EMPLOYMENT TRIBUNALS

Claimant: **Mrs S Child**

Respondents: **(1) Tyco Electronics UK Ltd**
(2) Mr S Rustler

Heard at: **Ashford** **On:** **3-7, 10-11 February 2020**

Before: **Employment Judge Corrigan**
Mrs J Jerram
Mr N Phillips

Representation
Claimant: In person
Respondents: Mr N Hart, Solicitor

REASONS

Judgment sent to the parties on 28 February 2020 and reasons requested by the Claimant on 12 March 2020.

1. The Claimant brought claims of direct sex discrimination, sex-related harassment, victimization, wrongful and unfair dismissal.

2. The issues were set out in the Case Management Order dated 21 February 2019, and amended at the outset of the hearing. They were as follows:

Unfair dismissal

3. What was the principal reason for dismissal and was it potentially fair? The First Respondent relied on misconduct.

4. Was the dismissal reasonable?

5. Was there a possibility the Claimant would have been fairly dismissed in any event?

6. Did the Claimant contribute to her dismissal?

Direct sex discrimination

7. Did the First Respondent subject the Claimant to the following treatment:

   7.1 subjecting the Claimant to harsher disciplinary sanctions than her male comparators?

   7.2 holding the Claimant responsible for the actions of her "subordinates" whereas other senior managers were not.

   7.3 Subjecting the Claimant to alleged humiliating, aggressive and harsh treatment by the Second Respondent in daily telephone calls between August and September 2017.

8. Was the above treatment less favourable than the Respondents treated or would have treated the Claimant's comparators? The Claimant's comparators are named in the Case Management Order.

9. If so, was this because of sex?

Harassment

10. Did the Second Respondent engage in humiliating, harsh and aggressive treatment during the daily briefing phone calls in August and September 2017?

11. If so, was that conduct unwanted?

12. If so, did it relate to the protected characteristic of sex?

13. Did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

Victimisation

14. Did the Claimant do a protected act and/or did the First Respondent believe that the Claimant had done or might do a protected act, in that she complained about the Second Respondent's alleged harsh and aggressive behaviour? The Claimant relied on emails dated 7 and 8 August 2017.

15. Did the First Respondent subject the Claimant to detriments by:

   15.1 withdrawing a settlement agreement;
   15.2 subjecting the Claimant to disciplinary action and/or harsher disciplinary action which led to her dismissal?

16. If so, was this because the Claimant did a protected act and/or the First Respondent believed the Claimant had done, or might do, a protected act?

Wrongful dismissal

17. To how much notice was the Claimant entitled?

18. Did the Claimant fundamentally breach the contract of employment by an act of gross misconduct?

Hearing

19. The Tribunal heard evidence from the Claimant on her own behalf. The Claimant also called as witnesses Mr A Hyde (former Operations Manager, Hastings) and Mrs Carr Taylor (HR Advisor and companion in disciplinary process).

20. The Tribunal heard evidence on the Respondents' behalf from Mr J Langan (Assistant General Counsel), Mr A Jevtic (Legal Counsel), Dr A Donachie (Director of Operations), Mr Fulford (Director Quality and TEOA), Mr S Rustler (the Second Respondent and Head of the Aerospace, Defence and Marine business unit), Mrs Clare Webb , Ms R Norton and Mrs L Hunt (Senior Manager Human Resources).

21. Other members of staff have been named as comparators in the Case Management Order. If we did not hear from a person as a witness I have referred to them by job title and not by name as these reasons will be posted online and be publicly available. The comparators include those staff based in France namely the Evreux Site Manager (formerly Manufacturing Manager in Hastings); both the current and former Heads of Engineering "Connectors"; and the person responsible for EMEA Product Management "Connectors". They also include the two Hastings staff who were subject to disciplinary proceedings but against whom no action was taken. These were the Quality Manager and Mr A Hyde, who was the Operations Manager at the time of the Claimant's dismissal.

22. There were two other members of staff who were dismissed at the same time as the Claimant who shall be referred to by job title as Global Product Manager and Engineering Manager. The Claimant had two line managers based in the US who are referred to here by their job title on the organisation chart: Head of "Connectors" and Operations Lead "Connectors". If on occasion other staff are mentioned I have used their job title.

23. There was a 506 page bundle to which additional pages were added during the hearing, including a supplementary bundle (SB) in relation to the warnings issued to those based in France (see paragraph 53 below) and a further 37

page bundle containing documentation in respect of the others who were subject to disciplinary proceedings in Hastings. The material in relation to the treatment of those based in France was provided at the Tribunal's request. The First Respondent also provided the organisation chart and material in respect of the 369 series connectors.

24. The First Respondent provided physical examples of the 3 way, 6 way and 9 way product referred to in these proceedings.

25. The parties made oral submissions.

26. Based on the evidence heard and the documents before us we found the following facts.

Facts

27. The First Respondent is a multinational telecommunications company with its head office in the US, but with a UK head office in Swindon. It has over 72,000 employees globally. It designs and manufactures connectivity and sensor solutions for a variety of industries including aerospace.

28. The Claimant's continuous employment began on 13 December 1999. She was employed by Deutsch UK which was acquired by the First Respondent in 2012 and the Claimant's employment transferred with it. Her background until then was Finance and she was Finance Director of the Hastings site, which is responsible for the production of electrical connectors used in a variety of locations including aerospace. Other Deutsch premises were also acquired by the First Respondent including the Evreux site in France.

29. Following the transfer, at the beginning of 2013, the Claimant took on the role of Site Director of the Hastings site. She had been concerned about taking on that role without an engineering background in a male dominated sector where most site leaders are men with either a production or engineering background. However she was persuaded that an engineering background was not necessary and she could rely on her engineering managers on technical matters. She did not receive a job description or any specific training for the role. Her line management were based in the US and the First Respondent accepts that they may not have been easily accessible.

30. The First Respondent accepts that initially the Deutsch sites were not integrated into the global organisation. Initially they were ring fenced until October 2015. The Claimant at that time sought a one to one with her new Line Manager and this was not organised until September 2016.

31. By late 2016/2017 former Deutsch employees were expressing dissatisfaction with the First Respondent's way of working. This included the Claimant. She did not receive her Longterm Incentive payment in November 2016, which was the first time in 4 years. It took some time for the Claimant to understand why this had occurred and she says, which was not challenged, that it was because

she no longer had responsibility for engineering and customer service. She did not pursue this further as the deadline had passed in any event.

