EMPLOYMENT TRIBUNALS

Claimants: Mrs M Gilicze and Mr I Gilicze

Respondent: Lettings Base Limited

Heard at: **Watford (by CVP)** **On: 19 March 2021 and 18 June 2021**

Before: **EJ Price**

Representation
Claimants: In person
Respondent: Ms S Ashraf, Solicitor

Reserved JUDGMENT

1. The Respondent has unfairly dismissed each Claimant contrary to s.94 Employment Rights Act 1996 ('ERA').

2. The Respondent is ordered to pay to the First Claimant a compensatory award of £939.78.

3. The Respondent is ordered to pay to the Second Claimant a compensatory award of £4581.85.

4. The Recoupment Regulations do not apply to this award.

5. Each claimant's claim for redundancy payment is well founded.

6. The Respondent is ordered to pay the First Claimant a redundancy payment of £4,597.46.

7. The Respondent is ordered to pay the Second Claimant a redundancy payment of £5,090.05

8. Each Claimant's claim for holiday pay is dismissed.

REASONS

Introduction and issues

1. These two claims are put in identical terms and are for unfair dismissal, holiday pay and redundancy pay.

2. The Respondent is a letting agency. On 24 April 2019 the Claimants were notified of their dismissal and put on garden leave. They their dismissal was effective on 16 July 2019. At the time of their dismissals the First Claimant's role was as a manager and the Second Claimant was an office manager. The claim arises out of these dismissals.

3. The Respondent accepts that it dismissed the Claimants and states this was due to a redundancy situation. The Respondent accepts the Claimants are due redundancy pay and that this has not been paid. The Respondent does not accept that any holiday pay is owing because it believes the Claimants both took more holiday than they were entitled to in the holiday years 2018 and 2019. The Respondent does not accept that the dismissal was unfair.

Procedure, documents, and evidence heard

4. This was a remote hearing which had not been objected to by the parties. The form of remote hearing was video. A face-to-face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing.

5. I had sight of a 129-page bundle of documents and a chain of emails that had been translated from Hungarian into English and certified by a translator called Mr Tunde Salanki dated 18 July 2019 and 2 November 2020. I had a witness statement from Mr Szabo on behalf of the Respondent who also gave oral evidence. I also had a witness statement from both Claimants and Mr Mohammed, a customer of the Respondent, all of whom gave oral evidence.

Findings of Fact

6. I make the following findings in this case.

7. The Respondent is a limited company specialising in the management of real estate in London. In particular it assists individuals who are Hungarian or from Hungary find and settle into accommodation in London. Mr Laszlo Szabo is the sole owner and director of the Respondent.

8. At the time of their dismissals, the First Claimant was employed in the position of Manager and the Second Claimant was employed as Office Manager.

9. Although it was agreed that the Second Claimant and Mr Szabo had been friends since childhood and had known each other a very long time, there was a dispute as to when the Claimants started to work for the Respondent. The Respondent states they both commenced employment from 1 September 2009. The Claimants contend that the Second Claimant commenced work on 23rd August 2004 and the First Claimant commenced work on 3 December 2006.

10. It is not disputed that both Claimants started working for a company called Guaranteed Properties Letting Ltd. which closed on 31 August 2009 and the following day Hungarian Lettings Ltd. opened. The Second Claimant gave evidence that this new company was based at the same address as Guaranteed Properties Letting Ltd. but also had the same directors and shareholders, carried out the same business activities (residential property lettings and management), and it also took over the properties and all employees, from Guaranteed Properties Letting Ltd.

11. Then in 2015 Hungarian Lettings Ltd. changed its name to Letting Base Limited. I had sight of a certificate of incorporation on change of name given at Companies House on 22 September 2015 that demonstrates this change of name. It is accepted by Mr Szabo that prior to 2009 both Claimants undertook identical roles and the previous company's work and practices were identical as to the current business. And that this again was the case in 2015 when the company became known as Letting Base Limited. The evidence of Mr Mohammed who was a client of the business through this period supported this account said that he was not even aware there was any change of name to the company and that the business and service provision remained exactly same.

12. There is a 'written statement of employment particulars' dated 1 September 2009 for each Claimant. These are in identical terms save for the title of the role. This states the Claimants are said to be entitled to 20 days holiday per year, plus public holidays. The holiday year runs with the calendar year from 1 January to 31 December. And that the employee is entitled to payment in lieu of holiday at the end of employment for any untaken holiday however, '*If, at the date of termination the Employee has taken any holiday in excess of his/her accrued entitlement, a corresponding deduction will be made from his/her final payment'*.

