



EMPLOYMENT TRIBUNALS

Claimant

Christine Doddington

v

Respondents

- (1) Paul Poppy
- (2) Sally Poppy
- (3) Brian Poppy

Heard at: Norwich (Hybrid hearing)

On: 21, 22 & 23 March 2021

Before: Employment Judge Housego

Members: Ms H Gunnell and Ms S Stones

Appearances

For the Claimant: Mr Doug Frame, Solicitor.

For the Respondents: Paul Poppy (1st Respondent and representing 2nd and 3rd Respondents)

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals.

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform (V). A face to face hearing was not held because it was not practicable during the current pandemic and all issues could be determined in a remote hearing on the papers.

JUDGMENT

1. The Claimant was unfairly dismissed by the Respondents.
2. The Respondents failed to provide terms and conditions of employment to the Claimant.
3. The Respondents discriminated against the Claimant by reason of disability.
4. The Respondents are ordered to pay notice pay to the Claimant.

5. The Respondents are ordered to pay the Claimant in respect of holiday accrued but not taken at the date of dismissal.
6. The amounts of compensation are notice pay £1,960.00, no terms and conditions £939.60, basic award for unfair dismissal £2,466.45, compensatory award for unfair dismissal £6,468.18, injury to feelings £10,000, and interest on that figure of £1,755.62, these totalling **£23,589.85**. The detail is in Schedule 1 annexed.
7. The recoupment regulations apply. Details are in Schedule 2 annexed.

REASONS

Background

1. Ms Doddington was employed at The Sailor's Home public house from 13 January 2012 until 13 January 2019. She was dismissed without notice by a Facebook message without any process being followed. The reasons given were of poor performance (capability and conduct). She has osteoarthritis and says that if there was any difficulty with performance that was the reason, so that the dismissal was unlawful discrimination. She denies any conduct that might warrant dismissal.

Claims made and relevant law

2. Ms Doddington claims unfair dismissal and disability discrimination (direct, by reason of the dismissal, s.15 (detriment from something arising from disability) and failure to make reasonable adjustments. She also claims notice pay and pay in respect of annual leave, and that she had no terms and conditions.
3. Section 13 of the Equality Act 2010:

“13 Direct discrimination

- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
- (2) ...
- (3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.
- (4) ...”

4. Section 15 of the Equality Act 2010:

“15 Discrimination arising from disability

- (1) A person (A) discriminates against a disabled person (B) if—
 - (a) A treats B unfavourably because of something arising in consequence of B's disability, and
 - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.”

5. Ms Doddington also says that the Respondents failed in their obligation to make reasonable adjustments:

“20 Duty to make adjustments

- (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
- (2) The duty comprises the following three requirements.
- (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
- (4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
- (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.
- (6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.
- (7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is

required to comply with the duty, to pay to any extent A's costs of complying with the duty.

- (8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.
- (9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—
 - (a) removing the physical feature in question,
 - (b) altering it, or
 - (c) providing a reasonable means of avoiding it.
- (10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—
 - (a) a feature arising from the design or construction of a building,
 - (b) a feature of an approach to, exit from or access to a building,
 - (c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or
 - (d) any other physical element or quality.
- (11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.
- (12) A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.
- (13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.”

6. In respect of a claim for unfair dismissal, the Respondents have to show that the dismissal was for a potentially fair reason¹. The Respondents say this was conduct and capability which are two of the categories that can be fair². It has to be shown that the dismissal was fair³. The employer must follow a fair procedure throughout⁴, and dismissal must fall within the range of responses of a reasonable employer⁵. It is not for the Tribunal to substitute

¹ S98(2) of the Employment Rights Act 1996

² Also S98(2) of the Employment Rights Act 1996

³ S98(4) of the Employment Rights Act 1996

⁴ Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 CA

⁵ Iceland Frozen Foods Ltd v Jones [1982] UKEAT 62_82_2907

its own view of what should have happened, for it is judging whether the actions of the employer were fair, and not deciding what it would have done.

7. The burden of proof as to the reason for dismissal is on the employer, on the balance of probabilities. There is no burden or standard of proof for the Tribunal's assessment of whether it was fair to dismiss⁶. If the dismissal was procedurally unfair the Tribunal has to assess what would have happened if a fair procedure had been followed⁷.
8. As it is asserted that the dismissal was by reason of unlawful discrimination the Tribunal must be satisfied that in no sense whatsoever was the dismissal tainted by such discrimination. For the discrimination claim, it is for Ms Doddington to show reason why there might be discrimination⁸, and if she does so then it is for the Respondents to show that it was not.
9. The Respondents accept that notice pay was due, as the matters they complain of were not gross misconduct (but have not paid it).
10. The Respondents deny that anything is due for annual leave.
11. The Respondents accept that they did not provide terms and conditions of employment as required by s.1 of the Employment Rights Act 1996.
12. The Respondents all say that the only employer was the 2nd Respondent, Sally Poppy.

Issues

13. Paul Poppy filed a response. Not until 19 November 2019 did Sally Poppy and Brian Poppy file responses. It appears that there has never been a formal application for an extension of time. If one is needed it is granted, and all parties have worked on the basis that there are three Respondents, until the hearing commenced.
14. The issues were set out by Ms Doddington's representative and were agreed as the issues in this case at a case management hearing on 30 October 2019.
15. They are as follows, from the Case Management Order:

The Claimant's claims

The Claimant makes the following claims:

1. *Discrimination arising from disability contrary to s.15 Equality Act 2010 ('EqA 2010');*

⁶ Section 98(4) of the Employment Rights Act 1996

⁷ Polkey v AE Dayton Services Ltd [1987] UKHL 8

⁸ Igen v Wong [2005] ICR 931, Madarassy v Nomura International plc [2007] EWCA Civ 33, Laing v Manchester City Council [2006] I.C.R. 159, and Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913

2. *A failure to make reasonable adjustments contrary to s.21 EqA 2010;*
3. *Unfair dismissal pursuant to ss.94 and 98 Employment Rights Act 1996 ('ERA 1996');*
4. *Failure to provide written particulars of employment pursuant to s.1 ERA 1996;*
5. *Arrears of Holiday Pay; and*
6. *Wrongful Dismissal.*

Disability Status Is the Claimant disabled within the meaning of s.6 EqA?

- a. *At all material times, was the Claimant suffering from a physical impairment (namely Osteoarthritis)?*
- b. *Did that physical impairment have a substantial and long term effect on the Claimant's ability to carry out normal day to day activities?*

Discrimination arising from disability (s.15 EqA)

7. *The Claimant alleges that she suffered the following unfavourable treatment:-*
 - a. *Dismissal.*
8. *The issues for the tribunal are:-*
 - a. *Did the Respondents know the Claimant was a disabled person within the meaning of s6 EqA 2010?*
 - b. *If the answer to 8(a) above is no, could the Respondents have reasonably been expected to know that the Claimant was a disabled person within the meaning of s6 EqA 2010?*
 - c. *If the answer to 8(a) or 8(b) above is yes, was the treatment set out in paragraph 7 (a) above unfavourable treatment?*
 - d. *If so, did the unfavourable treatment arise in consequence of the Claimant's disability?*
 - e. *If so, does the Respondent seek to demonstrate that any such treatment was a proportionate means to achieving a legitimate aim?*

Failure to make reasonable adjustments contrary to s.21 EqA

9. *The Claimant identifies the following provisions, criteria or practices (PCP's) as having been applied to her:-*
- a. *All bar staff and/or cleaning staff are required to take bottles out for recycling;*
 - b. *All bar staff and/or cleaning staff are required to put away deliveries;*
 - c. *All bar staff and/or cleaning staff are required to wrap and polish cutlery;*
 - d. *Cleaning staff are expected to complete the morning clean by 11am.*
10. *The issues for the tribunal are:-*
- a. *Do the acts from 9(a) – (d) above amount to PCP's? If so;*
 - b. *Were the Respondents PCP's as identified by the Claimant in paragraphs 9(a)-(d) above applied to the Claimant?*
 - c. *If so, did the PCP in question put the Claimant at a substantial disadvantage in relation to employment by the Respondents in comparison with persons who do not have the Claimant's disability?*
 - d. *If so, what was the disadvantage that the Claimant was put at?*
 - e. *In the case of each PCP, did the Respondents know that the PCP in question put the Claimant at a substantial disadvantage in comparison with persons who are not disabled in relation to employment by the Respondents?*
 - f. *If not, could the Respondents reasonably have been expected to know that the PCP in question put the Claimant at a substantial disadvantage in comparison with persons who are not disabled in relation to employment with the Respondents?*
 - g. *In the case of each PCP, did the Respondents take such steps as was reasonable to have to take to avoid the disadvantage caused by the PCP?*
 - h. *What were the steps that it is said that the Respondents should have taken in relation to each PCP? The Claimant will say that the Respondents should have arranged for another member of staff to share the polishing and wrapping of the cutlery with the Claimant or for another member of staff to take over that duty in its entirety. The Claimant will say that she should have been permitted additional time to complete the*

cleaning and/or judged on completing the cleaning by 12 noon rather than judging her harshly/penalising her for not finishing by 11am. The Claimant will say the Respondent could have arranged for another member of staff to put away the delivery and take out the recycling.

