Case Number: 3319510/2019

EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Mr J Hicks	v	Sporting Wholesale Limited

Heard at: Watford (via CVP) **On**: 27, 28 and, in private, 29 April 2021

Before: Employment Judge Hyams **Members:** Mr R Clifton
Ms L Thompson

Appearances:

For the claimant: In person
For the respondents: Mr Alex Francis, of counsel

UNANIMOUS RESERVED JUDGMENT

1. The claimant was dismissed unfairly within the meaning of section 98 of the Employment Rights Act 1996 ("the ERA 1996"), but not within the meaning of section 103A of that Act.

2. The financial compensation which the claimant should receive for that unfair dismissal is £359.43.

3. The claimant's claims of detrimental treatment within the meaning of section 47B of the ERA 1996 do not succeed and are accordingly dismissed.

4. The claimant was not dismissed wrongfully, i.e. his summary dismissal was lawful.

REASONS

The claim

1 By a claim form presented on 19 June 2019 the claimant complained of unfair dismissal, that he was owed a redundancy payment, and that he had been wrongfully dismissed. He was also (correctly) treated by the tribunal as having

made a claim of detrimental treatment for the making of a public interest disclosure within the meaning of section 43A of the Employment Rights Act 1996 ("ERA 1996"), contrary to section 47B of that Act (which provides that "A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure"). The claim of unfair dismissal was made on the basis that the dismissal was automatically unfair within the meaning of section 103A of that Act, i.e. on the basis that the reason or the principal reason for the dismissal was the fact that the claimant had made one or more public interest disclosures, as well as unfair within the meaning of section 98 of that Act. The latter claim was made on the basis that the claimant had more than two years' continuous employment, despite the fact that he was paid as a self-employed person. In fact, the claimant was plainly an employee. While there will be income tax implications for both parties as a result of acknowledging that, the respondent had accepted by the time of the hearing before us on 27 April 2021 that the claimant was at all material times an employee.

2 The claimant's dismissal occurred (the parties agreed) on 20 March 2019. There was a period of early conciliation between 7 and 15 May 2019, so that for limitation purposes, the time between 8 and 15 May 2019 inclusive did not count. That is a period of 8 days. The claim of unfair dismissal was plainly in time, but any claim of public interest detriment (which necessarily, as a result of section 47B(2) of the ERA 1996 did not include the claimant's dismissal) in respect of an act or omission that occurred before 12 March 2019 was (by reason of section 48(3) of the ERA 1996) out of time unless it was not reasonably practicable to make it in time and it was made within a reasonable period of time after then. That is subject to the possibility of the claim being in respect of (1) a series of similar acts or failures, or (2) an act extending over a period, where the series or as the case may be the act ends within the period of three months extended by the early conciliation period.

The parties

3 The respondent is an importer of fishing tackle and equipment. At the time of the claimant's dismissal, the respondent had a main warehouse from which it despatched orders, in Harpenden, Hertfordshire, and it rented the top floor of a self-storage facility in Hemel Hempstead, Hertfordshire. At the time of his dismissal, the claimant was employed as the respondent's assistant warehouse manager.

The procedure followed in this case

4 There was a preliminary hearing before Employment Judge ("EJ") Daniels on 12 March 2020, after which he issued the case management summary and orders at pages 33-43, i.e. pages 33-43 of the hearing bundle. EJ Daniels recorded in his case management summary that the claimant was no longer claiming that he was owed a redundancy payment. EJ Daniels included as part of the case

management summary two tables, one of claimed public interest disclosures within the meaning of section 43B of the ERA 1996, and one of claimed detriments within the meaning of section 47A of that Act. EJ Daniels listed the case to be heard over three days, from 26 to 28 April 2021 inclusive. Unfortunately, no judge was available on 26 April 2021, but fortunately we were able to hear evidence and submissions on 27 and 28 April 2021 (although it took the whole of both of those days to do that), after which we determined liability only in the claim as clarified and delineated by EJ Daniels on and after 12 March 2020.

5 We heard oral evidence from the claimant on his own behalf and from Ms Nikki Brooks, his partner, on his behalf. On behalf of the respondent, we heard oral evidence from

5.1 Mr Adam Eliaz,

5.2 Mr Audi Eliaz,

5.3 Ms Emily Cox, and

5.4 Mr Eddie Eliaz.

6 The claimant put before us witness statements from Mr Dillon Brooks, who is the son of Ms Nikki Brooks, and Mr Michael Hicks, who is the claimant's father. Mr Francis on behalf of the respondent said that the content of those witness statements was admitted, so that we did not need to, and did not, hear oral evidence from those witnesses. The respondent put before us a witness statement in the name of Mr Graham Gunn, but Mr Gunn did not attend to give evidence as a result of the death of a close relative. The respondent did not seek an adjournment in order to be able to rely on the oral evidence of Mr Gunn.

The issues

7 The issues were stated by EJ Daniels in paragraph 4 of his case management summary, at pages 34-36. We considered that they were best stated slightly differently, namely as follows.

7.1 What was the reason, or the principal reason, for the claimant's dismissal?

7.2 Was it, as the claimant claimed, the fact that he had made a number of disclosures to the respondent about the fact that several employees of the respondent were taking drugs (in particular skunk cannabis) at work? The respondent did not contend that the claimant had not made one or more such disclosures (although it did not accept that the claimant had made as many such disclosures as he claimed) but its case was that the claimant's dismissal was not to any extent because he had made those disclosures (or any of them). It was also the respondent's case that the disclosures

were not made in the public interest but, rather, the respondent's interest, which was different.

7.3 Assuming that the claimant had made one or more protected disclosures, but one or more such disclosures was not the principal reason for the claimant's dismissal, was the reason for the claimant's dismissal his conduct?

7.4 If so, then

7.4.1 did the person or persons responsible for deciding that the claimant should be dismissed genuinely believe that the claimant had committed that misconduct?

7.4.2 Did the respondent conduct a reasonable investigation into the alleged misconduct of the claimant before deciding that he should be dismissed for that conduct, i.e. was that investigation one which it was within the range of reasonable responses of a reasonable employer to conduct?

7.4.3 Were there reasonable grounds for the belief of whoever decided that the claimant should be dismissed that the claimant had committed the misconduct for which he was in fact dismissed?

7.5 If the reason for the claimant's dismissal was not his conduct, was it some other substantial reason within the meaning of section 98(1)(b) of the ERA 1996?

