Case No: 2308337/2020

EMPLOYMENT TRIBUNALS

Claimant: Mr A Klausner

Respondent: Impress Print Services Limited

Heard at: London South Employment Tribunal (by CVP)
On: 14 September 2021

Before: Employment Judge Abbott (sitting alone)

Representation
Claimant: Ms K Hosking, barrister, instructed by Davies and Partners
Respondent: Mr I Steel, solicitor, of the British Printing Industries Federation

REASONS FOR JUDGMENT

1. Following a Final Hearing held on 14 September 2021 I issued a judgment in the following terms:

    1. The claim for unfair dismissal succeeds: the Claimant was unfairly dismissed.

    2. The claim for wrongful dismissal succeeds: the Claimant was dismissed in breach of contract in respect of notice.

    3. The remedy to which the Claimant is entitled in respect of his claims shall be determined at a further hearing, if not agreed.

2. I gave my reasons orally. The Claimant requested written reasons immediately following the delivery of my oral judgment – these are those written reasons. I apologise to the parties for the delay in these reasons being promulgated, which is as a result of workload constraints.

<u>Introduction</u>

3. The Claimant, Mr Albert Klausner, was employed by the Respondent, Impress Print Services Limited, as a Machine Minder. His employment with the Respondent began on 17 September 2001, and ended with him being summarily dismissed on 4 September 2020.

4. The Claimant brought claims for unfair dismissal and wrongful dismissal. The Respondent denied the Claimant's claims.

5. The case came before me for Final Hearing on 14 September 2021. The hearing was held fully remote through the Cloud Video Platform. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

6. The Respondent was represented by Mr Steel, solicitor, of the British Printing Industries Federation. It called evidence from Mr Simon Webb (the Claimant's line manager who carried out the investigation which led to disciplinary action being brought against the Claimant), Mr Paul Dawson (the Respondent's Commercial Manager, who took the decision to dismiss the Claimant) and Mr Michael Kille (the Respondent's Managing Director, who heard and dismissed the Claimant's appeal), who each provided witness statements and gave oral evidence. The Claimant was represented by Ms Hosking, barrister, instructed by Davies and Partners. He provided a witness statement and gave oral evidence. He called no other witnesses. I was also provided with a 180-page Bundle of Documents.

7. I was also asked by the parties to watch three short videos, which I did after reading the witness statements but before hearing the oral evidence. These videos showed, respectively:

   (1) the environment of the printing machine that the Claimant operated;

   (2) the process that the Claimant would have had to go through to wind the machine back; and

   (3) the amount of light available when operating the machine with the printing room lights off.

<u>Issues for determination</u>

8. At the outset of the hearing, I agreed with the parties the issues to be determined. It was evident from the outset that there would be insufficient time to address remedy issues. The issues to be determined in this judgment are therefore only those relevant to liability.

9. There was no dispute that the Claimant was a qualifying employee and brought his claim in time, that there was a dismissal for the purposes of the Employment Rights Act 1996 (***ERA***), and that the reason for dismissal was a potentially fair one under section 98(2) ERA (conduct). The issues to be determined, therefore, were:

   <u>Unfair dismissal</u>

   1. Did the Respondent conduct a reasonable investigation and was the procedure adopted by the Respondent fair and reasonable in all the circumstances?

   2. Did the Respondent genuinely believe that the Claimant was guilty of the misconduct complained of?

   3. If yes, did the Respondent have reasonable grounds for that belief?

Wrongful dismissal

4. Did the Claimant do something so serious that the Respondent was entitled to dismiss without notice?

Findings of fact

10. The relevant facts are, I find, as follows. Where it has been necessary for me to resolve any conflict of evidence, I indicate how I have done so at the relevant point. References to “[xx]” are to page numbers in the Bundle of Documents. Only findings of fact relevant to the issues, and those necessary for me to determine, have been referred to in this judgment. I have not referred to every document I have read and/or was taken to in the findings below, but that does not mean such documents were not considered if referred to in the evidence and/or in the course of the hearing.

11. The Claimant was an experienced printing machine operator, having worked for the Respondent for almost 19 years at the time of his dismissal. For the majority of that time, the Claimant operated printing presses alone.

12. In January 2002, the Claimant was issued with a verbal warning, followed by a first written warning effective for 12 months, regarding the standard and consistency of his work.

13. In February 2010, the Claimant was invited to a disciplinary meeting regarding printing errors caused by an alleged lack of due care on the part of the Claimant. The outcome was a first written warning, effective for 12 months.

14. The Respondent maintained a policy of monitoring printing errors and the resulting cost, which were recorded against the relevant operator. In the period 1 March 2019 to 29 February 2020, the Claimant’s error report recorded 15 errors at a cost of £10,823.00, which was said by Mr Kille to considerably higher than other operators in the company. The Claimant raised as part of his appeal against dismissal objections to the attribution of several of these attributions. Without making any finding (it not being necessary for me to do so), those objections had *prima facie* merit.

15. On 16 June 2020 the Claimant was spoken to by Mr Webb regarding the importance of checking work (following a job that had to be reprinted at a cost of £487) and maintenance procedures. This conversation was not said by Mr Webb to have been part of any disciplinary process, nor was any disciplinary warning of any kind given.

