EMPLOYMENT TRIBUNALS

Claimant: Mrs C Parris

Respondent: Mr S Boghani and Dr SH Sachedina t/a Alpha Care

Heard at: **London South Employment Tribunal**

On: **12-13 September 2019**

Before: **Employment Judge Ferguson (sitting alone)**

Representation
Claimant: Mr R Henman (Claimant's husband)
Respondent: Ms J Shepherd (counsel)

JUDGMENT

It is the judgment of the Tribunal that:

1. The Claimant was unfairly dismissed and is awarded a basic award of £12,214.50 and a compensatory award of £50,045.16.

2. The Claimant was wrongfully dismissed and is awarded £90.24 in damages.

3. The Respondent made unauthorised deductions from the Claimant's wages and is ordered to pay the Claimant the gross sum of £237.90.

4. The application for a reinstatement or re-engagement order is refused.

5. The complaint of failure to provide a written statement of reasons for dismissal fails and is dismissed.

REASONS

INTRODUCTION

1. By a claim form presented on 31 March 2017, following a period of early conciliation from 9 January 2017 to 5 March 2017, the Claimant brought complaints of unfair dismissal, wrongful dismissal, failure to provide a written statement of reasons for dismissal and for arrears of pay. She had been employed by the Respondents, latterly as a Lead Physiotherapist, from 3 June 1998 until her dismissal with effect on 2 November 2016. The Respondents originally defended all of the complaints, but on 28 January 2019 they admitted unfair dismissal and wrongful dismissal. This hearing was listed as a two-day remedy hearing, but in fact it included determination of the two complaints for which liability had not been conceded (wages and written statement of reasons for dismissal).

2. By the time of this hearing, the basic and compensatory awards for unfair dismissal had been agreed as above (the compensatory award being the statutory maximum of one year's salary). Recoupment does not apply because the Claimant has not received any income-related benefits since her dismissal.

3. The remaining issues in dispute between the parties were as follows:

    3.1. The Claimant claims she is owed £945.65 in wages. The Respondent accepts only part of the wages claim and argues that most of the alleged deductions are out of time.

    3.2. In respect of wrongful dismissal, the claim was originally limited to the value of pension contributions that were not made in respect of the notice period. This figure is agreed between the parties at £90.24. The Claimant now claims she is also entitled to 12 weeks' pay because the payment she received on termination was described by the Respondent in its grounds of resistance as an "ex gratia" payment.

    3.3. The Claimant requests an order for reinstatement or re-engagement. The Respondents argue that neither order should be made.

    3.4. The Claimant maintains that she was not given a written statement of reasons for dismissal. The Respondents say she was.

    3.5. The Claimant asks the Tribunal to impose a financial penalty under s.12A of the 12A Employment Tribunals Act 1996.

4. By email sent at 10.27am on the day before the hearing the Claimant made an application to amend the claim to add a complaint of detriments on grounds of making protected disclosures. I heard oral submissions on the application from both parties at the start of the hearing and, applying the principles set out in Selkent Bus Co v Moore 1996 ICR 836, I refused it for the following reasons.

5. The Claimant was seeking to add an entirely new claim based on new facts,

mostly arising after the claim form had been submitted. The proposed amendment was lengthy. The detriments relied upon all relate to the Respondents' conduct of or response to legal steps or proceedings brought by the Claimant in this Tribunal and in other forums. The principal detriment is said to be the Respondents' refusal to accept reinstatement or re-engagement in these proceedings. The Claimant raised the possibility of reinstatement or re-engagement for the first time on 30 August 2019, less than 2 weeks ago. The Respondents' position was set out in a witness statement of Olive Jones, dated 9 September 2019 and disclosed to the Claimant on that day. She says the test for reinstatement and re-engagement is not met because neither would be practicable. That issue is to be determined at this hearing. If the amendment is allowed this remedy hearing would have to be postponed. I note that the proceedings began in March 2017, some two and a half years ago. I also note that the Claimant has previously applied to amend her claim to add a similar complaint, albeit alleging different detriments, and this was refused by Employment Judge Baron on 20 November 2018.