7.6 If so, did the respondent follow a fair procedure in deciding that the claimant should be dismissed?

7.7 Was the claimant's dismissal within the range of reasonable responses of a reasonable employer?

7.8 If the claimant's dismissal was unfair, was his conduct before the dismissal such that the basic and/or compensatory awards within the meaning of (respectively) section 119 and 123 of the ERA 1996 should be reduced?

7.9 Assuming that the tribunal accepts that the claimant's conduct was the reason for his dismissal, could the claimant have been dismissed fairly for the conduct for which he was in fact dismissed? If so, assuming that the respondent would have acted fairly in deciding whether or not the claimant should be dismissed, what is the percentage chance that the respondent would have dismissed the claimant for that conduct?

7.10 In any event, for how long would the claimant have continued to be employed by the respondent if he had not been dismissed on 20 March 2019?

7.11 Was the claimant treated detrimentally, as claimed in one or more of rows 1-3 of the table at page 43, for making one or more public interest disclosures?

7.12 If so, when did that treatment occur (reading that question in the light of what we say in paragraph 2 above)? If it occurred before 12 March 2019, then was it reasonably practicable to make the claim within the period of 3 months and 8 days from the date of that treatment? If it was not, was the claim made within a reasonable period of time after that period had ended?

7.13 Did the claimant do something that was a breach of the implied term of trust and confidence, i.e. the obligation not, without reasonable and proper cause, to act in a way which is likely seriously to damage or to destroy the relationship of trust and confidence that exists, or should exist, between employer and employee as employer and employee?

8 During the hearing, on 27 April 2021, Mr Francis on behalf of the respondent said that the respondent accepted that it had not followed a fair procedure in deciding that the claimant should be dismissed. That was because the respondent had not given the claimant advance warning of the possibility of his dismissal and then invited him to a meeting at which he could respond to the proposition that he be dismissed, having had sufficient time to prepare to do so.

Our findings of fact

9 The claimant's employment with the respondent started during 2013. It is was not clear precisely when in that year the claimant started to work for the respondent, as neither party remembered precisely when that happened, and because it was in a shop in Watford which closed a year or two later, after which the claimant went to work at the respondent's Harpenden warehouse.

10 The claimant worked initially as an assistant there but over time he came to be treated as the warehouse's assistant manager. He did not have a job description, however, because the respondent, at his request, treated him as self-employed and paid him on receipt of invoices. That was for reasons into which it is not necessary to go here, given what we say at the end of paragraph 1 above.

11 The respondent sells its products mostly on a wholesale basis but also, on occasion, at trade shows to members of the public direct. The respondent imports goods in containers from the far East, principally China, of products which it then needs to unload and store. Mr Eddie Eliaz is the respondent's

managing director and its only shareholder. Mr Audi Eliaz is his father, who worked for his son's business on a full-time basis except when he was absent, seeing his elderly mother, who lives abroad. Mr Adam Eliaz is Mr Eddie Eliaz's brother. Mr Adam Eliaz had his own online business selling "outdoor" equipment, including fishing equipment, and was a major customer of the respondent. Mr Adam Eliaz at the material time had a warehouse in the same (small) industrial estate as that of the respondent's Harpenden warehouse.

12 The Hemel Hempstead storage facility was first rented by the respondent in 2015. That was said by Mr Eddy Eliaz in paragraph 6 of his witness statement, which described the background to the claimant's claim very helpfully. It was in these terms:

> "As a wholesale business, the Respondent carries a large volume of physical stock (e.g. fishing rods, bait boxes, barrows and trollies) such that we need a significant amount of warehouse/ storage space. This is an essential part of the business. Over the years, the Respondent has moved warehouse premises 4 times as the business has expanded and the requirement for warehouse space has increased. In this regard, although (at the time) the Respondent had premises in Harpenden, in the summer of 2015, additional space was needed. The Respondent subsequently agreed to rent out the entire top floor of the Self Storage Company site in Hemel Hempstead (the "Premises"). This was a significant investment for the Respondent, with rent for the first year set at £100,000.00. Within a year, the Premises became the Respondent's main warehouse for stock holdings."

13 By the time of the claimant's dismissal, Mr Eddie Eliaz told us (and we accepted), the cost of renting the Hemel Hempstead storage space was about £120,000 per year.

14 The respondent's Harpenden warehouse was the one from which the stock was sent to customers, so it was the centre of the respondent's operations, but it was also a storage facility. All of the respondent's staff were based at Harpenden. The respondent had, after the claimant's dismissal, moved its main base from Harpenden to Luton. At the time of the claimant's dismissal, the respondent had about 20 employees.

15 Whenever a container was delivered to the respondent, the respondent would have a team of employees doing the unloading at Hemel Hempstead. The claimant would go there and would organise the unloading of the container, and other members of the respondent's staff, supplemented as necessary by one or more agency workers, would take the stock up to the top floor, and store it appropriately there.

16 During October to December 2018 inclusive, the claimant said on a number of occasions to, principally, Mr Audi Eliaz, that some Polish workers of the

respondent were smoking cannabis in their breaks at work and when they were at the Hemel Hempstead storage facility. The claimant also said that he had a suspicion that one or more employees had taken cocaine at work, and that he had on one occasion seen an employee drinking at work. That is a summary only of the claimed public interest disclosures numbered 1-7 on pages 40-42.

17 It was the claimant's case that the respondent had not taken his disclosures of drug use seriously, or at least sufficiently seriously. Whether or not it had done so was not the main issue for us, since the only issue arising from the claimed public interest disclosures was whether or not the claimant had been treated detrimentally for making them (including by being dismissed, albeit that that issue was determined by reference to the principal reason for the dismissal). However, the manner in which Mr Audi Eliaz and Mr Eddy Eliaz perceived and responded to the claimant's allegations of drug-use at work was evidentially helpful to us in deciding whether, on the balance of probabilities, the claimant had been treated detrimentally for making those allegations and/or dismissed principally because he had made one or more of those allegations.

18 Mr Audi Eliaz when giving oral evidence accepted that the claimant had made "many" allegations of the misuse of drugs by members of staff. His response when it was suggested that he should have just accepted what the claimant said to him about drug use was that he (Mr Eliaz) wanted to see it with his own eyes, so that if the claimant had at any time when he said he had seen someone (for example) smoking cannabis outside the warehouse (whether at Harpenden or Hemel Hempstead) asked Mr Eliaz to accompany him to go and see that person smoking cannabis, then he, Mr Eliaz would have gone with the claimant to see whether or not the allegation was true. However, that did not happen, and all he, Mr Eliaz, had to go on was the claimant's allegations.

19 When the claimant put it to Mr Eliaz in cross-examination that the employee called Kevin who worked at the self-storage facility in Hemel Hempstead as the manager of the premises had reported drug use by employees of the respondent, Mr Eliaz said: "No; never, ever." Mr Eliaz also said that

19.1 he knew about drugs, i.e. what they were, and presumably what cannabis smoke smells like,

19.2 he had never smelt drugs at either Harpenden or Hemel Hempstead, and

19.3 if he had caught anyone "with drugs" then he would have "kicked them out".

20 We accepted that evidence of Mr Audi Eliaz, whom we found to be an honest witness, doing his best to tell the truth.

21 In fact, we found all of the witnesses who gave evidence to us to be honest witnesses, doing their best to tell us the truth. We nevertheless recognised that

recollections can be faulty, so that the mere fact that a person was giving evidence in that way did not mean that we accepted his or her evidence.

22 It was clear to us that Mr Eliaz (i.e. Mr Audi Eliaz) believed that the claimant had what we would refer to as something of a vendetta against certain members of the respondent's staff, who happened to be Polish. Both Mr Adam Eliaz and Mr Eddy Eliaz used the word "vendetta" in oral evidence to describe the claimant's approach, but Mr Audi Eliaz did not. Mr Eddy Eliaz said that although he thought that that was the case, i.e. that the claimant had a vendetta against some members of staff, because he had no proof of it, he could not bring it up with the claimant.

23 We accepted that evidence of Mr Eddy Eliaz because it was entirely consistent with his evidence concerning the one situation in which the claimant brought something to him which was more than an uncorroborated allegation of the use by a member of the staff of drugs. That situation was the subject of claimed public interest disclosure number 8, which was in these terms (with the letters X and Y substituted for the names of the claimed drug users), on page 42:

> "X and Y were again witnessed using drugs at work and the evidence (a plastic bag of skunk) was found. I approached Eddy Eliaz and this evidence (to which he took a picture of on his phone, I was told to dismiss Y but not X as he like him.)" (Sic)

24 Mr Eddy Eliaz's witness statement described that event in the following terms (paragraph 19):

> "Towards the end of 2018, the Claimant found a very small clear bag containing a few particles of what he said was cannabis on the outer wall (near the fire escape) of the Respondent's unit at its previous premises at Southdown Road, Harpenden. The Claimant alleged that the bag belonged to another of the Respondent's employees, Y. The Claimant was adamant that this was proof that Y was using drugs at work and was insistent that he should be dismissed. I agreed to do so. Upon reflection, I wonder if I acted too hastily in accepting the Claimant's version of events (and have questioned whether the Claimant had his own agenda for insisting upon Y's dismissal) but the Respondent does not condone the use of illegal drugs - and all staff are aware that drug use (or anything which hinders the ability to perform at work is not tolerated - and this was, therefore, considered an appropriate step at the time. Y did not challenge his dismissal."

25 Mr Eddy Eliaz expanded on that evidence orally. He also said in more detail than in his witness statement why he did not act on the claimant's allegations of drug use by the staff of the respondent. What he said in oral evidence when asked why he did not investigate the claimant's allegations of drug use and why he <u>did</u> act on the claimant's allegation that he had found a bag with traces of cannabis

in it was that he had about 20 employees working together with contractors coming in and out at Harpenden, and only one (the claimant) was making allegations of drug use, and doing so without any proof (by which he meant, we understood, corroboration). He said that if the claimant had for example, when he (the claimant) thought he was seeing someone taking drugs, called him (Mr Eddy Eliaz) over and showed him what he was looking at, then he would have taken the claimant's allegations further. However, Mr Eliaz said, the claimant had told him that employee Y had admitted using drugs at work, and there was a bag which the claimant claimed had had cannabis in it, so in the circumstances he gave in to the claimant's pressure to dismiss employee Y.

26 Mr Eddy Eliaz said that the toilets at the respondent's Harpenden premises were in the warehouse so he would walk through the warehouse two or three times a day for that reason, but that he would also walk around on an ad hoc basis, and he himself had never seen anyone smoking or affected by drugs. Nor had he ever seen "anyone acting suspiciously". Therefore, he said, when the claimant made an allegation that he had seen someone for example smoking cannabis, he (Mr Eliaz) did not regard it as being of the same weight as it would have been if the claimant had shown him what he, the claimant, was seeing. He said that he would not tolerate anyone "doing drugs and working for [him]." He said that he spoke to the warehouse staff and made it clear that drug use would not be tolerated, although, he said, staff do not need to be told "Don't do drugs at work", as it was obvious that they should not do so.

27 Mr Eddy Eliaz also said that he had made a snap judgment in regard to the situation concerning employee Y and that dismissing Y had not been the right thing to do. Mr Eliaz said that he had subsequently "got some drug kits to try and prove it, but by the time they arrived we realised it was too late". So, he said, he subsequently decided that he had acted as a result of pressure from the claimant, and too hastily. Mr Eliaz said that when the respondent moved its main premises from Harpenden to Luton, employee Y had approached him and asked if he could return to the respondent's employment, and Mr Eliaz had gladly re-employed him and that Y had proved since then to be an exemplary employee.

28 Mr Audi Eliaz's witness statement dealt with the dismissal of employee Y only briefly. In oral evidence, he went rather further. He said that the claimant had not come to him when he found what he (the claimant) said was a bag in which there were particles of cannabis. Rather, he said, the claimant had gone straight to Mr Eddy Eliaz, probably because he knew that if he (the claimant) had gone to Mr Audi Eliaz, then the matter would not have gone further. Mr Audi Eliaz said that (1) the claimant had had no direct evidence to link the bag to Y, (2) the bag was very small indeed, only about three quarters of an inch square, and (3) it was not sufficient proof of the guilt of Y. The claimant put it to Mr Eliaz that Y had admitted that the bag was his, but Mr Eliaz accused the claimant of lying, as, said Mr Eliaz, Y had come to him when he was dismissed, crying and saying that he had not done anything (i.e. anything wrong). Mr Eliaz continued:

> "I did not see him smoking; you did not see him smoking; this little bag is not evidence."

29 The final, ninth, claimed public interest disclosure was on page 42 and was in these terms:

> "Threats and intimidation were made against a colleague called Phil in regards to the drugs being found and Phil was labelled as a grass and wanted to quit. I told Eddy Eliaz this."