- i. Would the steps set out in (h) above, have avoided the disadvantage caused by the PCP?*

Unfair Dismissal (s.94 and s.98 ERA 1996)

- 11. The Respondents assert that the reason for dismissal was gross misconduct in the workplace arising from poor hygiene (not washing hands after feeding and petting dogs, rolling cigarettes and smoking whilst food service was taking place).*
- 12. Did the Respondents act reasonably in all the circumstances in treating that reason as a sufficient reason for dismissing the Claimant in accordance with s.98(4) ERA 1996?*
- 13. Did the Respondents follow a fair disciplinary and dismissal procedure?*
- 14. If the answer to the above question 13 is “no”, if it had adopted a fair procedure, would the Claimant have been dismissed in any event?*

Failure to provide written particulars of employment (s.1 ERA 1996)

- 15. The Respondents accept that they have not complied with s.1 ERA 1996 and thus the issue for the tribunal relates to remedy as set out under paragraph 22 (g) below.*

Arrears of Holiday Pay

- 16. Have the Respondents failed to pay the Claimant part of any pay in lieu of untaken holiday due on termination of employment under Regulation 14 Working Time Regulations 1998?*
- 17. If so, to what extent?*
- 18. In the alternative, have the Respondents made an unlawful deduction from the Claimant’s wages by failing to pay the Claimant holiday pay due to her?*
- 19. If so, to what extent?*

Wrongful Dismissal

- 20. The Claimant was dismissed without notice and without a payment in lieu of notice. The Respondents accept that it was wrong of them not*

to pay notice therefore the Claimant takes this as an admission by the Respondent that the Claimant was entitled to notice to terminate her contract of employment which was not given.

21. *The issue for the tribunal is how much notice was the Claimant entitled to?*

Remedy

22. *If the Claimant is successful in any of her claims the tribunal will be required to consider the issue of remedy:-*
- a. *What basic award is the Claimant entitled to?*
 - b. *What compensatory award should be made?*
 - c. *What award should be made for injury to feelings?*
 - d. *Did the Respondents unreasonably fail to comply with the ACAS Code of Practice on Discipline and Grievance?*
 - e. *Is it just and equitable to award/reduce compensation (s.122(2) & 123(1) of ERA 1996, s.207A TULR(C)A 1992) or under Polkey v AE Dayton Services Ltd [1987] IRIR 503?*
 - f. *Has the Claimant mitigated her loss under s.123(4) ERA 1996?*
 - g. *What award should be made for failure to provide a written statement of employment particulars?*
 - h. *What award should be made for arrears of holiday pay?*
 - i. *What award should be made for the Respondents failure to give the Claimant notice to terminate her employment?*
16. Case law indicates that a list of issues is not a pleading, but a tool to facilitate a hearing, and could not be approached with the formality one might approach a commercial contract or pleading⁹. Nor must a Tribunal stick slavishly to them¹⁰. In this case the list of issues clearly set out the Claimant's case.

Evidence

17. Ms Doddington gave oral evidence. A former regular at the pub, Michael O'Farrell gave evidence for her about the way she carried out her

⁹ Leslie Millin v Capsticks Solicitors LLP and Others: UKEAT/0093/14/RN

¹⁰ Saha v Capita UKEAT/0080/18/DM

duties at the pub. Former colleagues, Millie Barnes and Melanie Last did the same. Paul Poppy gave evidence. Sally Poppy and Brian Poppy did not attend the hearing. There were unsigned witness statements purportedly from them in the bundle of documents. Paul Poppy's wife Emma Poppy also gave evidence. The Respondents also called a staff member, Michelle Gillingham. A regular at the pub, Morris Wood, was said to be convalescing after a hospital stay and did not give evidence. Mr Poppy declined to cross examine Ms Doddington. The Tribunal also considered documents running to 233 pages.

The hearing

18. The hearing was a hybrid hearing, though in reality entirely remote, in that the parties and the Tribunal were all in different places. On Monday 21 March 2021 the Respondents did not attend. At 10:30 am I telephoned the telephone number given on the ET3 by Paul Poppy. I spoke to Emma Poppy, who went and fetched her husband, Paul Poppy. He said that he knew the hearing was listed for today, and that it was a hybrid hearing. He said that no one had told them what to do. He had received an email at 4:30 pm on Friday saying that it was to be a hybrid hearing, but no more detail. I asked him whether he could log in. He said that they did not have a computer with a webcam or a smartphone. I said that it had been arranged that he and the other witnesses for the Respondent could use the video facilities at Court 1 in Norwich Magistrates Court. I asked how long it would take him to get there. He said he would need a bus and a train, so not until 2:30 pm. I asked if he had a car. He said that his wife was using it. She was not at the time of the call, as I had just spoken to her on the same landline. I said that that the hearing would start at 2:30. He said that only he could attend today. I said that was a matter for him as the case had been listed for a very long time. He raised no issue with this.
19. Mr Poppy arrived at 2:30 pm and the hearing commenced with Ms Doddington's evidence. She affirmed, stated that she had read her witness statement recently, did not wish to alter amend or correct anything and confirmed the truth of what it contained. There were no supplemental questions.
20. I asked Mr Poppy to commence his cross examination of Ms Doddington. Mr Poppy stated that he had no questions for Ms Doddington. I said that this meant that he accepted that everything in her witness statement was true. Mr Poppy said, "*I have no challenge on that*". I asked him whether the claim for notice pay, which he accepted was due, had been met. He said it had not been. I explained again that it was necessary for him to challenge Ms Doddington's evidence, for if he did not it was likely that the Tribunal would accept her evidence as factually correct. Mr Poppy repeated that he did not wish to ask questions of her. For a third time I explained the likely consequences – that if the evidence of Ms Doddington was not challenged the Tribunal was likely to accept it as true, and so Ms Doddington was likely to win. Mr Poppy said that all he had to say was in the bundle of documents and in the witness statements he had provided. I said that was for tomorrow,

and had he anything to put to Ms Doddington. Mr Poppy responded, “No. No questions.”

