EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr N Ryland	**v**	Peterborough Conservative Club

Heard at: Cambridge **On**: 24 June 2019

Before: Employment Judge S Moore

Appearances
For the Claimant: Ms R Kennedy, Counsel
For the Respondent: Mr T Thompson, Solicitor

JUDGMENT

The claim for unfair dismissal succeeds. However, it is just and equitable to reduce the Claimant's basic and compensatory awards of compensation by 100 per cent pursuant, respectively, to sections 122(2) and 123(6) of the Employment Rights Act 1996.

REASONS

1. This is a claim for Unfair Dismissal arising out of the termination of the Claimant's contract of employment with effect from 10 September 2018 for Gross Misconduct.

2. In addition to the Claimant, I heard evidence from Mr Andrew John Sanders and Mr John Christopher Gardner and I was also referred to a bundle of documents. On the basis of that evidence and documentation I make the following findings of fact.

Findings of Fact

3. The Respondent is a private members club administered by a committee of volunteers. These include the President, Chairman, Vice Chairman, Treasurer, two Trustees and an HR Adviser as well as seven additional committee members.

4. The Claimant was employed as Club Secretary from 20 October 2010 until 10 September 2018. His role involved daily activities such as emptying gaming machines and snooker tables, receiving the bar takings from the tills, entering monies into spreadsheets and Sage, paying invoices and maintaining change flows. He was also responsible for inputting employee timesheets, authorising the payroll and liaising with payroll in relation to overtime and holiday payments. The Claimant was the first point of call in the event of issues arising from the Respondent's tenanted properties and was also responsible for organising electric and gas certificates, energy performance certificates and licenses for each property and any routine maintenance.

5. The Claimant was employed pursuant to a contract of employment that stated his normal hours to be 35 per week, although he might be required to work additional hours when authorised and as necessitated by the needs of the business. Over the years, however, the Claimant had fallen into the regular habit of claiming significant additional hours worked over and above his contracted hours.

6. As regards annual leave and public bank holidays, the contract stated that the Claimant's holiday year began on 1 January and ended on 31 December each year during which time he would receive paid holiday entitlement of 5.6 weeks inclusive of any public / bank holidays which he may choose to request. However, the Claimant operated a system whereby he and other Club employees were able to "cash-in" holidays and receive pay in lieu over and above their annual salary. The Claimant said he inherited this system from the previous Club Secretary, Mr Robert Hodgett. He operated the system by keeping a spread sheet behind the bar marked with each employee's total annual leave entitlement and reduced that total as and when leave was "cashed-in", or actually taken, by each employee throughout the leave year.

7. Since the Claimant was himself responsible for running the Club's monthly payroll this practice of "cashing-in" annual leave was carried on without the knowledge of the President or the Chair or Vice Chair of the Club. However, the fact that the Claimant was regularly exceeding his weekly contracted hours was made obvious by the amount of time he spent at the Respondent club.

8. On 21 May 2017, the then Club Chairman Mr Les Smith, wrote to the Claimant stating:

"…the management sub-committee feel they need to bring to your attention that the Club can no longer sustain the amount of hours you are currently working per week and formally instruct you to work to your contracted hours of 35 hours per week. This is to be implemented four weeks from the date of this letter allowing you to complete any outstanding tasks. Any Sunday working was only permitted for training purposes and

unless authorised by me, or in my absence the Vice Chairman, will no longer be allowed. As a member of staff your holidays and hours of work must be signed off before being submitted to the wages department. These forms can be authorised by me, John Gardner or Lorraine Taylor. It is appreciated, however, that there will be times when you will be required to work extra hours, i.e. to cover the AGM, special meetings or any training requiring your attendance. These will also need authorisation."

9. The Claimant stated that notwithstanding that formal instruction he continued to regularly work in excess of 35 hours per week. He said that in respect of each four weekly payroll run he would write down on a piece of paper the additional hours that he had worked and show them to Mr Smith and, notwithstanding his letter of 21 May 2017, Mr Smith would authorise them. The Claimant said he would leave that evidence of authorisation with the payroll but that he didn't have now have those records because he destroyed each authorisation the following month when the next month's payroll was done.

