



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102497/2020 (V)

5 Held via Cloud Video Platform (CVP) on 26-29 January 2021 &
10 February 2021 (deliberation day)

10 Employment Judge M Sangster
Tribunal Member Z van Zwanenberg
Tribunal Member R Henderson

Mrs N Dudenko

Claimant
In Person

15 Costa Limited

Respondent
Represented by:
Mr Gibson
Advocate

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that:

- The claimant was unfairly dismissed. The respondent is ordered to pay to the claimant the sum of **£14,400.92** by way of compensation.
- The Employment Protection (Recoupment of Benefits) Regulations 1996 apply to this award. The prescribed element is **£11,726.35** and relates to the period from 28 January 2020 to 16 February 2021. The monetary award exceeds the prescribed element by **£2,674.57**.

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REASONS

30 Introduction

1. This was a final hearing which took place remotely. This was not objected to by the parties. The form of remote hearing was video. A face to face hearing was not held because it was not practicable due to the Covid-19 pandemic and all issues could be determined in a remote hearing.

2. The claimant presented a complaint of unfair dismissal, as well as claims that her dismissal was automatically unfair contrary to s99 Employment Rights Act 1996 (**ERA**) and amounted to pregnancy discrimination, contrary to s18 Equality Act 2010 (**EqA**).
- 5 3. The respondent admitted the claimant was dismissed, but stated that the reason for dismissal was conduct, which is a potentially fair reason. The respondent maintained that they acted fairly and reasonably in treating misconduct as sufficient reason for dismissal.
4. The respondent led evidence from four witnesses:
 - 10 a. Sarah Boyle (**SB**), F&F Manager for Tesco;
 - b. Connor Fitzpatrick (**CF**), Store Manager for the respondent;
 - c. Janis Veidelis (**JV**); Store Manager for the respondent; and
 - d. Bryan Watters (**BW**), Area Manager for the respondent.
5. The claimant gave evidence on her own behalf.
- 15 6. A joint set of productions was lodged, extending to 232 pages. 4 further documents were lodged, by consent, during the course of the hearing.

Preliminary Matter

7. At a case management preliminary hearing held on 11 September 2020, it was identified that the claimant may wish to assert a claim under s18 EqA. She was directed to provide further and better particulars in relation to that, and the respondent was invited to provide a response. It was confirmed that the scope of the claim, and whether any asserted claim under s18 EqA amounted to an amendment of the claim, would be addressed at the outset of the final hearing.
- 20 8. At the outset of the hearing the scope of the claim was discussed. The respondent's position was that the claim was one of unfair dismissal only and any application for the claim to be amended should be refused. The claimant's position was that her claim included a claim that her dismissal was linked to or as a result of her pregnancy. The Tribunal heard submissions from both parties

in respect of this, including at the Tribunal's request, whether the originating application also included a claim under s99 ERA.

5 9. After a short adjournment, the Tribunal confirmed that their unanimous view was that the terms of the ET1 included a claim under both s99 ERA and s18 EqA.

10. After narrating the circumstances leading to her dismissal, the claimant stated in her ET1 that:

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15 *'It's very unsettling that after 3 years of excellent service I was faced with such an allegations and disciplinary leading to immediate dismissal just weeks after revealing that I am pregnant. It almost seem like my termination was decided way before disciplinary hearings and any of my reasoning and explanations could not change the outcome.'*

11. The Tribunal was satisfied that words amounted to an assertion that the claimant felt that the fact she had recently informed her employer that she was pregnant either caused or influenced the respondent's decision to dismiss her.
20 The Tribunal was entirely satisfied that, given the words she used and the fact that she is a litigant in person and not legally qualified or represented, while she had not put the correct legal labels on her claims and categorised them in terms under s99 ERA or s18 EqA, that is what she was asserting.

25 12. The Tribunal concluded that it was in accordance with the overriding objective to revisit the list of issues identified previously, to allow these claims to proceed. In reaching this conclusion the Tribunal were mindful of the case of **Mervyn v BW Controls Ltd** [2020] EWCA Civ 393, where the Court of Appeal held that an Employment Tribunal, at the start of the full hearing, should have amended
30 the list of issues drawn up at a case management hearing to include constructive dismissal as well as ordinary unfair dismissal. Amending the list of issues in the circumstances would have brought justice to all the parties.

13. Tribunal noted that, even if that conclusion had not been reached, they would have allowed the Claim to be amended to allow the claims under s99 ERA and s18 EqA, on the basis that the balance of prejudice would favour such an amendment being allowed. This is particularly the case given that the claimant has asserted a link between her pregnancy and her dismissal from the outset and throughout the proceedings. She would be severely prejudiced if, as a litigant in person, she were penalised for not putting the correct legal labels on her claims.

Issues to be determined

14. The issues to be determined, were accordingly as follows:

Unfair dismissal

15. Was the reason for the claimant's dismissal a potentially fair reason, within the meaning of s98(1) or (2) of the Employment Rights Act 1996 (the **ERA**)?
16. Was the claimant's dismissal for that reason fair in all the circumstances, in terms of s98(4) ERA?
17. If the claimant's dismissal was unfair, what compensation should be awarded?

Automatically Unfair Dismissal - S99 ERA

18. Was the reason, or principal reason, for the claimant's dismissal related to pregnancy?

Pregnancy & maternity discrimination – s18 EqA

19. Did the respondent treat the claimant unfavourably by dismissing her?
20. If so, did the unfavourable treatment take place in a protected period and/or was it in implementation of a decision taken in the protected period?
21. If so, was the unfavourable treatment because of the pregnancy?

Issues arising in the course of the hearing

22. During the second day of the hearing, following the conclusion of CF's evidence, the claimant sought to introduce evidence of an exchange of

messages between her and CF. The respondent objected to the inclusion of these messages at that stage of the proceedings. The Tribunal agreed that the respondent would be prejudiced if this evidence was accepted, as CF had not had the opportunity to comment on it, so the request to lodge the additional evidence was refused.

Findings in Fact

23. The Tribunal found the following facts, relevant to the issues to be determined, to be admitted or proven.

24. The claimant commenced employment with the respondent in January 2017. She was initially employed as a Barista, then promoted to Barista Maestro (a more responsible position, roughly equivalent to Team Leader). She was promoted to Assistant Manager with effect from 30 September 2019. The Store Manager at the time was CF.

25. Throughout her employment with the respondent, the claimant worked in the respondent's Corstorphine store, in Edinburgh, which is located within a Tesco Superstore. Around 13 people in total were employed by the respondent to work at that store. The respondent's premises are on the first floor of the Tesco Superstore, along with two clothing departments. Within the Costa store at Corstorphine, there are approximately 22 tables seating approximately 60-70 people. A take-away service is also offered.

26. When the claimant started employment in January 2017, she was asked to sign a contract of employment. She was not however provided with a copy of this at the time and it cannot now be located by the respondent. She was shown a copy of the respondent's employee handbook on the commencement of her employment, but was not provided with a copy or informed where this could be accessed.

27. All staff employed in Costa stores receive training on fire and evacuation procedures. This involves reading the respondent's Fire and Evacuation Procedures and signing to say that they have been read and fully understood. The respondent's Fire and Evacuation Procedures state that, in the event of a fire:

1. *'On discovering a fire please raise the fire alarm calling 999 from the business line.*
 2. *Inform the duty manager*
 3. *Call the emergency services – explain details clearly.*
 - 5 4. *Close all doors and windows and switch off equipment (only if safe to do so).*
 5. *Leave by the nearest and safest exit, escorting and guiding guests.*
 6. *Do not stop to collect personal belongings.*
 7. *The duty manager will collect signing in sheets for role call.*
 - 10 8. *Role call at assemble point located:*
 9. *If trained and without risk to yourself, tackle the fire using the correct fire extinguishers.'*
28. The Fire and Evacuation Procedures also cover directions in the event of a bomb threat and gas leak. At the end of the procedure the following is stated in
- 15 capitals
- 'Remain calm at all times – do not run or rush. Avoid panic to ensure that evacuation is safe and quick.'*
29. Staff are also referred to the Costa Safety Manual during their fire safety training. This details a number of responsibilities of Store Managers and, in
- 20 relation to 'Team Member Training' detailed that Store Managers must ensure that all of their team members have been trained in fire safety and know a number points which are detailed in the Manual, such as *'the action to take upon hearing the fire alarm...the location of all fire exits, the location of the fire assembly point, their role in the evacuation of customers, including disabled*
- 25 *persons, to act promptly'* and *'follow fire evacuation procedures in the event of a fire'*. Actions to be taken in the event of fire are also detailed and include *'guide customers to their nearest fire exit...do not stop to collect personal belongings'* and *'usher customers to the fire assembly point.'*

30. The claimant received fire safety training at the commencement of her employment, on 8 January 2017, and refresher training on 7 March and 21 July 2019.
31. The claimant received additional training in relation to her role as Barista on 2 February 2017. Part of the training related to assisting disabled customers and included a direction that *'in the case of evacuation, offer or organise assistance, proceed to meeting point.'*
32. The claimant did not receive any additional training on being promoted to Barista Maestro, or on being promoted to Assistant Manager, with effect from 30 September 2019. She was not shown, or referred to, the Assistant Manager job description.
33. The fire alarm in the Tesco superstore at Corstorphine is tested every Friday morning. A warning announcement is made first to confirm it is a test and evacuation is not required. Tesco also organised fire drills on occasion, which would not be announced and where evacuation would be required. The claimant was present during two fire evacuations at the start of her employment, while she was a Barista, but none thereafter.
34. 3.03pm on Saturday 23 November 2019, a fire alarm sounded within the Tesco Superstore in Corstorphine. The claimant was the most senior member of staff on shift that day. There were three other individuals working within the Costa store that day, Cloey Guerriro (**CG**), Lauren Cameron (**LC**) (both Barista Maestros) and **SH** (a Barista). The store was very busy that afternoon, given that it was a Saturday afternoon in the run up to Christmas. At the time the alarm sounded most, if not all, tables in the store were occupied. There were elderly and disabled customers seated in the store at the time, as well as customers with buggies and young children. In addition, there were trollies filled with shopping at the side of the store and a number of customers had bags containing goods they had already purchased. The Costa store was evacuated by 3.09pm. The claimant was the last person to leave from the Costa store.

35. On his return to work on Monday 25 November 2019, CF was informed that Costa had been last to evacuate, following the fire alarm. He decided to investigate.

36. CF took the following steps in investigating the circumstances surrounding the fire evacuation.

a. He spoke to CG on 27 November 2019. His interview with her consisted of the following questions and answers

10 *CF- At what time did the alarm go off?*

CG- About 3pm.

CF- At time of alarm did you continue serving?

CG- Yes, we thought it was a test.

CF- Do you know the day the alarm gets tested?

15 *CG- Friday.*

CF- Did Natalia take charge and follow procedure at any point?

CG- When Sarah came up she took charge.

CF- Were you aware Tesco had been evacuated except Costa?

CG- No.

20 *CF- What did Sarah say?*

CG- Shouted that's the fire alarm you need to evacuate now.

CF- At any point did Natalia return for her jacket?

CG- We all did. We followed her.

25 *CF- If this was a real fire, not a customer accidentally hitting it, would you feel safe and secure with Natalia evacuating you? Given Saturdays events.*

CG- She did follow procedure but delayed. The awareness was delayed. She did stay till the end.

30 *CF- Do you not think given an immediate reaction following fire evacuation procedure it would have been a safer and controlled evacuation?*

CG- Yes it would have been more assuring.

CF- *Do you realize how she put not only customers in danger but the team also?*

CG- *Yeah.*

CF- *Do you have anything you would like to add?*

5 CG- *I think we should of done a better job and took it more serious.'*

10 b. CF also spoke to the claimant on 27 November 2019. She was not given any advance notice of the meeting. She stated that when the fire alarm went off she moved to the floor to assess the situation, and to be sure it wasn't a false alarm. She stated that the shop was full and she didn't want to cause panic. Once she was sure, she shouted to the team that it was not a drill and they had to evacuate. She then started evacuating people. She stated that customers were slow moving and complaining about drinks. She stated that she required to deal with an elderly, disabled customer who refused to move - he was quite slow moving but was eventually evacuated. She agreed that staff took their jackets with them, stating *'I did not think it would take any extra time to grab our jackets. It was cold and it was raining outside, I thought it was reasonable.'* When asked if she felt she had evacuated the store promptly, safely and securely, she stated that *'I should have been stricter with the customers as they didn't believe it was real. I should have sounded more urgent. I didn't want to cause panic. In the future I would be more urgent. I had to repeat myself a lot to the same customers.'*

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When asked how she would deal with the situation better in the future, she stated that she would *'Learn from this to be more efficient. 1st time people argued against the fire alarm not thinking it was real. I was shocked by their attitudes.'* At the conclusion of the meeting, CF informed the claimant that her actions could constitute gross misconduct.