13. There is some confusion in the evidence as to exactly where Mr Szabo was prior to March 2018. In his pleaded case he says he was in Hungary from 2015 to 2018 until he returned to London in March 2018, however in his evidence to

the Tribunal he said that he was located in the Dominican Republic for part of this time. The Claimants evidence is that he located to the Dominican Republic in the autumn of 2017. However, it is not dispute that after March 2018 he returned to London and worked in the office for a few hours a day. However, he then decided to undertake a full-time role as a lorry driver and so did not have an active role in the day to day running of the company until April 2019, when he suffered a leg injury and could not continue driving.

14. Around the same time, Mr Szabo explained that the Respondent's business had started to diminish. This was, at least in part, a consequence of the decision of the referendum in 2016 for the UK to leave the European Union. This was not contentious and the Claimants agreed in their evidence that this had a notable negative impact on business. The Second Claimant's evidence was that as a "*result of the BREXIT Referendum, the number of prospective tenants of Letting Base Limited has dropped significantly and the company found it increasingly difficult to let its properties*". It was also agreed that in 2017, the Respondent had nearly 60 properties with 6 employees compared to in 2019, where the Respondent had only 30 properties with 7 employees. The number of employees had increased as Mr Szabo had started working for the Respondent as an employee. Further it was agreed that the company had built up considerable debt in this period as well and the Claimants accepted in their evidence that the company had "*high expenses*".

15. It was agreed that between the 7 April 2019 - 22 April 2019 both Claimants were on annual leave. Whilst the Claimants were on annual leave Mr Szabo wrote a letter dated 18 April 2019 to each of them stating he intended to make them redundant. This stated that '*Recent economic conditions have caused a significant fall in the company's income, necessitating a workforce reduction at Letting Base Limited. Unfortunately, your position is part of this reduction and this means that your employment will terminate*'.

16. Upon their return from annual leave on 23 April 2019 Mr Szabo held a meeting with the Claimants in the morning, he handed them the letters dated 18 April 2019 and told them that he wanted to make them redundant. I accept the Claimants evidence that by this stage the other employees working for the Respondent and the Respondent's clients had all been informed that the Claimants were going to be dismissed. It was agreed between the parties that the Respondent had also changed the locks on the doors of its offices.

17. There was considerable dispute between the parties as to what was said at this meeting as to the reasons for the redundancy. The Claimants account is that they were told that there was no issue with the quality of their work, however redundancy was necessary for economic reasons. Although, the reason they were being selected was for personal reasons. Specifically, that Mr Szabo was

afraid the Claimants would take his business away from him, that the Claimants were too right minded, and he believed that they would refuse to undertake illegal activity if asked and that Mr Szabo's wife had insisted on them being chosen for redundancy, as she had been upset after the Second Claimant had visited her home and told her about the financial difficulties the Respondent was experiencing.

18. Mr Szabo's evidence was that the reason he told the Claimants they were being made redundant was that he could take on their roles and their persistent lateness, but the reason for the dismissal was that he did not need to employ the Claimants any longer as he decided to restructure that he would take on the roles of office assistant and office manager, in addition to his own role, and that this was a result of the economic difficulties the company was experiencing.

19. Both Claimants evidence is that they asked Mr Szabo to choose other employees for redundancy and he agreed. Mr Szabo disputed this, he told the Tribunal that he did not agree to choose other employees. He states that the Claimants of their own volition decided to tell two other employees that they were redundant and that this was something he had not agreed to, or told them to do.

20. However, it was agreed that the following day, 24 April 2019, when the Claimants returned to the office, Mr Szabo told the Claimants they were being made redundant and asked them to leave the office as soon as possible. The Claimants evidence was that at this stage Mr Szabo's wife started to shout at them and told them they had ruined the company.

21. It was agreed that at this point both Claimants were handed a letter which confirmed termination of employment. And the following day a letter was sent dated 25 April 2019 stating that '*your notice period is twelve weeks, therefore your employment will end on 16 July 2010. Final details of the redundancy payment will be available to you and are included overleaf. This payment includes payment for 12 weeks' notice and 15.5 weeks' redundancy pay. The payment for the notice period will be given in weekly instalments. The redundancy pay and holiday payment will be paid in one lump sum on the last day of your employment. In addition to the payments above you are also entitled to payment for any holidays accrued but not taken*'.