10. Mr Smith stepped down from the role of Club Chairman in February 2018 and Mr Wayne Mitchell took over until Mr Sanders became Club Vice Chairman and acting Chairman in June 2018. The Claimant said that he followed no such process of authorisation with Mr Mitchell or Mr Sanders and admitted that the practice of authorisation he followed with Mr Smith had by fallen by the wayside by the time Mr Mitchell became Club Chairman. I find that if the Claimant did, for a period of time after the letter of 21 May 2017, ensure his additional hours were authorised by Mr Smith, he stopped doing so within a matter of a few months, that he continued to work and claim additional hours without authorisation, and that in effect the attempt taken in 21 May 2017 letter to control the Claimant's working hours failed.

11. In June 2018, the Committee decided to bring in an external Human Resources Consultant to review the jobs undertaken by the Claimant in his capacity as Club Secretary. Ms Clausen, the Consultant, interviewed the Claimant as part of this process and produced a report. She made a number of comments concerning the tasks undertaken by the Claimant and suggested efficiencies that could be made in the way he carried out his day to day tasks. Following the Consultant's report, the Claimant produced a list of bullet points in response in which he stated that he felt the role had grown significantly over the years and believed that more than 40 hours per week were required to complete the work load.

12. Mr Sanders says he arranged to meet the Claimant to discuss that report and the Claimant's response but that five minutes before the meeting was due to take place, the Claimant put his head around the door of the meeting Mr Sanders was having with a supplier and stated that he was no longer available and it would need to be rearranged. Although the Claimant said he had no recollection of such a meeting being arranged I accept the evidence of Mr Sanders on this point, which was clear and precise.

13. Mr Sanders subsequently sent the Claimant a letter dated 16 July 2018, similar in content to the letter of May 2017. It provided:

"We have had a number of conversations on this topic and you have had conversations with Officers of the Committee on previous occasions. The Club has responsibility for the welfare of its staff and long working hours have been shown to adversely affect health, well-being and work life balance. A review of working hours submitted to payroll has highlighted substantial amounts of hours claimed that are additional to your 35 hour week contract. Over the last five months the additional hours have ranged from 9.5 over four weeks, to 39.5 over the same period. Two weeks out of twenty have come within the contract. This position does not merit this number of hours and we need them reduced. I am advising you that from working week ending 5 August 2018, contracted hours only will be paid. Any additional hours must be agreed in advance and for specific exceptional activities. Prior approval is at the discretion of the Committee and should be sought from myself or the President. You are advised to use the interim period to focus on prioritising the core activities of the role; should you want any help with this please contact me."

14. At the same time, Mr Sanders also sent a letter to the Respondent's accountants and informed them that only contracted hours of 35 per week would be paid to the Claimant and that any additional claims would require authorisation by himself or John Gardner.

15. An email to the accountant dated 15 July 2018 from Mr Sanders states:

"The arrangement begins the working week ending 5 August 2018".

16. On 6 August 2018, the accountants sent Mr Sanders an email setting out the hours that had been sent for processing by the Claimant in the four - week period immediately prior to 5 August 2018. In week one, the Claimant had claimed 38.5 hours, in week two he had claimed 47 hours, in week three he had claimed 33 hours and in week four - the week ending 5 August - he had claimed 46 hours. In addition, the Claimant had also claimed a total of 42 hours holiday pay, a claim for 6 days "cashed-in" holiday.

17. Mr Sanders spoke to the Claimant who stated that he had misread the letter of 16 July 2018 and thought the requirement to keep to his contractual hours applied in the weeks *from* 5 August 2018. Mr Sanders stated that he was prepared to give the Claimant the benefit of doubt on this occasion and in an email dated 6 August 2018 he informed the accountants as such. That email concludes,

"Sorry to mess you about but he is absolutely clear that anything in excess of 35 hours requires authorisation in advance from John or myself from now on."