30 When it was put to Mr Audi Eliaz by the claimant that that allegation was true, Mr Eliaz said this:

> "No; he was played with by you to be a witness; I can see what happened; I am not stupid. I was speaking with a lot of people. I was in warehouses for 45 years; not 4/5 years like you. I am not a silly man."

31 That allegation concerned the situation in (it was stated at page 42, i.e. it was the claimant's own case) "February 2019", a minimum of three weeks before the event which led to the claimant's dismissal. We now turn to that event.

The circumstances which led to the claimant's dismissal

32 Mr Eddy Eliaz made the decision that the claimant should be dismissed. Mr Eddy Eliaz described in his witness statement the circumstances and the reasons why he dismissed the claimant in the following way:

> "**The Incident**
>
> 21. As set out above, the Respondent rented the entire top floor of the Self Storage Company's warehouse unit in Hemel Hempstead. The manager of the Premises is Graham Gunn, who is employed by the Self Storage Company and not by the Respondent. My relationship with Mr Gunn was a professional one, and we usually communicated via email regarding any routine issues that arose with regard to the Respondent's tenancy.
>
> 22. On Tuesday, 19 March 2019, my father told me that there had been an incident at the Premises and that Mr Gunn wanted to see me. I was extremely busy getting ready for our biggest fishing show of the year, but was told I needed to go to the Premises as a matter of urgency. I arrived at the Premises at around 3.00pm that day and was met by Mr Gunn and Emily Cox (who I now understand is a Customer Service Adviser at the Premises). I was completely unaware of what was to follow and had never met Ms Cox before.

23. Mr Gunn told me that the Claimant had made an inappropriate and sexually explicit remark to Ms Cox. Ms Cox confirmed that the Claimant had made a comment about the size of her breasts in front of a number of people at the Premises (the "Incident"). I cannot remember the exact phrase used at the time but have seen the Witness Statements provided by Mr Gunn and Ms Cox, which refer to a comment about the Claimant not realising that Ms Cox "had tits" until the day of the Incident. This accords with my recollection of what was said to me at the meeting. Ms Cox also told me that she was incredibly shocked and that she cried in the toilets as a result of the Incident. I was extremely apologetic; I could see how this had affected Ms Cox and wanted to be clear that neither I nor the Respondent condoned this type of behaviour.

24. Mr Gunn was very angry. Mr Gunn was, equally, clear that he did not tolerate this behaviour and he told me that he expected the Respondent to vacate the Premises immediately. I struggled to take all of this in - when I should have been preparing for an extremely important show, I was now faced with a complaint of sexual harassment and the prospect of re-housing c. 15,000 square feet of stock.

25. Fortunately, when both Mr Gunn and Ms Cox had calmed down and after I had (again) sincerely apologised, over the course of a c. 45 minute conversation, it was agreed that the Respondent could remain as a tenant at the Premises. However, this was strictly on the condition that the Claimant would not, at any time, return to the Premises.

26. I was embarrassed and extremely angry with the Claimant but, equally, relieved that the Respondent did not need to find a new warehouse facility; as this would have potentially ended the Respondent's (my) business. I digested the events that evening.

The Claimant's Dismissal

27. On the following day, although I had (to some extent) calmed down, it was clear to me that the Claimant could not remain with the Respondent. As a starting point, the Claimant was engaged to work in the Respondent's warehouses and was now prevented from attending our largest site. On this basis, alone, the Claimant could not continue to work for the Respondent. More importantly, however, as I had no reason to doubt what Mr Gunn and Ms Cox had told me about the Incident (particularly having witnessed how upset Ms Cox had been), I felt that the Claimant's behaviour amounted to Gross Misconduct and that this justified his immediate dismissal. I would note that other employees of the Respondent - for example, Philip Green, who was employed at the time as a

Warehouse Operative - have since confirmed to me that the Claimant made the comment.

28. On Wednesday, 20 March 2019, I left for Farnborough where I was staying for 3 nights for the fishing trade show. At approximately 10.00am that morning, I called the Claimant from the showground with Craig Brown, another employee of the Respondent, as a witness. On speaker phone, I explained to the Claimant that, as a result of the Incident, I had no option but to terminate his employment with the Respondent with immediate effect. I clearly explained that the Claimant's dismissal was because of his comments to Ms Cox (which amounted to Gross Misconduct) and that the consequences of his actions meant that he could no longer attend our primary warehouse facility at the Premises.

29. The Claimant said words to the effect of he could not believe I was doing this to him. The Claimant did not, however, deny the Incident (or put forward a different version of events); nor did he seem in any way concerned about the comments to Ms Cox or the potential consequences of his actions. The Claimant did not apologise. Further, the Claimant certainly did not say that he was being dismissed because of his allegations of drug usage or any other matters he had reported to the Respondent. Had he done so, I would have set him straight immediately as the suggestion would have been absurd."

33 The claimant's evidence was that Mr Eddy Eliaz had not given him a chance to speak and to state his response to the allegation that he had, out of the blue, so to speak, referred to Ms Cox's breasts. Mr Eliaz denied that, saying that he had had a full discussion with the claimant over the van's speakerphone.

34 The claimant's witness statement contained this description of the events of March 2019 which led to his dismissal.

"11. On the 18/03/2019 we had a number of containers to unload at the Hemel unit. When containers arrived I would work in the loading bay next to reception organising the unloading while Audi would be on the top floor arranging where the stock would go. After the first container Kevin approached Audi and myself and told us that he had received complaints that no one wanted to use the canteen on the third floor as the employees named above were sprawled over the furniture and were acting in a loud and intimidatory manner. When Kevin left Audi made some disparaging remarks about him (Kevin) to which I replied that he (Audi) needed to remove his blinkers as what would it take for him to realize the said workers were out of control.

[11A] Later that day John Hays, a work colleague of mine, approached me and asked me to go and speak to Emily Cox (Receptionist at Self-Storage Unit) as she was upset. I had known Emily for a while and got on quite well with her. Emily often spoke to me about fashion, and her social life, she was aware I had a young daughter and am a single parent. To this end she would often show me pictures of suggested gifts for my daughter at birthdays and Christmas time. On one occasion I asked Emily about a jacket she was wearing, and she helped me locate it online and order it for my daughter. Emily used to chat to me at break times, and she had confided in me that one of the workers Michael, had asked her out, she told me she liked him as a friend as he made her laugh but was not interested in him romantically. Emily would join myself and the other workers when we went outside to have a cigarette and appeared to enjoy the friendly banter and attention. On one occasion Emily commented on John Hays ears, I explained that John used to play rugby and a lot of rugby player get what they call cauliflower ears, John would tease her about this. I believe we had a good working relationship and regularly enjoyed exchanging pleasantries, as noted above. The respondent rented the fourth-floor storage space, but my duties were on the ground floor as I was responsible for receiving and unloading containers, therefore we were both located on the ground floor and would see each other when I attended site.

