



EMPLOYMENT TRIBUNALS

Claimant: Ms F Eross

Respondent: Brico Ltd (T/A Bluebird Care Guildford and Waverley)

v

Heard at: Watford (by CVP)

On: 31 March 2021

Before: Employment Judge Cotton

Appearances

For the Claimant: Ms B Balmelli (Counsel)

For the Respondent: Mr L Betchley (Counsel)

This has been a remote hearing which was not objected to by the parties. The form of remote hearing was video. A face to face hearing was not practicable and all issues could be determined at a remote hearing.

RESERVED JUDGMENT

1. The claimant's claim that she has been unfairly dismissed by the respondent succeeds.
2. The claimant's claim of wrongful dismissal is dismissed on withdrawal by the claimant.

REASONS

Introduction

1. The respondent is a franchisee providing domiciliary care services for people who are elderly or have a condition that requires care at home. Mr Savvides and Ms Papamichalaki, husband and wife, are the owners of the company.
2. The claimant worked for the respondent as a Care Manager until 8 November 2019, when she was dismissed without notice. She claims that her dismissal

was unfair within section 98 of the Employment Rights Act 1996 (“the 1996 Act”). She seeks compensation.

Issues

3. The issues to be determined were agreed at the start of the hearing. Although the issues of Polkey and contributory conduct concern remedy, so would only be relevant in the event of a finding of unfair dismissal, it was agreed that these matters would be addressed in evidence and submissions. The issues identified were:-
 - 3.1 What was the principal reason for dismissal and was it a potentially fair reason under section 98(1) and (2) of the 1996 Act? The respondent asserted that the reason for dismissal was for some other substantial reason – an irretrievable breakdown of trust and confidence in the working relationship.
 - 3.2 If so, was the dismissal fair or unfair within section 98(4) of the 1996 Act, and did the respondent in all respects act within the band of reasonable responses? The claimant asserted that she was dismissed for a reason relating to her conduct and the respondent acted unreasonably in treating this a sufficient reason for dismissal; and also in failing to carry out an investigation and follow a fair procedure.
 - 3.3 If the dismissal was unfair, what adjustment, if any, should be made to the compensatory award to reflect the possibility that the claimant would still have been dismissed had a fair and reasonable procedure been followed, in accordance with the principles in *Polkey v AE Dayton Services Ltd* [1987] UKHL 8. The respondent asserts that the employment relationship could not have continued given the breakdown in relationship.
 - 3.4 Would it be just and equitable to reduce the amount of the claimant’s basic award because of any blameworthy or culpable conduct before the dismissal, as set out in section 122(2) of the 1996 Act, and if so to what extent?
 - 3.5 Did the claimant, by blameworthy or culpable conduct, cause or contribute to her dismissal to any extent, and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award under section 123(6) of the 1996 Act?
4. The claim of wrongful dismissal was withdrawn, the claimant having now received payment in lieu of notice from the respondent.

Evidence

5. I had before me an agreed 320 page bundle, including a 7 page supplementary bundle.
6. I had witness statements from Mr Pavlos Savvides, Ms Robyn Hill, Ms Jade Grigg and Mr Gary Street for the respondent and from the claimant and her witness Ms Andreea Guiuzan. I heard from all the witnesses.

