Case Number: 2503456/2018

THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		*Respondent*
Mr J Douthwaite	**AND**	**D W Marshall Ltd**

Before: Employment Judge Martin

Judgement on Reconsideration

The Reserved Judgement dated 7 July 2019 be varied in accordance with the Amended Reserved Judgement attached hereto, as underlined at paragraphs 3; 47; 51; and 62 thereof.

REASONS

1 On 26 July 2019 the Respondent made an application for a reconsideration of the Reserved Judgment dated 7 July 2019. On 26 August 2019 the Claimant responded to that application.

2 The Tribunal considered Rules 70 – 72 of Schedule of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013; the Respondent's application for reconsideration and the Claimant's response. The Tribunal determined that it could deal with the application without a hearing.

3 In their request for a reconsideration of the Reserved Judgement dated 7 July 2019, the respondent asked for the claimant's claim for holiday pay to be reconsidered and to be dismissed. They submitted that the claimant had withdrawn his claim for holiday pay. In his response to the application for

reconsideration of the Reserved Judgement dated 7 July 2019, the claimant did not directly address that point. The Tribunal has reviewed its notes of the Hearing, which took place over 2 days. Initially, the claimant gave evidence seeking 20 days holiday pay. However, during the course of his evidence on remedy, the claimant did not pursue that claim and withdrew it, despite his earlier evidence. Accordingly, this Tribunal finds that the claimant's claim for breach of the working time regulations (holiday pay) has been withdrawn and his claim in that regard should be dismissed. For those reasons, the Reserved Judgement dated 7 July 2019, should be varied in accordance with the Amended Reserved Judgement attached hereto (as underlined at paragraphs 3; 47; 51; and 62 thereof); dismissing the claimant's claim for breach of the Working Time Regulations (holiday pay).

EMPLOYMENT JUDGE MARTIN

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 27 OCTOBER 2019

JUDGMENT SENT TO THE PARTIES ON

8 NOVEMBER 2019

AND ENTERED IN THE REGISTER

Miss K Featherstone

FOR THE TRIBUNAL

THE EMPLOYMENT TRIBUNALS

Claimant: **Mr J Douthwaite**

Respondent: **DW Marshall Ltd**

Heard at: **North Shields Hearing Centre** **On:** **29th April & 10th June 2019**

Before: **Employment Judge Martin**

Members:

Representation:

Claimant: **In Person**
Respondent: **Mr Motion – Managing Director of Respondent Company**

AMENDED RESERVED JUDGMENT

1. The claimant's complaint of unfair dismissal is well-founded. The claimant is awarded compensation in the sum of £15945.7.

2. The claimant's claim for breach of contract (notice pay) is well founded. The claimant is awarded the sum of £820.

2. The claimant's claim for a redundancy payment is not well founded and is hereby dismissed.

3. The claimant's claim for breach of the Working Time regulations 1998 (holiday pay) is not well founded and is hereby dismissed.

REASONS

Introduction

1. Mr Motion, the managing director; Mr Drape , the production manager and Mr Woodward, the administration manager all gave evidence on behalf of the respondent. The claimant gave evidence on his own behalf.

2. The Tribunal was provided with a main bundle of documents marked Appendix 1 and 9 bundles of documents dealing with various records.

The Law

3**.** The law which the Tribunal considered was as follows:

3.1. Section 123(1) of the ERA 1996 "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 in so far as that loss is attributable to action taken by the employer."

3.2 Section123(4) of the ERA 1996 "In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss.

3.3 The well-known case of **Western Excavating (ECC) Ltd v Sharp** [1978] IRLR 27 where the Court of Appeal held as cited by Lord Denning – an employee is entitled to treat himself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. The employee in those circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle him to leave at once.

3.4. The case of **Hilton v Shiner Limited** 2001 IRLR 727 where the EAT held that requiring an employee to cease doing his principal job and take up a new role will almost always be capable of being a repudiatory breach of contract. The breach has to be viewed objectively by reference to its impact on the employee.

3.5 The case of **Land Securities Trillium Ltd v Thornley** 2005 IRLR765 where the EAT held that in order to determine what an employee's existing contractual duties were the tribunal were entitled to look at not only at the job description, but the actual work which the employee did.

3.6 The case of **Coleman v S & W Baldwin 1977** RLR 342 where did EAT held that in removing an important part of an employee's functions and leaving him with residual duties of a humdrum nature, the employers had changed the whole nature of the employee's job and repudiated the contract of employment.

3.7. The case of **Bessenden Properties Limited v Corness** 1974 IRR 338 where the Court of Appeal held that when one-party seeks to allege that another party has failed to mitigate a loss, the burden of proof is on the party making that allegation.

3.8 The case of **Woods v W M Car Services (Peterborough) Ltd** [1981] IRLR 347 where the EAT held that it is implied in a contract of employment a term that the employer will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. Any breach of this implied term is a fundamental breach amounting to a repudiation since it necessarily goes to the root of

the contract. The Employment Tribunal's function is to look at the employer's conduct as a whole and determine whether its cumulative effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.

The issues

4. In relation to the complaint of unfair dismissal the Tribunal had to consider whether the claimant resigned in response to a fundamental breach of contract on the part of the respondent; whether it was a breach of an express term in the claimant's contract of employment and / or a breach of the implied term of trust and confidence; the Tribunal had to identify what was the breach or breaches and finally the Tribunal had to consider whether the claimant affirmed the contract of employment in the meantime. The Tribunal also had to consider if the respondent had a fair reason for dismissing the claimant and fairly dismissed him. If the Tribunal found that the claimant was unfairly dismissed it had to consider what was the claimant's loss and for what period. It had to consider if he acted fairly in mitigating his loss and would have been fairly dismissed in any event if a fair procedure had been followed.

5. In relation to the claim for a redundancy payment, the Tribunal had to consider whether there was a redundancy situation and the claimant had been dismissed for redundancy.

6. In relation to the claim for breach of contract the Tribunal had to consider if the claimant was entitled to any notice pay. The tribunal also had to consider whether the claimant was entitled to any holiday pay on termination.

Findings of Fact

7. The respondent is a small**/**/Medium-sized company specialising in fabricating and stocking various metals**.**

8. The claimant initially worked for the respondents through an agency. He worked as a driver for the respondent for about three months from October 2015 until February 2016. The claimant commenced employment with the respondents on 8 February 2016.

