EMPLOYMENT TRIBUNALS

Claimants: Mr S Teji
Mr R Tyler

Respondent: Mr W Moore trading as Bales College

Heard at: London Central **On:** 30 and 31 October 2019

Before: Employment Judge K Welch (sitting alone)

Representation
Claimant: Mr S Thakerar, Counsel
Respondent: Ms M Murphy, Counsel

JUDGMENT

The Judgment of the Tribunal is that:

1. **the Claimants' claims for unfair dismissal and wrongful dismissal are well founded and shall succeed;**
2. **The Claimants' claims for failure to provide a written statement of particulars under section 1 of the Employment Rights Act 1996 is not well founded and shall fail.**
3. **The hearing is listed for a remedy hearing on 24 January 2020 should the parties fail to reach agreement as to quantum.**

RESERVED REASONS

1. This is a claim brought by Mr Tyler and Ms Teji against William Moore trading as Bales College. It had initially been brought against two separate respondents: Bales College and William Moore, but it was agreed at the

start of the hearing that the correct Respondent was William Moore trading as Bales College, since the college is an unincorporated entity with Mr Moore as its proprietor.

2. The Claimants had originally brought claims for disability discrimination and unauthorised deductions from wages. These were dismissed upon withdrawal and the remaining complaints of unfair dismissal, wrongful dismissal and failure to provide written statement of particulars were heard before me.

3. I was provided with an agreed list of issues as follows:-

Heads of claims

1. Unfair dismissal
2. Wrongful dismissal
3. Failure to provide written statement of particulars (Section 1 of the Employment Rights Act 1996)(ERA)).

Preliminary

1. What were the terms of the Claimants' employment with the Respondent?
2. Whether the claimants have statutory continuity of employment?

Unfair dismissal

3. Has the employment ended in respect of either or both Claimants? If so, when and how?

   3.1. The Claimants contend that they were dismissed and that it was effected on 28 September 2018.

   3.2. The Respondent denies dismissal on 28 September 2018, or at all.

4. If dismissed, was the claim brought within the time limit? If not, was it reasonably practicable to have brought the claim earlier?
5. Was there a potentially fair reason for the dismissal?
6. Was any dismissal fair?

Wrongful dismissal

Whether the Claimants were dismissed wrongfully?

Written particulars

Whether the Respondent has failed to provide written particulars?

7. I was provided with written submissions on liability for both the Claimant and the Respondent and agreed, at the start of the hearing, that the hearing would proceed on the basis of liability only, with remedy being dealt with once a decision on liability had been given, should it prove necessary.
8. There was an agreed bundle of documents and reference to page numbers within this judgment refer to pages within that bundle.
9. I heard evidence from:-
   9.1. Mr R Tyler
   9.2. Ms S Teji; and
   9.3. Mr W Moore.
10. Their witness statements stood as their evidence in chief with a few supplemental questions, and their evidence was tested by cross-examination and questions from myself.

Findings of fact

11. Ms Teji and Mr Tyler had been employed for a number of years by the Respondent. Ms Teji had, in fact, commenced employment in September 2001 and Mr Tyler had commenced employment with the Respondent in either September 2009 or September 2008 (the Respondent and the Claimants could not agree on the start date although for the purposes of liability, this is not material).

12. The Claimants were employed as teachers within the Respondent's independent school working from September to June/July in each academic year.

13. The Claimants were provided with only one written contract each during the course of their employment [pages 72 to 77 for Ms Teji's contract and 78 to 83 for Mr Tyler's]. These contracts, which seemed similar in their format, had been given to the Claimants during the academic year 2010 to 2011 and were signed in January 2011. The Claimants gave evidence, which was not refuted, that the contracts were signed due to an imminent inspection of the school.

14. No other contracts were given to the Claimants, although I am satisfied that both Claimants were employed on a series of fixed term contracts running each academic year from September to June/July. I am further satisfied that the Claimants expected each year to return to the school and continue teaching from September until June/ July the following year. All evidence supported this, including that the Claimants were contacted by the Respondent during the summer break to confirm provisional timetables, numbers of pupils and subjects to be taught.

15. The parties both agreed that the Claimants' contracts were due to commence again after the end of the academic year 2017/2018 at the start of the new academic year, 2018/2019.

16. During the academic year 2017/2018, the Claimants purchased a house in Wales from which they commuted to London for the remainder of that academic year. However, it was clear that the Claimants fully intended to return to the school to commence teaching again in September 2018.

