# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Leary

**Respondent:** Fairway Motors (High Peak) Limited

**Heard at:** Manchester (by CVP) **On: 8 June 2021 & 17 August 2021 (In Chambers)**

**Before:** Employment Judge Hill

**REPRESENTATION:**

**Claimant: Miss Awusu-Agyei (Counsel)**
**Respondent: Ms S Hornblower (Counsel)**

# JUDGMENT

1. The Claimant's claim for unfair dismissal is well founded and succeeds

2. The claimant's claims for notice pay, holiday pay and other payments are withdrawn and dismissed.

The Evidence

1. The Tribunal was provided with a bundle of documents comprising of 131 pages and two witness statements, The Claimant and Mr Scott. Both the Claimant and Mr Scott gave oral evidence.

Preliminary Matters

2. At the start of the hearing the Respondent confirmed that the correct name of the Respondent was Fairway Motors (High Peak) Limited. This was evidence by the Claimant's contract of employment and his wage slips. The Claimant accepted that this was the correct name. It was therefore agreed that the name of the Respondent should be amended.

3. The Claimant confirmed that he had received all payments due to him and therefore wished to withdraw his claims for notice pay, holiday pay and other payments.

The issues for the Tribunal to determine

4. What was the reason or principal reason for dismissal? The respondent says the reason was redundancy.

5. If the reason was redundancy, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant. The Tribunal will usually decide, in particular, whether:

    a. The respondent adequately warned and consulted the claimant.
    b. The respondent adopted a reasonable selection decision, including its approach to a selection pool;
    c. The respondent took reasonable steps to find the claimant suitable alternative employment;

6. Was the dismissal within the range of reasonable responses.

7. If the dismissal is found to be unfair, would the Claimant have been dismissed in any event even if a generally fair procedure had been followed and, if so, should any compensation awarded to the Claimant be reduced accordingly and by what amount?

8. If the reason was not redundancy what was the reason and was it a potentially fair reason pursuant to Section 98(1)(b) of the ERA?

9. If so, was the Claimant's dismissal fair having regards to equity and the substantial merits of the case and within the range of reasonable responses? In particular:

    d. Did the dismissal fall within the range of responses of a reasonable employer?
    e. Did the Respondent follow a procedure that was within the range of responses of a reasonable employer?

10. If the dismissal is found to be unfair, would the Claimant have been dismissed in any event even if a generally fair procedure had been followed and, if so, should any compensation awarded to the Claimant be reduced accordingly and by what amount?

Findings of Relevant Facts

11. The Claimant was employed as a Mechanic with 25 years' experience and commenced employment with the Respondent on 31 October 2017. The Claimant had experience in roadside recovery and was also trained to become a MOT tester and had previously been qualified to do so. The Claimant's qualification had lapsed. In order to be re-qualified to perform MOTs the Claimant would have been required to complete a 2-day theory training course and a 1 day practical course.

12. The claimant was employed on a full-time basis working on average 40 hours per week and was paid at the rate of £11.50 per hour. The Claimant had been employed for approximately 2 and half years at the date of his dismissal. The Claimant had not at the time of his dismissal been subjected to any disciplinary action or performance reviews.

13. The Respondent is a company that operates as a small motor garage providing services including maintenance and repairs of motor vehicles, including MOT certificates and servicing. At the time of the Claimant's dismissal the Respondent had been in business for approximately 3 years. The Respondent employed a small staff team which comprised of Mr Scott the owner and director; the Claimant, mechanic/technician; Mr Gary Sanxter, MOT Tester and mechanic/technician; Tony Smith, general assistant and administration; Linda Eyres, Office Administrator and Richard Price-Jones who was an apprentice.

14. Although it was agreed that the Claimant had not been subjected to any formal disciplinary or capability proceedings, in December 2019 the Claimant was spoken to by Mr Scott because he had taken a personal call regarding his father-in-law who had been taken ill and that having spent 7 hours at the hospital Mr Scott sent him home the following day on the basis that he considered he was tired and a potential danger.

15. Mr Scott's evidence was that he heard about the Claimant's call from other members of staff because on the day in question he was on a course. He told these other members of staff 'if he needs to go let him go'. Mr Scott said when he returned, he was told by Gary Sanxter that the Claimant continued working in the end and had gone to the hospital in the evening. The Claimants evidence was that he was sent home by Mr Scott and after that incident he felt the Respondent changed towards him and had been 'funny with me'. The Claimant tried to speak to Mr Scott about it and asked for a meeting to discuss the issues, but this was refused by Mr Scott.

