EMPLOYMENT TRIBUNALS (SCOTLAND)

5 **Case Number: 4104627/2020 (V)**

Final hearing held by video on 4, 5, 6 and 7 May 2021

Employment Judge M Whitcombe
10 **Tribunal Member N Elliot**
Tribunal Member M McAllister

Stuart Dorrans **Claimant**
15 **<u>In person</u>**

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Duracare Limited t/a Spearhead **Respondent**
<u>Represented by:</u>
Mr T Muirhead
(Consultant)
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JUDGMENT

The unanimous judgment of the Tribunal is as follows.

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(1) The claimant was unfairly dismissed.

(2) No compensation is awarded for unfair dismissal except for an award under section 38(2) of the Employment Act 2002 for failure to provide a
35 statement of particulars of employment. The Tribunal awards 2 weeks' pay totalling £720.

(3) The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply to that award.

(4) The claimant's dismissal was not because of sexual orientation and the claim for direct sexual orientation discrimination is dismissed.

(5) There was no breach of regulation 3 of the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002. That claim is also dismissed.

REASONS

Introduction

1. We will refer to the parties simply as "claimant" and "respondent". The claimant was formerly employed by the respondent on fixed term contracts from about 7 May 2018 until his dismissal, ostensibly for redundancy, with effect from 3 July 2020. The respondent is a family business employing about 53 staff. Various members of the Lindberg family occupy key positions in the company structure. In broad summary, the business provides goods and services to care homes. The part of the business with which this case is concerned was the repair and servicing of specialist mattresses in the air pressure mattress workshop, generally referred to simply as "the workshop".

2. The claim was commenced by a claim form received by the Tribunal on 28 August 2020. The claims and issues were clarified and recorded at a preliminary hearing for case management conducted by EJ Whitcombe on 28 October 2020. They were discussed and confirmed again at the start of this hearing. They are set out below.

Assistance given to the claimant

3. The claimant represented himself and was extremely anxious throughout the hearing. Breaks were taken when requested or necessary. Previous case management had set out the issues and given guidance on case preparation at some length, largely for the claimant's assistance. He was also encouraged to watch other hearings as a member of the public as part of his preparation, which he did. At points during cross-examination the claimant was offered assistance with the formulation of his questions. At all times we maintained a focus on the agreed issues, in order to ensure that all relevant matters were covered in evidence without straying into irrelevant matters.

Technical difficulties, lost time and listing

4. As part of prior case management it was decided that this hearing would take

place remotely, by video, using the CVP platform. Unfortunately, there were rather more technical difficulties during this hearing than is now common when using that platform. There is no need to go into details because they were all eventually overcome, but a good deal of time was lost as a result. Additionally, one member of the Tribunal panel had to attend an urgent and unmoveable medical appointment during one of the days listed for hearing. Happily, it was possible to make up time with some 0930 starts and an additional (fourth) day arranged at short notice. We are very grateful to the parties, their witnesses and the Tribunal staff for their patience, flexibility and willingness to ensure that this case could be completed without the substantial delay caused by failing to complete the case at the first attempt. Mr Muirhead gave up annual leave to make that possible and he should be thanked publicly for that.

Claims and Issues

Unfair dismissal

5. First, the **reason for dismissal**. The respondent must establish a potentially fair reason for dismissal and relies on redundancy (s.98(2)(c) ERA 1996). The respondent no longer relies on “some other substantial reason”, which had never been explained in the response. The claimant disputes that there was a genuine redundancy situation or that it was the reason for his dismissal.

6. Additionally, the claimant argues that the dismissal was unfair in the following respects (all relevant to the test of **fairness** in s.98(4) ERA 1996):

   a. in breach of its own procedures, the respondent failed to seek volunteers for redundancy, or to review and reduce overtime, before making compulsory redundancies;
   b. the selection pool was too small and should also have included at least one other employee, Ian McMath;

c. the claimant should have been furloughed under the Coronavirus Job Retention Scheme (“CJRS”) rather than dismissed;

d. temporary staff were brought into the workshop shortly after the redundancy exercise.

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7. By the end of the hearing the respondent conceded unfair dismissal on the basis that:

   a. the respondent had failed to apply and follow its own redundancy procedure;

10 b. the respondent had failed to identify a selection pool;

   c. the respondent had failed to adopt selection criteria;

   d. the respondent had failed adequately to consult the claimant on his selection for redundancy.

15 8. On the issue of remedy, the respondent argued that the claimant would have been selected for redundancy even if a fair procedure had been followed.

Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002

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9. The comparator is Ian McMath. The relevant differences in terms and conditions were:

   a. a difference in pay of £0.95 per hour;

25 b. overtime rates prior to October 2019;

   c. access to a bonus scheme prior to January 2020;

   d. it will be apparent from the above that jurisdictional time limit issues may arise, subject to arguments about a series of similar acts or failures under regulation 7(2)(a), or just and equitable extensions of

30 time under regulation 7(3).

10. The respondent disputes that Ian McMath was a “comparable permanent employee” for the purposes of regulation 3(1) and also that the differences in

terms constituted treatment on grounds that the claimant was a fixed term employee. The respondent also relies on an objective justification defence (regulation 3(2)(b)) on the basis that Mr McMath had greater length of service, experience and skill than the claimant.

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11. To the extent that jurisdictional time points arose, the claimant did not seek to argue that it would be just and equitable to hear any late complaints out of time under regulation 7(3) and gave no evidence to that effect. His argument was simply that there was a “series of similar acts” for the purposes of regulation 7(2)(a).

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Direct sexual orientation discrimination

12. The claimant is gay and he alleges that a significant cause of his dismissal (it need not be the sole or principal cause) was his sexual orientation (sections 12 and 13 of the Equality Act 2010).

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13. The matters relied on by the claimant to pass the burden of proof to the respondent are:

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   a. allegedly homophobic remarks made by Martin Cook (Service Manager) to Kevin Wilcox (formerly Workshop Supervisor), who is also a gay man;
   b. Mr Cook’s knowledge of the claimant’s own sexual orientation;
   c. Mr Cook asking other members of staff whether the claimant and Kevin Wilcox were in a relationship;

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   d. homophobic beliefs held by Mr Cook and other members of the respondent’s management;
   e. rules applied to Kevin Wilcox in relation to breaks, but not applied to anyone else, because Kevin Wilcox was gay;

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   f. the lack of any proper handling of Kevin Wilcox’s own grievance, because he was gay;
   g. the singling out of the claimant for redundancy, whereas a straight colleague in the same position (Mr McMath) was not;

h. the use of furlough for certain people known or presumed to be straight, but not for the claimant;

i. every other employee known or presumed to be straight received yearly service awards upon achieving two years' continuous service, but the claimant did not.

Failure to provide a written statement of terms

14. This is intended to be a claim for additional compensation under section 38 of the Employment Act 2002. However, the claimant accepts that the respondent was not in breach of its duty on the day that proceedings were commenced.

Amendment refused

15. On the third day of the hearing it appeared that the claimant was cross-examining in a way which suggested an intention to expand the issues set out above. After discussion he confirmed that it was his intention to do so. The new allegations were that it was both unfair and a breach of FTER 2002 to take into account the fact that the claimant was a fixed term employee when selecting him for redundancy. He accepted that these new issues were not contained within his claim form or witness statements and had not been identified either at the preliminary hearing for case management on 8 October 2020 (nearly 7 months ago) or in the confirmation of the issues at the start of the hearing. EJ Whitcombe's case management order of 8 October 2020 contained the following words, "*The respondent has prepared a helpful list of issues in its case management agenda, but I will express them slightly differently in this note in order to guide Mr Dorrans, who represents himself and who plans to do so at the final hearing too. He understood the importance of checking my list for errors or omissions since it will define the issues for the final hearing.*" It had not previously been suggested that the list of issues in that note was inaccurate or incomplete.

16. We explained that the claimant would therefore need to apply for permission to amend his claim and invited him to do so. He made that application. The respondent opposed it. Having heard submissions we rejected it having applied the principles in well-known cases such as ***Selkent*** [1996] ICR 836 and ***Abercrombie*** [2013] EWCA Civ 1148. We gave oral reasons at the time, but in brief summary we concluded that the balance of hardship and injustice weighed in favour of refusing the application. The claimant and his witness had already been cross-examined and had not given any evidence to support the new allegations. The respondent was not in a position immediately to defend them and would need time to take instructions, probably also time to prepare additional evidence and was highly likely to request an adjournment for the purpose. Witnesses on both sides would have to be recalled. This was not simply a question of applying an alternative legal analysis to facts already alleged and evidence already heard. While it would be an exaggeration to say that the case would have to be re-started, in certain respects it would be back at square one. The claimant had been given ample time and several opportunities to highlight any additional issues he wished to raise, and an attempt to do so on the third day of the hearing was simply too late and too prejudicial to the respondent, even allowing for the claimant's own anxiety, lack of experience and legal qualifications. We were sympathetic to the claimant's position, but that was precisely why so much effort had been put into exploring and recording the issues last October.

Evidence

17. The hearing was conducted on the basis of an agreed joint file of documents running to 193 pages. With the claimant's agreement, the respondent also referred to a small supplementary file of documents running to just 8 pages. We also ordered the production of some additional documents during the hearing. They were agreed by both sides to be relevant and necessary for a fair hearing.

18. Because of an earlier dispute about privilege, waiver and the legitimacy of

reference to certain documents (resolved by EJ Whitcombe at a preliminary hearing on 9 February 2021), it was unfortunately necessary to have two rounds of witness statements and all witnesses had both a witness statement and a supplementary witness statement. We pre-read those statements and they were subsequently verified on oath or affirmation. All witnesses were cross-examined. The witnesses were:

a. the claimant himself;
b. Kevin Wilcox (formerly Workshop Supervisor);
c. Martin Cook (Service Manager), who took the decision to dismiss;
d. Andrew Lindberg (Director), who heard the claimant's appeal against dismissal;
e. Bernard Lindberg (Marketing Director), who also had responsibility for HR and liaised between the respondent and its HR consultants.

Findings of fact

19. Many of the relevant facts were either agreed or matters of unchallenged evidence. Where facts were disputed we made our findings on the balance of probabilities, in other words on a "more likely than not" basis.

The claimant's employment and selection for redundancy

20. The respondent's service department had around 15 members of staff. Three, including the claimant, worked in the workshop. The others either worked in the office or were field engineers. During the relevant period the staff within the workshop were as follows.

a. Ian McMath, Mattress Repair Technician. He worked exclusively on the cleaning, repair and maintenance of air pressure mattresses.
b. Kevin Wilcox, Workshop Supervisor. He oversaw the operation of the workshop including the planning and scheduling of the workload, invoicing, quality control, repair quotations and stock control. He also spent about 20 to 30% of his time on mattress repairs and

maintenance. He was the most experienced and skilled of the members of staff carrying out that work.

c. Stuart Dorrans, the claimant. The claimant originally joined the respondent on 8 May 2018 at the request of Kevin Wilcox for a short period of holiday cover lasting two or three weeks. However, when that holiday cover ended there was a need to cover various other bits of miscellaneous work within the business and the claimant covered that work, for example helping with a backlog in the nurse call mat workshop, dealing with warranty repairs and helping in the service department parts store. For approximately the first 18 months of the claimant's employment he was a "floating employee" with no specific job title. He went wherever he was needed most. However, from about the end of October 2019 he worked almost exclusively in the mattress workshop. While the respondent had also planned for the claimant to assume the responsibilities of "service coordinator" on a temporary trial basis until the end of June 2020, that was never communicated to the claimant himself and he never understood that to be his role. He was not informed of the proposed change in writing either.

21. On 9 July 2019 the claimant was sent a written contract of employment initially running for the fixed term of three months from 1 July 2019. It is not necessary to examine the terms in any detail for present purposes. The claimant accepted that this constituted a statutory statement of terms and conditions and that he received it prior to the commencement of these proceedings. The contract referred to the employee handbook for a more detailed explanation of many matters.

