EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms S C Rivera Campos	**v**	Atlas Facilities Management Limited

Heard at: Watford

On: 13 February 2020
18 February 2020 (in chambers)

Before: Employment Judge Bloch QC

Appearances

For the Claimant: Ms Claire Marcel, Trade Union Representative
For the Respondent: Miss L Broom, Senior HR Advisor

RESERVED JUDGMENT

1. The claimant's complaint of unfair dismissal is upheld.

2. In respect of her unfair dismissal the claimant is awarded the sum of £10,759.61, calculated as set out in the attachment hereto.

3. The prescribed element is the sum of £8,116.98 in respect of the period from 29 January 2019 and 13 February 2020. The amount by which the award exceeds the prescribed element is £2,642.63.

4. (It is not known whether the claimant received any statutory benefits during the time in question).

REASONS

1. The issues in the case were:

    1.1 Was there a dismissal?
    1.2 Did the respondent mitigate the injustice to the claimant of the request of a third party in that she be removed from the site at which she was working? and
    1.3 If there was no dismissal has the claimant suffered an unauthorised deduction in her wages?

2. The claimant was employed by the respondent from 28 November 2013 from which date she was contracted to work as a cleaner for 24 hours each weekend at the David Lloyd Gym in Fulham. This is reflected by a contract of employment (bundle page 28) which in the top right-hand corner refers to David Lloyd Fulham and refers to her total contracted hours as 12 hours on each of Saturday and Sunday per week.

3. At some point towards the end of 2015 but probably not later than June or July of 2016 the claimant's contracted hours were extended by 21 hours which she was to carry out at David Lloyd Chelsea Harbour.

4. On 9 November 2017 there was a TUPE transfer to the respondent. The claimant gave evidence which I accepted that after 2015/2016 the claimant asked her previous employer (in due course the TUPE transferor) to amend her contract of employment to show the total of 45 hours per week.

5. However, despite her request no amendment was made to her written contract of employment. I conclude that the claimant after the addition of the hours at David Lloyd Chelsea Harbour, she was employed under a single contract of employment with 24 hours being worked at David Lloyd in Fulham and 21 hours being worked at David Lloyd Chelsea Harbour.

6. On 17 October 2018 the claimant complained to the respondent about bullying by her supervisor, Joseph. On 30 October 2018 the claimant complained to Mr Mehdi Siaidoun, general manager of David Lloyd Fulham about bullying by her supervisor Joseph. On 26 November 2018 the claimant complained to Mr Siaidoun about bullying by another David Lloyd manager, Justyna.

7. Within a few days of the last complaint by the claimant, on 1 December 2018 David Lloyd (through Mr Siaidoun) requested that the claimant be removed from the site at Fulham. No similar request was made in respect of her working at Chelsea Harbour. In his letter of 1 December 2018 to the respondent's manager, Steve Farenden, he stated that after investigating the claimant's email regarding his complaint against Justyna he would like the claimant to be removed from David Lloyd Fulham. He stated that her attitude at the club had been disruptive, she had been dismissive, rude, unwilling to co-operate and on numerous occasions had been negative towards her team. The email went on to say at this moment in time his team were finding it difficult at the weekend on their senior management shifts and were now complaining to him about Sara's attitude.

8. The respondent then suspended the claimant from her work at Fulham from 1 December 2018. However, Mr Farenden, described the process not as a suspension but as authorised paid leave. He described himself as needing to follow the "SOSR" (some other substantial reason route and told the claimant backed by email of 3 December 2018) that he would meet with the claimant to hear her side of events and that following this meeting he would then speak with the client to see if the decision could be reversed. If the decision remained the same they would need to meet a second time and at

that second meeting the outcome would be discussed. He added that should they reach the second stage, a list of all the current job vacancies will have been sent to the claimant and it was hoped that there would be another position into which she could be placed. There was a meeting on 19 December at which were present a senior manager, Joy Osaigbovo, and a Spanish interpreter. The claimant said that it was horrible to be suspended because of false accusations. She refuted every point of all the accusations of Mr Siaidoun because they were completely false and she was innocent. She described Mr Siaidoun's accusations as being defamatory.

9. On 8 January 2019 Mr Farenden (described as key account manager) wrote to Mr Mehdi Siaidoun by email stating inter alia: "Further to the request to remove Sara from site, part of the process we must follow is to ask whether you would consider having Sara reinstated at the David Lloyd Fulham. After meeting with Sara on 19 December she had expressed her sincerest apologies and had stated that the issues raised about her behaviour would not happen again." She asked whether the decision still stood or whether Mr Siaidoun would be willing to reconsider.

10. In fact (as appears from above) the claimant had not expressed sincere apologies or any apologies and indeed had taken great offence at the allegations made by Mr Siaidoun. However, perhaps Mr Farenden thought he was acting in the best interests of the claimant because to state her true position would be to make it much more difficult to have the decision excluding her from the premises reversed.

11. By letter dated 11 January 2019 to the claimant Ms Osaigbovo (described as area supervisor) told the claimant that John Lloyd had refused the respondent's request. She was accordingly required to attend a further formal meeting on 16 January at David Lloyd, Chelsea Harbour. At that meeting they would discuss further job opportunities within the respondent company and a list of vacancies was enclosed for her consideration.

12. The list of vacancies was very extensive indeed comprising some 100 vacancies all over the country. Very few related to London. A further meeting was held on 23 January 2019 which was chaired by Steve Farenden. The claimant expressed an interest in a role (on the list) at David Lloyd Hamptons. However, after enquiries it was discovered that the vacancy had been filled. At the meeting on 23 January 2019 the claimant stated that she could only work daytimes at the weekend.

13. On 29 January 2019 Ms Osaigbovo on behalf of the respondent wrote to the claimant saying that she had to advise that no suitable work was available and therefore regretted to inform the claimant that her employment at David Lloyd Fulham was terminated for "some other substantial reason" namely third party pressure with effect from 25 January 2019. It stated: "To confirm you will remain an employee of the company and continue working at your remaining contract." By an undated letter but apparently on 4 February 2019 the trades union on behalf of the claimant appealed the decision and stated (inter alia) that an employer faced with a request from a third party to

remove an employee must consider the injustice likely to be caused to that employee and must do all that they reasonably can to avoid or mitigate that injustice. That was likely to involve trying to get the client to change their mind. Reference was made to Mr Farenden's email stating that Sara apologised asking whether the claimant would consider accepting her back on the site. There was no other written evidence of attempts to persuade the client apart from that email. It was clear (so the email said) that the respondent did not question the client's motives or demand an investigation into the alleged behaviour of the claimant. That was said to be a significant failure. It was further pointed out that the request for removal came as a result of her making complaints about her supervisor, Joseph Forjour, and the site manager, Justina Skornog (by sending an email to the site manager, Mr Siaidoun). The complaint dated 29 November 2018 stated that Justina asked Sara to do Joseph's work, shouted at her, threatened Sara with dismissal if she does not obey and that Sara should resign if she didn't like her schedule. This indicated an unsafe, intimidating and oppressive work environment showing that the manager, Justina Skornog, engaged in bullying, harassing and discriminatory behaviour. There was injustice to the claimant since her removal came in retaliation of her raising a grievance of safety, harassment at the workplace and for trying to improve her condition. It was further pointed out there was no evidence or specific examples quoted to support the allegation that Sara had engaged in negative and disruptive behaviour.

14. The communication concluded as follows:

> "To some, the client's stance appears liable to cause injustice to Sara and Atlas FM failed to do all that it could to avoid or mitigate that injustice. Atlas FM did not take steps to separately establish whether Sara's conduct and misconduct had in fact occurred as stated by the client. Although our member has not been dismissed from the company but removed from the David Lloyd site, the significant reduction in her working hours amounts to a dismissal as per the EAT's ruling in Hogg v Dover. She therefore reserves the right to bring a claim for unfair dismissal and to recover any lost wage moving forward."

15. There followed an appeal hearing on 28 February 2019 in the presence of the regional manager, Jeanne Whelan and the claimant was accompanied by a trades union representative, Simona Simion.

16. The basis of the appeal was stated as:

> "The respondent should have objected to the request for the claimant's removal from the client and further evidence should have been collected to ensure an internal investigation could be carried out;
>
> The respondent should have submitted a greater defence in writing when requesting for the General Manager to reconsider their decision to remove you from the site;
>
> That the basis of the removal request was due to the complaint the claimant "rose" to the client regarding one of their employees.

> It was said that in response to the first point it was standard practice to try to resolve all issues that the respondent's client had reported before an employee is removed from a site. However, we do have a contract with the client and they are able to request the removal of our staff, which we are required to honour (interjecting, there was no copy of the client contract produced before the tribunal but I was prepared to accept the existence of such a clause which is commonplace).
>
> I do understand that due to the issues raised by his team and the nature of them that it is unlikely that his opinion could have been changed at that stage. However, it is agreed more could have been submitted in writing regarding objections or to obtain the evidence to investigate the claims. This part of the grievance has been upheld.
>
> In regard to the second point of your appeal I note that you feel that further attempts to have you reinstated at the site should have been taken and that you were not satisfied with the email the company sent urging the manager of the gym to reconsider as you felt that the extending your apologise [sic] did not act to persuade our client. We can confirm that discussions were held with the Gym Manager on how best to resolve the situation and I am confident we acted in your best interest. This aspect of your grievance is partil [sic] as further details should have been included in the email asking for your reinstatement. As regards the third element of the appeal Ms Whelan concluded that she had no reason to believe that the reasons given by John Lloyd were supplied with malicious intent."

17. The letter concluded:

> "You have now exercised your right of appeal, under the company's appeal procedure and this decision is final."

18. Ms Isabella McNally, an HR advisor for the respondent, gave evidence before the tribunal and he said that this letter (14 March 2019) had been written by her but approved by Ms Whelan. Ms McNally accepted that the references to grievances being partially upheld was in error and she had intended to refer to the claimant's appeal instead. However, she could not explain what the effect was of the partial success of the claimant's appeal. There was apparently none.

19. Ms McNally emphasised that what she had been seeking to communicate was that more effort should have been made to document matters in writing other than that she was saying that not enough had been done.

20. The claimant continued to provide her services at David Lloyd Chelsea Harbour and indeed continued to do so until the time of the hearing.

21. The evidence produced by the respondent at the tribunal hearing was noteworthy not so much for what it said but for what it did not cover. There was nothing which Ms McNally could really add from her own knowledge. As to:

    21.1 The efforts which Mr Farenden had made (or indeed anyone on behalf of the respondent had made) to have the claimant reinstated at the Fulham site or to put the claimant's position or to investigate the claimant's concerns about the lack of detail or even example produced by David Lloyd in support of their allegations against the claimant or to

investigate her concerns that the request from Mr Siaidoun was in fact retaliatory because of her complaints against the two personnel referred to above. In this regard, the evidence of the respondent taking steps to mitigate against the deep sense of injustice expressed by the claimant was minimal. Ms McNally explained that Mr Farenden was no longer employed by the respondent but that he had proved a statement by email as to the efforts which he had undertaken on behalf of the claimant but no witness statement was produced on behalf of Mr Farenden in his absence. Ms McNally made attempts to fill the lacuna in her witness statement but it was difficult to discern anything credible about which she was speaking from her own knowledge.

21.2 The same is true in regard to the respondent's efforts to find alternative employment. (beyond what is set out above, ie relating to the list of jobs the one job which had already been filled) Ms McNally was unable to assist the tribunal beyond vague references to other unspecified attempts being made by other supervisors of the respondent.

22. The only conclusion which I could safely make was that little or nothing was done on both fronts beyond what is set out above in this judgment. That relates both to attempts to persuade David Lloyd to reconsider or to investigate the allegations made by David Lloyd against the claimant or to find alternative employment.

23. It is clear to me from the evidence of Ms McNally that no attempt was made to look for any suitable employment otherwise than the two 12 hour shifts which the claimant had worked at David Lloyd Fulham. For instance, no attempt was made to see whether the claimant might accept a shorter working period over the weekend than 24 hours.

24. The claimant produced a skeleton argument as follows:

24.1 Was there a dismissal? As a result of the reduction of 40% of the working hours by the letter of 29 January 2019 the claimant was employed on dramatically different terms and so there was a dismissal in accordance with Hogg v Dover. …?... on the claimant's contract for 45 hours was gone and the claimant did not consent to this reduction appealing the decision to take her off the David Lloyd contract and seeking replacement hours.

24.2 Did the respondent mitigate the injustice? The claimant said that the respondent did not make proper representations on the claimant's behalf to David Lloyd to seek her reinstatement. There was no evidence that the respondent considered the injustice of the removal request on the claimant as per Dobi v Burns International Security Services (UK) Ltd [1984] EWCA Civ 11. The claimant submitted that mitigating the injustice of a client request for removal extended beyond providing a list of available jobs. Greenwood v White Ghyll Plastics Ltd [2007]: Appeal UKEAT/0219/07. In particular the respondent did

not hold the small number of job suitable vacancies open for the claimant and instead informed her immediately without verifying that they were closed. By failing to mitigate the injustice the respondent therefore dismissed the claimant unfairly.

24.3 In the alternative the claimant submitted that if the claimant had not been dismissed she continued contractually to be entitled to 45 hours of work per week. There was no express variation of her contract. If there was a valid variation she had manifestly been working under protest. She appealed the decision to remove her from David Lloyd. She engaged in full in the process to redeploy her as she wished to preserve her original working hours.

25. The claimant produced a schedule of loss claiming £10,759.65 for unfair dismissal and in the alternative unlawful deduction of wages £10,005.66.

26. In her submissions on behalf of the respondent Ms Broom (senior HR advisor) relied on the absence of a formal amendment to the contract of employment. She said that the respondent had not during or after the TUPE transfer been aware of the claimant's attempt to amend the contract of employment. It was a term of the contract with David Lloyd that they could require removal of the claimant from their premises. They were not required to give any reasons. She also …?... that the list of vacancies represented the actual vacancies available at the time and that there was a trade union member representing the claimant who would have been able to help her work through the list, notwithstanding her absence or inadequacy in English. In short, her submissions were (as I understood them) that the Fulham contract or part of the contract of employment had been fairly terminated for some other substantial reason, namely the requirement of the client, David Lloyd, and that the respondent's actions in relation to trying to reverse the David Lloyd decision and/or to find alternative working hours for the claimant had been reasonable.

27. Turning to the law. S.95 of the Employment Rights Act 1996 ("ERA") provides:

> "For the purposes of this Part an employee is dismissed by his employer if… -:
>
> (a) The contract under which he is employed is terminated by the employer (with or without notice),...
>
> (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."

28. Under s.94 ERA:

> "an employee has the right not to be unfairly dismissed by his employer. Under s.98 ERA:
>
> (1) in determining for the purpose of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

> (a) The reason (or, if more than one, the principal reason) for the dismissal, and
>
> (b) That it is either a reason falling within sub-section (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding a position which the employee held…
>
> (4) where the employer has fulfilled the requirements of sub-section (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 the equity and the substantial merits of the case."

29. As appears above the claimant pays particular reliance on the decision of the Employment Appeal Tribunal in Hogg v Dover College (UK EAT/88/88) a decision of the Employment Appeal Tribunal (Mr Justice Garlane and members). In that case the applicant was formerly the head of the history department at Dover College where he had been employed for a number of years. Having been employed as head of history on a full-time salary he was peremptorily told that he was no longer head of history and he would not be employed full time and he would come down to eight periods a week plus general studies and religious education; the salary he would receive would be exactly half the scale which superseded the Burnham scale. The Employment Appeal Tribunal said: "It seems to us, both as a matter of law and common sense, that he was being told that his former contract was from that moment gone. There was no question of any continued performance of it. It is suggested on behalf of the respondents that there was a variation, but again it seems to us quite elementary, that you can vary by consent terms of a contract, but you simply cannot hold a pistol to somebody's head and say henceforth "you are to be employed on wholly different terms which are in fact less than 50% of your previous contract". We, unhesitatingly, come to the conclusion that there was a dismissal on 31 July; the appellant's previous contract having been wholly withdrawn from him. Even if we were wrong about that, we would take the view that there was a constructive dismissal under sub-section 3 because the tribunal found, and this is also a matter of law, that there were fundamental changes in the terms offered to the appellant – I will not repeat how fundamental they were. The question then arises whether he accepted the respondent's conduct as a repudiation of their obligations to him or whether it has to be said that by his conduct there was, in the event, no acceptance or indeed, an affirmation. Of course, one asks affirmation: affirmation of what? If it could only be a totally different contract. This is not the affirmation of the continuance of the contract where one term has been broken; this is a situation where somebody is either agreeing to be employed on totally new terms or not at all. I have already drawn attention to what happened – his

Solicitor's wrote on 4 September alleging that he had been dismissed. On the seventh they wrote again, in the terms which I have already read out, saying that he would accept the new terms without prejudice to his claims, and on 19 October he issued his IT1.

30. The Employment Appeal Tribunal continued:

> "the question is not whether the relationship between the parties, has ceased, the question is not whether there was any contract between the parties; the question is whether the particular contract under which the employee was employed by the employer, the relevant time was terminated by the employer. That seems to us to incapsulate the principal to be applied here. Was the particular contract under which the employee was employed by the employer at the relevant time terminated by the employer? …"
>
> "At the end of the day, the position seems to us perfectly clear. There was here a dismissal. If we are wrong in our view in that respect, there was clearly a constructive dismissal because the appellant accepted the respondent's conduct as repudiatory and cannot, by his subsequent conduct, be said to have affirmed the original contract or any original contract as varied…."

31. In Mr S Bancroft v Interserve (Facilities Management) Limited UKEAT/0329/12/KN, Employment Appeal Tribunal (Mrs Justice Slade DBE presiding) stated (in a case involving dismissal at the behest of a third party) at paragraph 26:

"in those circumstances in our judgment, the Employment Tribunal did not properly apply the principles outlined in the authorities in holding that the respondents had done everything they could do to litigate the injustice caused by the third party's request that the claimant no longer work on their premises"

32. It is not clear whether the test there stated is too high, and whether the employer need show only that he had everything that it could reasonably have done (as appears earlier at paragraph 13 of the decision in that case).

33. In David Greenwood v Whiteghyll Plastics Limited [2007] [UKEAT/0219/207], the Employment Appeal Tribunal (Mr Justice Silber presiding) stated at paragraph 23:

"in our view this case is very different as there was nothing in the documents or anywhere else to which we were referred to show that the injustice to the appellant was considered by the respondent in deciding to dismiss the appellant or dismiss his appeal from that decision … the Employment Appeal Tribunal referred to the Court of Appeal decision in Doby v Burns International Security Services UK Limited [1984] EWCA CIV11, where it described as the "very important factor" of whether the respondent considered the injustice to the claimant and the extent of the injustice in deciding whether the respondents acted reasonably.