22. It was agreed that the Claimants were told they were on gardening leave for the remainder of their notice period and were paid their salary for this period. However, no holiday pay or redundancy pay was ever paid. On 27 June 2019 the Claimants wrote to the Respondent stating they were not happy to receive the monies owing in instalments and that they wanted their full entitlement and reminded Mr Szabo that their notice period was due to end on 16 July 2019.

On 6 July 2019 the Claimants received a '*notice of written warning'* dated 5 July 2019. This stated that it was a final written warning and that the Second Claimant's performance was unsatisfactory, that he had been late to work on multiple occasions and that he had taken more holiday than he was entitled to in 2018 and 2019.

23. On 12 July 2019 the Claimants state they appealed against this warning, however no letter expressly seeking to appeal this was before the Tribunal.

24. On 30 July 2019 the Respondent wrote a letter to the Claimants. In this it was confirmed that they have been made redundant because of the financial situation of the company. And that the final decision on this was made when the then '*Officer Manager (the Second Claimant) came to my home and talked to my wife about how bad the company's financial situation was*…'. The letter goes on to say that '*one of the main reasons to choose'* the Claimants was that Mr Szabo took on all the management tasks, but also that '*you were late every day, and even after I talked to you about this problem several times, the situation did not improve'*. The letter goes on to state '*Also Mrs Gilicze (the First Claimant) informed me after returning from her holidays that she felt she can no longer work with me and would like to resign because the company can't support these expenses much longer'*.

25. The Respondent did not contend at the hearing that the First Claimant resigned. Mr Szabo evidence's was that she was told she was made redundant, however she responded saying she was planning to hand in her resignation in any event. I accept the First Claimant's evidence that she was not planning to resign and that she did not say this. I find her evidence on this point credible and consistent and accept that she was worried about how she could afford to pay for her young family when she found out that she was losing her job at the same time as her husband. The Respondent's evidence on this point is inconsistent, in the letter of 30 July 2019 the Respondent suggested that the First Claimant had said she would resign, and yet in evidence before the Tribunal this had changed to the fact Mr Szabo considered she was only planning to resign. This finding is supported by the fact that she did not go on to resign, which would have still been open to her whilst she was on garden leave and instead waited to the end of this period in order to find new employment.

26. I further find that during the meeting on the 23 April 2019 the Claimants were told that they were being made redundant, and that this was necessary due to the economic difficulties the company was experiencing. However, I prefer the Claimants' account that when they asked why they had been selected as the employees to be made redundant they were informed it was because of personal reasons. In particular that Mr Szabo was concerned the Claimants could take over his business, that he felt they were too right minded and that

he was concerned they had upset his wife by telling her about the economic difficulties the Respondent was experiencing. I find that both Claimants' evidence on this point was credible and consistent. In contrast I find Mr Szabo was inconsistent. Despite, the Respondent's case being that they were selected due to being persistently late for work, he did not address the reason for their selection in his witness statement and his oral evidence on this point was vague and unclear. Further, the Claimants' account is supported by the letters they received about their redundancy, which do not mention lateness, this was only raised after the dismissals had been communicated to the Claimants. There is no other documentation regarding their alleged persistent lateness or any other issues with their performance that pre-dates the decision to dismiss. And finally, Mr Szabo confirmed in his own evidence that that it was during the period of the Claimants' garden leave that he became aware of the issues he alleged with the Claimants' performance including the fact he believed the Claimants would start work late most days. Further, Mr Szabo was not present at the Respondent's business to monitor, assess or observe the Claimants working practises for a number of years, this seems entirely inconsistent with his later determination about their alleged lateness. It was unclear how Mr Szabo had come to this view given that he had not observed the Claimants at work for some years.

27. I accepted the Claimants' unchallenged evidence that they both found new employment very quickly after their dismissal. The First Claimant found a new role on equivalent pay after three weeks. The Second Claimant found a new role on equivalent pay after ten weeks. However, this role had variable hours as it was a zero hours contract and therefore he had some on-going losses for a longer period until July 2020.

