RM

EMPLOYMENT TRIBUNALS

Claimant: **Abdoul El Gorrou**

Respondent: **Tesco Stores Ltd**

Heard at: **London East Hearing Centre**

On: **3 & 8 December 2020**

Before: **Employment Judge S Knight**

Representation

Claimant: In person, unrepresented
Respondent: Anna Greenley (Devereux Chambers)

JUDGMENT having been sent to the parties on 15 December 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided: **REASONS**

Introduction

The parties

1. The Claimant was employed by the Respondent between 20 January 2000 and 7 January 2020. The Respondent is a grocery retailer with over 3,400 stores in the United Kingdom, and around 300,000 employees. It operates a number of formats including Tesco Express, Tesco Metro, Tesco Superstore, Tesco Extra, and Distribution Centres.

The claims

2. The Claimant claims for unfair dismissal, arising out of his summary dismissal on 7 January 2020. The Respondent claims the dismissal was for reasons of gross misconduct. The alleged gross misconduct involved the Claimant restraining a shoplifter within the office of the store he managed. The Claimant states that the shoplifter was threatening and spitting at him and had armed himself with a key

between his knuckles. The Respondent states that the alleged gross misconduct came to the attention of the Respondent by a report to its whistle-blower hotline.

3. On 17 January 2020 ACAS was notified under the early conciliation procedure. On 17 February 2020 ACAS issued the early conciliation certificate. On 13 March 2020 the ET1 was presented in time. On 9 July 2020 the ET3 was accepted by the Tribunal.

The issues

4. At the start of the hearing, Ms Greenley provided a draft list of issues which, with edits, was agreed by the Tribunal and the parties. The issues can be summarised as:

   (1) Was the Claimant dismissed by the Respondent for a potentially fair reason under section 98(2) of the Employment Rights Act 1996 ("**ERA**")?

   (2) If so, was the dismissal fair pursuant to section 98(4) ERA 1996? In this regard:

      (a) Did the Respondent believe that the Claimant was guilty of gross misconduct?

      (b) If so, did the Respondent have in its mind reasonable grounds upon which to sustain that belief?

      (c) If so, when the Respondent formed that belief, had it conducted a sufficient investigation into the matter as was reasonable?

Procedure, documents, and evidence heard

Procedure

5. This has been a hybrid remote and in person hearing which has been consented to by the parties. The form of remote hearing was "***V****: video whether partly (someone physically in a hearing centre) or fully (all remote)*". A face to face hearing was not held because it was not practicable due to the COVID-19 pandemic and no-one requested the same. The documents that I was referred to are in a bundle, the contents of which I have recorded.

6. The Claimant attended the hearing in person, and all other participants attended the hearing through Cloud Video Platform.

7. At the start of the hearing I checked whether any reasonable adjustments were required. Those in attendance confirmed that none were required.

Documents

8. I was provided with an agreed Hearing Bundle comprising 812 pages, 806 of which were numbered.

9. Witness statements from the Claimant, James Lingard (the dismissing officer), and Andy Cruttenden (the appeal officer) were provided separately.

10. I was also provided by the Respondent with 2 bundles of additional documents. The First Additional Bundle comprises 40 pages; the Second Additional Bundle comprises 5 pages.

11. The parties also provided 2 video clips: CCTV recorded onto a mobile phone (relating to the incident with the shoplifter); and mobile phone footage from a news website (relating to an unconnected incident).

12. Finally, on the Tribunal's direction, between the 2 days of the hearing, the parties provided written closing submissions and the Claimant provided evidence relevant to remedy.

Evidence

13. At the hearing I heard evidence under affirmation from Mr Lingard, Mr Cruttenden, and the Claimant. Each of the witnesses adopted their witness statements and added to them.

Closing submissions

14. Both the Claimant and the Respondent provided helpful and detailed written closing submissions. Their oral closing submissions broadly reflected their written closing submissions.