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37. On 6 December 2019, the claimant tried to call CF on three occasions. He texted her to say he would call her back as he was on the bus. He did so and the claimant stated that she wished to arrange a meeting with him the next day. He asked what it was about and the claimant indicated that she would rather

discuss matters face to face. CF indicated that they wouldn't be working together for a few days and he was worried what the discussion was about. The claimant then informed CF that she was pregnant. This was the first time CF was informed of this. Following the discussion the claimant sent a text to the CF stating *'so yeah...that is why I wanted to talk to you in person.. I didnt feel like dropping that bomb in casual phone conversation but you have no patience.. just please keep that just between us! I understand that you need to inform Jamie... but I rather not brag about it at work'*.

10 38. On 12 December 2019, CF concluded an investigation report. This referred to the two interviews conducted, as well as the training received by the claimant and the handbook she signed on the commencement of her employment. The remit of the investigation was stated to be to investigate gross misconduct regarding health and safety procedures and in regards to following fire evacuation procedure. In relation to each allegation the report stated that they were 'upheld'. In relation to each allegation the report focused the claimant not evacuating via the nearest fire exit, but instead using the front door, and the fact that staff collected their jackets as they left. In relation to the first allegation the report also referred to the delay the commencement of the evacuation and not evacuating in a calm and orderly fashion. In conclusion the report stated *'through the investigation and the evidence considered I have to conclude that Natalia has been in breach of company health and safety procedures and has failed to follow the steps outlined in the company fire evacuation procedure.'*

25 39. The claimant was invited to attend a disciplinary hearing regarding allegations of gross misconduct by letter dated 16 December 2019. She was informed that the purpose of the hearing was to discuss allegations of:

- a. breach of company policy regarding Health and Safety; and
- b. breach of company fire evacuation procedure.

30 40. Enclosed with the letter was the investigation report and the documentation referred to within the report. The claimant was informed in the letter that the hearing may result in disciplinary action being taken against her up to and

including dismissal from the company and that she was entitled to be represented at the hearing.

41. The disciplinary hearing took place on 8 January 2020. It was conducted by JV. A notetaker was present and the claimant was accompanied by a work
5 colleague.

42. At the disciplinary hearing the claimant stated that when the alarm went off the store was packed with older people, disabled people and people with kids. She decided to assess the situation before proceeding. When she had done so she shouted to colleagues behind the bar that it was a fire alarm and they needed
10 to evacuate the store. The claimant evacuated from the floor and she expected staff to do so from behind the bar. She stated that customers refused to move because they didn't believe it was real and because of the weather. She stated that she was assisting an elderly person who needed a walking stick to walk more comfortably and was directing customers towards the escalators as she
15 thought this would be easier for them given that they were older or disabled. She stated that Tesco employees were also directing customers to the escalators. She stated that at one point SB approached the store and shouted '*this is an evacuation, you need to leave*'. She stated that this was a few minutes after the evacuation had commenced and around half the store had been
20 evacuated by that point. She said that around seven customers either refused to leave or complained. She reiterated to these customers that they needed to leave. She spoke to them politely and offered to replace all products, stating that everything would be dealt with after the evacuation. She stated she required to repeat that three times to an older man. There was also a disabled
25 man with headphones, who was not paying attention and she had to explain what was happening to him and help him to leave. By the time she had done so, the other staff in the store were standing at the front of the bar and she told them they could leave. As the last customer was leaving the claimant collected her jacket, from the office which is next to where he was seated, and followed
30 him out of the store. She stated that she had only been involved with a fire drill and one proper evacuation previously, when she first started employment with the respondent, as a Barista. She stated that she did not require to deal with customer issues on that occasion.

43. At the conclusion of the disciplinary hearing JV advised the claimant that he required to conduct further investigation before making a decision. He indicated that the claimant would be invited to a further disciplinary hearing once he had done so.

5 44. Following the disciplinary hearing the following steps were taken

10 a. SB provided a written statement. She stated that she was downstairs at the time the fire alarm sounded and ran upstairs to ensure her area was evacuating. She then noticed customers were on the mezzanine at Costa, looking down. She went to Costa and shouted 'it's a fire alarm, evacuate'. She stated that the claimant asked her what was going on and she said it's a fire alarm, you need to evacuate. SB stated that she then required to stop everyone going down the travelator and use the correct fire exit. She stated that Costa was the last area to start evacuating and it took approximately five minutes from the fire alarm going off for Costa to evacuate.

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20 b. CF interviewed LC on 9 January 2020. When asked to explain about the fire evacuation on 23 November 2019 she stated '*Alarm went off, I was behind the bar with Cloey. We looked at Natalia for what to do. She was going round the floor she came over asked her "What's going on?" She said I think it's the alarm. Sarah then came up and shouted. She didn't give me, Cloey or Sultan direction what to do. She started going round tables individually asking them to leave. All customers left, Natalia then told us "Jackets" so we then all got our jackets. Me, Cloey and Sultan then went down the travellator and stood right outside. Natalia came out after and that was it.*' On further questioning, she stated that it took about five minutes before Natalia started evacuating the store. She stated she was not given any instructions on what to do, just told that she needed to get customers out. When asked if the claimant took charge, she stated '*it was not controlled, she was telling customers to leave and taking her*

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30 *time.*' She stated that the evacuation took about 15 to 20 minutes from start to finish. She stated that she finished making orders after the alarm sounded and that her CG and SH went back for their jackets first,

followed by the claimant. When asked by CF *'do you realise how serious this and how Natalia not only by delaying the evacuation but by taking 20 minutes start to finish could of endangered not only team but customers?'* she stated *'yes'*.

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c. CF viewed the CCTV footage showing the bar area in the Costa store and prepared a handwritten note in relation to this which stated as follows: *'Alarm sounded at 3:03pm. Staff still serving. 3:05pm Air vent opens up above bar/customer area. Cloey and Lauren behind the bar, no sign of Natalia. Sultan comes to customer side of bar at 3:06pm and leans on the counter. Lauren and Cloey looking around and been given no instructions/evacuating the store. Cloey proceeds to serve a toastie. No sense of urgency to the fire alarm. Natalia appears at 3:08pm, staff still behind bar serving cakes/toasties. No sign of Sultan. 3:09pm Natalia can be seen leaving with her jacket on. 3:12pm staff return wearing outdoor jackets.'*

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d. Whilst JV had requested that CF interview SH, the Barista working at the time, this was not done. CF informed JV that this was due to SH being on annual leave.

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45. The claimant attended a further disciplinary hearing on 21 January 2020. She had been provided with additional evidence collated in advance of the meeting. She continued to work as Assistant Manager up to this point, as she had not been suspended. If there had been a requirement to evacuate the store while the claimant was on duty then, in the absence of the Store Manager, the claimant would have been responsible for this.

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46. During the meeting the claimant indicated that she had not had any discussions with SB during the evacuation. She suggested perhaps SB was confused by who she was talking to. She highlighted that there were comments in the notes of the CCTV footage which could not have been seen from CCTV footage without sound, for example "no instruction". She stated she did not tell staff to get their jackets. Following a 34 minute adjournment the claimant was advised by JV that she was dismissed on the grounds of gross misconduct, failure to

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lead the team and follow the evacuation procedure. She was informed of her right to appeal.

47. JV wrote to the claimant by letter dated 23 January 2020, confirming her summary dismissal on grounds of gross misconduct. He stated that the reasons for this were:

'Failure to commence fire evacuation immediately, failure to follow correct procedures and evacuating the store safely and in controlled manner, in reasonable time.

Failure to take charge and instruct staff effectively and efficiently during fire evacuation, which lead to your inability to control the situation. This resulted in staff being confused and disorganised, unable to contribute towards the evacuation and therefore prolonging it. This ultimately placed the team and customers at risk.'

48. The collection of personal belongings was not expressly mentioned.

49. The reasons set out in the outcome letter differed from the allegations put forward to the claimant in the disciplinary hearing invite, albeit that the claimant was aware, from the terms of the investigation report that these matters were being considered in relation to the allegations which were actually detailed in the invite letter.

50. The outcome letter confirmed that the claimant's last day of employment was 21 January 2020, but that she would be paid up to 28 January 2020. She was advised of her right of appeal.

51. Following the disciplinary process, JV prepared a Disciplinary Outcome Report dated 11 February 2020. The report stated that his remit was to investigate gross misconduct regarding health and safety procedures and in regards to following fire evacuation procedure. The allegations against the claimant were set out in the report as follows:

'Allegation 1 - Gross misconduct by breach of Health and Safety policy on 23 November 2019, where Natalia failed to start fire evacuation immediately, fulfil

the duties of manager in charge at the time, direct her team and give orders, to evacuate customers and themselves quickly, safely and in controlled manner.'
and

'Allegation 2 - Gross misconduct in regards to following Fire Evacuation Procedure points by stopping to collect her belongings during fire evacuation.'

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52. These allegations differed from those set out to the claimant in the letter inviting her to a disciplinary hearing and to those in the letter dated 23 January 2020, confirming her dismissal. From the evidence presented to the Tribunal, the Tribunal concluded that it was these allegations which formed the rationale for the claimant's dismissal. The claimant was not informed of the precise terms of the allegations set out in the Disciplinary Outcome Report prior to her dismissal. The claimant was not provided with a copy of the Disciplinary Outcome Report. She was however aware that these matters were being considered as part of the allegations which were actually intimated to her.

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53. The Disciplinary Outcome Report detailed that both allegations were upheld.

54. JV's overarching conclusion in relation to the first allegation was that the evacuation had taken longer than it should have. He stated in the conclusion of the report that *'It's clear that Natalia hesitated and delayed start of the evacuation, whilst it was full of people to "assess" situation if there is evidence to fire before commencing fire evacuation. Which is delayed seconds that put her, team and costumers at risk. Lack of leadership, and very minimal to non, direction to staff, to help her with evacuation, to the point where staff served customers couple minutes after fire alarm, and afterwards just stood frantically behind bar, just watching and again unnecessary delaying whole process. While Natalia frantically tried to ask every costumer to leave, which some of them questioned her authority and made her even more flustered and confused.'*

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55. In relation to the second allegation, he noted that the claimant had accepted that she had stopped to take her jacket on her way out.

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56. JV felt that each individually would have amounted to gross misconduct, and would have led to summary dismissal. In relation to the second allegation, the reason this would have merited summary dismissal was due to his finding that the other staff all followed the claimant's lead and collected their jackets as a result of her doing so. That conclusion was contrary to the evidence of the claimant and LC, both of whom stated that the claimant was the last person to collect her jacket. Only CG stated that the claimant had done so first. No explanation was provided as to why JV preferred CG's evidence over that of the only other two individuals present.
57. In February 2020 the claimant indicated that she had not received a letter confirming the outcome of the disciplinary hearing. A further copy was sent to her dated 13 February 2020.
58. The claimant appealed by letter dated 21 February 2020, submitted to BW. Her grounds for appeal were that the sanction was too harsh given that she had not been adequately trained and had never been given any indication as to how long a fire evacuation should take. She stated that her length of service and clean disciplinary record ought to have been taken into account and she had been treated inconsistently with other members of staff – all of whom received exactly the same training as her, but none of whom had been subjected to any scrutiny or disciplinary action. She suggested that her pregnancy was the reason for her dismissal.
59. BW confirmed by email of 26 February 2020 that her appeal would proceed by way of a re-hearing.
60. The claimant attended an appeal hearing with BW on 5 March 2020. At the hearing her grounds of appeal were discussed in detail. When asked about why she didn't immediately start the fire evacuation, she stated that she required to assess the full situation first, namely checking whether the evacuation routes were clear, or if there was anything blocking them such as customer with a wheelchair or a buggy. She also highlighted that she had had issues with team

members following her promotion to Assistant Manager: they didn't respect her and didn't follow her instructions.

61. On 11 March 2020, BW took the following steps:

5 a. He conducted a short interview with CG. She stated that when the alarm went off she had asked the claimant whether they should evacuate and the claimant indicated she wasn't really sure. The claimant was talking to customers table to table at the time and customers were asking for refunds. She stated that the claimant only took charge and started the evacuation when SB attended. The claimant then said that she was
10 going to grab jackets. They followed her to get jackets and went down the traveller.

15 b. He interviewed CF. Little was discussed about the investigation CF had conducted, but CF did state that he had not interviewed SH due to the fact that he has autism. He stated that he first found out the claimant was pregnant on 6 December 2020 and that he was aware of conflicts between the claimant and the team, following her promotion. He stated that the claimant had highlighted to him that she didn't feel respected as an Assistant Manager by the team.

20 c. He conducted a short interview with LC. She stated that the claimant was on the floor when the alarm went off and she didn't react or give any instructions. She stated that SB prompted the evacuation. Customers were only evacuated after that. LC stated that they waited until the customers left, got jackets and left themselves.

25 62. On 16 March 2020, the claimant was provided with the additional statements and invited to a reconvened appeal hearing on 19 March 2020. During that meeting the additional statements obtained were discussed. BW indicated that he would require to consider matters further, before reaching a decision.

30 63. Following the meeting BW considered matters and prepared an Appeal Outcome Report dated 27 March 2020. In relation to allegation 1, of '*Gross misconduct by breach of Health and Safety policy on 23 November 2019, where Natalia failed to start fire evacuation immediately, fulfil the duties of manager in*

charge at the time, direct her team and give orders, to evacuate customers and themselves quickly, safely and in controlled manner,' BW found this to be upheld. He concluded that the claimant was suitably trained, given the training records and fire evacuations that she had been part of previously, but that she delayed the start of the evacuation, which resulted in valuable time being lost. He found that there was a lack of direction on the claimant's part, to instruct the team on shift and to reach the fire assembly point in a timely manner.

64. In relation to allegation 2, of '*gross misconduct in regards to following Fire Evacuation Procedure points by stopping to collect her belongings during fire evacuation*' BW also found this to be upheld. This was based on the claimant's admission that she had taken her jacket. He found that she had allowed others to do so also and this further delayed the evacuation.

65. By letter dated 6 April 2020, BW informed the claimant that he had decided to uphold the decision to dismiss her. He stated that the reasons for this were

'Failure to commence fire evacuation immediately, failure to follow correct procedures and evacuating the store safely and in controlled manner, in reasonable time.

'Failure to take charge and instruct staff effectively and efficiently during fire evacuation, which lead to your inability to control the situation. This resulted in staff being confused and disorganised, unable to contribute towards the evacuation and therefore prolonging it. This ultimately placed the team and customers at risk.'

66. The reasons stated echoed the reasons stated in the letter confirming the claimant's dismissal. They did not precisely match the allegations set out in the Appeal Outcome Report, which the Tribunal found were the reasons relied upon by BW in reaching his conclusion not to uphold the appeal.

67. No other member of staff who was present during the evacuation on 23 November 2019 was investigated, invited to a disciplinary hearing or sanctioned in any way for their actions/omissions during the evacuation by the respondent.

LC was promoted to the role of Assistant Manager following the termination of the claimant's employment.

68. As at the termination of her employment, the claimant was earning £10.28 per hour and her average earnings per week were £416.54 gross/£351.67 net. In addition, the respondent contributed 2% of the claimant's pay to her pension scheme. As a result of the termination of her employment for gross misconduct she forfeited reward points with a value of £540. Prior to her dismissal she had been informed by the rewards team that these could be used up to 1 March 2020.

69. Following the termination of her employment, and as a result of that, the claimant became depressed and anxious. She was in regular contact with her GP but was not prescribed medication, given her pregnancy. She was referred to a mental health nurse, but had no one to one meetings with them, given the Covid-19 pandemic. She was unable to seek alternative employment during the period from the termination of her employment until the birth of her child, as a result of her ill health. She received benefits during this time.

70. The claimant's baby was born on 1 July 2020. Had she remained in employment she would have taken her full maternity leave entitlement. Given the terms of the respondent's Maternity Policy, her pay entitlement in that period would have been entitled to 13 weeks' full pay, 13 weeks' half pay, 13 weeks' statutory maternity pay and 13 weeks' nil pay.

71. She has not yet secured alternative employment.

Submissions

Respondent's submissions

72. Mr Gibson, for the respondent, initially summarised the facts and then addressed the law and the application of the facts to that.

73. He stated that the claimant's dismissal was in no way because of or connected to her pregnancy. The claimant has not demonstrated sufficient to shift the burden of proof. If it has shifted then the respondent has demonstrated that the claimant was not dismissed because of, or for a reason related to, her

pregnancy. CF was unaware that the claimant was pregnant when the investigation commenced. JV and BW's decisions were not influenced by the fact the claimant was pregnant.

5 74. The reason for dismissal was the claimant's conduct. He referred to s98 ERA and the Burchell tests, which he stated were satisfied. The respondent had a reasonable belief that the claimant was guilty of misconduct and this was based on reasonable grounds. When looked at in the round, and the additional steps instructed by JV are taken into account, it is clear that the investigation was reasonable. Each element of the claimant's conduct amounted to gross
10 misconduct. The sanction fell within the range of reasonable responses open to the respondent and a fair procedure was followed.

75. If the Tribunal requires to consider remedy, there should be substantial reductions for contributory conduct and **Polkey**. Any award for injury to feelings should be no higher than the middle of the lower **Vento** band.

15 *Claimant's submissions*

76. The claimant stated LC & CG's statements very brief and were contradictory. Notwithstanding this, their evidence was accepted and her position was disregarded throughout. She was dismissed for not following the internal procedures, but even the witnesses, JV and BW couldn't agree on how these
20 should be interpreted. For example BW confirmed in evidence that he felt it was reasonable for the claimant to take a short period of time to assess the situation before commencing the evacuation, JV stated he did not. JV stated in evidence that he felt 5 minutes would be a reasonable time for the evacuation to be completed, BW stated that a shorter period was appropriate.

25 77. She received no job description or training on becoming Assistant Manager. She had the same training as the other members of staff present on the day, but was singled out for different treatment. The customers on the day of the evacuation were difficult and a number were refusing to leave. She had no training on how to deal with this, but indicated throughout the process that she
30 would be willing to undertake additional training to ensure she could deal with matters better in the future.

Relevant Law

Automatically Unfair Dismissal

78. Section 99 ERA provides that where the reason or principal reason for dismissal relates to pregnancy, the dismissal will be automatically unfair.

5 *Unfair Dismissal*

79. S94 ERA provides that an employee has the right not to be unfairly dismissed.

80. In cases where the fact of dismissal is admitted, as it is in the present case, the first task of the Tribunal is to consider whether it has been satisfied by the respondent (the burden of proof being upon them in this regard) as to the
10 reason for the dismissal and that it is a potentially fair reason falling within s98(1) or (2) ERA.

81. If the Tribunal is so satisfied, it should proceed to determine whether the dismissal was fair or unfair, applying the test within s98(4) ERA. The determination of that question (having regard to the reason shown by the
15 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

20 *(b) shall be determined in accordance with equity and the substantial merits of the case.”*

82. Where an employee has been dismissed for misconduct, ***British Home Stores v Burchell*** [1978] IRLR 379, sets out the questions to be addressed by the Tribunal when considering reasonableness as follows:

- 25
- i. whether the respondent genuinely believed the individual to be guilty of misconduct;
 - ii. whether the respondent had reasonable grounds for believing the individual was guilty of that misconduct; and

iii. whether, when it formed that belief on those grounds, it had carried out as much investigation as was reasonable in the circumstances.

83. The Tribunal will then require to consider whether the decision to dismiss fell within the range of reasonable responses available to a reasonable employer in the circumstances. In determining this, it is not for the Tribunal to decide whether it would have dismissed for that reason. That would be an error of law as the Tribunal would have 'substituted its own view' for that of the employer. Rather, the Tribunal must consider the objective standards of a reasonable employer and bear in mind that there is a range of responses to any given situation available to a reasonable employer. It is only if, applying that objective standard, the decision to dismiss (and the procedure adopted) is found to be outside that range of reasonable responses, that the dismissal should be found to be unfair (***Iceland Frozen Foods Limited v Jones*** [1982] IRLR 439).

Pregnancy & maternity discrimination

84. Section 18(2) EqA provides that

'A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably-

a) Because of the pregnancy, or

b) Because of illness suffered by her as a result of it.'

85. Section 18(6) EqA provides that

'The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins and ends

a) If she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;

b) If she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.'

Burden of Proof

86. Section 136 EqA provides:

5 *'If there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the tribunal must hold that the contravention occurred. But this provision does not apply if A shows that A did not contravene the provision.'*

87. There is accordingly a two-stage process in applying the burden of proof provisions in discrimination cases, explained in the authorities of ***Igen v Wong*** [2005] IRLR 258, and ***Madarassy v Nomura International Plc*** [2007] IRLR 10 246, both from the Court of Appeal. The claimant must first establish prima facie case of discrimination by reference to the facts made out. If the claimant does so, the burden of proof shifts to the respondent at the second stage to prove that they did not commit those unlawful acts. If the second stage is reached and the respondent's explanation is inadequate, it is necessary for the Tribunal to 15 conclude that the complaint should be upheld. If the explanation is adequate, that conclusion is not reached.

88. In ***Madarassy***, it was held that the burden of proof does not shift to the employer simply by a claimant establishing that they have a protected characteristic and that there was a difference in treatment. Those facts only indicate the possibility 20 of discrimination. They are not of themselves sufficient material on which the Tribunal "could conclude" that on a balance of probabilities the respondent had committed an unlawful act of discrimination. The Tribunal has, at the first stage, no regard to evidence as to the respondent's explanation for its conduct, but the Tribunal must have regard to all other evidence relevant to the question of 25 whether the alleged unlawful act occurred, it being immaterial whether the evidence is adduced by the claimant or the respondent, or whether it supports or contradicts the claimant's case, as explained in ***Laing v Manchester City Council*** [2006] IRLR 748, an EAT authority approved by the Court of Appeal in ***Madarassy***.

Discussion & Decision

Reason for dismissal

89. The Tribunal firstly considered the reason for the claimant's dismissal. If it was for a reason related to her pregnancy, her dismissal would be automatically unfair under s99 ERA. If it was because of pregnancy then, accepting that dismissal would amount to unfavourable treatment and the dismissal occurred in the protected period, it could amount to discrimination, contrary to s18 EqA.

90. The Tribunal concluded that the reason for the claimant's dismissal was not because of, or for a reason related to, her pregnancy. The Tribunal noted that the investigation commenced prior to the claimant informing the respondent of her pregnancy and CF had already intimated, by his questioning of the claimant and the witness in that process, that the matter was being treated very seriously. There was no change in approach when the claimant informed the respondent she was pregnant. While the claimant stated in evidence that she informed the CF that she may be pregnant on or around 15 November 2019, the Tribunal did not accept this was the case, given the terms of the text message sent by the claimant to CF following their discussion on 6 December 2019. The Tribunal concluded from that message that this was the first occasion the claimant had informed CF of her pregnancy. There was no evidence that JV or BW's actions were, consciously or unconsciously, motivated by the fact that the claimant was pregnant.

Unfair Dismissal

91. The Tribunal referred to s98(1) ERA. It provides that the respondent must show the reason for the dismissal, or if more than one the principal reason, and that it was for one of the potentially fair reasons set out in s98(2). At this stage the Tribunal was not considering the question of reasonableness. The Tribunal had to consider whether the respondent had established a potentially fair reason for dismissal. The Tribunal accepted that the reason for dismissal was the claimant's conduct – a potentially fair reason under s98(2)(b).

92. The Tribunal then considered s98(4) ERA. The Tribunal had to determine whether the dismissal was fair or unfair, having regard to the reason as shown

by the respondent. The answer to that question depends on whether, in the circumstances (including the size and administrative resources the employer is undertaking) the respondent acted reasonably in treating the reason as a sufficient reason for dismissing the employee. This should be determined in accordance with equity and the substantial merits of the case. The Tribunal was mindful of the guidance given in cases such as ***Iceland Frozen Foods Limited*** that it must not substitute its own decision, as to what the right course to adopt would have been, for that of the respondent. There is a band of reasonableness within which one employer might reasonably dismiss the employee, whereas another would quite reasonably keep the employee on. If no reasonable employer would have dismissed, then dismissal is unfair, but if a reasonable employer might reasonably have dismissed, the dismissal is fair.

93. The Tribunal referred to the case of ***British Home Stores v Burchell***. The Tribunal was mindful that it should not consider whether the claimant had in fact committed the conduct in question, as alleged, but rather whether the respondent genuinely believed he had and whether the respondent had reasonable grounds for that belief, having carried out a reasonable investigation.

Was there a reasonable investigation?