17. Whilst no further contracts were given to the Claimants during the remainder of their employment with the Respondent, I am satisfied that the terms contained

within the contracts referred to above formed the basis of the agreement between the parties. In brief, the contracts provided:

17.1. the Claimants would be paid for hours worked teaching at the school;

17.2. no payment in respect of contractual sick pay;

17.3. a period of notice required to terminate the employment by either party of one month's written notice or statutory minimum notice, if longer.

18. The Claimants, who are married to each other, taught four days per week and it was agreed by the parties that even though the number of students requiring the subjects that they taught might vary, that their employment would recommence on 3 September 2018.

19. During August 2018, Ms Teji became ill and got progressively worse, such that it became clear towards the end of August that she would be unable to return to commence teaching at the beginning of the academic year on 3 September 2018. Ms Teji required surgery and therefore Mr Tyler emailed Mr Moore of the Respondent on 29 August 2018 [page 91]. This email confirmed that Ms Teji was clearly unfit for work and needed to be looked after. It went on to say, "*We are both looking forward to start the new term and see our old and new students. This situation has now arisen and, as you can appreciate, we are both very worried. I do hope that you understand that, naturally, I will have to remain with her in Wales until she recovers. Both of us will try our very best to be back at work as soon as is possible."*

20. Mr Moore responded on 30 August 2018 [page 92] and requested further information from Mr Tyler concerning the likely return to work for Ms Teji and Mr Tyler.

21. Mr Tyler responded [page 93] and there were further emails between the parties which clearly showed both parties' intention that the employment relationship would continue during the forthcoming academic year. Mr Moore

put forward suggestions which might have enabled Mr Tyler to return to work sooner. However, these suggestions were not thought feasible by Mr Tyler.

22. There was also correspondence between Mr Tyler and the Assistant Principal of the Respondent, which again made clear that everyone was expecting the Claimants to return to the school in the foreseeable future. I therefore do not consider that the Claimants had failed to accept an offer of a new limited term contract to commence in September 2018.

23. Mr Tyler offered assistance to the temporary supply teacher who had been appointed to teach Mr Tyler's classes by providing lesson plans, for which he requested to be remunerated. Whilst it appeared that initially assistance was given, when the remuneration for this work was not clarified, Mr Tyler stopped providing further support. This culminated in an email from Mr Tyler to the Assistant Principal on 11 September 2018 [page 100H] where he stated, *"I have been waiting to hear from you today but totally understand the vagaries of working at Bales and capriciousness of the boss. However, I am getting increasingly reluctant to be supportive and, as such, will not be sending the lessons to Ernest that I have meticulously prepared."* Following chasers sent to the Assistant Principal, the Assistant Principal confirmed to Mr Tyler that Mr Moore made all the financial decisions and requested that Mr Tyler contact him directly.

24. It was clear that the Assistant Principal was getting frustrated with Mr Tyler since he sent an email to Mr Moore on 11 September 2018 which stated, "*I am getting increasingly irritated by [Mt Tyler's] approach to this situation. He seems to think it is reasonable for us to pay his full teaching rate for sitting at home preparing lessons which he should have already have prepared for the start of term. I don't think he is concerned about the students more about his finances and I am suspicious he and [Ms Teji] are not intending to come back*".

25. However, there was no indication from the Claimants at this time that they were not intending to come back. The email went on to say that they expected Mr Tyler to come back to work on 21st September, although it appeared to me that no one actually made this clear to Mr Tyler himself.

26. Following this, Mr Tyler sent an email to Mr Moore on 17 September 2018 [page 104] asking for Mr Moore to confirm what sick pay Ms Teji would receive. It did not appear that Mr Moore replied to this email.

27. As the Claimants were receiving no remuneration from the Respondent, Mr Tyler sent an email to the Business Manager of the Respondent on 24 September 2018 [page 106] which stated, "…*as you may be aware, Bill is not paying any sick pay and we need to get some income. Although we fully intend to return to Bales, I am looking for some supply teaching work and have joined an agency….I have given your name as part of the SLT and they will be contacting you for a reference - I hope that is okay*".

28. It was clear that Mr Tyler in fact registered with at least one other agency in order to attempt to get some supply work. It was further accepted by Mr Tyler that he did in fact obtain supply work from mid-October 2018 (with some full time weeks being worked during November 2018). I don't find that seeking and undertaking this work affected the employment relationship between Mr Tyler and the Respondent to any material extent, since it was done with the full knowledge of the Respondent, and Mr Tyler was not paid for his absence from work during this period.

29. The communications between Mr Tyler, sent on behalf of himself and his wife, and Mr Moore, the Business Manager and the Assistant Principal all indicated a return to work at some stage. For Mr Tyler, once Ms Teji could be left alone, and for Ms Teji, when she was well enough to return.

30. The Claimants had contacted their trade union representative at some point during September which resulted in her emailing Mr Moore on 19 and 24 September 2018 to ask Mr Moore to confirm the occupational sick pay provisions that Ms Teji was eligible to receive. No responses were received to these emails.

31. On 27 September 2018, the Claimant's trade union representative (Ms Hill) emailed again Mr Moore [page 117a]; this email confirmed that Ms Teji had not received any pay on 26 September 2018, which should have included a statutory sick pay and any occupational sick pay provisions. This was therefore stated to be an unauthorised deduction from wages and requested payment of the monies to Ms Teji.

32. On 24 September 2018, Mr Tyler sent an email to Mr Moore [page 113] which confirmed that Ms Teji was due to go into hospital on 1 October for surgery and if her surgery went well, she would be able to return as soon as possible. Mr Tyler also confirmed that he would return to work as soon as Ms Teji was able to be left on her own. Mr Tyler confirmed that he would keep Mr Moore informed about when this would be. Mr Tyler stated that he hoped Mr Moore would pay Ms Teji her sick pay. He also confirmed that he had spent time preparing work for the supply teacher and that there was a week of outstanding salaries for both himself and Ms Teji from the last term in the academic year 2017-2018.

33. Mr Moore replied by email on 28 September [pages 114 to 115]. This email confirmed the calculation of payments which had been made to the Claimants and therefore confirmed that the net balance was zero. It went on to say, "*Your last working day here was 28 June. The next pay period finished 29 June. Hours up until your last working day were included in 29 June gross total. There is no other week of pay due. Neither of you are working here now and there is no other pay due to either."* The email went on to say that an invoice should be

sent for the lesson guides provided for Mr Tyler's supply teacher, which would be paid providing it was reasonable.

34. It is clear that the Claimants in receiving that email were not sure whether their employment had been, or was being, terminated.

35. During September, and in fact until February 2019, Mr Tyler continued to send sick notes to Mr Moore confirming Ms Teji's inability to work.

36. These were returned by Mr Moore in an envelope with no covering note or letter, as evidenced by an email sent by Mr Tyler to Mr Moore on 13 October 2018 [page 119]. Mr Moore's evidence was that he had taken copies of these sick notes and had returned them in an envelope to the Claimants.

37. Towards the end of October (29 October 2018 for Ms Teji) [page 122] and 31 October 2018 for Mr Tyler [page 123]), the Claimants' trade union representative sent emails to Mr Moore. The email sent on behalf of Ms Teji referred to earlier correspondence (those concerning sick pay) to which they had received no response and stated that she understood Mr Moore had informed HMRC that Ms Teji's contract was not renewed at the end of the summer term. The representative requested Mr Moore to confirm whether the school had terminated Ms Teji's employment, and, if so, to provide details of how and when this was communicated to Ms Teji and also to accept the letter as an appeal against that dismissal. It went onto say that if the school had not terminated Ms Teji's employment, please could they make arrangements for her to receive her statutory sick pay (SSP) as a matter of urgency.

38. The letter sent by the trade union representative on behalf of Mr Tyler referred to the email/letter sent to Mr Tyler in which it was *"[alluded] to the fact that he no longer works for you".* It also went on to say similarly to Ms Teji's letter that if the school had terminated Mr Tyler's employment could they please confirm that this was the case and how and when this was communicated. It went on

to request that the email be treated as an appeal against dismissal. The email finally stated *"if you have not terminated the employment of Mr Tyler please confirm this as a matter of urgency*". No response was received to either of the emails from the union representative.

39. On 8 November 2018, therefore, the trade union representative sent a further email to Mr Moore stating that, as her email of 31 October remained unanswered and in the absence of any communication, it was assumed that Mr Tyler had been dismissed and requested a written statement setting out the reasons for the dismissal. No reply was received to this email.

40. There were letters from HM Revenue & Customs within the bundle [pages 129 to 130 and 133 to 134] in response to Mr Teji's request for statutory sick pay to be paid. In the first letter dated 18 December 2018, HMRC stated "*Your employer has not retuned our enquiry form, so I am basing this opinion on information provided solely by you and the official records we hold*.

"To qualify for SSP an employee must be employed by an employer. Your former employer Mr William Moore Principal has advised us that your employment ended before you became sick. Your Pay As You Earn account with HMRC shows Mr William Moore Principal ended your employment on 27 July 2018. It is therefore my opinion that you are not entitled to SSP and your employer is correct not to pay." The additional letter dated 29 April 2019 [page 113 to 114] stated, "*According to HMRC's Real Time Information (RTI) system today, your employment with Bales College ended on 27 July 2018, which was before your sickness began. The information held on the RTI system is provided by employers on behalf of their employees. Therefore, Mr Moore has given us this information. He also confirmed you were no longer employed by Bales College in a telephone call with one of my colleagues on 16 October 2018*."

41. The letter went on to say that Ms Teji was not entitled to SSP. In evidence, Mr Moore stated that what was contained within the second letter (being the HMRC appeal outcome) was incorrect and that he did not confirm that Ms Teji was no longer employed there. He considered that they had assumed this as Ms Teji would not have appeared on the payroll from 27 July 2018. He stated that HMRC had barked questions at him during his conversation with them, and he did his best to answer them.

42. There appears to have been no further correspondence until ACAS were contacted and proceedings brought.

Submissions

43. Both parties provided me with written submissions on liability at the commencement of the hearing. The Respondent also provided an addendum to this. Both parties addressed me orally. In brief, their submissions were as follows:

Respondent's Submissions

44. The Claimants were employed on a series of limited term contracts and that their last working day under the contract 2017/2018 was on or about 28 June 2018. The Claimants have the burden of proving they were dismissed. There were two possible scenarios:

    44.1. The limited term contract expired on or about 28 June 2018 without being renewed, in which case whilst this was a dismissal any claims connected with it were therefore out of time; or

    44.2. The limited term contract for 2018/19 was renewed and it would be for the Claimant to prove that their contract had been terminated, they say, on or about 28 September 2018.

45. The Respondent accepted that the gaps in employment over summer vacations would not break continuity as a temporary cessation of work under section 212(3)(b) ERA.

46. As regards unfair dismissal, the Respondent denies that the Claimants were dismissed, and that, if they are found to have been dismissed, that any such dismissals were unfair. In any event, the Respondent contended that there was a potentially fair reason for any such dismissals. The Respondent submitted that for Ms Teji and Mr Tyler, the potentially fair reason was some other substantial reason ('SOSR') should the dismissals have taken effect on the expiry of the 2017/2018 contract. Should dismissals have taken effect later, then the potentially fair reasons for dismissal were capability or SOSR for Ms Teji and conduct or SOSR for Mr Tyler. Finally, the fairness of any such dismissal should be considered in all the circumstances and the Respondent would rely upon Polkey, contributory fault and/or mitigation to reduce any compensation awarded.

Claimants' submissions

47. The Claimants contended that they had been dismissed, and that the Tribunal should find that any such dismissal was both wrongful and unfair. The Claimants contended that when assessing the evidence as a whole, it was clear that the Claimants had been dismissed. The trade union representing both of the Claimants had contacted the Respondent on multiple occasions to clarify the situation and no reply was received. Also, the Respondent had failed to pay SSP to Ms Teji and, from correspondence from HMRC, had provided information to them such that her employment ended prior to her becoming sick.

48. The Claimants had not resigned as there was no compelling evidence to suggest that either of them had done so. On many occasions, it was made clear that both Claimants intended to return to work as soon as possible.

49. The Claimants therefore requested the Tribunal to find that the Respondent had unfairly and wrongfully dismissed the Claimants.

Law

50. Section 212 (1) of the ERA provides:

"Any week during the whole or part of which an employee's relations with his employer are governed by a contract of employment counts in computing the employee's period of employment"…

(3) subject to subsection (4), any week (not within the subsection (1)) during the whole or part of which an employee is -

(a) incapable of work in consequence of sickness or injury,

(b) absent from work on account of temporary cessation of work; or

(c) absent from work in circumstances such that by arrangement or custom is regarded as continuing in the employment of his employer for any purpose,…

….counts in computing the employee's period of employment."

51. From the case of *Cornwall County Council v Prater [2006] ICR 731*, the Court of Appeal held that it was not necessary for an employee to show that there had been an overarching or global contract of employment throughout the entirety of the contractual relationship. Rather, there were individual contracts of employment and any gaps in employment were dealt with by virtue of Section 212(3) ERA.

52. The burden of proof falls on the employee to show a dismissal has in fact taken place in order to bring an unfair dismissal claims. The standard of proof is on the balance of probabilities, whereby a Tribunal must consider whether it was more likely than not that the contract was terminated by dismissal.

53. Where ambiguous words are used, the test of whether this would amount to a dismissal is an objective one where all the surrounding circumstances must be considered and if the words remain ambiguous, the Tribunal should ask itself how a reasonable employer or employee would have understood them in the circumstances. Any ambiguity is likely to be construed against the person seeking to rely on it under the authority of *Graham Group Plc v Garratt EAT 161/97*.

54. I had regard to Section 95 ERA which states:

"95 - Circumstances in which an employee is dismissed.

(1) for the purposes of this Part, an employee is dismissed by his employer if (and, subject to sub section (2), only if) -

(a) the contract under which he is employed is terminated by the employer (whether with or without notice);

(b) he is employed under a limited term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract; or

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

55. It is necessary to consider events both proceeding and subsequent to the wording/actions that may amount to a dismissal. In the IDS Employment Law Handbook, Volume 3 - Contracts of Employment it says at paragraph 11.8, *"The same objective test applies when the ambiguity occurs in correspondence between employer and employee. Where an employee has received an ambiguous letter, the EAT has said that the interpretation 'should not be a technical one but should reflect what an ordinary, reasonable employee…would understand by the words used'.* It added that *'the letter must*

be construed in light of the facts known to the employee at the date he received the letter' - Chapman v Letheby and Christopher Limited 1981 IRLR440, EAT.'

56. The IDS handbook went on to state that if an employer subsequently seeks clarification of whether an employee's words amount to a resignation, this could indicate that the employee in question had not resigned. Therefore, I consider this must be the same in respect of when an employee clarifies whether an employer has dismissed them, that might indicate that the employer had not in fact done so at that point. However, it would be necessary to look at all the surrounding circumstances.

57. As regards unfair dismissal, assuming there to have been a dismissal, it is necessary to consider whether the Respondent has shown a potentially fair reason for the dismissal as provided by section 98(1) and (2) ERA, and, if so, whether the Respondent acted reasonably in all of the circumstances in accordance with section 98(4) ERA which provides:

"(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case."

58. The Claimants' claim for failure to provide written particulars is governed by Section 1 of the ERA:

"*Statement of initial employment particulars.*

(1) Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment.

(2) The statement may (subject to section 2(4)) be given in instalments and (whether or not given in instalments) shall be given not later than two months after the beginning of the employment."

59. Section 38 which provides:

"*Failure to give statement of employment particulars etc.*

(1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule 5.

(2) If in the case of proceedings to which this section applies—

(a) the employment tribunal finds in favour of the employee, but makes no award to him in respect of the claim to which the proceedings relate, and

(b) when the proceedings were begun the employer was in breach of his duty to the employee under section 1(1) or 4(1) of the Employment Rights Act 1996 (duty to give a written statement of initial employment particulars or of particulars of change) …,

the tribunal must, subject to subsection (5), make an award of the minimum amount to be paid by the employer to the employee and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.

(3) If in the case of proceedings to which this section applies—

(a) the employment tribunal makes an award to the employee in respect of the claim to which the proceedings relate, and

(b) when the proceedings were begun the employer was in breach of his duty to the employee under section 1(1) or 4(1) of the Employment Rights Act 1996 …,

the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

(4) In subsections (2) and (3)—

(a) references to the minimum amount are to an amount equal to two weeks' pay, and

(b) references to the higher amount are to an amount equal to four weeks' pay.

(5) The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable."

Conclusion

60. I am satisfied that the Claimants were employed on successive limited term contracts, for which they were provided with one contract of employment for the academic year 2010-2011. The previous and subsequent years were not subject to a written contract.

61. The Claimants had continuous service, since the gaps in their limited term contracts were covered by section 213 ERA. Therefore, both Claimants had sufficient service upon which to base their unfair dismissal claims.

62. Whilst I accept that their employment under the limited term contract for the academic year 2017-2018 terminated at the end of the academic year in Summer 2018, I am satisfied that their employment recommenced on 3 September 2018 on a new limited term contract with continuous service from the previous contract.

63. This was evidenced by both parties and I was satisfied that there was conclusive evidence that both the Claimants and the Respondent intended the relationship to resume in September 2018. Both parties acted consistent with

that, save that the Claimants were unable to return to work on the commencement of the academic term due to Ms Teji's ill health.

64. Therefore, the Claimants' employment continued during September 2018 and was subject to the same terms of employment as the previous contract.