21. I asked Mr Frame if he considered I had put the issue to Mr Poppy fairly, in case there was a subsequent appeal to the EAT if the Tribunal found for Ms Doddington. Mr Frame said that I had explained clearly to Mr Poppy that if he did not challenge the evidence of Ms Doddington it was going to be taken as truthful. I asked Mr Poppy “*Have you understood*” and he said “Yes”. The Tribunal asked a few clarificatory questions of Ms Doddington, about the holiday pay claim. I then asked Mr Poppy whether any points had arisen from those questions. He said that it was up to the employees to keep a note of the holidays they took and he did not check on them. He did not question Ms Doddington about it. I enquired whether he would have any questions for the 3 witnesses tendered by Ms Doddington (who had attended the hearing virtually), or whether he accepted their evidence. He had no questions for them and accepted their evidence, and so I released them as their witness statements are accepted as truthful. (In the event Mr Frame asked the next morning that they affirm and adopt their witness statements, and they did. Mr Poppy asked no questions of them.)
22. Mr Poppy then gave evidence and was cross examined. At the conclusion of his evidence, I indicated that we would resume at 10:00 am with the evidence of Sally Poppy and of Brian Poppy, followed by the other witnesses he was to call. Paul Poppy said that his mother (Sally Poppy) was not going to come. I asked about his father. Mr Poppy said that his father was no longer a respondent. I asked how he came to that conclusion. He said that EJ Brown had said so at the Case Management hearing on 31 October 2019. I read that Order to Mr Poppy, and it does not say that, and the ET3 from Brian Poppy was filed after that Order, in November 2019. I said he remained a respondent and asked if he would be giving evidence. Mr Poppy said that he would not.
23. I asked Mr Poppy if he understood that if the Tribunal found for Ms Doddington against all three respondents, they would all be liable for the money ordered to be paid. Mr Poppy said that Sally Poppy was the owner. I said to Mr Poppy “*You do realise that they are liable if we find for the claimant?*” Mr Poppy replied, “*They are not prepared to deal with it and I am the manager and representative.*” I said that oral evidence was usual, and his contention was that his mother Sally Poppy was Ms Doddington’s employer. Mr Poppy said he understood. I said that an unsigned written statement was of little evidential value. Mr Poppy said “*Yes, of course, I understand.*” The hearing was adjourned to the next day to hear from Emma Poppy and from Michelle Gillingham, followed by submissions. This is what occurred, and the Tribunal then adjourned to give judgment on 24 March 2021.

The Claimant’s case

24. Ms Doddington says that she worked for about 7 years without any issue or complaint. She developed osteoarthritis about 2016. She spoke to

Sally Poppy about it, often, and others. It slowed her down a bit. The dismissal was out of the blue. She was never spoken to about any of the matters raised when and after she was dismissed. Her dismissal was unfair, and it was because she was disabled, in one way or another.

The Respondent's case

25. Paul Poppy said that he runs the pub, and his parents retired about 5 years ago. He said that it was his mother's business, and he was the employed manager. He said had no idea that Ms Doddington had osteoarthritis. Ms Doddington may have told his mother, but his mother never told him because he now understood that Ms Doddington asked her not to do so. He said that Sally Poppy should be the only Respondent, because her name was on the payslips as Ms Doddington's employer. He maintained that Ms Doddington's dismissal was fair, by reason of poor performance and conduct, but accepted that she should have been paid in lieu of notice (although he had not paid it yet). They left everyone to arrange their own holiday, and if she hadn't that was down to her. They paid Ms Doddington in cash (91/233).
26. The ET3 and witness statement filed for Sally Poppy said that she ought to be the only Respondent because she was person who ran the business. It was her name on Ms Doddington's payslips as employer. Her son Paul ran the business for her, day to day. He was an employee of hers. Ms Doddington had told her of her (Ms Doddington's) osteoarthritis but had asked her not to tell her son Paul, so she hadn't. They did not have any paperwork like personnel files as it was a small family business, employing friends and family (91/233). While the lease of the pub was in all three names it was solely her business.
27. Brian Poppy's ET3 and witness statement said that although he was the licensee and the responsible person for the pub, and one of the three lessees of the pub, he was not a partner or part owner of the business, and it was his wife Sally who ran it. It was nothing to do with him on a day to day basis.

Submissions

28. Mr Poppy maintained that he had no idea that Ms Doddington had osteoarthritis when he dismissed her. He did not accept that this impacted on her ability to do certain tasks. He accepted that he had never had any discussion with Ms Doddington about the way she worked. Nevertheless, he said that the dismissal was because he said her work was inadequate and her attitude unsatisfactory. He fully expected a financial cost to the business from the hearing, but felt that it was inevitable that she would have to go because he would lose his temper with Ms Doddington by reason of the way she was undermining the business by her attitude, and that was what had happened. She had never accepted his authority in the business so there had been no point in telling her anything.