22. In late 2019 the respondent became concerned about turnover in the mattress workshop. This is apparent from the notes of an unrelated meeting with Kevin Wilcox on 18 December 2019. It is also consistent with views expressed by Mr McMath in an appraisal meeting. Throughput and turnover were both in decline. We also have been provided with spreadsheets showing monthly and quarterly turnover which confirm a reducing trend. There are some anomalies

but we accept that the April 2020 figure was inflated as a result of catching up on invoices from earlier months. Overall, we accept the respondent's evidence that the general trend was one of declining turnover and that the respondent was worried by that.

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23. We also find that the worrying decline in turnover predated the dramatic effects of the Covid 19 pandemic. The claimant suggested that the reason for diminished turnover was the fact that additional cleaning and decontamination necessitated by the pandemic meant that the workshop took longer to process the average mattress. However, if that were part of the cause of declining turnover then a backlog of incoming mattresses could be expected to build up. Part of the throughput would be converted to backlog, at least initially. We were not shown any evidence of that and Mr Cook was adamant that there was no such backlog. We find that the decline in turnover predated and was not solely caused by the pandemic.

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24. Consequently, Mr Cook wrote to the claimant in a letter dated 1 June 2020 inviting him to attend a meeting to be held on 3 June 2020. The letter reminded the claimant that his temporary contract was due to expire on 30 June 2020 and stated that due to a regrettable downturn in the workload of the air pressure mattress workshop the company might not be able to extend the claimant's contract beyond the current expiry date. The claimant was reminded of his right to be accompanied. The purpose of the meeting on 3 June 2020 would be to discuss the reasons why the claimant's employment might come to an end, whether the claimant believed that it should continue and if so how, what alternative work might be available and the consequences for the claimant if his contract could not be extended. The claimant was warned that if the company was not in a position to extend the temporary contract then the meeting might result in the termination of his employment on one month's notice upon expiry of the fixed term. The letter acknowledged that the claimant would be entitled to a redundancy payment if his employment terminated when the temporary contract expired.

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25. The notes of the meeting of 3 June 2020 are brief but they record a discussion

along the lines envisaged in the letter of invitation. However, no note has been made of the claimant's comments at all, although Mr Cook apparently explained that he would "consider remarks made" before informing the claimant of his conclusion. Mr Cook's evidence to us was that he believed that he had followed the redundancy policy, even though he thought that it did not strictly apply to the situation where a fixed term contract was not renewed.

26. The conclusion was confirmed in a letter dated 4 June 2020. The respondent said that there was no alternative employment into which the claimant could be moved and so it was not in a position to renew his contract of employment. Its termination on 3 July 2020 was confirmed and the letter accordingly gave one month's notice of expiry of the fixed term. In fact, that appears to be a very slight extension of the fixed term presumably in order to ensure that one month's notice was given, but nothing turns on that. The claimant's entitlement to a redundancy payment was acknowledged and he was reminded of his right of appeal.

27. The claimant did appeal, with detailed reasons, in a letter dated 9 June 2020. An appeal hearing to be conducted by Andrew Lindberg was arranged for 18 June 2020. Mr Lindberg was not aware of the claimant's sexual orientation and we therefore accept that it formed no part of his reasoning. The claimant briefly suggested in cross-examination that although Mr Lindberg did not *himself* discriminate his decision was nonetheless based on "tainted information" supplied by Mr Cook. However, the claimant conceded that he could not identify any tainted information and then withdrew that allegation.

28. Mr Lindberg's view was that he was taking the decision afresh and that the appeal was therefore more in the nature of (what employment lawyers might call) a full rehearing than a more limited review of the original decision. Curiously, Mr Lindberg referred the claimant to the disciplinary and appeal procedure but not the redundancy procedure. The notes of the appeal meeting are once again brief and the meeting appears to have lasted just 25 minutes. The respondent's stance was that the temporary contract had

terminated because there was insufficient workload and it was referred to as a “redundancy”. It became clear during cross-examination that Andrew Lindberg did not follow the redundancy procedure, although he claimed to have applied it.

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29. The outcome of the appeal was notified to the claimant in a letter dated 29 June 2020. The essential point was that in Andrew Lindberg’s view there was insufficient work for the previous staff numbers in the workshop and that would be the case even if there were to be a post-Covid recovery in levels of work. The claimant was reassured that the decision to terminate his contract was not based on the standard of his work and that the respondent would be happy to write a good reference for any future prospective employer. The decision to terminate the temporary contract therefore stood.

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15 *Redundancy policy*

30. The May 2016 edition of the respondent’s employee handbook contained a redundancy policy at section 8.8. It stated that if a redundancy situation arose, for whatever reason, the company would take whatever steps were reasonable in an effort to avoid compulsory redundancies. A bullet point list of example steps included: analysing overtime requirements; reducing hours; layoff with statutory guarantee pay; seeking voluntary redundancies and asking whether anyone had plans to retire or was considering a career move. If compulsory redundancies were necessary then employees would be involved and consulted at meetings to discuss selection criteria and any alternative positions and would be given an opportunity to put forward views of their own. The respondent reserved the right to reject applications for voluntary redundancy if it believed that the volunteer had skills and experience that needed to be retained for the future viability of the business.

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31. It became clear to us that all of the respondent’s witnesses laboured under a fundamental misapprehension. They thought that because the proposal was to allow the claimant’s fixed term contract to expire without renewal, the redundancy procedure might not or did not apply. Inconsistently, the

respondent's witnesses did sometimes faintly suggest that they had followed the procedure, but accepted to a greater or lesser degree that they had not when its elements were put to them.

32. The claimant was then placed on what the respondent called "garden leave" until the expiry of the fixed term contract on 3 July 2020. The claimant was paid a statutory redundancy payment which he accepts was calculated correctly.

Developments after notice of dismissal

33. On 8 June 2020 Kevin Wilcox commenced a period of sick leave for work related stress. However, we accept that it would not immediately have been clear that Mr Wilcox's absence would be long-term. In fact, he did not return to work and left the respondent's employment on 25 September 2020.

34. At around the same time Mr McMath underwent stent treatment for a heart problem. He was absent for about two weeks and was then working at reduced capacity for a while after his return to work. It had been known that Mr McMath would be undergoing that procedure but the precise dates were notified at relatively short notice. It was also known that Mr McMath would at some point require sequential procedures on each knee. The first procedure was expected to be in late 2020 but the precise timing was unknown. It would entail about 4-6 weeks off work.

35. Consequently, the respondent engaged an agency worker, Darren Holmes, to undertake driving and mattress cleaning duties from the end of June 2020. He spent 50% of his time in the workshop and the other 50% on other duties. Once it became clear that Kevin Wilcox's absence was likely to be long-term from about August 2020 the respondent also engaged another agency worker, Stephen Abercrombie, who similarly worked for 50% of his time in the mattress workshop and the other 50% on other duties. It can therefore be seen that by the autumn of 2020 the mattress workshop was functioning with two whole time equivalent members of staff (Mr McMath, following his return

to work and two agency workers who each spent half of their time in the workshop).

Material from which we were invited to infer discrimination

36. We have already set out a list of factors on which the claimant said he would rely to show that the burden of proof passed to the respondent in the discrimination claim. These are the "*Madarassy*" factors relied upon in addition to less favourable treatment and the possession of a protected characteristic. There is some overlap between them and some other points were dealt with in evidence though not strictly part of the list. Since this is background material relevant to the burden of proof in the central claim we will not apply the approach required by s.136 of the Equality Act 2010 to these background matters too: they are not themselves allegations of a contravention of the Act.

37. The respondent's directors and Martin Cook are all members of the Plymouth Brethren church. Mr Cook learned from another member of staff that Kevin Wilcox was gay. Kevin Wilcox later confirmed the same thing to Mr Cook and asked whether Mr Cook's religious beliefs meant that it would be a problem. Mr Cook replied to the effect that his religion did not accept homosexuality since it was perceived to be "abhorrent to God" but that he was not concerned with Mr Wilcox's sexual orientation and it would not affect the working relationship. Mr Cook accepted that he used the word "abhorrent" but did not accept the claimant's suggestion in cross-examination that it was offensive to describe the sexual orientation of Mr Wilcox and the claimant in that way. The precise date of this conversation is unclear but it happened during 2019.

38. Our view aligns with that of the claimant because whatever Mr Cook's religious beliefs they were expressed in an insensitive and offensive manner. "Abhorrent" is a strong and pejorative term and we are sure that more diplomatic language could have been used to express Mr Cook's sincerely held religious beliefs. "Abhorrent" is often defined in terms of inspiring disgust and loathing, being repugnant or causing or deserving strong dislike or

hatred. We understand the context, but we find that the use of that word in context was humiliating, degrading and offensive to gay people.

39. As for the claimant's own sexual orientation, Mr Cook accepts that he became aware of it somehow, but without more there is no reason for us to draw adverse inferences simply from the fact of that knowledge.

40. We find on the balance of probabilities that, at some point, Mr Cook probably did enquire whether Mr Wilcox and the claimant were "together", meaning in a relationship. The question was not asked directly of either of them but it arose in conversation with other members of staff, most likely including service co-ordinator Gillian Stewart. On the claimant's evidence, it must have occurred before April 2019. However, we also accept that Mr Cook would and probably did make similar enquiries from time to time in relation to possible heterosexual relationships between members of staff. According to Mr Wilcox's evidence, this question was probably asked within the first few months of the claimant's employment, long before his dismissal. That is therefore our finding too.

41. We do not accept that the enforcement of rules in relation to Mr Wilcox's breaks was an example of singling him out for adverse treatment because he was known to be a gay man. We think it is much more likely that Mr Cook is correct: it was a simple reminder of rules in order to deal with a perceived departure from policy in relation to breaks and the time taken to heat up soup. We regard this as a very minor matter in any event. There is no circumstantial material which would allow us to infer that Mr Wilcox's sexual orientation played any significant part in that matter.

42. We heard very little evidence on which we could assess whether Mr Wilcox's grievance was handled improperly, as suggested by the claimant. Mr Wilcox did not deal with this at all in his own witness statements. We do not find that proved on the balance of probabilities. Further, we are not satisfied that the reason for any shortcomings in the handling of Mr Wilcox's grievance was

because of his sexual orientation. There is no evidence that it had any bearing on the respondent's attitude towards his concerns.

43. We make no findings at this point on the allegation that the claimant was singled out for redundancy whereas a straight colleague (Mr McMath) was not. That is effectively a restatement of the claimant's case rather than a component of it, and we deal with that below.

44. We did not hear any evidence about the circumstances or the sexual orientation of staff allegedly furloughed and so it is difficult to make any comparison with them. We find that the failure to use furlough in the claimant's case was because the respondent honestly believed that the need to make a redundancy had arisen prior to and independently of the effects of the pandemic and that it would therefore have been inappropriate to take advantage of the furlough scheme.

45. It was suggested that Mr Cook had forbidden staff in the workshop from discussing personal matters at work because he was discomfited that Daniel McLaren, who had previously worked in the workshop and who was also a gay man, was discussing his personal life. We are not persuaded of that on the balance of probabilities. We accept Mr Cook's explanation that he was simply concerned that chatting about any personal matters was distracting staff from the job they were employed to do.

46. We do not accept that the claimant was originally placed on a temporary contract because of his sexual orientation. There is just no evidence to support that conclusion. We find it to be far more likely that the respondent put the claimant on a fixed term contract because it required flexibility and was uncertain whether there was a long-term need for the claimant's services. That would be consistent with the "floating role" he initially performed. We find those business-based explanations to be the probable cause and reject the suggestion that sexual orientation played any part.

47. As for the two years' service award, we find that the claimant's treatment had

nothing whatsoever to do with sexual orientation and that in any event Mr Cook had nothing to do with that treatment. Mr Cook treated all employees alike in this regard: he did not congratulate any of them on achieving two years' continuous service. It was the HR department that sent out messages and gifts of congratulation and the probable cause of any omission in the claimant's case was confusion arising from his fixed term contracts and a failure to appreciate his overall length of service.

Relevant terms and conditions

48. For the purposes of the claim under the Fixed-term Employees Regulations 2002 we make the following additional findings of fact.

49. According to the schedule of loss the claimant only compares himself with Mr McMath from July 2019 onwards, although he appeared to broaden the comparison in evidence. We will start from the beginning of his employment for the sake of completeness.

50. Initially, the claimant received less favourable overtime rates than Mr McMath. However, that was:

   a. for the initial period during which the claimant undertook a "floating role", and was not based solely in the workshop at all; and
   b. for an initial 3 months trial period in the workshop, from 1 June 2019 until 31 August 2019.

