EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Ms T Diakoumis	and	Qantas Cabin Crew (UK) Limited

Remedy hearing at Remedy hearing – 22 and 23 March 2021
Reading on: In chambers – 1 April 2021

Tribunal: Employment Judge: Vowles
Members: Ms C Baggs and Ms H Edwards

Appearances:

For the Claimant: Mr J Arnold, counsel
For the Respondent: Mr M Pilgerstorfer QC, counsel

RESERVED UNANIMOUS REMEDY JUDGMENT

Evidence

1. The hearing was held by CVP video link. The Tribunal heard evidence on oath and read documents provided by the parties. It also received written and oral submissions from both representatives. From the evidence heard and read the Tribunal determined as follows.

Decision

2. The Claimant is awarded **£20,263.15** in compensation for unfair dismissal. The Respondent is ordered to pay this sum to the Claimant, subject to the Recoupment provisions set out below.

Recoupment

3. The Claimant claimed benefits and the Employment Protection (Recoupment of Benefits) Regulations 1996 apply.

The monetary award is £20,263.15
The prescribed element is £12,550.77
The dates of the period to which the prescribed element is attributable is 29 June 2017 to 1 April 2019.
The amount by which the monetary award exceeds the prescribed element is £7,712.38

4. The effect of the Regulations is that **payment of the prescribed element is stayed and should not be paid to the Claimant**, until the Secretary of State has served a recoupment notice on the employer in respect of benefits paid to the Claimant or has notified the employer in writing that he does not intend to serve a recoupment notice.

Application for a Costs Order

5. The Respondent's application for a costs order was the subject of a separate written submission containing privileged information which the Tribunal was asked not to read until after the decision on remedy. That application remains outstanding and will be considered following further submissions by the parties which should be presented to the Tribunal no later than 28 days after this judgment is sent to the parties. In particular, the parties shall confirm whether the application for a costs order should be considered by the Tribunal without the need for a further hearing unless either party requests a hearing. If so, they shall state why such a hearing is necessary.

Reasons – rule 62 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013

6. This judgment was reserved and reasons are attached below.

Public Access to Employment Tribunal Judgments

7. The parties are informed that all judgments and reasons for judgments are published, in full, online at *www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the Claimant and the Respondents

REASONS

Background

1. A full merits hearing before the same Tribunal was held at Reading on 31 October – 7 November 2018.

2. In a Reserved Unanimous Judgment, sent to the parties on 24 January 2019 the claims of direct age discrimination, protected disclosure detriment, automatically unfair dismissal, victimisation and unauthorised deduction from wages/breach of contract failed and were dismissed.

3. The claim of unfair dismissal was successful and the purpose of this remedy hearing was to determine remedy for the claim of unfair dismissal

4. An agreed list of issues and directions for remedy were prepared by the parties and were as follows:-

   "Remedy

   What should the Tribunal order by way of remedy on the Claimant's unfair dismissal complaint?

1. *Should the Tribunal order reinstatement or re-engagement?*

2. *Based on the evidence the Tribunal has already heard during the liability hearing, should the Tribunal reduce any financial award it makes by reference to the following:*

    a. *The Polkey principle;*
    b. *Contributory fault on the part of the Claimant;*
    c. *The Devis v Atkins principle.*

3. *What financial award should be made?*

    a. *Basic award;*
    b. *Compensatory award;*

        (i) *Has the Claimant mitigated her losses?*
        (ii) *What is the appropriate quantum of the Claimant's losses;*
        (iii) *What does the compensation need to be capped by virtue of the statutory cap?*

Evidence

5. The Tribunal heard evidence on oath from the Claimant, Ms Tessa Diakoumis, and from Ms Kath Gregory on behalf of the Respondent.

Reinstatement and Re-engagement

6. The Claimant wished to be re-engaged by Qantas Airlines in Australia or alternatively reinstated in her role with the Respondent in the UK. In her witness statement she said as follows:

> "*112 – My preferred outcome would be for the Tribunal to order to be re-engaged to Qantas Australia, in the short haul crew base in Sydney, the position I held prior to relocating to London. This would allow me to continue to reside in the family home and commute to Sydney. As I have nearly three decades of experience, and my longevity at being a cabin crew member, I am able to re-train quickly and commence working straight away. Qantas has been my entire working life and due to my experience, it would be straight forward to place me either in the UK or Australia. Qantas would not have to incur costs to train someone from scratch which is significant, as I already hold the necessary skills.*
>
> *113 – As nearly four years has passed, many, if not all of the people who were involved in my case are no longer with the Qantas group, therefore many will be unaware of my circumstances, additionally ground managers whom cabin crew report to are generally in the role for 2-3 years then replaced. I respectfully invited EJ Vowles to consider an order for re-engagement or reinstatement."*

Territorial Jurisdiction

7. Section 115(1) Employment Rights Act 1996 states:

> *"An order for re-engagement is an order, on such terms as the Tribunal may decide, that the complainant be engaged by the employer or by an associated employer, in employment comparable to that from which he was dismissed, or other suitable employment."*

8. The Claimant submitted that Qantas Airlines Limited in Australia was an associated company under section 231 Employment Rights Act 1996 as follows:

Section 231 – Associated Employers

> *"for the purposes of this act, any two employers shall be treated as associated if:*
>
> *(a) One is a company of which the other (directly or indirectly) has control, or*
>
> *(b) Both are companies of which a third person (directly or indirectly) has control; and*
>
> *(c) Associated employer, will be construed accordingly.*

9. The Respondent argued that "*employment*" in section 115(1), as far as re-engagement was concerned, is subject to territorial limits, in the same way that exists for "*employment"* in respect of which there is a right to complain of unfair dismissal under section 94(1) Employment Rights Act 1996. It relied upon the case of Lawson v Serco [2006] ICR 250. It said that in this case the Tribunal must construe the word "*employment"* in section 115, and that it must mean employment with a sufficient connection to UK employment law to find jurisdiction on the part of the Tribunal. In other words, the same approach the Tribunal takes when assessing whether there is territorial jurisdiction for a particular employment. It was said that in section 115(2) the Tribunal must *"specify the terms"* on which re-engagement is to take place and that they must be specified with a degree of detail and provision. The Tribunal could not do that in relation to employment which is subject to foreign law and adjudication. In addition, the Tribunal would be unable to adjudicate as to the enforcement of a re-engagement order under section 117 in respect of an entirely foreign employment. It would be unable to determine disputes about employment which had no connection to the UK.

10. It was said that there was no connection with the UK of any sort if the Claimant was re-engaged in Australia working for Qantas which would involve work entirely within Australia. The contract would be subject to Australian law and not to English law. The Respondent submitted that an absolute jurisdiction bar existed, preventing re-engagement by an associated employer in Australia, and that these factors should also be taken into account when considering all the circumstances and whether to

make an order for re-engagement when considering the mandatory factors set out in section 116.

11. The Claimant referred to the case of Hancill v Marcon Engineering Ltd [1990] IRLR 51 EAT in which it was said:

" ... if the overseas subsidiary is a company which in its essentials is to be likened to a company limited under the Companies Act, then it would be right, fair and indeed in accordance with the principles of presumption of continuity under the 1978 Act that that company should be recognised as a company for the purposes of the definition section of 'associated employer'."

12. The Claimant said that both the Respondent and Qantas Domestic were part of the Qantas Group, and that Qantas Domestic was essentially the Australian equivalent of the Respondent. Qantas Domestic therefore fell within the definition of associated employer by reference to section 115 and section 231 as interpreted by Hancill.

13. The Tribunal considered that the case of Hancill was not about re-engagement but about continuity of employment. It was not directly relevant to re-engagement.