Findings of fact

7. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point. Any references to page numbers are to the agreed bundle of documents.
8. The claimant was employed by the respondent as Assistant Co-ordinator on 4 October 2012. At this time the business was owned by a Mr Colvin and the management team was very small. In July 2015, the claimant accepted the role of Care Manager, a leading management role.
9. In December 2017 Mr Colvin sold the business, heralding in a new era for the business.
10. In contrast to Mr Colvin, the new owners and directors, husband-and-wife team Ms Papamichalacki and Mr Savvides (“the directors”) saw themselves as owner/investors rather than as owner/managers. The claimant said in her evidence that they ‘had no knowledge or understanding’ of the sector and the business. They saw their role as providing guidance, vision and investment, but wanted to leave the day to day running of the business to the managers, with the claimant heading up the management team. Therefore, from the start they relied heavily upon her. The respondent had no dedicated HR function and it seems that in practice HR matters were left to the claimant.
11. Mr Savvides said that in the circumstances it was critical that significant trust could be placed in the claimant. Ms Grigg, who took over as Care Manager following the claimant’s departure, confirmed that the relationship between the Care Manager and the directors was critical to the success of the business. This was not denied by the claimant, and I accept that it is so.
12. The issue of the working relationship between the claimant and Mr Savvides and Ms Papamichalacki is central to this case.
13. To promote a good working relationship and - the claimant said and I accept - to reflect her additional responsibilities, the claimant was given an immediate pay rise of £5,000.
14. However, Mr Savvides’ evidence was that, unfortunately, the claimant had early on developed a negative attitude towards him. She had an intransigent, controlling management style, she cultivated ‘favourites’ who received preferential treatment while others were marginalised (in some cases leading to resignations.) She was not a team player and acted as though she wanted to show him that she was ‘running the show’. She had complete control over the company’s software system Staffplan and would not share her skills and knowledge of this system. The considerable efforts (‘we tried everything’) which were made to improve the working relationship, including a further pay rise in June 2018, were unsuccessful. This impacted negatively on the office atmosphere, on staff relationships and ultimately on the business. Mr Savvides said that in around Autumn of 2018, he and Ms Papamichalacki wished to enter into discussions about ending the claimant’s employment

relationship amicably.

15. The claimant's evidence was that, prior to the events in November 2019 which culminated in her dismissal, she had not been aware that Mr Savvides and Ms Papamichalacki were unhappy with her; that she was very capable and whatever else was happening she got on with her job, to which she was committed; and that she had had a good relationship with Ms Papamichalacki in particular. It was only after a visit from the Care Quality Commission in September 2019, when in response to questioning she had disclosed that she did not receive supervision or appraisals, that she noticed hostility on the part of Ms Papamichalacki.
16. However, the evidence from the claimant and other witnesses pointed to a troubled relationship from an earlier stage, although from the claimant's perspective the problems lay with Mr Savvides. In her statement the claimant said that after the change in ownership the dynamic of the business began to change, moving away from its core values and lacking structure and leadership. Mr Savvides had a confrontational style which had a negative effect on staff – for example, seven finance managers left in less than two years. The claimant says that in August 2018 she was subjected to one of Mr Savvides' 'anger episodes' when she was blamed for the resignation of the care co-ordinator. She said that Mr Savvides had lashed out in an intimidating manner; that other staff members overheard the incident; and that henceforth the relaxed office atmosphere was gone.
17. Ms Grigg, who became Care Manager following the claimant's departure and had formerly been on friendly terms with the claimant, said that she had witnessed first hand the deterioration of the relationship between the claimant and Mr Savvides. Her evidence was that the claimant's attitude to the new owners became increasingly dismissive, hostile and sour, impacting on team members and on the business. The claimant had told her several times that she was unhappy with her relationship with the new owners and had applied for jobs elsewhere.
18. Ms Ghiuzan, an employee at the respondent until July 2019, confirmed that the team ethos changed after Mr Colvin left and tensions arose. She had heard the argument between the claimant and Mr Savvides in August 2018, and said that the claimant had emerged from the meeting room in tears and very distressed. She reported that Mr Savvides had had angry outbursts on a few other occasions. Ms Ghiuzan described the claimant as a supportive colleague who was approachable, appreciative and shared her skills and experience with others.
19. On 1 October 2018 the claimant's sister in law, Ms Tibuleac, was employed on a salaried basis. Previously, she had been working for respondent on a 'zero hours contract' – an industry norm.
20. Mr Savvides said that this was a favour to the claimant, to assist Ms Tibuleac with her mortgage application. Ms Griggs reported having had many conversations with the claimant about Ms Tibuleac's mortgage. The claimant's

evidence was that Ms Tibuleac's salaried employment was not connected to a mortgage application but was because Ms Tibuleac had shown herself to be an excellent worker and Ms Papamichalacki had been very happy to offer her a salaried position at a time when recruitment was difficult. The claimant directed me to an 'in principle' mortgage approval certificate dated 4 September 2018, based on the finances of Ms Tibuleac's husband. On balance, I find it unlikely that, at around the time he was considering ending the claimant's employment relationship, Mr Savvides' primary motivation would be to do a favour for the claimant, and prefer the claimant's evidence on this point.

