EMPLOYMENT TRIBUNALS (SCOTLAND)

CASE NO. 4100563/2021 (V)

Hearing: 28 & 29 June 2021

Employment Judge Ronald Mackay

Mr Andrew Stewart	**Claimant** **Represented by:** **Mr Merke, Solicitor**
Kincardine Manufacturing Services Limited	**Respondent** **Represented by:** **Mr Hay, Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the Claimant was unfairly dismissed and the Respondent is ordered to pay the Claimant the sum of £27,397 by way of compensation. The Employment Protection (Recoupment of Job Seekers' Allowance & Income Support) Regulations 1996 apply to this award. The prescribed element is £19,228 and relates to the period from 3 December 2020 to 29 June 2021. The monetary award exceeds the prescribed element by £8,169.

REASONS

Introduction

1 This is a claim for unfair dismissal. The Clamant seeks compensation only. In its response to the Claim, the Respondent contended that the dismissal was fair by reason of redundancy. During the course of the Hearing, however, Counsel for the Respondent conceded that the dismissal was procedurally unfair, whilst maintaining the position that redundancy was the reason.

2 The parties agreed a joint bundle of documents which was placed before the Tribunal. Some additional documents were added on the morning of the Hearing. A further set of documents was added during the course of the Hearing. The Tribunal comments on the nature of these documents, and the manner of their discovery, in further detail below.

3 The Tribunal heard from two witnesses for the Respondent: Mr Graham Truscott, Finance Director, and Mr Ian Thomson, Quality, Health & Safety & Environmental Consultant.

4 For the Claimant, the Tribunal heard from the Claimant himself and Mr James Sinton, Commercial Director of Howco Group, a supplier to the Respondent.

5 The Claimant's solicitor produced a revised schedule of loss on the morning of the Hearing. Counsel for the Respondent accepted the accuracy of the underlying data used for the calculations.

Notes on Evidence

6 The Tribunal found the Claimant and his witness, Mr Sinton, to be credible and reliable. Both gave their evidence in a clear and measured way without inconsistency or exaggeration.

7 The same cannot be said for the evidence of the Respondent's witnesses, and that of Mr Truscott in particular. His evidence was at times in conflict with the documentary evidence, the Respondent's own pleadings, and the evidence of Mr Thomson. He also contradicted himself during the course of his own evidence. Material areas of conflict are outlined in the Findings in Fact section which follows.

8 Another key concern arose over Mr Truscott's conduct during the Hearing itself. At the start of his evidence, he was properly asked by Counsel for the Respondent whether he had in front of him any documents other than the agreed bundle. He replied that he did not. During the course of his

evidence, the Claimant's solicitor raised a question as to whether he was reading from documents not contained in the bundle. On being questioned by the Tribunal, Mr Truscott initially sought to argue that he was reading only from documents in the bundle before accepting that he had other documents and handwritten notes in front of him. The documents were clearly intended to act as an aide-memoire in presenting evidence on a key issue in the case. This issue alone gave rise to a significant concern over Mr Truscott's credibility and reliability.

9 In a number of key respects, the Respondent's evidence was in conflict with that of the Claimant. These areas of conflict are set out and resolved in the Findings in Fact section which follows. In all material respects, the Tribunal had no hesitation in preferring the evidence of the Claimant in areas of conflict.

Findings in Fact

10 The Respondent is engaged in the manufacture of precision engineering equipment. It supplies clients in the oil & gas sector. It was founded by Mr Truscott in 2001. Mr Truscott, along with family members, holds a majority of the shares in the company.

11 Mr Truscott operates as Finance Director. The Managing Director is Mr Brian Davie. Notwithstanding his role as Finance Director, Mr Truscott, rather than Mr Davie, is considered the most senior member of management.

12 The Claimant was employed with effect from 3 January 2018 as an Estimator. He holds a relevant qualification in mechanical engineering.

13 The principal function of the Claimant as Estimator was the preparation of quotations for orders received from the Respondent's customers.

14 90% of the Respondent's orders come from a single global oil & gas company. Approximately 50% of those orders are repeat and 50% new. The remaining 10% of orders come from a range of other customers.

15 In preparing quotations, an Estimator is required to analyse the customer's requirements, including complex engineering drawings, and make a judgement as to how much it will cost the company (in terms of material and time) to manufacture the product. This involves, amongst other things, assessing how much time it will take employees to do the necessary work, how much sub-contracted work will be required, and obtaining quotes for the necessary raw materials (principally steel of differing specifications).

16 In order to perform the role, a detailed understanding of the manufacturing and engineering processes is required.

17 In addition to the Claimant, Mr Davie had the necessary skillset to carry out these functions, which he did from time to time.

18 Mr Truscott gave evidence that he and his late wife (who had also worked for the Respondent) were capable of performing the estimating function. This was disputed by the Claimant who argued that they lacked the requisite engineering skills. The Claimant's position was supported by the account of Mr Sinton who gave evidence that (from his perspective as a supplier being asked for quotes), he dealt only with the Claimant and Mr Davie at the material times. The Claimant's account is, accordingly, preferred.

19 During the initial period of the Claimant's employment, the Respondent performed strongly. Fortunes changed following the advent of the COVID pandemic. A significant downturn was experienced across the oil & gas sector.

20 Mr Truscott described a reduction of approximately 50% in turnover in the second half of 2020. He suggested that this equated to a 50% reduction in quotes for the Claimant (as Estimator) to deal with. The Claimant candidly accepted that he did not have access to the company's finances but he

recognised the downturn in activity. He put the percentage reduction of his work as being in the order of 20-30%. The Claimant's assessment is in line with the evidence of Mr Sinton who, as a supplier receiving quotes, suggested that the volume did not diminish significantly and that what diminished was the value of the projects in question. Again, therefore, the Claimant's account of reduction in the volume of his work, is preferred.

21 Whilst the precise reduction averred by the Claimant was not put to the Respondent's witnesses, it was very clear from the cross-examination that their account of a drastic reduction was not accepted and they had an opportunity to respond.

22 The Respondent made a number of employees redundant between August and October 2020. Mr Truscott initially gave evidence that 8 or 9 people were made redundant. He later gave evidence that the figure was 11 before alighting on 9.

23 The Respondent placed a number of employees on furlough in the latter part of 2020. A conflict arose as to whether the Claimant himself was placed on furlough. In his evidence, Mr Truscott stated that the Claimant was placed on furlough in March and April 2020 before returning to work in June 2020. Mr Thomson gave evidence that the Claimant had been placed on furlough "*at various points in time*". Those accounts, which are mutually inconsistent, are also at odds with the Respondent's own pleadings where at Paragraph 6 it is stated: "*The Claimant was continually employed by the Respondent throughout 2020 notwithstanding the fact that some of his colleagues were made redundant and others were placed on furlough.*"

24 The Claimant's evidence is that he was never placed on furlough. His account is preferred.

25 As a result of the downturn in turnover, the company began to suffer financial losses. Mr Truscott gave evidence that there was a loss of £50,000 in November 2020 and £60,000 in December. These figures are at odds with an assessment of the company's accountants in a letter prepared for the

purposes of the Hearing. The accountants suggested a loss of £60,000 across November and December 2020. Mr Truscott was not able to account for the difference other than to suggest that the accountants were wrong. As the accountants did not give evidence, the Tribunal simply finds that the company suffered losses during this period.

26 The Respondent held a management meeting on 28 November 2020. This was attended by Mr Truscott, Mr Davie, Mr Thomson and Mr Ron McCulloch, the Respondent's IT Manager. The purpose of the meeting was to consider reducing cost. During the course of the meeting, Mr Thomson stated that the Claimant had less than two years' service (wrongly as it subsequently transpired). It was agreed that he would be dismissed without advance warning or consultation.