6. I consider that the balance of hardship and injustice lies on the side of refusing the amendment. The Claimant's objection to Respondents' stance on the reinstatement and re-engagement issue is to be determined at this hearing in any event. There is limited hardship to the Claimant in not being able to pursue an argument that it is, separately, a detriment causally linked to alleged protected disclosures, which include steps taken by the Claimant in other legal proceedings. There are other remedies available to the Claimant if, as she claims for example, the Respondents have failed to comply with County Court orders. There is considerable hardship to the Respondents in having to defend such a claim at a very late stage in these proceedings, delaying their conclusion substantially when they conceded almost the entire claim on liability in January this year.

7. On the second day of the hearing, after my judgment had been delivered and oral reasons given on all of the issues set out above, the Claimant asked for the decision to refuse the amendment to be reviewed under Rule 29. He wished to rely on a further authority, namely Onyango v Berkeley (t/a Berkeley Solicitors) UKEAT/0407/12/ZT. The EAT in that case overturned a decision of the employment tribunal that the claimant could not rely on a post-termination protected disclosure in a whistleblowing claim. I confirmed that that authority made no difference to my decision to refuse the amendment. The issue was not whether such a complaint could, in principle, be brought, but whether I should exercise my discretion to allow the Claimant to amend her claim, at an extremely late stage in the proceedings, to include it.

8. I heard evidence from the Claimant and, on behalf of the Respondents, from Olive Jones, Director of HR for Sussex Health Care.

WAGES CLAIM

9. In her claim form, the Claimant complained that the Respondents failed to pay her wages "on at least one day". This complaint was not fully particularised until July or August 2019, after the Claimant received documents from the Respondents via a subject access request and her husband and representative, Mr Henman, conducted a comparison of all time sheets and payslips from early 2015 until the end of the Claimant's employment (2

November 2016). He identified a number of discrepancies and produced a spreadsheet which purported to show that, over the whole period, the Claimant was underpaid for 39.5 hours, amounting to £945.65.

10. The Respondents accept that the Claimant was mistakenly underpaid for 8 hours in her final payslip, amounting to £190.32, but dispute the rest of the claim on the basis that it is out of time and/or the Claimant has not established the wages were due. Having conducted their own analysis of the data, the Respondents, relying on a written statement of David Blackman, Chief Finance Officer, say that there were only three minor discrepancies in the whole period resulting in a net underpayment of 0.25 hours.

11. The Claimant's contract states that she was employed to work 40 hours a week. It is not in dispute that at the relevant time her hourly pay was £23.79. She would submit time sheets and was paid monthly for the hours worked.

12. The Claimant claims that she had a contractual entitlement to be paid double her normal hourly rate for any hours worked on a bank holiday, and that she could also take a day off in lieu if she worked on a bank holiday. The entitlement to double pay is not accepted by the Respondents.

13. The alleged underpayments are as follows:

    13.1. 21 June 2015: 9.75 hours. 9.5 hours of this is said to arise from a failure to pay the claimant double time for working on a bank holiday. The other 0.25 hours is an unexplained discrepancy between the total hours worked in the previous month and the total paid. Mr Henman accepted in the hearing that the Claimant had in fact been paid double time for 8 of the 9.5 hours worked on the bank holiday, so the claim was actually for 1.5 hours plus the 0.25 discrepancy.

    13.2. 21 September 2015: 8 hours. This is said to be another failure to pay double time for working on a bank holiday.

    13.3. 21 January 2016: 0.5 hours. This is an unexplained discrepancy between the hours worked and the amount paid.

    13.4. 21 February 2016: 1 hour. This is another unexplained discrepancy.

    13.5. 21 August 2016: 1 hour. This is another unexplained discrepancy.

    13.6. 21 October 2016: 2 hours. This falls during the Claimant's period of suspension. The Claimant alleges that the Respondents simply calculated the hours wrongly and paid her for 174 instead of 176 (8 hours a day for the 22 working days in the month).

    13.7. 21 November 2016: 8 hours. This is accepted by the Respondents.

14. The Claimant also claims that her accrued untaken holiday was calculated incorrectly on termination, so that she is owed a further 10 hours' holiday pay. This is on the basis that the calculation was done excluding bank holidays (based on an annual entitlement of 224 hours) and it should have included them (264 hours). The Respondents maintain their calculation was correct.