32. In January 2017 the Claimant resigned from Directorships of 14 UK companies within the Group. This did not affect her site manager role. She was not comfortable relying on the First Respondent's processes in locations that were outside her control and approving accounts which she did not feel met her own standards. She made clear she was not suggesting impropriety. She essentially did not want to be accountable if she had not had an active role. Mr Fulford, who was also a Director, was supportive of her decision though he felt it was a loss, given her finance background.

33. The First Respondent has a Concernline for anyone, employee, former employee or customer, to report a concern anonymously. If a report is made it is investigated. On 12 April 2017 there was an anonymous report about the Hastings Site, namely that there had been deliberate falsification of an enhanced Altitude Immersion test report for the D369 range of connectors in order to gain Boeing approval, and non–compliant products were still sold using that accreditation. The reporter said that they had observed this i.e. they were an employee at the relevant time and said that the management team at Hastings, including the Claimant, were all aware.

34. This report was assigned to Mr Langan to investigate and he corresponded with the reporter to gain more information, and ultimately spoke with the person once. By that time he confirmed that the person no longer worked for the First Respondent. The investigation at some point was assigned to Mr Jevtic as lead investigator but Mr Langan remained involved. They did a comprehensive review of the engineering and testing in respect of the 369 product. This included buying some of the products from a supplier which failed the altitude immersion test. They obtained permission to review the emails of the management team which elicited a number of documents including what is referred to as the Robinson Helicopter memo (May 2013, page 49 of the bundle) and documentation relating to a recall of the 9 way product in 2014, approved by both Mr Langan and the Claimant's Line Manager at the time.

35. The Robinson Helicopter memo records that only 3 samples out of 5 of the size 9 D369 product had passed the altitude immersion test. It says that a meeting was held to discuss the implications of the failures due to the imminent delivery of overdue product to Robinson Helicopters. It records the reasoning behind the decision, and the decision that it was agreed to ship the D369 9 way with the weaker altitude resistance performance. It was signed by five Managers including the Engineering Manager who was also dismissed at the same time as the Claimant, the Manufacturing Manager (who had become the Evereux Site Manager by the date of the Claimant's dismissal), and the Claimant.

36. In July 2017 the Claimant complained to her Line Manager about the number of Group calls meaning there was little time for substantive work. Her site was underperforming, like others inherited from Deutsch. The Claimant's view was this was due to under investment in machinery. Mrs Hunt (Senior Manager Human Resources) also visited the site at the end of July 2017 and found the

staff, including the Claimant, disheartened and negative. This visit was followed up by the Claimant's email on page 96, which although it raised issues, is written in the context of someone looking forward to continuing working together.

37. In July 2017 Stefan Rustler, the Second Respondent, who had worked for the First Respondent since August 2006, became Head of the Aerospace, Defence and Marine business unit, of which the Hastings site was a part. His priority was to address the under performance of the former Deutsch sites including Hastings. Customers were dissatisfied with the Deutsch side of the business. He started a programme to "retrospectively integrate" the site. He began joining weekly calls with Site Managers around the business. There were typically 40 people on the calls, the majority men, led by the Second Respondent, and included the Claimant. She says she was typically the only woman, or one of two women, on the call.

38. The Claimant has made mention of the "disappearance" of a female leader shortly after the Second Respondent was appointed. He said that this was because the person concerned was not a good fit as the post was about detail which was not her strength.

39. The first weekly call with the Second Respondent was on 7 August 2017. The topic was the targets which had been set for the different sites. The Claimant's view of the Hastings target was that it was unachievable and did not recognise the particular constraints the Hastings site worked within. She had already had discussions with her immediate line manager about this. Most of the other leaders on the call agreed their targets. When it came to her turn she "pushed back" in respect of the Hastings target. The Second Respondent responded "give me a plan to reach the billings target and if you don't then I will give you a plan". She took this comment to be a threat. She found his attitude aggressive. Mr Hyde, the Operations Manager of Hastings, gave evidence to support the Claimant's account of what was said. Mr Hyde said that when the Claimant "pushed back" the meeting took a sour turn and the Second Respondent talked over her and was aggressive. Mr Hyde also said that there had been a comment said to the Claimant's two line managers at the outset of the call: "you know what the price of failure is don't you". Mr Hyde also described this as a threat. He accepted there had also been aggression to the two male line managers. He accepted the Second Respondent was tough with both men and women.

40. The Claimant was upset by the way she was treated. She emailed the two line managers up her reporting line (p97). She said she was exceptionally disappointed with the imposed target. She mentioned that she and her management team who were on the call had perceived the comment as a threat to her job. She herself said she was not sure what had been meant but would have preferred it to have been said privately and not in front of her team. She said "I got a hard time on the call today basically because I was honest".

41. She then had HR support to write a further email the next day (at page 100). She said she had woken up even more angry and upset. She said the way that she was spoken to and treated was unacceptable. She said she would not accept being treated that way.

42. The Claimant's issues with that call were never reported to the Second Respondent himself.

43. A few days later the UK HR Manager spoke to the Claimant to say that the Head of HR had called her to suggest that if the Claimant was no longer happy they could reach a settlement agreement for her to leave. The First Respondent has not objected to this evidence. The Claimant agreed in principle and there were subsequent negotiations as to terms.

44. There was a further group call with the Second Respondent and the Site Managers on 14 August 2017. The Claimant messaged Mrs Hunt during that call to say that she had real concerns about these calls. The same message references wanting to discuss the exit agreement (p129).

45. The Claimant says she began to have concerns that she was being treated differently as a woman after that call. She says that she and the only other female member of staff on the call (Clare Webb) were treated more aggressively than others and this time neither she nor Clare Webb had "pushed back". She says that after that call another member of her management team came and spoke to her and asked "does he have a problem with women?" with reference to the Second Respondent. Mr Hyde also expressed that after that call as a group they thought "wow does this man have a problem with women in manufacturing?". The treatment of the Claimant on that call was out of the ordinary to them.

46. The Claimant says she continued to have calls with the Second Respondent until her employment ended and she felt very anxious about them. However, there are messages in the bundle between her and the Site Manager of the Evreux site that discuss the Second Respondent's treatment. They both discuss the prospect of the Evreux Manager also "getting a kicking" and the Second Respondent's "bullying tactics", but also that in the end the Evreux Manager was treated lightly in the particular call concerned. The discussion remains light hearted and the Claimant did not appear anxious in those messages. The Second Respondent said that over the time they worked together he actually did give the Evreux Manager a much harder time than he gave the Claimant.