9. The claimant says that he was employed as a driver**.** The respondent says that the claimant was employed as a driver / warehouseman**.**

10. The respondent's managing director acknowledged on cross examination **t**hat at least 90% of the claimants job was driving. The only reason the claimant would not be driving and be working in the warehouse would be if his vehicle was off the road for a service; MOT; or if there were no deliveries.

11. The claimant's contract of employment is at page 1 of the bundle. It states that the claimant was employed from 8 February 2016. It did not indicate the claimant's job title. **T**he contract states that an employee must notify management of any absence, the reason, and duration of any absence and to keep management updated about the

absence. SSP would be paid for any sickness absence. The claimant signed the contract. The claimant is entitles to statutory notice.

12. The respondent's handbook states that, in cases of long-term absence line managers must arrange to conduct regular "care and concern" interviews to discuss absence. It also states that if there is doubt regarding an employee's ability to return to work advice must be sought from the company doctor/Occupational health.

13. The Claimant said that when he was not driving there was not much to do in the warehouse. He said that he felt at times that he was hiding from the managers because he had nothing to do. The respondents that there was plenty to do in the warehouse.

14. The claimant said that, on 11th of July 2018, he raised concerns about helping out on certain equipment in the warehouse with no training being made available. He said that he raised the matter with Mr Draper and argued with Mr Motion about it. Mr Motion said that he could not recall the argument, but that the claimant did request some training on certain equipment. The claimant said that this request for training came about because of that argument. On 17th and 19th of July 2018, the claimant did undertake some training on equipment used in the warehouse, as is noted at page 2 of the bundle. The claimant said that this training was just to operate two machines in the warehouse. He said that there was still not a lot to do in the warehouse for him, because he could not operate most of the machinery. He said that, prior to being trained up on those machines, he would mostly just to be sweeping up in the yard. He said that the only reason that he was trained up was because he asked for the training, because there was nothing to do if he was not able to take his vehicle out.

15. The claimant had some absences in 2017. Some of those absences was due to his wife's medical condition. He had to provide childcare cover because of his wife's illness. He had informed the respondents of his wife's medical condition.

16. On 24th February 2018, the claimant was involved in a road traffic accident on his motorcycle due to a collision with a Royal mail van.

17. On Friday 2 March the claimant fell over on some ice whilst he was clearing the pathway and started to suffer back pain. He texted Mr Draper to inform him that he would not come in that day because of falling over on the ice. He said he was told that there were no deliveries that day. The claimant referred in his text to his earlier bike accident and indicated he hoped to get into work on Monday (Page 10). The claimant returned to work on 5 March 2018.

18. On 9 April 2018, the claimant had severe back pain. He went to see his GP and was signed off sick for seven days (Page 11). The claimant was due to go back to work on 15th of April, but he was signed off for another week to 22nd April with back pain (Page 13). He informed the respondents of his sick note on Friday 13th April 2018 (page 12). He also updated Mr Draper on 17th of April 2018 and said that he was waiting for an MRI scan but hoped to be in on Monday (Page 12).

19. On the weekend of 21st and 22nd April 2018, the claimant took part in a motorcycle race rally. The claimant said that he did two races on 21st first April, but when he had problems with his back he did not participate in the race on Sunday 22nd April. The

respondents obtained documents showing that the claimant appeared to have been taking part in races on both days(Page 15– 16). The respondents had been informed by a colleague of the claimants that the claimant had been racing that weekend. The claimant acknowledged that he was due to race on the Sunday, but withdrew due to back problems.

20. The claimant went into work on the morning of 23rd third April. He said that he was in a lot of pain. He asked Mr Draper if he could to go home to the doctor. Mr Motion suggested in his evidence that the claimant simply phoned in sick that morning. On 23rd of April 2018, the claimant was signed off sick with serious back pain for three weeks. The claimant informed Mr Draper and told him that he was in hospital and receiving treatment. The claimant had an MRI scan and was referred for spinal surgery. He was signed off work for two months from 11th of May to 10th of July 2018 (Page 18– 19).

21 The claimant kept Mr Draper up-to-date and sent him various texts in May, June and July. After his surgery the claimant was signed off sick for another four weeks and notified Mr Draper (Page 24– 25). The claimant said that the respondent had not got in touch with him but he was updating them. The claimant was signed off sick for another three weeks in August.

22. Mr Motion said that the claimant's absence was impacting on the respondents business. They employed an agency Driver to cover the claimant's shifts. Mr Motion said that, in about May 2018, the respondents decided to recruit an additional driver to cover holidays and absences.

23. In evidence to the tribunal, Mr Motion stated that the respondents looked to recruit a 4th driver although they only had 3 vehicles. He said that they recruited a 4th driver in August 2018, although they had considered doing so earlier in the year. In evidence, Mr Motion said that they wanted an additional driver to cover holidays and absences. He said that the 4th driver could undertake warehouse duties. He also said they could send out to 2 drivers in one vehicle on occasions. He said that sending out 2 drivers for overnight journeys would reduce driving times. He did however accept on cross-examination that 2 drivers would not be of assistance on shorter journeys and may indeed cost more on longer journeys because only one driver could sleep in the in the cab and therefore there would be a hotel costs.

24. In his evidence, Mr Motion said he considered the introduction of 2 drivers at a later stage. He accepted on cross-examination that he did not consider that option as an option when the claimant sought to return to work, even though part of the reason for having 2 drivers was to help with lifting goods and that appeared to what be one of the issues in relation to the claimant's return. The 4th driver recruited was someone known to Mr Draper.

25. The claimant said that he was told in August by a colleague that the respondent had recruited an additional driver. He said he went to the office to discuss the matter with Mr Draper because he was concerned.