15. Section 23 of the Employment Rights Act 1996 ("ERA") provides, so far as relevant:

> (2) Subject to subsection (4), an [employment tribunal] shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—
>
> > (a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or
> >
> > …
>
> (3) Where a complaint is brought under this section in respect of—
>
> > (a) a series of deductions or payments, or
>
> …
>
> the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.
>
> …
>
> (4) Where the [employment tribunal] is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

16. The three-month time limit may be extended by commencing early conciliation before the time limit expires (s. 207B ERA). The Claimant having commenced early conciliation on 9 January 2017, any deduction prior to 10 October 2016 is in principle out of time. The Claimant argues that they were a series of deductions or alternatively that it was not reasonably practicable for her to present a claim in time.

17. I do not accept the deductions claimed amount to a series of deductions. The first two deductions are factually linked in that they both relate to the bank holiday pay rate, but all three deductions from January 2016 to August 2016 are simply unexplained discrepancies in the number of hours paid. Further, there is a gap of six months between the deductions in February and August 2016. Applying the approach in Bear Scotland Ltd v Fulton; Hertel (UK) Ltd v Woods; Amec Group Ltd v Law [2015] IRLR 15, there is neither sufficient factual or temporal link.

18. Nor do I accept that it was not reasonably practicable for the Claimant to bring a claim in time. She accepted in cross-examination that she could have undertaken the exercise of comparing her time sheets with the payslips at the time. She did not raise any queries or complaints about her pay at the time. She has not put forward any obstacle to her bringing a complaint in time.

19. The deductions from June 2015 to August 2016 are therefore out of time and the Tribunal has no jurisdiction to consider them.

20. I accept that the Claimant's pay on 21 October 2016 must have been wrong

because it was based on 174 hours. The Claimant should have been paid her ordinary basic pay of 8 hours, five days a week during her suspension. 174 is not divisible by 8, so I accept it is a mistake and the 2 hours claimed are owed.

21. The underpayment of 8 hours in the final payslip is accepted.

22. The Claimant has not established that she was underpaid in respect of holiday pay. The entitlement under the contract is as follows: "You will be entitled to be paid in respect of holidays accrued due but untaken as of the date of termination of employment". The Claimant says that the Respondents' calculation, based on an annual entitlement of 224 hours, did not take account of bank holidays. On the Claimant's own case, however, the bank holidays were dealt with separately. If the Claimant worked on a bank holiday she was entitled to a day off in lieu. She would not therefore have accrued, at the date of termination, any holiday that related to bank holiday days. Provided the Respondents did not deduct any bank holidays not worked in calculating the hours outstanding, and there is no evidence that they did, the calculation would be correct. The Claimant has not established that the Respondents' calculation was incorrect.

23. The total sum owed to the Claimant is therefore £237.90 (10 hours at £23.79).

NOTICE PAY

24. There was no claim for notice pay in the claim form. The Claimant claimed wrongful dismissal, but accepted that she had received 12 weeks' pay in lieu of notice. She claimed that she was also entitled to pension payments during what would have been her notice period if she had not been wrongfully dismissed. The Respondents originally disputed this claim, but it was conceded on 28 January 2019 and the sum of £90.24 has been agreed in respect of the unpaid pension.

25. The Claimant now claims that she is also entitled to 12 weeks' notice pay because the Respondents described the payment as "ex gratia" in their ET3, so it was not in reality notice pay. Mr Henman relies on the EAT case of Publicis Consultants UK Ltd v O'Farrell (2011) UKEAT/0430/10/DM. In that case the employee was entitled to three months' notice of dismissal. He was dismissed for redundancy with four days' notice. The letter of dismissal set out his "severance package", which included "Ex-gratia Payment – You will receive an ex-gratia payment equivalent to three months' salary… The payment is free of Tax and NI deductions". The employee brought a breach of contract claim for failure to pay the notice pay. The employer sought to defend it by reference to the "ex gratia" payment, but the employment tribunal found that on a correct construction the payment was truly "ex gratia" and therefore the employee was entitled to damages for the notice period. That conclusion was upheld by the EAT.

26. I do not accept that the same analysis applies in this case. There were a number of different versions of the letter of dismissal because the Respondents had to correct the notice period and the date of termination. The first letter, dated 31 October 2016, stated:

> "We are writing to confirm the termination of your contract of employment

with notice of one month with effect from 28 October 2016."