16. In or around November 2019, the respondent had introduced some new software to assist with booking in work and monitoring the work of employees. The system would enable staff to log repairs and manage diaries and provides an overview of what work is being done and how long it should take including what parts would be needed for each job. Mr Scott said it was an administrative tool to help the business function to work more efficiently.

17. The Claimant stated that this was a new system that had been recently introduced but that he still received job cards for some work and that it was not all recorded on Techman and some of his work was not recorded on Techman. The evidence of the use of job cards was in dispute. Mr Scott said that the only way work was allocated was through Techman and the Claimant said that he would receive work by way of job cards, phone and other means. The Claimant said the job cards were reintroduced after Christmas because the system was not functioning properly.

18. On 22 March 2020 the Claimant was told to stay at home because of the national COVID-19 lockdown. The Respondent did not close the business entirely and two members of staff continued working. Mr Scott said the reason

for this was in order to finish outstanding work including MOTs that had been booked in. Mr Scott also told the Tribunal that the two staff members were also required to carry out remedial work to the floor because of drainage issues.

19. The Claimant's evidence was that he volunteered to continue working but Mr Scott had told him that he was being furloughed because of the potential risk to his father-in-law and his daughter. The Claimant informed Mr Scott that there was not a risk but his request to continue working was refused. The Claimant remained on furlough until his employment was terminated. The Claimant's furlough was not confirmed in writing but Mr Scott used text messages to communicate with the Claimant.

*20.* At the beginning of April 2020, the Claimant sent Mr Scott a series of emails that he did not receive a response to concerning being furloughed.

    a. *Hi Alex please can you give me any updates on what's happening with registering for furlough, I've contacted you several times but you've not been replying to me, can you also send me a copy of my wage slip from last week, many thanks David Leary.*

*21.* And a further email was sent on

    *a.* M*orning Alex have we got any updates at when we're hoping to open up at with everything that's going, hope you and the family are ok, see you soon David*

*22.* And another email dated

    *a.* H*i Alex I'm guessing you have put me on furlough now please could you send my confirmation that this has happened with any letters that have been sent due to not having heard anything from yourself, hope your all keeping ok*

23. Mr Scott stated in evidence that he had responded by text message because that was his preferred method of communication but had lost his phone and was not able to produce any evidence. The Tribunal accepted the Claimant's evidence on this point because his emails clearly show that he was trying to find out what was going on and if he had received text messages explaining the situation, the Tribunal finds that it would then be unlikely that he would keep sending emails to follow up if he had had a response.

24. Eventually on 4 May Mr Scott replies to the Claimant via email and says "*Just a little something for you to mull over whilst we're on lock down, data taken directly from techman. Payslips to follow shortly. Alex".* Mr Scott had attached some data from Techman to the email which appeared to indicate that the Claimant had not been performing. The Tribunal finds that Mr Scott at this time was looking at the Claimant's performance.

25. The Claimant responded immediately and asked for copies of the jobs he had done which were not on Techman.

26. The Respondent response to that request was to send the Claimant a long email in which Mr Scott sets out issues relating to his perception of the Claimant's performance and conduct. He refers to data from Techman and suggests that the Claimant is not efficient in working his full hours and that the Claimant has been talking to other members of staff about applying for other roles. He concludes by saying

    *"I Feel, as do my peers that as a business we remain financially vulnerable with this level of commitment displayed by yourself though not entirely isolated to yourself. No more a time has this become apparent than when the business has to abstain from trading. Financially, we do not wish to burden ourselves any more with debt to support members of staff which show such a mediocre level of commitment and as such will seek no further support financially from any financial institution. The business on return to trading will have to seek to make adjustments to its outlays in order to stay viable and one of the main areas it will look to to recuperate these shortfalls are to decrease the staffing levels, I would urge yourself to consider your position to be vulnerable. Now going back to your original enquiry, would you still like a copy of these other jobs ? I don't suppose it would support your argument, its clear that you cannot palm off 68.29% of your working day, every single day as me asking you to do "other jobs" and as such i will be analysing in the days to come the efficiency of staff on the whole per job for comparison. I leave you these musings to consider very carefully. I may add to the pot that also ive been made aware of your intent to make a financial acquisition on the business adjacent to the garage by both two members of staff and the current business owner, of which is none of my business but i would strongly suggest that you may wish to consider who you class as your inner circle as many associates and acquaintances are willing to reveal your plannings. For the time being the company will keep you on furlough pay as financially it is of no cost for us to do so and leaves yourself with some for of income but be aware that at such time the company decides to reopen there will be undoubtedly job losses."*