27 Whilst Mr Truscott gave evidence that the meeting involved a discussion about the need for an Estimator and the conclusion that an Estimator was not required, when asked in cross-examination whether there had been any discussion about the Estimator role, Mr Thomson replied that there was a "*discussion about cutbacks*".

28 There was no evidence whatsoever of any analysis of the role of the Estimator and whether that role should be selected for redundancy in preference to others. The decision was taken on the basis of the erroneous belief that the Claimant did not have the service to claim unfair dismissal.

29 By letter dated 3 December 2020, the Claimant was advised that he had been selected for redundancy and that his employment was being terminated. He was advised that he would receive pay in lieu of one week's notice. He was offered a right of appeal.

30 Once the Claimant's length of service was established, he was paid for a further week's notice.

31 The Claimant exercised his right to appeal. In a series of text exchanges, the Claimant used language which he freely accepted was intemperate. The

Claimant was invited to an appeal hearing to take place on 14 December 2020. Earlier that day, in response to a request from Mr Thomson to provide grounds of appeal, the Claimant challenged the lack of notice, the lack of consultation and an apparent lack of selection process or criteria.

32 No appeal meeting ultimately took place. Instead, by email later in the morning of 14 December 2020, Mr Thomson provided a written response. He stated, inter alia, that requests for quotations had reduced "*drastically*". The lack of consultation was explained by an error as to the length of service, and in responding to the Claimant's point about selection process and criteria, Mr Thompson stated: "*Position as Estimator was only held by yourself and no other position within the company was available"*.

33 Mr Truscott gave evidence that the Claimant chose not to attend the appeal hearing. Mr Thomson, on being asked why the meeting did not take place, responded that he had "*tried to answer [the Claimant's] questions to the best [his] ability*". Mr Truscott's evidence was not accepted.

34 Following the Claimant's dismissal on 3 December 2020, a new employee, Mr Iain McCulloch, commenced work with the Respondent. He commenced employment on 7 December 2020 and, although the contract of employment produced by the Respondent gives his job title as "Machinist", in his email sign-off with the Respondent he is described as "Manufacturing Engineer".

35 Mr McCulloch's title as Manufacturing Engineer indicates something much more than a machinist. The Claimant said it was a title used by Estimators. Although it was not put directly to the Respondent's witnesses that a Manufacturing Engineer is equivalent to an Estimator, it was suggested to the Respondent's witnesses in cross-examination that Mr McCulloch was in effect carrying out the Claimant's role, which amounts to the same thing.

36 He was employed on a salary of £40,000, the Claimant's salary on termination being £42,500.

37 Immediately prior to joining the Respondent, Mr McCulloch worked as an Estimator in another company. According to his CV, he operated in an office environment for many years before that. His most recent direct machine operating experience was in 2014.

38 Mr Truscott gave evidence that it was this experience on a particular machine which was the reason for recruiting Mr McCulloch - on the basis that operators with experience of that particular machine were rare. That account is somewhat at odds with the agreed position that two other employees were capable of being trained to operate the machine after only four days training.

39 The Claimant, in fact, had more recent experience than Mr McCulloch and was capable of operating the machine in question. Prior to becoming an Estimator, he had extensive operational experience.

40 On the question as to whether they were aware of the Claimant's experience on machines of this nature, both Mr Truscott and Mr Thomson advised that they did not know and did not ask. The Tribunal had difficulty with this account given the detailed knowledge of the operation of the machines which is required in estimating costs.

41 In his pleadings, the Claimant averred that Mr McCulloch was in effect performing his role as Estimator. In his evidence, Mr Truscott disputed this and on more than one occasion said that there was "*no chance*" that Mr McCulloch was doing estimating. The evidence of Mr Truscott was that Mr McCulloch had been employed to work on the particular machine which had been purchased earlier in the year. As the machine did not, ultimately, become operational until several months later, Mr Truscott's evidence was that he "*helped out in the office*" in the meantime.

42 In resolving the question as to whether Mr McCulloch was carrying out estimating activities, the Tribunal had regard to the evidence of Mr Sinton who was in regular contact with the Respondent as a supplier of materials.

43 In his evidence, Mr Truscott stated that the company did not engage with the Howco Group (Mr Sinton's employer) after early December 2020. He stated that: "A*fter that, the work went to other steel companies*". That account is wholly at odds with the evidence of Mr Sinton and the documentary evidence in the bundle which shows very regular requests for quotations going from Mr McCulloch to the Howco Group.

44 The emails in the bundle are samples. Based on Mr Sinton's clear and unchallenged evidence, in the period from early December 2020 to late May 2021, he received 293 requests for quotes from Mr McCulloch. During the same period, he received 50 requests from Mr Davie. No requests were received from anyone else within the Respondent.

45 The Tribunal also accepted Mr Sinton's evidence that this split of requests between Mr McCulloch and Mr Davie was broadly equivalent to the split he experienced between the Claimant and Mr Davie when the Claimant was employed. He put that at approximately 80% from the Claimant, 20% from Mr Davie.

46 Whilst the Howco Group was only one of many suppliers from whom quotes were sought from the Respondent, there is nothing to suggest that Howco was in any way unique. The Tribunal readily concluded, therefore, that Mr McCulloch was, to a large extent, carrying out the function previously carried out by the Claimant.

47 The machine for which it was suggested that Mr McCulloch was employed, was never ultimately used other than, according to Mr Truscott's evidence, "*an odd day here and there*".

48 In May 2021, Mr McCulloch became unwell and has not since returned to work. Mr Sinton's evidence, which the Tribunal accepted, was that since then, requests are coming from Mr Davie alone.

The Relevant Law

49 S94 of the Employment Rights Act 1996 ("**ERA**") provides that an employee has the right not to be unfairly dismissed. It is for the respondent to show the reason (or principal reason if more than one) for the dismissal (s98(1)(a) ERA). That the employee was redundant is one of the permissible reasons for a fair dismissal (section 98(2)(c) ERA). Where dismissal is asserted to be for redundancy the employer must show that what is being asserted is true i.e. that the employee was in fact redundant as defined by statute.

50 An employee is dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that his employer has ceased or intends to cease to carry on that business in the place where the employee was so employed, or the fact that the requirements of that business for employees to carry out work of a particular kind have ceased or diminished, or are expected to cease or diminish (s139(1) ERA).

51 In ***Safeway Stores plc v Burrell*** [1997] IRLR 200 the EAT indicated a 3-stage test for considering whether an employee is dismissed by reason of redundancy. A Tribunal must decide:

(a) Whether the employee was dismissed?
(b) If so, had the requirements of the employer's business for employees to carry out work of a particular kind ceased or diminished, or were they expected to cease or diminish?
(c) If so, was the dismissal of the employee caused wholly or mainly by the cessation or diminution?

52 If satisfied of the reason for dismissal, it is then for the Tribunal to determine, the burden of proof at this point being neutral, whether in all the circumstances, having regard to the size and administrative resources of the employer, and in accordance with equity and the substantial merits of the case, the employer acted reasonably or unreasonably in treating the reason as a sufficient reason to dismiss the employee (s98(4) ERA). In applying

s98(4) ERA the Tribunal must not substitute its own view for the matter for that of the employer, but must apply an objective test of whether dismissal was in the circumstances within the range of reasonable responses open to a reasonable employer.

53 The House of Lords in ***Polkey v A E Dayton Services Ltd 1988 ICR 142*** held that: "**In the case of redundancy, the employer will not normally have acted reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by redeployment within its own organisation**".

54 Where there is a finding (or as here an acceptance) of procedural unfairness, the Tribunal is required to conduct an assessment as to whether dismissal might have taken place in any event. The principles to be followed are summarised in ***Software 2000 Ltd v Andrews & Others [2007] ICR 825*** at Paragraph 54:

"**The following principles emerge from these cases. (1) In assessing compensation the task of the tribunal is to assess the loss owing from the dismissal, using its common sense, experience and sense of justice. In the normal case that requires it to assess for how long the employee would have been employed but for the dismissal. (2) If the employer seeks to contend that the employee would or might have ceased to be employed in any event had fair procedures been followed, or alternatively would not have continued in employment indefinitely, it is for him to adduce any relevant evidence on which he wishes to rely. However, the tribunal must have regard to all the evidence when making that assessment, including any evidence from the employee himself. (He might, for example, have given evidence that he had intended to retire in the near future.) (3) However, there will be circumstances where the nature of the evidence which the employer wishes to adduce, or on which he seeks to rely, is so unreliable that the tribunal may take the view that the whole exercise of seeking to reconstruct what might have been is so riddled with uncertainty that no sensible prediction based on that evidence can properly be made. (4) Whether that is the position is a matter of impression and judgment for the tribunal. But in reaching that decision the tribunal must direct itself properly. It must recognise that it should have regard to any material and reliable evidence which might assist it in fixing just compensation, even if there are limits to the extent to which it can confidently predict what might have been; and it must appreciate that**

a degree of uncertainty is an inevitable feature of the exercise. The mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence. (5) An appellate court must be wary about interfering with the tribunal's assessment that the exercise is too speculative. However, it must interfere if the tribunal has not directed itself properly and has taken too narrow a view of its role. (6) The section 98A(2) and Polkey exercises run in parallel and will often involve consideration of the same evidence, but they must not be conflated. It follows that even if a tribunal considers that some of the evidence or potential evidence to be too speculative to form any sensible view as to whether dismissal would have occurred on the balance of probabilities, it must nevertheless take into account any evidence on which it considers it can properly rely and from which it could in principle conclude that the employment may have come to an end when it did, or alternatively would not have continued indefinitely. (7) Having considered the evidence, the tribunal may determine: (a) that if fair procedures had been complied with, the employer has satisfied it - the onus being firmly on the employer - that on the balance of probabilities the dismissal would have occurred when it did in any event: the dismissal is then fair by virtue of section 98A(2); (b) that there was a chance of dismissal but less than 50%, in which case compensation should be reduced accordingly; (c) that employment would have continued but only for a limited fixed period. The evidence demonstrating that may be wholly unrelated to the circumstances relating to the dismissal itself, as in O'Donoghue v Redcar and Cleveland Borough Council [2001] IRLR 615; (d) that employment would have continued indefinitely. However, this last finding should be reached only where the evidence that it might have been terminated earlier is so scant that it can effectively be ignored."

Submissions

55 For the Respondent, having accepted that the dismissal was procedurally unfair, Mr Hay focussed on the question of remedy and argued that the circumstances of the case were well within the territory of a ***Polkey*** reduction. He invited the Tribunal to reduce compensation by 100% or, if not, substantially based on the probability that dismissal would have occurred in any event or that it would have occurred at a later date.

56 Whilst accepting that the Respondent's witnesses were not *"men of detail"*, he maintained that the redundancy situation was genuine and that the circumstances surrounding the recruitment of Mr McCulloch were genuine.

57 He went on to highlight a number of matters which were not put directly to Mr Truscott in cross-examination. These included the suggestion that the manufacturing engineer was equivalent to estimator, that the Claimant was skilled to operate on the machine later delivered to the Respondent and that the reduction in quotes was in the order of only 20-30%.

58 Mr Hay reminded the Tribunal that is not for the Tribunal to sit in judgment of business decisions (***James Cook v Tipper [1990] ICR 716***). He also reminded the Tribunal of the shifting burden of proof where the reason for dismissal is challenged (***Maund v Penwith District Council [1984] ICR 143***).

59 Referring to ***Mugford v Midland Bank [1974] ICR 399***, Mr Hay suggested that a lack of consultation will not necessarily result in a finding beyond procedural unfairness. He went on to submit that there was a clear diminution in the requirement of employees to do work of a particular kind, particularly estimating. This was borne out by the decline in revenues, the losses sustained and the earlier redundancies effected by the Respondent.

60 With reference to ***Software 2000***, he reminded the Tribunal that it was open to make a finding of no compensation at all and invited that approach here. In the alternative, he suggested that the reduction should be no less than 50%.

61 Finally, he submitted that it was appropriate to assess whether the employment would have continued for a fixed period after the termination. He referred to what he described as a deteriorating relationship between the Claimant and the Respondent. He also referred to the ongoing financial difficulties facing the sector (which was borne out by the Claimant's unsuccessful efforts to mitigate his losses). He did not seek to suggest any failure to mitigate on the part of the Claimant.

62 For the Claimant, Mr Merke accepted the broad legal framework as outlined by Mr Hay. He invited the Tribunal to find, however, that there was not a genuine redundancy situation as it related to the Claimant and that

redundancy was not the true reason for dismissal. He invited the Tribunal to prefer the evidence of the Claimant that there was no "*drastic*" decline in the Claimant's work as suggested by the Respondent's witnesses. He highlighted a number of other respects in which the evidence of Mr Truscott lacked credibility and reliability.

63 He went on to question the very short space in time between the dismissal of the Claimant and the recruitment of Mr McCulloch on a similar salary. He invited the Tribunal to find that Mr McCulloch was carrying out a broadly equivalent function to that of the Claimant before his dismissal. He pointed to the evidence of Mr Sinton, and the related emails in this regard.

64 He submitted that the real reason for dismissal was the erroneous belief that the Claimant had less than two years' service.

65 In considering ***Polkey*** reductions, Mr Merke submitted that there was such a complete lack of procedure and thinking about the redundancy that the Tribunal is not capable of forming an assessment of the likelihood of dismissal such that no ***Polkey*** reduction should be made at all (at least until September 2021 during which period the Claimant might conceivably have been placed on furlough). In this context, he referred to ***King v Eaton Ltd (No 2) [1998] IRLR 686*** and ***Gwynedd Council v Barratt UK EAT 0206/18/VP***.

66 He went on to submit that the Claimant should receive losses for one year.

67 In a brief reply, Mr Hay submitted that if the argument was that the Claimant ought to have been placed on furlough, if correct, that had a bearing on quantum. He also submitted that the process did not amount to a complete failure in that there was some attempt at an appeal.

Decision

68 The Tribunal first considered whether a redundancy situation in accordance with s139(1) ERA existed within the Respondent at the time of the

Claimant's dismissal. Having regard to the economic circumstances facing the Respondent, the significant downturn in orders, and the need to reduce costs, the Tribunal had no hesitation in establishing that a redundancy situation existed.

69 The Tribunal went on to consider whether the Claimant's dismissal was wholly or mainly attributable to that state of affairs. The Tribunal concluded that it was. Leaving aside the selection of the Claimant and the manner of his dismissal, the Tribunal was satisfied that the significant economic downturn and the need to reduce ongoing staffing costs was the principal reason for dismissing the Claimant.

70 Whilst the Tribunal accepted that much of the Claimant's work continued (and was carried out by Mr McCulloch), the continuing need for estimating work at between 70 and 80% of earlier levels did not mean that there was no reduced need for employees overall. That is further evidenced by the earlier redundancy programme undertaken by the Respondent and its use of the furlough scheme.

71 The Tribunal considered whether the principal reason was the Claimant's length of service, and concluded that this was a secondary reason which arose in consequence of the redundancy situation which prevailed and was the key factor in his being selected for redundancy.

72 Given the almost complete lack of procedure followed by the Respondent in effecting the dismissal, and the Respondent's acceptance that there had been procedural unfairness, the Tribunal went on to consider remedy and the application of ***Polkey***.

73 The Tribunal first considered whether, had a fair procedure been followed, the Claimant would have been dismissed in any event. Considering the problematic evidence put forward by the Respondent, the Tribunal is not able to make any such finding. Moreover, there was nothing in the evidence from the Claimant to suggest that he would otherwise have left the employment of the Respondent.

74 Given the complete absence of any analysis by the Respondent of the ongoing need for the role of Estimator, and the interaction of the newly created position taken by Mr McCulloch, the Tribunal was not able to recreate a scenario whereby the Claimant would have been dismissed in any event.

75 Even if the Respondent's position that Mr McCulloch was employed to operate a particular machine is correct, the most cursory consultation with the Claimant over the proposal of his redundancy and the creation of that role would have resulted in a swift understanding that the Claimant was able to perform the work on the machine with minimal training and, like Mr McCulloch, would be in a position to continue estimating until such time as the machine was ready. The fact that Mr McCulloch became so heavily involved in estimating (with the known ongoing need for that work albeit at reduced levels) reinforces the conclusion that a fair process would not have led to the dismissal of the Claimant.

76 In response to Mr Hay's submission that it was not put to the Respondent's witnesses that the Claimant was skilled to operate the particular machine, the fact that both said that they did not know and did not ask means that there is no prejudice to the Respondent by virtue of that failure.

77 The Tribunal went on to consider whether the Claimant might otherwise have been fairly dismissed at a later stage. It had regard to the fact that, due to his illness, Mr McCulloch ceased work for the Respondent in May 2021. According to the evidence of Mr Sinton, his interface from then has been with Mr Davie alone. It is necessary to consider, therefore, whether given the ongoing financial difficulties facing the Respondent and the oil & gas sector, the redundancy might have been effected around that time. The Respondent did not give any evidence on this point. As a result, the Tribunal concluded that there was insufficient evidence to make any finding that dismissal would have taken place at or around that time. Given the issues affecting the industry and the lack of available opportunities, the Tribunal

was satisfied that had he not been dismissed, the Claimant would have remained in employment – at least to the date of the Hearing.

78 Whilst Mr Hay made reference to a deteriorating relationship between the Claimant and the Respondent, as evidenced by the text messages following his dismissal, the Tribunal accepted the Claimant's evidence that he sent them in the heat of the moment having been advised of his dismissal. Moreover, there was no suggestion from the Respondent's witnesses that the Claimant might have been dismissed by reason of conduct or for any other reason.

Compensation

79 Having regard to the Tribunal's finding that the Claimant was dismissed by reason of redundancy and the Claimant having received a redundancy payment, no basic award is due.

80 The Claimant's losses to the date of hearing amounts to £19,228. This is comprised of loss of salary and pension for 29.7 weeks, the net loss being £641.41 per week.

81 As noted, no issue was taken with the Claimant's attempts to mitigate his losses to date.

82 The Tribunal went on to consider whether future loss should be awarded and if so for what period. The Claimant sought compensation for one year (to 3 December 2021).

83 Having regard to the Claimant's ongoing duty to mitigate his losses, and the forecast for economic improvement, the Tribunal considered it appropriate to award future loss for a further 12 weeks only, amounting to £7,769.

84 Whilst the Claimant's solicitor made some allusion to the possibility of the Claimant being placed on furlough (leaving aside the conflict as to whether he had been placed on furlough previously), there was insufficient evidence

before the Tribunal of any meaningful analysis such as to make any finding on that point.

85 The tribunal awarded loss of statutory rights of £400.

86 The total compensatory award is, therefore, £27,397.

87 The Claimant having received Jobseeker's Allowance, the Recoupment Regulations apply to the compensatory award. The prescribed element is £19,228 and relates to the period from 3 December 2020 to 29 June 2021. The monetary award exceeds the prescribed element by £8,169 and this sum is payable immediately. The Respondent should await confirmation of the balance to be paid to the Claimant in accordance with the Recoupment Regulations.

Employment Judge **Judge R Mackay**

Dated **22/07/2021**

Date sent to parties **22/07/2021**