Relevant law

15. Section 94 of the ERA 1996 provides that an employee with sufficient qualifying service has the right not to be unfairly dismissed by their employer.

16. Section 98 of the ERA 1996 provides insofar as is relevant:

> "(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
>
> (a) the reason (or, if more than one, the principal reason) for the dismissal, and
>
> (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
>
> (2) A reason falls within this subsection if it— […]
>
> (b) relates to the conduct of the employee,
>
> (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

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

17. In the case of *British Home Stores v Burchell* [1980] I.C.R. 303; 20 July 1978 the Employment Appeal Tribunal set down the test that the Tribunal applies in cases of unfair dismissal by reason of conduct. The burden of proof within the test was later altered by section 6 of the Employment Act 1980. As a result, the test applied by the Tribunal is as follows:

    (1) The employer must show that it believed the employee to be guilty of misconduct.

    (2) The Tribunal must determine whether the employer had in mind reasonable grounds upon which to sustain that belief.

    (3) The Tribunal must determine whether, at the stage at which that belief was formed on those grounds, the Respondent had carried out as much investigation into the matter as was reasonable in the circumstances.

18. This means that the employer does not need to have conclusive direct proof of the employee's misconduct: the Respondent only needs to have a genuine and reasonable belief, reasonably tested. Further, there is no requirement to show that the employee was subjectively aware that their conduct would meet with the employer's disapproval.

19. In *Beatt v Croydon Health Services NHS Trust* [2017] EWCA Civ 401; [2017] IRLR 748; 23 May 2017 Lord Justice Underhill stated that the "reason" for a dismissal is the factor or factors operating on the mind of the decision-maker which causes them to take the decision to dismiss or, as it is sometimes put, what "motivates" them to dismiss.

20. In *Shrestha v Genesis Housing Association Ltd* [2015] EWCA Civ 94; [2015] IRLR 399; 18 February 2015 Lord Justice Richards noted at ¶ 23:

    "To say that each line of defence must be investigated unless it is manifestly false or unarguable is to adopt too narrow an approach and to add an unwarranted gloss to the Burchell test. The investigation should be looked at as a whole when assessing the question of reasonableness. As part of the process of investigation, the employer must of course consider any defences advanced by the employee, but whether and to what extent it is necessary to carry out specific inquiry into them in order to meet the Burchell test will depend on the circumstances as a whole."

21. In considering the case generally, and in the Tribunal's assessment of whether dismissal was a fair sanction in particular, the Tribunal must not simply substitute

its judgment for that of the employer in this case. Different reasonable employers acting reasonably may come to different conclusions about whether to dismiss. As Mr Justice Phillips noted when giving the judgment of the EAT in *Trust Houses Forte Leisure Ltd v Aquilar* [1976] IRLR 251; 1 January 1976:

> "It has to be recognised that when the management is confronted with a decision whether or not to dismiss an employee in particular circumstances, there may well be cases where more than one view is possible. There may well be cases where reasonable managements might take either of two decisions: to dismiss, or not to dismiss. It does not necessarily mean, if they decide to dismiss, that they have acted 'unfairly,' because there are plenty of situations in which more than one view is possible."

22. It is therefore not for the Tribunal to ask whether a lesser sanction would have been reasonable in this case. The Tribunal asks itself whether dismissal was reasonable. The question is also not whether the Claimant committed gross misconduct, but whether the Respondent had a reasonable belief that the Claimant had committed gross misconduct.

Findings of fact

The investigation and dismissal process

23. The Claimant was summarily dismissed for alleged gross misconduct on 6 January 2020. The alleged gross misconduct constituted unacceptable behaviour in initiating and sustaining physical contact, and detaining, a shoplifter who the Claimant states was armed and threatening. This took place on 7 June 2019. The Claimant had no previous disciplinary issues.