26. A meeting took place with the claimant, Mr Draper, and Mr Motion. The claimant said that at that meeting he was told that he would be working as a relief driver

/warehouse man. The claimant said he told the respondents that he was employed as a driver not a relief driver/warehouseman and they were not his normal duties. He said that he was told if he did not want to do warehouse work he might have to be made redundant. The claimant said but he was told that the matter would be discussed on his return to work. Mr Motion said he told the claimant at that meeting he not been replaced and explained the reasons for the Increase in the number of drivers. The claimant said that he was concerned that there were 4 drivers for 3 vehicles. He felt he had to do what he was told or leave because the respondents had got a new driver and were effectively changing his role to that of a relief driver/warehouse man. Mr Motion denied that he told the claimant that he would be a relief driver and be doing yard work. In his evidence Mr Motion was unclear as to how he was going to use 4 drivers to drive 3 vehicles, other than one of them act ing as a relief driver. No notes were made of that meeting as the claimant had attended unannounced.

27. The claimant was signed off sick until mid-September. On 17th of September 2018, the claimant was signed fit to return to work with certain stipulations. He was certified fit to drive but could only lift light weights and should avoid prolonged periods of lifting (page 32).

28. On 18 September the claimant attended a return to work meeting with Mr Motion and Mr Draper. At that meeting the claimant's fit note was discussed. The respondents expressed concern about whether the claimant was fit to return to work. At that meeting, the claimant expressed concern about the change to his role. The respondent said they still needed drivers and that it was part of their long-term strategy. The claimant expressed a concern about a reduction in his pay because of the change of role. He said in evidence that he would get less overtime if he was not driving. He was told that there was no change to his job role. The claimant also indicated his concerns about working more in the warehouse. He said that was not part of his role. At the meeting the claimant was asked about his accident. The respondents said that they had referred the matter to their insurers and had provided information to them. The return to work meeting was postponed. A further return to work meeting was arranged. The notes from the meeting are at pages 30–32 of the bundle.

29 The claimant said that, following the meeting in September, he was concerned because the respondent would not allow him back to work. He said he was fit to drive, which was the job he was employed to do. He could not understand why the respondents would not let him return to work at that stage. The only thing he was not allowed to do was heavy lifting which was not part of his role. He felt that he was being forced out of the company.

30 On 25th of September the claimant sent a letter of grievance to the respondent (page 80). In that letter, the claimant complained about the changes being made to his job role. He said and that he had worked for the respondent for the last three years as a driver and would only infrequently work in the warehouse. He stated that he was not happy with the changes to his job role. He went on to say that he was concerned as to why the respondents would not allow him back to work when he had been certified fit to drive and therefore undertake his contracted job role. He raised concerns about the way which he felt he was being treated by the respondents particular the changes to his job role and the refusal to allow him to return to his existing role now that he was certified fit by his GP. No response was sent to that letter.

31. The claimant provided the respondent with a copy of a letter from his consultant (pages 33- 34). Although the consultant referred to some numbness in the right leg and foot, he said that this was resolving. The consultant stated that the claimant was slowly improving and there was to be no follow-up. The Consultant did not recommend having heavy lifting in the future. That letter followed a review in mid-September.

32 On 10 October the claimant attended a further return to work meeting. The meeting was adjourned as Mr Draper was on holiday and the claimant looked to bring a trade union representative to the meeting. The claimant provided the respondent with a copy of the letter from his consultant at that meeting. It was agreed that the claimant would be paid for the two days until the meeting could be reconvened namely 15 and 16th October, as the claimants further fit note was due to expire on 14th of October 2018.

33. On the same day, 10th of October, the respondent wrote to the claimant and asked him to consent to access to his medical records and a report from his GP. Mr Motion said in evidence to the tribunal that they were concerned about the insurance risk of allowing the claimant on the road to drive.

34 On 12th of October the claimant sent the respondent a further letter of grievance. He complained about the failure to respond to his earlier grievance. He also complained about the failure to manage his absence. He raised concerns about being redeployed to the yard, rather than being allowed to return to his existing job as a driver. He asked why the respondents had not sent him for a medical assessment. He also complained about disclosure of his medical details to the respondent's insurers (Page 82).

35. The claimant received an acknowledgement of his two grievance letters on 16th of October (Page 84).

36. On 16th of October the respondents again wrote to the claimant requesting consent to access his medical records and for a medical report from his GP, although by that stage, they had already received a fit note from the claimant's GP stating what duties he could do, and a letter from the claimant's consultant (page 41).

37. The claimant attended a further return to work meeting with Mr Motion and Mr Draper on 17th of October 2018. The respondents went through the claimant's absences at that meeting. The respondents said that they did not have any light duties for the claimant to do in accordance with the fit note. The claimant said that he was unable to do heavy lifting but that he could drive. He said that he was fit to return to work as a driver. The respondent said that there was some lifting as part of that job. In evidence to the tribunal the claimant said that he did not do much lifting as part of his driving role. He said that assistance was provided when he delivered the goods at different locations. The respondents accepted in evidence that assistance with lifting was given by their clients but that it was not always available. In evidence to the tribunal, the claimant suggested that the respondents did not consider any reasonable adjustments, in particular what they were now suggesting of a two driver system, which would have avoided him doing any lifting.

38. The claimant refused to give access to his medical records. He said that the respondents already had the fit note from his GP and a letter from his consultant. He

said that no further information was required. He also said that he was concerned about providing access to his private medical records because of the earlier disclosure made by the respondent to their insurers about his medical information.

39 The claimant was suspended at that stage.

40. On 21st October the claimant sent a further letter of grievance (Page 51– 52). In that letter he raised concerns about the way his absence had been managed, in particular, in relation to both the return to work meeting and in accordance with the respondent's policies. He then asked why the respondent required access to his medical records when they already had sufficient information about his medical condition from his fit note and the letter from his consultant. He suggested that, if they had any concerns about his fitness, they should send him for an occupational health assessment. He complained that the reason why the respondents would not let him back to work was because they had replaced him as a driver. He also questioned why his grievances had not been addressed. He suggested that they should be dealt with by someone else in the organisation as they related to concerns raised about Mr Draper and Mr Motion.

41 On 26 October the claimant was invited to an investigatory meeting by Mr Motion. He was told that the purpose of the meeting was to consider allegations of conflicting evidence relating to the claimant's absence and his refusal to carry out normal duties upon return to work. It was stated that the allegations could lead to disciplinary action (page 53).

42 Due to his concerns about the way he was being treated, the claimant then contacted ACAS and informed the respondents on 31st October.