47. The Second Respondent does not agree that he was aggressive. He says he is consistent in expecting performance and will be straight talking when that is not met. His perception was the Claimant was not well prepared on the calls and she did not have the plan of action to achieve the target he required, though he does not remember the specific conversations. He was prepared in evidence to be critical of the Claimant's Manager if he had told her to simply accept the target to please the Second Respondent (as the Claimant asserted).

He accepts he can be harsh as he accepts he gave the Evreux Manager a hard time.

48. Mrs Webb also gave evidence. She agrees there was a change in style when the Second Respondent became Head of the Aerospace, Defence and Marine business unit, and that the Second Respondent expected a lot. She does not recall the Claimant being treated differently, nor believe that she herself has been treated any differently, because they are women. She felt the change of approach, though challenging, was needed. She would not describe the Second Respondent as aggressive, and did not herself feel intimidated. She said she herself was only partially meeting targets.

49. We also heard from another female Senior Manager, Ms Norton, who worked closely with the Second Respondent. Her office was also located next door to his. She describes the Second Respondent as intense and focused. She said he had no patience or tolerance and would get frustrated if Managers were not able to account for their site's performance in detail. In her witness statement she does say that the calls could be heated and he could be angry if people were not delivering. She said she found it uncomfortable to witness other managers experiencing that, when it was obvious they were not prepared. She said the target of the anger was at anyone not delivering. She says that 99% of the individuals were male and the individuals who received the most heat were men. In oral evidence she did not agree that the calls were angry or had raised voices, she said the tone was firm and frustrated.

50. We find that there were heated calls and anger at those who were not answering the Second Respondent as he required and the experience was at the very least embarrassing and uncomfortable for those present.

51. On 15 August 2017 the Claimant spoke to Mrs Hunt about the settlement agreement. Negotiations continued with the First Respondent offering a year's salary and the Claimant returning on 8 September 2017 with questions about her pension and bonus.

52. Meanwhile on 28 August 2017 Mr Langan contacted Mrs Hunt to say that on-site interviews would be needed on 14 and 15 September 2017 (with respect to the anonymous report through Concernline and subsequent investigation, mentioned at paragraph 33 above).

53. Prior to a response about her pension and bonus, on 14 September 2017, the Claimant met with Mr Jevtic for the first time in respect of the Concernline investigation.

54. The Claimant was interviewed first (p144). The Claimant was nervous and she was told not to worry and that it was not about her but a general investigation. Mr Jevtic does not accept that he said anything more than not to worry but it is right that initially it was a generic investigation. Mrs Hunt has made a note that

the Claimant was uncomfortable with some of the questions particularly when challenged. She noted "As the site leader clearly couldn't answer questions and relinquished responsibility for many areas eg you need to talk to the engineers". This was consistent with the Claimant's approach to the job which was to trust the expertise of the engineers and only to be involved with engineering issues if they referred matters to her (see paragraph 29 above). They invited her back for further questions. The settlement negotiations with the Claimant were put on hold whilst the investigation was carried out.

55. Mr Jevtic also met with a number of other key staff on the site. Mr Jevtic ended up having 2-3 meetings over a period of time with some of the members of staff. It was a detailed, thorough investigation and developed as it went along. The First Respondent accepts though that it would have been better practice to have individuals agree and sign the minutes. In fact they were not routinely given to those interviewed or signed and the Claimant only received hers once she was invited to a disciplinary hearing.

56. On 22 September 2017 the Claimant received an email saying "every dog has its day" from the same email address as the Concernline report. Mr Langan was aware of this and accepted the reporter might therefore have questionable motives. This email was taken seriously from a security point of view. It was not mentioned in the investigation report.

57. The investigation report is dated 13 November 2017 and sets out that the investigation had found that products in the D369 product range were shipped that did not comply with product specification. It had also looked into the degree to which individuals were aware and had a responsibility to either speak up or to act to stop shipments. In total 8 staff were recommended for disciplinary action. Five, including the Claimant, were based in the UK and 3 were by then based in France. The report is at pages 328-360 though in addition there were exhibits attached. I have summarised the findings below, made prior to the disciplinary stage, to aid understanding of the allegations against those subject to disciplinary proceedings including the Claimant.

58. The investigation found the product did not pass altitude immersion on a consistent basis. It records the Robinson Helicopter memo as evidence of a decision to ship the product as they concluded that the customer's application did not require it to meet the specified altitude immersion requirement. The investigation found no documentary evidence that the customer was ever notified. The report records that the 9 way product was recalled in 2014, even though the altitude immersion failures were not exclusive to the 9 way product. In 2015 testing results in respect of the Boeing 737M program were used to demonstrate the product met the Boeing enhanced requirements, despite the necessary changes not being implemented (p340). There had been efforts to develop a shielded product but up to the date of the report this product had not been launched due to altitude immersion failures.

59. The alleged individual liability found by the report in respect of the 8 individuals was as follows. The Manufacturing Manager (Evereux Site Manager by the date of the investigation) had signed the Robinson Helicopter Memo. The person responsible for EMEA Product Management/Director of Product Management (based in France by the time of the investigation) line managed the relevant Global Product Manager. The investigation concluded he was aware the unshielded product did not consistently pass altitude immersion until qualification. The Global Product Manager had reported to him issues with both the enhanced Boeing requirement and the development of the shielded products. The investigation report concluded he had a responsibility to further investigate and to potentially to stop shipments. The Global Product Manager himself was found to be personally aware of the fact the unshielded product did not consistently pass altitude immersion and also the issues with the shielded product. With respect to the improvements to meet the Boeing requirement, he had followed up repeatedly with Engineering to have them implemented but this did not occur, and despite this knowledge he did not inform customers.

60. The Engineering Manager was considered to be aware of the unshielded products inability to consistently pass altitude immersion. He was lead engineer on site and had a responsibility to speak up and stop shipments. The Quality Manager was only involved in the shielded product but it was considered he knew about the altitude immersion failures of that, and the read across to the unshielded product, and therefore knew or should have known that that also did not consistently pass altitude immersion tests.

61. With respect to the Claimant it was found that, based on what others said, she was personally aware that the unshielded product did not consistently pass altitude immersion, although she claimed she was not aware. It was recorded that she had signed the Robinson Helicopter memo and been involved in the product recall. She had said that these were the only issues she was aware of but the report found that several other individuals indicated otherwise. She also knew of the issues with the shielded product. It was considered she knew of the read across to the unshielded product and as the Site Manager it was considered she had responsibility to question engineering, stop shipments and inform customers of failures.

