EMPLOYMENT TRIBUNALS

Claimant: Mr I Ismail

Respondent: Telecom Services Centres Limited

HELD AT: Manchester **ON:** 15-16 July 2020

BEFORE: Employment Judge Dunlop

REPRESENTATION:

Claimant: Mrs N Ismail, Claimant's Sister
Respondent: Mr R Byrom, Solicitor

JUDGMENT having been sent to the parties on 17 July 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. By a claim form presented on 30 July 2019 the claimant brought claims in respect of alleged underpayments of wages. He also brought a race discrimination claim, but that was dismissed at an early stage. There was some confusion initially about the correct respondent to the claim, but by the time I heard the matter it was agreed that Telecom Services Centres Limited was the correct respondent to the claim.

2. An oral Judgment, with reasons, was given at the conclusion of the hearing. I found that the respondent had made unauthorised deductions from the claimant's wages, and ordered payment of £18,855.00 representing the backpay owed to the claimant. The Judgment was sent to the parties on 17 July 2020.

The Hearing

3. I heard this claim over two days. The claimant gave evidence on his own behalf and I heard from Robert Moore and Kenneth Hammond, both Customer

Service Managers on behalf of the respondent. I had regard to an agreed bundle of documents.

4. This claim related to an alleged on-going underpayment. At the outset of the hearing the claimant applied to amend the claim to include deductions made between the presentation of the claim and the hearing date. The respondent agreed to this amendment.

The Issues

5. A preliminary case management hearing was held in this case before Judge Franey on 19 November 2019. This identified that the claim for underpayment was being pursued as a statutory claim for unauthorised deductions under s.13 Employment Rights Act 1996 ("ERA"). A contractual claim could not be pursued in the tribunal as Mr Ismail remained employed. The issues were defined in that hearing with the agreement of both parties as follows:

1. **Can the claimant establish that on any occasion on or after 31 July 2017 he was paid less than the amount properly payable to him by the respondent? This requires consideration of:**

   1.1 The terms of the claimant's secondment beginning in 2013;

   1.2 What was agreed, if anything, when his pay changed in 2016; and

   1.3 Whether any change became contractually binding because the claimant continued working without objecting to it.

2. **If there has been a series of unlawful deductions with no gap of longer than three months between such deductions, what is the amount in total unlawfully deduction from the claimant's pay in the two years prior to the presentation of his claim?**

Findings of Fact

6. During their submissions both Mrs Ismail and Mr Byrom made representations as to the credibility of the witnesses. At the outset, I record that I found all the witnesses to be giving evidence in an honest and genuine way. It is understandably difficult to recollect conversations that happened several years ago. I do not find that any witness has deliberately sought to tell anything other than the truth. I would also like to record – as I stated in giving my oral judgment – that the professionalism of Mr Ismail, Mr Hammond and Mr Moore in continuing to work together whilst this case has been ongoing is to be commended.

7. Mr Ismail was employed by the respondent's predecessor businesses. This respondent has come into the claim by way of a TUPE transfer through which it assumed liability for the claim.

8. Mr Ismail was employed by the Carphone Warehouse from 2007 as a customer service adviser. He was issued a contract of employment for that role. The customer service advisers were organised into teams, and Mr Ismail worked within a team called the Covert Team, which was within a part of the business named The Geek Squad.

9. Around 2012, the respondent began to offer technical customer support services to third parties on an outsourced basis. The first client was TalkTalk and a team was put together, including Mr Ismail, to provide that service. From 1 April 2013 he was promoted to the role of Team Manager in order to manage that team. However, the promotion was a secondment rather than a substantive role. Mr Moore explained, and I accept, that it was offered on the basis that it was not clear whether the respondent would be doing outsourced work in the longer term. It may therefore have been necessary for Mr Ismail to return to his customer service adviser role in due course.

10. Mr Moore completed an "HR2" form which was the Carphone Warehouse form for processing changes to employee's terms of employment. In the form he stated:

> *"Ibrahim Ismail will start a secondment as a Covert Ops Team Manager on 1/4/2013. Can you please ensure the difference in salary uplift from his agent wage of £20,768 to £27,053 per annum for his secondment is paid. That is an uplift of £6,285 per annum. His secondment is for an indefinite period at the moment so no end date. Ibrahim starts this secondment on April 1st 2013."*

11. That document was not shown to Mr Ismail at the time.

12. The secondment was offered by way of a formal offer letter which was, in effect, generated automatically by the submission of the HR2 form. It confirmed that the title of the role was Covert Ops Team Manager and that the terms and conditions which would apply "*are set out below in conjunction with the Employee Handbook and the terms and conditions of employment document enclosed*". There was no mention in that letter of any secondment policy which applied. Under "remuneration" the letter stated:

> "*During the secondment your salary will remain the same. You will receive a supplement amount of £6,285 per annum during the period of your secondment."*

13. There was space for signature on the document and Mr Ismail duly signed and returned it to signify his consent to the secondment. There was nothing in the letter about the intended length of the secondment nor about what would happen afterwards.

14. Mr Moore gave evidence that at the time of arranging the secondment he was limited in the options for a pay increase to attach to it. The respondent used an Oracle HR system which had been set up to recognise around 50 roles and business groups. He could only allocate this new seconded role to one of those existing options. Although he sought to pick the closest match, he described the pay as being "far higher" than it should have been for the role that Mr Ismail was actually undertaking. He was, however, comfortable with this on the basis that he considered that the secondment would only last a short period of time. Mr Ismail was not told any of this background.

15. I accept Mr Moore's evidence about the restrictions of the system as a matter of fact. However, to the extent that the limitations of the system are a problem, they

are a problem for the respondent which chose to adopt that system (quite possibly for very good wider reasons at the time). From Mr Ismail's perspective, he was offered and accepted a secondment to the role of Covert Operations Team Manager at a salary which included his previous basic pay plus the £6,285 supplement.

16. I find that both parties had a broad expectation that the secondment would likely last around six months. In Mr Ismail's case this was based on his understanding of other people who had taken secondments within the business. In Mr Moore's case, it reflected the initial length of the TalkTalk contract. After six months he expected to be able to assess whether the new team was going to be a permanent part of the business or whether it was going to be an experiment which would be unwound. As it happened, the team was a great success. It attracted more work which led to the recruitment of further customer service advisers to the team, and that in turn led to the additional of two new manager roles. It seems that the new managers were recruited in early 2014, which was also around the same time as Mr Moore was promoted and his role was taken by Mr Hammond.

17. It appears that, by this time, the Oracle system had been updated so that the business was able to accommodate those additional managerial roles at a lower pay rate. Mr Moore's evidence on the changes to the system was vague, although this is understandable, given the passage of time. In any event, no one thought to revisit Mr Ismail's pay arrangements at this point.

18. In summer 2014 Carphone Warehouse merged with Dixons. Mr Moore believes that following the merger it became apparent that certain HR policies had been missing from the Carphone Warehouse business and new policies were launched for the joint business. The bundle contained three secondment policies: one dated from 2018 and the others undated. Mr Moore said (and I accept) that all the policies post-date the start of Mr Ismail's secondment as they all had branding which dates from after the 2014 merger. Due to this, and due to the fact that no secondment policy was referenced in the offer letter, I find that there was no policy in place at the time that Mr Ismail's secondment commenced. I also find that none of the policies were intended to have contractual force. They do, however, contain some sensible expectations of what will happen in practice, including that secondments will be for defined periods and that review meetings will happen to extend the secondment period where necessary. Mr Ismail complains that his secondment was not reviewed. No doubt it would have been sensible to do so, but that does not of itself affect the contractual relations between the parties.

19. Mr Ismail continued in his seconded role. He applied for a permanent manager role in May 2014 but was unsuccessful. Matters continued without any further developments for over a year. I find that during this period both Mr Ismail and Mr Hammond continued to be aware that he had seconded status as opposed to permanent status, however I also find it was not in the contemplation of either party by this time that he could ever be asked or required to revert to being a customer service adviser. His seconded status therefore represented only the formal position, rather than the practical reality. This *status quo* was only called into question when, in early 2016, the two other team managers came to ask Mr Hammond why Mr Ismail was earning more than them. Mr Hammond said this in his statement:

> "*When I checked I found out that Ibby was in receipt of a base salary of £22,038.79 but that he was also in receipt of a secondment allowance of £6,285 taking his total annual package to £28,323.79. The other two team managers were only on £24,446.27 so I can see why they weren't happy*."

20. Mr Hammond as a result met with Mr Moore who explained the history as I have outlined it, and together they met with Katie Gallagher of HR. That is set out in paragraph 9 of Mr Hammond's statement, which I accept. Mr Hammond explains that the three of them met and, "*it was agreed that Ibby should be made permanent. That meant his secondment allowance would be removed but that his base salary would increase to the same rate as his peers so that they were all paid the same. I was given the task of telling him*".

21. Subsequent to that, the parties agree that there was a conversation between Mr Hammond and Mr Ismail. There is some conflict in the documents as to whether it happened in late January or early February. I find that it happened in late January but I do not consider that conflict to be material nor do I consider that the fact that Mr Hammond may have said February in internal investigation some years later caused me any wider concern for his credibility. That is an understandable error. I find both men gave an honest account to the best of their recollection. Unsurprisingly, given the passage of time, and the fact that no record of the conversation was made at the time, those recollections do differ.

22. Mr Hammond admits that his recollection of the conversation was not perfect, for example he does not remember where it took place. He says he does remember it taking place because he expected Mr Ismail to be upset and instead he seemed to take it in his stride. I accept this part of Mr Hammond's evidence. Both agree that the conversation started with Mr Hammond telling Mr Ismail they needed to bring his pay into line with other managers. On Mr Ismail's case he responded, "ok, I will await the paperwork" and the meeting was brought to a close. On Mr Hammond's case, he says that he was absolutely clear that he told Mr Ismail precisely how his pay would change and that the overall pay would reduce, and it is also clear that he told him that he was going to be made permanent.

23. I find that Mr Hammond did communicate that there would be a reduction in pay. I do not accept Mr Ismail's evidence that the alignment could possibly have been an increase. However, I do not find that the precise figures were discussed. I broadly accept Mr Ismail's account that the understanding at the end of the meeting was that there would be paperwork produced which would set out the precise changes proposed by the business. I accept this both because the encounter would clearly have been a significant meeting for Mr Ismail and is more likely to have made an impression on him, but also because it fits in with Mr Hammond's recollection that Mr Ismail was not as upset as he expected him to be. Intentionally or not, Mr Hammond had given the impression that this was the first step in a process. Mr Ismail's intention, therefore, was to assess his position once he had received the paperwork and respond accordingly. I also accept that Mr Ismail had no clear understanding following this meeting that his status was being changed from seconded to permanent.

24. Following this meeting Mr Hammond filled in a "Change of Payroll" form. That indicated that the change required was a change in salary, and gave the new salary

that Mr Ismail was to be put onto of £24,446.27. Mr Hammond's evidence is that it was emailed to HR. There has been some suggestion from Mr Ismail that it may not have been emailed to HR at the time, but I accept that it was.

25. I note that the document contains nothing to action the change of status from secondment to permanent, and no other steps were taken by Mr Hammond to action it. By this time, I find Mr Ismail was a secondee in name only. The role had already been, in effect "assumed to permanence" (to use a phrase used by the witnesses). It would have been appropriate, as Mr Hammond accepts in evidence, to formalise that, but the fact that there was no such formalisation at this time only emphasises the reality that Mr Ismail was already, in practice, operating as and regarded as a permanent team manager. Although the position from the respondent's perspective after this meeting that the role was now permanent on a formal basis as well as a practical one, that was not clearly communicated to Mr Ismail.

26. For some reason, the pay change was not put into effect by HR/payroll and Mr Ismail continued to be paid his lower basic pay and supplement. This came to Mr Hammond's attention in the summer. He then re-sent the change order to payroll. In Mr Ismail's July pay packet the supplement was removed and a bonus (which is separate entitlement) was also removed. In the August pay packet the bonus was back but the supplement was not. Page 119 of the bundle contains a key email chain. Mr Ismail queried his pay for July and August in an email dated 31 August to Mr Hammond, saying:

> "*Hi Ken, could you please check and confirm my pay for the last two months as for the month of July 2016 I have not had my bonus or my seconded supplement, and in August 2016 a bonus was given but no supplement. Due to this now the second month it is putting me in some financial difficulties*."

27. Mr Hammond replied promptly saying that he could sort out the bonus, and indeed that was duly done. He then said:

> "*As for the seconded supplement, I had a conversation with you earlier in the year about your pay (February) and how I needed to bring you in line with the other TMs. I requested Payroll to make this change back in February. I carried out a payroll audit as part of the yearly pay reviews and noticed they had not made the change. As it happened they didn't process the change as instructed therefore I had to chase them to action it. To be fair I could request that you pay back the overpayments since the original request but as it was their mistake I didn't*."

28. There was then a short reply from Mr Ismail saying:

> "*I'm just wondering how come you didn't mention the seconded pay supplement in the last two months when you decided to make the change. I even asked you last month when you said to chase it up and I'm finding out this way. I know you're probably busy on your first day back, hopefully discuss this tomorrow*."

29. As at 31 August, therefore, Mr Ismail believed he was still entitled to the supplement. As at 5 September he states that it had not been mentioned "in the last

two months" that it would be removed. I find that Mr Hammond did not inform Mr Ismail prior to re-actioning the salary deduction in the summer. As at September 2016 Mr Ismail was aware from the February conversation that there may be a pay change in the pipeline which was not going to be in his favour, but he was still expecting that he would be formally notified of such a change. I accept his evidence that he believed the removal of the supplement for those two months could have been a mistake, as indeed the removal of the bonus in July was. That was sorted out by Mr Hammond. Mr Ismail did not have a clear understanding that the business had made a firm decision to reduce his pay and the reasons behind that, because no one in the business had taken steps to communicate that in a clear way and, in particular, to set it out in writing.

30. Mr Ismail and Mr Hammond met on 8 September. There are no notes of the meeting. Mr Hammond does not appear to have much recollection of it, though his understanding was that Mr Ismail wanted his job role, pay and contract confirmed by HR, and that Mr Hammond expected HR to do that. Mr Ismail's recollection is that in this meeting he challenged the decision to reduce his pay, pointing out that he had been in the managerial role before the other managers. His expectation at the end of this meeting was that Mr Hammond was therefore going to provide him with documentation of the changes that the respondent was seeking to impose.

31. No such documentation was provided. Mr Ismail did not take any active steps to chase this up until the end of December 2016. In the intervening period there was an issue as to a potential misconduct investigation involving an allegation of fraud against Mr Ismail. In the end Mr Hammond was satisfied by the explanation given by Mr Ismail about the incident which led to this: it was not something that Mr Ismail was worried about or that was left hanging over his head.

32. On 28 December Mr Ismail emailed various generic HR email addresses (page 143 of the bundle). He said: *"Please could I request a copy of my initial contract or contract as well as all change letters up to now for myself*", and he gives his employment details.

33. On 29 December Mr Ismail emailed Mr Hammond again, and there is a chain of correspondence between them requesting, in effect, the paperwork that he had expected to receive following the 8 September conversation. That ends with an email from Mr Hammond saying that providing that documentation will be "*absolutely no problem*", but still no documentation was provided.

34. On 30 December Mr Ismail received a response from HR telling him that there was no record of the information her had requested on the respondent's system.

35. So at the end of the year Mr Ismail still had no documentation setting out the change that was being imposed on him and the reason for this. These responses understandably caused him frustration, stress and anxiety. Mr Ismail was signed off due to stress from 31 January 2017, and I accept his position that the cause of his stress plus his ongoing problems in clarifying what was going on with his pay.

36. I asked Mr Hammond whether he regarded Mr Ismail as being worried about his pay in this period. Mr Hammond's evidence was that Mr Ismail was not worried but "questioning". He said that they discussed the fact that Mr Ismail was going to

pursue the issue and that they both agreed they could not let it affect the day-to-day running of the department. Mr Ismail gave evidence, which I accept, that he had been more tentative in pursing the matter than he might otherwise have been because he remained in employment and did not want to cause "riff-raff" (which he used to mean arguments or trouble) at work.

37. Mr Ismail returned to work in April 2017. He gave evidence that it took him a further 3-6 months to get back to normal at work. At the end of 2017 he tried once more to obtain information from the HR department. He was told he would have to make a subject access request, which he duly did, including paying the £10 fee then applicable. When asked the reason for the request he wrote it was *"due to a dispute of changes made to my pay without any discussion or clarification*".

38. There was further email traffic between January and April 2018 but no documentation relating to the contractual changes emerged because, of course, none had actually been generated in either February or July 2016. An email of 4 April 2018 did note that, "*It is routine for us to send the employee a letter as official confirmation of their change in salary*", and extended apologies for the fact that Mr Ismail had not received any letters. However, no-one actually took the initiative to compose and send a letter which notified Mr Ismail, even retrospectively, of the precise changes that had been imposed and the reasons for this.

39. On 15 May 2018 Mr Ismail emailed to say that he wished to raise a grievance in respect of being unfairly treated and unfairly managed. Neither side acted promptly to progress the grievance. It took until 11 October 2018 to get an outcome and then until 23 April 2019 to get an appeal outcome. It is apparent, however, that a major plank of the grievance was the decision to reduce Mr Ismail's pay by removing the supplement, as well as the way this had been handled. The respondent's position in summary was that it was entitled to align his pay to the correct banding for the role, and that Mr Ismail had benefitted from the business's oversight in allowing him to receive the supplement for so long.

40. After receiving the grievance appeal outcome, Mr Ismail commenced Early Conciliation and subsequently brought this claim on 30 July 2019.

The Law

41. The only area in respect of which the parties made legal submissions related to the circumstances in which a contractual change may be deemed to be accepted by an employee because they continue to work, thereby "affirming" the contract with the changed terms.

42. The respondent referred to the following well-known dicta of Elias P from **Solectron Scotland v Roper [2004] IRLR 4**:

> "*The fundamental question is this: is the employee's conduct, by continuing to work*, *only referable to his having accepted the new terms imposed by the employer? That may sometimes be the case. For example, if an employer varies the contractual terms by, for example, changing the wage or perhaps altering job duties and the employees go along with that without protest, then in those circumstances it may be possible to infer that they have by their*

> *conduct after a period of time accepted the change in terms and conditions. If they reject the change, they must either refuse to implement it or make it plain that by acceding to it, they are doing so without prejudice to their contractual rights. But sometimes the alleged variation does not require any response from the employee at all. In such a case if the employee does nothing, his conduct is entirely consistent with the original contract containing; it is not only referable to his having accepted the new terms. Accordingly, he cannot be taken to have accepted the variation by conduct."*

43. The respondent also relied on the case of **GAP Personal Franchises Limited v Robinson EAT 0342/2007**. That was a claim concerning a change to the rate at which mileage expenses were claimable. The range had changed from 25p to 15p and the claimant had submitted expenses for five months at the lower rate before leaving the role. After leaving he brought a grievance and then a claim seeking the difference for the mileage claims he had made during employment. The respondent said that that bears factual resemblance to this case, and that a much shorter period of acquiescence was enough for the respondent in the **GAP** case to successfully appeal the Tribunal's decision that the contract had not been affirmed. That case also supports the proposition that a failure to provide a written statement of changes to the terms of the contract (as required by s.4 ERA) will not necessarily be fatal to a respondent seeking to show affirmation. However, the EAT in that case did not make a finding that Mr Robinson had affirmed the contract – the matter was remitted to the Employment Tribunal to determine whether he had continued to "work under protest".

44. Significantly, the respondent did not refer to the more recent Court of Appeal authority of **Abrahall v Nottinghamshire County Council [2018] IRLR 628** which reviewed many of the key authorities in this area and which set down some general principles as to when continuing to work following a pay cut can give rise to an inference of acceptance. I directed myself in particular to paragraphs 86-89 and extracted the following key points from those passages.

45. Firstly, an inference of affirmation must arise unequivocally. In other words, the employee must be given the reasonable benefit of the doubt and where there is an alternative explanation for their conduct (other than acceptance of a disadvantageous variation to the contract) that should be preferred.

46. Secondly, the reference in **Selectron** to affirmation possibly arising after a period of time may cause problems in practice, but ultimately such difficulty has to be faced and assessed on the facts of each case. The delay in **Abrahall** was a period of years and was held to be a case where there had been no affirmation.

47. Thirdly, an employee may be more readily taken to affirm a change in contract where it involves a mixture of changes, some of which are advantageous, as opposed to where it involves a wholly detrimental change.

Discussion and conclusion

48. I will frame this section of the judgment with reference to issues set out at the case management hearing:

What were the terms of the claimant's secondment beginning in 2013?

49. I find that the key term of the secondment was that the claimant would take the role of a team manager and that he would be paid a supplement of £6,285.00 per annum to reflect the additional seniority and responsibilities of that role. The right to the supplement was indefinite provided that the claimant remained in the team manager role and did not revert to his substantive customer service adviser role.

50. I find that at some point prior to February 2016 Mr Ismail had changed from a seconded manager to a permanent or substantive manager. That change had little practical relevance unless the respondent tried to move him back into the customer service adviser role, which they never did. The respondent acknowledged the change in February 2016 because it was convenient for them to do so. They hoped it would soften the blow of the pay reduction. That may have been a reasonable hope, but it does not mean that they were then contractually entitled to reduce the pay. The claimant was entitled to be paid at his agreed team manager rate as long as he remained a team manager or until another agreement was reached. That agreement could be express or implied, and each of those alternatives are discussed below.

What was agreed, if anything, when the claimant's pay changed in 2016?

51. In February 2016 I find that nothing was agreed. The claimant used the word "ok" to acknowledge what he had been told but he did not agree to the removal of the supplement. He was not invited to agree it or given any choice. Further, even the respondent did not act in accordance with its proposed new terms, as it failed to action the removal of the supplement.

52. Again, I find that there was no express agreement in Jul 2016. The claimant's pay was simply reduced without any notification or explanation. He was not invited to agree to the change and did not do so.

Did any change became contractually binding because the claimant continued working without objecting to it?

53. A harder question is whether an agreement was reached by implication: that is whether the change became contractually binding because the claimant continued working without objections, thereby affirming his contract.

54. Considering the findings of fact I have made and applying the principles from **Abrahall** and the other authorities mentioned above and considered in **Abrahall**, I consider the following factors to be relevant:

55.1 This was a change that was wholly disadvantageous to Mr Ismail. Although there was an attempt to soften the blow pf the pay cut by offering permanence, I have found that in the circumstances of this case that made no material change for Mr Ismail. Where the proposed change is wholly negative, Tribunals will be slower to find implied acceptance than where there is a mix of negative and positive changes.

55.2 It is also relevant that the change was never clearly notified to Mr Ismail, nor did the respondent seek his agreement. In the **Abrahall** case that was not done as the proposed changes had been discussed with the union rather than with

individuals. Here there was not even that excuse. The failure seems to have arisen from administrative incompetence, and perhaps a certain high-handedness. Not only was the reduction never put to Mr Ismail for agreement, it was not even clearly notified to him as something that was being imposed, it was simply done. Mr Ismail's attempts to secure the paperwork that he had been promised right from day one were a major contributing factor to the delay in him bringing a grievance and, ultimately, challenging the decision through bringing a claim.

55.3 Following the reduction in pay in July 2016 I accept the claimant did not pursue his concern over this as actively as others might have done. However, there were several reasons for this. He was stymied by the repeated lack of clear communication from the respondent. Nobody, for example, when he was requesting contractual documentation, took the time to try to understand what his concern was and to offer a grievance meeting. Similarly, Mr Hammond's approach was to 'agree to differ'. Whilst both men acted admirably in not allowing the dispute to get in the way of day-to-day work a more confident manager would have identified a need to conclusively resolve the question of pay entitlement and taken steps to ensure that happened. This affected Mr Ismail so severely that it caused him mental ill-health, which then itself led to further delay. Ultimately, Mr Ismail did raise a grievance whilst in employment (unlike Mr Robinson in the **GAP** case, who waited until he had resigned). The delays both in getting to the point of raising the grievance and thereafter in the grievance process itself are equally to be laid at the door of the respondent as well as the claimant.

56 For those reasons I find that the claimant's continued performance in his role in the period July 2016 to July 2019 cannot be said to be solely referable to him have accepted the pay cut, and that he can properly be considered to be working under protest for the duration of that period.

57 In those circumstances the removal of the supplement did not become contractually binding and the respondent was therefore making unauthorised deductions from the claimant's wages from July 2016.

If there has been a series of unlawful deductions with no gap of longer than three months between such deductions, what is the amount in total unlawfully deduction from the claimant's pay in the two years prior to the presentation of his claim?

58 As discussed at the case management hearing, s.23(4A) Employment Rights Act 1996 limits the recovery of amounts of unauthorised deductions to the two year period prior to the claim being brought. The relevant figures for each month are set out in the claimant's Schedule of Loss and are agreed. As noted at the start of this Judgement, that claim was amended to include deductions made between the presentation of the claim and the hearing date.

59 The gross sum claimed in the Schedule of Loss up to April 2020 was £17,807. Adding another two months for May and June takes this up to £18,855. This will be payable subject to the usual deductions for tax and NI etc. Those figures were agreed by the parties.

60 At the conclusion of the hearing Mrs Ismail asked to make an order for what Mr Ismail should receive in his future pay. I am unable to do that. It may still be the case that the respondent seeks to take steps to vary Mr Ismail's contract to bring his pay into line with the other managers. If, at a future date, matters are not resolved between the parties then the claimant considers he has a complaint in respect of further underpayments, he would have to bring a separate claim at that point.

61 Before ending these written reasons I wish to record the reasons for the gap between the Judgment being sent to the parties and this document being produced. Rule 62(3) of the Employment Tribunal Rules of Procedure 2013 requires a party requesting written reasons to do so within 14 days of the Judgment being sent. Mr Ismail requested these written reasons on 15 September 2020, some weeks outside that timescale. He indicated in his email that the respondent was continuing to make deductions to his wages and he wished to have the judgment to consider his next steps. In those circumstances, I considered it may assist both parties to have the written reasons to understand what was decided and why, with a view to taking matters forward. I cannot (and do not) make any comment on what has passed between the parties in the intervening period and what steps they may wish to take going forward. I can only repeat the comments set out in the preceding paragraph, which also formed part of the oral judgment given at the conclusion of the hearing.

Employment Judge Dunlop

Date: 3 November 2020

REASONS SENT TO THE PARTIES ON

5 November 2020

FOR THE TRIBUNAL OFFICE