14. There would be no recourse to the Employment Tribunal under section 117 in respect of re-engagement with a company in Australia whereby a Tribunal can enforce an order for re-engagement.

15. The Tribunal preferred the Respondent's legal arguments regarding jurisdiction, summarised above. There is no direct legal authority on this matter. The Tribunal concluded that there was a jurisdictional bar preventing re-engagement by an associated employer in Australia.

Reinstatement and Re-engagement – Mandatory factors

16. *"Section 113 – the orders*

An order under this section may be:-

(a) An order for reinstatement (in accordance with section 114); or
(b) An order for re-engagement (in accordance with section 115),

as the Tribunal may decide."

"Section 116 – choice of order and its terms

(1) In exercising its discretion under section 113 the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account-

(a) Whether the complainant wishes to be reinstated,
(b) Whether it is practicable for the employer to comply with an order for reinstatement, and

(c) Where the complainant caused or contributed to some extent to the dismissal, whether it would be just and equitable to order his reinstatement.

(2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.

(3) In so doing the tribunal shall take into account-

(a) Any wish expressed by the complainant as to the nature of the order to be made,
(b) Whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and
(c) Where the complainant caused or contributed to some extent to the dismissal, whether it would be just and equitable to order his re-engagement and (if so) on what terms.

(4) *Except in a case where the tribunal takes into account contributory fault under subsection (3)(c)it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.*

17. The Respondent submitted that it was not practicable to reinstate or re-engage the Claimant because there had been a breakdown in trust and confidence between the Respondent and the Claimant because of the Claimant's misconduct. It was said that there was distrust and a lack of confidence on both sides and that the Respondent could not trust the Claimant when in contact with the public.

18. The Tribunal considered the EAT decision in PGA European Tour v Kelly [2020] IRLR 927 where the EAT said:

> *"It is well established that a genuine loss of trust and confidence may lead to the conclusion that re-employment would not be practicable. As explained in Farren the Tribunal must consider whether the employer genuinely and rationally believes that trust and confidence has been broken, so that re-employment is not practicable: that is, not capable of being carried out into effect with success. ... The Tribunal should test and evaluate against the evidence before it, whether the employers stated belief is both genuinely and rationally held. ... The requirement for the asserted belief to be both genuinely held and have a rational foundation, is not a reasonable test, or to be equated with that which would have applied under section 98 (4). A belief may have a rational foundation in evidence or information known to the person who forms it, although it has not been reasonably reached. This explains why, as the authorities show, it is possible for an employer to rely upon a genuine and rational belief in misconduct as having a bearing on practicability, even though the dismissal for that same conduct was unfair."*

19. This decision has recently been affirmed by the Court of Appeal in Kelly v PGA European Tour [2021] EWCA Civ 559.

20. The Tribunal took account of the evidence of Ms Gregory (Manager of Qantas Cabin Crew (UK) Limited) which included the following:

> "*7. The duties of the role of a CSM as set out in the witness statement of Cassie Radford at paragraphs 9-11. Reviewing those paragraphs I agree that the duties are correctly described by Ms Radford.*
>
> *8. I can also confirm from my experience that all of Ms Radford's observations about the natures of the duties of a CSM, including in particular, the extent of the trust and confidence reposed in a CSM are correct; the role of a CSM is a highly responsible role and QCCUK must be able to repose total trust and confidence in CSMs.; CSM's are expected to be honest as a fundamental requirement of their role. I understand that Ms Diakoumis agreed with this point when giving her evidence to the Tribunal.*
>
> *9. Ms Diakoumis repeated assertions to QCCUK regarding having made an application for an ASIC were found to be untrue (see Tribunal judgment at paragraph 128).*
>
> *Paragraph 128: Although the Tribunal has found the dismissal to be unfair, there appeared to be grounds for reduction in compensation by reason of the Claimant's acceptance that her assertions to the Respondent regarding having made an application for ASIC were untrue.*
>
> *10 This is highly significant. This is because, in my considerable experience of Qantas policy and procedure in relation to cabin crew employed within the Qantas group, any employee of QCCUK who had deliberately, and repeatedly, failed to tell the truth in relation to a serious security related matter, such as renewal of an ASIC pass, would inevitably have undermined trust and confidence to the point where continued employment became improbable; dismissal in such a case would have been the likely outcome.*

21. Ms Gregory then gave three examples of employees being dismissed after providing untruthful accounts during investigations in May 2015, October 2016 and December 2017.