24. The Respondent was made aware of the alleged misconduct by an anonymous complainant through its whistleblowing hotline on 25 September 2019. The "whistle-blower" made a series of allegations against the Claimant, including theft and assault. The whistle-blower attached an extract of the store CCTV which they created by recording on their phone a screen which was playing the store CCTV. The whistle-blower held some sort of vendetta against the Claimant, and was using the CCTV footage to encourage the Respondent to take disciplinary action against the Claimant. This is made clear by the email by the whistle-blower to the whistleblowing hotline, which makes allegations of theft against the Claimant in respect of which the Respondent (rightly) found the Claimant had no case to answer: the allegations of theft were malicious false allegations.

25. Pending completion of an investigation, the Claimant was suspended on 30 September 2019. Initially, the Claimant was suspended and an investigation commenced in respect of allegations of (i) unacceptable behaviour in making physical contact with a member of the public; and (ii) theft. However, at the investigation stage, the Respondent concluded that there was no case to answer in respect of the allegation of theft.

26. An employee of the Respondent who was a witness to the incident, Mr Ahmed, was interviewed by multiple investigators on 1 October 2019, 3 October 2019,

and 8 October 2019. As Mr Lingard recognised in his evidence, it is uncommon for a witness in a disciplinary matter to be interviewed multiple times by multiple investigators. I note that the transcript of the second of these meetings, said to last 14 minutes, contains under a minute's worth of transcribed text, and that the transcript of the third of these meetings, said to last 25 minutes, contains about 2 minutes' worth of transcribed text. I am concerned by what was clearly said for the rest of the time and not recorded.

27. The Claimant was invited to two investigation meetings, on 4 October 2019 and 8 October 2019. Having considered the Claimant's representations and on completion of the investigation, it was decided there was a disciplinary case to answer.

28. The disciplinary hearing began on 17 December 2019 following the Claimant's requests to reschedule the hearing due to his suffering work related stress and then the unavailability of his representative.

29. The disciplinary hearing was adjourned to allow for Mr Lingard to meet with Rachel Alexander, the relevant Area Manager, on 3 January 2020.

30. During the course of the disciplinary process, the Claimant put forward his defence. In particular, he showed photographs of the armed shoplifter, with a key in his hand held in such a way as to allow it to be used as a weapon.

31. The disciplinary hearing was reconvened on 6 January 2020. The disciplinary outcome of summary dismissal was notified to the Claimant in a letter dated 6 January 2020. Mr Lingard made the decision to dismiss.

32. The Claimant exercised his right of appeal, which was considered by Mr Cruttenden, a Store Director for the Southampton and Reading area, at a hearing on 10 February 2020. The appeal was not upheld. This was notified to the Claimant by a letter dated 17 February 2020.

The shoplifting incident and the background to it

33. The Respondent, rightly, viewed the store as "high-risk" due to targeting by shoplifters. Another, appropriate, word for this is "dangerous", because the shoplifters would sometimes be violent.

34. The reporting system for security incidents at the store was so complex that the staff did not use it. They asked for a simpler system. For this reason, the incident involving the shoplifter was not reported. The frequency of incidents was increasing. The Respondent gave employees in the store wrist bands as a security measure, but these were ineffective. The Claimant had to struggle hard with the Respondent for any security to be provided.

35. No security guard was provided for the store at the time of the shoplifting incident. I was surprised by something that Mr Cruttenden said about this in evidence: he said that a desire to minimise costs played no role in determining whether guards were hired to provide security at a particular store. The Claimant disputed this. In

the Tribunal's experience, when determining whether to hire additional security staff, it is entirely natural for an employer to factor in cost, amongst all the other factors that they will consider. I find that as a responsible company, aware of the need to control costs, the Respondent does factor in cost in such a way. I therefore reject Mr Cruttenden's evidence that the Respondent does not factor in cost, and accept the Claimant's evidence that the Respondent does factor in cost. In light of this, I have viewed Mr Cruttenden's evidence with a considerable degree of circumspection. I was given further cause to treat his evidence with circumspection by his initially evasive answers in oral evidence to a question about whether the Claimant was seen to kick or slap the shoplifter, it being obvious from CCTV that the Claimant did not do such a thing.

