EMPLOYMENT TRIBUNALS

Claimants		Respondent
1. Mrs T Bedford **2. Mr R Bedford**	v	**Sweetings of Leeds Limited**

Heard at: **By CVP** **On:** **24, 25 September 2020**

Before: **Employment Judge Davies**

Appearances:
For the Claimants: **In person**
For the Respondent: **Mr R Manning (solicitor)**

RESERVED JUDGMENT

1. The First Claimant's claims of unfair dismissal and breach of contract (notice pay) are well-founded and succeed. The amount of compensation and damages due to her will be determined at a separate remedy hearing.

2. The First Claimant's claim for pay in lieu of accrued holiday is not well-founded and is dismissed.

3. No deduction should be made from the First Claimant's compensation to reflect any chance that she would have been fairly dismissed in any event.

4. The Respondent unreasonably failed to comply with the ACAS Code of Practice on disciplinary and grievance procedures and it is just and equitable to increase the First Claimant's compensatory award for unfair dismissal only by 25%.

5. The First Claimant contributed to her dismissal by blameworthy conduct and it would be just and equitable to reduce her compensatory award for unfair dismissal by 50%. It would be just and equitable to reduce her basic award for unfair dismissal by 50% because of her conduct before her dismissal.

6. The First Claimant did not make a request for a written statement of the reasons for her dismissal and her complaint under s 93 Employment Rights Act 1996 is not well-founded and is dismissed.

7. The Second Claimant's claims of unfair dismissal and breach of contract (notice pay) are well-founded and succeed. The amount of compensation and damages due to him will be determined at a separate remedy hearing.

8. No deduction should be made from the Second Claimant's compensation to reflect any chance that he would have been fairly dismissed in any event.

9. The Respondent unreasonably failed to comply with the ACAS Code of Practice on disciplinary and grievance procedures and it is just and equitable to increase the Second Claimant's compensatory award and damages for breach of contract (notice pay) by 25%.

10. The Second Claimant did not contribute his dismissal by blameworthy conduct.

11. The Second Claimant did not make a request for a written statement of the reasons for his dismissal and his complaint under s 93 Employment Rights Act 1996 is not well-founded and is dismissed.

REASONS

Technology

1. This hearing was conducted by CVP (V - video). The parties did not object. A face to face hearing was not held because it was not practicable and all the issues could be dealt with by CVP. The respondent's representative's connection failed early in the afternoon on day one and it was necessary to adjourn to the next day.

Introduction and preliminary matters

2. This was the final hearing of claims of unfair dismissal, breach of contract (notice pay) and for accrued holiday pay brought by the claimants, Mr and Mrs Bedford, against their former employer, Sweetings of Leeds Ltd. The claimants represented themselves and the respondent was represented by Mr Manning (solicitor).

3. This claim was meant to be heard in February 2020. The hearing was postponed on the day, when Mr Sweeting did not attend on medical grounds. EJ Evans made case management orders on that occasion. The re-arranged hearing was then cancelled because of the coronavirus pandemic and was finally listed in front of me by CVP.

4. Case management orders were made when the claim was first presented. Witness statements were due to be exchanged in October 2019. The claimants complied. The respondent did not produce its statement until December 2019. At that stage a statement was produced for Mr Sweeting. Mr Manning was by then representing the respondent and he advised on the drafting of the statement. No other statement was produced. As I have indicated, the final hearing was then postponed in February 2020. Mr Manning was present and made the postponement application on the respondent's behalf. The Tribunal stored the hard copy hearing files for use at the re-listed final hearing. At the start of the week, given that some months had passed and that the hearing was to be conducted by CVP, I asked Tribunal staff to check with the parties whether there

were any additional documents that were going to be relied on and that had not been included in the files in February. That prompted the respondent to send two undated "statements" apparently written by former employees of the respondent. They were not in the form of proper witness statements, they were undated and they did not contain a statement of truth. Mr Manning did not ask to call the authors as witnesses. In those circumstances, I simply indicated that I would attach very little weight to those documents.

5. At the outset of the hearing, Mr Manning indicated that he was preparing a further witness statement, for a Mrs Taylor. He was seeking to call her as a witness. He could provide no satisfactory explanation why a party who had been legally represented since at least December 2019 was seeking to rely on evidence almost a year after the deadline for exchanging witness statements (and indeed had still not at that stage actually produced a statement). The potential relevance of evidence from Mrs Taylor was clear from the claim forms. She is named by both claimants in their brief narrative of events. The indication that it was not until Mr Manning came to prepare for this hearing that he realised its relevance is simply not a satisfactory explanation. Mr Manning has been representing the respondent since December last year at the latest, and was indeed involved in advising on witness evidence at that stage. He presumably prepared for the hearing in February 2020 that was postponed. The relevance of evidence from Mrs Taylor plainly could and should have been identified from the outset.

6. A statement for Mrs Taylor was emailed to the Tribunal and the claimants at lunchtime on the first day of the hearing. In the afternoon, Mr Manning was unable to connect successfully to the CVP hearing room, so it was eventually necessary to adjourn to the second day. While the claimants and Mr Sweeting were still connected to the hearing, I explained to the claimants that they should go through Mrs Taylor's statement and prepare questions for her, in case I decided to allow her to give evidence. They should also identify anything in the statement that they were unable to deal with or any further evidence that they would need to deal with the points she made. Mr Sweeting asked me to make a decision there and then about Mrs Taylor's evidence, but I explained that I could not do that while Mr Manning was not present: he was representing the respondent and would put forward arguments on its behalf.

7. Mrs Taylor's witness statement dealt with what the claimants said about her involvement in events. It also included serious accusations about the claimants made for the very first time. The claimants identified documentary evidence that they would have asked for if they had seen this evidence sooner. It was clear that admitting those parts of Mrs Taylor's statement would cause significant prejudice to the claimants. Given the history of these proceedings, it was wholly inconsistent with the overriding objective to postpone the hearing for these documents to be obtained and neither party wanted me to do that. I therefore decided that those parts of Mrs Taylor's evidence should not be admitted. However, the remaining paragraphs were relevant to the issues and dealt with matters that were raised by the claimants in their evidence or by Mr Sweeting in his. The failure to produce this evidence at an earlier stage, particularly when the respondent was legally represented at all relevant times, was inexcusable. However, my concern was with the overriding objective and the interests of

justice. I was satisfied that the claimants were in a position to question Mrs Taylor about the remaining parts of her statement and that the prejudice to them of allowing her to give that evidence was relatively minor. This was relevant evidence and it was in the interests of justice to admit it. I therefore admitted Mrs Taylor's evidence, apart from paragraphs 3, 6 and 7 of her witness statement.