22. Ms Gregory also pointed to the fact that after the Claimant's dismissal, it had come to light that she had covertly recorded five separate meetings during the course of the disciplinary and appeal process. She said that if the Claimant had still been employed, the covert recordings would have been investigated and, given the impact that such behaviour would have in relation to the Respondent's trust and confidence in the Claimant, in her view, the result of the discovery of the recordings would have been a dismissal.

23. Ms Gregory also pointed to the allegations made by the Claimant against management during the course of the disciplinary investigation, in which she had made personal allegations against the cabin crew ground management team, suggesting they had deliberately taken action against her. She gave examples quoting from the Claimant's correspondence during disciplinary process from October 2016 to May 2017.

24. Ms Gregory also said that there were simply no jobs available for the Claimant to return to. She said:

> "*I can state very clearly to the Tribunal that it would be impossible to comply with either order for the simple practical reason that neither QCCUK nor Qantas have any CSM or other cabin crew jobs available." QCCUK and Qantas have faced significant challenges, along with most of the aviation sector as a result of the COVID-19 pandemic. In late March 2020, Qantas took the decision to ground all scheduled international flights. As a result, on 1 April 2020, QCCUK place all existing cabin crew staff on furlough status. Indeed, currently, I am the only working employee of QCCUK. Whilst a heavily reduced number of scheduled domestic flights are being undertaken in Australia, these are being shared around the domestic Qantas workforce. All further recruitment staff in the UK have ceased (albeit there are some jobs posted from time to time with Qantas in Australia). In the UK, to mitigate redundancies all current crew commenced a period of leave without pay for a period of up to 24 months. This is also the case in Qantas' business in the UK. It is uncertain what the position will be when Qantas resumes scheduled international flights."*

25. In summary, Ms Gregory's evidence was that there had been breakdown in trust and confidence between the Claimant and the Respondent because of the Claimant's dishonest conduct, for which she was dismissed. The making of covert recordings of meetings, personal allegations against management and the fact that because of the pandemic, there were no jobs available for the Claimant to be reinstated or re-engaged, in either the UK or Australia.

26. The Tribunal found, based upon Ms Gregory's evidence, that the Respondent genuinely and rationally believed that trust and confidence had been broken so that re-employment was not practicable and not capable of being carried into effect with success.

27. The Tribunal found that neither reinstatement, nor re-engagement would be practicable for the Respondent to comply such an order.

28. Additionally, having taken account of the Claimant's conduct (mainly her untruthful statements regarding the ASIC matter, for which she was dismissed), it would not be just and equitable to order reinstatement or re-engagement.

29. The applications for reinstatement and re-engagement were refused.

30. The Tribunal therefore went on to consider what compensation should be awarded for unfair dismissal.

Compensation

Key information

31. It was agreed between the parties as follows:

    Gross annual basic pay: £33,480.29
    Gross weekly basic pay: £643.85
    Net weekly basic pay: £519.49
    Contractual notice period: 12 weeks
    Claimant's date of birth: 19 October 1964
    Claimant's age at effective date of termination: 52 years
    Period of service: 10 August 1989 – 6 April 2017

Basic Award

32. The parties agreed the basic award was £12,469.50.

Compensatory Award

Loss of earnings

33. The parties agreed that the Claimant had been paid notice pay for the period 6 April 2017 to 28 June 2017.

34. The Tribunal then considered what period was just and equitable for compensation for loss of earnings after 28 June 2017.

