegations. This is for the following reasons:-

a) Mr Howe's oral evidence was that it was the allegations in relation to Mr Ruddy and its consequences that had pushed the decision to dismissal from, alternatively, being a final written warning.

b) The disciplinary charges related to swearing for which the Respondent had reasonable grounds after a reasonable investigation were limited to:-

i) Saying "bastard, bastard" not to the employee but when walking away from the employee when he had given her a smart allick response "I am not psychic" to a reasonable enquiry in relation to an unsigned form; and

ii) Beyond that there were just 2 occasions, the dates of which could not be identified when she had referred in inappropriate terms to her dislike of other employees (but not to their faces);

c) The fact of the Claimant's exceedingly long service and the fact that as at the relevant date she had no live disciplinary sanctions would have been taken into account;

d) I conclude that taking these factors into account nearly all employers would have taken the view that such misconduct was insufficient to destroy trust and confidence and so justify dismissal even in circumstances where the Claimant refused to admit the misconduct. This was in effect acknowledged by Mr Howe in his evidence in relation to what the sanction might have been if he had not taken into account the allegations concerning Mr Ruddy.

Contribution

49. On the balance of probabilities I conclude that the Claimant did:-

- a) Say "bastard, bastard" in relation to Mr Clarke;
- b) Say words to the effect of "I fucking hate that bloke" in relation to Mr Clarke;
- c) Say words to the effect of "I fucking hate her" in relation to Ms Putterill.

50. This is blameworthy and culpable behaviour. It is obviously inappropriate for a manager to speak about employees in this way.

51. I have concluded that the Claimant said these things because that is what the weight of the evidence suggested for the reasons set out above in relation to the findings made by the contemporaneous fact finder.

52. In these circumstances I conclude that it is just and equitable to reduce both the compensatory award and the basic award by 25%.

Employment Judge Evans

Date: 6 July 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE