EMPLOYMENT TRIBUNALS

Claimant: Mrs Gemma Stoate

Respondent: British Airways plc

Heard at: Watford **On:** 1, 2 and 3 October 2019

Before: Employment Judge McNeill QC

Representation
Claimant: Mr Stoate (husband)
Respondent: Ms M. Tutin (Counsel)

REASONS

for the judgment dated 3 October 2019 which was sent to the parties on 1 November 2019, provided pursuant to a request from the Claimant dated 11 November 2019

1. The Claimant brings claims in respect of underpayments of holiday pay, breach of contract/unlawful deductions in the non-payment of an excess baggage and holiday bonus, breach of contract in not granting early voluntary redundancy to the Claimant and unfair (constructive) dismissal. A claim in relation to the failure to provide a statement of particulars pursuant to s1 of the Employment Rights Act 1996 (ERA) has not been pursued.

2. The Claimant resigned from her employment with the Respondent by a letter dated 14 March 2018. Her resignation took effect on 25 March 2018. One of the issues before the Tribunal was whether the Claimant's resignation constituted a constructive dismissal.

Findings of Fact

3. The Claimant was employed by British Midland International (BMI) from 28 August 1995 until her employment was transferred to the Respondent on 1 November 2012 pursuant to the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). She was employed as an Aircraft Dispatcher, although her job following the TUPE transfer was labelled "Turnaround Coordinator".

4. Following the TUPE transfer, the Claimant was encouraged to sign a contract of employment with the Respondent but she chose not to do so. She was happy to remain on her BMI contract. The Claimant was not

placed under any undue pressure to sign the contract with the Respondent. Although the Respondent wanted its staff to be employed on common terms and conditions, it knew that it could not require this.

5. Neither the Claimant nor the Respondent was able to produce to the Tribunal either the Claimant's individual contract of employment with BMI or any collectively agreed terms on which the Claimant was employed by BMI. Neither the Claimant nor the Respondent were able to find such documents during the disclosure process. Although there plainly was a contract of employment which governed the employment relationship between the Claimant and the Respondent from 1 November 2012 until 25 March 2018, neither party could provide written evidence as to the details of those terms. That did not make the Tribunal's task any easier.

6. BMI was purchased by the Respondent's parent company, International Airlines Group (IAG), shortly before BMI entered administration. At the time of the TUPE transfer, the Claimant worked part-time. Her job involved tasks such as boarding departing passengers, de-boarding arriving passengers, liaising with the flight deck and loaders, fueling and stocking the aircraft, aircraft security and checking the weight and balance of the aircraft ("aircraft trim").

7. Immediately following the TUPE transfer, the Claimant and the 23 or so BMI employees who transferred with her, were given the title Turnaround Coordinator (TRC) by the Respondent. This was a new job title created for the incoming BMI Aircraft Dispatchers. The Respondent already had existing employees carrying out the same role as the Claimant who had the job title of Turnaround Manager (TRM). The TRMs were all existing employees of the Respondent who, for historical reasons, were better paid, and therefore more expensive for the Respondent to employ, than the TRCs. Following the TUPE transfer, no new TRMs were engaged, only TRCs. The group comprising both TRCs and TRMs was described by the Respondent as "TRMC".

8. At the end of 2016, the Respondent put forward a significant change programme for its underwing operation at Heathrow terminals 3 and 5. This was known as Project Independence. The project set out to improve safety standards, give better service to customers and cut costs. The cost-cutting exercise involved the reduction of staff numbers in the department where the Claimant was employed.

9. There was consultation with the trade unions in relation to the project. A letter to Mick Rix, GMB National Officer, dated 8 November 2016, indicated a proposal to cut the numbers in the TMRC group from 227 to 184, a reduction of 43 jobs. During consultation with the trade unions, the Respondent indicated that its proposals would lead to a cost benefit of £4.9 million in 2017 and £15 million in 2018. These were projections.

10. During the consultation with the trade unions, the Respondent referred to a "proposal of voluntary redundancy for those at risk colleagues who would like to leave the business". In answers to questions, the Respondent stated that, if it were oversubscribed for voluntary redundancy, it would "work with the Trade Unions to determine how best

to manage the demand". In relation to whether there would be compulsory redundancies, the Respondent said that its "final proposal would see a number of options for affected staff to choose from including Voluntary Redundancy" and there was "no proposal to make any compulsory redundancies as a result of these changes". Discussions would take place with the trade unions in the event of "insufficient take up of the voluntary arrangements of applicants for the new role to make the changes possible".

11. Before the implementation took place, there would be a staff ballot. If the ballot was in favour of implementing the changes, the turnaround work would remain within BA. If not, the work would be outsourced to handling agents. As the head of Turnaround Operations, Mr David Wilding, explained to the Tribunal, the threat of losing the turnaround work had been there for 20 years. The Respondent wanted to be in a place where it had the best opportunity to keep the work. The Respondent's motivation to persuade affected employees to vote in favour of the proposed change was strong.

12. The Claimant attended a briefing on the proposed changes. Mr Wilding carried out the briefing. Neither party could provide a precise date for the briefing but it was probably shortly before the ballot which took place on 24 and 25 May 2017.

13. What was said at that briefing is very much in dispute and relevant to matters I have to determine. The Claimant said that she and the other attendees were told that the Respondent was making changes on the ramp, associated with streamlining and cost-cutting. They were creating a new job title of Aircraft Departure Manager which would replace both TRMs and TRCs. She said that Mr Wilding said at the meeting: "if you do not accept the changes then we cannot guarantee you will stay in a British Airways uniform". The meaning was clear. If the TRMCs did not vote in favour of the changes, their jobs would go to an outside handling agent.

14. The Claimant's evidence was that Mr Wilding also said that as part of the reorganisation the Respondent was offering voluntary redundancy. He said: "everyone who wants it will get it and we will back-fill if we have to".

15. The Claimant saw this as a "carrot" to help the reorganisation go through. The Claimant was not only willing to leave but was keen to leave. The job had changed and she was thinking of taking up a different role, teaching and coaching horse riders. The voluntary redundancy money would be helpful.

16. During the course of her evidence, the Claimant was taken to slides used during the presentation. Those slides indicated that VR applications from TRMs would be "prioritised". The Respondent contended that this clearly indicated that TRMs would have priority in the voluntary redundancy process. The Claimant said that she understood this to mean that TRMs would be allowed to go first. It was not in dispute that there would be different exit dates for those taking voluntary redundancy.

17. The Claimant relied on a witness statement from a Ms Emma Stone,

signed with a statement of truth. Ms Stone said that it was clear that the Respondent wanted the TRMCs to vote in favour of the proposal. She said that voluntary redundancy was offered and that it was made 100% clear that anyone who wanted voluntary redundancy could have it. She said that this happened in her meeting and, from talking to other TRCs, she knew that the same was true of other meetings. There were no statements by BA managers to the contrary.

18. The Claimant also relied on anonymous witness statements from three other employees who said that the proposal was sold to the TRMCs on the basis that they could have voluntary redundancy if they did not want to take up the role of Aircraft Departure Managers. She also relied on text messages saying much the same thing. One individual recorded in a text message that she remembered it being said that "anyone who wants voluntary redundancy can get it", however, "TRCs may have to wait longer". Reference was made to back filling so that anyone who wanted to go could go.

19. Mr Wilding, in his evidence, denied making the comment about staying in a BA uniform. He said that the proposals were to result in the reduction of about 40 employees in the dispatch department: "while the offer of voluntary redundancy was given to all staff in the Turnaround department, it was made clear to staff at the briefings that voluntary redundancy would be agreed with TRMs first (as this would create higher cost saving because of their more expensive contracts) and it was only if we didn't fill all the voluntary redundancy slots with TRMs that we would allow voluntary redundancy to the TRCs". Mr Wilding denied saying that anyone who applied for voluntary redundancy would be granted it.

20. When cross-examined, Mr Wilding explained that he did not speak from a script at the briefings. He took people through the slide pack. He said that he made it clear that TRCs may not get voluntary redundancy.

21. Ms O'Shea, who conducted other briefings and gave evidence to the Tribunal, was also clear that there was no promise of voluntary redundancy to all staff. Her evidence was consistent with that of Mr Wilding.

22. The slide pack was referred to in the evidence. It was described as "TRMC Presentation" and was dated April 2017. The first slide was entitled "our proposal – a re-cap". The slide showed the logos of other handlers down its right-hand side: handlers who might benefit from the contract if the work were outsourced. The first bullet was: "We work in a competitive industry and want to ensure we continue having BA colleagues turning BA aircraft". It was made clear that the proposal would be implemented in two phases: Phase 1 would start in September 2017 and Phase 2 in March 2018, subject to the outcomes and review of Phase 1. Later there were 4 possible dates for voluntary redundancies taking effect.

23. Reference was made to "Deferred VR over 2017 and 2018". It was stated that: "All TRMCs would be offered voluntary redundancy and able to apply for part-time/job share working. Voluntary redundancy applications will be

prioritised from TRM applicants first". It was then stated under a heading "Voluntary Redundancy and flexible working" that "Enhanced Voluntary redundancy would be available with flexible leaving dates offered. TRMCs would also have the option to move to part-time working or job-sharing".

24. In a section headed Key FAQs, the first question was: "What are the voluntary redundancy terms"? The answer was: "An offer of Enhanced Voluntary Redundancy including 5,000 pounds retraining payment would be offered to all permanent TRMCs across a deferred exit programme. The earliest exit date is anticipated to be November 2017, and the latest exit June 2018. Applications would be prioritised from the TRM community". The final slide contained the words: "voluntary redundancy is available to all…TRMC staff".

25. In determining whether I accepted the Claimant's evidence about what was said at this meeting, I made my own assessment of the witnesses based on their oral evidence. I took into account that the witnesses relied on by the Claimant had not attended to be cross-examined on their accounts and in the case of all but Ms Stone, had not provided witness statements. I therefore could not give those accounts the weight that they may have had if they had attended for cross-examination. There was nevertheless a thread of consistency between all the statements.

26. In relation to the Respondent's evidence, the Respondent submitted that Mr Wilding's evidence should be preferred. It would make no commercial sense for the Respondent to make a guaranteed offer of voluntary redundancy to all employees when it did not know how many would apply. In any event, the correspondence which post-dated the ballot made it clear that what was being offered were 'preferences', which included voluntary redundancy. It was, as is normal under voluntary redundancy schemes, for the employer to decide whether to accept or reject applications for voluntary redundancy depending on its business needs. Normal commercial practice should be taken into account.

27. As is so often the case, it was the contemporaneous documentation which was helpful in assessing differing accounts of the same events. I noted that nowhere in the documentation was it stated that voluntary redundancy might only be available to some of the group. Indeed, looking objectively, much of the language indicated the contrary: such as that "voluntary redundancy would be available to all" and that "all TRMCs would be offered voluntary redundancy". The reference to prioritisation of TRMs was entirely consistent with what the Claimant said, namely that TRMs would be able to go first.

28. I preferred the Claimant's evidence on this issue. The Claimant gave her evidence in a clear and straightforward way. Where there were differences between her evidence and Mr Wilding's evidence, I preferred her account. I took into account the strong pressure to keep this work within BA which was communicated to the group and that the clear message was to vote in favour of the proposal. I also took into account that the Claimant did not specifically complain about not receiving voluntary redundancy or make the allegations now made in relation to that promise until February or March 2018.

29. The day after the second day of the ballot, in which the Claimant voted in favour of the proposal, a letter was sent to the Claimant. This letter referred to the requirement that the Claimant should submit her preferences from 4 options that included voluntary redundancy. It then stated: "Should you wish to leave BA under an Enhanced Voluntary Redundancy Arrangement, your Voluntary Redundancy offer is £9,914 pounds to compensate you for the loss of your employment by reason of redundancy. In addition BA will pay you an additional compensation payment of 5,000 pounds. BA will provide you the full terms of this arrangement it this is your preferred option".

30. This letter was accompanied by a pack. In the pack, it was stated that if the Claimant's preference was for voluntary redundancy, she would receive a formal written offer outlining the full terms of the arrangement. She was told that her preference form was not binding. She was also told that if voluntary redundancy was one of her preferences, the Respondent would review whether they were able to release her and, if so, which leaving date was allocated.

31. The Claimant accepted the offer of voluntary redundancy in the letter of 26 May 2017, although neither party was able to produce this acceptance.

32. On 30 June 2017, the Claimant was sent another letter offering enhanced voluntary redundancy. In this letter, the Respondent stated that the criteria for determining whether employees could be released under voluntary redundancy would be "entirely based on the needs of the business". This letter was very much more detailed.

33. The Claimant trusted the Respondent to comply with what it had said at the pre-ballot briefing. She confirmed that she wished to leave the Respondent as part of the voluntary redundancy scheme and that she had understood the terms of her voluntary redundancy offer on 3 July 2017.