18. Notably, Mr Sander's email to the accountants did not specifically address or mention the Claimant's claim for six days "cashed-in" holidays.

19. On Monday 3 September 2018, Mr Sanders was in the Club when the Claimant approached him at about 10:50am, he was clearly angry and upset. The first words he said were,

"They have fucked up payroll again. They have taken off my holiday."

20. It transpired that in respect of the four-week payroll period to 2 September 2018, while the Claimant had only claimed 35 hours per week in respect of his working hours he had also made a claim for five more days of "cashed-in" holidays, which had not been paid by the accountants.

21. Mr Sanders explained to the Claimant that his contracted hours and annual salary included payment for holidays. The Claimant was not happy with the response. He said that unless Mr Sanders told the accountants to add his cashed in holiday to the payroll, he was going to go home, that he would not authorise the payroll run and as a result none of the staff would be paid. He went upstairs to go to his office. Mr Sanders followed him and suggested that they sit down and sort the matter out. The Claimant, who was very angry, refused to listen and said that he was going to go home. He then began to disconnect his printer, as if to indicate he had finished his working day.

22. Mr Sanders was very concerned that the staff would not be paid as a result of the Claimant's actions. Although he had authority to authorise the accountants in respect of payable hours for individual employees the accountants always returned the completed payroll to the Claimant and Mr Sanders did not know how to process the payroll and/or make the BACS payments. In this respect I accept Mr Sanders' evidence that he believed that if the Claimant carried out his threat and did not process the payroll that he, Mr Sanders, was not in a position to do so and the staff would not get paid. I further accept that as a result Mr Sanders felt that he had no alternative other than to comply with the Claimant's demands. He therefore instructed the accountants to amend the payroll and reinstate the Claimant's claim for "cashed-in" holiday pay.

23. Afterwards Mr Sanders considered he could not permit the Claimant to behave in this way and hold him to ransom, and on 4 September 2018 he wrote him a letter stating,

"Following our discussion this morning you are immediately suspended on full pay and benefits pending a disciplinary hearing. Notwithstanding written instructions on 16 July 2018, stating that any hours in excess of 35 per week required authorisation in advance, you chose to ignore the said instructions and submitted a claim for an additional 35 hours for the four week pay period. This is an allegation of Gross Insubordination and as a result constitutes an allegation of Gross Misconduct. When I spoke to you on Monday 3 September, you informed me that you were going home and

would not process the payroll for the staff for that period. Such conduct also constitutes the further allegation of Gross Insubordination. You are invited to attend a disciplinary hearing on Monday 10 September 2018."

24. The Claimant was advised that the outcome of the hearing might be dismissal without notice and that he had the right to be accompanied at the hearing by either a work colleague or Trade Union official.

25. Mr Sanders was of the view that there was no need for any additional investigation to be carried out by any other person. He further took the view that since he was the most senior person apart from the President, who was on holiday, it was appropriate for him as Chairman of the Club, to conduct the disciplinary hearing. In any event, he considered the President needed to be held back from the disciplinary process in order to deal with any potential appeal hearing.

26. At the disciplinary hearing, as regards the issue of taking holiday or being paid for holiday untaken in lieu, the Claimant said it had been his intention to comply with Mr Sanders' letter and that he did not consider that his claiming pay in lieu of holiday amounted to claiming excess hours, or hours additional to the 35 hours to which he had been restricted. When it was put to the Claimant that he had refused to complete the payroll and had effectively held Mr Sanders to ransom, the Claimant replied that the payroll was already completed at the time and it was red mist speaking because he was very, very angry. This latter statement made at the disciplinary hearing was not in fact true because at the hearing before me the Claimant admitted that at the time he made his threat to Mr Sanders he had not fully completed the payroll and therefore his threat had not been an empty one.