62. The notes at the bottom of page 352 include what the individuals had said about her knowledge of the unshielded issues to lead to the above conclusions about her knowledge. The Engineering Manager is recorded as saying in answer to questions about who knew about issues the unshielded product was facing: “Maybe not [the Claimant] always unless there were bigger issues. It tended to be Quality and Manufacturing. Only bigger business implications…. [The product not consistently passing would] have been discussed with Production Engineer[ing] and Quality and with Operations”. When then asked if this was discussed with the Claimant he responded “yes”. Then later he said “[e]veryone was aware we were having issues with those tests and passing”. The

R&D/Product Development Engineer is recorded as saying that, in respect of who was aware of the product ever passing altitude immersion, "[the Claimant] was aware…of unshielded definitely. Probably shielded as meetings were called….There were multiple meetings. I participated in a few low level ones. Sometimes the engineering ones". There is also reference to the interview with the Test Lab Manager on 14 September (p353). The notes of the meeting are at pages 136-143. He did say he had voiced his opinion [that the product was a liability and should have been stopped and redesigned] to senior people, then named the Head of Engineering and Engineering Managers. We could not find any reference to the Claimant's knowledge in that interview. There was a second interview with the Test Lab Manager, also attached to the report at exhibit 8, in which he listed all the people he had discussed the unshielded failures with. He did not initially mention the Claimant. When asked specifically about the Claimant he said he did have one session with the Claimant and another person (HR), and that it was "about general tick box engineering and actually fixing what was on the shop floor…about 2 years ago. That was a general malaise. Not specifically for the 369" (p299-300).

63. We also noted that the Claimant's name was not mentioned anything like as much as others in the interviews. Looking at the actual interview of the Engineering Manager (that was referenced in the footnote at page 352, and is at p318J onwards) although he said the Claimant would have known the product was not consistently passing mid 2013-2014 it is not clear from his interview that her knowledge went beyond that. We also note that in respect to the interview with the R&D/Product Development Engineer, who was also cited in the footnote on page 352, at pages 313-318, that although he said the Claimant would have been aware of the unshielded issues, he did not say how he knew this as he himself was only at "low level" meetings. In his earlier interview (page 195) he said it was the Test Lab Manager who had had several lengthy conversations with the Claimant. However, the Test Lab Manager himself had said he had not. The issue of how the Claimant knew was not fully explored.

64. The Claimant made a point that the language used about her was different to others and implied culpability but we find this issue is not relevant as she compared the language used about her to that used about others who were also found culpable.

65. With respect to the finding that the Claimant had responsibility to question the efforts of engineering we noted that the Claimant had no job description and it was not in our view obvious that this is the job of the general manager when there are specialist line managers off site having weekly reports/meetings. Moreover, we accept she was told that that she did not get her Longterm Incentive payment the year before in part because she did not have responsibility for engineering.

66. The Head of Engineering, based at Evreux, was considered to have been involved as advice- giver in the development of the product since the beginning. He had discussed issues with the shielded product several times with the Engineering Manager. It was considered that even if he was not aware of issues with the unshielded product he had a responsibility to investigate further. With respect to Mr Hyde, the Operations Manager, it was recorded that he had said he was not aware of the unshielded product failures. He was aware of the shielded issues and it was said he participated in conversations about the read across from the shielded product to the unshielded product. It was considered he knew or should have known that the unshielded product was not consistently passing altitude immersion tests.

67. By 16 November 2017 a decision was taken by one of the Claimant's line managers (Head of Connectors) based in the US that those then based in France would simply be issued written warnings. There was no disciplinary process. There was some to-ing and fro-ing about wording and then letters consistent with the findings of the report were written. In fact pages SB33-34 show that the Evreux Site Manager (formerly Manufacturing Manager in Hastings) and Head of Engineering, Connectors were treated more leniently than the comparator who held the post of EMEA Product Management, Connectors, with verbal discussions and notes on file being considered sufficient for both of them. Page SB 49 shows there was a decision to "soften the message" to them with references in the "talking notes" to expertise and teaching experience. The conversations ultimately took place in January 2018.

68. The person who held the post of EMEA Product Management was given his warning letter and required to sign it (SB 63).

69. We do not know why the cases in France and those in the UK were separated and treated differently. We were told by the Respondents' representative that the reason for the difference in treatment was the legal situation in France (though this explanation was not offered by any of the First Respondent's witnesses in evidence). However it appears from the material on French law he provided that it is possible to dismiss for real and serious cause, which appears akin to our concept of gross misconduct. A disciplinary process is also required in France. We also know that a previous site manager in France had been dismissed.

70. Mr Langan initially said in evidence that he had nothing to do with the treatment of those in France. He said he carried out the investigation and then his involvement ended. In fact he had been involved in writing the letters issued to those in France. Once we asked to see the documentation he was recalled to give further evidence in which he offered explanations for the difference in their treatment. He said he had previously simply forgotten his involvement. Mr Langan is a capable and experienced legal counsel in a large global organisation and, as is clear from the investigation and the rest of his evidence

before us, is an intelligent person with very good attention to detail. We find it incredible that, knowing the Claimant was comparing herself to those in France and having the grasp of the investigation that he showed in evidence, that he had not reminded himself of the outcome for those in France that he himself was responsible for (in terms of drafting the letters). He also went on once he did give evidence about those in France to offer the reasons for the difference in treatment. We find it incredible that he could go from forgetting his involvement completely, to offering explanations for the differences in treatment. We do not accept this was his own recollection as he could not remember any involvement the day before.

71. The explanations offered were that the Head of Engineering "Connectors" only had knowledge of the shielded version of the product. He had been involved in an advisory capacity and had not followed up. He had not been involved when a manager. The Evreux Site Manager (formerly Manufacturing Manager in Hastings) had signed the Robinson Helicopter memo when he was Manufacturing Manager in Hastings but subsequently transferred roles to manage the Evreux site in France. He was not aware of the problems with the unshielded product. He was aware of the issues with the shielded product. He was not aware of the situation since he moved to France. The person with responsibility for EMEA Product Management "Connectors" (who was the Hastings Global Product Manager's manager) was aware of the product not meeting the Boeing specification. He was aware of the issues with the shielded product also. The Claimant's Line Manager referred to at paragraph 54 above believed that the Evreux Site Manager (formerly Manufacturing Manager in Hastings); and the Head of Engineering "Connectors" were less culpable. The person with responsibility for EMEA Product Management "Connectors" had more culpability which is why he had to sign his letter, whereas the other two did not.