51. Once the claimant became settled in the workshop in the autumn of 2019 he received exactly the same overtime rate as Mr McMath. That change took effect from 23 October 2019, as the claimant accepted in cross-examination.

52. With effect from January 2020 the claimant was put on the same bonus scheme too.

53. The only difference continuing after January 2020 was the £0.95 difference

in basic hourly rate.

54. The claimant received 95p per hour less than Mr McMath for normal hours of work. We find that Mr McMath was a more experienced employee as a result of his greater length of service in the mattress workshop. Mr McMath had been employed by the respondent since November 2009 and had been in the workshop since June 2015.

Statement of terms and conditions (relevant to the claim under s.38 of the Employment Act 2002)

55. The claimant accepted that he received a relevant statement of terms and conditions in the form of a written "contract of employment" signed by him on 12 July 2019. In terms of the duty owed under section 1(1) or 4(1) of the Employment Rights Act 1996 that statement contained a statement of all relevant terms apart from:
    a. the date on which the period of continuous employment began;
    b. a statement that there were no relevant terms, as required by section 2(1), in relation to probationary period, collective agreements and training entitlement.

Legal Principles

Unfair dismissal

56. It is for the respondent to prove a potentially fair reason for dismissal falling within section 98(1)(b) or (2) of the Employment Rights Act 1996. A reason for dismissal is a set of facts known to the employer, or beliefs held by the employer, which cause it to dismiss the employee. This therefore requires the employer to prove what was in its mind at the relevant time. The reason need not be correctly labelled at the time of dismissal. See generally ***Abernethy v Mott, Hay and Anderson*** [1974] ICR 323, NIRC.

57. In this case the employer relies on redundancy (section 98(2)(c) of the

Employment Rights Act 1996). That is in turn defined by section 139 of the same Act. The relevant parts are reproduced below.

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.

58. Subsection (6) provides that the words “cease” and “diminish” in the above subsection mean cease and diminish either permanently or temporarily and for whatever reason.

59. If the employer proves a potentially fair reason for dismissal then the test of fairness under section 98(4) is answered by having regard to the reason shown by the employer and 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. The question must be determined in accordance with equity and the substantial merits of the case.

60. On the issue of fairness the burden of proof is neutral.

61. It is well-known that the Tribunal must not substitute its own view of the

appropriate outcome for that of the respondent. Instead, fairness is assessed by reference to the range of responses which might have been adopted by a hypothetical reasonable employer in the same situation. The law recognises that different reasonable employers might respond in different reasonable ways to the same situation. If the dismissal falls within that range then it is fair. Only if it falls outside that range is it unfair. The "range of reasonable responses" test applies as much to procedural points as it does to the overall question whether to dismiss (***Sainbury's Supermarkets v Hitt*** [2002] EWCA Civ 1588).

62. Where an employee has exercised a right of appeal the Tribunal must consider the totality of the process (***Taylor v OSC Group Ltd*** [2006] IRLR 613). A defective first hearing might be corrected by an appeal. The issue is not the characterisation of the appeal as a review or a re-hearing, but rather whether the process as a whole was fair.

63. It may be relevant to compensation for the Tribunal to ask whether any unfairness made a difference to the outcome, and if so what. ***Polkey v AE Dayton Services Ltd*** [1988] ICR 142, HL established that a Tribunal may reduce compensation by a percentage to take account of the possibility that the employee would have been dismissed even if a fair procedure had been followed.

64. If it is not realistic or practicable to embark upon such an exercise, or if the exercise would be highly speculative, then the Tribunal should not do so (***King v Eaton (No.2)*** [1998] IRLR 686, CS). That said, a degree of uncertainty is an inevitable feature of the exercise and the mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence (***Andrews v Software 2000 Ltd*** [2007] IRLR 568, EAT). It is only where the evidence is so scant that it can effectively be ignored that a tribunal should decline to undertake a ***Polkey*** exercise (***Eversheds v De Belin*** [2011] ICR 1137, EAT).

65. Even if the Tribunal concludes that the outcome would have been the same

it is important to consider *when* dismissal following a fair procedure would have taken place.

Direct sexual orientation discrimination

66. Sexual orientation is a protected characteristic for the purposes of the Equality Act 2010 (section 12).

67. Direct discrimination is defined by section 13 of the same Act. A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

68. Where that comparison is made there must be no material difference between the circumstances relating to each case (section 23(1) of the Act).

Burden of Proof

69. The burden of proof in proceedings relating to a contravention of the Equality Act 2010 is governed by section 136 of that Act. The correct approach is set out in section 136(2) and (3). References to "the court" are defined so as to include an Employment Tribunal.

> *(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision.*

70. The Court of Appeal has repeatedly stressed that judicial guidance on the burden of proof is no more than guidance and that it is no substitute for the statutory language.

71. We have taken into account the well-known guidance given by the Court of

Appeal in ***Igen Ltd v Wong*** [2005] ICR 931 (sometimes referred to as "the revised ***Barton*** guidance"), which although concerned with predecessor legislation remains good law. It was approved by the Supreme Court in ***Hewage v Grampian Health Board*** [2012] ICR 1054. ***Ayodele v Citylink Ltd*** [2018] ICR 748, CA confirmed that differences in the wording of the Equality Act 2010 have not changed the test or undermined the guidance in ***Igen Ltd v Wong***.

72. First, the claimant must prove certain essential facts and to that extent faces an initial burden of proof. The claimant must establish a "*prima facie*" or, in plainer English, a "first appearances" case of discrimination which needs to be answered. If the inference of discrimination *could* be drawn at the first stage of the enquiry then it *must* be drawn at the first stage of the enquiry, because at that stage the lack of an alternative explanation is assumed. The consequence is that the claimant will necessarily succeed *unless* the respondent can discharge the burden of proof at the second stage.

73. However, if the claimant fails to prove a "*prima facie*" or "first appearances" case in the first place then there is nothing for the respondent to address and nothing for the tribunal to assess. See ***Ayodele*** at paragraphs 92-93 and ***Hewage*** at paragraph 25.