94. The Tribunal did not believe that CF, initially and in response to requests from JV to take further steps, was impartial in his conduct of the investigation. This was demonstrated in the following examples, which are not exhaustive:

a. His questions to CG on 27 November 2019, namely '*If this was a real fire, not a customer accidentally hitting it, would you feel safe and secure with Natalia evacuating you? Given Saturdays events?*', '*Do you not think given an immediate reaction following fire evacuation procedure it would have been a safer and controlled evacuation?*' and '*Do you realize how she put not only customers in danger but the team also?*'

b. His notes of the CCTV footage, which consisted of images of the bar area only and no audio, in which he records that staff have been given no instructions.

c. His questions to LC on 9 January 2020, such as *'do you realise how serious this and how Natalia not only by delaying the evacuation but by taking 20 minutes start to finish could of endangered not only team but customers?'*

5 d. The findings of the investigation which determine that the allegations are *'upheld'* and he has concluded that the claimant has breached health and safety procedures and has failed to follow the steps outlined in the company's Fire and Evacuation Procedures.

95. The Tribunal concluded that a reasonable employer, faced with these
10 circumstances, would have conducted an investigation in a balanced and impartial manner. CF's investigation formed the basis for the disciplinary decision. Whilst BW stated that he would be conducting a rehearing, he relied upon the initial investigation conducted by CF, and the disciplinary decision taken by JV and conducted supplementary investigations, rather than
15 conducting a full rehearing.

96. The Tribunal noted that CF's initial investigation consisted solely of an interview with the claimant and CG, one of the three other members of staff who were on duty at the time of the fire evacuation. Based on that limited investigation, he recommended that matters proceed to a disciplinary hearing. He did not
20 interview LC or SH and no explanation was provided for why he did not do so. He did not view the CCTV. Some additional steps were taken prior to the disciplinary decision being taken, including interviewing LC, obtaining a written statement from SB and viewing the CCTV footage available. Further steps were then taken prior to the appeal decision being taken. While SH was not
25 interviewed the Tribunal, and it would have been preferable for that to have been done particularly given the contradictions in evidence, the Tribunal did not find that that fact, of itself, undermined the reasonableness of the investigation conducted.

97. The Tribunal noted however that, despite the importance placed on the time the
30 evacuation took in relation to the first allegation, at no stage did the respondent investigate how long it normally takes for that particular Costa store to evacuate. Data was available from previous drills/evacuations, but it was not

obtained. No investigation was conducted into when the other departments completed their evacuations. In the Tribunal's view, a reasonable employer, faced with these circumstances would have obtained data to demonstrate how long it had taken to evacuate the store on previous occasions and how long it took other departments in the store to evacuate on that particular day.

Did the respondent have a genuine belief that the claimant was guilty of misconduct?

98. The Tribunal concluded that both JV and BW had a genuine belief that the claimant was guilty of misconduct.

Did the respondent have reasonable grounds for this belief?

99. The Tribunal considered each aspect of the reason for dismissal in turn.

Allegation 1

100. The Tribunal found that there were, in effect, three elements to this allegation, as follows

a. *Failing to evacuate in a reasonable time period, which the Tribunal concluded from the evidence presented was the principal element relied upon by the respondent.*

b. *Failing to start the fire evacuation immediately; and*

c. *Lack of leadership during the evacuation – failing direct her team and give orders, to ensure evacuation in the most effective way.*

101. In relation to the first element, both JV and BW concluded that the length of time the evacuation of the Costa store took on 23 November 2019 was unreasonable. This was the principal reason JV and BW upheld the first allegation. Other than the fact that Costa were last to evacuate the store there were was no basis for the belief that the length of time taken was unreasonable. That Costa customers may take longer to evacuate would be anticipated: customers in Costa would generally be seated, potentially with coats off and belongings placed down beside their tables. Young children would possibly be out of their prams/pushchairs. Customers elsewhere in Tesco would be walking around the store, with coats on and carrying their possessions.

102. Neither JV, nor BW, had any data available to them to demonstrate how long it has taken in previous evacuations for Costa to evacuate. Both however found that the 6 minutes taken on the day in question was entirely unreasonable and the claimant was solely responsible for this. In his evidence before the Tribunal, JV indicated that if there are customers with disabilities in the store, evacuation may take 5 minutes. That was based on his understanding that the store's capacity was 23-30 people, rather than up to 70. BW indicated that 3/4 minutes would have been a reasonable time frame. The only rationale articulated for that conclusion was that the rest of the store had evacuated by the time Costa had done so. BW did not have any data available to him as to when the other departments in the store had completed their evacuation, only that Costa had been last to do so.
103. In light of these points, the Tribunal found that there were no reasonable grounds for JV and BW's conclusion that the length of time the evacuation of the Costa store took on 23 November 2019 was unreasonable.
104. In relation to the second element, namely failing to start the fire evacuation immediately, the Tribunal found that there were reasonable grounds for this belief. The claimant admitted that she did not immediately start the evacuation. She did not do so however as she wanted to assess the situation and whether the lines of exit were clear, before asking all the customers in the store to leave by that route. This was to ensure that they would not be walking towards a fire or other hazard
105. In relation to the third element, namely lack of leadership during the evacuation failing direct her team and give orders, to ensure evacuation in the most effective way, the Tribunal found that there were reasonable grounds for this belief. The evidence of all parties was that, at best, the claimant shouted to staff that they needed to evacuate and told them to leave, once the customers had all left the store. She however, singlehandedly, evacuated the store. She was not assisted in that process by the two Barista Maestros or the Barista who were working with her that day.

Allegation 2

106. The claimant accepted that she had collected her jacket while exiting the store during the evacuation. This was contrary to the respondent's Fire and Evacuation Procedure. There were accordingly reasonable grounds for this belief.

Procedure

107. The respondent investigated the allegations against the claimant. While the claimant was not informed of the precise allegations which the respondent relied upon in dismissing and upholding her dismissal, the claimant was aware of the circumstances which were being considered by the respondent as potentially amounting to gross misconduct. She was also informed of the potential consequences and provided copies of the evidence compiled. The claimant was given the opportunity to respond to the allegations at the disciplinary hearing and was provided with the opportunity to appeal. She was afforded of his right to be accompanied at all stages. The respondent followed their internal procedures. The procedure adopted by the respondent, while not perfect, was reasonable in the circumstances.

Did the decision to dismiss fall within the band of reasonable responses?

108. The Tribunal then moved on to consider whether the decision to dismiss the claimant, as a result of the identified misconduct, fell within the range of reasonable responses available to a reasonable employer in the circumstances.

109. The Tribunal found that the conclusion that the claimant's conduct in relation to allegation 1 amounted to gross misconduct, and the decision to summarily dismiss her as a result, fell outside the range of reasonable responses available to a reasonable employer in the circumstances. For the following reasons:

- a. As the Tribunal concluded above, there were no reasonable grounds for JV and BW's conclusion that the length of time the evacuation of the Costa store took on 23 November 2019 was unreasonable;

b. No reasonable employer would have determined it was gross misconduct for an individual not to start a fire evacuation immediately, when her position was that she delayed slightly (for seconds rather than minutes) to assess the situation and whether the lines of exit were clear, before asking all the customers in the store to leave by that route. Had she failed to do so, she may have directed customers towards a fire or other hazard. The respondent's Fire and Evacuation Procedures direct employees to '*leave by the nearest and safest exit, escorting and guiding guests*'. The identification of the safest exit requires to be assessed at the outset, which will necessarily involve a very short delay.

c. No reasonable employer would have found that it was gross misconduct for an employee to fail to demonstrate leadership in a fire evacuation and direct her team and give appropriate orders to ensure evacuation in the most effective way, when they had provided no training or guidance whatsoever in relation to this to the individual and had not indicated that failure to take this action could amount to gross misconduct. The claimant was given no additional training or guidance when she became an Assistant Manager – whether in relation to fire evacuation or otherwise. BW provided evidence in relation to the steps the claimant should have taken in relation to the difficulties she experienced with customers during the evacuation, but conceded that no training whatsoever had been provided to the claimant in relation to dealing with difficult customers in this scenario or any other.

110. The Tribunal found that the conclusion that the claimant's conduct, in stopping to take her jacket while evacuating, amounted to gross misconduct and the decision to summarily dismiss her as a result, fell outside the range of reasonable responses available to a reasonable employer in the circumstances. Notwithstanding the fact that the claimant was the most senior employee on site on the day in question, no reasonable employer would have categorised the conduct of the claimant as gross misconduct in circumstances where:

- a. no other member of staff was disciplined in any way, such as by way of written warning, despite them stating that they also took their jackets with them; and
- b. Those members of staff had all received exactly the same training as the claimant.

111. The Tribunal accordingly found that the conclusion to dismiss the claimant fell outside the band of reasonable responses open to the respondent in the circumstances.

Conclusions re s98(4)

112. For the reasons stated above the Tribunal conclude that the respondent acted unreasonably in treating the claimant's conduct as a sufficient reason for dismissal. No reasonable employer would have dismissed the claimant in these circumstances. The claimant's dismissal was accordingly unfair.

Remedy

113. Having found that the claimant was unfairly dismissed, the Tribunal moved on to consider remedy.

114. The Tribunal firstly considered whether it was appropriate to make any adjustments to the basic or compensatory award, and reached the following conclusions:

Polkey

115. Given that the Tribunal's finding that the dismissal was unfair is not restricted to procedural irregularities, a reduction in any compensation awarded on the basis of **Polkey** is not appropriate.

Acas Code

116. The Tribunal do not make any finding that the respondent unreasonably failed to comply with the Acas Code. No uplift in compensation is accordingly appropriate.

Contribution

117. The Tribunal then considered

5 a. whether the claimant's conduct before the dismissal was such that it would be just and equitable to reduce the basic award (s122(2) ERA); and

10 b. whether the claimant's dismissal was to any extent caused or contributed to by the actions of the claimant, such that it would be appropriate to reduce the compensatory award by a proportion which the Tribunal considers is just and equitable, having regard to that finding (s123(6) ERA).

15 118. This requires the Tribunal to make findings in relation to what actually happened, rather than whether the respondent reasonably believed that the claimant was guilty of misconduct.

20 119. From the evidence before the Tribunal, the Tribunal determined that the claimant did stop to take her jacket, prior to evacuating the store. This was contrary to the direction given in the Fire and Evacuation Procedures. The Tribunal found that the claimant otherwise handled the evacuation of the store as best she could in the circumstances, given the very limited training she had received, the difficulties she experienced with customers refusing to leave the store and the absence of any assistance whatsoever from the other members
25 of staff on duty that day.

120. Taking into account the claimant's conduct before the dismissal in relation to taking her jacket, contrary to the respondent's policies, the Tribunal concluded that was just and equitable to reduce the basic award by 25%.

30 121. The Tribunal then considered whether the claimant's dismissal was to any extent caused or contributed to by the actions of the claimant. In reaching a conclusion on this point the Tribunal considered whether the claimant's actions

were culpable or blameworthy. The Tribunal found that the claimant's actions in stopping to take her jacket, prior to evacuating the store, were culpable and blameworthy conduct and did contribute to her dismissal. The Tribunal do not consider that evidence was presented to support a conclusion that this conduct, by itself, would necessarily have warranted the dismissal of the claimant for gross misconduct however, particularly given that no other members of staff were disciplined in any way for doing so. The Tribunal found that, at most, given the circumstances, this would have merited a written warning. The Tribunal accordingly find that it would be just and equitable to reduce the compensatory award by 25%.

Basic Award

122. Given the claimant's age (34), service (3 years) and weekly gross wage (£416.54), the basic award is £1,249.62. A reduction under s122(2) ERA at 25% reduces this to **£937.22**.

Compensatory Award

123. The claimant was paid up to 28 January 2020. She did not secure alternative employment prior to the birth of her baby, a period of 22 complete weeks. She would have taken a full year's maternity leave had she remained in employment. The Tribunal considered it reasonable to compensate the claimant for the period up to the conclusion of her maternity leave period. The Tribunal accordingly calculated the compensatory award as follows:

Loss of earnings

• to the start of maternity leave – 22 weeks at £351.67	£7,736.74
• 13 weeks' full pay – 13 weeks at £351.67	£4,571.71
• 13 weeks' half pay – 13 weeks at £175.84	£2,285.92
• 13 weeks' SMP – 13 weeks at £148.68	<u>£1,932.84</u>

Total loss of earnings	£16,527.21
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Pension contributions – 2% of £19,219.25 (gross amounts)	£384.39
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Loss of value of reward points	£540.00
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Loss of statutory rights	<u>£500.00</u>
Sub-total before adjustments	£17,951.60
Reduction for contributory conduct – 25%	<u>£4,487.90</u>
Total Compensatory Award	<u>£13,463.70</u>

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Employment Judge: Mel Sangster
Date of Judgment: 16 February 2021
Entered in register: 22 February 2021
and copied to parties

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I confirm that this is my Judgment in the case of Dudenko v Costa Limited and that I have signed the Judgment by electronic signature.