29. Mr Frame pointed out that there was no process followed, and while it was not accepted that there was any justice in the complaints about her work the dismissal had to be unfair since it was accepted to be out of the blue and without any prior warning. In so far as there was any performance issue it was a result of the osteoarthritis, and reasonable adjustments would have resolved them. Paul Poppy must have known of the disability on the facts, but it made no difference as everyone accepted that Sally Poppy knew of it, and all three Respondents said that she was the employer. If she chose not to tell her manager that did not absolve her from responsibility for his actions.

Facts found

30. The pub is leased for 20 years, and all three Respondents are tenants. Brian Poppy is the licensee of the pub and the “*responsible person*” for official purposes. The accounts are prepared for Sally Poppy, and it is her name on Ms Doddington’s payslips. Paul Poppy manages the pub, and his wife Emma Poppy works there too. For the last 5 years Sally and Brian Poppy have played little active role in the running of the pub, but have been there almost every day, and both deal with financial matters. Paul Poppy is issued with payslips by Sally Poppy as an employee.
31. Ms Doddington worked at the pub from 13 January 2012.
32. The business employs between 5 and 7 people. They regard it as a small family business employing only family and friends, and have no contracts of employment, or policies of any sort.
33. Ms Doddington would frequently take a cigarette break when Sally Poppy was in the pub and they would go outside and discuss things including arthritis, from which both suffered. Ms Doddington would also discuss this with her colleagues. It is inconceivable that Paul Poppy did not know of it (and the Tribunal find that he did know, at all material times). She also asked him for, and was given, time off for medical appointments for her osteoarthritis.
34. The effects of the osteoarthritis made it harder for Ms Doddington to do some of her tasks (like folding cutlery into napkins and heavy lifting).
35. Ms Doddington would roll a cigarette at the bar to smoke in a break. Mr Poppy accepted that bar staff vape while serving customers. There was nothing wrong (in the very particular circumstances of this employment) in Ms Doddington rolling a cigarette preparatory to smoking it outside.
36. On 13 January 2019 she was shouted and sworn at by Paul Poppy for rolling a cigarette when at the bar. After she left work at 5:30 pm and got home, she received a Facebook message at 7:12 pm with a series of complaints about her work and attitude, ending “*i have to let you go with immediate effect, thanks for working with us but i feel it is time for you to move on.*” (sic) (100/233)

37. At no time did any of the three respondents (or Emma Poppy) speak to Ms Doddington about any aspect of the way she carried out her job. Paul Poppy and Emma Poppy both accepted that this was the case in their oral evidence. In addition, when writing on 06 February 2021 in response to a request from Ms Doddington for reasons for dismissal said that she was *“blissfully unaware of her actions and seemed to think her work ethic was acceptable to all parties”*. It is clear that Ms Doddington had no idea that anything she did was considered unsatisfactory by Paul Poppy.
38. Ms Doddington rang Sally Poppy about being dismissed. She was unaware of it. She went to see Sally Poppy (at the invitation of Sally Poppy), who told her that Paul Poppy ran the business, and that while it was a pity there was nothing she could do about it.
39. Paul Poppy said that it was wrong of Ms Doddington to approach Sally Poppy, even though he said that Sally Poppy was Ms Doddington’s employer, and he said that if she wanted to appeal it should have been to him, within the pub not to Sally Poppy at her home. It was not wrong to approach the person who said she was her employer, and it is no appeal at all if the appeal is to the same person who made the decision to dismiss.
40. The Tribunal determines all the issues set out above in favour of the Claimant. Ms Doddington’s evidence was unchallenged. It has been consistent from the start, is in key respects either admitted or is supported by the evidence of Paul and Emma Poppy. There was a legitimate aim of keeping the business successful. It was not a proportionate means of achieving that aim to dismiss Ms Doddington without any attempt to address any issue related to disability. The PCPs contended for were in place. They did place her at a substantial disadvantage compared to someone without her disability. The Respondents must (or in the alternative should) have known this was the case. No steps were taken to avoid that disadvantage, and steps could have been taken to do so.
41. Ms Doddington was not guilty of any conduct which might have contributed to her dismissal.

Conclusions

42. The Respondent’s case is logically unsustainable:
 - 42.1. Paul Poppy stated that he is the manager, and that he and his wife Emma run the pub, and that his parents have no part in the running of the pub (105/233) and retired five years ago or more. He stated that Ms Doddington had a problem with his authority, demonstrated by going to see Sally Poppy about her dismissal. He said that Sally Poppy knew nothing about it in advance. He says also that he could not be expected to make any adjustments because his mother had not told him about Ms Doddington’s osteoarthritis.

- 42.2. He also states that he should not be a Respondent at all, as he is only an employee, and that the business is that of Sally Poppy alone.
 - 42.3. It appears to be the Respondent's case that it is acceptable for the manager to run things as he wants, and that the owner, as an absentee, cannot be held accountable for what he does, and nor can the manager because he is not the owner.
 - 42.4. This is nonsense. If the manager does not ask the owner about dismissing someone in advance, that does not relieve the owner of responsibility for it.
 - 42.5. If the owner knows something important about the health of an employee and chooses not to tell the manager that does not relieve the owner of responsibility for what the manager does in ignorance of that fact (if he is ignorant of it).
43. The witness statements of Sally Poppy and of Brian Poppy are unsigned. They are in the same font and font size as that of Paul Poppy. They have the same idiosyncratic misuse of lower case letters where there should be upper case letters as in all the witness statements of the Respondents. Emma Poppy and Michelle Gillingham stated that Paul Poppy had prepared their witness statements for them. It is plain that the author of the witness statements attributed to Sally Poppy and Brian Poppy is Paul Poppy. Given his statement in the hearing that his parents want nothing to do with the case, and expect him to deal with it, it is likely that they have never seen the witness statements tendered in their names. Mr Poppy is clear that he did not consult his mother before dismissing Ms Doddington, and Ms Doddington's evidence accords with this: she says she rang Sally Poppy when she got the message that she was dismissed and was invited to go and see her, and that Sally Poppy did not know, but thought there was nothing she could do as Paul Poppy ran the pub. The Tribunal gave very little weight to those witness statements for that reason.

Who employed Ms Doddington?

44. The Tribunal finds all three Respondents to be employers of Ms Doddington, for the following reasons:
- 44.1. Sally Poppy accepts that she is an employer (or at least the representative of all three respondents (Paul Poppy) so states).
 - 44.2. All three are leaseholders.
 - 44.3. Brian Poppy is the licensee. It is inconceivable that he is not the employer of employees in the pub for which he holds the licence and is the tenant. While he is entitled to let others run the pub, after over 5 years "*retirement*" he is still a key person for the pub – the licensee. He deals with paperwork for the business while in the pub.

- 44.4. Paul Poppy runs the pub, and whether he is treated as an employee internally is not to the point. He runs it without any supervision from his mother, as the dismissal shows, and in the manner of an employer.
- 44.5. It is not disputed that Sally Poppy and Brian Poppy would visit daily and when there deal with the business of the pub.
- 44.6. It is described by all three Respondents as a “*family business*”.

Fair or unfair dismissal

45. The dismissal was unfair. There was no process followed at all. There was a summary dismissal purportedly for capability and conduct reasons, with none of the issues set out in the dismissal Facebook message ever mentioned before, as Paul and Emma Poppy accepted.
46. Paul Poppy says that he did not know of the disability of Ms Doddington. He accepted at the Case Management Hearing that she had the claimed disability, but not that he knew or should have known of it. The Tribunal does not accept that this is the case. Ms Doddington talked openly in the pub of the problems this was causing her. Her evidence that she took time off for medical appointments is set out with clarity in her witness statement, and that she told Paul Poppy what those appointments were for. The Tribunal finds as a fact that she did tell Paul Poppy this. He may well not have appreciated that it was a disability, but that is not to the point.
47. The reasons given for dismissing Ms Doddington were a mixture of claimed attitudinal issues and capability issues related to the effect of her disability.
48. It follows that the dismissal was:
 - 48.1. direct discrimination (because she was dismissed for having a disability which slowed her down);
 - 48.2. indirect discrimination (because there was a PCP requiring her to her job exactly as anyone else, which had a greater effect on her than on someone without her disability, and that was a reason why she was dismissed);
 - 48.3. a failure to make reasonable adjustments (such as relieving her of heavier tasks, or allowing more time for dealing with cutlery, or giving this task to another);
 - 48.4. contrary to S15: the “*something arising*” being taking more time, and being less able to undertake heavy task, and the detriment being dismissal.
49. The dismissal was unfair for the following reasons:

- 49.1. It was in part by reason of disability discrimination, so that there were no capability reasons.
 - 49.2. There was no process: it was a summary dismissal without warning.
 - 49.3. None of the matters raised had ever been put to Ms Doddington.
 - 49.4. There was no appeal.
 - 49.5. On the facts there was no misconduct.
50. Had a fair procedure been followed there would not have been a dismissal. There would have been reasonable adjustments to deal with capability issues. Ms Doddington would have heeded any warning about conduct. The Tribunal has found as a fact that there was no conduct warranting disciplinary action. It follows that there is no *Polkey*¹¹ reduction in compensation. There is no reduction in compensation by reason of contributory conduct¹².

Uplift

51. The manner of the dismissal could not be further from the ACAS Code. The Tribunal decide on the maximum 25% uplift to the award for unfair dismissal. To do otherwise would be perverse in these circumstances.

Notice pay claim

52. The dismissal was without notice. There was no gross misconduct alleged (as Paul Poppy accepted), and Paul Poppy accepted in the ET3 that notice pay was due. The claim for notice pay is conceded (and proved on the facts). Ms Doddington was employed for seven full years, and so she is entitled to seven weeks' pay for that breach of contract.

Holiday pay claim

53. There is a claim for holiday pay. Ms Doddington's unchallenged evidence was that she was told she could take four weeks' paid holiday a year. It was agreed that she could take holiday whenever she liked (save in peak season when it was understood this would not be the case) and that it was up to her to take the right amount. The entitlement is 5.6 weeks' annual leave. Ms Doddington was therefore 1.6 weeks short of her holiday entitlement. Her holiday year (by coincidence) started on 13 January, which was the day she was dismissed. There was a series of deductions, but such deductions are now capped at two years. The successful claim is therefore for 3.2 weeks. (There is an EU right that can go back without limit, but that is for four weeks a year, and that Ms Doddington accepts she took.)

No terms and conditions

¹¹ *Polkey v AE Dayton Services Ltd* [1987] UKHL 8

¹² S122(2) and S123(6) of the Employment Rights Act 1996

54. Ms Doddington was never given written terms and conditions of employment, as required by s.1 of the Employment Rights Act 1996. The remedy is set out in s.38(4) of the Employment Act 2002. It is two or four weeks' pay. The Tribunal considers it just and equitable to award four weeks' pay. These are employers who have made a conscious decision not to supply terms and conditions, on the basis that it considers itself a "*family business*" employing family and friends. That is no reason to ignore the law. (And the dismissal was an odd way to treat a friend.)

Compensation

Notice pay

55. Ms Doddington was paid £234.90 a week gross and £224 net. She was entitled to 7 weeks' notice. That is £1,568.00, uplifted by 25% = **£1960.00**.

Holiday pay

56. 3.2 weeks at £234.90 is £751.68 (part of compensatory award).

Failure to provide terms and conditions

57. Four weeks' pay at £234.90 is **£939.60**.

Unfair dismissal

58. The basic award is for 7 years, for all of which Ms Doddington was over 41. The award is therefore 10½ weeks' pay. Ms Doddington was paid £234.90 weekly. The basic award is therefore **£2,466.45**.
59. The compensatory award starts from the expiry of notice pay. Seven weeks from 13 January 2019 is 02 March 2019. She got new employment, at better pay, starting on 16 July 2019. That is 19.3 weeks @ £224 = £4323.20.
60. Ms Doddington was active in her search for employment (and provided documentary evidence of it). She is in her 50s and has osteoarthritis. Both are not advantages in the job market, and her osteoarthritis limited the roles for which she could apply. The Tribunal is satisfied that Ms Doddington has met the burden of proving that she has made the required effort to mitigate her loss.
61. Ms Doddington received universal credit after 7 weeks, and the recoupment regulations apply to the award of loss of earnings.
62. In addition there is loss of statutory rights. This is to compensate for having no rights until 2 years into a new job. Ms Doddington is only 4 months from that milestone, and raises no concerns about her employment. The Tribunal awards one week's pay, rounded up to £250.

63. The compensatory award is to be uplifted by 25%. It is £4323.20 + £250 + £751.68 = £5324.88. 25% of this is £1143.30 and so the total is **£6,468.18**.

Injury to feelings

64. The second addendum to the Presidential Guidance on *Vento* bands applies as the claim was issued on 19 April 2019. The bands are a **lower band of £900 to £8,800** (less serious cases); a **middle band of £8,800 to £26,300** (cases that do not merit an award in the upper band); and an **upper band of £26,300 to £44,000** (the most serious cases), with the most **exceptional cases capable of exceeding £44,000**.
65. The Tribunal noted that this was a one off act, not a series of actions. The unfairness was egregious, but some of it was unconnected with disability. This means that not all the injury to feelings is attributable to unlawful discrimination.
66. Ms Doddington did not tell us that she required any medical help to cope with her injury to feelings. Nevertheless, she regarded herself as employed by friends (which is also how the Respondents viewed it) and Ms Doddington's claim of substantial injury to feelings is entirely credible. She was dismissed by people she regarded as friends, after seven years working in a small team, and in a brutal way. Her job was a social one, and in addition to the introspective injury to feelings there is the additional injury to feelings through the loss of the companionship of her colleagues and regulars, including repeat summer visitors. This is a small community, and she has also the injury to feelings from people knowing that she was dismissed for (in short) being workshy, when her difficulty in work was disability related. In addition, the dismissal letter said that she was known by a pejorative nickname, which was Mr Poppy said was bruited about by colleagues and customers. This was undoubtedly hurtful, and while it might have related to matters not to do with disability Ms Doddington cannot be expected to analyse in such detail¹³. Ms Doddington had worked in pubs in the village for many years, and lived there until some years ago.
67. Ms Doddington felt unable to resume work in a pub, and found it difficult even to enter a pub for a long time. She was distraught at what happened and how it happened. The injury to feelings is not reduced as there is an absence of any form of insight by Mr Poppy and most certainly no apology.
68. The Tribunal bore in mind the need to have regard to what the sum awarded in compensation equates to in terms of what things cost, the need neither to impair public confidence in the system by large awards which can be seen as unjustified riches, nor so small as to trivialise the pernicious nature of unlawful discrimination, and what awards are likely for physical injury awards in personal injury claims. It noted the particularly brutal and rude way the dismissal was effected, which would inevitably increase the injury to

¹³ The nickname is not included as Judgments are public documents and to do would cause needless extra injury to feelings.