36. Turning to the CCTV of the incident, this is reliable as far as it goes. It is poor quality due to the nature of the recording medium used, but it has not been altered. However, what is shown on the CCTV has been carefully selected, or as the Claimant has put it, cherry-picked, and I bear this in mind in assessing it in context. It is unclear from the CCTV alone what happened immediately before the CCTV footage starts, but it is plain that the whistle-blower selected this specific part of the CCTV to record onto their mobile phone.

37. The CCTV extract shows the following. The shoplifter is sat on a wheeled office chair in a small office within the store. The office contains 2 chairs. The Claimant quickly takes 2 steps, covering the very short distance from his position by the open office door across the office to the shoplifter, and grabs the shoplifter's hood to push the shoplifter's head down. The shoplifter swings his right arm towards the Claimant, which the Claimant catches. There is something held in the shoplifter's right hand. The Claimant and the shoplifter then struggle, with the Claimant restraining the shoplifter in the chair. The Claimant's colleague Mr Ahmed then walks from the open door into the office to assist the Claimant with the restraint, before walking out of the office. The shoplifter then uses his legs to propel the office chair along the floor, in an unsuccessful attempt to escape the Claimant's restraint. The Claimant then restrains the shoplifter in place for about 10 seconds until police arrive. When police arrive, they tap the shoplifter on the shoulder, and the shoplifter again begins struggling to escape. The police take over the restraint, to which the shoplifter reacts by struggling further. The Claimant leaves the office.

38. The original CCTV is automatically deleted after 8 weeks, so would not have been available by the time of the report by the whistle-blower.

39. I now turn to consider what actually occurred during the incident, both in terms of what is captured on the short CCTV extract and what happened before and after. I accept that the Claimant's account of the incident was truthful: he was an honest and reliable witness. He noticed a shoplifter. He used his customer service skills, honed over almost 20 years' employment, to invite the shoplifter into the store office. At this stage the Claimant did not feel threatened. It was a situation that the Claimant will have managed professionally countless times before. This was in line with the Claimant's training, to invite the shoplifter into the office to issue a banning letter and if appropriate call police. When the shoplifter was in the office,

the shoplifter turned aggressive. He spat at the Claimant. He had in his hand a key, which the Claimant at the time thought was a screwdriver. Outside the office were staff and customers who could get hurt. The Claimant was close to the shoplifter at the time. He had already approached him before the shoplifter became threatening. The Claimant then made a split-second decision to restrain the shoplifter to protect himself and others. The Claimant's actions, viewed objectively, were reasonable in all the circumstances as he believed them to be at the time, in defence of himself and others. The Claimant did not do anything to provoke the shoplifter, or indeed to provoke the police.

40. Mr Ahmed's account of what occurred in the store office changed during the course of the investigation. I find that during the course of the investigation, managers pressed Mr Ahmed for an increasingly detailed account. However, I have not heard from Mr Ahmed. I do not have sufficient material before me to reach a finding that the evidence of Mr Ahmed is corrupted as a result of the investigatory process. Mr Ahmed's evidence during the Respondent's investigation confirmed that the shoplifter was threatening. The Respondent was always aware that Mr Ahmed's evidence supported the Claimant's account in this way.

The Respondent's policies

41. The Respondent has suggested that its policies mean that an employee should not approach a shoplifter. I find that the understanding of the Respondent's policy on shoplifters, that is shared by the Respondent and its employees (including the Claimant), and which is the only sensible interpretation of the policy, is as follows. Where a customer in a store is suspected of shoplifting, the employee should approach them and ask if they require assistance, unless the employee feels threatened. If the employee has already approached the shoplifter, they should escort the shoplifter to the store office, and issue a banning letter, await the police, or take some other appropriate action in the same vein. In these interactions, the employee should not restrain the shoplifter to get them to the office, or to await arrival of the police. However, the Respondent's policy does not cover the situation where the shoplifter has already been escorted into the store office, and then becomes threatening. In such circumstances, the employee has already approached the shoplifter: it is too late for them not to approach the shoplifter. The Respondent's policy does not prohibit the employee from taking reasonable actions in self-defence and defence of others when the shoplifter has already (appropriately) been approached. It also does not encourage such actions in self-defence or the defence of others.