74. At the first stage of the test, when determining whether the burden of proof has shifted to the Respondent, the question for the tribunal is not whether, on the basis of the facts found, it *would* determine that there has been discrimination, but rather whether it *could* properly do so.

75. The following principles can be derived from ***Igen Ltd v Wong*** (above), ***Laing v Manchester City Council*** [2006] ICR 1519 EAT, ***Madarassy v Nomura International plc*** [2007] ICR 867, CA and ***Ayodele v Citylink Ltd*** (above), which reviewed and analysed many other authorities.

   a. At the first stage a tribunal should consider all the evidence, from whatever source it has come. It is not confined to the evidence

adduced by the claimant and it may also properly take into account evidence adduced by the respondent when deciding whether the claimant has established a *prima facie* case of discrimination. A respondent may, for example, adduce evidence that the allegedly discriminatory acts did not occur at all, or that they did not amount to less favourable treatment, in which case the tribunal is entitled to have regard to that evidence.

b. There is a vital distinction between "facts" or evidence and the respondent's "explanation". While there is a relationship between facts and explanation, they are not to be confused. It is only the respondent's *explanation* which cannot be considered at the first stage of the analysis. The respondent's *explanation* becomes relevant if and when the burden of proof passes to the respondent.

c. It is insufficient to pass the burden of proof to the respondent for the claimant to prove no more than the relevant protected characteristic and a difference in treatment. That would only indicate the *possibility* of discrimination and a mere possibility is not enough. Something more is required. See paragraphs 54 to 56 of the judgment of Mummery LJ in ***Madarassy***.

76. However, it is not always necessary to adopt a rigid two stage approach. It is not necessarily an error of law for a Tribunal to move straight to the second stage of its task under section 136 of the Equality Act 2010 (see for example ***Pnaiser v NHS England*** [2016] IRLR 170 EAT at paragraph 38) but it must then proceed on the assumption that the first stage has been satisfied. The claimant will not be disadvantaged by that approach since it effectively assumes in their favour that the first stage has been satisfied. The risk is to a respondent which then fails to discharge a burden which ought not to have been on it in the first place (see ***Laing v Manchester City Council*** [2006] ICR 1519 EAT at paragraphs 71 to 77, approved by the Court of Appeal in ***Madarassy***). Tribunals must remember that if and when they decide to

proceed straight to the second stage.

77. It may also be appropriate to proceed straight to the second stage when the claimant compares their treatment to that of a hypothetical comparator. Sometimes the reason for the treatment, and the question whether there is a *prima facie* or "first appearances" case of discrimination, will inevitably be intertwined with the question whether the claimant was treated less favourably than a comparator, especially a hypothetical comparator. In cases of that sort the decision on the "reason why" issue will also provide the answer on the "less favourable treatment" issue (see Lord Nicholls in ***Shamoon v Chief Constable of the RUC*** [2003] ICR 337 at paragraphs 7 to 12 and Elias LJ in ***Laing v Manchester City Council*** [2006] ICR 1519 EAT at paragraph 74).

78. In a similar vein, the Supreme Court in ***Hewage*** (above) observed that it was important not to make too much of the role of the burden of proof provisions. They required careful attention where there was room for doubt as to the facts necessary to establish discrimination but they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or The other.

Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002

79. The claim is brought under regulation 3, which also requires a consideration of regulation 4. The relevant parts are as follows.

3 (1) A fixed-term employee has the right not to be treated by his employer less favourably than the employer treats a comparable permanent employee—

(a) as regards the terms of his contract; or

(b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.

(2) …

(3) The right conferred by paragraph (1) applies only if—

(a) the treatment is on the ground that the employee is a fixed-term employee, and

(b) the treatment is not justified on objective grounds.

(4) Paragraph (3)(b) is subject to regulation 4.

(5) In determining whether a fixed-term employee has been treated less favourably than a comparable permanent employee, the pro rata principle shall be applied unless it is inappropriate.

(6) …

(7) …

80. Objective justification is dealt with in regulation 4.

(1) Where a fixed term employee is treated by his employer less favourably than the employer treats a comparable permanent employee as regards any term of this contract, the treatment in question shall be regarded for the purposes of regulation 3(3)(b) as justified on objective grounds if the terms of the fixed term employee's contract of employment, taken as a whole, are at least as favourable as the terms of the comparable permanent employee's contract of employment.

(2) Paragraph (1) is without prejudice to the generality of regulation 3(3)(b).

81. The Tribunal must first determine whether the claimant and his comparator were engaged in the same or broadly similar work. If so, it must then consider whether the less favourable treatment was on the ground that the claimant was a fixed term employee. Only if that question is answered affirmatively is there a need to consider objective justification. A finding that the work was broadly similar does not preclude justification based upon such differences as do exist. The question is whether they are sufficient to justify the different treatment (***Manchester College v Cocliff*** (UKEAT/0035/10/CEA).

Failure to provide a statement of terms

82. Section 38 of the Employment Act 2002 sets out a number of situations in which a tribunal should award either 2 or 4 weeks' pay where there has been a failure to supply the statement of employment particulars required by sections 1 or 4 of the Employment Rights Act 1996. Matters are assessed at the point "when the proceedings were begun" and the Tribunal must consider whether at that date the employer was in breach of its duty to give the employee the written statement of initial employment particulars or of particulars of change. If satisfied of that then the Tribunal *must* award the "minimum amount" of two weeks' pay and *may*, if it considers it just and equitable in all the circumstances, award the "higher amount" of 4 weeks' pay instead.

Reasoning and conclusions

Unfair dismissal – the reason for the dismissal

83. The respondent has satisfied us on the balance of probabilities that it had a genuine belief in redundancy as the reason for dismissal. While it would be fair to say that there was a degree of confusion in the way the witnesses expressed their reasoning they are not employment lawyers and they are not to be criticised for failing to understand that the non-renewal of a fixed term contract is in law a dismissal, but that the Tribunal is concerned with the reason for that dismissal. A lay person might understandably blur the distinction between dismissal and the reason for dismissal.