35. The Claimant claimed that she was entitled to loss of earnings from 29 June 2017 until the date of the remedy hearing.

36. The Respondent submitted that the Claimant would have been dismissed, regardless of her conduct for which she was in fact dismissed, because of her conduct in making covert recordings of five meetings on 24 February 2017, 20 March 2017, 6 April 2017, 24 April 2017 and 12 May 2017.

37. The Tribunal concluded that the covert recordings by themselves would not have provided reasonable grounds for a fair dismissal. The Respondent accepted that, in the alternative, the covert recordings should be taken in conjunction with the Claimant's earlier misconduct, that is her dishonesty during the disciplinary procedure.

38. The Tribunal found that it was just and equitable to award compensation for loss of earnings for the period 29 June 2017 to April 2019, when the Claimant moved from the UK to Australia to become a full-time carer for her father.

39. The Respondent pointed to the Claimant having applied for only three jobs in the first six months after dismissal and another three jobs in the second six months after dismissal. Thereafter, in the second year after dismissal, the Claimant made 18 job applications during this period.

40. During the period 29 June 2017 to April 2019, the Claimant was registered with the Department for Work & Pensions Job Centre and during this period continued to receive Job Seekers Allowance. During this period, she would have had to provide evidence of her efforts to obtain alternative employment. Although the evidence which she produced to the Tribunal during this period showed only the applications referred to above, it is clear that she would have had to provide details to the DWP Job Centre in order to continue to receive Job Seekers Allowance.

41. The Tribunal concluded that the Claimant had acted as a reasonable former employee would have acted in mitigation to attempt to obtain alternative suitable employment, and that she had made reasonable steps during this period to find alternative work.

42. Thereafter, during the period April 2019 to July 2020, the Claimant made no further applications for alternative employment and during this period she had returned to Australia and acted as her father's full-time carer.

43. On consideration of the above matters, the Tribunal found that it was just and equitable to award compensation for loss of earnings attributable to the dismissal for the period 29 June 2017 to 1 April 2019.

44. Accordingly, during this period of 91 weeks at £519.49 basic net pay per week, the Tribunal awarded £47,273.59.

45. Adding pension at £1,674.10, divided by 52 = £32.19 per week x 91 weeks is £2,929.50.

46. The total loss of earnings for the above period 29 June 2017 to 1 April 2019 amounted to £50,203.09.

47. The Tribunal decided that the Claimant should be awarded compensation for the loss of bonus amounting to £1,500 per annum. This was a discretionary payment but there was no reference in the Claimant's contract of employment to a loss of the payment of the bonus if she was subject to a disciplinary process during the relevant period. She had been paid a bonus in previous years and would have been entitled to a bonus of £1,500 in September 2017 and a further bonus of £1,500 in September 2018. Accordingly, the Tribunal awarded £3,000 compensation for bonus payments.

Meal allowance

48. Ms Gregory confirmed in paragraph 36(d) of her witness statement that the meal allowance was only paid when the employee was flying and it was compensatory in nature. It was not taxable and it was not income. The Claimant was not flying during the given period and no compensation was awarded by the Tribunal for meal allowance.

Sector pay

49. Ms Gregory dealt with this at paragraph 34 of her witness statement.

50. The Tribunal found that sector pay amounted to remuneration. It was not a payment by way of expenses.

51. The Tribunal found that had she had not been unfairly dismissed she would have been entitled during the relevant period to £3,988.03 per annum, divided by 52 which equals £76.69 per week.

52. Multiplied by 91, this amounted to £6,979.05. This was added to the compensatory award.

Medical insurance

53. This was dealt with by Ms Gregory at paragraph 36(c) of her witness statement. The Tribunal found that this was not compensatory in nature, it was a benefit in kind. The Claimant was entitled to recover loss of this benefit as part of the compensatory award.

54. The sum was £419 per annum, divided by 52, times 91 weeks, equalling a sum of £733.25. This amount was added to the compensatory award.