27. The Tribunal finds that at this point the Respondent had formed a view in respect of the Claimant that he would be dismissed and while the Respondent references job losses at a point when the company decides to reopen, it is clear that the Respondent had formed a view at this point that the Claimant was going to be dismissed. Not only does the Respondent consider that the Claimant is not efficient but describes him as have mediocre commitment, that he has an 'intent' to make a financial acquisition on another business.

28. On 21 April 2020 Mr Scott then posted a message on a Facebook site, Automotive Support a group for employers, making comments about two of his employees and in particular makes reference to one being a diabetic and another have a disabled child (the Claimant). Mr Scott suggests they are making unreasonable demands, have a lack of 'self-discipline' and want full pay and confirmation their jobs will be secure.

29. On 23 May Mr Scott writes to the Claimant and informs him that he has been selected for redundancy and that his employment will terminate on 12 June 2020. The Claimant appealed the decision to terminate his employment on 5 June 2021 on the basis that there had been no consultation and no warning.

30. On 4 June 2020 the Claimant makes enquiries about his redundancy payments. Mr Scott's response to that query demonstrates his personal animosity to the Claimant

> "*Often, Mr Leary, I have individual staff meetings to discuss the behaviour of other members of staff towards them including the baneful effects of having other job positions, seen on job websites, at other companies, suggested to them and that they should apply for said positions. Mr Leary I will suggest that you consider your actions could be interpreted as gross misconduct.*
> *Let me define gross misconduct for you:*
> *Gross misconduct is when an employee commits an act that destroys the relationship of trust with you as the employer. Such acts must be serious enough to make it impossible to continue the working relationship. Gross misconduct therefore warrants dismissal without notice or pay in lieu of notice.*
> *I consider Mr Leary that for many months you have been making a deliberate and premeditated attempt to bring down my company from the inside or to do harm to my reputation and I would like an explanation as to why you feel it is acceptable to behave in such a manner and what your reasonings for doing so are……. I have given you every opportunity to perform at the highest standards and you chose not to do so. You had equipment and tools available to yourself that many do not have access to and a workshop some main dealers would aspire to. Should you have performed in such a manner I have no doubt that I would not have selected you for redundancy, though now I have the information about the above matters most certainly I would have*
> *been performing a thorough investigation into your conduct".*

31. The Tribunal finds that it is clear that Mr Scott considered that there were performance and conduct issues with the Claimant. He did not invite him in to discuss his concerns, did not conduct any investigation into his concerns, did not invite the Claimant to a disciplinary meeting or performance review but decided that he would select him for redundancy.

32. Mr Scott said in evidence that he had researched the topic of making staff redundant extensively but had been unable to afford professional advice and had misinterpreted the information he had researched and thought that he only needed to consult if he were dismissing 20 or more staff.

33. After receiving the Claimant's appeal Mr Scott decided to seek professional advice and then wrote to the Claimant on 10 June 2020 and informed him that he had made a mistake and retracted his notice of termination and informed the Claimant that he would be re-starting the redundancy process and invited him to attend a consultation meeting on 12 June 2020. This meeting was rearranged, and a consultation eventually took place on 18 June 2020.

34. At this meeting Mr Scott set out to explain why the claimant was at risk of redundancy and referred again to making a mistake previously by not conducting a proper procedure. The Respondent had prepared a business case, set out a page 38 of the bundle where the Respondent refers to Techman and the efficiency of staff, the impact of COVID -19 and anticipated slow

recovery and that the Respondent needed to make savings of £2,000 per month. The Respondent said in this notice that each employee would be scored based on a combination of facts such as relevant qualifications, experience and ability, and that the workforce would be reduced to those who create the highest volume of revenue and require minimal supervision in their day-to-day roles. Although the Respondent does not refer to 'pools' for selection it set out the current structure of the business and the proposed new structure.