12. I approached Emily and asked her what was wrong. She told me that while she was up on the third floor the employees Michael, Lukas and Konrad were looking at her and laughing while speaking in their own language (Polish) and repeating the word kurwa at her. She had looked up the word and had seen a translation meaning “bitch” or “prostitute”. Having worked with many people from Poland before, I have learnt that kurwa, when used in different contexts, has many meanings. As mentioned in section 7, I had spent a weekend away with above mentioned workers and had seem them act in the manner described, when they had seen a girl they had liked. As I recall I wanted to try and defuse the situation and I addressed Emily in the manner that I would adopt with my own daughter. Due to the nature of our working relationship, I felt able to do so, and therefore told her it was likely the boys were behaving childishly and that young boys can be silly when they like a girl. I went further to say that as it was nearly spring, they had probably got carried away on seeing her without a big bulky jacket on and stupidly I said, “Maybe that’s why there [sic] behaving like kids, even I had never noticed you had boobs before”. In hindsight my wording was ill considered, but having not received any training in employment matters, and in the absence of any formal company

policies or code of conduct in place to assist managers – we had to manage situations to our own judgement.

13. I also recall that it was a very busy day as we had several containers to unload, and I was under pressure to get each one unloaded before the next container arrived. On reflection I was trying to defuse the situation and make Emily feel better about things, and that the choice of word Kurwa, was not in this context, insulting. I was aware that kurwa in some contexts can be a derogatory term about women, as referenced above. I think I was trying to assure Emily that in this instance it was likely a compliment, and they were admiring her. I elected to speak with Emily in the manner I would address my own daughter, who had a similar experience around the same time. My daughter was upset, and I had reassured her in much the same way, it was boys being silly, rather than meaning to be offensive.'

35 As we say above, we heard oral evidence from Ms Cox. Her witness statement described her relationship with the claimant and what happened on 18 March 2019 in this way:

'**Interactions with the Claimant**

5. I did not have a relationship with Mr Hicks, on a personal or professional level. We rarely spoke and I did not see him often as he worked on a different floor of the Premises to me. On the odd occasion that we did see each other, we might say "hello" and "bye" - nothing more.

6. The first and only conversation I recall having with Mr Hicks, before the Incident, was in or around January 2019 when I was walking past Mr Hicks at the Premises, and he commented on my jacket. He said words to the effect of ''*that's a really nice jacket, where is it from so I can buy one for my daughter's birthday*''. I found this question extremely odd as I did not converse with Mr Hicks on a personal level but responded with "I got it online". The conversation ended there, and I do not recall speaking with Mr Hicks again.

7. On 19 March 2019, it was a hot day, so I decided to wear a shirt to work. I was sat at my desk in Reception near a water cooler. Mr Hicks came near the Reception area, where I was working, to fill up his water bottle from the water cooler. After he filled his water bottle, Mr Hicks turned to me and loudly said ''*I didn't realise you had tits till today*''. I was so shocked by this abrupt comment that I looked around and saw that there were many other men present, who all began to laugh. I was left speechless and was extremely

embarrassed and upset. I went outside the Premises to remove myself from the situation (the "Incident").

8. After checking that the crowd around Reception had disappeared, I came back inside the Premises and back to my desk. Throughout the day, I felt distracted and uneasy as I kept replaying the Incident in my head. I was so shocked that Mr Hicks would make such an offensive and inappropriate comment, especially as I was only 21 years old at the time. I went to the toilets and cried due to the frustration and embarrassment before going to speak to Graham Gunn, the Director of the Self Storage Company, about the Incident.

9. I understand that Mr Hicks has alleged that, on the day of the Incident, I was actually upset about comments/leering behaviour of other employees of Sporting Wholesale Limited and that he had, in fact, counselled me about this and offered to resolve the situation. This is absolutely untrue. It was only Mr Hicks who made an inappropriate comment that day. Further, even if another employee had made that (or a similar) comment, I would not have felt comfortable speaking with Mr Hicks about it; in view of the (extremely) limited nature of our relationship.

Reporting the Incident

10. I told Graham about the Incident and how I felt extremely vulnerable and upset. I made him aware that I had no idea why Mr Hicks felt that the comment was an appropriate thing to say in a workplace or at all. I told him that I now felt uncomfortable to be around Mr Hicks. Shortly afterwards, I heard that Mr Hicks had been dismissed due to the Incident and Graham making Sporting Wholesale aware that Mr Hicks could not return to the Premises."

36 When giving oral evidence, Ms Cox accepted that she may have been mistaken about the precise date of what she called the Incident. She agreed that she had had a concern about the use of the word 'kurwa' and that the incident described by the claimant in the first part of paragraph 12 of his witness statement (which we have set out in paragraph 34 above) had happened. However, she said that it had happened earlier on in March 2019, and that it was probably during the previous week (i.e. the week before the one in which the claimant referred to her breasts). She said that the Polish workers had come down from the top floor and apologised to her, saying that they did not realise that she knew what the word meant. She said that they had used the word in passing and that she did not hear it very distinctly. She had then "googled it to find out what it was" and then thought: "Do they mean that about me?" We inferred that she had raised it in such a way that the relevant employees of the respondent were asked about it and they then came and apologised to her, for the use of the word.

37 We accepted Ms Cox's evidence in that (and all other) regards, including the passage in her witness statement that we have set out in paragraph 35 above and that to which we refer below. To the extent that it conflicted with the evidence of the claimant, we preferred Ms Cox's evidence.

38 When Ms Cox was asked whether she was aware of a problem of the use of drugs at the warehouse (i.e. the self-storage facility), she said that she was not. She said that concerns had been raised by customers (not the respondent) of the self-storage facility about the smell of cannabis, that as there are flats adjacent to the unit's car park it was possible that the smell came from there, and that it was not possible to know where the smell had come from.