8. I therefore heard evidence from both claimants and from Mr Sweeting and Mrs Taylor.

9. During Mr Sweeting's evidence, it became clear that the claimants had requested disclosure of potentially relevant evidence in these proceedings, and that it had not been disclosed. That included evidence about the claimants' correct employment dates, invoices and receipts relating to the use of a vehicle involved in the events of 10 June 2019, a letter from the Traffic Commissioner in March 2019 (relevant to whether Mr Bedford was performing his role as Transport Manager satisfactorily) and CCTV footage from 10 June 2019. Nor had relevant evidence generally been disclosed, such as payslips and evidence of holiday dates. Mr Sweeting's explanations included that he did not want to provide the evidence, that it was "none of your business" and that he "didn't feel like to." I raised my concerns about whether a fair hearing was possible if potentially relevant evidence had not been disclosed to the claimants. Mr Manning's suggestion that this could be overcome by allowing Mrs Taylor to give evidence on the respondent's behalf about the disputed matters was plainly misconceived. Allowing a second witness for the respondent to give evidence does not overcome the fact that the claimants were not provided with potentially relevant evidence to enable them to challenge that evidence. However, neither party wanted these proceedings to be delayed further by adjourning to enable proper disclosure to take place. I therefore indicated that I would proceed but that if the respondent's witnesses referred to or relied on evidence that that the claimants had not seen, little or no weight would be attached to that.

10. I note for completeness that when Mr Bedford initially gave his evidence, by oversight I did not administer an oath or affirmation. I realised the oversight and Mr Bedford then made an affirmation and confirmed the truth of the evidence he had already given. Mr Manning agreed with this course of action.

Issues

11. The issues to be determined in each case were as follows:

Unfair dismissal

11.1 What was the reason for the claimant's dismissal? Did the respondent have a genuine belief in misconduct?

11.2 If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:

- 11.2.1 there were reasonable grounds for that belief;
- 11.2.2 at the time the belief was formed the respondent had carried out a reasonable investigation;
- 11.2.3 the respondent otherwise acted in a procedurally fair manner;
- 11.2.4 dismissal was within the range of reasonable responses.

11.3 If there is a compensatory award for unfair dismissal, how much should it be? The Tribunal will decide:
- 11.3.1 What financial losses has the dismissal caused the claimant?
- 11.3.2 Has the claimant taken reasonable steps to replace his/her lost earnings, for example by looking for another job?
- 11.3.3 If not, for what period of loss should the claimant be compensated?
- 11.3.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- 11.3.5 If so, should the claimant's compensation be reduced? By how much?
- 11.3.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 11.3.7 Did the respondent unreasonably fail to comply with it?
- 11.3.8 If so is it just and equitable to increase any award payable to the claimant? By what proportion, up to 25%?
- 11.3.9 If the claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?
- 11.3.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
- 11.3.11 Does the statutory cap of fifty-two weeks' pay apply?

11.4 What basic award is payable to the claimant, if any?

11.5 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

Notice pay

11.6 Was each claimant guilty of gross misconduct or did each claimant do something so serious that the respondent was entitled to dismiss him/her without notice?

Holiday pay

11.7 Did the respondent fail to pay the claimants for annual leave accrued but not taken when their employment ended?

ACAS uplift

11.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

11.9 Did the respondent unreasonably fail to comply with it?

11.10 If so is it just and equitable to increase any award payable to the claimant in respect of notice pay or annual leave? By what proportion, up to 25%?

Written reasons for dismissal

11.11 Did the claimants make a request for a written statement giving particulars of the reasons for their dismissal in letters dated 2 July 2019?

11.12 If so, did the respondent unreasonably fail to provide such a statement?

Findings of fact

12. I begin with some general findings about credibility. I found that both Mr and Mrs Bedford were witnesses doing their best to give accurate evidence to the Tribunal. What they said in their witness statements was generally consistent with what they had said throughout and their oral evidence, although there were of course some minor differences. Mrs Bedford made appropriate concessions, for example she accepted as soon as she was asked in cross-examination that she had sworn at Mr Sweeting on 10 June 2019 and she agreed that she had once been sent home when she was upset about somebody driving into her new car and laughing about it. Their recollection of events was not always complete but that is unsurprising when these events took place more than a year ago.

13. By contrast I found Mr Sweeting's evidence wholly unreliable. He repeatedly contradicted himself in his oral evidence, and his oral evidence was inconsistent with his witness statement and the written documents. The language used in Mr Sweeting's witness statement seemed to me to be the language of his legal representative, not his own. Mr Sweeting gave the impression that he did not care whether his evidence was accurate or not. By way of example:

    13.1 Mr Sweeting was adamant in cross-examination that he had never offered Mr Bedford a job after his dismissal. His own ET3 response form he said that he offered him a job as a driver.
    13.2 Mr Sweeting said in cross-examination that he had never received a letter from Mr Bedford dated 16 September 2019. Mr Bedford pointed out that it had been signed for on 18 September 2019. Mr Sweeting then said he had not seen the letter at the time. His attention was drawn to paragraph 16 of his own witness statement written a few weeks later, in which he expressly stated that he had been asked to provide information and documents by Mr Bedford and dealt in turn with the requests made in the letter of 16 September 2019. When asked about that he said, "If I've seen it I've seen it."
    13.3 In his evidence about 10 June 2019, Mr Sweeting said in his witness statement that he received a call at home from Mr Bedford telling him that a truck needed some parts and that the supplier had put the respondent on stop. He said that he went down to the yard and only then did Mr Bedford tell him that the damage had been caused by a driver hitting a wall at the rear of the yard. He gave a detailed account of a conversation and an apology from Mr Bedford. In his oral evidence he gave a completely different account. He said that he had found out about damage to the wall from the neighbour whose wall it was. He had therefore called Mr Bedford and then come down to the yard. He had not seen Mr Bedford in the yard. When asked why the two accounts were different he said that he did not know. He said that he had "just remembered" that it was the guy who owned the wall who told him about the damage. That's why he was "annoyed."
    13.4 Further, when asked about CCTV footage, Mr Sweeting said that the damaged vehicle did not go out the next day. In his witness statement Mr Sweeting had said that on 10 June 2019 he made a call and organised obtaining the parts that were needed to repair the vehicle because it was due out the next day. There was no suggestion that the vehicle did not go

out the next day. When he was asked about this, at one stage he said that the vehicle did not go out because it was not repaired. That was because he just said to leave it in the yard and the fitters repaired it when he told them to. Later, he said that the vehicle did not go out because the parts were not available. Those explanations contradicted each other and what he said in his witness statement.

