RM

EMPLOYMENT TRIBUNALS

Claimant: **Mr G Binnell**

Respondent: **Crystal Collections Limited**

Heard at: **East London Hearing Centre (by Cloud Video Platform)**

On: **19 and 23 March and in chambers on 26 March 2021**

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

Representation

Claimant: In person

Respondent: Mr. R. Cater- Representative

JUDGMENT

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was V by Cloud Video Platform. A face-to-face hearing was not held because the relevant matters could be determined in a remote hearing.

The unanimous judgment of the Tribunal is that: -

1. **The Claimant's claim for unfair dismissal is made out and succeeds.**

2. **The remedies hearing is listed for Thursday 23 September 2021.**

3. **Directions will be sent out separately in respect of preparations for this hearing.**

REASONS

Background and Issues

1. The Claimant was a driver employed by the Respondent between 5 June 2017 and 31 December 2019, at which time he was dismissed by reason of gross misconduct.

2. In his Claim Form received by the Tribunal on 14 March 2020, he claimed that he was unfairly dismissed by the Respondent. The Respondent in its Response Form

disputed that the Claimant was unfairly dismissed and cited that the dismissal was by reason of gross misconduct and that it was a fair dismissal.

3. The issues for the Tribunal were firstly to determine what the reason for dismissal was and whether it was by reason of conduct as asserted by the Respondent. Thereafter, the Tribunal had to ascertain whether the Respondent acted reasonably in all the circumstances in dismissing the Claimant and in particular: -

(i) Did the Respondent believe that the Claimant had committed the acts of conduct relied on?

(ii) Had the Respondent reasonable grounds for that belief?

(iii) Had the Respondent conducted such investigation as was reasonable in all the circumstances of the case?

(iv) Was dismissal within the range of reasonable responses open to a reasonable employer?

4. The Tribunal had an agreed bundle of documents in front of it. The Respondent also called the investigation officer, Mr. Karl Andrews (National Field Agent Manager), the dismissing officer, Mr Lloyd Hope (Director of Operations) and the appeal officer Ms Suzanna Walker (Risk and Compliance Manager) to give evidence. All three of these witnesses prepared written witness statements and were subject to cross examination. The Claimant attended in person having presented a short witness statement himself and he was also subject to cross examination.

Facts

5. The Claimant was employed as a driver working for the Respondent which provides a national asset recovery services and employs 64 employees. The Respondent has two offices, a head office in Upminster, Essex and an office in Mold. The Claimant started on 5 June 2017 until his dismissal on 31 December 2019 which was the effective date of dismissal.

6. When he joined, the Claimant was issued with a contract of employment and issued with an updated version after he was reinstated in October 2019 and which he signed on 10 October 2019 (Pages 25-32) The contract set out the main provisions of the company vehicle policy, as the Claimant was issued with a recovery vehicle to be able to undertake his duties. (Pages 28-29) This specified that if multiple insurance claims (more than 2) for any company vehicle in his care, whether or not it was the employee's fault, the company could dismiss if alternative insurance provision could not be made, or if the excess the insurance company subsequently applied, was prohibitive. The Claimant was also issued with the Company Handbook, which set out the disciplinary and grievance policies. (Pages 33-44)

7. The Claimant's vehicle was stolen from outside his house on 12 July 2019 and the insurance company subsequently refused to insure a vehicle parked overnight outside his house as this was the fourth insurance claim made in respect of his vehicle in just over two years. The Claimant was placed on garden leave until a solution could be found as he could not undertake his duties as a driver without being insured to drive a company

vehicle. The Transport Manager wrote to the Claimant making various suggestions on 17 July 2019 which included driving to Upminster to collect the vehicle and return it, become self-employed with his own vehicle and considering secure storage. However, the Claimant did not agree with any of the suggestions and lodged a grievance. This was heard by Suzanna Walker, (Risk and Compliance Officer), by way of a telephone grievance meeting on 14 August 2019.

8. The Claimant stated in his grievance that he did not feel that the company was supporting him and that he was being pressured to leave. He was not able to become self-employed and supply his own vehicle and the daily travel cost to Upminster to pick and return the vehicle would be prohibitive. Ms. Walker partially upheld the Claimants grievance, and a compromise was agreed namely that the company would explore storing the vehicle securely close to the Claimants home so that insurance could be obtained for it and the Claimant could continue working using an insured company vehicle.