Conclusions

Liability

42. In determining whether the Respondent has acted within the band of reasonable responses, I have been careful not to adopt a "substitution mindset". I have borne in mind the relevant authorities on the point, as summarised earlier, and the Respondent's clear submission on this point.

43. I have no reason to doubt Mr Lingard's report of what he believed to be the case when he took the decision to dismiss the Claimant. I conclude that Mr Lingard, and by extension the Respondent, did believe that the Claimant was guilty of misconduct when it made the decision to dismiss. I further conclude that Mr Cruttenden shared this belief when he rejected the Claimant's appeal.

44. I have therefore considered whether this belief was arrived at on reasonable grounds. I have concluded that it was not, for the following reasons.

45. By the time of his dismissal, the Claimant had provided to the Respondent nearly 20 years of blemish-free service. The Claimant had provided photographic evidence that the shoplifter was using a key as a weapon to threaten him. These were facts that would provide the starting point for any reasonable employer's analysis of the Claimant's account of his interaction with the shoplifter.

46. The Claimant's account of having been threatened with a weapon and spat at by the shoplifter a moment before the CCTV footage commences is itself credible. No reasonable employer would have treated it as anything but credible. Indeed, it is broadly supported by the account of Mr Ahmed. Mr Ahmed's account remained broadly consistent on the issue of the Claimant having been threatened by the armed shoplifter. Unfortunately, the Respondent failed to give this due consideration in considering the evidence.

47. Mr Lingard accepted that the way that the CCTV was provided to the Respondent was suspicious. He was correct in this regard. Any reasonable employer would conclude, as indeed the Respondent did conclude, that the whistle-blower held a vendetta against the Claimant, had made a false and malicious allegation of theft against the Claimant as part of the same whistleblowing complaint, and was using the CCTV footage to encourage the Respondent to take disciplinary action against the Claimant.

48. The CCTV is completely decontextualised. It does not show what happened immediately before the Claimant took a step towards the shoplifter. Any reasonable employer would conclude that the editing of the footage by a person who it had concluded clearly had a vendetta against the Claimant (and who had made an unsubstantiated allegation of theft against him) was intentional, and that relevant material may well exist immediately before the start of the edited footage. Any reasonable employer would also conclude that this was suspicious, and that the footage immediately before the start could be exculpatory, and could have been edited out by the whistle-blower to make the Claimant look worse. The Respondent failed to take adequate account of this. A reasonable employer would ask why the footage had been edited in this way. However, the Respondent did not ask itself this question.

49. This would have been the starting point for any reasonable employer's consideration of the Claimant's evidence of what happened before the CCTV extract began. In light of this starting point, there were no reasonable grounds on which the Respondent could have disbelieved the Claimant's account that there were threats and spitting by the armed shoplifter immediately before the

CCTV footage commences, and that this is why the CCTV footage was edited as it was. Further, there were no reasonable grounds on which the Respondent could have concluded that the Claimant acted otherwise than in response to disgusting and violent actions by the armed and threatening shoplifter. As such, having in the course of the disciplinary process heard the Claimant's explanation for his actions, there were no reasonable grounds to conclude that in the CCTV footage the Claimant acted otherwise than in reasonable selfdefence and defence of others in the circumstances as he reasonably believed them to be at the time, having made a split-second decision about what defence was required, in an intensely scary and fast-paced situation, and without a security guard having been provided for his or his colleagues' protection.

