EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
(1) Mr Joga Hayes	v	Sky Cabs Corby Limited
(2) Mr John Turbett		

Heard at: Bury St Edmunds (by CVP)

On: 17 & 18 August 2020 and 16 & 19 October 2020

Before: Employment Judge M Warren

Appearances:

For the Claimant: (1) Mr Hayes in person.
(2) Ms Owusu-Adjei, Counsel.

For the Respondent: Mr Cameron, Consultant.

COVID-19 Statement on behalf of Sir Ernest Ryder, Senior President of Tribunals.

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by Cloud Video Platform (by CVP). A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing.

JUDGMENT having been sent to the parties on 4 November 2020 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Background

1. These are claims of unfair dismissal brought by Mr Hayes and Mr Turbett arising out of their dismissal from employment as the respondent company's directors, on 22 February 2019. This case began with a 2 day hearing on 17 and 18 August 2020. We went part heard, continuing last Friday 16 October and concluding today on Monday 19 October 2020.

The Issues

2. The issues in the case were identified by me at a closed preliminary hearing on 6 March 2020 as follows:

(1) These are cases of unfair dismissal only. Everybody is agreed upon that. Mr Hayes understands that the Employment Tribunal only has jurisdiction to deal with employment law issues, not matters of company law for example, or slander and libel.

(2) The first question for the Tribunal will be, what was the reason or principle reason for which the claimants were dismissed and was such reason a potentially fair reason in accordance with s.98(1) and (2) of the Employment Rights Act 1996? In both cases, the respondent says that the reason for dismissal was conduct. In the case of Mr Hayes, the alleged conduct is theft. In the case of Mr Turbett, it is assault.

(3) If the respondent establishes that the reason for dismissal was the potentially fair reason of conduct, the Tribunal must then go on to decide whether dismissal was fair in all the circumstances, in accordance with the test set out at s.98(4) of the ERA. In a case of conduct, that will entail first of all considering whether the respondent genuinely believed that the claimant was guilty of the misconduct alleged and if so, whether such belief was based upon reasonable grounds after conducting a reasonable investigation. If the respondent satisfies that test, the Tribunal will go on to decide whether the decision to dismiss lay within the range of decisions a reasonable employer might make in the particular circumstances of the case, (the so called range of reasonable responses test).

(4) The claimant's both say that they were dismissed without warning, that there had been no investigation, no disciplinary hearing and that neither were provided with a right of appeal. Therefore they say, there was no fair process, no reasonable investigation, no genuine belief in misconduct and no grounds for any such belief. Furthermore, they will both say that the decision to dismiss lay outside the range of reasonable responses. They would both however, acknowledge that hypothetically, if there had been a reasonable investigation and there were reasonable grounds to believe they were guilty of the misconduct alleged, a decision to dismiss would have laid within that range.

(5) One further issue is length of service. This does not go to jurisdiction, but simply to calculation of a basic award were the claimants to succeed. The respondent's position is that their respective employment began on 27 October 2013 when the company's payroll system was set up. Prior to that, the respondent says, the claimants were mere office holders.

Evidence

3. I had before me for this CVP hearing, a pdf bundle and a small supplemental bundle provided without objection on the 16 October 2020. I had witness statements from Mr Robb for the respondent and from Mr Turbett and Mr Hayes.

Law

4. Section 94 of the Employment Rights Act 1996 contains the right not to be unfairly dismissed. Section 98 at subsections (1) and (2) set out five potentially fair reasons for dismissal, one of which at subsection (2)(b) is the conduct of the employee. Section 98(4) then sets out the test of fairness to be applied if the employer is able to show that the reason for dismissal was one of those potentially fair reasons. The test of fairness reads:

"*Where the employer has fulfilled the requirement of subsection (1) the*

determination of the question whether the dismissal was 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."

5. The first step then, is to determine whether the reason for dismissal was one of the 5 potentially fair reasons for dismissal. Only if it was, does one go on to consider the test of fairness in section 98(4). If the reason for dismissal was not a potentially fair one, the dismissal was unfair.