9. In the meantime, and on 14 August, the insurance company confirmed that it would not extend cover in respect of a company vehicle parked outside the Claimant's property. (Pages 48-49) Mr Hope wrote to the Claimant on 4 September 2019 setting out three options similar to the ones outlined earlier. (Pages 50-51) Mr. Hope and the Claimant met on 16 September 2019 but were unable to resolve the situation. As a consequence, Mr. Hope on 17 September 2019 wrote to the Claimant advising him that in the circumstances, the company had no option other than to terminate his employment. (Page 52)

10. The Claimant appealed against his dismissal by letter dated 20 September 2019, In the letter, the Claimant stated that he felt that he had been unfairly treated and that his dismissal was unfair. He stated that he was not guilty of any misconduct or gross misconduct that would warrant his dismissal and stated that the company should store the vehicle and insure it. He stated that the issue of insurance was the company's responsibility. He also stated that a proper procedure was not followed prior to his dismissal and that he should not have been dismissed in these circumstances where he was not responsible for insuring the vehicle. He concluded that he should be reinstated and that suitable alternative arrangements should be found to deal with the insurance issue.

11. The Claimant's appeal was heard by Karl Andrews (National Field Agent Manager) and upheld on the basis that the Claimant would park the vehicle away from his home at a secure location and the vehicle would continue to be insured by the insurance company. (Page 54)

12. The Claimant was reinstated and recommenced work as normal storing the company vehicle in secure storage near to his home from 3 October 2019. The Claimant had previously obtained assistance from his Union (GMB) during the earlier dismissal and reinstatement. He was given some friendly advice from his trade union representative and told to 'watch' his 'back' as the company would be 'gunning' for him now. Indeed, this advice turned out to be true. Almost from the time of his reinstatement, the company started to find fault with his work. For example, the Respondent began having issues where it appeared that the Claimant was not contacting customers as per instructions that were given to him. Mr. Hope sent the Claimant an email on 25 October 2019 asking him to address these issues. (Page 57) In addition, on 5 November, Mr. Hope wrote to the Claimant inviting him to an investigation meeting on 8 November 2019 at which the

Respondent would consider two matters — alleged failure to perform contracted hours and failure to follow procedures for contacting customers. (Pages 58). The meeting took place and the matters under investigation were put on hold according to Mr. Hope. The Claimant contrary to this assertion told the Tribunal that he was able to explain the matters under investigation to the Respondent's satisfaction and matter was not proceeded with. There were no documents in the bundle produced by the Respondent as to what the resolution of these issues was. The Tribunal would have expected the Respondent to have included such a document so on balance it preferred the evidence of the Claimant that his explanation was accepted and the disciplinary investigation in respect of these issues was not proceeded with. Nevertheless, this incident did support the Claimant's contention that after his reinstatement, the advice given to him by his Union was prophetic namely that he 'should watch his back.'

13. On 21 November 2019 during a conversation with another member of staff, the Claimant said that he recorded all his telephone calls. His explanation for this action was that as per the advice of his trade union representative he was 'watching his back'. This caused concerns to the Respondent because this would include calls to and from the office as well as to and from customers. The Claimant was therefore invited to a further investigation meeting chaired by Karl Andrews who was involved in the earlier disciplinary process that had led to the Claimants dismissal and reinstatement. Mr. Andrews held the meeting on 5 December 2019 (Pages 60- 61). At the meeting, the Claimant was asked about this allegation and whether he had been getting three pieces of information from customers when arranging to collect vehicles. This information related to name, post code and vehicle registration. The Claimant admitted that he had been covertly recording calls with the office and customers and that he had not been asking three identity security questions as he had been trained to do. (Pages 60-61) The Claimant said the reason he did this was to cover himself because of the advice that he had previously received from his union that the company would now be 'gunning' for him and gave an example of a call to a customer who said he would be at a specific location but was not there when he turned up, so the collection was aborted. The Claimant insisted that there was no breach of the DPA as he did not retain the information or pass it on. The Claimant said that the calls were automatically deleted after 48 hours and that the app had been installed by his son. The Claimant told the Tribunal that he had been undertaking this recording for about two weeks from his re-instatement to cover his back as advised by his Union and the Tribunal accepted this evidence. He said that he would have recorded about 20 calls during this two-week period which was also accepted. The Tribunal also accepted his evidence that the calls were deleted by the Claimant within 48 hours of recording. It was clear on the evidence produced at the hearing that there were no details of the content of such calls and the Respondent appeared to have accepted that the calls were deleted and no information from them was passed on to a third party.