50. The Respondent has suggested that it had reasonable grounds to conclude that the Claimant breached the Respondent's policies by approaching the shoplifter inside the office. I conclude that the Respondent is incorrect in this regard. The policy does not cover this situation. If the Respondent did have a policy which provided that, once a shoplifter was in the office and began being threatening, its employees could not act in reasonable self-defence by restraining the shoplifter, then this would be unreasonable. It would be to expect the Respondent's employees to accept being subject to violence without defending themselves. As such, I conclude that the Claimant did not breach the Respondent's policies by restraining the armed and threatening shoplifter. I further conclude that the Respondent did not have reasonable grounds to conclude that the Claimant had broken its policies in relation to restraining the armed and threatening shoplifter.

51. As I have concluded that the Respondent did not have reasonable grounds to sustain its belief that the Claimant had breached its policies and thereby committed an act of gross misconduct, the Claimant was unfairly dismissed.

52. Even if the Claimant had breached the Respondent's policies, and the Respondent had reasonable grounds to sustain a belief that he had done so, formed on the basis of a reasonable investigation, dismissing the Claimant would not have been within the band of reasonable responses. This is because of (i) the difficult situation in which the Claimant was placed, of managing a store which was dangerous and which the Respondent knew to be dangerous; (ii) his nearly 20 years of unblemished service; (iii) the delay in the complaint against the Claimant; (iv) the obvious malice of the whistleblower who brought the issue to the Respondent's attention; and (v) the lack of a complaint from the shoplifter. In this light, no reasonable employer would have taken the decision to dismiss. As such, the Claimant was unfairly dismissed.

Remedy

53. The method by which I have calculated the remedy is set out in the Schedule.

54. The Claimant has mitigated his loss by attempting to find new work. He applied for multiple appropriate job opportunities. I conclude that his damages should not be reduced for a failure to mitigate his loss.

55. I have considered whether the Claimant could have been dismissed fairly, even though he was not on this occasion. In light of my findings as to whether the Claimant did commit an act of misconduct, and whether there were reasonable grounds to conclude he could have been fairly dismissed, I conclude he could not have been. As such, his compensation will not be reduced on a *Polkey* basis.

56. The Claimant did not cause or contribute to his own dismissal. He acted reasonably in a challenging situation, to prevent harm to himself and to others. As such, his compensation will not be reduced on this basis.

57. I conclude that it would not be just and equitable to adjust an award for a failure to follow an appropriate ACAS Code of Conduct.

58. The Claimant has a right to recover a Basic Award, and a Compensatory Award. The detailed calculations are set out in the Schedule.

Basic Award

59. The Claimant was 60 years old at the Effective Date of Termination ("**EDT**"). He had 19 years' continuous service with the Respondent at the EDT. His gross weekly pay exceeded the statutory cap of £525 per week which applied at the EDT.

60. As such, the Basic Award is calculated by multiplying the Claimant's capped weekly gross wages by 1.5 times the number of years' continuous service at the EDT.

61. This is £525 x 1.5 x 19 = **£14,962.50**.

Compensatory Award

62. The Compensatory Award compensates the Claimant for his losses arising out of his unfair dismissal.

63. The Claimant found temporary employment after 5 weeks and 2 days (5.2857 weeks). His **weekly net lost wages to the new job** were £592.91. This produces a loss of £592.91 x 5.2857 = **£3,133.95**.

64. From finding a new (temporary) job to the Tribunal hearing, the Claimant earned £14,133.86. The temporary job ended before the Tribunal hearing. The Claimant's **net average lost wages from starting the new job to the Tribunal hearing** were **£11,276.57**.

65. This gives a total **prescribed element of £14,410.52**.

66. Given the efforts that the Claimant is taking to find work, and his previous good fortune in finding temporary work, combined with the prevailing economic conditions in the retail sector, I conclude that the Claimant is likely to find further employment very soon. I conclude that this will be at a similar rate to his temporary employment that he secured after his dismissal by the Respondent. I conclude that he will regain a managerial role of an equivalent level to his job as

Store Manager within 9 months (39 weeks). I therefore conclude that his future lost wages until restoration of his old wage level will continue at a loss of £263.12 for 39 weeks. This gives **future losses of £10,261.68**.