84. On a fair assessment of their evidence it was clear to us that the respondent's witnesses thought that the workshop could no longer sustain 3 whole time equivalent staff given its declining turnover. That was the reason for the failure to renew the claimant's fixed term contract. That reason clearly satisfies the definition of redundancy in section 139 of the Employment Rights Act 1996 because the requirements of the business for employees to carry

out work of a particular kind (the servicing and repair of mattresses) had diminished. The diminution was at the very least temporary, and having regard to subsection (6) that is enough for the statutory test to be met.

5 85. We are satisfied that the employer honestly and genuinely believe those things because it is consistent with the general trend of the turnover figures and also with the fact that the workshop continued to function with just two whole time equivalent members of staff after the end of the claimant's employment.

10

Unfair dismissal - fairness

86. Since the respondent conceded that the dismissal was unfair in accordance with section 98(4) we will keep our reasoning brief. There was a serious
15 failure to follow the respondent's own redundancy procedure as well as a failure to follow basic general principles of fairness in selection for redundancy.

87. There was no consultation worth the name - it was in truth not much more
20 than notification. The respondent simply failed to apply its mind to the question whether there should be a selection pool and we find that all reasonable employers would have constructed one. It is less easy to say who should have been in that pool. It seems to us that some reasonable employers might have limited it to the claimant and Mr McMath whereas
25 others might also have included Mr Wilcox. In breach of its own procedures, the respondent also failed to seek volunteers for redundancy, or to review and reduce overtime before making compulsory redundancies.

88. However, we do not accept the claimant's arguments on fairness in full. We
30 do not think that the failure to furlough the claimant is something which fell outside the reasonable range of procedures. There was plenty of material upon which a reasonable employer could think that the need for redundancies predated the coronavirus pandemic and was unrelated to it. In those circumstances we are unable to find that all reasonable employers would

have used furlough as an alternative to redundancy.

89. Similarly, we find that at least some reasonable employers would have used temporary staff in the workshop just as this employer did. While it is true that one temporary member of staff began to work 50% of his time in the workshop during the claimant's notice period, it would not have been apparent to a reasonable employer at that time that Mr Wilcox would be absent for a prolonged period. Since there was no reason to think that there would be a need for long-term sickness cover and it was entirely likely that Mr Wilcox might return at fairly short notice we do not think that the failure to call the claimant back from garden leave or (more pertinently) to renew his contract fell outside the reasonable range. The other temporary member of staff was engaged well after the end of the claimant's employment and there was no evidence that the need to do so was envisaged before the end of the claimant's employment. In those circumstances it has no bearing on fairness.

Unfair dismissal compensation

90. It is common ground that the claimant has received his full entitlement to statutory redundancy pay and that it therefore extinguishes his entitlement to a basic award for unfair dismissal. We therefore turn to the compensatory award and "***Polkey***" issues, explained above.

91. We have considered carefully what difference the unfair aspects of this dismissal made to the outcome. We unanimously concluded that the claimant would also have been dismissed as redundant by the same date after a fair procedure and that the compensatory award should therefore be reduced by 100% to nil.

92. Our reasons for a 100% reduction in the compensatory award are as follows.
    a. While there should have been a selection pool and selection in accordance with relevant and objective criteria, there was no realistic chance that the claimant would have scored more highly than either Mr McMath or Mr Wilcox given their much greater experience and

length of service. We could not conceive that the claimant could have ranked higher than either of them in any fair selection process and he would always have been ranked second of two, or third of three. We hope he will not take that as any criticism of his skill, dedication or ability, we just think that Mr McMath and Mr Wilcox would have been rated more highly. We heard no evidence to suggest that any potential pool member would have scored badly on other typical criteria, such as disciplinary record or attendance.

b. There was no evidence to suggest that seeking volunteers for redundancy or enquiring about possible ambitions to move on would have avoided the need to make one employee redundant. Even if Mr McMath or Mr Wilcox had responded to a request for volunteers then we think it is likely that the respondent would have declined that request because their skills and experience were so useful to the business.

c. The failure to examine overtime did not make a difference to the outcome. The workshop was a small department with just three staff. Some need for overtime in order to react to fluctuations in demand or to deal with urgent priorities is probably inevitable and it cannot necessarily be converted to hours that a redundant member of staff could have worked as an alternative to dismissal. Further, the volume of overtime being worked at the relevant time was simply too low to support a finding that even an outright overtime ban would have avoided the need to make redundancies. We accept that the analysis of overtime included in the joint file of documents is broadly accurate.

d. As for consultation, we have been able to listen to the claimant during this hearing and we make the working assumption that he would have made very similar points if consultation had been meaningful. However, we have not heard anything which persuaded us that he could have avoided a fair selection for redundancy. Additional consultation would have ensured that he was treated with proper dignity and respect but it would not have altered the outcome.

93. We have also considered whether the requirements of a fair process would have meant that the claimant would have been dismissed at a later date than was actually the case. We do not think so. The selection pool would have been small and fair selection could have been carried out very rapidly indeed. Meaningful consultation with all in the pool would not have taken very long either and could certainly have been achieved during the claimant's month long period of garden leave. We find that the date of dismissal assuming a fair procedure would have been exactly the same.

94. However, all of this is subject to an increase in compensation under section 38 of the Employment Act 2002. We deal with that below.

Direct sexual orientation discrimination

95. We have concluded that the evidence is not sufficient for the burden of proof to pass to the respondent, but that even if it were, the respondent has satisfied us that sexual orientation played no part whatsoever in the claimant's dismissal.

96. We have already set out our findings on the "***Madarassy***" factors identified by the claimant and we refer back to those. In many respects our view of the background material and its probative value was very different from that of the claimant. In some respects we found there was no poor treatment of Mr Wilcox or the claimant at all. In others we found that, whatever the quality of that treatment, there was nothing to link the treatment to sexual orientation. The most troubling incident was Mr Cook's insensitive and offensive description of homosexuality as "abhorrent". However, that was a single incident which occurred a long time before the claimant's dismissal. We found no cogent evidence of antipathy towards the claimant in the intervening period. Crucially, we also accepted Mr Lindberg's evidence that he was simply unaware of the claimant's sexual orientation. He heard the appeal against dismissal and the claimant withdrew the suggestion that his decision was based on tainted (i.e. discriminatory) information supplied by Mr Cook.

In those circumstances the decision to confirm the dismissal on appeal cannot have been because of a sexual orientation of which Mr Lindberg was unaware.