The Law

28. The burden of proof lies on the Respondent to show, on the balance of probabilities, what the reason or principal reason for dismissal was and that it was a potentially fair reason under S. 98 (2) ERA.

29. S.98 ERA states:

"*(1)In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*
(a)the reason (or, if more than one, the principal reason) for the dismissal, and
(b)that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
(2)A reason falls within this subsection if it—

... (c)is that the employee was redundant, or ..."

30. The Respondent contends that the reason for dismissal was redundancy, which is a potentially fair reason within S. 98(2)(b) ERA. Alternatively, the Respondent refers to and relies on SOSR which is a category of potentially fair reasons that do not fall within those specified in the Act.

31. The definition of redundancy is set out in S.139 ERA as follows:

"(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."

32. **Hatchette v Filipacchi UK Ltd v Johnson (2005) UKEAT/0425/05** establishes a three-stage process for determining whether an employee has been made redundant under s.139 ERA as follows:

"*It is now well established that a three-stage process is involved in determining whether an employee is redundant under ERA 1996, s.139 (1) (b). First, ask if the employee was dismissed. Second, ask if the requirements of the employer's business for employees to carry out work of a particular kind had ceased or diminished or were expected to cease or diminish. Third, ask whether the dismissal of the employee was caused wholly or mainly by the state of affairs*."

33. If the respondent shows a potentially fair reason, such as redundancy, for dismissing the claimant then the question of fairness is determined in accordance with s.98 (4) ERA which states:

"(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having

regard to the reason shown by the employer)—

(a)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, and

(b)shall be determined in accordance with equity and the substantial merits of the case..."

34. Further, when considering the question of fairness in a redundancy dismissal , the correct approach is that set out in **Williams v Compair Maxam Limited [1982] IRLR 83**. In summary, employers acting reasonably will give as much warning as possible of impending redundancies to employees, consult them about the decision, the process and alternatives to redundancy, and take reasonable steps to find alternatives such as redeployment to a different job. However, the Tribunal must not put itself in the position of the respondent and decide the fairness of the dismissal based on what it would have done in that situation. It is not for the Tribunal to weigh up the evidence as if it was conducting the process afresh. Instead, its function is to determine whether, in the circumstances, the respondent's decision to dismiss the claimant fell within the band of reasonable responses open to an employer.

35. Section 123(1) ERA provides that:

"(1) Subject to the provisions of this section and sections 124, 124A and 126 the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

(2) The loss referred to in subsection (1) shall be taken to include—
(a)any expenses reasonably incurred by the complainant in consequence of the dismissal, and
(b)subject to subsection

(3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.
(3) The loss referred to in subsection (1) shall be taken to include in respect of any loss of—
(a)any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or

otherwise), or
(b)any expectation of such a payment, only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 122) in respect of the same dismissal.

(4) In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland...

(6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding."

36. Under the principle in **Polkey v A E Dayton Services Ltd 1988 AC 344**, where a Tribunal finds that a dismissal was unfair, it must go on to consider the chance that the employment would have terminated in any event, had there been no unfairness i.e., if a fair dismissal could have taken place in any event – either in the absence of any procedural faults identified or, looking at the broader circumstances, on some other related or unrelated basis. The Tribunal should make a percentage reduction in the compensatory award which reflects the likelihood that the claimant would have been dismissed in any event.

37. Continuity of employment normally applies only to employment with a single employer S.218(1) Employment Rights Act 1996 (ERA). However, there are a number of exceptions to that provision. The potentially relevant exceptions in this case are where there has been a transfer of a business or undertaking (S.218(2)) or there is a transfer of employment between associated employers (S.218(6)). In addition, regulation 4 (1) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 SI 2006/246 (TUPE) provides for the automatic transfer of contracts to the transferee. It states '*a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer, which would otherwise be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee'*.

38. The law relating to redundancy payments is in Part XI of the Employment Rights Act 1996. A claimant is entitled to one week's gross pay for every complete

year of continuous employment during the whole of which he or she was over 22 but under 41 and 1.5 weeks pay for years over 41.

Conclusions

Continuity of employment

39. The Second Claimant gave unchallenged evidence that both in 2009 and 2015 (when the company changed its name) the entity continued to trade in exactly the same manner. It was based at the same address but also had the same directors and shareholders, carried out the same business activities (residential property lettings and management), and over the same properties and all employees who retained their roles on the same previous terms and conditions. This was supported by Mr Mohammed a client of the company who confirmed that the same service was provided, by the same people, and in fact there was no change in service provision at all as far as he was concerned throughout the entire period.