14. Mr. Andrews explained to the Claimant that the implications of recording calls and failing to ask three security identification questions were potentially serious for the Company. A breach of the rules could lead to a heavy fine and could threaten its data collection licence. As a consequence of the Claimants admissions about covertly recording customer calls without permission, the matter was referred by Mr. Andrews for formal disciplinary action. The Respondent produced its disciplinary procedure, but it did not include a section of what the Respondent regarded as misconduct and/or gross misconduct. Therefore, it was not in a position to confirm to the Tribunal that breach of the DPA would be perceived by the Respondent as gross misconduct entitling it to dismiss an employee without notice. The Tribunal was surprised by this omission as in the Tribunal's

view it was common for disciplinary procedures to include such a list as guidance to employees that certain types of conduct would be perceived as so serious as to amount to conduct that would allow the Respondent to dismiss an employee instantly.

15. On 6 December, Mr. Hope who was also involved in the previous dismissal and reinstatement of the Claimant suspended the Claimant for alleged breach of the GDPA 2018 and especially the covert recording of calls from customers. (Pages 62-63) On 9 December, Mr. Hope invited the Claimant to a disciplinary meeting. (Pages 64-65) The matters of concern were the Claimant's alleged covert recording of calls to the business and customers and his failure to take three items of data to verify customers' identities. The Claimant was warned that if the allegations were found proven he could be dismissed for gross misconduct.

16. Mr. Lloyd met the Claimant on 18 December and produced notes of the meeting transcribed by an employee of the company, which the Claimant confirmed were substantially accurate. (Pages 66-71) During the course of the meeting the Claimant admitted that he had covertly been recording telephone calls, however, he said it was to protect himself and that he was not divulging client details to anyone else. He did not think it was a data protection breach. The Claimant also accepted that he did not ask for three pieces of identifying data from customers, saying that because they answered the phone, he assumed he was speaking to the correct person. During the interview, the Claimant also confirmed that he had undertaken the Data Protection training with the company that included how to verify the identity of a customer. Following the meeting, further enquiries were made of the identity of the software company that provided the recording facility. This was because the Claimant had said during the meeting that the recording was only of his voice and not the customer or person he was speaking to. (Pages 72-73). After considering the outcome of the additional investigation that the recordings would include all the conversation between the parties, Mr. Hope considered all of the evidence including the Claimant's own admissions and the reasons that he gave for his actions. Mr. Hope concluded that this was a clear breach of trust, that the Claimant had, despite receiving training, deliberately ignored DPA regulations and that in the circumstances, there were admitted examples of gross misconduct. He considered whether there were any mitigating circumstances but found that there were none. Therefore, he decided that dismissal was the appropriate sanction in this case and wrote to the Claimant on 20 December 2019 advising him of his decision and the reasons for it. (Pages 74-75). Mr. Hope gave evidence to the Tribunal that the company was a small employer and that the individuals involved in the first disciplinary process leading to the Claimants dismissal and reinstatement (Mr. Andrews, Mr. Hope and Ms Walker) had to be involved in the subsequent process leading to the Claimants dismissal. However, the Tribunal did not accept this evidence. The Respondent employed 64 employees and was accessing professional advice from its advisors during this disciplinary process. Therefore, it appeared clear to the Tribunal that other independent persons were available to be involved in the second disciplinary process leading to the Claimants dismissal.

17. Following the Claimant's dismissal, he appealed on 23 December 2019. The Claimant submitted that the dismissal was too harsh in the circumstances as he maintained that there was no breach of the DPA as any recordings were kept secure and not disclosed to others. He also submitted that the recordings were deleted shortly after recording. Ms. Walker was appointed to hear the appeal. She met the Claimant at the Mold office on 8 January 2020. The notes of the meeting were taken by an employee of the company, and the Claimant confirmed that these notes were an accurate summary of