Vouchers

55. Ms Gregory dealt with this at paragraph 36(f) of her witness statement.

56. The Tribunal accepted that the Respondent does not provide vouchers of any description to its employees. Although there is a recognition system in place whereby employees may receive points which can turn into vouchers, based upon feedback from customers and colleagues in relation to performance, this was not part of remuneration. It was not quantified and the Tribunal found that there was no entitlement to compensation for any vouchers as part of the compensatory award.

Staff travel

57. In the Claimant's statement of loss, she claimed to be entitled to four years loss of entitlement to staff travel, amounting to £56,422.40.

58. In her witness statement Ms Gregory, at paragraph 36(e) stated that travel benefits were under the staff travel programme conditions which stated that the conditions do not form part of employee's contracts and create no binding contractual obligations on the company.

59. Apparently, the Claimant had made contact with the Head of Qantas HR and requested that her staff travel benefits be reinstated on her previous Australian staff number. On 21 December 2018 this request was actioned by Qantas HR who had no knowledge of the Claimant's dismissal. She accessed staff travel under these arrangements on two occasions, a flight departing 22 December 2018 and returning 17 January 2019 and another

being a one way flight departing London in April 2019 when the Claimant returned to Australia to care for her father. The Respondent said that the Claimant had no entitlement to discretionary staff travel on these occasions and on discovering the above, the benefit was blocked in relation to the Claimant.

60. The Tribunal found that the staff travel benefits were discretionary and would only be payable where an employee actually incurred the costs of such travel. The Claimant did get two discounted flights as mentioned above but it appears that they were not properly authorised.

61. Although the Respondent submitted that having undergone a disciplinary process and having been dismissed, the Claimant would not be entitled to discounted staff travel, in fact at no point was discounted staff travel withdrawn from her.

62. The Claimant has not suffered any loss in this respect. The Tribunal found it was not a valid head of claim and it was not just and equitable to award any compensation attributable to her dismissal.

UK Citizenship expenses

63. Details of this claim were set out in the Claimant's witness statement at paragraphs 98-99 and in her statement of loss at footnote 5 as an expense of obtaining UK citizenship. The Tribunal found that this was not a loss incurred attributable to her dismissal and not incurred in mitigation of loss. The Claimant was not entitled to compensation under this head of claim.

Training and other expenses

64. The Claimant claimed £129 for a level two course and £159 regarding Reiki training. The Tribunal found that this was not re-training to mitigate loss and she was not entitled to recover this as compensation for a loss attributable to the dismissal.

65. The claim for hotel expenses of £12 was not explained and the Tribunal found that the Claimant was not entitled to recover this as compensation attributable to her dismissal.

66. The claim for £25 for the Disclosure Scotland Certificate was not compensation for which the Claimant was entitled to recover. After dismissal, she was not required to provide a Disclosure Scotland Certificate.

67. The application for future expenses of £3,000 was speculative. There were no details attached and these were expenses which the Claimant had not quantified. There was no evidence that such expenses would be incurred in mitigation of loss. The Tribunal have found that these were not expenses which it was just and equitable to award.

Loss of statutory rights

68. The parties agreed that the Claimant should be awarded £300 for loss of statutory rights.

Summary

69. Basic award: 12,469.50

Compensatory award:

Loss of earnings 29 June 2017 – 1 April 2019		
91 weeks at £519.49 per week	47,273.59	
Pension £1,674.01 divided by 52 x 91 weeks	2,929.50	
Total loss of earnings		50,203.09
Bonus		3,000.00
Sector pay		6,979.05
Medical insurance		733.25
Loss of statutory rights		300.00
TOTAL COMPENSATORY AWARD		£ 61,215.39

Adjustments

Polkey

70. The Claimant accepted that if the Tribunal considered that there was a percentage chance that the Claimant would have been dismissed had there been no procedural unfairness, any reduction in the compensatory award would be no more than 25%.