43. On 5 November, the respondents again wrote to the claimant requesting consent to access his medical records and for a medical Report from his GP. In that letter, the respondents also informed the claimant that his entitlement to company sick pay had expired and he would have to apply for SSP (page 58-59).

44. On the same day, 5 November, Mr Woodward wrote to the claimant to invite him to a grievance meeting. He stated in that letter that he had conducted an enquiry into the grievances, although from his evidence in Tribunal it was unclear what inquiries he had made and when those inquiries had been made. Mr Woodward made further attempts to set up a meeting, although it was unclear why he was so keen at that stage to set up a grievance meeting, when there had been such a delay in dealing with the grievances. It seems somewhat unlikely that Mr Woodward was not already aware by the time that he wrote the invite to the grievance meeting of the involvement of ACAS.

45. By that stage the claimant had contacted ACAS to try and resolve the matter to enable him to return to work. The claimant informed Mr Woodward of his contact with ACAS and explained that was the reason why he would not be attending the grievance meeting at that stage. The claimant said that he understood from his discussions with ACAS that's the only basis on which he could return to work would be if he agreed to consent to the release of his medical records to the respondents.

46. On 22nd November, the claimant wrote to the respondents to resign from his employment. The reason given for his resignation was that the respondents would not allow him to return to his role as a driver, even though he had been certified fit to do so. He said that the reason why the respondent would not allow him to do so was because they had hired someone else to do his job. He went on to say that, as the respondents had put him onto statutory sick pay, he is left with no income. He states that he cannot claim statutory sick pay because he does not have a sick note from his GP certifying him on fit to work. On the contrary, he has a fit note from his GP certifying him fit to return to his role as a driver (pages 72 -73). The claimant's letter of resignation was accepted by the respondents.

47. The claimant said that the holiday year ran from 1 January to 31 December. He said that he was entitled to 25 days holiday, three of which had to to be taken over Christmas. Initially, he said in evidence that he had 20 days due to him for that holiday year on termination of his employment. However, when he gave evidence on remedy, he accepted that his holiday pay had been paid and withdrew that claim.

48. The claimants gross weekly pay before overtime was £360 a week. The claimant said in evidence that his average weekly pay after working overtime ,net of tax and NI was £410 week. Those figures were not contested.

49 Since his employment terminated the claimant said in evidence that he had signed on with various agencies for temporary and permanent work. He said that he had signed on with five agencies and was getting ad hoc work. He had earned various amounts since the termination of his employment, amounting to a total of £1393. He has had a number of interviews, but has not been successful. He has applied to various companies including UK Express, Network Rail and other local companies. He has been applying for driving work. He believes that, if he was able to get his Class 2 licence, he would be able to would obtain a job within a few months. He has now sent away for his Class 2 licence. He could not do so previously, due to requiring his licence and not being able to afford to do so. He expects to get a job at a higher rate of pay then he earned with the respondents within the next three months. The respondents suggested on cross-examination that the claimant ought to have been able to obtain a permanent driving job before now, but have not produced any evidence of any available jobs. The claimant signed on for job seekers allowance when his employment terminated.

Submissions

50. The respondents submitted that claimant had not been dismissed. They asserted that he had resigned. They further submitted that there was no redundancy situation. The respondent's case was that the claimant was not entitled to any compensation.

51. The claimant submitted that he had resigned because of a breach of contract on the part of the respondent. He said that the breach was a breach of an express term of his contract of employment, namely a change to his job role. He also said that there was a breach of the implied term of trust and confidence, as the respondents would not let back to work, even though he had been certified fit to return to his role as a driver. He is seeking a redundancy payment in the alternative. He did not pursue his claim for holiday pay.

Conclusions

52. This Tribunal finds that there was a breach of contract on the part of the respondent which entitled the claimant to resign.

53. The Tribunal finds that the claimant was employed as a driver. Even based on the respondents' own evidence, the claimant spent 90% of of his time driving. However, after the claimant went on long-term sickness absence, the respondents replaced him with another driver and changed the claimant's job role to relief driver/ warehouse person. This was a change to the claimants duties and a fundamental breach of contract.

54 The Tribunal found the respondent's evidence about the recruitment of the additional driver and the role he would undertake to be confusing and lacking in credibility. The Tribunal preferred the claimant's evidence about what he was told regarding the recruitment of the additional driver to that of the respondents. The claimant was a credible witness. His evidence is consistent with the notes of the meeting in September when it is clear that he raised his concerns about the changes to his job role. The claimant's evidence is also entirely consistent with the three letters of grievance sent by him to the respondents to which he did not receive a response.

55. Further, the Tribunal finds that the respondent's refusal to allow the claimant back to work, when he had provided them with a fit note from his GP stating that he was fit to drive as well as a letter from his consultant indicating that no further review was required, also amounted to a fundamental breach of the implied term of trust and confidence, which of itself would also have entitled the claimant to resign. The respondent's insistence that the claimant give consent to the release of his medical records and provide a medical report from his GP was wholly unnecessary and unreasonable in the light of the medical information already available to the respondents. Furthermore, if the respondents really had concerns about the claimant's fitness to work, then they could have obtained an occupational Health assessment in accordance with their policies, which the claimant agreed to undergo. That refusal to allow the claimant back to work without him providing access to his medical records was consistent with the fact that the respondents did not want the claimant back at work as a driver, because they had already replaced him.

56. It is clear that the claimant resigned as a result of these breaches of contract on the part of the respondents and was entitled to do so.

57. The claimant did not affirm the contract following the breaches of contract on the part of the respondents. The claimant attempted to resolve matters through ACAS, but when it became clear that the respondents would not allow him to return to work other than on their terms, he was entitled to treat himself as dismissed, in particular once it was clear to the claimant that the respondents were no longer intending to pay him either his wages or sick pay. The claimant realised, and the respondent must also have realised or ought to have, that the claimant would not be entitled to statutory sick pay because he did not have a sick note and had effectively been certified fit to work. The respondents were effectively preventing the claimant from earning any income.

58. Accordingly for those reasons this tribunal finds that the claimant was unfairly dismissed.

59. The tribunal finds that the claimant had taken reasonable steps to mitigate his loss. He has obtained some ad hoc work and is now looking at obtaining an additional driving qualification to improve his chances of obtaining driving work.