27. The second version, also dated 31 October 2016, stated:

> "We are writing to confirm the termination of your contract of employment with notice of twelve weeks with effect from 2 November 2016".

28. A further letter dated 1 November 2016 was in materially the same terms. The Claimant's final payslip included 12 weeks' pay in lieu of notice, labelled "PILON", from which income tax was deducted. Mr Henman asserts that no National Insurance was deducted from the sum. There was no evidence on this issue and the Respondents did not know the position. Ms Shepherd speculated that National Insurance may not have been paid in respect of the notice period because the Claimant's employment came to an end on 2 November 2016.

29. The Respondents' ET3, presented on 5 September 2018, denied the wrongful dismissal complaint and stated:

> "Owing to the Claimant's length of service, the decision was taken to make an ex-gratia payment of 'notice pay [of] twelve weeks' upon termination of her employment. No salary or other payments are payable to an employee dismissed for gross misconduct; and as such no pension contributions are owing to the Claimant."

30. The payment made to the Claimant at the time was clearly intended as pay in lieu of notice. The reference to it as ex-gratia in the ET3 does not affect the analysis of what the payment was at the time. Further and in any event, all that is conveyed by that passage in the ET3 is that the Respondents believed they were entitled to dismiss the Claimant without notice or pay in lieu of notice, but chose not to do so in recognition of her length of service.

31. The Respondents further argue that the claim for notice pay is not pleaded and the Claimant requires permission to amend. Whether or not that is correct, I consider the claim is not well-founded, so if permission to amend were required I would not grant it.

32. In conclusion the only amount payable in respect of wrongful dismissal is the agreed figure of £90.32.

33. I delivered this judgment with oral reasons in the terms set out above around lunchtime on the second day of the hearing. After an adjournment Mr Henman applied for reconsideration of the decision on notice pay, on the basis that he felt disadvantaged because he was not legally trained, and if he had been he would have presented evidence to show that National Insurance was not paid. I refused the application. I had already considered the possibility that National Insurance was not paid, but concluded that the payment was still understood at the time to be pay in lieu of notice.

<u>REINSTATEMENT/ RE-ENGAGEMENT</u>

34. By email to the Respondents' solicitors dated 30 August 2019 Mr Henman said, for the first time in these proceedings, that the Claimant wished to be reinstated or re-engaged. The email states as follows:

> "Ms Parris has advised me that in the interest of mitigating her losses to the maximum and getting back to a job and service users she loved, she would like to explore the possibility of seeking reinstatement or re-engagement under s114 or 115 of Employment Rights Act 1996.
>
> This is on the basis that the Respondent has admitted liability for unfair and wrongful dismissal.
>
> In addition the senior personnel involved with her dismissal process have now been removed or resigned from their post.
>
> The fact that the Claimant has enforced her legal rights under the Data Protection Act and the Defamation Act in other proceedings would have no bearing on her ability to be reemployed at SHC as these are matters of legislation and compliance that she has a legal right to pursue.
>
> There have been various unfilled physiotherapy posts advertised on the SHC website for the last 6 months. There are currently two vacancies…
>
> Obviously there will need to be appropriate protection from victimisation from the owners of the company, future job protection in case other means to remove the claimant for unfounded reasons. However, in light of the employment market, the local presence of the opportunities of work and the Claimant's skills which she has maintained and gathered more diverse experience in the NHS, she would like to review the possibility of a position at SHC.
>
> This will require detailed consideration of how the organisation has changed in the last three years. A potential start date would be likely to be late 2019 or early 2020."

35. At a case management hearing on 5 September 2019 Employment Judge Balogun directed that the Tribunal would consider the issue at this hearing and gave the Respondents leave to produce supplementary evidence.

36. The undisputed factual background is as follows. The Claimant commenced employment with the Respondents on 3 June 1998 as a physiotherapist and was promoted to Lead Physiotherapist on 11 March 2005. She worked in care homes run by the Respondents. The Claimant was dismissed with effect from 2 November 2016. The reason given for dismissal was gross misconduct, based on an allegation that she covertly recorded a meeting between her and her manager, Mr Ajayi. In addition to her claim in the Tribunal, the Claimant brought a County Court claim in respect of a subject access request against two companies under the umbrella of "Sussex Health Care", owned by the Respondents. She also brought a claim in the High Court for libel and malicious falsehood against Mr Ajayi and the same two companies on the basis that they were vicariously liable for him. The County Court gave judgment recently in the Claimant's favour. The High Court proceedings are ongoing.