21. Ms Tibuleac moved from Woking to her new house in Ash in March 2019.
22. Unfortunately, in November 2018, the claimant was diagnosed with a serious medical condition and – according to Mr Savvides – it was in response to this that the directors' plans to terminate her employment relationship were not implemented.
23. The claimant was off work between 11 and 14 December 2018 and 8 and 22 January 2019. Mr Savvides said that on her return she was 'a different woman', co-operative and grateful for the health insurance provided by the respondent. A 'honeymoon period' ensued. But, by around April 2019 – according to Mr Savvides - the claimant had returned to form. He said that he did not at that time take steps to dismiss her, believing that she still needed time to recover, mentally if not physically; also he said he was generally reluctant to let staff go, and deprive them of their livelihood.
24. As noted, the claimant's evidence was that she was unaware that the directors were at this time not happy with her. Based on the evidence from Ms Savvides, Ms Grigg and the claimant, I find that on balance it is likely that during the spring and summer of 2019 the directors felt that their relationship with the claimant was poor and that this was impacting on the business, but that, perhaps in addition to the more altruistic concerns identified above, they nevertheless wished to continue to rely upon her as a competent and committed employee.
25. Mr Savvides' evidence was that one factor in the deteriorating relationship during 2019 was the claimant's failure to manage Ms Tibuleac. He said that after being taken on full time, she became idle and underutilised. Though contractually obliged to work for 40 hours per week, in practice she worked an average of 20. She had been taken on to carry out, and was paid extra for, cleaning the office after office hours, but she spent more and more time in the office rather than on care visits and would clean within office hours. Further, she was disrespectful and made a point of not cleaning the directors' office properly, habitually leaving dirty cups in there for days. He said that the favouritism the claimant displayed was apparent to everyone in the office.
26. Ms Grigg gave evidence that after Ms Tibuleac became salaried she only visited the customers which suited her, generally customers in Woking as was convenient for her in light of her domestic commitments, rather than

customers near her home in Ash. This was detrimental to the business since it led to an unnecessary increase in mileage, which is a huge factor in this sort of business. It caused ill feeling.

27. Ms Hill, who is and was responsible for rostering, also expressed this view. She said that when she tried to schedule Ms Tibuleac to complete visits near her home during her contracted care hours these were removed and Ms Tibuleac was given visits in Woking. The claimant would ask her to change the roster in order to benefit Ms Tibuleac. She also said that the claimant had failed to share her knowledge of the Staffplan system with her, which could have helped her to carry out her rostering job.
28. The claimant conceded that during the summer of 2019 Ms Tibuleac spent more time in the office. However, she said that this was not because Ms Tibuleac, assisted by herself, was being idle but because the business had lost customers over a short period of time – partly through death and hospitalisation – and, in consequence, the regular zero hours workers had insufficient work and were threatening to leave. The office had agreed that Ms Tibuleac would be mainly allocated to office work in order to give the zero hours workers the opportunity to do the care visits. This explanation is supported by a later Whatsapp exchange between the claimant and Ms Grigg – dated 9 November 2019 (page 316) - in which Ms Grigg agrees that, contrary to an assertion by Mr Savvides that ‘I have kept [Ms Tibuleac] with very little work on purpose to trick the company’, the deliberate and agreed strategy had been to give Ms Tibuleac’s care work to the zero hours workers.
29. I accept the claimant’s evidence that, as regards the relevant time period, her aim in increasing Tibuleac’s office time was to retain the zero hours workers, as this explanation is supported by the Whatsapp exchange with Ms Grigg. However I find that, on the basis of Mr Savvides’ actions, and the evidence generally, Ms Savvides was not made aware of this explanation and that if he had been his suspicions may have been allayed.
30. In June 2019, Mr Savvides gave the claimant a further pay rise. He said that this was an attempt to motivate her and encourage her towards a more positive attitude. The claimant said she saw it as a reward for her good performance. There was no evidence that the reasons for the rise were articulated.
31. I find that the relationship between the claimant and Mr Savvides was, by October 2019 and for some time prior to this, very strained. Communication between them was poor, and this was affecting the atmosphere in the office. Based on the evidence I read and heard, I find that, whatever the actual situation, Mr Savvides genuinely believed that the claimant was favouring her sister in law at the expense of the business and was not communicating with him in the way that he wanted and needed; and that neither party sought to resolve matters in a constructive way. This was at least in part because of the poor relationship; the claimant felt intimidated by Ms Savvides and his confrontational style, and, while she carried on performing in her role, she did not seek to address the issues between them and explain the situation from

her perspective.