71. The Respondent submitted that because of the Claimant's dishonesty regarding the ACIS matters, there was a 100% probability that she would have been dismissed.

72. The Tribunal decided in its judgment following the full merits hearing that the dismissal was procedurally unfair. It concluded however that, had there not been the procedural short-comings and unfairness described in the Tribunal's judgment, there was a 50% chance that the Claimant would have been fairly dismissed in any event.

73. It therefore concluded that there should be a reduction in the compensatory award of £61,215.39 by 50%, that is to £30,607.70.

Section 207A Trade Union & Labour Relations (Consolidation) Act 1992

74. The Tribunal found, as submitted by the Claimant, that the Respondent had unreasonably failed to comply the ACAS Code of Practice on disciplinary procedures as follows:

    Code 5 – failure to carry out necessary investigations;
    Code 6 – different people should carry out the investigation and the disciplinary hearings;
    Code 9 – Insufficient information about the alleged misconduct;
    Code 27 – the appeal should be dealt with impartially.

75. These failures were dealt with in the Tribunals decision at paragraphs 101, 104, 108 and 110 – 111.

76. The Tribunal found that there was not a complete failure to comply with the ACAS Code of Practice but there were significant failures which should result in a 10% uplift in compensation in the compensatory award.

77. Accordingly, the award of £30,607.70 was increased by 10% to £33,668.47.

Contributory conduct – section 123(6) Employment Rights Act 1996

78. So far as contributory conduct was concerned, this is referred to in the Tribunal's decision at paragraphs 92, 128 and 129.

79. The conduct was the misconduct in relation to the ASIC matter whereby the Claimant had been untruthful on repeated occasions and had produced deliberately misleading information regarding documents prepared for the 2014 application which she submitted as part of her 2016 application. This was significant misconduct which caused and contributed to her dismissal. It was blameworthy and culpable, and it was also extensive.

80. The Tribunal considered that it was just and equitable to reduce the compensatory award by 75%. Had the Claimant not been untruthful then she would have been dealt with in the same way as the other employees who had also failed to apply for the ASIC certificate, which in their case resulted in a warning rather than dismissal. The Claimant's persistent repetition of the dishonesty led to her dismissal.

81. A reduction of the compensatory award of £33,668.47 by 75% meant that the compensatory award was then £8,417.12.

Basic award – section 122(2) Employment Rights Act 1996

82. The Tribunal considered that the Claimant had been denied a procedurally fair dismissal. Procedural fairness is a basic employment right. She had 26 years unblemished service. The basic award is based upon length of service.

83. It was only in the last year of service that there was any misconduct and the Tribunal decided that it was just and equitable to reduce the basic award by less than the 75% reduction in the amount of the compensatory award. The basic award would be reduced only by 5%, and that figure was arrived at based upon 26 years unblemished service and misconduct only in the last year service.

84. Accordingly, the basic award of £12,469.50 was reduced by 5% to £11,846.03.

85. **Total Summary**

Basic award	11,846.03
Compensatory award	8,417.12
TOTAL	**£20,263.15**

Recoupment Regulations

86. The Claimant claimed benefits and the Employment Protection (Recoupment of Benefits) Regulations 1996 apply.

87. The prescribed period to which the prescribed element is attributable is 29 June 2017 to 1 April 2019 (91 weeks).

88. The prescribed element is £12,550.77 (£50,203.09 less 75% for contributory conduct).

89. The monetary award is £20,263.15.

90. The amount by which the monetary award exceeds the prescribed element is £7,712.38.

I confirm that this is the Unanimous Reserved Remedy Judgment in the case of Ms T Diakoumis v Qantas Cabin Crew (UK) Limited case no. 3327266/2017 and that I have dated the Judgment and signed by electronic signature.

_____
Employment Judge Vowles
Date: *4 May 2021*

Sent to the parties on:

6 May 21

For the Tribunals Office