Ms Doddington's feelings. The Tribunal concluded that this award should be towards the bottom of the middle band and awarded **£10,000**.

69. The Tribunal is obliged to consider interest on injury to feelings awards¹⁴. If it decides to award interest it is calculated at 8% pa, simple, from the date of the event. That was 13 January 2019. This is 2 years and 2 months (1/6 of a year). $£10,000 \times 8\% \times 2 = £1,600$, and $£10,000 \times 8\%$ divided by 6 = £133. The interest is therefore £1,755.63, the small additional amount being for the days above 2 years 2 months. The Tribunal noted that the *Vento* bands increase each year, but that the bands in any case are fixed by the date the claim was issued. It has taken account of the low rate of inflation since January 2019. However, in all the circumstances it decided to award interest (of **£1,755.62**).

70. The total of these amounts is:

Basic award	£2,466.45
Wrongful dismissal	£1,960.00
Compensatory award (inc holiday pay)	£6,468.18
Injury to feelings	£10,000.00
Interest thereon	£1,755.62
	= <u>£23,589.85</u>

Employment Judge Housego

Date: 25 March 2021

Sent to the parties on: 16 April 2021
THY

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For the Tribunal Office

¹⁴ Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 SI 1996/2803

Schedule 1 – Calculation of awards

IN THE EMPLOYMENT TRIBUNALS CASE NO: 3314025/2019
BETWEEN Christine Doddington v Paul, Sally and Brian Poppy
CLAIMANT'S SCHEDULE OF LOSS

1. Details	
Date of birth of claimant	25/12/1962
Date started employment	13/01/2012
Effective Date of Termination	13/01/2019
Period of continuous service (years)	7
Age at Effective Date of Termination	56
Date new equivalent job started or expected to start	16/07/2019
Remedy hearing date	24/03/2021
Date by which employer should no longer be liable	16/07/2019
Contractual notice period (weeks)	7
Statutory notice period (weeks)	7
Net weekly pay at EDT	224.00
Gross weekly pay at EDT	234.90
2. Basic award	
Basic award Number of qualifying weeks (10.5) x Gross weekly pay (234.90)	2,466.45
Less contributory fault (basic award) @ 0%	0.00
Total basic award	2,466.45
3. Damages for wrongful dismissal	
Loss of earnings Damages period (7) x Net weekly pay (224.00)	1,568.00
Plus loss of pension	0.00
Pension loss during damages period	0.00
Past pension loss	0.00
Plus failure by employer to follow statutory procedures @ 25%	392.00
Less accelerated payment (wrongful) @ 0%	0.00
Total damages	1,960.00

4. Compensatory award (immediate loss)	
Loss of net earnings Number of weeks (19.3) x Net weekly pay (224.00)	4,323.20
Plus loss of statutory rights	250.00
Plus loss of commission and/or bonus	0.00
Less payment in lieu	0.00
Less ex-gratia payment	0.00
Less non-recoupable benefits	0.00
Less early payment of compensation	0.00
Total compensation (immediate loss)	4,573.20
5. Compensatory award (other statutory rights)	
Holiday pay	751.68
Total compensation (other statutory rights)	751.68
6. Adjustments to total compensatory award	
Less Polkey deduction @ 0%	0.00
Plus failure by employer to follow statutory procedures @ 25%	1,143.30
Less contributory fault (compensation award) @ 0%	0.00
Accelerated payment @ 0%	0.00
Plus interest (compensation award) @ 0% for 401 days	0.00
Compensatory award before adjustments	5,324.88
Total adjustments to the compensatory award	1,143.30
Compensatory award after adjustments	6,468.18
7. Failure to provide written particulars	
Number of weeks (4) x Gross weekly pay (234.90)	939.60
Less contributory fault (compensation award) @ 0%	0.00
Total	939.60
8. Non financial losses	
Injury to feelings	10,000.00
Plus interest @ 8% for 801 days	1,755.62
Aggravated damages	0.00
Plus interest @ 0% for 401 days	0.00
Physical and psychiatric injury	0.00
Plus interest @ 0% for 401 days	0.00
Total non-financial award	11,755.62

9. Summary totals	
Basic award	2,466.45
Wrongful dismissal	1,960.00
Compensation award including statutory rights	7,407.78
Non-financial loss	11,755.62
Total	23,589.85
AFTER COMPENSATION CAP OF £83,682.00	23,589.85

Schedule 2 – recoupment

IN THE EMPLOYMENT TRIBUNALS CASE NO: 3314025/2019

BETWEEN

CHRISTINEDODDINGTON

AND

PAUL, SALLY & BRIAN POPPY

RECOUPMENT

Recoupment

Prescribed period 04/03/2019 to 24/03/2021

Compensation cap applied

Total award	£23,589.85
Prescribed element	£4,323.20
Balance	£19,266.65

Compensation cap not applied

Total award	£23,589.85
Prescribed element	£4,323.20
Balance	£19,266.65