40. Mr Szabo would be aware of exactly what the nature of the change in entity was in 2009, and whether there was a transfer and did not seek to challenge the argument put forward by the Claimants.

41. Therefore, I find on the balance of probabilities that it is likely that the provisions of TUPE would have applied to both the change of employer in 2009 and therefore continuity of employment would have been preserved by virtue of regulation 4 (1). If I am wrong in this, then I find in the alternative for the same reasons, that it would have been preserved by provisions of 218 (2).

42. Then the company changed its name from Hungarian Lettings Ltd. to Letting Base Limited in 2015. On the balance of probabilities, I find this was simply a change in the employer's name, and therefore there was no change in employing entity.

43. Consequently, the First Claimant had 12 complete years of continuity of employment and the Second Claimant had 15 complete years of continuous employment at the time of their employment ended.

Redundancy payment

44. There is no dispute that redundancy pay is owing as the Respondent accepts the same. No reason has been given as to why this has not been paid to date.

The redundancy pay is to be calculated on the statutory basis as there is no contractual entitlement above this amount.

Holiday pay

45. The holiday year started on 1 January 2019. That meant by the 16 July 2019 they each would have accrued 15 days holiday entitlement.

46. There was no record of when any holiday had been taken in 2019 for either Claimant before me. On the Claimants own account they took off between 7 April and 22 April 2019, which is 11 days of annual leave. Mr Szabo's evidence was that the Claimants also took time off in school holidays to look after their children. Although the First Claimant denied this was '*always the case'* as her mother-in-law flew to the UK to help, I find that Mr Szabo's evidence on this point was consistent and credible and that on the balance of probabilities it is likely both Claimants took some time off in school holidays in order to care for their young children. I find that on the balance of probabilities in 2019 they took off time to look after their children in the holidays and that between the start of the holiday year and the time their employment was terminated that was at least 5 days of annual leave.

47. Therefore, the Claimants had taken their full holiday entitlement owing up to the point of their dismissal and no holiday pay is owing.

Unfair dismissal

48. As to the principal reason for the Claimants' dismissal and whether it was a potentially fair reason, I am satisfied that the test set out in **Hatchette v Filipacchi UK Ltd v Johnson** is satisfied as follows:
    a. The Claimants were dismissed.
    b. The requirements of the Respondent's business for employees to carry out work of a particular kind had ceased or diminished and/or were expected to cease or diminish as a result of the impact of the UK's decision to leave to the EU and that as a result of this, three roles were being amalgamated into one role. Further I remind myself that there is no legal requirement for an employer to show an economic justification or business case for the decision to make redundancies; **Polyflor v Old EAT 0482/02**. The economic difficulties the company was in were not disputed. Although the reason the Claimants were selected as the employees to be dismissed, the need to cut costs and the economic difficulties the business was suffering were agreed.

    c. Third, the Claimants' dismissal was caused wholly or mainly by that situation. I am satisfied that on the balance of probabilities

that the reason for their posts were deleted and they were subsequently dismissed was the economic downturn the Respondent suffered after the referendum in 2016.

49. Therefore, I find that the Claimants were made redundant under s.139 ERA 1996. Further and for the avoidance of doubt, I have considered the Respondent's alternative argument that the Claimants; dismissal was for SOSR. In light of my finding on redundancy, I reject that alternative argument.

50. However, I find that the dismissal was unfair. The dismissal did not lie within the range of conduct which a reasonable employer could have adopted.

51. I do not find that the Claimants were adequately consulted about the redundancies. They were first informed of them on 23 April 2019 when all other employees and clients of the company had already been informed of their departure from the Respondent's employment. By this stage I find the Respondent had made up its mind and therefore any discussions about the redundancy and possible alternatives were inadequate in that they were not properly considered.

52. It was conceded on behalf of the Respondent that there was no consideration of a selection pool. I find that Mr Szabo did not consider whether or not to make other employees redundant once he had decided that the roles of Office Manager and Assistant were to be deleted.