35. The current structure is set out above at para 14 and the proposed new structure would be Mr Scott, and MOT Tester and a General administrator and workshop assistant. The Respondent's evidence was that he needed to retain an MOT tester. Whilst the Tribunal finds that it is entirely reasonable for the Respondent to want to retain someone with those skills, the Tribunal finds that the Respondent failed to provide any evidence of why the Claimant would not have been unable to re-accredit as a MOT in a relatively short period of time. The Respondent stated that it had asked the Claimant do get the qualification previously, however, the Claimant's evidence was that he had not been asked. The Tribunal accepts the Claimant's evidence and finds that in any event if this was an issue in respect of the selection criteria being used that it is for the Respondent to demonstrate that it had asked the Claimant to obtain the accreditation.

36. The Respondent produced the Claimant's scores at the consultation hearing. The Claimant scored 267 and ranked 7. The Respondent could not explain these scores. The Respondent had said that the Claimant was in a pool of two with Mr Sanxter so it is unclear how the Claimant could have ranked 7. Mr Scott conceded in evidence that the scoring system had not been discussed with the Claimant but that the Claimant had only been presented with the result. As I have previously said there was no evidence that Mr Scott discuss obtaining relevant MOT testing accreditation with the Claimant and that not having the accreditation could result in his selection for redundancy.

37. A further consultation meeting was held on 22 June and the Claimant was then invited to a final redundancy meeting on 24 June 2020 where his redundancy was confirmed. The Claimant did not appeal. The Tribunal finds that in the circumstances the Claimant's failure to appeal was not unreasonable in view of the manner in which the Claimant's employment had been terminate.

The Law

38. The Section 98 of the Employment Rights Act 1996,

(a) did the respondent have a potentially fair reason to dismiss?

(b) did the employer act reasonably or unreasonably in dismissing the claimant for the reason given?

Section 98(4) provides that the determination of the question whether the dismissal is fair or unfair (having regard to the reasons 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.

39. Section 139 of the ERA contains the definition of 'redundancy' and provides as follows:-

"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 out 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.

40. In **Williams and ors v Compair Maxam Ltd [1982] ICR 156,** the EAT set out a number of steps that a reasonable employer might be expected to follow when dismissing employees by reason of redundancy, namely:-

a. Were the selection criteria used by the employer objectively chosen and fairly applied.
b. Were employees warned and consulted about the redundancy;
c. If there is a union, was the union consulted; and
d. Was there any alternative work available?

41. The EAT stressed, however, that when the Tribunal decided whether the dismissals were fair or not, it was not for the Tribunal to impose its standards and decide whether the employer should have acted differently. Rather, the Tribunal should ask the question 'did the dismissal lay within the range of conduct which a reasonable employer could have adopted'?

42. The case of **Polkey v AE Dayton Services Ltd [1988] ICR 142** established the importance of procedural fairness in determining whether the dismissal was fair or unfair under section 98(4) of the ERA. In that case the House of Lords decided that a failure to follow a fair procedure was likely to render a dismissal unfair unless, in exceptional cases the employer could reasonably have concluded that doing so would have been futile. Lord Bridge concluded, in his judgment, that "the employer will not normally act reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by deployment within his own organisation.

43. Procedural fairness will, therefore, make a redundancy dismissal unfair, but the question of whether the employee would have been dismissed even if a fair procedure has been followed will be relevant to the question of compensation payable to the claimant.

44. In **Langston v Cranfield University [1998] IRLR 172** the Employment Appeal Tribunal held that it was implicit, unless the parties had agreed otherwise, that an unfair redundancy dismissal claim incorporates unfair selection, lack of consultation and failure to seek alternative employment on the part of the employer, even if those specific issues are not raised before the employment tribunal. The Tribunal must, therefore, consider each of those issues when reaching its decision on the fairness of a redundancy dismissal.

45. Where selection criteria are used to determine who should be made redundant, as is the case here, the application of the criteria must be reasonable.

46. In **Beatt v Croydon Health Services NHS Trust [2017] EWCA Civ 401; [2017] IRLR 748; 23 May 2017** Lord Justice Underhill stated that the "reason" for a dismissal is the factor or factors operating on the mind of the decision-maker which causes them to take the decision to dismiss or, as it is sometimes put, what "motivates" them to dismiss.