60. The claimant is awarded compensation for unfair dismissal in the sum of £18,672.21 calculated as follows:

Basic award 2 years @1.5 x £360	£1080
Compensatory award	
Immediate loss 7th Dec 2018 – 10h June 2019 26 weeks at £410. Less sums received -£1393.	£10,660. £9,267
Future loss 12 weeks at £410	£4920
Loss of statutory rights	£350
Loss of pension 8.65 x 38 weeks	£328.7
Total compensatory award	£14865.7
Total award on compensation	£15945.7

The Employment Protection (Recruitment of Benefits) Regulations 1996 apply to this award. The prescribed period is 23 November 2018 to 10th June 2019. The prescribed element is £9267.

61. The Claimant was not paid any notice pay. He is entitled to 2 weeks notice in accordance with his contract of employment and section 86 of the Employment

Rights Act 1996. Accordingly, his claim for breach of contract is well founded and he is awarded the sum of £820.

62 . The claimant is not pursuing his claim for breach of the Working Time Regulations (holiday pay) which he has withdrawn.

THE EMPLOYMENT TRIBUNALS

Claimant: **Mr J Douthwaite**

Respondent: **DW Marshall Ltd**

Heard at: **North Shields Hearing Centre** **On:** **29th April & 10th June 2019**

Before: **Employment Judge Martin**

Members:

Representation:

Claimant: **In Person**
Respondent: **Mr Motion – Managing Director of Respondent Company**

RESERVED JUDGMENT

1. The claimant's complaint of unfair dismissal is well-founded. The claimant is awarded compensation in the sum of £15945.7.

2. The claimant's claim for breach of contract(notice ay) is well founded. The claimant is awarded the sum of £820.

2. The claimant's claim for redundancy payment is not well founded and is hereby dismissed.

3. The claimant's claim for breach of the Working Time regulations 1998(holiday pay) is also well founded. He is awarded the sum of £1640.

REASONS

Introduction

1. Mr Motion, the managing director; Mr Draper , the production manager and Mr Woodward, the administration manager all gave evidence on behalf of the respondent. The claimant gave evidence on his own behalf.

2. The Tribunal was provided with a main bundle of documents marked Appendix 1 and 9 bundles of documents dealing with various records.

The Law

3**.** The law which the Tribunal considered was as follows:

3.1. Section 123(1) of the ERA 1996 "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 in so far as that loss is attributable to action taken by the employer."

3.2 Section123(4) of the ERA 1996 "In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss.

3.3 The well-known case of **Western Excavating (ECC) Ltd v Sharp** [1978] IRLR 27 where the Court of Appeal held as cited by Lord Denning – an employee is entitled to treat himself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. The employee in those circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle him to leave at once.

3.4. The case of **Hilton v Shiner Limited** 2001 IRLR 727 where the EAT held that requiring an employee to cease doing his principal job and take up a new role will almost always be capable of being a repudiatory breach of contract. The breach has to be viewed objectively by reference to its impact on the employee.

3.5 The case of **Land Securities Trillium Ltd v Thornley** 2005 IRLR765 where the EAT held that in order to determine what an employee's existing contractual duties were the tribunal were entitled to look at not only at the job description, but the actual work which the employee did.

3.6 The case of **Coleman v S & W Baldwin 1977** RLR 342 where did EAT held that in removing an important part of an employee's functions and leaving him with residual duties of a humdrum nature, the employers had changed the whole nature of the employee's job and repudiated the contract of employment.

3.7. The case of **Bessenden Properties Limited v Corness** 1974 IRR 338 where the Court of Appeal held that when one-party seeks to allege that another party has failed to mitigate a loss, the burden of proof is on the party making that allegation.

3.8 The case of **Woods v W M Car Services (Peterborough) Ltd** [1981] IRLR 347 where the EAT held that it is implied in a contract of employment a term that the employer will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. Any breach of this implied term is a fundamental breach amounting to a repudiation since it necessarily goes to the root of

the contract. The Employment Tribunal's function is to look at the employer's conduct as a whole and determine whether its cumulative effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.

The issues

4. In relation to the complaint of unfair dismissal the Tribunal had to consider whether the claimant resigned in response to a was a fundamental breach of contract on the part of the respondent; whether it was a breach of an express term in the claimant's contract of employment and/ or a breach of the implied term f trust and confidence; the Tribunal had to identify what was the breach or breaches and finally the Tribunal had to consider whether the claimant affirmed the contract of employment in the meantime. The Tribunal also had to consider if the respondent had a fair reason for dismissing the claimant and fairly dismissed him. If the Tribunal found that the claimant was unfairly dismissed it had to consider what was the claimant's loss and for what period. It has had to consider if he acted fairly in mitigating his loss and would have been fairly dismissed in any event if a fair procedure had been followed and whether there should be any increase in any award for failure to follow the ACAS code of conduct.

5. In relation to the claim for a redundancy payment, the Tribunal had to consider whether there was a redundancy situation and the claimant had been dismissed for redundancy.

6. In relation to the claim for breach of contract the Tribunal had to consider if the claimant was entitled to any notice pay. The tribunal also ad to consider whether the claimant was entitled to any holiday pay on termination.

Findings of Fact

7. The respondent is a small**/**/Medium-sized company specialising in fabricating and stocking various metals**.**

8. The claimant initially initially worked for the respondents through an agency. He worked as a driver for the respondent for about three months from October 2015 until February 2016. The claimant commenced employment with the respondents on eighth of February 2016.

9. The claimant says that he was employed as a driver**.** The respondent says that the claimant was employed as a driver warehouseman**.**

10. The respondent's managing director acknowledged on cross examination **t**hat at least 90% of the claimants job was driving. The only reason the claimant would not be driving and work and be working in the warehouse would be if his vehicle was off the road for a service MOT or if there were no deliveries.

11. The claimant's contract of employment at page 1 of the bundle states that the claimant was employed from 8 February 2016. It did not indicate the claimant's job title. **T**he contract states that an employee must notify management of any absence, the

reason, and duration of any absence and to keep management updated about the absence. SSP would be paid for any sickness absence. The claimant signed the contract.

12. The respondent's handbook states that in cases of long-term absence line managers must arrange to conduct regular "care and concern" interviews to discuss absence. It also states that work there is doubt regarding an employee's ability to return to work advice must be sought from the company doctor/Occupational health.