34. On the same date, the Claimant sent an email to Ms O'Shea. She referred to the offer of voluntary redundancy. She then requested a copy of her employment contract and confirmation of whether her holiday pay included shift pay in accordance with a judgment of the Reading employment tribunal in 2010.

35. On 31 July 2017, the Claimant's husband, who is a solicitor and represented her at this hearing, wrote to the Respondent with a reminder about the Claimant's earlier email to which no response had been received. He then asked if voluntary redundancy was being made available to his wife.

36. Ms O'Shea responded on 4 August 2017 that they were looking into the Claimant's original email and would be liaising with the Claimant on their response.

37. On 20 August 2017, Ms O'Shea confirmed to Mr Wilding that voluntary redundancy would only be offered to TRMs.

38. On 31 August 2017, nothing further having been heard from the Respondent in response to the email of 3 July 2017, the Claimant, through her husband but with her express consent, submitted a grievance to the Respondent. The grievance related to the email of 3 July 2017 and, in particular, the holiday pay matter.

39. On 1 September 2017, Mr Wilding informed the Claimant and her husband that he was setting up a meeting on 19 September to discuss the Claimant's concerns and that he would "send a copy of [her] employment contract as soon as [he could]."

40. Also on 1 September 2017, Ms O'Shea responded in relation to the shift pay matter that the Respondent paid "consolidated shift pay" whether an employee was working or on holiday. In fact, the Claimant's pay slips show shift pay as a specific item. The Claimant was not happy with this response and her husband wrote an email on 4 September 2017 setting out further questions about this. In the same email, Ms O'Shea informed the Claimant that voluntary redundancy was not being offered to TRCs.

41. On 8 September 2017, the Claimant requested the job descriptions and qualification/training requirements for TRMs. These were not provided.

42. On 19 September 2017, the Claimant met with Mr Wilding. The meeting was treated as an informal meeting and no notes were kept. Mr Wilding was unable to answer the Claimant's questions. He contacted HR after the meeting in order to try to obtain a copy of the Claimant's employment contract. Although he said in evidence that he sent an email to someone named "Francesca" in relation to this issue, no such email was disclosed by the Respondent. The grievances remained unresolved.

43. When the Claimant reminded Mr Wilding again in December 2017 about her employment contract, Mr Wilding said that he had been unsuccessful and would try again. But the contract was not found. I concluded that no very great efforts were made to see whether the contract could be found. There was significant delay in providing a response to the Claimant's request which was first made on 3 July 2017. If the Respondent did not retain a copy of the Claimant's contract of employment, it could have said so.

44. In January 2018, the Claimant submitted a request for unpaid leave. This was to meet childcare commitments. The Claimant had had such a period of leave in 2013. Ms Kate Hogg, who normally assisted the Claimant with childcare, had her own caring commitments connected with a sick relative. By 11 February 2018, this had not been resolved. In the event, Ms Hogg was able to continue.

45. On 5 February 2018, via her husband, the Claimant communicated a further grievance to the Respondent. She subsequently confirmed this grievance in an email dated 15 February 2018. This grievance related to the matters previously raised relating to shift pay, the contract of employment and the job descriptions. Mr Stoate stated that "if the Claimant were offered voluntary redundancy none of the other grievances

would need to be pursued". This was in fact a without prejudice statement but the parties agreed that I could read it.

46. A grievance meeting was originally arranged for 16 February 2018, but then postponed when it became clear that the Claimant was not working on that day. The Claimant was told that a meeting would be arranged from 6 March.

47. On 6 March 2018, having heard nothing, the Clamant enquired as to whether the grievance meeting was going ahead. The Claimant referred to the meeting with David Wilding in which he stated that anyone wanting voluntary redundancy would be given it. She had been sent a letter with the voluntary redundancy offer and the amount of money that would be paid but had not received her voluntary redundancy. She asked for this to be dealt with together with her other grievances.

48. On 6 March, the Claimant was sent an explanation as to why the grievance meeting had not yet been fixed, which was because of the extreme bad weather ("beast from the east") which had caused significant disruption to the Respondent's operations. Mr Stonebanks was allocated as the grievance manager and the Claimant was told that he would contact her directly.

49. Before the grievance meeting took place, on 14 March 2018, the Claimant resigned. She said that her decision was "influenced in large part by BA's failure to answer any of the questions concerning her employment". She reserved her position as to whether this constituted unfair or constructive dismissal. 25 March 2018 was her last day of work in accordance with notice period.