67. The Claimant claimed loss of employer's pension contributions at £40.60 per week for 12 weeks. I conclude that it is fair to award this amount. I award **pension contributions lost of £487.20**.

68. Considering the Claimant's length of service with the Respondent and the prevailing economic climate, I award **£300 for loss of statutory protection**.

69. Considering the same factors, I award **£300 for loss of right to long notice**.

70. The Claimant has provided no receipts for his claimed expenses in looking for work. The Respondent points out that the job searching appears to have been done remotely, given the nature of the applications made and the COVID-19 pandemic. I do not make an award for expenses in looking for work.

71. This gives a total **non-prescribed element of £11,348.88**.

72. This gives a total **Compensatory Award *before grossing up* of £25,759.40**.

Grossing up

73. Where a tribunal awards more than £30,000 in compensation for an unlawful dismissal, income tax is generally charged on the excess over £30,000. The principle in *British Transport Commission v Gourley* 1956 AC 185; 8 December 1955 therefore requires the tribunal to increase the amount awarded to ensure that, when this income tax is paid, the claimant does not end up with less than the amount the tribunal intended to award, and which would put them in a worse position than if they had not been dismissed.

74. Compensation is taxed in the year that it is received by the Claimant (section 403(2) of the Income Tax (Earnings and Pensions) Act 2003). The Claimant must declare his compensation by completing a self-assessment income tax form at the end of the tax year in which he receives his compensation.

75. The amount by which the monetary award before grossing up exceeds the taxfree element of £30,000 is £9.713.25.

76. Given his reduced income in the current tax year, the Claimant will pay tax at 20% on the amount by which his award exceeds the tax-free element of £30,000.

77. As such, in order to avoid an award which is too low, the excess of the monetary award over the tax-free element must be increased to £12,141.56. This is a difference of £12,141.56 - £9,713.25 = **£2,438.31 to account for grossing up**. This will be added to the non-prescribed element of the Compensatory Award.

Conclusions on Monetary Awards

78. **The Total Monetary Award is £42,141.56**.

79. **The Basic Award is £14,962.50**.

80. **The Compensatory Award is £28,187.71**, made up of a **prescribed element of £14,410.52** and a **non-prescribed element of £13,777.19**.

……..
Employment Judge Knight

18 January 2021

Schedule: Remedy Calculations

cells.

Date of birth	15/10/1959	Age at EDT	60
Date of start of employment	20/01/2000	Full years of service at EDT	19
Effective date of termination ("**EDT**")	06/01/2020	Pay frequency	Weekly
Gross Weekly Pay	£812.02	Additional Award made?	No
Net Weekly Pay		Compensatory Award uncapped?	
	£592.91		No
No			
		Automatically unfair, with min. Basic Award?	No

FINDINGS OF FACT **Fill in only the yellow**

Workings

Years:Weeks Calculation
10.5 weeks per full year worked under 22;
1 week per full year worked between 22 and 41; 1.5 weeks per full year worked 41 or older.

ERA ss 100(1)(a); 100(1)(b); 103A; 124(1A)
ERA ss 100(1)(a); 100(1)(b); 101A(d); 102(1); 103

Automatically unfair for blacklisting?