13. The Claimant said that when he was not driving there was not much to do in the warehouse. He said that he felt at times that he was hiding from the managers because he had nothing to do. The respondents that there was plenty to do in the warehouse.

14. The claimant said that, on 11th of July 2018, he raised concerns about helping out on certain equipment in the warehouse with no training being made available. He said that he raised the matter with Mr Draper and argued with Mr Motion about it. Mr Motion said that he could not recall the argument, but that the claimant did request some training on certain equipment. The claimant said that this request for training came about because of that argument. On 17th and 19th of July 2018, the claimant did undertake some training on equipment used in the warehouse as it is noted at page 2 of the bundle. The claimant said that this training was just to operate two machines in the warehouse. He said that there was still not a lot to do in the warehouse for him because he could not operate most of the machinery. He said that prior to being trained up on those machines he would mostly just to be sweeping up in the yard. He said that the only reason that he was trained up was because he asked for the training because there was nothing to do if he was not able to take his machine his vehicle out.

15. The claimant had some absences in 2017. He said that some of those absences was due to his wife's medical condition. He had to provide childcare cover because of his wife's illness. He had informed the respondents of his wife's medical condition.

16. On 24th February 2018, the claimant was involved in a road traffic accident on his motorcycle due to a collision with a Royal mail van.

17. On Friday 2 March the claimant fell over on some ice whilst he was clearing the pathway and started to suffer back pain. He texted mr Draper to inform him that he would not come in that day because of falling over on the ice. He said he was told that there were no deliveries that day. The claimant referred in his text to his earlier bike accident and indicated they hoped to get into work on Monday (Page 10). The claimant return to work on 5 March 2018.

18. On 9 April 2018, the claimant had severe back pain. He went to see his GP and was signed off sick in seven days (Page 11). The claimant was due to go back to work on 15th of April, that he was signed off for another week to 22nd April with back pain (Page 13). He informed the respondents of his sick note on Friday 13th April 2018 (page 12). He also updated Mr Draper on 17th of April 2018 and said that he was waiting for an MRI scan but hope to be in on Monday (Page 12).

19. On the weekend of 21st and 22nd April 2018 the claimant took part in a motorcycle race rally. The claimant said that he did two races on 21st first April but when he had

problems with his back he did not participate in the race on Sunday 22nd of April. The respondents octanes documents showing that the claimant appear to have taking part in races on both days(Page 15– 16). The respondents had been informed by a colleague of the claimants that the claimant had been racing that weekend. The claimant acknowledged that he was due to race on Sunday but withdrew due to back problems.

20. The claimant went into work on the morning of 23rd third April that he was in a lot of pain. He asked Mr Draper if he could to go home to the doctor. Mr Motion suggested in his evidence that the claimant simply phoned in sick that morning. On 23rd of April 2018 the claimant was signed off sick with serious back pain for three weeks. The claimant informed Mr Draper and told him that he was in hospital and receiving treatment. The claimant had an MRI scan and was referred for spinal surgery. He was signed off work for two months from 11th of May to 10th of July 2018 (Page 18– 19).

21 The claimant kept Mr Draper up-to-date and sent him various texts in May June and July. After his surgery the claimant was signed off sick for another four weeks and notified Mr Draper(Page 24– 25). The claimant said that the respondent had not got in touch with him but he was updating then. The claimant was signed off sick for another three weeks in August.

22. Mr Motion said that the claimant as absence was impacting on the respondents business. Lady employed an agency Driver to cover the claimants shifts. Mr Motion said that, in about May 2018, the respondents decided to recruit an additional driver to cover holidays and absences.

23. In evidence to the tribunal, Mr Motion stated that the respondents looked to recruit a 4th driver although they only had 3 vehicles. He said that they recruited a 4th driver in August 2018, although they had considered doing so earlier in the year. In evidence Mr Motion said that they wanted an additional driver to cover holidays and absences. He said that the 4th driver could undertake warehouse duties. He also said they could send out to 2 drivers in one vehicle on occasions. He said that sending out 2 drivers for overnight journeys would reduce driving times. He did however accept on cross-examination that 2 drivers would not be of assistance on shorter journeys and may indeed cost more on longer journeys because only one driver could sleep in the in the cab and therefore there would be a hotel costs.

24. In his evidence, Mr Motion said he considered the introduction of 2 drivers at a later stage. He accepted on cross-examination that he did not consider that option as an option when the claimant sought to return to work, even though part of the reason for having 2 drivers was to help with lifting goods and that appeared to what be one of the issues in relation to the claimants return. The 4th driver recruited was someone Mr Draper knew.

25. The claimant said that he was told in August by a colleague that the respondent had recruited an additional driver. He said he went to the office to discuss the matter with Mr Draper because he was concerned.

26. A meeting took place with the claimant, Mr Draper, and Mr Motion. The claimant said but at that meeting he was told that he would be working as a relief driver/warehouse man. The claimant said he told the respondents that he was

employed as a driver not a relief driver/warehouseman and they were not his normal duties. He said that he was told if he did not want to do warehouse work he might have to be made redundant. The claimant said but he was told that the matter would be discussed on his return to work. Mr Motion said he told the claimant at that meeting he not been replaced and explained the reasons for the Increase in the number of drivers. The claimant said that he was concerned that there were 4 drivers for 3 vehicles. He felt he had to do what he was told or leave because the respondents had got a new driver and were effectively changing his role to that of a relief driver/warehouse man. Mr Motion denied that he told the claimant that he would be a relief driver and be doing yard work. In his evidence Mr Motion was unclear as to how he was going to use 4 drivers to drive 3 vehicles other than one of them act as a relief driver. No notes were made of that meeting as the claimant had attended unannounced.

27. The claimant was signed off sick until mid-September. On 17th of September 2018, the claimant was signed fit to return to work with certain stipulations. He was certified fit to drive but could only lift light weights and should avoid prolonged periods of lifting (page 32).

28. On 18 September the claimant attended a return to work meeting with Mr Motion and Mr Draper. At that meeting the claimant's fit note was discussed. The respondents expressed concern about whether the claimant was fit to return to work. At that meeting, the claimant expressed concern about the change to his role. The respondent so they still needed drivers and that it was part other long-term strategy. The claimant expressed a concern about a reduction in his pay because of the change of role. He said in evidence that he would get less overtime if he was not driving. He was told that there was no change to his job role. The claimant also indicated his concerns about working more in the warehouse. He said that was not part of his role. At the meeting the claimant was asked about his accident. The respondents said that they had referred the matter to their insurers and had provided information to them. The return to work meeting was postponed and a further return to work meeting was arranged. The notes from the meeting are at pages 30–32 of the bundle.

29 The claimant said that, following the meeting in September, he was concerned because the respondent would not allow him back to work. He said he was fit to drive, which was the job he was employed to do. He could not understand why the respondents would not let him return to work at that stage. The only thing he was not allowed to do was heavy lifting which was not part of his role. He felt that he was being forced out of the company.

30 On 25th of September the claimant sent a letter of grievance to the respondent (page 80). In that letter, the claimant complained about the changes being made to his job role. He said and that he had worked for the respondent for the last three years as a driver and would only only infrequently work in the warehouse. He stated that he was not happy with the changes to his job role. He went on to say that he was concerned as to why the respondents would not allow him back to work when he had been certified fit to drive and therefore undertake his contracted job role. He raised concerns about the way which he felt he was being treated by the respondent mainly the changes to his job role and the refusal to allow him to return to his existing role now that he was certified fit by his GP. No response was sent to that letter.

31. The claimant provided the respondent with a copy of a letter from his consultant (pages 33- 34). Although the consultant referred to some numbness in the right leg and foot, he said that this was resolving. The consultant stated that the claimant was slowly improving and there was to be no follow-up. The Consultant did not recommend having heavy lifting in the future. That letter followed a review in mid-September.

32 On 10 October the claimant attended a further return to work meeting. The meeting was adjourned as Mr Draper was on holiday and the claimant looked to bring a trade union representative to the meeting. The claimant provided the respondent with a copy of the letter from his consultant at that meeting. It was agreed that the claimant would be paid for the two days until the meeting could be adjourned namely 15 and 16th October, as the claimants further fit note was due to expire on 14th of October 2018.

33. On the same day, 10th of October, the respondent wrote to the claimant and asked him to consent to access to his medical records and a report from his GP. Mr Motion said in evidence to the tribunal that they were concerned about the insurance risk of allowing the claimant on the road to drive.

34 On 12th of October the claimant sent the respondent a further letter of grievance. He complained about the failure to respond to his earlier grievance. He also complained about the failure to manage his absence. He raises concerns about being redeployed to the yard, rather than being allowed to return to his existing job as a driver. He asked why the respondents had not sent him for a medical assessment. He also complained about disclosure of his medical details to the respondent insurers (Page 82).

35. The claimant received an acknowledgement of his two grievance letters on 16th of October (Page 84).

36. On 16th of October the respondents again wrote to the claimant requesting consent to access his medical records and for a medical report from his GP, although by that stage, they had already received a fit note from the claimant's GP stating what duties he could do and a letter from the claimant's consultant (page 41).

37. The claimant attended a further return to work meeting with Mr Motion and Mr Draper on 17th of October 2018. The respondents went through the claimant's absences at that meeting. The respondents said that they did not have any light duties for the claimant to do in accordance with the fit note. The claimant said that he was unable to do heavy lifting but that he could drive. He said that he was fit to return to work as a driver. The respondent said that there was some lifting as part of that job. In evidence to the tribunal the claimant said that he did not do much lifting as part of his driving role. He said that assistance was provided when he delivered the goods at different locations. The respondents accepted in evidence that assistance with lifting was given by their clients but that it was not always available. In evidence to the tribunal, the claimant suggested that the respondents did not consider any reasonable adjustments, in particular what they were now suggesting of two driver system, which would have avoided him doing any lifting.

38. The claimant refused to give access to his medical records. He said that the respondents already had his fit note from his GP and a letter from his consultant. He said that no further information was required. He also said that he was concerned about

providing access to his private medical records because of the disclosure made by the respondent to their insurers of his medical information.

39 The claimant was suspended at that stage.

40. On 21st October the claimant sent a further letter of grievance (Page 51– 52). In that letter he raised concerns about the way his absence had been managed, in particular, in relation to both the return to work meeting and in accordance with the respondent's policies. He then asked why the respondent required access to his medical records when they already had sufficient information about his medical condition from his fit note and the letter from his consultant. He suggested that, if they had any concerns about his fitness, they should send him for an occupational health assessment. He complained that the reason why the respondents would not let him back to work was because they had replaced him as a driver. He also questioned why his grievances had not been addressed. He suggested that they should be dealt with by someone else in the organisation as they related to concerns raised how about Mr Draper and Mr Motion.

41 On 26 of October the claimant was invited to an investigatory meeting by Mr Motion. He was told that the purpose of the meeting was to consider allegations of conflicting evidence relating to the claimant's absence and his refusal to carry out normal duties upon return to work. It was stated that allegations could lead to disciplinary action (page 53).

42 Due to his concerns about the way he was being treated, the claimant then contacted ACAS and informed the respondents on 31st October.

43. On 5 November, the respondents again wrote to the claimant requesting consent to access his medical records and for a medical Report from his GP. In that letter, the respondents also informed the claimant that his entitlement to company sick pay had expired and he would have to apply for SSP (page 58-59).

44. On the same day, 5 November, Mr Woodward wrote to the claimant to invite him to a grievance meeting. He stated in that letter that he had conducted an enquiry into the grievances, although from his evidence in Tribunal it was unclear what inquiries he had made and when those inquiries had been made. Mr Woodward made further attempts to set up a meeting, although it was unclear why he was so keen at that stage to set up a grievance meeting, when there had been such a delay in dealing with the grievances. It seems somewhat unlikely that Mr Woodward was not already aware by the time that he wrote the invite to the grievance meeting of the involvement of ACAS.

45. By that stage the claimant had contacted ACAS to try and resolve the matter to enable him to return to work. The claimant informed Mr Woodward of his contact with ACAS and explained that was the reason why he would not be attending the grievance meeting at that stage. The claimant said that he understood from his discussions with ACAS that's the only bases on which he could return to work would be if he agreed to consent to the release of his medical records to the respondents.