27. Mr Sanders wrote the Claimant a letter dated 10 September 2018 dismissing him. That letter states,

"The first allegation was that you ignored a written instruction dated 16 July 2018 that you are not permitted to claim payment for any additional hours over and above your contracted hours each week without prior authorisation. Notwithstanding this instruction, you submitted a claim for an additional 35 hours for the four week period ending 2 September 2018 and thereby attempted to claim an additional payment representing these additional hours. In the disciplinary meeting you purported to give an explanation that the hours represented accrued holiday payments. I do not accept that explanation. Your basic annual salary includes your holiday entitlement and consequent entitlement to holiday pay. I have concluded that your attempt to claim payment for an additional 35 hours in that period represents a flagrant breach of the written instruction dated 16 July 2018. This amounts to an offence of Gross Insubordination and in my judgment, constitutes an offence of Gross Misconduct. Insofar as the further allegation of Gross Insubordination is concerned, I conclude that you did inform me that you would not finalise the payroll payments to all staff for that period. Your refusal at that time to input the task required to finalise

the payments is another case of Gross Insubordination and again, in my judgment, represents an offence of Gross Misconduct."

28. The Claimant appealed. His appeal was heard by Mr Gardner, the President of the Respondent. The Claimant reiterated that he thought he had complied with the letter of 16 July 2018 and that at the time of the 3 August 2018 altercation, his head was full of red mist. As regards the holiday procedures, he said that he had always done it this way and he had inherited the practice from Rob Hodgett the previous Secretary.

29. The Claimant's appeal was dismissed by letter of 24 September 2018. Mr Gardner stated that the Claimant did not give adequate reasons for disregarding Mr Sanders' specific instructions regarding obtaining authorisation when claiming hours in addition to his contractual hours and he did not contest advising Mr Sanders of his deliberate intention not to complete staff payroll.

30. On 27 September 2018, Mr Gardner issued a notification to all staff which states:

"The Committee has become aware for the first time that a practice of paying staff in lieu of holiday has been in operation. This is in breach of our legal requirements and as such will cease with immediate effect. We understand this practice has been in place for some time and in order that all holidays can be taken, 5 days holiday for the current year can be transferred to 2019."

31. After the Claimant had been dismissed, a number of matters came to light that the Respondent relied upon at the hearing:

32. First, on 18 September 2017, the Claimant had ordered some chairs from a company called Turn Furniture in the sum of £5,693.25. He paid the deposit of £4,269, which meant that upon delivery the balance of £1,424.25 was due to be paid. However, upon delivery the Claimant paid the full amount so that the Club over paid the sum of £4,269. The Claimant stated that he had made the full payment on delivery with the authorisation of the Chairman, but accepted that he should have remembered he had already paid a deposit of £4,269. He further accepted that he had not been aware of the mistake until it was drawn to his attention by the accountants some months later. On 12 March 2018 he sent an email to Turn Furniture asking for reimbursement of the overpayment and eventually the company refunded the sum of £3,000. Unfortunately, the company are no longer trading, which meant that the Respondent was out of pocket in the sum of £1,269. The Claimant accepted he had made a mistake. He also accepted that he had not revealed his mistake to the Committee and the first they knew of it was in January 2019, after his dismissal.

33. Secondly, the Respondent alleged that the renewal documentation dated October 2018 in respect of the Respondent's building insurance was

based on the previous year's submission by the Claimant, which included an erroneous declaration to the insurers that the Respondent's premises were directly linked to both the Police and the Fire Service. However, since the Claimant denied he had made such a declaration and the declaration was not contained in the bundle, I find this allegation unproved.

34. The third matter concerned performing rights and an allegation that the Claimant had failed to renew the Respondent's licence to play live and recorded music from January 2018. The Claimant stated that he had not paid this amount because he was waiting for an invoice to be issued which specified the amount that was payable, but accepted in cross examination that he should have chased up the invoice.