6. We have guidance from the appeal courts on how to apply that test where the grounds for dismissal relied upon by the employer is misconduct. The first is the test set out in the case of British Home Stores v Burchell [1980] ICR 303. The Tribunal must be satisfied that the employer holds a genuine belief, based upon reasonable grounds and reached after a reasonable investigation. It is for the employer to show the genuine belief, the burden of proof in respect of the reasonable grounds and the investigation is neutral.

7. If the employer is able to satisfy that test, the Employment Tribunal must go on to apply the test set out in Iceland Frozen Foods Ltd v Jones [1982] IRLR 439. The function of the Tribunal is to determine whether in the particular circumstances a decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted. If a dismissal falls within the band the dismissal is fair, if the dismissal falls outside the band it is unfair. In judging the reasonableness of the employer's conduct, the Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer.

8. The band of reasonable responses test also applies to the question of whether or not the employer's investigation into the alleged misconduct was reasonable in all the circumstances. See Sainsbury v Hitt [2003] IRLR 23.

9. We should look at the overall fairness of the process together with the reason for dismissal. It might well be that despite some procedural imperfections, the employer acted reasonably in treating the misconduct as sufficient reason for dismissal, see Taylor v OCS [2006] IRLR 613.

10. In this case, the Respondent says that the claimants were guilty of gross misconduct justifying dismissal without warning. The test for gross misconduct, or repudiation, is that the conduct must so undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in its employment, see Neary v Dean of Westminster Special Commissions [1999] IRLR 288.

11. Section 207(2) of the Trade Union & Labour Relations Act 1992 provides

that any Code of Practice produced by ACAS under that Act which appears to an Employment Tribunal to be relevant shall be admissible in evidence and shall be taken into account. One such code of practice is the ACAS Code of Practice 1: Disciplinary and Grievance Procedures (2015) which includes the following in respect of disciplinary proceedings relating to misconduct. The fundamentals for a fair dismissal are set out at paragraph 4:

> *"… whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly. There are a number of elements to this:*
>
> • *Employers and employees should raise and deal with issues **promptly** and should not unreasonably delay meetings, decisions or confirmation of those decisions.*
>
> • *Employers and employees should act **consistently**.*
>
> • *Employers should carry out any necessary **investigations**, to establish the facts of the case.*
>
> • *Employers should **inform** employees of the basis of the problem and give them an opportunity to **put their case** in response before any decisions are made.*
>
> • *Employers should allow employees to be **accompanied** at any formal disciplinary or grievance meeting.*
>
> • *Employers should allow an employee to **appeal** against any formal decision made."*

12. In the case of Polkey v A E Dayton Services Limited [1988] ICR 142 it was made clear that employers cannot argue that a procedurally improper dismissal was none the less fair because it would have made no difference had a fair procedure been followed, save in wholly exceptional cases where it could be shown that following a proper procedure would have been, "utterly useless" or "futile". At paragraph 12 of that Judgment, Lord Mackay of Clashfern adopted the reasoning of Browne-Wilkinson J in Sillifant v Powell Duffryn Timber Limited [1983] IRLR 91 later helpfully summarised by Lord Bridge of Harwich at paragraph 28 as follows:

> *"If an employer has failed to take the appropriate procedural steps in any particular case, the one question the Industrial Tribunal is* not *permitted to ask in applying the test of reasonableness posed by s.57(3) is the hypothetical question whether it would have made any difference to the outcome if the appropriate procedural steps had been taken. On the true construction of s.57(3) this question is simply irrelevant. It is quite a different matter if the Tribunal is able to conclude that the employer himself, at the time of the dismissal, acted reasonably in taking the view that, in the exceptional circumstances of the particular case, the procedural steps normally appropriate would have been futile, could not have altered the decision to dismiss and therefore could be dispensed with. In such a case the test of reasonableness under s.57(3) may be satisfied."*

13. Section 123(6) of the ERA provides that where a Tribunal finds that the dismissal was to any extent caused or contributed to by the Claimant, it must reduce the award of compensation by such proportion as it considers just and equitable.