65. I then have to consider what happened to that employment relationship. I am satisfied that the Claimants were in fact dismissed by the Respondent. I accept that the email/ letter of 28 September 2018 did not in itself terminate the employment relationship between the parties, since it did not make sufficiently clear at that time that their employment was being terminated, and the Claimants requested clarification of this following receipt of that email/ letter. However, I am satisfied that the combined effect of this email/ letter and the treatment of the Claimants by the Respondent subsequent to this email/ letter was sufficient for any reasonable employee to have considered their employment to have been terminated by the Respondent.

66. The Respondent confirmed the termination of Ms Teji's employment to HMRC, and, despite alleging that he had been misquoted, I am satisfied that Mr Moore confirmed to HMRC that her employment had been terminated. Mr Moore contended that he believed that this termination was at the end of the academic year 2017-2018, but in light of my finding that the contractual relationship commenced again on 3 September 2018, I am not satisfied that this was the case.

67. The Claimants sought clarification from the Respondent, and it would have been very easy for confirmation to have been given as to when the Respondent considered the contractual relationship to have come to an end, or conversely, that it had not. Mr Moore failed to do this, and I find that this, the non-payment of SSP, the confirmation to HMRC of the termination of Ms Teji's employment

all point to the fact that the Respondent terminated the Claimants' employment at some point after 28 September 2018.

68. In coming to my decision, I have to consider the date on which the Claimants' employment was in fact terminated by the Respondent. As stated, I am satisfied that the employment was terminated at some point after 28 September (when the email/ letter was sent confirming that the Claimants were no longer employed by the Respondent) and 8 November 2018 (when the trade union representative confirmed that she assumed Mr Tyler had been dismissed and asking for reasons for the dismissal).

69. I consider, in light of all of the circumstances in this case, therefore that the termination of Ms Teji took place on 29 October 2018, and Mr Tyler on 31 October 2018. Should I be wrong on this date, then, as stated above, the latest date that termination took effect would be 8 November 2018. However, none of these alternative dates affect the limitation points concerning the time limits in which to bring claims for unfair dismissal. Nor does the date of termination affect my considerations as to whether the dismissals were fair or unfair in all of the circumstances.

70. Turning to whether their dismissals were fair, I consider that there were potentially fair reasons for the dismissals of both Ms Teji and Mr Tyler. For Ms Teji, I consider that it would have been possible to have dismissed for capability and/or some other substantial reason. For Mr Tyler, I consider that the potentially fair reasons were conduct and/or some other substantial reason.

71. However, in considering whether the Respondent acted reasonably in all of the circumstances, I have to take into account the complete failure by the Respondent to follow any formal procedure in respect of either of the dismissals.

72. There was no meeting, no apparent consideration of when Ms Teji and/or Mr Tyler would be able to return to work, no warning (formal or informal) that their employment might end. Therefore, I consider that it is impossible for me to find in these circumstances that the employer acted reasonably in treating that reason as sufficient to dismiss two long serving employees.

73. The decision was not within the range of reasonable responses and therefore I find that the Respondent unfairly dismissed both of the Claimants.

74. It is not appropriate for me to outline in this decision whether any awards should be reduced on Polkey principles or due to contributory conduct, since the parties did not address me on this in their submissions. However, this can be considered at the remedy hearing.

75. As far as wrongful dismissal is concerned, I also find that the Claimants were wrongfully dismissed. They were not given notice of the termination of their employment, and were entitled to this by virtue of the terms of their contract and by virtue of section 86 ERA. In this case, as the terms of their contract provided that they should receive one month's notice of termination, or statutory notice, they are entitled to receive statutory notice, the amount of which is to be determined at the remedy hearing.

76. Finally, I dismiss the claim for failure to provide a written statement to the Claimants. As I have found that the Claimants were employed on a series of limited term contracts, for which they were only provided with one written statement in the academic year 2010-2011. However, under the new limited term contract commencing on 3 September 2018, they had not, by the time of the termination of their employment, been employed under the latest contract for 2 months, being the expiry of the deadline for provision of a section 1 statement. Therefore, I do not uphold this complaint. If I am wrong on this, and their service for the section 1 statement began when they originally

commenced employment, then they were provided with a section 1 statement of terms during their employment and I would dismiss their claim in any event.

77. The hearing is listed for 24 January 2020 to deal with remedy, unless the parties are able to agree remedy prior to this.

Employment Judge **Welch**

Date 20 November 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

20 November 2019

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FOR THE TRIBUNAL OFFICE