97. Looking at all of those matters in the round, and ignoring for the moment the respondent's explanation, we do not think that we *could* conclude on that basis that there had been unlawful discrimination. The test in section 136(2) of the Equality Act 2010 is not satisfied and the claim therefore fails.

98. Even if we had found that the burden of proof had passed to the respondent, it would have persuaded us on the balance of probabilities that it had an explanation for the claimant's dismissal which had nothing whatsoever to do with his sexual orientation. The respondent's explanation for the treatment is essentially:

   a. that it had a genuine business need to make redundancies; and
   b. the admitted unfairness was due to a genuine misunderstanding of what fairness required in this situation.

99. In our findings on unfair dismissal we accepted that the respondent honestly and genuinely believed that there was a redundancy situation. The respondent's handling of the subsequent procedure was deeply deficient but we accept that Mr Cook and Mr Lindberg were genuinely ignorant of the requirements of fairness rather than wilfully ignoring them. Mr Cook's belief that the company's redundancy procedure did not apply to the non-renewal of a fixed term contract was deeply flawed but nevertheless honest in our assessment. We are therefore satisfied that the respondent's deficient and unfair redundancy procedure was simply a botched implementation of a defensible business decision. There is no reason to think that the respondent deliberately adopted that flawed procedure in order to ensure that the claimant, rather than someone else, was selected for redundancy. Finally, we note once again that Mr Lindberg, who confirmed the dismissal on appeal, was not even aware of the claimant's sexual orientation and cannot therefore have been influenced by it, whether consciously or subconsciously.

100. For all of those reasons, the claim for direct sexual orientation discrimination fails.

5 *Less favourable treatment of the claimant as a fixed term employee*

101. The comparator is Mr McMath.

102. Because time limit points may arise, we will deal first with the only difference
10 in terms which was ongoing at point of dismissal: Mr McMath was paid £0.95 per hour more than the claimant.

103. We find that the difference of £0.95 in the basic hourly rate was not on the ground that the claimant was a fixed term employee for the purposes
15 regulation 3(3)(a) FTER. Rather, it was because he had less experience and shorter service than Mr McMath, both in the workshop and more generally. Further, if necessary, we find that the difference in experience and length of service is an objective justification for that difference in basic pay falling within regulation 3(3)(b) FTER. It sufficiently explains a difference of £0.95 an hour.
20 The claim in relation to basic hourly rate therefore fails.

104. The other aspects of the claim under FTER are therefore out of time since none of them were continuing within three months prior to 15 July 2020 when ACAS received early conciliation notification. Since the claimant does not
25 argue that it would be just and equitable to hear any late complaints out of time, they fail because we have no jurisdiction to hear them under regulation 7 FTER.

105. The claimant's sole argument on time limits was that the other aspects of the
30 claim were part of a series of similar acts or failures for the purposes of regulation 7(2)(a) FTER. We do not think that alleged failures in relation to bonus and overtime rates are similar to the alleged failure in relation to basic hourly rate, but even if they had been we have rejected the claim in relation to basic hourly rate and therefore any series of alleged failures ends too early
35 to help the claimant.

106. Even if there had not been any time limit issues and the other aspects of the claim had fallen within our jurisdiction, we would have rejected them on their merits.

107. Firstly, we do not think that Mr McMath was a valid comparator until the claimant ceased to have a "floating" role, completed his trial period in the workshop and became more permanently settled there in Autumn 2019. Prior to that point their work was too different and Mr McMath was not a "comparable permanent employee" for the purposes of the comparison in regulation 3 FTER.

108. Secondly, we are not persuaded that the differentials in relation to bonus or overtime rates were on the grounds that the claimant was a fixed term employee for the purposes of regulation 3(3(a). Rather, we think the differences were because the Claimant had begun his employment in a rather different role from Mr McMath's in which bonuses and enhanced overtime rates were not standard. The evidence we heard was that these were standard aspects of remuneration in the workshop, but not necessarily in other roles. To the extent that there was a delay in the claimant being afforded the same overtime rates and bonus as Mr McMath on completion of his trial period in the workshop, it was not on grounds of his fixed term status. It was a short-lived historical legacy.

109. Thirdly, for the duration of the claimant's trial period in the workshop the different overtime rate and lack of bonus were in any event objectively justified by the fact that the claimant was on trial with no firm expectation of a more permanent role in the workshop. Regulation 3(3)(b) therefore applied.

Failure to provide a statement of terms

110. We have already made findings that there was a very minor and somewhat technical failure to comply fully with the requirements of the Employment Rights Act 1996 in relation to statements of employment particulars, or changes to them. Not only was the failure rather minor and technical, there is

no evidence that it was deliberate or that it caused the claimant any real difficulty or loss. Substantially, the respondent had complied with its duty. In those circumstances we award two weeks' pay under section 38(2) of the Employment Act 2002. There are no exceptional circumstances falling within subsection (5) which would make it unjust to do so.

111. Subsection (6) applies the definition of a week's pay in Chapter 2 of Part 14 of the Employment Rights Act 1996, giving a figure of £360 per week and a total award of £720. This forms part of the compensatory award for unfair dismissal by virtue of sections 124A and 118(1)(b) of the Employment Rights Act 1996.

112. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply because we have not awarded any compensation for loss of earnings ("immediate loss") and the award above does not fall within the definition of "monetary award".

Conclusion

113. Those are the reasons why we have upheld the unfair dismissal claim, dismissed the others, but awarded only modest compensation for unfair dismissal.

114. We nevertheless hope that the respondent will reflect on a deeply flawed redundancy process which has clearly caused the claimant much distress. It worried us that neither of the managers involved in the decision to dismiss and the appeal had any real appreciation of the requirements of the respondent's own redundancy procedure. Fair and transparent procedures generally lead to fairer outcomes as well as an increased acceptance of unwelcome outcomes. The respondent might wish to consider formal training for managers who are entrusted with making such important decisions. Since the respondent had no problem with claimant's performance, work ethic or attendance we hope that it will still feel able to write a supportive reference to help him to re-establish himself in work.

Employment Judge: Mark Whitcombe
Date of Judgment: 26 May 2021
Entered in register: 01 June 2021
5 and copied to parties