37. The Employment Tribunal proceedings were originally brought against "Sussex Health Care" and there was considerable correspondence about the correct identity of the Claimant's employer, culminating in a Preliminary Hearing on 20

November 2018, following which the two current Respondents, trading as Alpha Care, were found to be the Claimant's employers. On 28 January 2019 the Respondents admitted liability in the claims of unfair dismissal and wrongful dismissal. There was a dispute about mitigation, but by the time of the Preliminary Hearing on 5 September 2019 the Respondents had agreed not to argue failure to mitigate and accepted that the Claimant should be awarded the statutory maximum compensatory award for unfair dismissal. The Claimant found employment in the NHS in April 2017 and has remained in the same role to date.

38. The Respondents argue that there should be no reinstatement or re-engagement order.

39. Sections 112-113 ERA confer a discretion on the Tribunal to make an order for reinstatement or re-engagement, as defined in sections 114 and 115 ERA respectively. Section 116 then provides:

> **116 Choice of order and its terms**
>
> (1) In exercising its discretion under section 113 the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account—
>
> (a) whether the complainant wishes to be reinstated,
>
> (b) whether it is practicable for the employer to comply with an order for reinstatement, and
>
> (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.
>
> (2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.
>
> (3) In so doing the tribunal shall take into account—
>
> (a) any wish expressed by the complainant as to the nature of the order to be made,
>
> (b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and
>
> (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.
>
> (4) Except in a case where the tribunal takes into account contributory fault under subsection (3)(c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.
>
> (5) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining, for the purposes of subsection (1)(b) or (3)(b), whether it is practicable to comply with an order for reinstatement or re-engagement.

(6) Subsection (5) does not apply where the employer shows—

(a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement, or

(b) that—

(i) he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he wished to be reinstated or re-engaged, and

(ii) when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

40. The evidence of Olive Jones, the Respondents' Director of HR, may be summarised as follows. She was not employed by the Respondents until long after the Claimant's dismissal, but said she was familiar with the background from reading the documents and correspondence relating to the various legal proceedings. She said the admissions in respect of unfair and wrongful dismissal were made on the basis that the Claimant's dismissal had been procedurally unfair and that the Respondents still genuinely believe that the Claimant covertly recorded the meeting with Mr Ajayi and subsequently lied about doing so, and that these were acts of gross misconduct. Ms Jones accepted that Mr Ajayi and all of the other managers involved the Claimant's disciplinary proceedings had now left Sussex Health Care. She said the Respondents still believed that it would be impossible to successfully reintegrate the Claimant into Sussex Health Care.

41. Sussex Health Care currently employs around 650 people, including 15 physiotherapists. The team was comprised of one Therapy Team Manager (Ms Jon, who had been in post since 22 November 2018), two senior physiotherapists, three physiotherapists and nine physiotherapy support workers. Sussex Health Care was currently recruiting for two additional full time or part time physiotherapists. Ms Jones said the Claimant's former role of Lead Physiotherapist had been replaced by the role of Therapy Team Manager. She considered the Claimant may find it difficult to transition to the much more junior role of physiotherapist. She also believed it would be undermining and unsettling for Ms Jon, who was only relatively recently appointed and it was her first managerial post. There was a dispute about whether Ms Jon was previously managed by the Claimant. It was put to Ms Jones in cross-examination that the Claimant was never Ms Jon's line manager, but it was accepted on the Claimant's behalf that the Claimant had conducted some supervision sessions with Ms Jon.