35. A fourth matter concerned the Respondent's biggest supplier of wine, spirits and food, namely a company called Hyperama Wholesalers. Although the Respondent had a credit limit with the company of £6,000, on 14 September 2018 they were informed they had exceeded the credit limit by more than twice that amount and as a result needed to make an immediate payment in the sum of £9,000 to reduce their liability.

36. Finally, the Respondent also discovered that the Claimant had not changed the name of the club secretary (so that it was still in the of the previous Secretary, i.e. Mr Robert Hodgett) and that the Claimant had failed to change and keep up to date the authorised signatories on the Respondent's bank accounts. The Claimant accepted that in some respects he had not been doing his job properly.

Submissions

37. For the Claimant, Ms Kennedy submitted that the Claimant's dismissal had arisen as a result of a misunderstanding. The Respondent had used excessive measures to deal with the fact that the Claimant had claimed holiday pay in lieu of holiday without realising that he was not permitted to do so. She further submitted that procedurally the Claimant had not had a fair hearing.

38. In this respect she first referred to a complaint that Mr Sanders had made to Mr Smith, (the then Chairman of the Respondent, on 3 December 2017) as regards the Claimant's behaviour and attitude.

39. The complaint concerned the installation of an EPOS system, which had been agreed in the Committee. In that letter, Mr Sanders complains of the Claimant's lack of support and also accuses him of "negativity, obfuscation and deliberate withholding of information". In one paragraph he states that he is *"…incensed by comments from the Secretary concerning the project, but when he suggested my resignation should be forthcoming that was a reprehensible step too far. This is akin to verbal bullying and I take exception to his behaviour which is why I am bringing this to your attention. I am far from happy"*.

40. Ms Kennedy submitted that in the light of Mr Sander's complaint of verbal bullying by the Claimant, he was plainly not in a position to be impartial with respect to the Claimant's disciplinary hearing. Although in evidence Mr Sanders had stated that as far as he was concerned once he had handed the letter of complaint to the Chairman he considered the matter closed, Ms Kennedy said that it was impossible to believe that he could have considered the disciplinary matter with a truly impartial mind. If the Respondent had found somebody independent to deal with the matter, such an independent person would have got to the bottom of the fiasco of the cashed in holiday pay arrangements and was likely to have come to a different view. It was notable that Mr Sanders had only become acting Chairman in June 2018, by July 2018 he had sent a letter to the Claimant and by September the Claimant had been dismissed.

41. Secondly, Mr Sanders should not have heard the disciplinary because he was involved in the dispute itself, having had the altercation with the Claimant on 3 August 2018. Ms Kennedy further submitted that Mr Sanders had made his mind up in advance of the hearing and that was apparent from the fact that at the beginning of the disciplinary hearing he had asked the Claimant for the passwords to the Respondents' computer systems and also from the speed in which he made his decision and his lack of investigation.

42. The appeal was also defective because Mr Gardner had not made an attempt to get to the bottom of anything but had simply gone through the motions.

43. Ms Kennedy also submitted there was not a fair reason for the Claimant's dismissal. There was a genuine misunderstanding on the part of the Claimant as to whether or not he was entitled to claim for payments in respect of holidays not taken and that sort of misunderstanding would not normally amount to Gross Misconduct and result in dismissal. The Claimant ought to be believed when he said that he was genuinely trying to comply with the letter of 16 July 2018 to keep his hours to 35 hours. Further, it was notable from Mr Sander's email to the accountants, on 6 August 2018 concerning the payments leading up to 5 August 2018, that Mr Sanders had said nothing about the Claimant's claim for holiday pay and the Claimant was entitled to assume that holiday was not included in the 35 hour restriction. Ms Kennedy also stated that the matters relied upon by the Respondent that had come to light post the dismissal would not have resulted in the Claimant's dismissal because they were not sufficiently serious.