14. Mrs Taylor's evidence was less unreliable. However, she had not been asked to prepare a statement recalling these events until September 2020 – between one and two years after the events she was describing. She did not appear to have consulted relevant documents when preparing her statement. Therefore, she was not always able to give an accurate account of what had happened and when. Her recollection seemed to me to be very much influenced by the benefit of hindsight.

15. With those preliminary observations in mind, I make the following findings of fact.

16. The respondent is a small company based in the outskirts of Leeds that runs bulk tippers. It has around 12 employees.

17. Mr Bedford started working for the respondent in 2009 as a self-employed driver. He became an employee in January 2014. That was his oral evidence. He did not have any written documents, but he remembered that it was January 2014. Mr Sweeting did not deal with this in his witness statement. In cross-examination he said that Mr Bedford started as an employee in January 2015, but Mrs Taylor, who was present in the room with him, whispered that answer to him. I warned them both that Mrs Taylor would be asked to leave the room if there was any repeat, and I placed little weight on Mr Sweeting's evidence. Mrs Taylor said that Mr Bedford's start date was 19 January 2015. She had obtained that information from the payroll records, and had written a letter in May 2020 confirming that date. The payroll records had not been disclosed to Mr Bedford. Mrs Taylor had only become the company's accountant in late 2018 and was relying on information somebody else had entered onto the payroll records. There was no written contract confirming that date. There was a later contract, but that incorrectly failed to recognise any of Mr Bedford's prior service. Mr Bedford was adamant that he started as an employee in January 2014. On the balance of probability I preferred his evidence.

18. In January 2016 following a public inquiry, Mr Sweeting lost his licence as a transport manager. The Traffic Commissioner found that he had lost his repute as a transport manager. He described him as always ready to blame others and rarely accepting of his own responsibility. He was disqualified from acting as a transport manager for two years. Mr Sweeting's repute as a transport operator was found to be "severely damaged" but just remained intact and the business narrowly escaped being disqualified from holding an operator's licence in future. However, it was required to appoint a competent, full-time employed transport manager in order to retain its licence. Mr Bedford held the relevant licence. He was appointed as Transport Manager in January 2016. He was given a written employment contract at that stage. It wrongly said that his continuous employment started on 18 January 2016.

19. Mr Bedford's contract said that his holiday year ran from 1 January to 31 December. He was entitled to 20 days' holiday plus bank holidays. If his employment finished part way through the year his entitlement would be calculated and rounded up to the nearest whole day. His contract referred to disciplinary and grievance procedures. I was not shown any procedures.

20. Mrs Bedford started work for the respondent in July 2010 as an office administrator. Mr Sweeting did not know her start date. Mrs Taylor again relied on information entered by somebody else on the undisclosed payroll records. Mrs Bedford gave clear evidence about her start date, referring to the person from whom she took over and how that came about. On the balance of probability I preferred her evidence.

21. Mrs Bedford was never given a written contract of employment. Mr Bedford said that he did not know he was obliged to provide one until after Mrs Taylor was taken on. She advised him he should provide written contracts but he did not take any steps to do so.

22. I was shown no written evidence of any shortcoming in Mr or Mrs Bedford's work. Mr Sweeting suggested in his evidence that there were many concerns about their conduct and performance and that he had spoken to them about these matters on numerous occasions. Mr and Mrs Bedford disagreed. Where there was a conflict, I preferred Mr and Mrs Bedford's evidence. In particular:

    22.1 Mr Sweeting said that both Mr and Mrs Bedford had drink problems. I was shown no evidence to support that and I accept their evidence that they did not. Mr Sweeting said that Mrs Bedford had health issues related to an alcohol problem, and took time off for medical appointments as a result. Mrs Bedford produced hospital appointment letters showing that her appointments were for glaucoma and nothing to do with drink. Mr Sweeting suggested that if he called Mrs Bedford in the evening her speech would be slurred because she drank in the evening. Mrs Bedford said that she was on medication for anxiety, which she had to take in the evening because it did affect her and make her drowsy, and she needed to be fit for work. When asked whether that might be the explanation for apparently slurred speech, Mr Sweeting said that he did not know and that he took his medication in the morning. That is plainly irrelevant. I accept Mrs Bedford's evidence that she took her medication in the evenings and that this might cause slurred speech.

    22.2 Mr Sweeting said in his witness statement that on "a number of" occasions he had spoken to Mr Bedford because he had come into work after a heavy night the previous evening but later in his witness statement he referred to "the incident" when Mr Bedford came into work the worse for wear after a heavy night. In cross-examination he referred to only one such alleged incident. Mr Bedford said that it had never happened. He relied on the absence of any record of any warning being given to him about what would be a very serious matter. Given the inconsistency within Mr Sweeting's own statement about this, and my view of his evidence more generally, I again preferred Mr Bedford's account. It seemed to me that Mr Sweeting was simply making wild and unsubstantiated allegations, in part twisting things that did happen (such as medical appointments and

slurred speech), in an attempt to paint a false picture that suited his own ends.

22.3 As far as Mr Bedford was concerned, I accept his evidence that he was a hard-working employee who had had no warnings or meetings about his conduct prior to June 2019. I accepted his evidence that the Traffic Commissioner had written to him in March 2019 to say how well they were doing with the operator licence. Mr Bedford had requested disclosure of that document but Mr Sweeting had not provided it because "he didn't feel like to."

22.4 Mrs Taylor made criticisms of Mr Bedford in her witness statement. I did not accept those, as explained below.

23. As far as Mrs Bedford was concerned, Mr Sweeting's evidence in his witness statement was that she was incompetent, and that she had a poor attitude. He said that she would go days on end without talking to him. He said that he had spoken to her about her attitude and behaviour and warned her that she would be unable to continue with her job. It was put to Mrs Bedford in cross-examination that this was a couple of years before 2019. Mrs Bedford accepted that there was one occasion about 15 months before she lost her job, when she had been upset at work. She had a new car and one of the mechanics backed into it and damaged it. They were laughing and she was upset. Mr Sweeting told her to get herself home. There was no other occasion, she was not sullen and she did not go for days on end without talking to him. I accepted Mrs Bedford's evidence. Again, it seemed to me that Mr Sweeting was twisting and exaggerating things that had happened in an attempt to create a false picture.

24. Mrs Taylor also made criticisms of Mrs Bedford in her witness statement. Again, I did not accept those, as explained below.

25. In autumn 2018 Mrs Taylor was brought in as the company's accountant. That seems to have been prompted by a visit from HMRC, at which concerns were raised about the company's record keeping and systems although, again, the respondent had not disclosed any relevant documents. It was also suggested that the company was in financial difficulties. Neither Mr nor Mrs Bedford accepted in cross-examination that they knew this was the case and Mr Manning sought to make much of this, but I accepted their evidence that they did not see the accounts and would not know about the company's finances. It appears that Mr Sweeting bought an expensive car at around this time, which would paint a different picture.