72. Meanwhile the Claimant and the 4 others at the UK site were invited to disciplinary meetings. Meetings took place on 20, 21 and 22 November 2017. The outcomes were communicated on 28 November 2017. The decision maker was Dr Andrew Donachie. The disciplinary invite (dated 14 November 2017) was the first time the Claimant was informed that she was facing a disciplinary charge herself but we agree that from the previous investigation, along with the hold placed on the settlement negotiations, the Claimant must have known this might be where the investigation ended.

73. The Claimant in her disciplinary raised that she had no engineering background and relied on her relevant expert senior managers. She had no reason to question engineering as they were the experts and she relied on them. She said she did know about the Robinson Helicopter issue and the product recall in respect of the 9 way product in 2014. She also knew about issues with the shielded product. She did not know about the unshielded product not meeting specification and was not aware of the read across from issues with the shielded product.

She said she had been given a credible reason why the product recall only affected the 9 way and that stock was inspected at the time and there were no issues with the other two products. She said the recall showed that when she was aware of an issue she took appropriate action. She was not aware of the test results. She did not know of the claim to meet the enhanced specification that had been required by Boeing.

74. In respect of the 2013 memo she said she had only just moved into the Site Manager role from Finance and relied on the other Senior Managers. If something similar arose at the time of the disciplinary she would have gone to legal for advice. She said she had had no guidance in the new role and had been put into the job to do the integration into the First Respondent after the transfer. Under Deutsch she said they'd make these decisions themselves. She believed they had spoken to the customer but could not prove it. The team had advised her the customer did not need the product to meet the specification.

75. With respect to the suggestion by the R&D/Product Development Engineer and his suggestion that she had known about the unshielded issues, she queried why he would say this as she had never been in meetings with him, and only met him to say hello in the car park. She said that although he said that the Test Lab Manager had spoken to her, the Test Lab Manager never had. She explained what her one 3-way meeting with him and the HR Manager was about and that he certainly did not say that the 369 product was not consistently passing altitude immersion (as he had also confirmed in his interview). She denied that the Engineering Manager had raised the issue with her and said if he had raised it she would have recalled the product. She gave examples of her integrity in finance.

76. In the disciplinary processes Dr Donachie was looking globally at whether there was a team of people who knowingly shipped product not meeting specification. He approached the matter as one global disciplinary. He considered the Claimant was aware of the 3 and 6 way failures as she was Site Manager and had access to the test material and the Global Product Manager and the Engineering Manager had said they were in meetings with her. In fact the Global Product Manager's disciplinary meeting as a whole supports the Claimant's case that she did not know of the failures. The Engineering Manager confirmed he had escalated an issue with the 9 way to the Claimant, but not so much other information. His meeting is more contradictory with parts where he said she knew and parts where he said she did not, for example p37 of the separate disciplinary hearing bundle.

77. The disciplinary meetings with both the Global Product Manager and the Engineering Manager were not shown to the Claimant and until Dr Donachie's evidence before us the Claimant did not know that they were taken into account in her disciplinary decision. Even the Respondents' representative did not know that the First Respondent had approached the disciplinary as one global disciplinary. Although Dr Donachie back tracked in evidence and said he relied

on the references to the Claimant by both the R&D/Product Development Engineer and the Engineering Manager in the report, we find he did take what was said in the other two disciplinary meetings with the Global Product Manager and the Engineering Manager into account in deciding the Claimant's disciplinary. This was his clear evidence initially.

78. Three of those based in the UK (including the Claimant) were dismissed with more or less identical letters. The only change is the name and job title. The other two dismissed were the Global Product Manager and the Engineering Manager. Two others received no action and also received more or less identical letters to each other (the Quality Manager and Mr Hyde, the Operations Manager).

79. The Claimant's letter is at pages 397A-B. He found she was aware of the unshielded failures and did not take the appropriate action to question the engineering team when the product test data was disclosed to her and she knowingly allowed the continuation of shipments to the customer. He considered this gross misconduct justifying summary dismissal.

80. In his evidence he said he did not dismiss or take any action in respect of Mr Hyde and the Quality Manager because they were lower in the management chain, had known of the problem and reported it up. However the letters to them say they were not aware (and therefore would not have escalated the matter up to management). He did not explain this difference. The investigation report had found them culpable. We do not have a record of their meetings and we are therefore unclear as to what was found in respect of their cases.

81. The Claimant had the opportunity to appeal and did so by way of the solicitor's letter at p397C. The letter put emphasis on the fact that it was not the Claimant's task to manage engineering. It addressed and challenged the evidence of the R&D/Product Development Engineer and the Test Lab Manager. There was no mention of the Engineering Manager's evidence from his disciplinary and it is clear the Claimant was not aware of that evidence. The comparison was drawn between the Claimant and the Evreux Site Manager (formerly Manufacturing Manager in Hastings). The third person who had been at the one meeting with the Claimant and the Test Lab Manager provided a statement confirming that that meeting did not discuss concerns or issues in relation to the manufacture and testing of the 369 product (p398).

82. The Claimant had an appeal hearing on 14 December 2017 dealt with by Mr Fulford. She raised the point that engineering do not report to her but to the Head of Engineering "Connectors" and yet the former Head of Engineering "Connectors" was not questioned about the matter. She said no disciplinary action was taken against the current Head of Engineering "Connectors". The Claimant raised discrimination at p402. She raised that she had had no

handover to the role and she was not paid as much. She did accept that with hindsight it was not right to sign the memo (p429). Mr Fulford did not look into the comparators raised by the Claimant as he was only dealing with dismissal. He also dealt with the appeals by the Global Product Manager and the Engineering Manager and had their disciplinary hearing records but did not share these with the Claimant. He said in evidence that the hearings were 3 parts of a joint system and he wanted to make sure all conversations were aligned. He said he wanted the full picture. Again his meetings with the Global Product Manager and the Engineering Manager were not shared with the Claimant.

83. Mr Fulford considered the Claimant had either acted deliberately and allowed products to be shipped that did not pass product specifications or been grossly negligent in allowing this under her ultimate supervision (page 435). He upheld the dismissal. In his outcome letter he said she did not need a background in engineering to understand that the product did not meet specification. He considered her responsibilities as Director of Operations for the Hastings site included having operational oversight of all products and ensuring non compliant products were not shipped to customers. He relied on the Robinson Helicopter memo incident and also the test results between late 2011 and mid 2014 and the evidence of the R&D/Product Development Engineer which led him to believe it was highly unlikely that as Site Director she was not aware of the ongoing issues. He also mentioned the investigation report as a whole.