44. Mr Thompson submitted that the Respondent was a voluntary organisation with limited personnel and resources. The concerns about the Claimant claiming extra hours had been made consistently over a lengthy period of time, he had been told numerous times he had to reduce his hours and conform to his contractual requirement of 35 hours per week. However, until June 2108, when Mr Sanders became the acting Chairman, nobody

had been able to control the Claimant who had operated the running of the Respondent like his own personal fiefdom. The Claimant should not have been under any confusion as regards whether he was entitled to claim for payment in lieu of holiday because it had already been made blatantly clear to him that he was not supposed to claim more than 35 hours per week. But in any event, his behaviour on 3 August was not reasonable. He had blackmailed Mr Sanders to make the payment to him under threat of not processing the payroll. It had been an attempt to get extra money through the system early because in effect the Claimant had been claiming for holidays that were not only untaken, but unearned - at the date of his dismissal it was common ground that he had claimed for more holiday than he had at that date earned.

45. Further, Mr Thompson submitted that in all the circumstances, the dismissal was procedurally fair; there was no need for any further investigation because the facts were clear. There had been a good delay of nine months between Mr Sander's complaints against the Claimant of bullying and given that Mr Sanders had far more management experience than the other committee members and his seniority, it had been appropriate for him to hear the disciplinary proceedings.

46. In any event, given the circumstances and further matters that had come to light since the Claimant's dismissal, it was just and equitable to reduce any compensatory award to which the Claimant would otherwise be entitled to zero and / or to proceed on the basis that the Claimant would in any event have been dismissed shortly thereafter.

Conclusions

47. The Respondent relied on two reasons for the Claimant's dismissal. The first was that he had flagrantly ignored the written instruction dated 16 July 2018 not to claim payment for any additional hours over and above his contracted hours each week without prior authorisation. The second was that the Claimant said he would not finalise the payroll payments to all staff for the period ending 3 September 2018 unless Mr Sanders authorised his claim for holiday pay.

48. As regards the first of those reasons, I accept that the Claimant believed there was a distinction between the working hours he claimed and the hours he claimed by way of "cashed-in" holiday. I further accept that at the date of dismissal Mr Sanders was not aware of the long-standing practice the Claimant, and apparently his predecessor, operated, of allowing employees to cash-in their holiday entitlement whenever they saw fit. It is also true that in his conversation with the Claimant, and his email to the accountants on 6 August 2018, Mr Sanders concern about the Claimant's pay period ending 5 August 2018 had focused on the claim for hours worked in excess of 35 hours per week, rather than the claim for holiday pay. I therefore agree with Ms Kennedy that the Respondent has not proved that the Claimant's claim for "cashed-in" holiday in respect of the

pay period ending 2 September 2018 was an act of insubordination or done in flagrant disobedience of Mr Sander's letter of 16 July 2918.

49. As regards the second reason, however, there is no dispute between the parties as to what happened on 3 August 2018. The Claimant was incensed by the fact that his holiday pay claim had not been paid, and threatened to refuse to authorise the pay roll run – affecting all the Respondent's employees – unless Mr Sanders telephoned the accountants and amended the pay roll to include the Claimant's holiday pay claim, which Mr Sanders then did. This was clearly an act of insubordination and dismissing the Claimant for that behaviour amounted to dismissing him for a reason related to his conduct within the scope of section 98(2)(b) of the Employment Rights Act 1996 ("the ERA"). Further, I find that this behaviour on 3 August 2018 was the principal reason for his dismissal. If the Claimant had accepted his pay on 3 August, or sought to explain calmly to Mr Sanders why he thought he should also have been paid his holiday pay, I do not believe he would have been dismissed simply because he had made a claim for holiday pay in addition to his worked hours. It was the Claimant's reaction, in particular the fact he forced Mr Sanders to reinstate his holiday pay with the threat of refusing to implement the pay roll for the staff, which provoked Mr Sanders to implement the disciplinary proceedings.