the meeting. (Pages 81-87) The Claimant was accompanied by Mr. Alyn Thomas, his GMB Union representative. During the meeting, the Claimant advised Ms. Andrews that his son had installed the call recording app on his phone and that he felt his dismissal was too harsh as he did not believe he had done anything wrong. He said that it was only his voice that was recorded and that he did not disclose any personal information during the calls. The Claimant also said that no GDPR policy had been shown to him. Ms. Andrews showed the Claimant the certificate proving that he had undertaken external GDPR training within the last 12 months and that he had passed the training course. The parties discussed the system of booking in calls from the office and that the purpose of the App was to record office rather than customer calls but that he did not know how to turn the app off. The Claimant said that he was being bullied because the Respondent wanted him out of the company possibly because of the earlier insurance issues that lead to his reinstatement at the end of October/early November 2019 a month before his dismissal. He also said that he was being bullied and harassed by Mr. Andrews almost as soon as he was re-instated and investigated for his failure to undertake all his hours. The Claimant felt that the company was using the current allegations against him as a pretext to dismiss him.

18. After the meeting was concluded, Ms Andrews gave consideration to the evidence presented at the appeal and decided that she could not uphold the appeal. She wrote to the Claimant on 14 January 2020 advising him of her decision and setting out the reasons. (Pages 88-89) The principal reason for dismissing the appeal was that she was not satisfied that the Claimants recording of the calls only recorded the Claimant and not the customers voice as alleged the Claimant. After contacting the developer of the programme, she was satisfied that both parties voices were recorded. Furthermore, she was not satisfied that the few calls that the Claimant did produce of the alleged recordings made were genuine as they only showed the Claimant speaking. She was satisfied that there had been covert recordings made of customers without their permission and that this amounted to a breach of the DPA. There was no response in the letter to the Claimants assertion that the company was ‘gunning’ for him as soon as he returned to work after being reinstated by Mr. Andrews. Ms. Andrews gave evidence to the Tribunal that she did consider this matter, but the Tribunal did not accept this evidence. If she had considered it, the Tribunal would have expected a more complete reference to it in the letter dismissing the appeal. The letter contained no reference to it at all although based on the notes of the appeal, this matter did form a large part of the appeal against dismissal.

Law

19. Section 98(1) Employment Rights Act 1996 (ERA) provides that it is for the employer to show the reason or principal reason for dismissal of the employee and 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. If the Respondent fails to do so the dismissal will be unfair.

20. If the Tribunal decides that the reason for dismissal of the employee is a reason falling within Section 98(1) or (2) ERA it will consider whether the dismissal was fair or unfair within the meaning of Section 98(4) ERA. The burden of proof in considering Section 98(4) is neutral.

21. Section 98(4) ERA provides: -

> “the determination of the question whether the dismissal is fair or unfair (having

regards 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."

22. In the case of **Iceland Frozen Foods Ltd v Jones [1982] IRLR 439 EAT**, guidance was given that the function of the Employment Tribunal was to decide whether in the particular circumstances the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair. If the dismissal falls outside the band it is unfair.

23. In the case of **Sainsburys Supermarket Ltd v Hitt [2003] IRLR 23CA**, guidance was given that the band of reasonable responses applies to both the procedures adopted by the employer and the sanction, or penalty of the dismissal.

24. The Tribunal should not substitute its own factual findings about events giving rise to the dismissal for those of the dismissing officer (**London Ambulance NHS Trust v Small [2009] IRLR 563**).

25. In the case of **British Home Stores v Burchell [1978] IRLR 379 EAT**, guidance was given that, in a case where an employee is dismissed because the employer suspects or believed that he has committed an act of misconduct, in determining whether the dismissal was unfair, an Employment Tribunal has to decide whether the employer who discharged the employee on the grounds of misconduct in question and obtained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at the time. This involved three elements. First, there must be established by the employer the fact of that belief, that the employer did believe it. Second, it must be shown that the employer had in its mind reasonable grounds upon which to sustain that belief. Third, the employer at the stage on which he formed that belief on those ground, must have carried out as much investigation into the matter as was reasonable in all of the circumstances of the case.

26. With regard to contributory fault pursuant to s122(2) ERA 1996, a tribunal may reduce a basic award where it considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such as it would be just and equitable to reduce or reduce further the amount of the award to any extent.

27. With regard to the compensatory award (s123(6) ERA 1996), where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, the tribunal shall reduce the amount of the compensatory award by such proportion as it considers just and equitable.

28. To fall into this category, the Claimant's conduct must be 'culpable or blameworthy'. In respect of the compensatory award, such conduct must cause or contribute to the

Claimant's dismissal, rather than its fairness or unfairness. Such conduct need not amount to gross misconduct (**Jagex Ltd v McCambridge UKEAT/0041/19**).

29. A tribunal should first assess the amount of loss under s 123 (1) ERA 1996 and then consider the question of contributory fault. Where an initial reduction has been made under s 123(1), this might alter the extent of the reduction under s 123(6). Accordingly, it may turn out that the reduction from the compensatory award under s 123(6) would be less than the reduction which it was just and equitable to make to the basic award under s 122(2) ERA 1996.

30. The EAT in **Steen v ASP Packaging Ltd UKEAT/0023/13, [2014] ICR 56** (Langstaff P Presiding) observed that a finding of 100% contributory conduct is an unusual finding, albeit a permissible finding. A Tribunal should not simply assume that because there is no other reason for the dismissal therefore 100% contributory fault is appropriate. It may be the case, but the percentage might still require to be moderated in the light of what is just and equitable: see **Lemonious v Church Commissioners UKEAT/0253/12** (27 March 2013, unreported) (Langstaff P presiding).

31. In assessing contribution, the tribunal should in turn, 1) Identify the relevant conduct; 2) assess whether it is objectively culpable or blameworthy; 3) consider whether it caused or contributed to the Claimant's dismissal; and 4) If so, determine to what extent it is just and equitable to reduce any award. (**See Steen v ASP Packaging Ltd UKEAT/0023/13/1707**).

Conclusion and Findings

32. In this case, the Tribunal was satisfied that the reason for dismissal was misconduct. The Claimant admitted that he had made covert recordings for two weeks after he was reinstated in October 2019 of customers and office employees. He told the Tribunal he would have recorded approximately 20 customers during this period. He confirmed that this was without permission from the customers and that he did not get permission to do so from the Respondent. In addition, he confirmed that he did not obtain three forms of identification as required from the customers pursuant to the Respondents procedures. Even in the absence of the Respondent providing the Tribunal with a disciplinary procedure outlining that the Claimants above conduct amounted to misconduct, the Tribunal was satisfied that the Claimants actions in this regard were misconduct. Therefore, the reason for the Claimant's dismissal was satisfied under section 98(1) ERA.

33. However, the Tribunal was not satisfied that the Respondents dismissal of the Claimant on the facts of this case was fair in all the circumstances pursuant to section 98 (4) ERA. It was clear to the Tribunal that the Respondent had a reasonable belief that the Claimant was guilty of misconduct as was alleged and that this was based upon a reasonable investigation. However, the facts of this case, supported the Claimants contention that the Respondent was looking for any reason to terminate his employment. In the first instance, the Claimant was subject to disciplinary action regarding the insurance of his company vehicle and that led to the Claimant being dismissed from his employment by letter dated 17 September 2019 which would be effective from 15 October 2019. After the Claimant appealed against his dismissal, he was reinstated by the Respondent by letter dated 2 October 2019 recommencing employment on 3 October 2019. The Tribunal noted that it was the same individuals that were involved in this first

dismissal as were involved in the second dismissal. Namely Mr Andrews as the investigating officer and the appeal officer who reinstated the Claimant, Mr Hope as the dismissing officer and Ms Walker who conducted the grievance in the first dismissal. These individuals were all involved in the second dismissal as prominent players. Mr Andrews was the investigating officer; Mr Hope was again the dismissing officer and Ms Walker conducted the appeal. Mr Hope gave evidence to the Tribunal that due to the size and administrative resources of the Respondent it was only these three officers that could be involved in both Claimants disciplinary processes. However, the Tribunal did not accept this. The Tribunal noted that the company was medium sized and employed 64 employees. The Tribunal also noted that the Respondent had access to external legal advice during the entirety of this process. It seemed to the Tribunal that independent officers not involved in the original dismissal of the Claimant should have been appointed in the latter process that led to the Claimants dismissal. This would have ensured that these officers would have remained independent and unbiased and could have considered the latter allegations leading to the Claimants dismissal with a fresh and independent viewpoint. The Tribunal did not accept the evidence of Mr Hope that he was independent and could put out of his mind the earlier dismissal of the Claimant that he undertook in September 2019 a few months earlier than the second dismissal which he also was the dismissing officer. The Tribunal could not see how Mr. Hope could put out of his mind matters that he had previously decided were so serious as to warrant the dismissal of the Claimant in September 2019 only a few months before he decided to dismiss him again. For the same rationale, the Tribunal also did not accept that Mr Andrews or Ms Walker were unbiased and independent.

34. To support the Tribunals finding that the dismissal of the Claimant was not conducted in an independent and unbiased manner making the dismissal unfair pursuant to section 98 (4), the Tribunal found that as soon as the Claimant was reinstated back to work in early October 2019, Messrs Andrews and Hope immediately took action leading to a disciplinary process being commenced against the Claimant in relation to his hours and the work undertaken by him. This was evidenced at pages 55 to 59 of the bundle of documents. These pages showed that both Messrs Andrews and Hope were concerned about whether the Claimant had undertaken certain jobs allocated to him and at page 58, Mr Hope instituted a separate disciplinary investigation into such items of concern which was conducted by Mr Hope with Mr Andrews accompanying to take notes. The disciplinary investigation was not continued with in the event that the Claimant provided a satisfactory explanation of the issues that concerned the Respondent. Nevertheless, the fact that these individuals had started a disciplinary process against the claimant so soon after his reinstatement showed very clearly the negative mindset that they had developed against the Claimant. Furthermore, the fact that Messrs Andrews and Hope almost immediately instigated a fresh investigation into the Claimants alleged misconduct relating to breaches of the Respondents data protection procedures with an investigation meeting commenced on 5 December 2019 led by Mr Andrews also showed their animus towards the Claimant. The timing and proximity of this new disciplinary process to the first disciplinary process supported the Claimants contention that the Respondent was looking for any reason to “get rid” of him. The fact that it was the same officers that were involved also supported the Claimants contention.

35. The Claimants assertions in this regard were further supported by Ms Walker’s (Appeal Officer) failure to deal with a substantial part of the Claimants appeal against dismissal namely that Messrs Andrews and Hope were looking for any reason to terminate his employment. The Claimant and his trade union representative made the point clearly

in the appeal meeting (pages 85 and 86) conducted by Ms Walker. However, Ms Walker did not deal with this part of the Claimants appeal making no reference to these grounds of appeal in her letter dismissing the appeal (pages 88 and 89). Ms Walker was asked at the hearing why she did not deal with the matter in her letter of appeal and could not provide a satisfactory response. In the Tribunal's view this supported the Claimants contention that all three of these officers involved in his dismissal were not prepared to deal with the matter in an independent and unbiased manner and that such bias had crept in from the earlier dismissal and reinstatement in September and October 2019.

36. Therefore, the Tribunal finds that the Respondent was looking for a reason to terminate the Claimants employment and was using the breach of the data protection procedure as a pretext dismiss the Claimant for gross misconduct. This means that the dismissal was unfair in all of the circumstances of the case. In addition, the dismissal for gross misconduct was outside the band of reasonable responses test as it was not a reasonable penalty to impose in the circumstances.

37. The Claimant's admitted misconduct in recording calls from customers without their consent and his failure to obtain the Respondents consent in so doing amounted to contributory fault in respect of his dismissal. In addition, his failure to obtain three items of identification when calling the customers also amounted to contributory fault. The Tribunal noted that his explanation for doing so was that he was protecting himself, but he could have done so without recording the telephone calls. For example, he could have taken a note of all of the jobs he was instructed to do in a personal diary. He did not give a reasonable explanation of why he did not obtain three identifying details from customers when calling them. It appeared to the Tribunal that objectively the Claimants conduct in this regard was culpable and blameworthy. It contributed to his dismissal as it was the main reason for it. The Claimant admitted he had recorded the customers without consent and that he failed to take three identifying features when speaking to them contrary to the Respondents procedure. This failure did open up the Respondent to risks under the Data Protection Act although the Tribunal did not find that the risks to the Respondent were great given the Claimants almost immediately deletion of the recordings. Furthermore, the parties agreed that the Claimant did not share such information with a third party. Therefore, if the matter proceeds to a remedy hearing and is not settled beforehand, the Tribunal finds that it would be just inequitable to reduce the Claimants compensatory award by 25%.

38. The Tribunal will list the case for a remedy hearing and provide separate directions shortly.

Employment Judge Hallen

6 April 2021