34. Applying the law to the facts of this case:

35. The first question is whether the claimant was working under a single contract at two different locations or whether there were in fact two separate contracts of employment, although the respondent's position was not entirely clear, it seemed to be the case that they regarded that the two contracts as separate, or at least that there was a single contract with two severable parts. They, however produced no documentation or evidence to support that there were two separate contracts or two severable parts, such as payslips or other documentation indicating that. In the circumstances I accepted the claimant's evidence that she was working under a single contract, that she had tried after 2015/2016 to have the contract of employment amended to show her increased hours but failed to obtain the formal amendment and I should add that it was clear from the evidence from Ms McNally that the claimant was expected to work the required hours at Chelsea Harbour in the same way as she was expected to work her required hours at David Lloyd Fulham. Accordingly, I accepted the claimant's submission that the contract (of employment as amended) was for 45 hours per week in total.

36. The next question is was there a dismissal? I have found this a difficult question. The facts are not quite as strong as those in Hogg v Dover College, where in addition to the slashing of hours there was the removal of the Head of Department role. That said, on balance, in my judgment, the correct analysis is that by terminating 47% of the claimant's working hours, they were terminating her contract of employment within the meaning of ERA section 95 and doing so without notice. In my view there was no substantial difference between the circumstances in Hogg v Dover where the employee continued (under protest), to provide his services as a teacher. Then the circumstances here were that her cleaning services were terminated at one of the two places where she cleaned, with a concomitant substantial reduction in salary.

37. If I am wrong in that conclusion, then in any event in my judgment, by terminating the claimant's hours at David Lloyd in Fulham without notice, the respondent committed a repudiatory breach of contract. The question is whether the claimant accepted that repudiatory breach and in my judgment, she did. By her Trade Union's letter of 4 February 2019, they brought to the attention of the respondent that the significant reduction in her working hours amounted to a dismissal in accordance with the decision in Hogg v Dover. She therefore reserved the right to bring a claim for unfair dismissal. In my judgment by that language and her conduct in strongly protesting the removal of her hours from Fulham, including exhausting the appeal process, she accepted the repudiatory breach of the respondent. There were only two possibilities, either she accepted the repudiatory breach or else she affirmed the contract. There is no fair and reasonable way in which the letter of 4 February and the claimant's conduct in pursuing the appeal and taking part in the process of looking for other jobs could be described as an affirmation of the same contract under which she had been employed. She was continuing to work under a contract which was radically different in terms of its hours, than the one under which she had been employed and

therefore her conduct in continuing to work at the Chelsea Harbour site could only fairly be seen as an act of mitigation of loss, rather than an affirmation of the original contract of employment.

38. While dismissal at the behest of the third party is often defended as "some other substantial reason" within the meaning of ERA section 97 on the less section 97, looks at whether the employer acted reasonably in treating that reason as a sufficient reason for dismissal. In my judgment, on the evidence before me, the respondent failed in regard to the "very important factor" of considering the injustice to the claimant and the extent of that injustice. I accepted the evidence of the claimant that he regarded the grounds put forward by David Lloyd is false and defamatory and that her removal from the site was an act of victimisation or retribution. The respondent was fully aware of the claimant's expressed feelings in this regard but seems to have taken very little or no regard of that, perhaps thinking it that it had an easy "get out of jail free" card under the SOSR reasons. While there are of course limits beyond which an employer cannot go in these kinds of cases, proper regard has to be given to the employer preserving its commercial relationship with the client in question, nonetheless I have no doubt that the respondent's acts in this case (on the evidence which I have seen), were quite insufficient. Even if it was difficult for the respondent to push against David Lloyd's decision, nonetheless it should have investigated the position as best it could, especially given the potential inference that the actions of David Lloyd were inspired by the claimant's complaint of bullying.

39. In this regard the respondent failed to take all steps or all reasonable steps to seek to mitigate the injustice caused to the claimant by her removal from the site at the behest of David Lloyd Fulham. The letter of 14 March 2019 by the respondent in which the claimant's 'grievance' was partially upheld is in my judgment further evidence that the respondent did not take all reasonable steps in this regard. While Ms McNally was keen to emphasise that she was talking only about criticism of matters not being properly evidenced in writing, in my judgment, even that supports the conclusion that the respondent was acting far too casually in dealing with the removal of the claimant from the Fulham site.

40. The same is true in relation to attempts to find the claimant alternative employment. There was no evidence (beyond the list) of any attempts made to find the claimant alternative employment. I was left with the suspicion that given the respondent's conclusion that they were not in breach of contract in regard to the hours at Fulham being extinguished that they did not put in as much effort as they would have done in this regard if they had believed the Hogg v Dover College argument which had been put to them. I accordingly concluded that the claimant's dismissal was unfair. If, I am wrong in that conclusion, ie that the claimant was dismissed or constructively dismissed by the respondent and that dismissal was unfair, I would uphold the claimant's claim for unauthorised deduction of wages in the amount of £10,005.66 as set out in the claimant's schedule of loss.

41. At the end of the hearing, I indicated that in giving this reserved judgment, I would consider whether there should be a separate remedy hearing and a provisional date of **1 April 2020**, was set. I explained to the respondent's representative the effect of the decision in Polkey v Dayton and that it might be possible for the respondent to argue that even if they had made a reasonable search for alternative employment and had made proper attempts to investigate the complaints against the claimant and to persuade David Lloyd to retract their decision, that the position would have been the same or similar. However, given the state of the respondent's evidence in regard to alternative employment and attempts to persuade David Lloyd on the evidence before the tribunal, the Polkey v Dayton line of argument would have failed. Further, given that the tribunal listing was for one day, it was incumbent on the respondent if wishing to pursue that kind of argument to have covered in witness statements and appropriate documentation.

42. There is a further matter concerning remedies which is of some concern to me. It is plain that the schedule of loss includes loss only to the date of the hearing, however, as the claimant is apparently still only at the Chelsea Harbour site.

43. Accordingly, in case my decision leaves the parties with a sense of injustice in that they would have wished to make further submissions, I am prepared to take steps to prevent that from happening. I have indicated, the respondent accepted the accuracy of the claimant's calculations set out in the schedule of loss.

44. I therefore give the parties **14 days** from the date they receive this judgment to indicate whether they wish me to reconsider my judgment as to remedy under rule 19 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, schedule 1. Any application, by either side, should be accompanied by written submissions, any witness statements and all relevant documentation upon which such party relies. All such documentation is to be received by the tribunal within that **14 day** period.

45. If neither party applies for reconsideration of the remedies part of this judgment within the 14 day time limit, the date of **1 April 2020** (provisionally set for a remedy hearing) shall be vacated.

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Employment Judge Bloch QC

Date: …10 March 2020

Sent to the parties on: .10 March 2020...

.....
For the Tribunal Office

Case Number: 3314512/2019
Ms C Rivera Campos v Atlas Facilities Management Limited

CALCULATION OF THE CLAIMANT'S LOSS

Date of birth	09/11/1961
Date on which employment commenced	28/11/2013
EDT	29/01/2019
Claimant's age at EDT	57 years
Total continuous service (years)	5 years
Gross weekly pay for hours worked	£352.35
Net weekly pay	£303.54
Date of hearing	13 February 2020
Weeks between EDT and hearing	54

Basic award

The claimant is awarded the following basic award.

Relevant multiplier	1.5
Number of years of service at EDT	5
Gross weekly pay	£352.35
Basic award	**£2,642,63**

Compensatory award

Loss of net earnings to date of hearing	Net weekly pay: 303.54 Number of weeks: 54 Total: **£16,391.16**
Loss of statutory rights	300
Less net income earned since EDT	Net earnings: **£3,476.27**
Less estimated net income between date of SoL and date of hearing	Currently net weekly earnings: 175.79 Number of weeks between SoL and EDT: 29 Total: **5,097.91**
Total:	**£8,116.98**

TOTAL

	Unfair dismissal
Basic award:	£2,642.63
Compensatory award:	£8,116.98
Total:	**£10,759.61**