50. The next question is whether the Respondent acted reasonably in treating this as a sufficient reason for dismissing the Claimant. In my judgment the behaviour of the Claimant on 3 August 2018 clearly amounted to gross misconduct and dismissal was within the range of responses open to the Respondent. However, Ms Kennedy submitted that the dismissal was unfair because procedurally the Claimant had not had a fair hearing and I find I am bound to accept this submission. It is true that the Respondent is a small organisation with limited resources however there were very good reasons why an objective bystander might consider that Mr Sanders would not be able to hear the disciplinary impartially. First, he had made a strongly worded complaint about the Claimant within the previous year. Secondly, and more pertinently, he had been the very person with whom the Claimant had had the altercation on 3rd August and whom the Claimant had coerced into authorising his holiday pay. Although finding a suitable alternative person to Mr Sanders to hear the disciplinary may not have been easy, there was no evidence that Mr Sanders had made any real effort to do so. Even if none of the other committee members were sufficiently senior or experienced in managerial matters to deal with the matter he could have asked an impartial third party. At the very least Mr Sanders could have sat with another person. Further, I do not consider that this significant procedural flaw was sufficiently rectified by way of the appeal to Mr Gardner, which was of a relatively short and cursory nature, and Mr Thompson did not attempt to make submissions to this effect.

51. I therefore find that the disciplinary procedure followed by the Respondent was unreasonable and that the Claimant's dismissal was unfair.

52. Nevertheless, notwithstanding the unfairness of the disciplinary procedure outlined above, I find that the dismissal was caused by the Claimant's own actions within the scope of section 123(6) ERA – actions which were undisputed – and that the compensatory award must therefore be reduced. In assessing that reduction I take into account the following matters:

53. First, the matter arose in the first place because the Claimant made a claim for cashed-in holiday pay, something which is contrary to regulation 13(9) of the Working Time Regulations 1998 (and for which there was no provision in his contract). Although he may have inherited that system from his predecessor, he was the person with responsibility for implementing it at the time and had been doing so for a number of years. Furthermore, he was operating that system in such a way as to claim "cashed in" holiday pay for himself in the middle of his leave year and in respect of holiday that he had not yet earned. Effectively he was operating the payroll to pay himself in advance without the Respondent's authorisation. It is also notable that, despite having been told in no uncertain terms he could not claim more than 35 hrs pay each week, the Claimant had not expressly alerted Mr Sanders to his practice of claiming cashed in holiday and asked if it was compatible with Mr Sanders' instruction.

54. Secondly, the Claimant had no good reason to lose his temper and coerce Mr Sanders into authorising his holiday pay claim. As stated above, that holiday pay claim – made midway through his leave year – did not relate to holidays he had actually taken, and there was no reason why he could not have simply reinstated the same claim in the following pay period, or subsequently. The obvious inference is that the Claimant was incensed that the Respondent, in the form of Mr Sanders, had finally begun to take control of his pay and he probably suspected that not only was he no longer able to work and claim for whatever hours he wanted, but that the practice of cashing in holidays would also be stopped once Mr Sanders realised what was happening.

55. Thirdly, the Claimant was prepared to significantly inconvenience the Respondent's other employees in order to get his own way. Some of those employees may well have had scheduled outgoings dependent upon their pay date and at the very least would suffered stress and disruption if not paid on time. The Claimant's threat to Mr Sanders put Mr Sanders in an impossible position of having to authorise the Claimant's holiday pay claim in order to ensure the Respondent's employees were paid on time. The Claimant said in evidence that he acted out of character and that a "red mist" came down. However it is notable that he did not later and once he had had the opportunity to calm down, contact Mr Sanders and apologise for his behaviour. Instead, at the disciplinary hearing he sought to downplay his actions by saying, untruthfully, that his threat had been an empty one because he had already completed the payroll.

56. For all these reasons I find that it would be just equitable to reduce the Claimant's compensatory award by 100 per cent.

57. Similarly, and for the same reasons, I find it would be just and equitable within the scope of section 122(2) ERA to reduce the Claimant's basic award by 100 per cent.

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Employment Judge S Moore

Date: 6 July 2019

Sent to the parties on: .....

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For the Tribunal Office