84. In evidence to us, however, he accepted the Claimant was reasonable to rely on the expert engineering function. He accepted she may not have seen the test results data and that as Site Manager she is not necessarily expected to look at everything. He thought those appealing knew about the problems (but did not explain how in the Claimant's case, apart from the helicopter memo). He said the Claimant should have had protocols in place but accepted he had not looked for this evidence and was unaware of whether, as the Claimant said, there had been a quality report. He considered any one of the allegations ie the helicopter memo would be sufficient. He said as Site Manager she had particular responsibility to show leadership.

85. Following the decision to dismiss the Claimant Mr Hyde was told he had to take the Claimant's position in front of colleagues. He did not want the role and left employment with the First Respondent shortly after.

86. There is no dispute in fact that there was product on the market that did not meet the specification. It was listed in the First Respondent's catalogue and could be ordered for any purpose. The Claimant accepted at the end of her evidence that as Site Leader she was responsible for the fact that product left the site not meeting the specification and she would accept some sanction for that, but said that given what she knew, and the treatment of others, she did not consider dismissal reasonable.

Relevant law

87. The test in relation to ordinary unfair dismissal is contained in section 98 of the Employment Rights Act 1996. Section 98 provides:

(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-

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3). . .

(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.

88. In considering reasonableness in cases of dismissal for suspected misconduct the relevant test is that set out in *British Home Stores Ltd v Burchell* 1978 IRLR 379, namely whether the employer had a genuine belief in the employee's guilt, held on reasonable grounds after carrying out as much investigation into the matter as was reasonable in all the circumstances of the case.

89. In applying section 98(4) the Tribunal are not to substitute their own view for that of the employer. The question is whether the employer's decision to dismiss fell within the range of reasonable responses open to the employer, or whether it was a decision that no reasonable employer could have made in the circumstances. The range of reasonable responses test applies as much to the investigation as to the substantive decision to dismiss *Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23.

90. The compensation to be awarded in respect of a successful claim for unfair dismissal is set out at ss118-124 Employment Rights Act 1996 and consists of both a basic award and a compensatory award. Section 123 (1) states that the amount of a compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

91. Section 122(2) provides for a deduction to the basic award where the Tribunal considers any conduct of the complainant before the dismissal make it just and equitable to reduce the amount of the basic award to any extent. Section 123(5) provides that where the Tribunal finds the dismissal was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable.

Harassment

92. Section 26 Equality Act 2010 defines sex related harassment as unwanted conduct related to sex, which has the purpose or effect of violating the employee's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee. In deciding whether the conduct has the required effect the Tribunal must take into account the employee's perception, the other circumstances of the case, and whether it is reasonable for the conduct to have that effect.

Victimisation

93. Victimisation is defined in section 27 Equality Act as being where a person (A) subjects a person (B) to a detriment because B does a protected act or A believes B has done, or may do, a protected act. A protected act includes making an allegation (whether or not express) that A or another person has contravened the Equality Act.

Conclusions

Unfair dismissal

What was the principle reason for dismissal and was it potentially fair?

94. The First Respondent relied on misconduct. We accept that conduct was at least the primary reason for the Claimant's dismissal. We accept that there was a Concernline report. It did uncover a major issue of product being sold that did not meet the product specification. The Robinson Helicopter memo was also uncovered. There's no question that the Claimant at the least signed that.

Was the dismissal reasonable?

95. The first issue is whether the First Respondent's witnesses had a genuine belief the Claimant had committed misconduct?

96. Whatever the reason for the difference in approach between the French staff and the UK staff we accept the decision makers themselves had a genuine belief that the Claimant had been involved in some way or was negligent in respect of the situation where product was shipped that did not meet specification over a significant period. There's no question that the Claimant at the least signed the Robinson Helicopter memo and now accepts this was wrong.

97. The next issue is whether the First Respondent's disciplinary officers had reasonable grounds for that belief after a reasonable investigation.

98. The initial investigation was a wide ranging detailed general investigation. There was then a disciplinary hearing and an opportunity to appeal. However, as the initial investigation was general, it did not explore the basis for the occasional statement from staff that the Claimant knew about long term failure of the altitude immersion test yet this was written in the report and relied upon as a statement truth, which the later disciplinary officers then relied on without further exploration.

99. The disciplinary procedure was conducted as a global hearing of the five accused and whether "as a team" they were responsible for the shipping of the non-compliant product. The hearings were all heard over 2-3 days and the decision maker considered all of them in making his decisions. Yet the individuals were only aware of their own responses. This is inherently unreasonable. We acknowledge many employers would approach a situation such as this by having one disciplining officer for all cases in order to seek to be consistent. However this does come with the danger of cross contamination, with the officer taking into consideration material from other disciplinary hearings that the specific employee has not been told about or had a chance to comment on. We find this did happen here. Dr Donachie's initial evidence was that he had considered the cases together and had relied on what others had said about the Claimant. She was not told about these comments, did not have a chance to comment on them and only found out about this when this evidence was given

before us in this hearing. A fair procedure would ensure that specific extracts relied on by the disciplining officer were presented to the relevant employee for comment. The statements that we have seen by the Global Product Manager are in fact supportive of the Claimant's case whereas the Engineering Manager's statement is internally inconsistent and inconsistent with the statement of the Global Product Manager.

100. Even if, as Dr Donachie backtracked, and which we do not accept, he only relied on the statements in the investigation report then he did not explore sufficiently why he accepted that evidence without further exploration. For example by seeking understanding of when and how the R& D Product Development Engineer would have knowledge that the Claimant was aware of the unshielded product not passing altitude immersion when he had not met with her himself and when his evidence and the Test Lab Manager's were contradictory in respect of whether the Test Lab Manager had told her. The Test Lab Manager himself did not say he had told her. He also did not look further into when and what the Engineering Manager said he told her. The Claimant herself was clear the matter had not been raised with her.

101. The outcome letter is very generic (and written in similar terms to all three of those dismissed) and does not identify what the Claimant's particular culpability was for example why it was considered she personally was aware the product was non-compliant. Given the complexity and detail of the proceedings until then and the difference with the letters in France this was not adequate to understand the grounds for dismissal, save for the Robinson Helicopter memo which the Claimant accepts she signed and accepts with hindsight that she should not have.