53. I do not find that the criteria used for selection was the Claimants lateness in arriving at work. No issues had been previously been recorded as being raised with the Claimants on any occasion prior to the dismissal concerning late attendance at work. This was only mentioned in letters sent to both Claimants and dated after the dismissal. Further there was no evidence as to what time the Claimants were in fact expected to attend work. I find that this reason was considered after the decision to dismiss was taken when a justification was needed for their selection. On the balance of probabilities, I find it was not a factor in the decision to select the Claimants for dismissal. I found Mr Szabo's evidence to be both vague and inconsistent as to the reason why the Claimants were selected for redundancy and notably the letters of redundancy notification did not give any reason for their selection. I find the Claimants were chosen because Mr Szabo no longer thought their roles were necessary as he could undertake them and that he did not consider whether he could make other employees redundant. Thus no clear and transparent selection criteria were applied.

54. I accept the Claimants' evidence that they were told at the time of their dismissal that Mr Szabo was concerned the Claimants may take his business and that

they had upset the Claimant's wife by telling her the company was in financial difficulty. I find these factors influenced, to an extent, the decision to make the Claimants redundant rather than other employees. However, I find that these factors contributed to and confirmed the decision, but were secondary to the redundancy.

55. Nor do I find Mr Szabo considered whether there was any suitable alternative employment for either Claimant. In particular, Mr Szabo said that he had employed his wife as an administrator for the Respondent's social media accounts, specifically Facebook. As one of the duties of the First Claimant was to update the Respondent's Facebook page and that this was an alternative role that may have been suitable for the First Claimant. Mr Szabo told the Tribunal that he did not offer this role to the First Claimant as he thought she would not take it as it was part time. I accept the Claimants evidence that they were clearly concerned about her their finances at the time of their dismissal. I accept the First Claimant's evidence that she may have accepted the role as she had a young family to provide for and both she and her husband were being dismissed at the same time. I find that it was unreasonable not to discuss with the First Claimant whether this role was suitable alternative.

56. Therefore, the Claimants' claims for unfair dismissal succeeds.

57. As to contributory conduct and/or mitigation of loss, I do not consider that the Claimants caused or contributed to the dismissal by any blameworthy or culpable conduct. Further, the Respondent has not sought to argue that the Claimant failed to mitigate their losses.

58. As to **Polkey**, I must look at what is just and equitable. I do not accept that the Claimants' employment would necessarily have been terminated after a reasonable procedure in any event. However, given the size of the Respondent's undertaking and the significant drop in business it was experiencing means that I accept there was a risk this would happen. In the circumstances, I find that compensatory losses should be reduced by 30% to reflect the chance that their employment might still have terminated after a reasonable procedure in accordance with the principles in **Polkey v A E Dayton Services Ltd**.

59. As redundancy was the reason for dismissal, the ACAS Code of Practice on Discipline and Grievance does not apply to the Claimants unfair dismissal claim and there is no uplift for unreasonable failure to comply with its provisions.

Remedy

<u>Redundancy payment</u>

60. The First Claimant worked for the Respondent for 12 years from 3 December 2006 to 16 July 2019. She was over 41 years old for 4 years in this period. Her gross weekly pay was £328.39. She is therefore entitled to a payment of £4,597.46.

61. The Second Claimant worked for the Respondent for 14 years from 23rd August 2004 to 16 July 2019. He was over 41 years old for 3 years in this period. His gross weekly pay was £328.39 payment. He is therefore entitled to a payment of £5,090.05.

Unfair dismissal

62. As the Claimants have been awarded a payment for statutory redundancy pay they are not entitled to a basic award.

63. I award both Claimants £500 for loss of statutory rights.

64. I award the First Claimant £842.55 loss of earnings for the three weeks she was out of work prior to getting new employment. This calculation is based on her net earnings.

65. This gives a total of £1342.55 compensatory award to the First Claimant. To which a 30% Polkey reduction is applied.

66. I award the Second Claimant £2,808.50 loss of earnings for the 10 weeks he was out of work prior to getting new employment and a further £3,237,01 based on the loss of earnings occasioned by the fact his new employment has a variable number of hours per week. This calculation is based on his net earnings.

67. This gives a total of £6,545.51 compensatory award to the Second Claimant. To which a 30% Polkey reduction is applied.

68. The Claimants did not claim any benefits to which the recoupment regulations apply.

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Employment Judge **Price**

Date 2 August 2021

JUDGMENT SENT TO THE PARTIES ON

26 August 20210

S. Bhudia

FOR THE TRIBUNAL OFFICE