32. Matters came to a head in October and November 2019. Mr Savvides challenged Ms Tibuleac about an unwashed cup in his office. He then called the claimant into his office and instructed her to change Ms Tibuleac's contract back to a zero hours contract. As it turned out, this event was a key trigger leading to the end of the employment relationship. The claimant said that Mr Savvides was angry and that he said nothing about following any procedure or giving a month's notice - as evidenced by the fact that, less than 4 weeks later, he had demanded to know why she was still on the pay roll. The claimant said that she had interpreted the instruction as 'just one of his anger episodes' and did not believe he was serious, given that she had no legal basis for changing Ms Tibuleac's contract. However, she did not raise this with Mr Savvides. For his part, Mr Savvides said that he left HR matters to the claimant and had told her to follow whatever process needed to be followed, including giving a month's notice.
33. Ms Grigg said, and I accept, that she had witnessed the incident with the coffee cup and that, speaking to her after the meeting, the claimant had been clear that Mr Savvides wanted her to change Ms Tibuleac's contract.
34. On 7 November Mr Savvides emailed the claimant asking why Mr Tibuleac had not yet been transferred to a zero hours contract. He also complained about Ms Tibuleac cleaning during office hours, failing to wash up cups around the office and spending time serving lunch to the claimant. His email, the tone of which is angry and frustrated and which includes capitalised text, ends 'Please confirm you have followed my instructions of nearly 4 weeks ago and you have turned her contract into a zero hours contract.'
35. The claimant responded shortly before midnight – she was on call that evening. She wrote 'I have not changed her contract, I still cannot believe you meant that, as I think that legally you are not able to change someone's contract for an unwashed cup, which is not her duty anyway.' She says that if Mr Savvides wants this to happen, he should ask someone else to do it. The following morning she emailed him again, saying that she felt too ill to come to work. She wrote 'I find it very difficult to comprehend why when working so hard, doing everything I can for the company...nothing is appreciated and your bullying never stops. All this is affecting my physical and mental health, therefore, I need to seek professional help and advice.'
36. In his response Mr Savvides' complained that the claimant displayed an attitude of 'contempt and insolence towards me' and that telling him to ask someone else to deal with Ms Tibuleac's contract shows insubordination. He accused her of a pattern of insubordination and a controlling management style.
37. There followed slightly later a letter, emailed to the claimant, from Ms Papamichaelaki saying that her employment was terminated with immediate effect because 'there has been a breakdown of communication and trust with yourself which has now become detrimental to the business'. She says that

the claimant's recent exchange with Ms Savvides 'clearly shows your insolence and insubordination to the directors' decisions and requests'.

38. It was unclear whether Mr Savvides was aware that – in accordance with the respondent's procedure - he could have suspended the claimant on full pay pending an investigation: 'I didn't pay much attention to that sort of thing'.
39. The claimant appealed this decision by a letter dated 16 November 2019. Though the issue of manipulating the roster was not raised in the letters of 7 and 8 November (pages 52-56) the claimant must have been aware of Mr Savvides' suspicions in this regard since the appeal letter denies it, and it is also referred to in the Whatsapp message to Ms Grigg (page 316.) The claimant received no response to her appeal letter.

Post termination investigation

40. I heard evidence from the respondent that after the claimant's departure an investigation into the claimant was carried out. Mr Street, a Staffplan trainer, had helped to produce reports from which it might reasonably be inferred that the claimant had manipulated the system in favour of Ms Tibuleac, for example, showing that she made care visits in Woking rather than in her own locality and her mileage seemed disproportionately high. I was directed to relevant evidence in the bundle. However, the claimant was not asked to give her side of the story and asserted innocent explanations during the hearing.

Relevant law and conclusions

41. Section 94 of the 1996 Act confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111.
42. It is for the employee to show that she was dismissed by the respondent. In this case the respondent admits that it the claimant was dismissed within section 95(1)(a) of the 1996 Act.
43. Section 98 of the 1996 Act deals with the fairness of dismissals. The employer must show that it had a potentially fair reason for the dismissal within section 98(2). If so, the Tribunal must consider – without there being any burden of proof on either party - whether the employer acted fairly or unfairly in dismissing for that reason. The answer to this question depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee. This shall be determined in accordance with equity and the substantial merits of the case.