102. The appeal proceeded in a similar fashion with all three appeals being considered before a decision was made in order for Mr Fulford to have a "complete picture". He said in evidence that the hearings were 3 parts of a joint system and he wanted to make sure all conversations were aligned. This is the same flaw as set out at paragraph 99 above. Moreover he had the disciplinary notes of all three whereas the Claimant still had not seen the minutes of the others.

103. He accepted in evidence that the Claimant may not have seen the log and that she was not necessarily expected to look at everything. He thought those appealing knew about the product failures (but did not explain how in her case- apart from Robinson Helicopter memo). He said she should have had protocols in place but accepted he had not looked for this evidence and was unaware of whether, as the Claimant said, there had been a quality report. He also did not look into the point about inconsistent treatment at all.

104. He considered any one of the allegations ie the Robinson Helicopter memo alone would be sufficient to dismiss. He said as Site Manager she had particular responsibility to show leadership. However he did not consider the

fact that Evreux Site Manager (formerly Manufacturing Manager in Hastings); had been barely disciplined for the same thing, as the Claimant's line manager did not consider the memo matter sufficiently serious to even have him sign his letter.

105. To conclude, the issues with the way the disciplinary hearings were addressed (paragraph 99) carried on into the appeal (paragraph 102)and were not rectified. As a result we find the investigation fell outside the range of reasonable investigations.

106. We find as a result the First Respondent did not have reasonable grounds to believe the Claimant knew about the wider 3 way and 6 way issues at the time of the June 2014 recall or otherwise. Nor was there really any evidence she knew about the enhanced Boeing specification issue or that she should have read across to the unshielded product from the issues with the shielded product. We do find there are reasonable grounds to find that she signed the Robinson Helicopter memo.

107. The Claimant accepted that she did not micro manage the individual technical departments but we find there is no evidence that that is what she was told her role was, in the context of an additional level of expert line management between her and them. We find that without it being made very clear that it was the expectation in a job description it is not reasonable to expect the Claimant to have hands on day to day involvement in the technical side and the detail of whether or not a product meets product specification.

108. She also accepted that as Site Manager she ultimately bore responsibility for the site failures as such. We agree this is the case for the memo, which she was aware of and signed. However we do not agree that as Site Manager it is reasonable to consider her culpable for any failing of the site if she is not aware of it and in this case lines of responsibility and communication are very unclear and there was a shift from one culture to another.

109. To be clear we find there were only reasonable grounds to consider she was culpable in respect of the Robinson Helicopter memo.

110. Was it within range of reasonable responses to dismiss for the Robinson Helicopter memo alone? We accept it is a serious matter that the product was shipped without evidence that the customer agreed to it. The Claimant accepts that it should not have been signed.

111. However the reason for the Evreux Site Manager (formerly Manufacturing Manager in Hastings); being treated very leniently was that he had only signed the memo and then had moved to manage the Evreux site. He was not Site Manager at the time he signed the memo however the Claimant was newly appointed at the time in circumstances where it was expedient and she had

been told she could rely on her specialist senior Managers and there was additional specialist Line Management in place. So she was relying on all of those others who had signed. We do not consider there to be sufficient difference in their circumstances to understand why he was treated so much more leniently in respect of signing the memo. We find it is unreasonable to treat the Robinson Helicopter memo as sufficient reason to dismiss the Claimant when the Evreux Site Manager (formerly Manufacturing Manager in Hastings) was barely sanctioned for the same thing.

Was there a possibility the Claimant would have been fairly dismissed in any event?

112. Based on the evidence before us we do not find it more likely than not that a fair procedure would have led to the Claimant being found more culpable than the above (ie that her only involvement was to sign the Robinson Helicopter memo).

Did the Claimant contribute to her dismissal?

113. However we did find the Claimant contributed to her dismissal by committing the serious misconduct of signing the Robinson Helicopter memo. Our provisional view was the correct percentage contribution was 50% but we allowed the parties an opportunity to make submissions in respect of the degree of contribution once they had heard our decision.

114. The Respondents' Representative argued that 75% was appropriate as it was entirely wrong to ship product that was non conforming and as Site Manager she bore ultimate responsibility. The Claimant argued that the reduction should only be 25% as she was very new into the role, had no guidance, no mentoring and relied on experienced senior managers that the product was fit for the client's purposes. There was also such a disparity between her treatment and the treatment of the Evreux Site manager who just received a verbal conversation and was told that the matter should be a learning experience.

115. The submissions did not change our view that the appropriate balance between the two parties' positions was 50%, reflecting the seriousness of the conduct but the fact that for the reasons set out above we did not consider dismissal within the range of reasonable responses.

Direct sex discrimination

Did the First Respondent subject the Claimant to the following treatment:

subjecting the Claimant to harsher disciplinary sanctions than her male comparators?

holding the Claimant responsible for the actions of her "subordinates" whereas other senior managers were not.

Was the above treatment less favourable than the First Respondent treated or would have treated the Claimant's comparators?

The Claimant's comparators are named in the Case Management Order and are referred to here as the Evreux Site Manager (Formerly Manufacturing Manager at Hastings), the Operations Manager and Quality Manager (in respect of the first allegation) and the former and the current Head of Engineering "Connectors" (at time of dismissal) in respect of the second.

116. The male managers in France, including the named comparator, the Evreux Site Manager, were not disciplined as harshly as the three staff who were dismissed from the Hastings site, including the Claimant. There were also two male members of staff (the Operations Manager and the Quality Manager) who were not dismissed from the Hastings site but instead no action was taken.

117. It is right that the Claimant was as Site Manager uniquely held accountable for the failings of the site.

118. We considered there were material differences in the circumstances of the Claimant and those treated more leniently. The Claimant was unique in holding the position of Site Manager at Hastings and was planning to leave the First Respondent in any event.

119. The former Head of Engineering "Connectors" was barely mentioned in the investigation and not identified as someone who should be considered for disciplinary action. The Head of Engineering "Connectors" at the time of the investigation did not have line management responsibility initially and was based off site in France. The Evreux Manager had signed the memo when he was Manufacturing Manager but then shortly after became the Evreux Manager based in France.

120. The person with responsibility for the EMEA Product Management "Connectors" was aware of the issue with the Boeing specification and the shielded product but did not sign the memo. He was also based in France by the time of the investigation.

121. The Operations Manager, Anthony Hyde, and the Quality Manager did not sign the memo and were below the Claimant in the hierarchy.

122. For the avoidance of doubt we do not find enough evidence to infer that a hypothetical male comparator who was Hastings Site Manager would not have been treated similarly to the Claimant, where there were two other male members of staff who were dismissed, and the Claimant was unique as Site Manager based at Hastings.

If so, was this because of sex?

123. In any event, we cannot infer that the treatment of the Claimant was because she was a woman as there were two other male colleagues who were also disciplined as harshly as she was, and were also dismissed.

124. We find the reason for the difference in treatment between the UK based staff and the French based staff was not adequately explained, but we are satisfied that was in part because the disciplining officers dealing with the Hastings based staff did not turn their minds to comparisons with those staff based in France.

125. However we are satisfied on the evidence that in the Claimant's case the reason she was dismissed was because the disciplining officers reached a view that she was more culpable than simply signing the Robinson Helicopter memo, and in addition she was held accountable as the Site Manager, and highest in the hierarchy on site. We have found their view flawed for the reasons set out in the unfair dismissal case above. However we do not consider there is evidence to infer it was because she was a woman.

Subjecting the Claimant to alleged humiliating, aggressive and harsh treatment by the Second Respondent in daily telephone calls between August and September 2017. Was the above treatment less favourable than the Second Respondent treated or would have treated the Claimant's comparator, the Evreux Site Manager (see Case Management Order)? If so, was this because of sex?

126. We are satisfied that the Second Respondent could be angry and demanding, and embarrass, in front of colleagues, both men and women who did not in his view adequately answer his questions. This did include his behaviour on phone calls which the Claimant experienced.

127. However the Claimant's witness Mr Hyde said that men on the calls were also perceived as being threatened. The Second Respondent's own evidence was that he was even harsher to the Claimant's comparator. The Claimant did not initially consider her treatment was because she was a woman but because she gave "push back" about the Hastings target. It was colleagues who speculated on the possibility that it was because she was a woman very early on before they had seen the extent of his behaviour to others including male managers. Ms Webb is cited by the Claimant as another who was treated less favourably but she herself does not agree.

128. We therefore do not find this to be less favourable treatment because of sex.

Harassment

Did the Second Respondent engage in humiliating, harsh and aggressive treatment during the daily briefing phone calls in August and September 2017?

129. Yes, as set out above at paragraphs 39,45,46,49 and in particular 50 and 126 we accept that the Second Respondent did engage in humiliating, harsh and aggressive treatment in regular briefing calls. The Claimant felt so, Mr Hyde felt so, and the Evreux Site Manager described his behaviour as bullying (p127). Ms Norton described his anger at those who could not give adequate answers and feeling uncomfortable herself witnessing their treatment. We find that on the phone calls this was in front of 40 other high level colleagues which heightened the embarrassment for those subjected to the treatment.

If so, was that conduct unwanted?

130. It was unwanted. The Claimant said so twice in her emails when the calls first commenced dated 7 and 8 August 2017.

If so, did it relate to the protected characteristic of sex?

131. We do not find the conduct related to the protected characteristic of sex. We accept that the Second Respondent was more aggressive to some of the male managers and so the behaviour was not, as the Claimant suggests, directed at her because she is a woman. Her female colleagues who experienced it do not complain about it.

Did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

132. We do consider the conduct had the effect of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. The fact that someone was unprepared or did not have answers required did not justify such treatment, as has been suggested by at least one of the Respondent's witnesses. However, as we find it was not related to sex the conduct does not meet the particular test of sex-related harassment.

Victimisation

Did the Claimant do a protected act and/or did the First Respondent believe that the Claimant had done or might do a protected act, in that she complained about the Second Respondent's alleged harsh and aggressive behaviour? The Claimant relied on emails dated 7 and 8 August 2017.

133. We find the Claimant's emails fall very short of being a protected act. They do not complain of either sex discrimination or harassment. The first time discrimination was raised was on appeal after the Claimant had been dismissed. It was therefore not necessary to consider the remaining issues in respect of victimisation.

Wrongful dismissal

To how much notice was the Claimant entitled? Did the Claimant fundamentally breach the contract of employment by an act of gross misconduct?

134. The value of the wrongful dismissal claim exceeds the cap of £25,000.

135. We find on the balance of probability the Claimant did commit misconduct in signing the Robinson Helicopter memo but otherwise we accept her evidence that she did not know of the general altitude immersion failings, apart from the 9 way product in June 2014 when she took prompt action and escalated the matter to her line management. We do not find it proven on the balance of probability that she knew about the issues with the Boeing specification or that she could be expected to read across from the shielded product issues. We are satisfied on balance of probability that she was not aware that non-compliant product was being shipped apart from in respect of the 9 way recall and when she did know then she took action. We do not consider that the Respondent, in the absence of a job description requiring day to day management of the technical side of the site, could expect her to take action about something she did not know.

136. In respect of the Robinson Helicopter memo, this occurred in the context of her being new to the Site Manager role. Taking account of how she came to have the role and the lack of handover or support, in the context of a recent and ongoing transfer from the more relaxed Deutsch culture to the First Respondent's culture (which at the time was nowhere near complete) we do not consider the action of signing that memo gross misconduct, especially where it was not considered anywhere near as such for the Evreux Site Manager (formerly Manufacturing Manager in Hastings) by the Claimant's own US based Line Manager.

137. The Claimant therefore did not commit conduct sufficiently serious to justify withholding notice pay.

Remedy

138. The damages for wrongful dismissal were £25,000.

139. Turning to compensation for unfair dismissal. The Claimant's basic award was based on a week's pay of £489, length of service of 17 years and the Claimant's age of 53 years. This gave a sum of £11, 247 (£489 x 23) which was reduced by half to reflect the Claimant's contribution to her dismissal giving the sum due as £5623.50.

140. The Claimant's salary with the First Respondent was £98,000 per annum giving £4,736 net per month. She obtained another Finance Director role in

February 2019 and by May 2019 her salary had increased to £80,000. In respect of her compensatory award she claims, and is awarded, her ongoing loss of earnings for 11 months after that date. The balance of her loss of earnings after deducting the compensation for wrongful dismissal was calculated to be £8,887. Also included were the bonuses for 2017 and 2018 (£14,021 and £13,500 net respectively), and car allowance and pension contributions up to May 2019 of £2,835 and £10,508 respectively. A sum of £1,000 was included for loss of statutory rights.

141. This gave a total compensatory award of £50,751 which was then halved to reflect contribution giving a compensatory award of £25,375.50. The total award for unfair dismissal was therefore £30,999.

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Employment Judge Corrigan
8 December 2020