39 Ms Cox said that the problem of the use of the word 'kurwa' had been insignificant for her, but that if the incident concerning the use of that word had occurred on the same day as the reference by the claimant to her breasts, then she would have gone home as it would have been too much for her to take, i.e. both events on the same day. When it was put to her by the claimant that it was strange for him to come out with a comment about her breasts if he was not referring to the use of the word 'kurwa', she said this (as recorded by EJ Hyams, and tidied up; he read out the original words in the note and Mr Francis said that his and his instructing solicitor's notes were in almost precisely the same terms):

> "No. You are a low key attention seeker and you would say something to make someone else laugh. You said that and everyone laughed and I shut down and went into the toilets as it was embarrassing. There was no lead up to it. I was shocked. I remember it as it was so awful."

40 When the claimant put it to her that his description of the events in paragraphs 11 and 12 of his witness statement (which we have set out in paragraph 34 above) was correct, and that the events happened on the same day, she said that it was "not true; I am sorry. Not at all. That is terrible."

41 It was the claimant's evidence that he had, on 4 March 2020, had a conversation with Mr Philip Green (to whom Mr Eddy Eliaz referred in paragraph 27 of his witness statement, which we have set out in paragraph 32 above) and that Mr Green had said that Ms Cox had told him (Mr Green) that she had been forced to make her statement to the tribunal. When that was put to Ms Cox, she was emphatic that it was not true. She said that it was "dangerous lies" to say so. She said that she could never be forced into doing anything, and that if the claimant had known her in the way that he alleged he did, he would have known that.

42 When Mr Clifton asked Ms Cox whether she would have accepted an apology from the claimant and been able to continue to work in her job at the self-storage facility if the claimant had continued to go there, she said that she wanted to leave her job and only agreed with Mr Gunn not to do so when he said that he

could make sure that the claimant did not come back to the self-storage facility. She said this when asked whether the outcome for the claimant could have been different:

> "If you are a good person you just don't say that sort of thing. I do not tolerate nor would I want to be around someone who made that sort of comment. I would never make anyone feel the way I did in that situation, with those guys looking at me like I was ... No."

43 She also said that it is difficult to be taken seriously when you are the only woman in a workplace, and that she had wanted to leave her employment.

Possible alternative employment for the claimant

44 In paragraph 20 of is witness statement, the claimant said this:

> "Mr Eliaz insistence that he had no other option than to dismiss me as detailed in his ET3 because I could no longer work at our placed of work is untrue. The main distribution site for orders small and large was from the Harpenden warehouse, the company also rented the top floor at the Self-Storage Unit in Hemel Hempstead. This was for excess stock that we could not physically fit into the premises at Harpenden. The floor was unmanned and only accessed to collect stock or to receive containers. There was not an operational need for me to attend every day – and I only attended there to unload containers. Therefore, I could have quite easily been substituted with one of the workers who were on site picking and packing orders continuously. Also on more than one occasion Mr Eliaz asked if I would consider taking over the management of his fishery in Chertsey. I was heavily involved in the running of the fishery and would spend my week ends there assisting the Head Bailiff."

45 Mr Audi Eliaz said in oral evidence (and we accepted) that if for example the respondent was receiving three containers in one day at Hemel Hempstead then the claimant would have had to be at Hemel Hempstead, or the respondent would have to use an agency member of staff, which would have cost £90 per day and would not have been acceptable to the respondent. During his closing submissions, the claimant asserted (as he had done in paragraph 20 of his witness statement) that he could have done his job without ever going to Hemel Hempstead, and (and this was not in his witness statement or his oral evidence) that he would have sent any one of three workers at Harpenden to Hemel Hempstead in his place and that it was only on the respondent's insistence that he himself had gone to Hemel Hempstead to (as he put it) "help". Mr Francis urged us not to admit that late evidence, which was not the subject of cross-examination. We decided to admit it on the basis that it had not been put to any of the respondent's witnesses (even though EJ Hyams had given the claimant sufficient guidance at the start of the hearing for the claimant to know that he would need to put for example paragraph 20 of his witness statement to the

relevant witnesses), and to accord it such weight as it seemed to us to be appropriate.

46 In oral evidence, Mr Eddie Eliaz said that he had bought the fishery to which the claimant referred in paragraph 20 of his witness statement (set out in paragraph 44 above) on the spur of the moment in August 2018 and that to begin with the claimant had gone there on occasion. When it was put to him by the claimant that he (the claimant) had stayed in a caravan there to assist the bailiff at weekends, Mr Eliaz said that the caravan was in a derelict state and that while he had no issue with the claimant using it, it was not there for the claimant's use.

47 Mr Eddie Eliaz also said, in answer to a question from Mr Clifton, that it did not cross his mind to suspend the claimant. He said that he saw what the claimant had done as gross misconduct, and that he did not see a way back in for the claimant. That was because the claimant had made the comment (which he had himself heard repeated by Ms Cox and which he accepted had been said in the terms described by Ms Cox) to a girl half his (the claimant's) age. He indicated that the comment had been made in his view without any excuse. He also said that he could not see how the claimant could have remained the respondent's assistant warehouse manager without being able to go to the Hemel Hempstead storage facility at least sometimes.

48 Mr Eddy Eliaz also said that he was "100% certain" that he would have dismissed the claimant if he had given him time to consider the allegation of gross misconduct and then held a disciplinary meeting with him to hear what he had to say about the matter having had advance notice of the basis of the allegation. Mr Eddie Eliaz said that he would in the circumstances in March 2019 not have been able to have a disciplinary meeting with the claimant before a week had elapsed after 20 March, but that he would have had such a meeting at that time (a week later).

49 We accepted all of Mr Eddy Eliaz's evidence which we describe or set out above. If and to the extent that it conflicted with the evidence of the claimant, we preferred Mr Eddie Eliaz's evidence.

The claimed detrimental treatment for whistleblowing and the respondent's evidence in response

50 The detriments which the claimant claimed he had been subjected to for making the public interest disclosures were set out on page 43 and were these:

50.1 'After speaking to Audi Eliaz regarding all the problems with drugs at the warehouse I was extremely upset as:
(1) he called me crazy;
(2) he said I was losing my mind;
(I considered it detrimental that having been asked to do my job as assistant manager and despite other witnesses and evidence confirming

what I had been telling him these concerns were brushed off and I started to question my own sanity and my health was seriously affected).

(3) From regularly having lunch together and visiting him at the weekends he barely spoke to me any more. I felt "sent to coventry".'

That was said to have occurred in "October 2018".

50.2 "Adam (Audi Eliaz youngest son) criticised me at work concerning his Dad and my apparent obsession with X and Y using drugs at work.
Our relationship was not the same from then onwards."

That was said to have occurred in "Approx. February 2019".