Reason for dismissal

44. In this case, the reason for dismissal is disputed. The respondent contends that the claimant was dismissed for 'some other substantial reason' – namely, an irretrievable breakdown of trust and confidence – of 'communication and

trust,' as noted in the termination letter on page 56. When questioned, Mr Savvides said that the claimant was dismissed for 'a combination of things' and 'for a hundred' reasons,' and because he believed the business was in danger due to the poor relationship.

45. The claimant contends that if she was dismissed for any potentially fair reason at all, she was dismissed for a reason relating to conduct, namely, for failing to carry out the instruction to transfer Ms Tibuleac to a zero hours contract – an instruction which was itself unreasonable, as there was no legal basis for unilaterally making this change.
46. This is a case where the relationship between the claimant and respondent had become strained over time, and where communication was poor. The events leading up to the dismissal are to be interpreted and understood in this context. There is no doubt that the breakdown in communication played a part in the dismissal.
47. However, I find that the primary reason for dismissal was reasons relating to conduct – the claimant's failure to carry out Mr Savvides instruction about Ms Tibuleac's contract and, in so failing, demonstrating an insolent attitude.

Fairness

48. In misconduct dismissals, there is well-established guidance for Tribunals on fairness within section 98(4) in the decisions in Burchell 1978 IRLR 379 and Post Office v Foley 2000 IRLR 827. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt; then, whether it held such belief on reasonable grounds and after carrying out a reasonable investigation. In considering the investigation, the grounds for the belief, the penalty imposed and the procedure followed, the question for the Tribunal, in deciding whether the employer acted reasonably or unreasonably within section 98(4), is whether the employer acted within the range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made. The Tribunal must not substitute its view for that of the reasonable employer.
49. I find that Mr Savvides genuinely believed that the claimant was guilty of misconduct by failing to follow what he regarded as a reasonable management instruction, for displaying an insolent attitude and for showing favouritism to her sister in law by, amongst other things, manipulating the roster in her favour. That he believed this was clear from the evidence. It is also clear from the Whatsapp exchange between the claimant and Ms Grigg dated 9 November 2019, page 316. In this exchange, and as previously noted, the claimant expresses concern that Mr Savvides believes 'that I have kept [Ms Tibuleac] with very little work on purpose to trick the company,' and asks Mr Grigg to explain that this was not true, that this belief is not fair, that she had given Ms Tibuleac's work to care workers on zero contracts because they were short of work and threatening to leave. She asserts that she has

never interfered with Mr Tibuleac's roster.

50. However, I find that the complete absence of any investigation into the claimant's conduct, or any constructive enquiry into the situation which had arisen in the office, renders the dismissal unfair. Such an investigation is essential to fairness, and to the reasonableness or otherwise of the employer's belief. Due to the negative relationship, Mr Savvides had formed suspicions which he did not properly test. The claimant's view was that had an investigation been carried out no misconduct would have been found. Mr Savvides did not respond to her appeal letter. He eventually made a notice payment, but only in April 2020 after she had issued proceedings. After termination, when the claimant was not present to put forward her side of the story, an investigation was carried out and revealed an apparently concerning picture regarding Ms Tibuleac's rostering and mileage. However, the claimant was not given an opportunity explain the potentially innocent reasons for this information, which she asserted during the hearing.

51. In conclusion, the claimant was unfairly dismissed by the respondent.

Polkey

52. At the start of the hearing I agreed with the parties that if I concluded that the claimant had been unfairly dismissed I would consider whether any adjustment should be made to her compensation on the grounds that if a fair process had been followed by the respondent the claimant might in any event have been fairly dismissed. I am assessing what this particular employer might or would have done, on the assumption that the employer would this time have acted fairly though it did not do so before.

53. Ms Balemlli invited me to find that that if a fair process had been followed the claimant would not have been dismissed. The relationship between her and the directors was not irredeemable. The situation could have been managed, as it had been prior to the events triggering the dismissal. Further, the respondent would not have been capable of dismissing the claimant fairly. The claimant was in charge of HR. Without her, they would have messed up the process. She contends that the evidence disclosed after the claimant's departure did not amount to conduct which could have formed the basis of a fair dismissal. Mr Savvides was broadly aware of the issues before dismissal but chose not to investigate. The claimant asserted her innocence throughout the hearing.