46. On 22nd November, the claimant wrote to the respondents to resign from his employment. The reason given for his resignation was that the respondents would not

allow him to return to his role as a driver, even though he had been certified fit to do so. He said that the reason why the respondent would not allow him to do so was because they had hired someone else to do his job. He went on to say that, as the respondents had put him onto statutory sick pay, he is left with no income. He states that he cannot claim statutory sick pay because he does not have a sick note from his GP certifying him on fit to work. On the contrary, he has a fit note from his GP certifying him fit to return to his role as a driver (pages 72 -73). The claimants letter of resignation was accepted by the respondents.

47. The claimant said that the holiday year ran from 1 January to 31 December. He said that he was entitled to 25 days holiday, three of which had to to be taken over Christmas. He said in evidence that he had 20 days due to him for that holiday year on termination of his employment. The respondents did not contest that evidence.

48. The claimants Gross pay before overtime with £360 a week. The claimant said in evidence that his average weekly pay after working overtime net of tax and NI was £410 week. Those figures were not contested.

49 Since his employment terminated the claimant said in evidence that he had signed on with various agencies for temporary and permanent work. He said that he had signed on with five agencies and was getting ad hoc work. He had earned various amounts since the termination of his employment, amounting to a total of £1393. He has had a number of interviews, but has not been successful. He has applied to various companies including UK express, Network Rail and other local companies. He has been applying for driving work. He believes that if he was able to get his Class 2 licence he would be able to would obtain a job within a few months. He has now sent away for his Class 2 licence. He could not do so previously due to requiring his licence and not being able to afford to do so. He expects to get a job at a higher rate of pay then he earned with the respondents within the next three months. The respondents suggested en cross-examination that the claimant ought to have been able to obtain a permanent driving job before now, but have not produced any evidence of any available jobs. The claimant signed on for job seekers allowance when his employment terminated.

Submissions

50. The respondents submitted that claimant had not been dismissed. They asserted that he had resigned. They further submitted that there was no redundancy situation. The respondent's case was that the claimant was not entitled to any compensation.

51. The claimant submitted that he had resigned because of a breach of contract on the part of the respondent. He said that the breach was a breach of an express term of his contract of employment, namely a change to his job role. He also said that there was a breach of the implied term of trust and confidence, as the respondents would not let back to work, even though he had been certified fit to return to his role as a driver. He is seeking a redundancy payment in the alternative. He is also seeking notice pay and holiday pay for 20 days holiday.

Conclusions

52. This Tribunal finds that there was a breach of contract on the part of the respondent which entitled the claimant to resign.

53. The Tribunal finds that the claimant was employed as a driver. Even based on the respondents' own evidence, the claimant spent 90% of of his time driving. However, after the claimant went on long-term sickness absence, the respondent replace him with another driver and changed the claimant's job role to relief driver/ warehouse person. This was a change to the claimants duties and a fundamental breach of contract.

54 The Tribunal found the respondent's evidence about the recruitment of the additional driver and the role he would undertake to be confusing and lacking in credibility. The Tribunal preferred the claimant's evidence about what he was told regarding the recruitment of the additional driver to that of the respondents. The claimant was a credible witness. His evidence is consistent with the notes of the meeting in September when it is clear that he raised his concerns about the changes to his job role. The claimant's evidence is also entirely consistent with the three letters of grievance sent by him to the respondents to which he did not receive a reply.

55. Further, the Tribunal finds that the respondent's refusal to allow the claimant back to work, when he had provided them with a fit note from his GP stating that he was fit to drive as well as a letter from his consultant indicating that no further review was required, also amounted to a fundamental breach of the implied term of trust and confidence, which of itself would also have entitled the claimant to resign. The respondent's insistence that the claimant give consent to the release of his medical records and provide a medical report from his GP was wholly unnecessary and unreasonable in the light of the medical information already available to the respondents. Furthermore, if the respondents really had concerns about the claimant's fitness to work, then they could have obtained an occupational Health risk assessment in accordance with their policies, which the claimant agreed to undergo. That refusal to allow the claimant back to work without providing access to his medical records was consistent with the fact that the respondents did not want the claimant back at work as a driver, because they had already replaced him.

56. It is clear that the claimant resigned as a result of these breaches of contract on the part of the respondents and was entitled to do so.

57. The claimant did not affirm the contract following the breaches of contract on the part of the respondents. The claimant attempted to resolve matters through ACAS, but when it became clear that the respondents would not allow him to return to work other than on their terms, he was entitled to treat himself as dismissed, in particular once it was clear to the claimant that the respondents were no longer intending to pay him either his wages or sick pay. The claimant realised, and the respondent must also have realised or ought to have, that the claimant would not be entitled to statutory sick pay because he did not have a sick note and had effectively been certified fit to work. The respondents were effectively preventing the claimant from earning any income.

58. Accordingly for those reasons this tribunal finds that the claimant was unfairly dismissed.

59. The tribunal finds that the claimant had taken reasonable steps to mitigate his loss. He has obtained some ad hoc work and is now looking at obtaining an additional driving qualification to improve his chances of obtaining driving work.

60. The claimant is awarded compensation for unfair dismissal in the sum of £18,672.21 calculated as follows:

Basic award 2 years @1.5 x £360	£1080
Compensatory award	
Immediate loss 7th Dec 2018 – 10h June 2019 26 weeks at £410. Less sums received -£1393.	£10,660. £9,267
Future loss 12 weeks at £410	£4920
Loss of statutory rights	£350
Loss of pension 8.65 x 38 weeks	 £328.7
Total compensatory award	£14865.7
Total award on compensation	£15945.7

The Employment Protection (Recruitment of Benefits) Regulations 1996 apply to this award. The prescribed period is 23 November 2018 to 10th June 2019. The prescribed element is £9267.

61. The Claimant was not paid any notice pay. He is entitled to 2 weeks notice in accordance with his contract of employment and section 86 of the Employment

Rights Act 1996. Accordingly, his claim for breach of contract is well founded and he is awarded the sum of £820.

62 . Although the Claimant initially led evidence regarding his claim for holiday pay, he subsequently accepted that he had been paid his holiday pay and subsequently withdrew that claim. Accordingly, his claim for holiday pay is dismissed.

EMPLOYMENT JUDGE MARTIN

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 27 October 2019