EMPLOYMENT TRIBUNALS

Claimant: **Mr S. Mohammed**

Respondent: **Tesco Stores Limited**

Heard at: **Birmingham** **On: 6-12 February 2020**

Before: **Employment Judge Broughton**

Representation
Claimant: In person
Respondent: Miss Kaye, Counsel

REASONS
FOR THE JUDGMENT OF 12 FEBRUARY 2020

The facts

1. The Claimant was employed by the Respondent as a warehouse team member at their warehouse in Daventry. It appears that his primary role was driving a forklift truck.

2. On 20 December 2017 at around 7pm a female colleague, who I shall refer to as CP made a complaint that she had been sexually harassed by the Claimant a couple of hours earlier.

3. Specifically, she alleged that the Claimant had followed her in his truck and made a sexual gesture with his tongue and that he had a history of pursuing her. For example, she alleged that he had been calling her "sexy" on Facebook and asking people if he could be her boyfriend. She said she had asked him to stop, and both of those allegations appeared to be from the previous year.

4. Following the complaint, the Claimant was called into a meeting shortly thereafter by Lester Burgess.

5. The Claimant asked for a union representative and this was agreed.

6. The Claimant was asked if he knew CP. He said "no" and, when asked if he had spoken to her, he said he couldn't remember and didn't want to say any more.

7. Both the Claimant and his representative signed the notes of that meeting.

8. The Respondent said that the Claimant was also shown a photo of CP at this meeting but the Claimant initially denied this.

9. The Respondent then investigated the Claimant's movements and CP produced some of the Facebook messages to the Respondent.

10. The Claimant was then called to a further meeting with the Respondent's Shift Manager, Carl Rice, again with his Union Representative. He was informed that he was being suspended due to the dignity at work allegations and the need to investigate.

11. The Claimant was provided with the Respondents standard suspension form, but he refused to sign it and denied the allegation. That said, before me he suggested that he did not know what the allegation was. It seems that the form did state that the allegation was one of sexual harassment of a female and, in the previous meeting, the Claimant had been told who had made the allegation and his representative did sign the form.

12. The Claimant was invited to an investigation meeting to take place on the 22 December 2017. As mentioned, in the claim form and indeed before me, the Claimant said he had no idea what the allegation was at this stage, but it seems clear that he was at least told the name and the nature of the allegation, even in the unlikely event that he could not remember.

13. The Claimant was told he could have a union representative at the investigation meeting. He attended on 22 December 2017 but was unwilling to proceed without his choice or representative, even though it appeared he was not a fee-paying union member.

14. It is the employee's obligation to arrange representation and there is no strict legal right to representation at an investigation meeting but, ultimately, the investigator, Jackie Deakin, agreed to postpone the Hearing and it was reconvened on the 27 December 2017.

15. The Claimant attended with his chosen representative. He then complained that he was unhappy with the notetaker as this was Lester Burgess, the manager who had held the first meeting with him on the 20 December. I note that this was the meeting the Claimant claimed not to remember before me.

16. It appeared that the Claimant's union representative was willing to continue as Mr Burgess was only a note taker. The meeting continued for a short while with the Claimant being asked again if he knew CP. The Claimant said he didn't know her but that he had been shown a photo at the first meeting.

17. As mentioned that was initially denied before me before the Claimant said that he couldn't remember. When then asked how long the Claimant had known CP, he said that he couldn't remember but also that he had reported her a couple of times.

18. It transpired that it was actually the Claimant's union representative who had shown him the photograph in the initial meeting and this was confirmed in the signed notes.

19. As that was a disputed fact from the meeting with Lester Burgess, the Respondent had a brief adjournment and changed the note taker.

20. The Claimant then complained about having been shown the photo at the first meeting even though he'd also said he couldn't remember it and it was actually shown by his representative.

21. The Claimant then said that he had complained about racist comments by CP about 6 months earlier. When challenged on this, he said he didn't report it to one of the Respondent's managers but to an agency team leader.

22. These were very serious allegations including, for example, that he said CP had said that "she wanted to kill all Muslims". He said that he had not spoken to her since.

23. The meeting was then adjourned as the Claimant's representative had come to the end of his shift and both the Claimant and his representative signed the notes. The investigation was then reconvened on 2 January 2018 and the Claimant attended with the same union representative.

24. The Claimant was shown the CCTV footage of the alleged harassment. It seemed to show the Claimant passed CP in his truck and then returned and slowed or stopped near her.

25. The Claimant's Union representative acknowledged that the CCTV appeared to show the two speaking, but the Claimant said, "prove it".

26. The CCTV was insufficient to show any facial gestures or speaking and had no sound.

27. The Claimant was then shown a photo of himself. He confirmed it was him and asked where it had come from. He was then asked if he knew anyone by the name of Darius Pavell. He said that it was "maybe a friend or a family member". When it was put to him that he must know which it was, he simply replied "maybe".

28. He was asked again about Darius Pavell and said it was a private matter and he shouldn't be asked about his family and that it was none of the Respondent's business.

29. He was then shown the Respondent's social media policy and the Facebook posts that CP had produced from 2016 which were from an account named "Darius Pavell" but with a picture of the Claimant.

30. The Claimant said his picture had been put on the Facebook account by his family and that his account had been hacked in 2016.

31. No evidence of that was ever produced and the Claimant couldn't explain how Darius Pavell would have known CP, whether it was a family member or hacker.

32. The Claimant then said again that the Facebook account belonged to a member of his family and that he had known Darius Pavell from a long time ago. He was asked for proof of the hacking, but that was never provided.

33. The claimant said that Darius Pavell lived in Iraq but the respondent had established that the Facebook account was from Leicester, where the claimant lived.

34. The claimant couldn't explain that. He then asked why hadn't CP blocked him. The Respondent took this as an admission that it was, in fact, his account, presumably because of the reference to "him" but also because he otherwise wouldn't know whether the account was blocked or not.

35. When this was pointed out to him, he said that it was a language mistake as English was not his first language and that he would need an interpreter if that was to be relied on. He also became agitated and so the meeting was adjourned.

36. The Claimant's union representative then sought clarity regarding the Facebook account. The claimant said, "it was a family account hence it had his picture and that was based in Leicester".

37. The meeting adjourned again and Jackie Deakin then met certain other witnesses. These included the individual who CP spoke to immediately after the incident on 20 December. They said that CP had been upset and told them of the previous incidents and that CP was afraid to return to work and so she had been advised to report it. The witness also said she was aware that the Claimant had a Facebook profile with a different name as were others.

38. The next day Jackie Deakin interviewed CP and confirmed her version of events. CP also identified another colleague who she said the Claimant had sent sex-related messages to. CP said she "did not want the Claimant to be dismissed, just for the harassment to stop".

39. Jackie Deakin then interviewed the other potential witnesses. One appeared to confirm the Claimant used a Facebook account under a different name. Another was a married employee who said the Claimant had asked her out. A third said the Claimant had made inappropriate comments to her such as "nice arse". A further witness was an individual who CP had asked to pretend to be her boyfriend to put the Claimant off.

40. The Claimant claimed never to have seen these witness statements, even up to the Hearing before me. There was no evidence that they were either provided or requested during the Respondents investigation. That said, in terms of the claimant's suggestion that he had never seen them before and that they were a complete fabrication, they had clearly been provided

during the disclosure process and had been in the bundle for many months.

41. There was a further investigation meeting on 5 January 2018. The Claimant was told that Jackie Deakin had these other statements, but not the specific detail, and he was asked if he had anything to add.

42. There was a discussion about whether the Claimant had language difficulties and Jackie Deakin confirmed her view she was happy that the Claimant had understood her questions and engaged in the dialogue.

43. There was then an attempt to identify the team leader that the Claimant had said that he had reported CP's allegedracism to. From the description that he gave, the Respondent was able to identify the individual, but they had left the agency and, whilst attempts were made to contact them, there was no reply.

44. The Claimant said that he felt someone was trying to get him into trouble and, at one stage, suggested it was all a conspiracy to get rid of him. However,

    a. several colleagues supporting the allegations but only on discrete issues,
    b. a Facebook account with the claimant's photo and a name that the Claimant knew and
    c. the principal complainant saying that "she didn't want the Claimant to be dismissed"

    all pointed away from a such conclusion and there was no evidence to support it.

45. Jackie Deakin then summarised her investigation findings. The Claimant said that the allegation was because CP had a problem with Muslims. Ms Deakin asserted that it was her view that the allegations were possible gross misconduct and that she would refer the matter to a Disciplinary Hearing.

46. The Claimant repeated that he thought CP was racist. He then said that he thought he had been targeted because he had reported his Manager. Then he said that it was because he had had a previous problem with his knee. This was the only time in the internal proceedings he raised these allegations. He raised them again before me, albeit with no supporting evidence.

47. The claimant was then suspended again on full pay and invited to a Disciplinary Hearing with Mr Smalley, warehouse shift manager. That was to take place on 11 January 2018.

48. The claimant was told that the allegations were potentially gross misconduct and he was entitled to a representative.

49. The Claimant went to see his GP and was signed off sick with "reactive stress" on 10 January 2018. He attended on 11 January 2018 with his union representative, but only to hand in his sicknote.

50. The Claimant was, therefore, put on sick pay. He received a further sicknote on 30 January 2018 for a further 4 weeks saying that he was "unfit for work". The note didn't specifically address whether he was fit for a meeting.

51. As a result, the Respondent wrote to him on 8 February 2018 inviting him to a disciplinary hearing on 16 February 2018. The letter included further details of the allegations made against him.

52. Specifically, in addition to the alleged incident on 20 December 2017 it was made clear that it was also alleged that he had sent the messages on Facebook and had made comments at work such as asking if he could be CP's boyfriend and telling her "to smile because she was sexy".

53. On 12 February 2018, the Claimant telephoned the Respondent and said he couldn't attend the meeting due to sickness. He was then invited by a letter dated 27 February to a Disciplinary Hearing on 6 March 2018.

54. On 2 March 2018, the claimant called the Respondent to say, "he couldn't attend". The Respondent recorded the reason as "a prior arrangement", but the Claimant disputed this before me saying "it was his sickness".

55. The Respondent received a further sicknote but again it did not address the claimant's ability to attend the meeting and so, by letter dated 15 March 2018, a meeting was arranged for 22 March 2018.

56. The Claimant was told in this and the previous invites about the adjustments the Respondent could make to assist him, such as holding the disciplinary at a neutral venue or allowing a representative to attend on his behalf.

57. The claimant was also told that if he didn't attend the meeting then it would proceed in his absence. That letter was sent by Recorded Delivery. The Claimant didn't attend and so the meeting proceeded in his absence.

58. There was no evidence of any attempts to call the Claimant or to check whether the Recorded Delivery letter had been received.

59. The Claimant's union representative did, however, attend and so Mr Smalley went through the evidence, albeit without any response. He then considered that evidence and felt that the allegations were made out and they did amount to gross misconduct.

60. His decision was to dismiss for breach of the Respondent's Dignity at Work Policy which was expressly stated to amount to gross misconduct.

61. As a result, the Respondent said that they had summarily dismissed on 22 March 2018. The Claimant, however, was only notified by letter sent on 27

March 2018 so, ultimately, his date of termination would have been on receipt of that letter, but that was not an issue before me.

62. The Claimant was given a right of appeal. He said he received the dismissal letter on 6 April 2018 and appealed the same day. His only stated ground of appeal was not receiving the invite to the Disciplinary Hearing.

63. The appeal was to be heard by Mr Gill, who had recently been appointed as the Distribution Centre Manager, and, as a result, did not know any of those involved.

64. On 10 April 2018 the Claimant was invited to an Appeal Hearing on 20 April 2018 and he was reminded of his right to representation. The Claimant attended but without his representative.

65. The Respondent seemingly tried to find a union representative on site but the claimant's previous representative apparently refused.

66. The Claimant asked if he could bring his brother but the Respondent refused. Nonetheless, the meeting was adjourned for him to find a new representative and it was rearranged to take place on a different local site on 27 April 2018.

67. The Claimant was unhappy about this being moved to a different site but it seems that this was not unreasonable in the circumstances.

68. The Claimant attended, again without a representative, but said he was happy to proceed.

69. The only grounds advanced in his appeal were:

    a. not having received the invite to the Disciplinary Hearing and
    b. nobody had called him and
    c. he was signed off sick at the time.

70. I saw the notes and heard evidence, which I accept, that the Claimant had expressly said on more than one occasion that he was not appealing against the specific findings.

71. The meeting was adjourned to check the position with regard to the invite letter and reconvened on 3 May 2018.

72. The Respondent confirmed that it didn't appear that the letter had been delivered. It was their evidence that, again, the Claimant refused to discuss the allegations themselves.

73. It was Mr Gill's evidence that he had expected to be going through all of the evidence but, as the Claimant was not challenging it, the dismissal was upheld.

74. This was confirmed on 3 May 2018 and by letter of the same date. The Claimant was offered a further right of appeal but he didn't exercise this.

75. The Claimant then complained about his final pay.

76. The only pleaded allegation on the case before me was in relation to a 33% reduction to his holiday pay.

77. The claimant suggested that there was a further shortfall before me but there was no evidence of that and it hadn't been mentioned before.

78. It appears that the Respondent paid the Claimant's accrued holiday pay up to termination but, in error, had made a deduction of £726.30 from that holiday pay. When this was identified the Claimant's P45 had already been issued. The Claimant was informed that the deduction could be repaid but, if he wanted it immediately, it would have to be subject to the emergency tax code. The Claimant said that he wanted the money immediately and so the deduction was made.

Unlawful deduction of wages claim

79. It seems, by this stage, the Respondent had no alternative by law but to make that deduction and the Claimant had expressly agreed to it, in writing, albeit under significant financial pressure. Any overpaid tax, of course, ought to be recoverable from the Inland Revenue.

80. So, it seems to me, if there was any unlawful deduction, this must have been in relation to the initial error. That has been rectified and so there is no loss.

The issues and the law

81. In relation to the unfair dismissal claim, the issues which I need to consider were set out by the Respondent's representative.

82. It is for the Respondent to prove a potentially fair reason for the dismissal and, in this case, they relied upon conduct.

83. I then have to consider the provisions of Section 98(4) of the Employment Rights Act 1996 and, specifically, having regard to the size of administrative resources of the Respondent,

    a. was there a genuine belief in the misconduct and
    b. was that a belief formed on reasonable grounds,
    c. following a reasonable investigation and
    d. did they follow a fair procedure and
    e. was the decision to dismiss within the range of reasonable responses?

    I will return to those, but firstly, the Claimant helpfully identified in his submissions a number of challenges to fairness which I will address in turn.

Decision

84. Firstly, the Claimant referenced the fact that English wasn't his first language and so he had certain difficulties both in the internal proceedings and before me. He said this made things more complicated and there were some misunderstandings. He said, effectively, that the Respondent should have adjusted their processes to ensure fairness and this is something I will also return to.

85. The Claimant's second and third points were essentially that the CCTV did not prove the allegation against him. That was true but, that said, it did appear to support the allegation in that he turned his truck back, appeared to stop and CP made a gesture with her hand.

86. It did not show if there was a tongue gesture or any discussion and I doubt any ordinary CCTV camera would have been able to show that level of detail.

87. It was the Claimant's case that he had turned back to get some water. Jackie Deakin didn't accept this. Mr Smalley did appear to at least accept the possibility, even though apparently the Claimant was taking the wrong route and parking in the wrong area if that were the case.

88. The Claimant's fourth point was that CP did not want him dismissed and therefore it wasn't serious enough for the Respondent to do so. He said that this showed that the Respondent always intended to sack him and that they could, and should, have gone for an alternative sanction such as a warning and/or relocation.

89. That said, the Claimant maintained that he hadn't done any of the things alleged against him which, if the Respondent believed he did, suggests a lack of remorse and risk of repeat.

90. The fifth point was that the Claimant had hoped that the appeal would be fair. He didn't want to lose his job.

91. The Respondent accepted that the invite letter to the Disciplinary Hearing had not been received but the Claimant advanced no defence to the substantive allegations.

92. The Claimant's sixth and seventh points were that the Respondent should have provided him with a union representative and an interpreter at the appeal.

93. The Claimant had failed to get the union representative to attend the first Appeal Hearing. The Respondent then also tried and failed and so adjourned.

94. The claimant then asked for his brother, albeit as a representative as opposed to an interpreter. The Respondent was entitled to refuse.

95. At the second appeal meeting the Claimant had apparently tried to arrange a representative and produced a text in support. He was offered

a further adjournment but agreed to go on and also to proceed at the third appeal hearing without a representative.

96. It is not for the Respondent to provide representatives but they did, in any event, try and they did adjourn.

97. I note at this stage that, at one point in the hearing before me, the Claimant suggested that he had attended with a representative and had been refused entry. When challenged on this evidence he repeated it before eventually accepting that it wasn't true.

98. This was an example of how the claimant often appeared to make up his responses and allegations as he went along, only dropping them when proved wrong and then attempting to say that it must have been a misunderstanding.

99. The eighth point was that Mr Smalley should have telephoned him before the Disciplinary Meeting or asked the union to do so and/or to check that the invite letter had been received. That seems to be a fair point.

100. The Claimant said that this showed the Respondent just wanted to sack him when they could have waited a couple of days.

101. The claimant's ninth point was that he had denied the allegations throughout, especially regarding the Facebook account. However, his answers showed he had knowledge of the account and the name on it and it had his photo and was posted from Leicester from someone who clearly knew CP.

102. His answers in relation to the Facebook account were, at best, inconsistent, unclear and contradictory and that remained the case before me, even with the assistance of an interpreter. The claimant's responses lacked credibility and could not have been solely due to any alleged language difficulties. It was not unreasonable for the respondent to reach the same conclusion.

103. In relation to points 10, 15, and 16, these were in relation to the Claimant being out of work for 2 years and his losses. Those are, of course, remedy matters.

104. Turning then to points 11 and 13. The Claimant said that his dismissal was because of his previous knee injury which caused the Respondent to try to transfer him. I note there was a brief mention of this in the investigation meeting, but it did not form a substantive part of the Claimant's case. There was no mention of this in the claim form or the claimant's witness statement and there was no supporting evidence. Of course, that suggestion doesn't explain why CP and others would have manufactured evidence, including the Facebook account.

105. Point 12. The Claimant said that he should have been given another chance which relates back to point 4.

106. The claimant's point 14 was that he didn't receive the invite to the Disciplinary Hearing which was conceded.

107. He also said that the reason for his dismissal was because he had complained about his Shift Manager 2 days before the allegation was made against him. Again, there was no evidence to support that. It wasn't raised in the claim form or witness statement despite the fact that the Claimant was represented by lawyers when issuing proceedings right up to the exchange of the witness statements.

108. At point 17, the Claimant said it was unfair to dismiss him because he was signed off sick.

109. There was no medical evidence that he was unfit to attend a meeting and there is no obligation on an employer to wait indefinitely. The Claimant was able to attend the investigation and appeal and it was the Respondent's case that there was no evidence that he was unfit for a meeting. Nonetheless the respondent postponed several times and offered adjustments which was a reasonable response.

110. Point 18. The Claimant said that he had good work performance and, indeed, had been offered training as a driver. This contention, of course, would appear to contradict any suggestion that the Respondent had an ulterior motive to dismiss him.

111. Point 19 was that the claimant didn't believe that statements had been produced by others. There was no evidence before me that they were shown to him before the dismissal, but they were expressly referenced in the investigation.

112. There was no evidence that the Claimant or his representative requested them and they had clearly been in a bundle in these proceedings for some time. They should have been provided to the claimant but I do not accept that they were fabricated, nor was there any evidence to support such an assertion.

113. At point 20 the Claimant said that the appeal wasn't fair and, specifically, that he didn't have enough time to speak and that he had no representative or interpreter.

114. Against that, I note that the appeal was adjourned twice and that the claimant had confirmed that he was ok to proceed without a representative. The claimant offered no challenge to the substance of the allegations against him despite ample opportunity.

115. For example, he could have produced his defence in writing with the help of his brother.

116. I note that, at one point before me, the Claimant said that the reason he hadn't requested these things was because Mr Gill had effectively bullied him in the meeting. He said that was how he ran the site and that he was not the person that was being presented before me.

117. The difficulty with that argument was that the Claimant never worked with Mr Gill as he only joined the site after the claimant had gone off sick. This appeared to be another example of the Claimant making up allegations as he went along.

118. Point 21 raised by the claimant was that he was not familiar with the law and other than one brother in the UK the rest of his family were abroad.

119. He said that he was taking on a big company and he had found it very difficult but was grateful for the Tribunal's assistance. As a lay person he argued his case well as is shown by the extensive submissions that I have addressed above.

120. I considered all of those challenges.

121. There was no evidence that the Respondent had any other reason to dismiss the Claimant other than the dignity at work complaint. It would have to have been a massive conspiracy with most of the shop-floor and management and none of the evidence appeared to support that theory.

122. In that regard, I also note that Mr Gill only joined that site after the events in question. As a result, I accept that the Respondent had a potentially fair reason for dismissal and genuinely believed the claimant was guilty of misconduct.

123. In terms of the reasonableness of that belief, I have the evidence of CP which was consistent with the CCTV, albeit that the CCTV didn't prove the allegation. It was also consistent with the Facebook posts and the Claimant's explanation for those was understandably viewed as "lacking credibility".

124. However, it was clear that the Respondent also relied on the evidence of other witnesses without putting that to the Claimant, albeit they said they would have done if he had attended the Hearing.

125. Regarding the investigation, the Respondents spoke to all relevant witnesses. The claimant was given an opportunity to respond to the allegations of CP. He didn't suggest any further investigation and nor did his representative.

126. There was an attempt to investigate the claimant's counter-allegation of racism and it appeared that the Claimant's case before me had changed as he now said the complaint wasn't about CP but rather it was about her friend and/or boyfriend. Again, it seems unlikely that this was due to any language difficulty as he repeatedly said it was CP in the internal procedures.

127. The Claimant also suggested looking at more of the CCTV cameras but it seems unlikely that would have shown anything. So, overall, the investigation appears well within the band of reasonable responses.

128. Looking at the procedure, the Respondent did make several adjustments.

129. The claimant was allowed adjournments and representation and those adjournments related both to the availability of representatives and his health and so in that regard the Respondent did more than the minimum required, especially as the Claimant was offered a further appeal.

130. The Claimant was provided with copies of the notes of the meetings with him but the Respondent failed to provide the investigation notes and the other evidence to the Claimant before the Disciplinary Hearing or even the appeal.

131. It was their case that they would have provided those on the day or upon request. However, it is generally best practice for these to be provided in advance and, with a gross misconduct allegation, and an employee with language difficulties, it seems to me that those should have been provided in advance.

132. It was clear the Claimant's English was adequate enough to have largely understood the investigation, but it was also clear that there could be some misunderstandings and so the Respondent should, perhaps, have done more to mitigate that.

133. There is no requirement for employers to obtain an independent interpreter but possible adjustments could have been made using, for example, another Kurdish colleague or possibly allowing his brother to attend, albeit that is not a requirement. Alternatively, as mentioned, at the very least, providing the evidence in advance to give him time to translate and prepare.

134. I note the Claimant did raise the possible issue of an interpreter when he made what he called an error in defending the allegation. That said, the meeting notes signed by the Claimant and his representative do suggest a largely meaningful and comprehensible dialogue.

135. It seems to me the Respondent made adequate adjustments for the Claimant's sickness absence but they should have checked that the disciplinary invite letter was received before proceeding with the Hearing, At the very least they should have called him to establish the position before dismissing.

136. It seems to me that, as a result, the dismissal was premature and this, coupled with the earlier failings in relation to language and providing the evidence, given the size and resources of Tesco, is enough to take the process outside the band of reasonable responses.

137. As a result the dismissal was procedurally unfair. That means I then have to determine what would have happened but for the unfairness.

138. It seems to me that, having established that the invite had not been received, the invite should have been resent with the full investigation

pack and then the disciplinary hearing reconvened. It is unclear, as indeed the Claimant confirmed, whether or not he would then have attended but, in trying to establish what was most likely to happen, it seems, it is likely that it would have mirrored the appeal process.

139. Ultimately, the disciplinary hearing would have been heard with the same difficulties that arose in the appeal and so the final Hearing was likely to have been on 3 May 2018.

140. At that hearing the additional witness evidence would have been put to the Claimant and he would have denied all of it as he did before me. It would not have been unreasonable for the respondent to prefer the witness evidence in those circumstances.

141. The incident of 20 December 2017 in relation to the tongue gesture, on its own was, potentially, not enough to warrant a dismissal. However, when coupled with the other evidence and particularly the Facebook entries and the Claimant's highly implausible explanations for those, dismissal was well within the band of reasonable responses open to the respondent. Not least because the claimant's failure to recognise his actions or show remorse and hence the risk that it would happen again, was very real.

142. As a result, if the procedural defects had been rectified, the Claimant would have been fairly dismissed on 3 May 2018.

143. There would have been no further appeal as he elected not to avail himself of that and so the losses are limited to the lost wages between 22 March and 3 May 2018.

144. The Claimant's claim of unfair dismissal succeeds, but it would have been dismissed fairly on 3 May 2018 in any event.

145. His claim for unlawful deduction from wages fails and is dismissed.

Employment Judge Broughton

18 May 2020