Fill in only **STATUTORY CAPS AND MINIMA the yellow cells.**

Fill in only **BASIC AWARD the yellow cells.**

Always required		**Required where listed in yellow**	
Max weekly gross wage at EDT	£525.00	Max compensatory award at EDT	£86,444.00
		Max compensatory award at EDT in this case	£42,225.05

Running total
£14,962.50
£14,962.50
£14,962.50
£14,962.50

only the **COMPENSATORY AWARD Fill in yellow cells.**

Prescribed Element

Loss of wages inc taxable benefits to date of hearing (after allowing for failure to mitigate)

Dismissal to new job	**Monthly**	**Weekly**	**No of Weeks**	**Total**	
Net average lost wages to new job	£2,569.28	£592.91	5.2857	£3,133.95	
Capped Gross Wages	£2,275.00	£525.00	28.5	£14,962.50	a
New job to hearing	**Monthly**	**Weekly**	**No of Weeks**	**Total**	
Wages earned in new job	£1,429.09	£329.79	42.8571	£14,133.86	**Net** average lost wages from old job £1,140.19 £263.12 £11,276.57
Unreasonable refusal of reinstatement		s 122(1)		£0.00	
Total Lost Wages to Hearing				£14,410.52	b a+b
Subtract					
Conduct / contributory fault		s 122(2) & 3 s 122(4)	0%	£0.00	
Redundancy payment					
Wages / money in lieu of notice	£0.00	£0.00	0.0000	£0.00	
				£0.00	
Actual total lost wages				£14,410.52	c

Running total
£14,410.52

Adjust by subtracting or adding, as appropriate

NET BASIC AWARD		**Multiplier**	**Total**	-ve value is subtracted from Comp. Award
Chance of dismissal anyway with fair procedure	*Polkey*	0%	£0.00	d
ACAS Code breach increase / reduction s.124A 0% £0.00 Conduct / contributory fault s.123(6) 0% £0.00				
PRESCRIBED ELEMENT			£14,410.52	

Running total
£14,410.52
£14,410.52
£14,410.52
£14,410.52

Non-Prescribed Element

Estimated future loss of wages (allowing for failure to mitigate)

	Monthly	**Weekly**	**No of Weeks**	**Total**	Weeks to restoration of old wage level 39.0000
Wages earned in new job	£1,429.09	£329.79			
Net average lost wages £1,140.19 £263.12 £10,261.68 Loss of other benefits £0.00 £0.00 0.0000 £0.00					
Loss of pension rights				£487.20	
Loss of statutory protection				£300.00	
Loss of right to long notice	£300.00 Expenses in looking for work		£0.00		
Total				£11,348.88	

Running total
£10,261.68
£10,261.68
£10,748.88
£11,048.88
£11,348.88
£11,348.88

Adjust by subtracting or adding, as appropriate

		Multiplier	**Total**
Any other payment by Respondent (except excess of redundancy payment)			£0.00
Chance of dismissal anyway with fair procedure	*Polkey*	0%	£0.00
Reduction for accelerated receipt			£0.00
ACAS Code breach increase / reduction	s.124A	0%	£0.00
Failure to provide employment contract: 0, 2, or 4 weeks'	EA s 38 & Sched. 5	£0.00 0	
Protected disclosure not made in good faith	s.123(6A)	£0.00	
Conduct / contributory fault	s.123(6)	0%	£0.00
Excess of redundancy payment over basic award	s.123(1) or (7)		£0.00
Adjustment to account for grossing up			£2,428.31
NON-PRESCRIBED ELEMENT			£13,777.19

Running total
£11,348.88
£11,348.88
£11,348.88
£11,348.88
£11,348.88
£11,348.88
£11,348.88
£11,348.88
£13,777.19

COMPENSATORY AWARD	**£28,187.71**	c + d

	Monthly	**Weekly**	**No of Weeks**	**Total**

ADDITIONAL AWARD for non-re-engagement s 117(3) **Fill in only the yellow cells.**

ADDITIONAL AWARD	£2,275.00	£525.00	0	£0.00

SUMMARY **Fill in only the yellow cells.**

Basic Award	£14,962.50
Compensatory Award	£28,187.71
Additional Award	£0.00
TOTAL MONETARY AWARD owed by the Respondent	**£42,141.56**
EXCESS of Total Monetary Award over the Prescribed Element	**£27,731.04**
Less recoupment	£1,008.65
TOTAL DUE to the Claimant	**£41,132.91**