50.3 "After speaking to Eddy regarding the threats to a member of staff there was a heated discussion with me. I said I could not understand why no action was being taken about the drugs and the company was allowing this to go on. He appeared to have no issue with the matter and brushed me off."

That was said to have taken place in "February 2019".

51 Mr Audi Eliaz denied using the words complained of in paragraph 50.1 above to the claimant's face, but accepted that in private, i.e. at home, he had used those words to describe the claimant.

52 Mr Adam Eliaz accepted that he had spoken to the claimant on one occasion in the reception area of the respondent's Harpenden warehouse. However, he was not, he said (and we accepted) an employee of the respondent, and it was not put to him (nor did we see or hear any evidence) that he was when he did that acting to any extent as an agent of the respondent.

53 Mr Eddy Eliaz's response to the allegation stated in paragraph 55.3 above was to the same effect as what we say in paragraphs 22-26 above, namely that there was insufficient evidence to take action of the sort that the claimant wanted.

Relevant law

54 We have based our statement of the issues in paragraph 7 above on the relevant statutory provisions and case law. There were two cases to which we referred the parties which were relevant because of the impact of the impossibility in practice of the claimant working at Hemel Hempstead, and they were *Burns v Dobie International Security Services (UK) Limited* [1984] ICR 812 and *Henderson v Connect (South Tyneside) Ltd* [2010] IRLR 466. Mr Francis, after we had referred the parties to those cases, suggested that the principal reason for the claimant's dismissal was "some other substantial reason" in the form of the refusal on the part of Mr Gunn to permit the claimant again to attend the self-storage unit at Hemel Hempstead, which is why the question whether

that was the principal reason for the claimant's dismissal was stated in paragraph 7.5 above.

55 It is often the case that an employer dismisses an employee for what could be regarded as several "reasons". In *Abernethy v Mott Hay and Anderson* [1974] IRLR 213, [1974] ICR 323, at 330B-C, Cairns LJ said this:

> "A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."

56 Paragraph DI[821] of *Harvey on Industrial Relations and Employment Law* helpfully and in our view accurately states the manner in which those words have been approved and applied in subsequent case law:

> "These words, widely cited in case law ever since, were approved by the House of Lords in *W Devis & Sons Ltd v Atkins* [1977] AC 931, [1977] 3 All ER 40 and again in *West Midlands Co-operative Society v Tipton* [1986] AC 536, [1986] IRLR 112, HL where the rider (important in later cases) was added that the 'reason' must be considered in a broad, non-technical way in order to arrive at the 'real' reason. In *Beatt v Croydon Health Services NHS Trust* [2017] EWCA Civ 401, [2017] IRLR 748, Underhill LJ observed that Cairns LJ's precise wording in *Abernethy* was directed to the particular issue before the court, and it may not be perfectly apt in every case. However, he stated that the essential point is that the 'reason' for a dismissal connotes the factor or factors operating on the mind of the decision-maker which causes them to take the decision – or, as it is sometimes put, what 'motivates' them to do what they do."

57 We bore it in mind that in a claim made under section 47B of the ERA 1996 of detrimental treatment for making a protected disclosure within the meaning of section 43A of that Act, which is made under section 48 of that Act, it is for the employer to prove the reason for the conduct which it is claimed was detrimental. That is the effect of section 48(2), which provides that "it is for the employer to show the ground on which any act, or deliberate failure to act, was done".

58 Otherwise, in deciding whether the claimant had been treated detrimentally for whistleblowing, we took into account, and applied, the now considerable body of case law concerning the proof of direct discrimination within the meaning of section 13 of the Equality Act 2010. As a result of paragraphs 43 and 45 of the judgment of Elias LJ, with which Davis LJ and Mummery LJ agreed, in *Fecitt v NHS Manchester (Public Concern at Work intervening)* 2012 ICR 372, we worked on the basis that a claim of a breach of section 47B of the ERA 1996 is akin to such a claim. Thus, we considered in each case so far as relevant whether or not the claimant had proved facts from which we could draw the

inference that his claimed detrimental treatment was to any extent done "on the ground" that he had made a protected disclosure.

Our conclusions on the claims before us

59 We therefore now state our conclusions, albeit for the sake of fluency not in the order in which we have stated them in paragraph 7 above.

(1) What did the claimant actually do on 18 March 2019?

60 As will be apparent from what we say in paragraph 37 above, we concluded that what the claimant did was precisely as described by Ms Cox and that it was not said in the circumstances described by the claimant in paragraph 12 of his witness statement, which we have set out in paragraph 34 above. Thus, we concluded that the claimant had said what Ms Cox described in paragraph 7 of her witness statement, which we have set out in paragraph 35 above, and as we record in the extract from our notes of her evidence which we have set out in paragraph 39 above.

61 We concluded that the claimant's memory was simply not reliable and that he had, when thinking back to the events of Monday 18 March 2019, realised that he had done something he should not have done (as even he was able to acknowledge, in paragraph 12 of his witness statement, where he called what he said "ill considered"), and then sought to find an explanation for it. He had then misremembered the time of the discussion about the use of the word "kurwa".

(2) Was that a breach of the implied term of trust and confidence?

62 We concluded that by saying to Ms Cox, for no good reason, "I didn't realise you had tits till today", the claimant committed a breach of the implied term of trust and confidence, which was necessarily such as to justify his dismissal without notice (i.e. what is commonly called "gross misconduct").

(3) Did the claimant make one or more protected disclosures?

63 We concluded that the claimant's allegations of drug-taking by employees of the respondent were public interest disclosures within the meaning of section 43B of the ERA 1996 if only because he reasonably believed that

63.1 someone was smoking cannabis (as corroborated by the evidence of Ms Cox that we have set out in paragraph 38 above),

63.2 it might be one or more employees of the respondent who was doing so, and

63.3 if one or more employees of the respondent was doing so then

63.3.1 they were committing an offence,

63.3.2 they were in breach of the implied term of trust and confidence, and

63.3.3 the health and safety of one more employees of the respondent was at risk because of the nature of the operations of, and equipment used by the staff of, the respondent.

(4) What was the reason, or if more than one the principal reason, for the claimant's dismissal?