50. The grievance hearing went ahead on 18 March 2018. The Claimant was given notice of this. She attended and put forward her case. None of her four grievances (relating to her holiday pay, failure to be provided with her terms and conditions of employment, failure to be provided with a requested job description and failure to be granted voluntary redundancy) was upheld. The Claimant did not appeal these findings.

51. On 8 May 2018, the Claimant presented her claim to the employment appeal tribunal.

52. A list of issues was agreed between the parties. All issues remained live save in relation to the claim under s1 of the ERA.

Law

53. The legal principles to be applied were largely uncontroversial.

54. In relation to her contractual claims, the Claimant bears the burden of proof. Where she claims unlawful deductions from her wages and a failure to pay the holiday pay to which she was entitled, she must prove what she has not, and should have been paid.

55. In order to make out her claim for constructive dismissal, the Claimant

must prove that the Respondent acted in repudiatory breach of contract and that she resigned in response to that breach rather than affirming the contract. If a "last straw" was relied on, it must be a matter that was more than trivial.

56. In relation to repudiatory breach, the key question was whether the employer did not intend to be bound by the contract as properly construed.

57. The only area where the law was at all controversial between the parties related to the Claimant's claim that the Respondent's promise that everyone would be entitled to voluntary redundancy if they wanted it constituted a contractual term by which the Respondent was bound.

58. The Claimant relied on **Dresden Kleinwort Ltd v Attrill** [2013] ICR D30, CA. I was also referred to Chitty on Contracts 3rd Ed 2-083 and 2-084 in relation to unilateral contracts. In short, the Claimant submitted that the Respondent's promise of voluntary redundancy was an offer of a unilateral contract which could be accepted by fully performing the required act, in this case voting in the ballot. There was no need to give advance notice of acceptance. The offer could be accepted by performance, in this case voting in the ballot. The offer could have been withdrawn before acceptance and was not.

59. I was referred to the judgment of Elias LJ in **Dresdner Kleinwort**, where it was stated that an employer's statement that it would create a minimum bonus pool, with the intention of retaining staff so that the investment banking division operated as a going concern until the point of sale, was a term of the employees' contracts. I took into account in particular paras 60-73, 80-81, 89 and 98-100 and 142 of the judgment.

60. At paragraph 81 of the judgment, it is stated that where a change is being introduced against the background of an existing contractual relationship the onus will be on the party, asserting that there is no intention to create legal relations, to establish that fact. Also, at paragraph 89, it is stated that where there is a promise made in the context of a pre-existing legal relationship (in **Dresdner**, as in the current case, an employment contract), viewed objectively, the natural inference is that the promise will take effect in the same way as other contractual terms.

61. The Respondent sought to distinguish **Dresdner** from the current case on the basis that the announcement in **Dresdner** was clear and unequivocal in that there was a specified bonus pool. In the current case, it could not be known how many TRMCs would apply for voluntary redundancy.

62. I did not consider that that factual distinction distinguished **Dresdner** from the current case. In the current case, as was clear from the offer sent to the Claimant on 26 May 2017, the Respondent will have been well aware of the costs of voluntary redundancy and the amount payable to each employee if they opted to take voluntary redundancy. Much as in **Dresdner**, the Respondent was taking a calculated commercial risk, in circumstances where it did not wish to lose work to an outside handling agent.

Conclusions

Contractual claim – voluntary redundancy payment

63. In relation to any alleged contractual term, an objective approach must be applied. I considered the relevant facts and matters objectively. On the one hand, I accepted that it is common practice for employers to ask for volunteers for redundancy but to retain a discretion as to whether or not to accept applications. On the other hand, in the current case, statements made orally at the meeting that pre-dated the ballot, together with the slides shown at that meeting, involved a clear promise to staff that anyone who wanted voluntary redundancy could take it. Applying the approach in **Dresdner**, there was a promise of voluntary redundancy made to the Claimant and other attendees at the briefing. That promise was made for the specific purpose of keeping the TRMC work within the Respondent rather than outsourcing to handling agents and there was strong encouragement to the relevant employees to vote in favour of the proposal in the ballot.

64. Looking objectively at all the circumstances, I concluded that there was an intention to create legal relations. TRMCs would vote in the ballot confident that the Respondent would comply with its promise. Within the context of an existing employment contract, this was a promise which became part of the Claimant's contractual terms and would take effect like any other contractual terms. The refusal to allow the Claimant to take voluntary redundancy, after the ballot had successfully secured the TRMC work for the Respondent, was in breach of contract.