54. Mr Bletchley invited me to find that there is reason to suppose that the claimant would have been dismissed for her conduct even after a fair investigation. He pointed to the material produced after the claimant's departure which, had it been known at the time, could have formed the basis for a fair dismissal, and said that in any event, given the state of her relationship with the directors, Mr Savvides in particular, her employment could not have continued.

55. I find that it is certain that this particular employer would, following a fair investigation, have dismissed the claimant for some other substantial reason – namely, a breakdown in the working relationship and loss of trust and confidence. This is based on my finding that the relationship between the Care Manager and directors is critical to the success of the business and on the evidence about the extent to which this relationship had deteriorated. Although the claimant dealt with HR issues, and Mr Savvides himself may not have had the experience to carry out a fair process, I find that a fair process could have been followed by other managers for example claimant's successor Ms Grigg.
56. The claimant should be fully compensated for two weeks from 8 November 2019, up to reflect the time a fair procedure would have taken. For the period following this, her compensatory award should be reduced by 100%.

Contribution

57. I also agreed with the parties that if the claimant had been unfairly dismissed I would address the issue of contributory fault. The Tribunal may reduce the basic or compensatory awards for culpable conduct in the slightly different circumstances set out in section 122(2) and 123(6) of the 1996 Act.
58. Section 122(2) provides that 'Where the Tribunal considers that any conduct of the complainant before the dismissal...was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the Tribunal shall reduce or further reduce that amount accordingly.'
59. Section 123(6) provides that 'Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.'
60. Ms Balmelli invited me to find that the claimant did not contribute in any way to her dismissal. She was not aware that Mr Savvides believed that their relationship was so poor that it was impacting adversely on the business. Her emails on 7 and 8 November were not insolent but were a cry for help.
61. Mr Betchley pointed to the claimant's failure to make any attempt to address issues with the directors, or to give explanations as to Ms Tibuleac's conduct. She had said 'I stuck around and did my job. If they had issues, they should have discussed them with me.' She contributed to her own dismissal by failing to take steps to communicate constructively with Mr Savvides to diffuse escalating tensions and allay his concerns. She herself was knowledgeable and competent while the directors had little understanding of the sector, and she failed to share her knowledge.
62. On the one hand, the claimant's emails to Mr Savvides are accusatory and defensive rather than conciliatory and constructive in tone. By her own admission, she did not take steps to address constructively address the issues that had arisen – though she was aware that, for example, Mr

Savvides was not content with the way in which she was managing Ms Tibuleac, and that he had suspicions about her manipulating the roster. She dismissed his concerns and did not seek to explain.

63. On the other hand, as the CQC had noted, she seemed to have been alone in her role, with little supervision or guidance. She said in evidence 'I had absolutely no one.' The two owner/investors were married to one another, making it difficult for her to approach one of them in confidence. There is little evidence that Mr Savvides or Ms Papamichalaki attempted to constructively resolve matters either, although Mr Savvides asserted that they 'tried everything' and 'gave her all the time in the world'. The evidence suggests that, for example, instead of exploring the situation with the way in which Ms Tibuleac was being managed, Mr Savvides simply instructed the claimant to change her contract. From the claimant's perspective, she had been asked to carry out an instruction which was unlawful – namely, to unilaterally vary Ms Tibuleac's contract to her disadvantage.

64. I find that it would not be just and equitable to reduce the claimant's basic award but that her compensatory award should be reduced by 10% to reflect her contribution to her dismissal.

Mitigation

65. Evidence about whether or not the claimant failed to mitigate her loss was included in the bundle and I heard submissions about this. In the light of my finding above, the only relevant period is the two weeks following dismissal. I find that the claimant did not fail to mitigate her loss during this period. It would be unreasonable to expect her to find alternative employment in two weeks.

Remedy hearing

66. The provisional remedy hearing listed for **27 July 2021** will now proceed and separate directions for that hearing are set out in a care management order of today's date.

Employment Judge Cotton

Date: 16 April 2021

Sent to the parties on:

.....
For the Tribunal Office