64 We concluded that the principal reason for the claimant's dismissal was his conduct. We came to that conclusion because

64.1 we were satisfied on the balance of probabilities that

64.1.1 it was the claimant's conduct in the form of him doing what Ms Cox told Mr Eddy Eliaz the claimant had done, as Mr Eliaz stated in paragraph 23 of his witness statement, which we have set out in paragraph 32 above, that led Mr Eliaz to decide that the claimant should be dismissed,

64.1.2 that conduct led to the situation in which the claimant was no longer going to be able to go to the respondent's storage space at Hemel Hempstead, and

64.2 we concluded that the fact that the claimant had repeatedly alleged drug use by employees of the respondent and said the other things that he relied on as public interest disclosures was not only not the principal reason for his dismissal, it had nothing to do with it. It was in no way a motivating factor for his dismissal.

(5) Could the claimant have been dismissed fairly if a fair procedure had been followed?

65 We concluded that the claimant could have been dismissed fairly if a fair procedure had been followed. That would have been on the basis that the claimant's conduct as found by us to have occurred as stated in paragraph 60 above was such serious misconduct that it was within the range of reasonable responses of a reasonable employer to dismiss him for it.

66 If we had had any doubt about our conclusion stated in the first sentence of the preceding paragraph above, then that doubt would have been resolved by the fact that the claimant could no longer attend and work at the respondent's storage facility at Hemel Hempstead, so that the respondent's day to day operations were going to be affected in such a way that if only for that reason it was (given the evidence of Mr Audi Eliaz set out in the first sentence of

paragraph 45 above, and that of Mr Eddie Eliaz set out in the final sentence of paragraph 47 above, which, as stated above, we accepted) within the range of reasonable responses of a reasonable employer to dismiss the claimant.

(6) What would have happened if the claimant had not been dismissed unfairly on 20 March 2019?

67 We concluded that if the claimant had not been dismissed by Mr Eddy Eliaz over the telephone on 20 March 2019, and Mr Eliaz had instead followed a fair procedure, then the claimant would have been given a week to consider the allegation that he had referred to Ms Cox's breasts in an inappropriate manner on 18 March 2019, and that Mr Eliaz would (i.e. it was a 100% certainty that Mr Eliaz would) then have dismissed him for his conduct, i.e. for precisely the same reason as that for which he did dismiss the claimant. That dismissal would, for the reasons stated in the two preceding paragraphs above, have been within the range of reasonable responses of a reasonable employer, and therefore fair.

(7) Was the claimant treated detrimentally for making one or more public interest disclosures?

68 The second claimed detriment, in the form of the conduct of Mr Adam Eliaz (stated in paragraph 50.2 above) was, we concluded, not done by Mr Eliaz in any way on behalf of, or as the agent of, the respondent. Accordingly, that claim of a breach of section 47B of the ERA 1996 could not (and did not) succeed.

69 We accepted, however, on the balance of probabilities, that Mr Audi Eliaz had told the claimant to his face at work, and not just behind his back, at home, that he was crazy and/or was losing his mind. We did so because Mr Eliaz very clearly thought those things, he admitted saying them at home, and (we concluded) he struck us as the kind of person who would say those things to someone in person and not just behind his or her back.

70 However, those things were not said to any extent "on the ground that" the claimant had made a protected disclosure within the meaning of section 43A of the ERA 1996. They were said (we concluded) because and only because Mr Audi Eliaz genuinely believed the claimant to have lost touch with reality when coming to believe that members of the respondent's staff were using drugs at work, and that that belief was being pursued by the claimant obsessively. Thus, the claim of detrimental treatment for the making of a public interest disclosure set out in paragraph 50.1 above did not succeed.

71 Equally, the claimant was not treated detrimentally within the meaning of section 47B of the ERA 1996 by Mr Eddie Eliaz not taking any action in respect of the claims of the claimant that employees other than employee Y had been taking drugs at work (or at least during the course of the working day). We came to that conclusion because (as we say in paragraph 49 above) we accepted the evidence of Mr Eliaz that we have described in paragraphs 25-27 inclusive above and because we were satisfied on the balance of probabilities that Mr

Eliaz had not omitted to take action against other employees of the respondent "on the ground that" the claimant had made the allegations set out in paragraph 50.3 above. We came to that conclusion because

71.1 Mr Eliaz did in fact take some action in response to the claimant's allegations of drug use because, as recorded in paragraphs 23 and 24 above, he dismissed employee Y on the basis of the claimant's assertion that employee Y had brought cannabis to work, but only on the basis that there was some hard "evidence" of it (the small plastic bag) and the claimant had told him that employee Y had admitted the use of drugs at work, and

71.2 the fact that Mr Eliaz did take some action in response to the claimant's allegations of wrongdoing by employees in relation to the use of drugs and in one case intimidation for informing about the use of drugs made it less likely on the balance of probabilities that he had omitted to take action in respect of other employees "on the ground that" the claimant had alleged that those employees had acted wrongly by taking drugs or intimidating a claimed informant.

72 In any event, the claims of detrimental treatment contrary to section 47B of the ERA 1996 were made outside the primary time limit for making them and the claimant put before us no evidence to show that it was not reasonably practicable to make a claim in respect of the claimed detrimental treatment within that primary time limit. For that reason also, the claims of detrimental treatment within the meaning of section 47B did not succeed.

(8) What compensation should the claimant receive for his unfair dismissal?

73 We concluded that the claimant's conduct was such that he should receive no basic award within the meaning of section 119 of the ERA 1996, on the basis that his conduct was such that it was just and equitable within the meaning of section 122(2) of the ERA 1996 to reduce to nil the basic award.

74 However, we concluded that it was not just and equitable to reduce the compensatory award within the meaning of section 123 of the ERA 1996 because in our view the only compensation which the claimant should receive under that section was a week's pay in the circumstances stated in paragraph 67 above. In our judgment, there was no justification for reducing that award to nil. That was for the following reasons:

74.1 in our view no reasonable employer would have dismissed the claimant without giving him time to become used to the reality that he was likely to be dismissed and time to prepare his case in response to that proposition; and

74.2 the failure to do that led to significant shock and emotional upset to the claimant, for which (by reason of the decision of the House of Lords *in Dunnachie v Kingston upon Hull City Council* [2004] UKHL 36, [2004] IRLR 727, [2004] ICR 1052) compensation is not available in any other forum.

75 The claimant's gross pay per week was £425. Mr Francis calculated that the net pay of the claimant would today have been £359.43. Assuming that the award will not be taxed on the basis that it is less than £30,000, and on the basis that the claimant did not put a different figure before us, we award the sum of £359.43 as compensation for the claimant's unfair dismissal.

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Employment Judge Hyams

Date: 30 April 2021

JUDGMENT SENT TO THE PARTIES ON

17/5/2021

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J Moossavi

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FOR THE TRIBUNAL OFFICE