65. Although there was some ambiguity in the letter sent to the Claimant on 26 May 2017, the voluntary redundancy payment was expressed as an offer which the Claimant accepted. Had it been necessary to do so, I would also have determined that this had contractual force, in spite of statements in the accompanying pack.

66. What happened after 26 May 2017 is not relevant to this analysis. The contract was already concluded and the failure to make the voluntary redundancy payment was in breach of contract. That claim is therefore upheld.

Constructive dismissal

67. The promise that all TRMCs could take voluntary redundancy if they wished to do so was reneged on. That was in breach of the term of mutual trust and confidence in the contract of employment. However, the Claimant continued to work for the Respondent for many months after the breach and, in doing so, affirmed the contract of employment. The Claimant knew that TRCs would not receive voluntary redundancy by September 2017 at the latest. Yet the first time she raised a clear complaint about the failure to offer her voluntary redundancy was on 6 March 2018. Even if her husband's letter of 5 February 2018 were taken as a protest about the failure to pay voluntary redundancy, the fact remained that she had continued to work for the Respondent for many months following the repudiatory breach and affirmation is made out.

68. I considered whether other matters relied on by the Claimant, including the failure to deal with her requests for unpaid leave and for her contract of employment, failures in relation to her complaint about her holiday pay and the failure to provide job descriptions requested amounted to a repudiatory breach in the sense that they evinced an intention by the Respondent not to be bound by the contract. Was there a "last straw" that was more than trivial?

69. While I accepted that the Claimant resigned from her employment because she felt that the Respondent was not treating her fairly, I was not satisfied that she resigned in response to a series of events which together amounted to a repudiatory breach of contract. Her letter was not clear as to the reason for dismissal. No last straw was referred to. The Claimant resigned after asking the Respondent to deal with her grievances in February 2018. The act of asking the Respondent to deal with her grievances was an act consistent with the Claimant accepting the continuing subsistence of her contract of employment. She then resigned before the grievance was heard. I did not identify a last straw which caused her to resign. Further, if there had been any repudiatory breach prior to 5 February 2018, I considered that her actions at and after that date were consistent only with an acceptance that the contract was continuing. It was her choice to resign before the grievance was heard.

70. The unfair dismissal claim is therefore dismissed.

Remaining matters

71. As to the remaining claims, in order to make out her claim for unpaid holiday pay, the Claimant would need to have established, as a starting point, the days in respect of which she was underpaid and in what amounts. There was no such evidence before me. The allegation amounted more to a general complaint, the merits of which I could not test without the necessary facts.

72. In relation to the other contractual/unlawful deductions claims, the Claimant had the burden of proving that she had a contractual right to the payments in question and failed to meet that burden. These claims rested on the Claimant's recollection and the amounts shown on some payslips. That was not sufficient to enable her to make out these claims. In relation to one of the payments, excess baggage bonus, there was differing evidence from the Claimant and another former employee of BMI, Simon Cooper, as to whether the bonus was contractual or not. Mr Cooper did not attend to give evidence and therefore his evidence was untested. Nevertheless, without seeing the contract of employment, I was not satisfied that the sum in question was a contractual bonus. These clams were not particularised and involved only estimates of loss. They were not made out.

73. At the conclusion of the hearing, the Respondent contended that the amount of the voluntary redundancy payment should be reduced (1) because the Claimant would have left her employment in October 2017 if she had gone on voluntary redundancy; and (2) because of a failure to

mitigate her losses.

74. I found that on the basis of all the evidence, including the phased application of voluntary redundancy, that the Claimant was unlikely to have left her employment before 25 March 2018, if she had taken voluntary redundancy. No question of mitigation arose as she would have received that sum in full, irrespective of when she left.

75. I was asked by the parties to consider whether the Claimant's compensation should be uplifted or discounted pursuant to s207A of the Trade Union and Labour Relations (Consolidation) Act 1991. I concluded that while the Respondent had not dealt promptly with the Claimant's July 2017 grievance and it had never really been resolved, the Claimant had resigned before allowing the Respondent to deal with her February 2018 grievance and had not appealed the outcome of that grievance. I concluded that it was not just and equitable either to uplift or reduce the Claimant's award.

76. The Claimant would therefore be awarded the sum of £14,914 as damages for breach of contract.

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Employment Judge McNeill QC

Dated: 25 November 2019

SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE