THE EMPLOYMENT TRIBUNALS

Claimant: **Mr W Bradley**

Respondent: **Mr J O'Brien t/a O'Brien Mobility**

Heard at: **Newcastle Hearing Centre (by CVP)** **On: 10 November 2020**

Before: **Employment Judge Morris (sitting alone)**

Representation:

Claimant: **Mr J Wilkin, solicitor**
Respondent: **Mr S Healy of counsel**

RESERVED JUDGMENT ON REMEDY

The judgment of the Employment Tribunal is as follows:

1. In respect of the claimant's successful complaint by reference to Section 94 of the Employment Rights Act 1996 that his dismissal by the respondent was unfair contrary to Section 98 of that Act the respondent is ordered to pay to the claimant compensation of £7,681.73. That award comprising the following elements the detailed calculations of which are set out in the Reasons below:

    1.1 Basic award - £1,350
    1.2 Compensatory award - £6,331.73

2. The Recoupment Regulations apply to the above award the effect of which is explained in the Annex to this judgment.

REASONS

Representation and evidence

1. The hearing was conducted by way of the Cloud Video Platform. The claimant was represented by Mr J Wilkin, solicitor, who called the claimant to give evidence. The respondent was represented by S Healy of counsel, who called the respondent to give evidence.

2. The Tribunal was not referred to any new documents in respect of this remedy hearing other than an updated Schedule of Loss although some limited reference was made by the claimant to the agreed bundle of documents that had been provided to the liability hearing.

Context

3. The context of this remedy hearing is that on 20 March 2020 I found the claimant's complaint that his dismissal by the respondent on 4 September 2019 was unfair to be well-founded.

The evidence of the parties

4. I set out below what I consider to be the key points arising from the evidence of the parties before this Tribunal. In making my findings of fact either as agreed between the parties or found by me on the balance of probabilities, I took into consideration all relevant evidence, the submissions made on behalf of the parties at the hearing and the relevant statutory and case law, notwithstanding the fact that, in pursuit of some conciseness, every aspect might not be specifically mentioned below.

    4.1 After the claimant's dismissal, the respondent continued to operate his business. As previously, he and his daughter worked in that business and a new employee was recruited to replace the claimant.

    4.2 In accordance with the regulations introduced as a consequence of the coronavirus pandemic, the business was closed in March 2020 and the respondent's daughter and the replacement employee were placed on furlough. Although the business reopened at the beginning of July 2020 they have both remained on furlough as a result of the absence of customers. The respondent has received payment from the government under the self-employed furlough scheme, in respect of which he intends to continue to make claims.

    4.3 In light of the furlough scheme ending on 31 October 2020, the respondent's intention had been to make the replacement employee redundant but he had remained on furlough given the extension of that scheme.

    4.4 In the circumstances, had the claimant been employed by the respondent in March he would have been placed on furlough, potentially continuing on furlough until next March.

    4.5 Since his dismissal in September 2019, the claimant has made approximately 110 application for wide-ranging vacancies. Initially he had focused his attempts on firms providing mobility aids but then began looking elsewhere, for example in engineering, warehousing, driving and window firms but without success. In fact, he had only received two telephone responses from businesses, the names of which he could not remember.

He had approached prospective employers principally by 'door-knocking' and telephone in locations in Middlesbrough and surrounding areas such as Hartlepool, Darlington and Stockton, and as far away as Newcastle; his focus being on where there were clusters of employers such as at industrial estates or trading estates.

4.6 He had used a notebook to keep a log of the approaches and applications he had made. His daughter had the same notebook and, in error, took the claimant's notebook to college with her approximately three weeks ago where she lost it. He had a duplicate with him today, which his partner had written out from the original at the time, but he had not disclosed it for the purposes of these proceedings.

4.7 The claimant had stopped his business of buying and selling televisions about a year ago because only getting a few pounds on each television had not been worth the time and effort.

4.8 Not having secured employment he was now working with the Job Centre with the intention of starting up his own mobility business. He had not done this previously because he would prefer to be employed but there is nothing doing and he needs to pay his mortgage.

4.9 The claimant had begun receiving Jobseeker's Allowance on 12 September 2019.

The law

5. Having been found to have been unfairly dismissed, the claimant had opted for the remedy of compensation. Section 118 of the Employment Rights Act 1996 ("the Act") provides that an award of compensation shall consist of a basic award and a compensatory award. That being so and given that the calculation of the basic award has been agreed between the parties, the principal statutory provisions of the Act that are relevant to the issues in this case are as follows:

"122 Basic award: reductions.

(2) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly."

"123 Compensatory award

(1) Subject to the provisions of this section and sections 124, 124A and 126, the amount of the 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.

(2) The loss referred to in subsection (1) shall be taken to include –

(b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.

(4) In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland.

(6) Where the tribunal finds that 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 having regard to that finding."

Submissions

6. After the evidence had been concluded the parties' representatives made submissions. It is not necessary for me to set out those submissions in detail here because they are a matter of record and the salient points will be obvious from my findings and conclusions below. Suffice it to say that I fully considered all the submissions made and the parties can be assured that they were all taken into account into coming to my decision.

7. That said, the key points made by Mr Healy on behalf of the respondent included as follows:

7.1 The Tribunal is to consider if the claimant took reasonable steps to mitigate his loss in respect of which he had provided woeful evidence: lists had been prepared and not disclosed; other lists had been lost, which was bizarre. The Tribunal cannot be satisfied that the claimant had taken anything like the steps that would be expected. Even accepting (in respect of which the Tribunal should be sceptical) that the claimant had made 110 efforts to find employment in 14 months, the majority had been by door-knocking with no application forms having been submitted and no attempt at retraining.

7.2 The calculation of the basic award at £3,375 was agreed subject to any deduction for contributory fault.

7.3 The claimant's conduct had been culpable or blameworthy (see Nelson v BBC (No. 2) [1980] ICR 110) and, therefore, a contributory reduction of both the basic and compensatory awards should be made in accordance with sections 122(2) and 123(6) of the Act, which would usually be of the same percentage: University of Sunderland v Drossou UKEAT/0341/16. A reduction of 100% is rare but 50% to 75% would be appropriate.

7.4 In calculating the compensatory award, the first consideration is the period of loss. The Tribunal should allow an absolute maximum period of six months but should look at a period of three months from the date of the dismissal until December 2019. It was accepted that the Country was now

in ‘lockdown’ but there had been some 6 or 7 months since the claimant’s dismissal in September 2019 until the start of ‘lockdown’ at the end of March 2020 during which time the claimant could have made proper efforts but had not done so. More is required than speculative knocking on doors. Thus the reference to ‘lockdown’ is a red herring because claimant had 6 or 7 months before then to find alternative employment. It would be grossly unfair to extend the period of loss into the ‘lockdown’ period because the reality is that if the claimant had been furloughed the respondent would have received 80% of his salary from the government but now he cannot reclaim any part of the compensation from the government.

7.5 A ‘Polkey reduction’ should be applied given that, for example, the claimant had walked off site when he did not need to as the tyres were being sorted and he could have stayed in the workshop where there was work to do. In doing so he had refused a lawful instruction from his employer. As such, if a proper procedure had been followed it is likely that the claimant would have been dismissed anyway for insubordination and disobedience. Not to make such a reduction would be most unjust given the previous findings of the Tribunal. Different deductions can be made in respect of Polkey and contributory fault.

7.6 Given the size of the respondent’s business, the adjustment in respect of not having followed the ACAS Code should be towards the bottom at 10%. The claimant had not exercised the right of appeal that he was offered and the Tribunal would need to be satisfied that it would have been unreasonable to expect him to appeal. There is scope for the failing of one party to cancel out the other.

8. The key points made by Mr Wilkin on behalf of the claimant included as follows:

8.1 At paragraph 18 of the claimant’s witness statement that he had adopted at the liability hearing he stated that he had undertaken a wide-ranging job search throughout Teesside and County Durham since being made unemployed. He had then listed the names of 27 businesses that he had contacted, leaving his CV and contact details. The claimant was approaching 53 years of age when he was dismissed and is now 54, which is not an ideal age to get another job. His work from the respondent was relatively specialised and the market for such employees is relatively limited. He had engaged in reasonable attempt to mitigate his loss both up to March 2020 and since.

8.2 Furlough is unusual but an employer must live with the consequence of its actions. If an employee has been unfairly dismissed and then there is an intervening event such as Covid 19, that makes re-employment difficult but unfortunately that is life. The respondent reaps the consequences of his decision to dismiss the claimant without following a procedure. To suggest that the claimant could find alternative employment ignores the reality of the pandemic. Jobs are not there and people are being made redundant.

8.3 The respondent did not follow any disciplinary procedure at all and therefore a full award of 25% should be made or at least be the starting point, it being acknowledged that the respondent is a small business without an HR Department.

8.4 The calculation of the compensatory award must be considered in the round as part of a balancing exercise looking at Polkey, the ACAS Code and contribution with the focus on the individual. The appellant not pursuing the appeal that he was offered should not be brought into account as for him to have appealed was clearly pointless. The respondent ran an argument that the claimant had resigned and maintained that up to the trial in March giving evidence that his letter saying that the claimant was sacked did not mean what it said. So if the claimant had purported to appeal it is highly likely that it would have been summarily rejected on the basis that the respondent had not sacked him and therefore he had no standing to appeal.

8.5 As to Polkey, it is extremely difficult in present circumstances to form a view of what might have happened if a fair disciplinary procedure had been followed. There is no evidence of the respondent's procedure or any appeal; to whom? This is a one-man business. The respondent might get an independent person who might have formed a more reasonable view of what occurred as the claimant is a relatively long serving employee with no suggestion of a poor disciplinary record. The claimant genuinely believed that the tyres on the van were illegal, which was the view of a passer-by too, and Mr Bailey's evidence was that they were "borderline legal". Importantly the respondent did not take steps to properly investigate the position. It was remarkable that he did not look at the tyres to see if the claimant had a legitimate complaint. It was a leap too far for the Tribunal to form a reliable view of what might have happened if a fair disciplinary process had been followed; it could never have done because of the lack of the investigation of the tyres. If a proper disciplinary hearing had been held, tempers might have subsided and the prospect of summary dismissal would be slim. As such there should be no Polkey deduction or a modest deduction because it is less likely than likely that the claimant would have been dismissed in any event.

8.6 Contribution is also difficult. It was conceded that the respondent's argument on this point is better. Deductions of 100% are, however, very rare and substantial reductions only occur in the most severe cases which this one is not. The claimant and a passer-by thought the tyres were illegal and Mr Bailey considered them to be "borderline legal". The respondent should have asked Mr Bailey to look at the tyres and do what was necessary but that did not happen. Instead he engaged the claimant in argument and cast doubt on the validity of the claimant's view causing him to become upset. He may have overreacted but that was understandable. The respondent's comments (page 8 the transcript of their conversation) that even if the tyres were bald a policeman would simply say "get your tyres changed mate" demonstrates his cavalier attitude to health and

safety. His response ignores whether the tyres were illegal and may cause an accident resulting in the claimant being injured or killed. The respondent's attitude was the primary cause of what occurred. The respondent was equally if not more to blame because of his 'couldn't care less' attitude. That said it was accepted that the claimant's reaction had been a bit 'over the top' so maybe a relatively modest reduction was appropriate with an absolute maximum of 50%. The dismissal had not been an immediate decision. Both men had slept on it. The claimant was prepared to 'offer an olive branch' and came in to work ready to work whereupon the respondent sacked him on the spot.

Application of the facts and the law to determine the issues

9. The above are the salient facts relevant to and upon which I based my judgment having considered those facts in the light of the relevant statutory law and the case precedents in this area of law.

10. As indicated above, in this case, the claimant had opted for the remedy of compensation, that comprising a basic award and a compensatory award. I address first, the calculation of the basic award in respect of which parties are agreed that the starting point is that the product of the mathematical calculation in accordance with section 119 of the Act produces a figure of £3,375. That calculation is, however, said to be subject to the provisions of section 122 of the Act. As set out above, section 122(2) provides that where a tribunal considers that any conduct of the complainant before the dismissal was such that it would be just and equitable to reduce the amount of the basic award it shall do so. Thus, the conduct of the claimant before the dismissal becomes relevant.

11. In this respect, in my judgment on liability I found that on 3 September 2019, following the heated discussion between the claimant and the respondent and the involvement of Mr Bailey, the claimant began to walk away from work. The respondent asked him to wait while Mr Bailey had time to assess the tyres on the delivery van to check if they were within the legal limit and said that he would change them if required. The claimant refused to wait as requested, repeated that he was going home and started to walk away. The respondent followed him down the road for about 50 yards and asked him to return to the workshop as there was plenty of work to do apart from the deliveries but he again refused, said that he was going home and continued to walk away. After having asked Mr Bailey to change the tyres, the respondent then caught up with the claimant and told him that Mr Bailey was to change the tyres and that the van would be available to drive in 10 minutes. Once more the claimant refused, responded that he was going home and continued to walk away. At the time, the claimant's reasoning for going home was that the respondent could not make him drive an illegal van. That is relevant in three respects: first, Mr Bailey had assessed the tyres as being within the legal limit, albeit barely so (and in this regard I previously found that in order to bolster his claim the claimant had exaggerated his evidence as to the condition of the tyres); secondly, the claimant knew before he finally left the scene that the tyres would be changed within 10 minutes; thirdly, even if he were to have been correct in refusing to drive an illegal van, there was plenty of work for the claimant to do in the workshop.

12. Given the above, there can be little doubt that the claimant's conduct before the dismissal had an important part to play in the respondent's decision to dismiss him and I am satisfied that it would be just and equitable to reduce the amount of the basic award. In submissions, Mr Wilkin accepted that the claimant may have overreacted and maybe a relatively modest reduction with an absolute maximum of 50% was appropriate. In all the circumstances, however, I assess the just and equitable reduction of the basic award to be 60%: i.e. £2,025.

13. Hence I award the sum of £1,350 to the claimant as the basic award.

14. In accordance with the long-standing guidance given in the case of Norton Tool Co v Tewson [1972] IR LR 86 NIRC my assessment of the compensatory award should include immediate loss of wages, future loss of wages, loss arising from the manner of dismissal and loss of protection in respect of unfair dismissal. There are several elements to be brought into account in calculating the compensatory award and the order of any adjustments that I make to that award, which I apply following the guidance of the Court of Appeal in its decision in Digital Equipment Co Ltd v Clements (No 2) [1998] IRLR 134.

15. My consideration of the claimant's loss of wages first requires me to consider the period of that loss, which includes a consideration of whether the claimant has taken reasonable steps to mitigate his loss, essentially by obtaining alternative employment. In this regard, Mr Healy described the claimant's evidence as being woeful. While I might not go that far, it is certainly right that he has failed to provide any corroborative evidence to support his evidence at the hearing, which was entirely oral without a written witness statement having been produced for the purposes of this hearing; although I do accept that he has set out at paragraph 18 of the witness statement he adopted at the liability hearing the names of 27 business that he said he had contacted "regarding positions, leaving my CV and contact details should a future position arise".

16. In this regard, any criticism by Mr Healy of the claimant's evidence could be applied equally to the respondent's evidence as he does not address the issue of mitigation in either the witness statement that he adopted at the liability hearing or that which he adopted at the remedy hearing; neither did the respondent deal with this issue in oral evidence at the hearing. This omission is important given that (as Mr Healy accepted) it has long been established that where a party seeks to allege that the other has failed to mitigate a loss, the burden of proof is on the party making that allegation: see, for example, Bessenden Properties Ltd v Corness [1974] IRLR 338 CA. As it was put in Fyfe v Scientific Furnishing Ltd [1989] IR LR 331 VAT, "The wording of [*section 123(4)*] is merely to direct that the common law rules on mitigation are to apply and it has long been settled under those rules that the onus is on the defendant". The only evidence of the respondent that has some bearing upon this question is that the new employee whom he had recruited to replace the claimant had been placed on furlough following the closure of his business in March 2020 and he remained on furlough; further, that if the claimant had been employed he too would have been placed on furlough in March 2020, potentially continuing on furlough until March 2021.

17. I did not find the evidence of the claimant with regard to his attempts to mitigate his loss to be entirely persuasive. He said that he had only received 2 responses to the 110 applications that he had made but could not recall the names of either of the prospective employers; he said that he initially focused on door-knocking and telephoning as the means he adopted of seeking alternative employment but then said that he had filled in application forms; in that respect he initially stated that he did not know exactly how many forms he had submitted but it had been "quite a few" then later answered that he had made applications for "more than half". In this regard I also note that in paragraph 18 of his earlier witness statement mentioned above the claimant referred only to leaving his CV and contact details and not to submitting formal application forms.

18. Against that, however, I repeat that the respondent has provided no evidence whatsoever in support of his contention that the claimant has failed to mitigate his loss.

19. Considering all of the evidence before me in the round and despite some misgivings regarding the claimant's evidence I am satisfied that he has made sufficient efforts to mitigate his loss arising in consequence of his dismissal.

20. I have thought long and hard about this question of the period of the claimant's loss especially given the impact of the current pandemic, lockdown, the government's Job Retention Scheme or furlough and the reduced opportunities in the local job market. Those factors, or at least the extent of them, could not have been imagined at the hearing on 20 March 2020 and I recognise that if I had also dealt with the question of remedy that day, which had been the intention had we not run out of time, it is likely that my assessment of the period of loss would have been less than it is now. My task, however, is to award such amount as I consider just and equitable in all the circumstances having regard to the loss sustained by the claimant "in consequence of the dismissal insofar as that loss is attributable to action taken by the employer". With that in mind, I find that the claimant's loss, having commenced on the date following his dismissal on 19 September 2019 will continue until the end of the recent extension of the job retention scheme on 31 March 2021 but that the claimant will then either be able to find equally well remunerated employment or successfully establish his own mobility business three months thereafter. Thus I assess the period of loss to be from 20 September 2019 until 30 June 2021.

21. In making that assessment it is implicit, but I make the point expressly for completeness, that on the evidence available to me, I am not satisfied that if the respondent had followed a fair procedure in connection with dealing with the claimant's conduct, his employment would have continued for only a limited period before he would have been fairly dismissed in any event: see Polkey v AE Dayton Services Ltd [1987] IRLR 503 HL and Software 2000 Ltd v Andrews [2007] IRLR 568 EAT; albeit that latter case relating to the former statutory disciplinary and dismissal procedures (the "DDP").

22. The parties are agreed that the claimant's net weekly basic pay was £312.67 and that the respondent made a pension contribution of £7.71 per week: i.e. a total of £320.38 each week. That would have been the claimant's initial loss had he not

been dismissed. I accept, however, that had he remained in employment he would have agreed to have been placed on furlough from the commencement of lockdown on 24 March 2020. Thus, in respect of that period 20 September 2019 until 23 March 2020, the claimant's total loss (wage plus pension contribution) amounted to £8,393.96.

23. Having agreed to be placed on furlough, the claimant would also have agreed to his wage being reduced to 80% of his normal pay. Although the government contribution to pay reduced during the year, the percentage of reference pay that the claimant would have received during furlough remained at 80%: i.e. £250.14 with the pension contribution continuing at £7.71 per week producing a total of £257.85. The period from 24 March to the date of the remedy hearing on 10 November 2020 and thence to the date upon which I make this assessment is 35 weeks. Thus the claimant's total loss in that period amounted to £9,024.75.

24. Loss would have continued on that basis from the date of assessment to 31 March 2021, which is a period of 18 weeks. Thus the claimant's total loss in that period will amount to £4,641.30.

25. Thereafter, it is a period of three months until 30 June 2021. Accepting that I am now stretching this speculative exercise to its limit, my assumption is that the Job Retention Scheme will end on 31 March 2021 and, therefore, the claimant's loss will revert to being calculated by reference to his normal pay and pension contribution that he received from the respondent: i.e. £320.38. In that period of 13 weeks, therefore, a total of £4,164.94.

26. I next consider whether any adjustment should be made to the above preliminary totals by reference to what chance I consider there to be that the claimant would still have been dismissed had a fair procedure been followed by the respondent: i.e. the 'Polkey reduction'. This inevitably involves a degree of speculation on my part as was recognised by the Employment Appeal Tribunal in Software 2000. That was echoed by the EAT in Contract Bottling Ltd v Cave [2015] ICR 146 when the President said that the appropriate amount of any Polkey reduction would "necessarily involve a number of imponderables".

27. In relation to adjusting the basic award of compensation for unfair dismissal referred to above, I have summarised some of the findings that I made at the liability hearing including the claimant walking away from work despite being asked several times to remain, being assured that the tyres on the van would be changed and being asked to go to the workshop to undertake work there yet he left. I am satisfied that such circumstances, as more fully set out in my judgement on liability, would have led to the respondent commencing a disciplinary process in relation to the claimant's leaving work without good reason and refusing to comply with a reasonable instruction to undertake work in the workshop. A further factor that I am satisfied would have come into play when at the conclusion of the disciplinary process the respondent was considering whether to dismiss the claimant is that (as I found at the liability hearing) at the time of the incident the respondent's daughter, who worked in the business, was on holiday "so things were somewhat 'stretched'" and the consequence of the claimant going home was that the respondent had to close the premises and make the delivery himself. I

repeat that any assessment of the outcome of that process is speculative but I am satisfied that there must have been at least a 50% chance that the outcome of such disciplinary process, which I estimate would have taken no more than one week, would have been the fair dismissal of the claimant.

28. The next potential adjustment that I need to consider is the parties' compliance with the requirements of the ACAS Code of Practice on Disciplinary and Grievance Procedures (2015). In this respect, the respondent has not suggested that he complied with the code at all. That said, Mr Healy submitted that an adjustment of 10% was appropriate to reflect the size of the respondent's business and that his failure might be cancelled out by the claimant's failure to exercise his appeal. For his part, Mr Wilkin suggested at least a starting point of 25%, acknowledging that the respondent is a small business.

29. Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 provides that if, in the case of proceedings such as this, the employer has failed to comply with the Code and that failure was unreasonable, an employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%. In accordance with Section 124A of the 1996 Act that increase is to be applied to the compensatory award. Guidance in this respect was given by the Employment Appeal Tribunal in relation to the former DDP in the case of Lawless v Print Plus EAT 0333/09, which I considered to be equally applicable in relation to the ACAS Code. That guidance includes that I should have regard to whether the procedures were applied to some extent or were ignored altogether, whether the failure to comply was deliberate or inadvertent and whether there were circumstances that mitigated the blameworthiness of the failure to comply. In this case the respondent did fail to comply with the Code, except that he offered the claimant an opportunity to appeal against his dismissal. I am satisfied that that failure was unreasonable and that in all the circumstances of this case it is just and equitable to increase the award to the claimant by 20%. The claimant did not, however, take up the opportunity to appeal against his dismissal which the Code states he should have done. Although understanding Mr Wilkin's submissions regarding why that was, I nevertheless consider that the claimant's failure in that respect was unreasonable and, therefore that it is just and equitable to decrease the award by 5%.

30. The final adjustment that that I address is to consider section 123(6) of the Act, which provides as set out above that where a tribunal finds that 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. In this respect I apply the principles set out by the Court of Appeal in the decision in Nelson: namely, the relevant action must be palpable or blameworthy, it must have actually caused or contributed to the dismissal and it must be just and equitable to reduce the award by the proportion specified. For the same reasons as I have given in relation to the percentage reduction of the basic award, I consider it just and equitable to reduce the compensatory award by that same percentage of 60%; the EAT in Drossou indicating that that is appropriate.

31. Having set out above my approach to the calculation of the compensatory award, the adjustments to be made and the order in which they are to be made, it is necessary in this case to divide that award into what are referred to as the prescribed element and the non-prescribed element, the point of division being the date of the assessment.

Prescribed element

32. As to the prescribed element my calculation is as follows:

32.1 I assess the claimant's loss of wages from the date of dismissal to the date of assessment to be £17,418.71.

32.2 I apply to that sum the Polkey reduction of 50%, which produces £8,709.36.

32.3 Next, there is the failure by each of the parties comply with the ACAS Code in respect of which I increase that sum by 20% (£1,741.87) but decrease it by 5% (£435.47) producing a net figure of £10,015.76.

32.4 Finally, there is the issue of contribution resulting in a 60% reduction of £6,009.46.

33. The final total of the prescribed element is therefore £4,006.30.

34. As to the non-prescribed element my calculation is as follows:

34.1 I assess the claimant's loss of wages from the date of assessment until 30 June 2021 to be £8,806.24.

34.2 I apply to that sum the Polkey reduction of 50%, which produces £4,403.12.

34.3 Next, there is the failure by each of the parties comply with the ACAS Code in respect of which I increase that sum by 20% (£880.62) but decrease it by 5% (£220.16) producing a net figure of £5,063.58.

34.4 The final adjustment, is the issue of contribution resulting in a 60% reduction of £3,038.15.

34.5 Finally, compensation is due to the claimant in respect of the loss of his employment rights in respect of which he seeks an award of £300, which I make.

35. The final total of the non-prescribed element is therefore £2,325.43.

Conclusion

36. Thus the total award of compensation that I order the respondent to pay to the claimant in respect of his unfair dismissal is as follows: a basic award of £1,350 plus a compensatory award of £6,331.73 making a total of £7,681.73.

37. The Recoupment Regulations apply to the above award in respect of which the required figures are as follows:

    37.1 Monetary award: £7,681.73

    37.2 Prescribed element: £4,006.30

    37.3 Period of the prescribed element: from 20 September 2019 to 24 November 2020

    37.4 Excess of the monetary award over the prescribed element: £3,675.43

JUDGMENT SIGNED BY EMPLOYMENT JUDGE MORRIS

ON 24 November 2020