26. Mrs Taylor is an accountant. Her evidence was that she was brought in primarily to provide accountancy services, but also to do some consultancy work effectively as a financial director to try and turn around the workings and practices of the company. In cross-examination, she began by saying that she "never" gets involved in the day to day running of the business, just anything that has an impact on the finances, but her evidence of her involvement with the respondent suggested that she did go on to involve herself in the day to day running of the business, on occasions purporting to tell both Mrs Bedford and Mr Bedford how to do their jobs. Although Mrs Taylor said that she was brought in to provide consultancy services as well as accountancy services, it does not appear that Mr or Mrs Bedford was ever told that. I asked her if she was given line management responsibility for them and she initially said that she was asked

to instigate that. I asked her to confirm that she was saying that she did have line management responsibility for Mr and Mrs Bedford, and she then said, "I wouldn't say that but an authority, yes." Later in her evidence, she volunteered that Mr Sweeting had "failed" to warn Mr or Mrs Bedford about her arrival on her first day or what her position would be. She said that she told them she was going to find out what she could and make recommendations, so she needed their help and assistance. That is not the same as telling somebody that you will be their line manager or have been asked to manage them. Mrs Taylor was asked if Mr and Mrs Bedford had ever been told that Mrs Taylor's job was to manage them or give them warnings about their performance. She said, "We had those conversations with them in the office and Mr Sweeting. And with the other drivers." She was pressed about this, and said that it was in January or February. She was asked to confirm if she was saying that she had told Mr and Mrs Bedford that she would now be managing them and she said, "Possibly not in those terms." I did not find Mrs Taylor's evidence about this convincing. I find that she was brought in to provide accountancy services and make recommendations for improving the company and its finances. She was not brought in to manage Mr or Mrs Bedford and they were never told that she had any line management responsibility or authority over them. However, she came into the company and acted as though she were their manager, giving them instructions about how to do their jobs. In Mr Bedford's case, in particular, this included instructions on areas over which she had no expertise. That is the context in which her involvement with Mr and Mrs Bedford is to be viewed. It might well be expected that they would react differently to an instruction given by their line manager or boss, from the way they would react to an instruction given by the company's external accountant.

27. Mrs Bedford's evidence was that she had worked for the company under Mr Sweeting's father, until he passed away in April 2016. She was asked by him to help with the basic books and she did so. She carried on without problems until late November 2018. Around that time, Mrs Taylor came into the office, essentially unannounced, and when Mrs Bedford asked who she was, she told her that she was here to see whether Mrs Bedford had a job or not. Mrs Bedford said that she had a job and Mrs Taylor told her that she might not. In cross-examination, Mrs Taylor accepted that she could "recall a similar" conversation and could "recall a lot of that." In those circumstances I accept Mrs Bedford's evidence. It is clear that Mrs Taylor and Mrs Bedford did not have a good relationship, but it seems to me that responsibility for that starts with Mrs Taylor: the relationship began with Mrs Taylor walking in and telling Mrs Bedford she was there to see whether or not Mrs Bedford had a job.

28. Mrs Bedford said that Mrs Taylor began to go through her computer system, set up with the previous accountant, and kept shaking her head as though Mrs Bedford had done something terribly wrong. She said that Mrs Taylor was rude to her and made her feel uncomfortable. As time went on, she began to feel more panicky and be unable to sleep, so her GP increased her medication. Mrs Bedford gave a particular example about the respondent's accounting system. Mrs Taylor said that she tried to introduce a new financial bookkeeping package called Xero. In her witness statement she said that Mrs Bedford's response to her "request" was totally negative and she said things like "No I can't" and "I am not prepared to try to learn." In cross-examination, Mrs Bedford suggested that

Mrs Taylor had given her five minutes over her shoulder, and told her the package was "idiot proof." Eventually Mrs Taylor accepted that she had probably told Mrs Bedford it was "idiot proof" (because that is how it advertised itself). She accepted with hindsight that telling somebody who lacked confidence and was not a trained bookkeeper that a package was "idiot proof" might not be a helpful approach. Mrs Taylor said that she gave Mrs Bedford a login, but she never accessed it. Mrs Bedford's evidence was that she wanted to learn the new system. Weighing all the evidence, I find no evidence of any misconduct in this respect on Mrs Bedford's part. On the contrary, Mrs Taylor arrived unannounced and essentially told Mrs Bedford she was there to see whether she would have a job or not. That set the tone for their interactions and put Mrs Bedford on edge. Mrs Taylor was not Mrs Bedford's line manager and Mrs Bedford was never told that she was or asked to follow instructions from her. A month or two later, Mrs Taylor wanted to introduce Xero, but instead of engaging appropriately with Mrs Bedford about it, and providing appropriate training and support, she set Mrs Bedford up on the system, talked to her about it for five minutes, told her it was "idiot proof" and left her to it. If Mrs Bedford did not access the system after that stage, that is not a matter of misconduct. There was no attempt to address this as a capability issue or to provide support or training.

29. Mrs Taylor's evidence was that she gave Mrs Bedford a verbal warning two days before her employment ended, and that Mrs Taylor told her that she was, "Not taking this from you." Mrs Taylor said that she reported this to Mr Sweeting. Mrs Bedford said that this did not happen. Mr Sweeting made no mention of any such conversation or warning in his witness statement. In the ET3 response he suggested that he had given Mrs Bedford a verbal warning of some kind, but made no reference to any warning from Mrs Taylor. The first time this was suggested was in a witness statement written by Mrs Taylor more than 15 months after the events in question. I prefer Mrs Bedford's evidence that no such warning was given. I do not accept Mrs Taylor's evidence that she reported to Mr Sweeting on Mrs Bedford's performance or Mrs Bedford's response to Mrs Taylor's alleged warning two days before her dismissal.

30. As regards Mr Bedford, Mrs Taylor criticised him in her witness statement. She said that she had commented on the use of the vehicles, because maximum use had to be made of them for profitability. If a waggon could carry out 8 loads in a day and was only carrying 7, she "blamed the transport manager for failure" but he "would not take any criticism." Mr Bedford asked her about this in cross-examination. He suggested to her that there could be a problem stopping a vehicle from doing 8 loads. She agreed, but said that if the driver had the availability to do another load she would see that as a necessity. Mr Bedford pointed out, for example, that the driver might not have enough driving hours left to do an eighth load. Mrs Taylor accepted this. This seemed to me to be a clear illustration of how she had conducted herself at the time. She "blamed the transport manager for failure" if the vehicles were not doing the maximum number of loads, but if he pointed out a reason for that, within his area of expertise, such as driving hours, she said that he could not take any criticism.

31. Mrs Taylor also accused Mr Bedford of being "negligent" in keeping "the men's hours and worksheets" so the wages could be properly calculated. She said that she gave him a warning about this and his attitude was to brush her off "as if she

had no authority." That is perhaps a telling remark, given what her position was. Mr Bedford asked her about this too. Mrs Taylor said that the worksheet was a calculation of the hours, what days the drivers had worked, where they had been, what loads they had delivered and so on. Mr Bedford said that they did not have any such worksheet to complete when he worked there. Mrs Taylor said that she had brought it in and requested Mr Bedford to fill in a spreadsheet and send it to her. She was asked when that was, and she eventually said that it was January. She then said that "a start of a makeshift one" was emailed to her and that she "requested an improvement", which was not provided. Mr Bedford said that there was a document he used to send her every Friday morning that included the hours worked by the drivers but not the loads delivered. Mrs Taylor then said, "The sheet he filled in was the start of the paperwork we discussed, days worked. Yes he was filling that in. There was communication between us asking for more information about what they were doing." She was then asked again whether the sheet asked for information about the loads delivered and she said it did not, "That was a conversation." So, it appeared that Mr Bedford was filling in the documentation that was required of him every Friday, providing details of the days and hours the drivers worked. There was no worksheet requiring him to fill in other information. At some point, Mrs Taylor, who was not his line manager, verbally asked him to provide other information, e.g. about loads delivered. That is fundamentally different from the accusation in her witness statement that he was "negligent" in keeping the hours and worksheets so the wages could be properly calculated. That simply did not stand up to scrutiny when Mrs Taylor was questioned.

32. That is the background to the events of 10 June 2019. As I have indicated above, Mr Sweeting's account of what happened that day was inconsistent and unreliable. Mr Bedford's account of what happened has been consistent throughout. I prefer his version and I make the following findings.

33. On that day the business was short of drivers and Mr Sweeting had accepted a job, so Mr Taylor had to do two runs himself driving an HGV from Sleaford to Sherburn, starting at 3.15am. Mr Bedford returned to the yard at around 2.30pm He saw Mr Sweeting, who went home shortly afterwards telling Mr Bedford he was not feeling well. At around 4.20pm, a driver reversed an HGV into a wall outside the yard, damaging both the wall and the vehicle. The fitter, whose job it was, tried to source parts to repair the vehicle. He was unable to do so because the parts company had put the respondent "on stop" for not paying its bills. Mr Bedford understood from the fitter that he had spoken to Mr Sweeting (who was his friend) and told him what had happened, that the wall had been damaged and that they could not get parts. Mr Bedford gave instructions that the spare waggon should be used. Mr Bedford locked up and set off home. On his way he received a call from Mr Sweeting. They talked about what had happened and agreed that they would have to get a builder to repair the wall and the driver would have to pay towards it. There was no issue between them. About fifteen minutes later, Mr Sweeting called Mr Bedford back. This time he was angry and abusive. He told Mr Bedford to go back to the yard and fix it, so Mr Bedford set off back to the yard. It seems to me most likely that Mr Sweeting had indeed received an angry call from the wall's owner during those 15 minutes. As he said in his oral evidence, he was annoyed. That was not because he did not know what had happened; he did. It may be that he had not realised the full extent of

the damage to the wall. The wall's owner had been angry with him. I find that he took this out on Mr Bedford.

34. Before Mr Bedford made it back to the yard, he received another call from Mr Sweeting. This time, Mr Sweeting told him that he was "finished" and to go home. Mr Sweeting also told him to tell his wife that she was "finished" too.

35. The final call was prompted by a conversation between Mrs Bedford and Mr Sweeting. Mrs Bedford saw Mr Bedford pull up on their home driveway, then drive off again. This must have been just after Mr Sweeting had instructed Mr Bedford to return to the yard. She tried to call her husband to find out what was happening and could not get hold of him, so she called Mr Sweeting. Mr Sweeting said that she was slurring her speech and drunk. Mrs Bedford said that she was not drunk. If she sounded slurred it was because she had taken her medication. As explained above, I accepted her evidence about this.

36. Mrs Bedford accepted straightaway in cross-examination that she had sworn at Mr Sweeting during this call. Mr Sweeting said that he was "controlled" and did not raise his voice or swear. His account of the conversation in his witness statement was wholly implausible. He suggested that he had told Mrs Bedford that her behaviour was "gross misconduct" and that "in the circumstances it would be impossible for me to accept that she could continue her employment and therefore the employment was terminated." That was the language of a lawyer. Having heard Mr Sweeting give evidence, it was not his language. Given this, and my view of his evidence more generally, I prefer Mrs Bedford's account of the conversation. Further, I take into account Mr Bedford's unchallenged evidence that Mr Sweeting regularly swears in the workplace and Mr Sweeting's own evidence in cross-examination that he was annoyed after the angry wall owner had telephoned him. That was, of course, just before his conversations with Mr Bedford, then Mrs Bedford.

37. I therefore find that Mrs Bedford called Mr Sweeting and asked him if he knew where her husband was going. Mr Sweeting told her that Mr Bedford was going back to work because he had not "done his fucking job properly." Mrs Bedford was angry and upset because Mr Sweeting was shouting and swearing at her and bad mouthing her husband, who worked hard and had been working since 3:15am that day. She lost her cool and swore at Mr Sweeting. She accepted she may have sworn at him four times during their conversation. She ended up telling him to "fuck off" and putting the phone down on him. Mr Sweeting was also swearing and using a raised voice during the phone call.

38. It was that conversation that led Mr Sweeting to telephone Mr Bedford the last time and tell him that both he and his wife were "finished."

39. Mr Sweeting gave elaborate explanations in his witness statement about the reasons for dismissing Mr and Mrs Bedford. Partly they related to alleged previous shortcomings in their conduct and warnings about those, which I have found above did not happen. Mr Sweeting suggested that Mrs Bedford was on a final warning because of the incident when her car was damaged and she went home. It became clear in the oral evidence that this happened more than a year earlier, and I find that no warning of any kind was given. I find that Mr Sweeting

dismissed Mrs Bedford because she had sworn at him and put the phone down and not for any other reason. I find that he dismissed Mr Bedford for the same reason, i.e. because of his wife's conduct. In his witness statement Mr Sweeting suggested that he had already decided to dismiss Mr Bedford because he had failed in his duties as transport manager by not telling Mr Sweeting the truth about the accident on 10 June 2019, and showing no concern about the loss of revenue if the vehicle was not repaired and ready to work the next day. The explanation given in the witness statement is plainly nonsense. Mr Sweeting did not even stick by this account of the events of 10 June 2019 in his oral evidence. He accepted that the vehicle did not go out the next day, but volunteered that it was "not much of an issue" because they had a spare truck. Further, it was only after the call with Mrs Bedford that Mr Bedford was dismissed. Nothing had changed about the incident in the yard since Mr Sweeting last spoke to Mr Bedford. Therefore, I simply do not believe Mr Sweeting's complex justifications for dismissing Mr Bedford as set out in his witness statement. I find that the real reason was much more straightforward. He dismissed Mr Bedford because of what had happened with Mrs Bedford.

40. Mr Sweeting contacted Mr Bedford a day or two later to ask for his company car and other items back, and they were returned on 12 June 2019.

41. Mr Sweeting did not give any evidence or explanation about why he did not follow a disciplinary process before dismissing Mr and Mrs Bedford, nor did he suggest that there was any reason not to have done so. Mrs Taylor was asked whether she had given any advice to the respondent about disciplinary procedures. She said she had done so after it was too late. She had not given advice before Mr and Mrs Bedford were dismissed. It was not her area of expertise, but after the event she said that she would have advised the respondent to seek HR or legal advice. No steps were taken after 10 June 2019 to try to put matters right, for example by offering an appeal against dismissal.

42. The evidence about payments made to Mr and Mrs Bedford on termination of their employment was confused and, again, the relevant payslips were not disclosed. Nobody suggested that they had been dismissed with notice or pay in lieu of notice and I find that they were not.

43. Both Mr and Mrs Bedford received a payment on about 21 June 2019. Mr Bedford was paid £2225 net and Mrs Bedford was paid £725 net. Mrs Taylor said that this was pay for two days worked in the week in which they were dismissed, their week in hand and holiday pay.

44. It was not disputed that Mrs Bedford's holiday year ran from 1 January to 31 December, like her husband's. By 10 June 2019 Mr and Mrs Bedford had therefore each accrued 13 days' holiday (rounded up to the nearest whole number, as in Mr Bedford's contract). They had each taken 4 bank holidays. Their evidence was that they had also taken one day in January and one day in March. Mrs Taylor said that they had each taken one week. She said that this information would have come to her from the respondent's office at the time. She said that she could not now make an accurate comment about when holidays were taken. The relevant documents had not been disclosed. In those circumstances, on the balance of probability I accept the clear account given by

Mr and Mrs Bedford. That means each of them had taken 6 days' holiday in total by 10 June 2019, so each of them had 7 days' accrued but not taken when their employment ended.

45. Mr Bedford's net weekly pay was £649.71. Seven days' net holiday pay for him would be 7/5 x £649.71 = £909.59. He was paid the unexplained sum of £2225 net. Assuming he was paid one week in hand (£649.71), for two days in the week in which he was dismissed (£259.88) and for seven days' accrued holiday (£909.59) that would come to £1819.18. That would mean he was paid in full for his accrued holiday.

46. Mrs Bedford's net weekly pay was £249.68. Seven days' net holiday pay for her would be 7/5 x £249.68 = £349.55. She was paid the unexplained sum of £725 net. Assuming she was paid one week in hand (£249.68), for two days in the week in which she was dismissed (£99.87) and for seven days' accrued holiday (£349.55) that would come to £699.10. That would mean she was paid in full for her accrued holiday.

47. Mr and Mrs Bedford both wrote to Mr Sweeting on 27 June 2019. They referred to a telephone conversation regarding a letter of dismissal and a full breakdown of monies paid to them as well as their P45 and P60. They both wrote again on 2 July 2019. Mr Bedford said that the reason Mr Sweeting gave him was that he was incompetent, for keeping a damaged vehicle off the roads. He explained why he did that and suggested that the company had been looking for an excuse to get rid of him. Mrs Bedford said that she had been dismissed without reason. She referred to Mrs Taylor telling her on the first day she met her that she was there to decide if she had a job or not, and said that she now felt that this is why she was dismissed. Neither Mr nor Mrs Bedford asked for a written statement of the reasons for their dismissal in their letters.

Legal principles

48. **Unfair dismissal** is dealt with in s 98 of the Employment Rights Act 1996 as follows.

> **98 General**
> (1) In determining for the purposes 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 subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
>
> (2) A reason falls within this subsection if it –
>
> …
>
> (b) relates to the conduct of the employee,
>
> …
> (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

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

…

49. If the dismissal is for misconduct, the Tribunal must decide: did the employer have a genuine belief in misconduct; was that belief based on reasonable grounds; and when the belief was formed had the employer carried out such investigation as was reasonable in all the circumstances? See *British Home Stores Ltd v Burchell* [1980] ICR 303 and *Boys and Girls' Welfare Society v McDonald* [1996] IRLR 129.

50. The question for the Tribunal is whether dismissal was within the range of reasonable responses open to the employer. The range of reasonable responses test applies to all aspects of the decision to dismiss including the procedure followed: see *Foley v Post Office; HSBC v Madden* [2000] ICR 1293 *Sainsbury's Supermarkets v Hitt* [2003] IRLR 23.

51. In an unfair dismissal claim, it is not for the Tribunal to substitute its view for the employer's. The Tribunal's role is to consider whether the employer genuinely believed that the employee was guilty of misconduct, based on reasonable grounds and following a reasonable investigation.

52. The ACAS Code of Practice on Disciplinary and Grievance Procedures applies to a conduct dismissal and the Tribunal must have regard to it. It tells employers that they should carry out investigations of potential disciplinary matters. They should then inform the employee of the problem; hold a meeting with the employee, at which they have the right to be accompanied by a trade union representative and can set out their case and answer any allegations made; inform the employee of the outcome in writing; and provide them with an opportunity to appeal. The Code is much more detailed, and it of course makes the point that what is reasonable will depend on all the circumstances, including the size and resources of the employer. However, the basic elements are as set out above.

53. As regards the remedy for unfair dismissal, a basic award is payable under s 122 and a compensatory award under s 123 of the Employment Rights Act. Both the basic and compensatory awards may be reduced because of conduct by the employee. Under s 123(6) the relevant conduct must be culpable or blameworthy; it must actually have caused or contributed to the dismissal; and it must be just and equitable to reduce the award by the proportion specified: see *Nelson v BBC (No 2)* [1980] ICR 110 CA. By contrast, the basic award can be reduced where conduct of the Claimant before the dismissal makes that just and equitable. There is no requirement that the conduct should have caused or contributed to the dismissal. In *Hollier v Plysu* [1983] IRLR 260 the EAT suggested broad categories of reductions: 100% where the employee is wholly to blame; 75% where the employee is mainly to blame; 50% where the employee is equally to blame and 25% where the employee is slightly to blame.

54. Where the Tribunal considers that there is a chance that the employee would have been fairly dismissed in any event, then the compensation awarded may again be reduced accordingly: *Polkey v A E Dayton Services Ltd* [1987] 3 All ER

974. Guidance on how to approach that issue is set out in the case of *Software 2000 Ltd v Andrews* [2007] IRLR 568.

55. Section 38 of the Employment Act 2002 applies if, when relevant proceedings were begun, the employer was in breach of its duty to give the employee a written statement of employment particulars under s 1 of the Employment Rights Act 1996. In such cases, the Tribunal must make an award of two weeks' pay to the employee, unless there are exceptional circumstances that would make it unjust or inequitable to do so. The Tribunal may, if it considers it just and equitable to do so, make an award of four weeks' pay. Relevant proceedings include unfair dismissal claims.

56. Under s 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, where an employer or an employee has unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures, a Tribunal determining an unfair dismissal claim or a breach of contract claim may (respectively) increase or decrease any award by up to 25% if it considers it just and equitable to do so.

57. As regards a claim for **notice pay**, if an employer acts in breach of contract by dismissing an employee summarily, the employee can recover damages for the failure to give notice. However, a summary dismissal is not in breach of contract where the employer can show that summary dismissal was justified because of the employee's own breach of contract. Misconduct by an employee may amount to such a breach, if the misconduct of the employee so undermines the trust and confidence inherent in the contract of employment that the employer should no longer be required to retain the employee: see e.g. *Briscoe v Lubrizol Ltd* [2002] IRLR 607 CA.

58. The Working Time Regulations 1998 give workers the entitlement to be paid for accrued but untaken **holiday** when their employment ends: regulation 14. Workers are entitled to 5.6 weeks' leave per year (28 days including bank holidays for a full-time worker). If they leave part way through the leave year, their accrued leave is calculated by reference to the proportion of the leave year that has expired. Any leave they have already taken in the leave year is deducted. Annual leave is paid at the rate of a week's pay for a week's leave.

59. Under s 92 of the Employment Rights Act 1996, employees are entitled to a written statement giving particulars of the **reasons for their dismissal**. Except in limited cases (which do not apply here), employees are only entitled to a written statement if they make a request for one. If a Tribunal upholds a complaint that an employer has unreasonably failed to provide a written statement, then under s 93 it must award the employee two weeks' pay.

Application of the law to the facts

60. Applying those legal principles to the detailed findings of fact above, I deal with the issues in turn, starting with **Mrs Bedford's** claims.

Unfair dismissal

61. As explained in the findings of fact above, I find that the reason for Mrs Bedford's dismissal was that she raised her voice and swore at Mr Sweeting during the phone call on 10 June 2019 and put the phone down on him. That was a reason related to her conduct and I accept that Mr Sweeting genuinely believed the Claimant had committed misconduct.

62. However, I have no hesitation in finding that the respondent did not act reasonably in all the circumstances in treating that as a sufficient reason to dismiss her. It did not follow any kind of disciplinary process nor did it offer any appeal. Although it was evident to Mr Sweeting on the day that Mrs Bedford had committed misconduct, that did not mean that no disciplinary process whatsoever was called for. A fair hearing would have allowed Mrs Bedford to put her case – for example saying that it was Mr Sweeting who raised his voice and swore first, saying that he regularly swore in the workplace, or explaining that she was not drunk but had taken medication that might have affected her behaviour. A fair hearing would have considered Mrs Bedford's long service and absence of disciplinary warnings, and taken into account any mitigation she put forward. A right of appeal would also have enabled those matters to be considered, and would have allowed a different person, not personally involved in the telephone conversation, to reach an objective decision about what happened and what should be done. This was a relatively small employer, but it could still have carried out a simple, fair disciplinary process. The failure to follow even the basic rudiments of a fair process was unreasonable and no reasonable employer would have dismissed Mrs Bedford in those circumstances.

63. The respondent did not give evidence about what would have happened if a fair process had been followed. I have identified above things that Mrs Bedford might have raised if there had been a fair process, including Mr Sweeting's own conduct and the fact that he was the first to swear, Mrs Bedford's medication, and her long service and any other mitigation. A fair process would have included not only a disciplinary hearing, but also an appeal conducted by somebody else, who could have reached an objective view about Mr Sweeting's role and the appropriate outcome. A fair hearing would also have proceeded on the basis that Mrs Bedford did not have any previous disciplinary warnings. The occasion when she was sent home more than a year earlier did not give rise to any such warning and Mrs Taylor had not given her any warning (nor did she have authority to do so). Those are all features that might have led to a decision not to dismiss Mrs Bedford. I was given no evidence about how a fair process would have been conducted or who would have been involved. I was not given evidence about other employees who had done similar things or about the respondent's approach in general to swearing or conduct of this kind. In all of those circumstances, it is not possible to reach any proper conclusion about what would have happened if a fair procedure had been followed. Therefore, I am not satisfied on the balance of probability that there is a chance Mrs Bedford would have been fairly dismissed in any event.

64. However, I do find that she contributed to her dismissal by her own culpable and blameworthy conduct and that it would be just and equitable to reduce both her compensatory award and her basic award as a result. On her own admission, she raised her voice, swore four times at Mr Sweeting during the conversation,

and concluded by telling him to "fuck off" and putting the phone down. Even though he swore first, and even though he was also speaking in a raised voice and swearing during the call, that is still culpable and blameworthy conduct on her part, and it contributed to the dismissal. I consider a 50% reduction in the compensatory and basic awards is just and equitable. Mr Sweeting and Mrs Bedford seem to me to have been equally to blame for what happened. They were as bad as each other during the conversation, albeit Mr Sweeting swore first.

65. The ACAS Code of Practice on Disciplinary and Grievance Procedures applied and there was no attempt whatsoever to comply with any of it. There was no investigation, no written notification of the disciplinary allegations, no disciplinary hearing, no written notice of the decision and no appeal. Mrs Bedford was simply dismissed there and then. This was not even done directly, but via her husband. I find that was wholly unreasonable. This is a relatively small company, but there was no reason it could not carry out an appropriate disciplinary process and no reason for not doing so. It had access to advice from Mrs Taylor, who clearly knew that a procedure should have been followed and advised Mr Sweeting to seek appropriate advice after the event. No steps were taken at that stage to put matters right, e.g. by offering a right of appeal. This was a wholesale failure to comply, for which no good reason was identified. In those circumstances, it is just and equitable to increase Mrs Bedford's compensatory award by the maximum 25%.

Notice pay

66. I have found that Mrs Bedford committed misconduct on 10 June 2019, when she swore at Mr Sweeting and put the phone down on him as described. The issue in her claim for notice pay is whether her conduct was sufficiently serious that it undermined trust and confidence to such an extent that the respondent should no longer be required to keep her on. I have concluded that it did not reach that threshold. That is principally because of the context in which it took place. As I have found, it was Mr Sweeting who swore first, and he too continued to use a raised voice and swear during the telephone conversation. This was a row between Mr Sweeting and Mrs Bedford in which they behaved equally badly. Given that Mrs Bedford's swearing was in response to Mr Sweeting's, and that both continued to behave in the same way, I do not find that Mrs Bedford's conduct was such as to undermine trust and confidence in the employment contract so much that the respondent should no longer be expected to keep her on. I do not lose sight of the fact that, ultimately, she told her boss to "fuck off" and hung up on him, but that conduct cannot be viewed in isolation. I also take into account the evidence that Mr Sweeting regularly swore in the workplace. That is relevant when assessing the effect of Mrs Bedford's conduct. Her own language would be expected to be less offensive, and to have less impact on trust and confidence, when the recipient was someone who was comfortable himself swearing in the workplace. When all the circumstances are taken into account, I find that Mrs Bedford's conduct did not reach the threshold that justified her dismissal without notice. She was entitled to 8 weeks' notice.

67. Although the respondent unreasonably failed to comply with the ACAS Code of Practice, I do not consider it is just and equitable in Mrs Bedford's case to apply any uplift to her notice pay. The failure to comply with the Code relates directly to

the fairness of her dismissal and it is just and equitable to award the full uplift for that part of her claim. However, Mrs Bedford did commit misconduct. I have concluded that it did not reach the threshold to justify dismissal without notice, so she is entitled to receive her notice pay, but in my view it would not be just to uplift that notice pay as well, in the light of Mrs Bedford's conduct.

Holiday pay

68. As explained in the findings of fact above, the final payment made to Mrs Bedford on 21 June 2019 was sufficient to include her outstanding pay and all of her accrued but untaken holiday, so this part of her claim does not succeed.

Written reasons for dismissal

69. The right to a written statement of the reasons for dismissal only applies if the employee makes a request for such reasons. I have found that Mrs Bedford did not make such a request. Her letter of 27 June 2019 refers to a conversation and to a request for a dismissal letter, but it does not refer to a request for the reasons for her dismissal. The request might have related to information about pay or the date of dismissal for example. The letter of 2 July 2019 does not include a request for the reasons for dismissal. Mrs Bedford did not give any evidence that she requested written reasons for her dismissal. In those circumstances, her claim under s 93 cannot succeed.

70. That brings me to **Mr Bedford's** claims.

Unfair dismissal

71. As explained in the findings of fact above, the only reason for Mr Bedford's dismissal was his wife's conduct. That is not a potentially fair reason for dismissal. Mrs Bedford's conduct clearly did not have any impact on her husband's ability to do his job or to retain the trust and confidence of his employer. For that reason alone his unfair dismissal claim succeeds.

72. However, even if Mrs Bedford's conduct had been a potentially fair reason for dismissing Mr Bedford, plainly the respondent did not act reasonably in all the circumstances in treating it as a sufficient reason to dismiss him. It followed no disciplinary or dismissal process of any kind. It did not tell him what the problem was or give him a chance to address it. It did not hold a disciplinary meeting, provide a written outcome, or give him a right of appeal. No reasonable employer would have dismissed Mr Bedford in those circumstances.

73. There is no chance that Mr Bedford would have been fairly dismissed in any event. His wife's conduct was not a fair reason for dismissing him, regardless of the procedure followed. In any event, no evidence was given to me to suggest that there was any basis for fairly dismissing Mr Bedford and I have found that he did not commit any misconduct in fact.

74. Mr Bedford did not cause or contribute to his dismissal by blameworthy conduct. He did not commit any misconduct. I have rejected Mrs Taylor's evidence about alleged shortcomings in his performance and Mr Sweeting's evidence about prior misconduct. On 10 June 2019 Mr Bedford did not commit misconduct. He

did a long day's driving work. Back at the yard, a driver had an accident. The fitter told Mr Sweeting. There was no requirement that Mr Bedford separately phone and tell him. The fitter was unable to source the parts to repair the HGV because the company had not paid its bills. That was the fitter's job. Mr Bedford rightly gave an instruction that the damaged vehicle should not be used until it was repaired and that the spare vehicle should be used. Mr Bedford then spoke to Mr Sweeting. They spoke about the damage to the wall and what needed to be done. Mr Bedford then left for home. He had not committed misconduct or done anything culpable or blameworthy.

75. Mr Bedford was dismissed purportedly for misconduct. The ACAS Code of Practice applied. There was no compliance whatsoever with it. In circumstances where Mr Bedford had not committed any misconduct, that was even more unreasonable than it was in Mrs Bedford's case. For that reason, as well as the reasons in Mrs Bedford's case, it is appropriate to increase Mr Bedford's compensatory award by the maximum 25%.

Notice pay

76. Mr Bedford did not commit any misconduct or do anything that justified the respondent dismissing him without notice. He was entitled to five weeks' notice.

77. In Mr Bedford's case, it is just and equitable to increase his damages by 25% because of the respondent's unreasonable and wholesale failure to comply with the ACAS Code of Practice. He did not commit any misconduct that might make it seem unjust to award an uplift on his notice pay. The conditions for awarding an uplift are met in principle and my judgment is that it is just and equitable to uplift the award in his case. I consider that 25% is the appropriate uplift, because of the total failure to comply with the Code, the failure to take any steps towards compliance even once Mrs Taylor had advised, and the lack of any rational explanation for not following a proper process in Mr Bedford's case.

Holiday pay

78. As explained in the findings of fact above, the final payment made to Mr Bedford on 21 June 2019 was sufficient to include his outstanding pay and all of his accrued but untaken holiday, so this part of his claim does not succeed.

Written reasons for dismissal

79. The right to a written statement of the reasons for dismissal only applies if the employee makes a request for such reasons. I have found that Mr Bedford did not make such a request. His letter of 27 June 2019 refers to a conversation and to a request for a dismissal letter, but it does not refer to a request for the reasons for his dismissal. The request might have related to information about pay or the date of dismissal. The letter of 2 July 2019 does not include a request for the reasons for dismissal. Mr Bedford did not give any evidence that he requested written reasons for his dismissal. In those circumstances, his claim under s 93 cannot succeed.

S-J Davies

Employment Judge Davies
6 October 2020