Conclusions

47. Firstly, I considered the reason for the dismissal. The Respondent asserts that the reason for dismissal was redundancy. The Tribunals accepts that this was a very difficult time for the Respondent. The impact of the pandemic and the national lockdown clearly had an immediate impact on the respondent's business, which resulted in a sudden and unprecedented loss of income and work. The future at that time looked bleak and the Respondent when looking at a date of when new work would return to the business was uncertain.

48. However, what is clear from the correspondence between the parties prior to the Respondent deciding to make redundancies, is that the Respondent had serious concerns and issues relating to the Claimant's commitment to the workplace specifically relating to his childcare and caring responsibilities, performance, efficiency and conduct.

49. It is clear to me that Mr Scott took a particularly unfavourable view of the Claimant's childcare and other caring responsibilities. As early as December 2019, prior to any indication that the business would be going to be lockdown, the Respondent sent the Claimant home from work and refused to speak to him about the fact that he had to leave to attend to his father-in-law. The Respondent formed a view that the Claimant was a danger to himself and others and yet refused to meet with the Claimant to discuss his concerns, which in the Tribunal view, set the scene for how the Respondent approached employment related issues, that is that Mr Scott made his own mind up without discussing with the Claimant whether he was unfit to work. The Claimant's evidence was that from that time Mr Scott was 'funny' with him. The Tribunal accepted this evidence.

50. Secondly, the Respondent was upset and annoyed with the Claimant when the Claimant tried to get information regarding the furlough scheme and how and when he would be paid. Indeed, Mr Scott failed to communicate with the Claimant adequately and did not respond to emails, did not confirm his furlough in writing and chose to use a public platform to air his grievances about the claimant. I consider this demonstrates that Mr Scott was personally upset with the Claimant and still held unfavourable feelings towards the Claimant about his caring responsibilities.

51. Thirdly, prior to any redundancy discussions or decisions even on the Respondent's own evidence, Mr Scott's primary concerns are related to the Claimant's performance and efficiency. Mr Scott raises issues with the Claimant in emails about these issues and in the email dated 5 May 2020 Mr Scott sets out a series of performance issues and concludes *"Financially, we do not wish to burden ourselves any more with debt to support members of staff which show such a mediocre level of commitment and as such will seek no further support financially from any financial institution*."

52. Finally, even after the Respondent decides to make the Claimant 'redundant', Mr Scott continues to set out allegations of alleged conduct and performance issues. After the Claimant's employment is terminated Mr Scott sends a further email referencing the Claimant as being inefficient and suggesting that due to those inefficiencies this is the cause of the redundancy situation and makes an allegation of gross misconduct.

53. I consider the above evidence demonstrates that the Mr Scott's state of mind on 5 May 2020 and thereafter, was that he wished to dismiss the Claimant for performance and conduct related issues. Mr Scott then took steps to ensure that the Claimant was dismissed and that his selection for redundancy was contrived to ensure that the Claimant was dismissed.

54. The Tribunal finds that the principal reason for the Claimant's dismissal was his performance and or conduct issues.

55. The Tribunal considered whether the dismissal on these grounds was fair. I conclude that it was not. The Respondent failed completely to investigate its concerns in an appropriate way, there was no investigation, no meetings to discuss the concerns or misconduct and no opportunity for the Claimant to defend himself. The Respondent failed completely to conduct any fair process or follow any procedures.

56. Even if I am wrong, and if redundancy was the true reason for dismissal, I find that the dismissal was unfair.

57. I considered the cases of, **Safeways Stores plc v Burrell [1997] ICR 523** and **Murray v Foyle Meats Ltd [1999] ICR 827** which set out three tests to be considered in redundancy situations:

    1. Has the employee has been dismissed?

2. Had the requirements of the business for employees to carry out work of a particular kind ceased or diminished?
3. Was the dismissal attributable, wholly or mainly, to the fact that work had ceased or diminished?

58. In this case, the tribunal finds that the answer to question 1 and 2 are yes but the answer to question 3 is no. The Tribunal does not find that the dismissal was attributable wholly or mainly to the fact that work had ceased or diminished but because the Respondent had decided to dismiss the Claimant for performance and conduct issues and used the redundancy situation as a way to remove the Claimant from the business.

59. The Respondent sent the Claimant a letter informing him that he had been selected for redundancy. At this point there had been no warning or consultation with the Claimant. When the respondent eventually took advice, the Respondent attempted to undo what was done. I have considered that there are times when an employer makes a mistake an employer can remedy the situation by re-running a process or procedure and engaging meaningfully and with an open mind. In this case I have found that the evidence does not demonstrate any attempt on the Respondent to meaningfully engage in the process and considered it a mere tick box exercise to get to the same result.

60. Consultation is a key ingredient to a fair redundancy and an employer will not be taken to act reasonably unless it warns and consults any affected employees before deciding to dismiss. The Tribunal finds that the Respondent failed to do this. The decision to dismiss the Claimant had been made as early as 5 May 2020 prior to any consultation.

61. Individual consultation is fundamental and should allow for a meaningful exchange of dialogue with the parties. It should be done at a formative stage before any decisions are made. In this case the evidence shows that the Respondent made unilateral decisions and then attempted to re-run the process. Although the Respondent submits that Mr Scott was someone who was not 'well versed' in employment law, I consider that Mr Scott only sought advice and support when confronted with the appeal letter from the Claimant and that the consultation from that point was cursory which was demonstrated by a complete failure to consult on the selection criteria to be used and the Claimant was never given an opportunity to comment before they were applied.

62. Mr Scott could not explain how the scoring figures were arrived at or the rank. The Respondent sought in submissions to dismiss this as being important and stated 'just because he cannot explain it does not mean it is unfair'. The Tribunal wonders that if the Respondent cannot explain how the scoring system worked, how does the Respondent expect the Claimant to understand and more importantly how the Respondent can argue that the result of the scoring matrix produced the right results. Moreover, if the Respondent, Counsel and the Claimant do not understand how the figures were calculated, how can the Tribunal find that the result of this calculation is fair and reasonable. It is important when making decisions such as selecting employees for redundancy that the process is clear and unambiguous so that an employee has the opportunity the challenge how they are scored. In this case it is not clear how

the scores were calculated and therefore the Claimant was not in a position to challenge the results.

63. From the evidence the Respondent says that the efficiency 'scores' were removed from the final calculation, however, the Tribunal finds that the efficiency was so ingrained in Mr Scott's mind that he did not give any consideration to alternatives such as to re-training the claimant to become an MOT tester and that would not have been an insurmountable issue to have resolve. He did not discuss with the Claimant whether he was able to get his re-accreditation done and in what time scale and the reason this was not discuss with the Claimant was because Mr Scott had already decided that the Claimant would be the one selected for redundancy.

64. The Tribunal is aware that at the time many employers were faced with difficult financial circumstances and that in this case there would have been a reduction of work which would have resulted in the requirements of employees to carry out particular work. The Tribunal also accepts that an employer would want to ensure that it retained employees that had the appropriate skills to match the work that it needed to provide. However, it is clear the procedure adopted by this Respondent fell woefully short of what is required. The Respondent provided no evidence that the Claimant did not have the required skills although he would have needed to obtain his qualification and provided no evidence that the Claimant had refused to do so.

65. The Respondent had pre-determined that the Claimant would be selected for redundancy based on the alleged performance and conduct related issues that I have found were not properly investigated and no fair procedure was adopted.

66. For all these reasons I find that the dismissal was unfair.

Polkey

67. I then considered whether if a fair procedure had been adopted would the Claimant still have been dismissed in any event. It is difficult to conclude anything other than if the Respondent had engaged in a fair process and had not pre-determined the outcome that the Claimant would have remained in employment. In so far as the finding that the Claimant was not dismissed by reason of redundancy and that the real reason for the dismissal was capability/conduct the Respondent failed completely to follow any procedure at all. In so far as the redundancy dismissal the Tribunal has found that the decision to select and dismiss the Claimant was pre-determined and that Respondent was completely unable to show that it had followed a fair procedure or engage in any meaningful consultation. The Tribunal finds that any compensation awarded should not be reduced.

Employment Judge Hill
Date 22 October 2021

JUDGMENT SENT TO THE PARTIES ON
18 November 2021

FOR THE TRIBUNAL OFFICE

**Note**
Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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