42. Ms Jones also referred to a number of allegations made by Mr Henman in the course of the various legal proceedings, including that Mr Boghani had given untruthful evidence at the preliminary hearing on 20 November 2018, that the Respondents' behaviour in the Tribunal proceedings had "exceeded the high threshold of malicious conduct", that Mr Boghani had committed a criminal act in allegedly failing to disclose documents and he had "lied about Sussex Health Care", saying the Claimant was not an employee of that partnership. Ms Jones said that in light of these allegations the Respondents were very concerned that

the Claimant's real objective in requesting reinstatement or re-engagement was to have "the opportunity to further malign the Respondents and damage their reputation amongst their employees". Ms Jones said the Respondents were also conscious that the libel proceedings would still be ongoing, and did not feel it was reasonable to expect them to employ the Claimant while she was still actively pursuing claims against their companies. It was accepted that the Claimant would not have daily contact with the Respondents, but Ms Jones said the Claimant would be bound to encounter them at some stage.

43. The Claimant's evidence in cross-examination was that she only saw the Respondents once in the 18 years she worked for them and was very unlikely to encounter them. She accepted, however, that the senior management would continue to report to them. She also accepted that she still felt very aggrieved about the circumstances of her dismissal and said she maintained that Mr Boghani had lied under oath.

44. There is no allegation or finding that the Claimant caused or contributed to her dismissal, so the principal factor in considering either an order for reinstatement or re-engagement is whether it is practicable for the Respondents (or a successor or an associated employer) to comply with such an order. The question of practicability is one of fact for the Tribunal. In Coleman v Magnet Joinery Ltd [1974] IRLR 343, [1975] ICR 46, it was emphasised that what was practicable was not to be equated with what was possible, and that it was necessary for the tribunal to consider the industrial relations realities of the situation. If an employee has shown that she distrusts or lacks confidence in her employer and would not be a satisfactory employee if reinstated, that may be a relevant factor (Nothman v London Borough of Barnet (No 2) [1980] IRLR 65, CA).

45. In the present case I consider that it would not be practicable for the Respondents (or any associated employer – all of which are owned by the Respondents) to comply with an order for reinstatement or re-engagement. The tone of the correspondence in this Tribunal has been extremely antagonistic and Mr Henman has repeatedly made very serious allegations against the Respondents, questioning their honesty and integrity. He has done so expressly on the Claimant's behalf. Whatever the merits of those allegations, they have inevitably resulted in considerable animosity between the parties. Further, the email in which the Claimant raised the question of reinstatement or re-engagement for the first time itself demonstrates that she does not have trust and confidence in the Respondents as employers, seeking assurances for example that she would not be removed again for unfounded reasons.

46. Regardless of the level of personal contact between the Claimant and Respondents if she were to be re-employed, there would need to be a basic level of trust and confidence for the employment relationship to subsist. It is also relevant that the Claimant is still pursuing libel proceedings against companies owned by the Respondents.

47. Further, the Respondents have engaged a permanent replacement for the Claimant and I am satisfied that the conditions in s.116(6) ERA are met, so I am entitled to take that into account. The only current vacancies are at a much more junior level.

48. I give very little weight to the hearsay evidence about the Respondents' genuine belief that the Claimant was guilty of gross misconduct, but in all the circumstances I accept the Respondents' position that re-employing the Claimant would be extremely disruptive to the physiotherapy team and, given the lack of trust and confidence between the parties, it would not be practicable.

49. I therefore decline to make an order for reinstatement or re-engagement. The basic and compensatory awards for unfair dismissal are agreed.

WRITTEN STATEMENT OF REASONS FOR DISMISSAL

50. There is nothing in this complaint. The Claimant accepts that she received letters which set out the conduct she was accused of and said that she was dismissed for gross misconduct. That satisfies the requirements of s.92 ERA. Mr Henman complained that the reasons given were flawed and/or inadequate, but there is no additional requirement in s.92 other than to provide a written statement giving particulars of the reasons for the employee's dismissal. The letters certainly complied with that, whether or not the Claimant agreed with the reasons.

PENALTY UNDER s.12A ETA 1996

51. I decline to order the Respondents to pay a penalty to the Secretary of State under s.12A of the Employment Tribunals Act 1996. There are no findings of fact on which I could find that the breaches of the Claimant's rights had any aggravating features. I considered it would not be proportionate to hear evidence, in circumstances where liability was admitted, solely for the purposes of considering a penalty under s.12A.

COSTS/PTO APPLICATIONS

52. The Claimant made an application for a preparation time order and the Respondents applied for a costs order. I reserved judgment on both applications and a separate reserved judgment will be sent in due course.

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Employment Judge **Ferguson**

Date: 17 September 2019