14. In Nelson v BBC (No2) 1979 IRLR 346 the Court of Appeal laid down that there are 3 findings that an Employment Tribunal must make before reducing an award for contributory fault. They are:-

1. There must have been culpable and blameworthy conduct by the employee, (that can include not just misconduct or breach of contract but also conduct which could be described as perverse, foolish, bloody-minded or merely unreasonable in all the circumstances – but not all unreasonableness – it depends on the circumstances);

2. The conduct must have caused or contributed to the dismissal.

3. It must be just and equitable to reduce the award by the proportion specified.

Findings of Fact

15. In 2001 the claimants set up the respondent company with a view to running a non-profit making business, of which the black cab taxi drivers of Corby would be shareholders. Its purpose was to provide a taxi call centre and booking service. They bought an existing business for £45,000.

16. The way the business operated was that taxi drivers would buy shares by paying something called a renter fee for a period of time. They would sign up to agree to abide by a set of rules. The respondent would install hardware with bespoke software, which the taxi drivers paid for. The initial cost of that bespoke software to the respondent was around about £250,000. The respondent's borrowing to cover this cost was personally guaranteed by the claimants. The software then installed in the drivers' cabs would provide efficient dispatch to customers. Taxi drivers would pay for the equipment installed and would pay a regular fee for "radio services". Staff were employed to operate the business and to administer accounts. By accounts, I mean corporate customers who held an account with the respondent company so that rides by their employees could be charged to their employer.

17. Peninsula were engaged at some point to provide contracts of employment and company procedures. Disciplinary procedures can be found at page 42 of the bundle.

18. The respondent business was run by a committee appointed by the shareholders. Mr Turbett was Chair of that committee. Both claimants were Directors of the company. Mr Turbett also Company Secretary.

19. There are contracts of employment for Mr Turbett and Mr Hayes in the bundle, the provenance of which is disputed.

20. The claimants say that they received the benefit of the respondent's services for their own and their wives' taxis without having to pay the radio fees that everybody else paid, in lieu of receiving wages. There is a table of the amounts involved at page 179.

21. Amongst the documents before me in the bundle, the first evidence of the claimants being paid for their work, (apart from the contracts of employment) is in the minutes of an AGM in 2008 at page 214. Item 4

reads:

> "Donald Wilson asked if Directors had now been paid reference last year's comments."

22. Next, I turn to page 216 which is a report for the 2010 AGM, the relevant paragraph reads:

> "The company has now over the last 4 years fallen back to increased involvement from its Directors and as consequence an improved amount of remuneration is being recommended due to the extra workload and financial liabilities currently being experienced trying to bring restructuring and new contracts into place. I am therefore recommending this to be increased to £100 per week to start from April of this year."

23. At page 217 I see the minutes of the AGM on 16 March 2010, in which one Mr O'Connor is recorded of asking why the Directors have not taken their remuneration, the answer provided; "this is explained in the company report". Item 7 reads that it is proposed the Directors should now take an increase on a yearly payment from £2,600 to £5,200 per annum.

24. Company pay records for its payroll show Mr Hayes joining the company PAYE payroll on 7 November 2013, that is at page 66. The accounts for the year ending July 2014 at page 144 show Directors fees at £5,817 for 2014 and a nil entry for 2013. That information is repeated in the detailed profit and loss account at page 148 for that year. The company's PAYE pay records show Mr Turbett joining the payroll system on 24 November 2016, page 149. I was referred in the bundle to what is said to be a letter from the accountants at page 319. The document is rather odd, because it looks as if some communication from the accountants has been cut and pasted into an email from the respondent to their legal advisors. However, the information provided there, that Mr Hayes joined the payroll in October 2013 and Mr Turbett in November 2016, largely accords with the documents I have just referred to.

25. The earliest corroborative evidence that the claimants were receiving remuneration is 2008 on the documents, but that they were receiving remuneration at that time seems not to have been a new feature at that point. I find that the December 2001 contracts are genuine and that the claimants were employed from December 2001. I find that the claimants received remuneration by foregoing payment of radio fees to the respondent. I accept their evidence that the benefit in kind was declared to the Inland Revenue in their personal tax returns and that the contracts of employment were not tainted by illegality.

26. I have noted at page 318 an apparent admission by Mr Hayes to his employment commencing in October 2013 in accordance with the PAYE records. However, Mr Hayes is an unrepresented individual without the benefit of legal advice, apparently working on the misapprehension that the status of an employee depends upon paying Income Tax and National Insurance via PAYE. He made that concession merely because such records only go back to the date contended for by the respondent. I find as a fact that he was employed from when he signed his contract of

employment in December 2001, (as was Mr Turbett).

27. Over the years, ill feeling has built up on the part of some shareholders towards the Directors of the respondent company at the time, in other words towards Mr Turbett and Mr Hayes. If shareholders did not follow the rules that they had signed up to, they were disciplined. This usually involved action by Mr Turbett and Mr Hayes, as members of the committee which undertook disciplinary action. This often led to resentment. A common cause of such irritation was that members were forbidden from running private hire vehicles. Private hire vehicles are competition for black cabs. Two particular people the claimants found themselves at loggerheads with were Mr McGurn and Mr O'Callaghan. For example, Mr O'Callaghan had allegedly been overcharging on a particular account to a commercial client. When that issue was raised, the respondent made deductions from monies it otherwise owed Mr O'Callaghan, so as to reimburse the client. The issue with Mr McGurn had been that he was running private hire vehicles as well as his black cab. There was also a history of ill will between a Mr Lafferty and Mr Turbett.

28. In June 2018, the committee of the respondent was presented with a notice calling for a General Meeting, this is at pages 52-55. This notice called for the removal of Mr Turbett as Director and Company Secretary, and for the committee to be disbanded and replaced. This notice had attached to it a number of shareholder signatures, stated to be the required 5% such that as a Special Notice, it was a valid call for a General Meeting pursuant to s.303 of the Companies Act 2006. Those 32 signatures appeared on a separate piece of paper to the notice itself and in a different type face, such that it would be plausible to suggest that the people who had signed that document may not have known what it was that they were signing. One signatory, a Mr Buchannan, approached Mr Turbett and told him that he had signed the document thinking that it amounted to no more than calling an Annual General Meeting. The background was that a decision had been taken not to hold an AGM that year because of poor attendance and lack of interest in previous years. Mr Buchannan told Mr Turbett that he had not realised that the document had called for his removal and disbandment of the committee. This gave the claimants and the respondent committee cause for concern. They therefore approached the other signatories, calling each one into a meeting of the committee in order to discuss why they had signed this document and whether they had done so knowing what it called for. A number of those that attended the committee meetings as invited confirmed that they had not realised what it was that they were signing for. Those individuals signed another document, (page 232) in which they confirmed that they had not realised that they were calling for disbandment of the committee and removal of Mr Turbett and asked for their signatures to be removed.

29. The respondent says that these individuals were threatened with being excluded from the respondent's radio service if they did not sign. This was a common form of punishment for misdemeanours by shareholder members. I was referred to a document at page 56, a letter apparently written to shareholders by Mr Dermot O'Callaghan, who sadly is now

deceased. He wrote about his concerns in respect of the company accounts, but of particular interest at this point is that he referred to people telling him that they had felt intimidated by the threat of having their radios turned off, which is why they had signed the document put to them by the claimants and the committee. However, I have no direct evidence on the allegation that Mr Turbett, Mr Hayes and their fellow committee members were threatening individuals with their radios being switched off if they did not sign to retract their name from the earlier Special Notice.

30. Mr Robb's evidence at paragraph 10 of his witness statement was, "I understand" that they were so threatened. Mr Robb was a signatory himself and he does not say in his witness statement that he himself was so threatened. On balance I find that those that signed the document at page 232 were not threatened by Mr Turbett and Mr Hayes with their radios being switched off.

31. Not everyone co-operated with the claimants and not everyone went to the committee meetings they were invited to. So, for example at page 254 Mr O'Callaghan wrote calling for a copy of the company accounts and made it clear that he was not prepared to attend the committee meeting. He is then written to by the committee, (page 255) saying that it wished to see him and invited him to attend their meeting the following day, (10 July 2018). Mr O'Callaghan did not attend and the committee again wrote to him explaining they had twice asked him to attend to assist in their investigations, he had not co-operated and they would therefore carry out their own investigations, (page 257). The committee had in the meantime received a letter from solicitors instructed by Mr O'Callaghan and in response suspended his service, in other words, "switched off his radio" as they put it, pending further investigation on 21 August.

32. In a similar chain of letters at page 252, the committee invited Mr McGurn to attend a meeting on 10 July. At page 256, it wrote again inviting him to attend on 15 August. On 20 August 2018, (page 258) it suspended his radio service pending investigation.

33. It is worth re-iterating the point that the committee consisted not just of Mr Turbett and Mr Hayes, but of others. In the meantime on 15 August 2018, as I have alluded to, solicitors instructed by Mr McGurn and Mr O'Callaghan wrote to the respondent with regard to the Special Notice calling for the General Meeting and threatening them with legal action if it was not complied with. The claimants sought advice and were told by their solicitors that they should comply with the request. They went ahead and held an AGM. To my mind this clears up an unsatisfactory controversy in the hearing of the case, which was that the claimants said that 25% of the shareholders were required to sign a special notice before an General Meeting could be forced upon them, in accordance with a change in their rules which is at page 36. The respondent says that company law does not allow any such provision in an individual company's rules and 5% must be permitted to call a General Meeting. I am not a company lawyer and no submissions have been made to me on the law in this regard. The fact of the matter is the claimants were advised that they had to proceed with the General Meeting in accordance with the notice

they had been served with and so I gather the so-called petitioners were entitled to do what they were doing.

34. An AGM was held on 21 November 2018. The claimants posted notices outside the meeting to say that only shareholders could attend, (there is nothing wrong with that). Mr Lafferty attended with his wife, who was not a shareholder, Mr Turbett asked her to leave and she did so. Mr McGurn and Mr O'Callaghan attended, Mr Turbett asked them to leave because as he puts it, they were suspended and they had no right to attend. As shareholders, they had every right to attend the meeting; they refused to leave and they were entitled to do so. A Mr Wilson distributed to selected people in the room a list of shareholders taken from Companies House which showed that they, that is Mr McGurn and Mr O'Callaghan and others present, were shareholders and entitled to be there. There is nothing inappropriate in that, particularly as Mr Turbett was trying to exclude Mr McGurn and Mr O'Callaghan. Mr Turbett went around the room taking those papers back off people.

35. When the meeting started, Mr Turbett saw that Mr Lafferty was video recording. He asked him to stop and Mr Lafferty did not. Mr Turbett went over to him and tried to take the camera off him. There followed mutual pushing and shoving. Mr Turbett then dropped his hands, realising that he was being foolish. Mr Lafferty then headbutted him on the bridge of his nose, causing Mr Turbett to suffer mild concussion and a nasty gash to his forehead. He attended A&E to receive stitches.

36. In a newsletter to the membership, copied in the bundle at page 259, Mr Turbett wrote that he had been a fool to be dragged into the arguments at the meeting and he apologised. In describing the incident with Mr Lafferty he wrote:

> "I again noticed that Mr Lafferty was videotaping the Directors again without permission. I confronted him again and shouted at him "Are you still videotaping us?". He then smirked and replied "Yes". At this point I tried to take the video equipment away from him, we both began pushing one another and I was shouting at him to get out, the next thing I knew was that he'd headbutted me."

In the penultimate paragraph of that newsletter, he repeats his apology.

37. Mr Turbett was removed as a Director of the respondent at a General Meeting held on 21 January 2019. No minutes of the AGM or documents relating to this AGM have been produced to me by either side. At the meeting, Mr Turbett read a document which is at page 235 and which he calls his 'Statement of Defence'. Following that, Mr Turbett and Mr Hayes were told by the employed administrators of the respondent company that they were not to go into work and that the company auditors were attending, looking for anything illegal.

38. On 26 January 2019, Mr Hayes was signed off work with stress related problems, (copy fit notes are at page 191 and 193). Mr Hayes was paid his normal pay for 4 weeks and then, unknown to him, he was placed on Statutory Sick Pay. Whilst Mr Hayes was off sick he did not go into the respondent's premises and work as a Director, however he continued to

drive his taxi on a Friday and Saturday night, as he had always done. To be clear, driving his taxi is something quite separate from his duties as a Director and something for which he received an income as a separate business.

39. At a committee meeting, a decision was taken to dismiss Mr Turbett and Mr Hayes. I have not been told the date of this meeting, nor have I been provided with any minutes or notes of any such meeting. I am told that the members of that committee included a Mr Robertson, Mr Parker, Mr Condon, Mr McGurn, Mr O'Callaghan, Mr Robb and Mr Carter. Of those, only Mr Robb has given evidence.

40. By letter dated 22 February 2019, the claimants were each informed that they were dismissed.

    40.1 The letter to Mr Turbett is at page 194, this gives us the reason for the dismissal:

> "You have conducted yourself in a way that was threatening, intimidating and bullying of colleagues. This conduct includes a physical attack on Mr James Lafferty at the company's Annual General Meeting on 21 November 2018. Your conduct has amounted to a mis-use of your position and has caused damage to the reputation of the company."

    40.2 For Mr Hayes his dismissal letter is at page 271 and the reasons for his dismissal given are:

> "You have conducted yourself in a way that is threatening and intimidating and bullying of colleagues. Your conduct has amounted to a mis-use of your position and caused damage to the reputation of the company. It has also come to our attention that you've been dishonestly claiming sick pay from the company. The company has evidence that you have been completing trips with your vehicle HC043 with customers despite the fact that you are also currently claiming sick pay."

41. The author of these two letters is Mr Robertson. Notably, he has not given evidence. Mr Robb acknowledged in evidence that Mr McGurn and Mr O'Callaghan were members of the committee that made that decision to dismiss. Mr Robb also agreed that Mr Hayes' and Mr Turbett's long service and clean disciplinary records were not considered.

42. Mr Hayes wrote a number of letters complaining about what had happened and seeking information. Mr Robertson replied, (page 283) that he had no rights.

43. On 19 March 2019 Mr Hayes was removed as a Director at General Meeting.

44. At the time the claimants were dismissed, the Respondent employed approximately 10 people and had 87 shareholders.

Conclusions

45. Dealing with Mr Turbett first of all:

45.1 I am not satisfied that Mr Turbett was dismissed because of his conduct, but rather I find that he was dismissed because of ill feeling that had built up towards him by certain shareholders of the company, who were trying to achieve his removal from the company before the events of the November 2018 AGM. Amongst other things, including the dissatisfaction of some at being subject to disciplinary action, members were suspicious of financial mismanagement or dishonesty on the part of Mr Turbett, hence the post-dismissal audit. I detected enmity toward Mr Turbett on the part of Mr Robb, which went beyond the events surrounding the AGM. The events of the AGM in my judgment provided the individuals that took over the respondent company, with an excuse to dismiss Mr Turbett.

45.2 I find that the claimants, both, had reason to enquire of the signatories to the so-called petition, why they had signed that document. That good reason came from information provided to Mr Turbett by Mr Buchannan. I find that those individuals had not been threatened by Mr Turbett or Mr Hayes with being, "switched off" if they did not retract their signatures by the committee.

45.3 Mr Turbett trying to exclude Mr McGurn and Mr O'Callaghan from the AGM was wrong, as was his attempting to prevent Mr Wilson from distributing the list of shareholders. However, I would not call that conduct sufficient conduct to in anyway approach warranting dismissal

45.4 Mr Turbett trying to take Mr Lafferty's camera off him and engaging in shoving was misconduct, but I find that misconduct did not contribute to his dismissal, because the reason for his dismissal was the vendetta against him, not what had happened at the AGM, which was no more than a convenient excuse.

45.5 Had I found that the reason for dismissal was conduct, notwithstanding the respondent's size and administrative resources, I would still have found the dismissal unfair because of the complete lack of any process.

45.6 I would then have had to make an assessment of Mr Turbett's contribution toward that dismissal in his behavior at the AGM. Undoubtedly, he was provoked by Mr Lafferty videoing him, but he ought not to have tried to take the camera off him nor engage in pushing and shoving. I think it unlikely that an objective committee, a committee consisting of people with no ill will towards Messers Turbett and Hayes, having regard to the background, to the provocation by Mr Lafferty and the injury sustained ultimately by Mr Turbett, would have fairly taken the decision to dismiss. I would not therefore have made a Polkey deduction even in that event.

I would have made a small contribution deduction, 10%. However, to be clear, that question does not arise because I find the reason for dismissal was not conduct, was not a potentially fair reason. The reason was a vendetta against Mr Turbett.

45.7 I therefore find that Mr Turbett was unfairly dismissed and there shall be no deduction from such compensations as may be assessed in due course in respect of Polkey or conduct.

46. Now I turn to Mr Hayes:

46.1 I find that Mr Hayes was quite simply dismissed because of his association with Mr Turbett and not because of his conduct.

46.2 In respect of the reason given, that he was claiming Statutory Sick Pay fraudulently, for the avoidance of doubt I find that, firstly he did not realise that he was going to be in receipt of Statutory Sick Pay when he continued driving his taxi on a Friday and Saturday night. Secondly, he was signed as unfit for his duties as a Director because of the stress of everything that was going on at the time. That did not mean that he was unfit to drive a taxi, a completely separate business and source of income which he found therapeutic. He was perfectly entitled to drive his taxi on a Friday and Saturday night even though he was certified as unfit to attend his duties as a Director.

46.3 As with Mr Turbett, had I found the reason for dismissal was conduct, even having regard to the respondent's size and administrative resources, I would still have found the dismissal unfair due to the complete lack of any process.

46.4 Mr Hayes did not contribute in any way to his dismissal by culpable or blameworthy conduct. An objective fair-minded committee would not have dismissed him, there will be no Polkey deduction nor contribution.

47. As I have said in my Findings of Fact, both these individuals had been employed by the respondent since December 2001.

48. There will in due course have to be a separate hearing as to remedy. I make the observation at this stage that neither Schedule of Loss in the supplementary bundle that I have taken a quick look at, seems to recognise that there is a statutory cap of 1 year's salary on compensation for unfair dismissal. I would also make the point that the claimants are entitled to compensation for the financial consequences of their unfair dismissal, not of other decisions and other causes of action. Therefore references to demands for radio money, to difficulties in selling their taxis, to being removed from radio services, to legal costs or to issues over selling shares, seem to me to have no bearing on the question of compensation for unfair dismissal. Of course, I have not heard any submissions on these points, I have simply looked at the Schedules of Loss during my deliberation and make these observations in case they

may assist the parties in any discussions between now and the remedy hearing.

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Employment Judge M Warren

Date: 29 November 2020

Judgment sent to the parties on
02 December 2020
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T Henry-Yeo
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For the Tribunal office