16. On 12-13 August 2020 the Claimant was working the 6pm to 6am night shift, which were his usual hours on at least 3 days per week.

17. At shortly before 10pm on 12 August 2020, there was a flash power cut at the Respondent’s premises. Following this, 8 of the 9 lights above the press that the Claimant was operating did not come back on. The Claimant notified his line manager, Mr Webb by text message. They then had a telephone conversation, the outcome of which was that Claimant continued working the

press in the limited light available. I find that Mr Webb did not instruct the Claimant to continue working, but nor did he encourage the Claimant to stop. I accept the Claimant's evidence that (irrespective of what Mr Webb said) he felt under pressure to keep working and to complete the long print run that was underway.

18. In the early hours of the morning of 13 August 2020, in the process of carrying out a print job change, the press that the Claimant was operating jammed. The Claimant attempted to release the jammed printing plates by attaching a manual crank handle to wind the press backwards. This was contrary to training that the Claimant had received regarding the operation of the press, and to a warning sign on the press itself.

19. A discussion took place between the Claimant and Mr Webb at the shift change on the morning of 13 August 2020, as recorded in a contemporaneous note from Mr Webb [74]. The Claimant admitted that he had manually turned the press backwards because he panicked and could not think what else to do. Mr Webb explained that this was contrary to the Claimant's training, and the Claimant acknowledged this was the case and that he did not know why he had done it.

20. By a letter dated 14 August 2020 [75], the Claimant was invited to an investigation meeting, to be chaired by Mr Webb. This meeting took place on 17 August 2020 and the notes are at [76]. The Claimant explained what had happened and again acknowledged that what he had done was contrary to his training, and that he did not know why he had done what he did. Mr Webb explained that the costs to the company resulting from the damage to the machine were £6,000.

21. Mr Webb recommended that the events of 13 August 2020 be treated as a disciplinary matter [79-80].

22. By a letter dated 17 August 2020 [77-78], the Claimant was invited to a disciplinary meeting, to be chaired by Mr Dawson. The letter included four allegations:

    - Gross Misconduct – serious damage to company property
    - Gross Misconduct – serious breach of company rules
    - Gross Misconduct – serious breach of health and safety
    - Misconduct – working without due cate and attention and not following instruction / procedures

23. The first three of these allegations related to the incident on 13 August 2020. The fourth related to the 15 errors in the year to 29 February 2020 and the matters raised with the Claimant on 16 June 2020. The letter notified the Claimant of his right to be accompanied, and that the outcome could be summary dismissal without notice.

24. The disciplinary meeting took place on 20 August 2020. The Claimant was

not accompanied. The notes [81-82] record that the Claimant again acknowledged his actions on 13 August 2020. He explained that he "*got confused and lost and panicked*". Mr Dawson asked the Claimant about any circumstances outside of work that might have affected the Claimant's judgement – the Claimant mentioned his mother being seriously ill but indicated that was nothing to do with the incident. Mr Dawson did not ask about circumstances in work, and the Claimant did not mention the issue with the lights (because he assumed that Mr Webb would have made Mr Dawson aware of that issue) or any other in-work issue that may have affected him. The issues regarding errors were also discussed, and the Claimant stated "*perhaps I lose concentration through the night*". Mr Dawson noted that due to the seriousness of the situation, instant dismissal was a possibility, and that all factors including length of service would be taken into account.

25. The outcome letter was issued on 4 September 2020 [83-86]. Mr Dawson decided that the Claimant should be dismissed with immediate effect for:

    (1) Serious damage to company property breaching disciplinary rule 1.6.1 in breach of training delivered by the manufacturer in February 2019 and notice on the press telling you your actions could damage the press.

    (2) Serious breach of company rules disciplinary rule 1.6.1 – turning the press backwards when clearly instructed not to in training and by notice on the guard reminding you not to.

    (3) Breach of health and safety – turning the press backwards when clearly instructed not to in training and you ignored the notice telling you not to.

26. Rule 1.6.1 in the Respondent's disciplinary procedures [37-41] reads:

    The following offences are examples of gross misconduct

    Theft or unauthorised possession of any property belonging to the Company [or] any employee

    Unauthorised acceptance of gifts in contravention of your terms and conditions of employment

    Unauthorised absence

    Serious damage to Company property

    Falsification of reports, accounts, expense claims or Self-certification forms

    Clocking in or out offences

    Refusal to carry out duties or reasonable instructions

    Intoxication by reason of drink or drugs

    Having alcoholic drink or illegal drugs in your possession, custody or control on the Company's premises

    Serious breach of Company rules

Violent, dangerous or intimidatory conduct

Sexual, racial or other harassment

These examples are not exhaustive or exclusive and offences or a similar nature will be dealt with under this procedure.

27. The dismissal letter itself also elaborated further on the test of gross misconduct that Mr Dawson was applying:

    Gross misconduct is behaviour by an employee, which is so serious that it goes to the root of the contract and destroys the relationship between an employer and employee. Further, the conduct is deliberate or amounts to gross negligence, which then entitles the employer to dismiss an employee with immediate effect, and without any notice.

    Mr Dawson had not provided such an explanation to the Claimant at the disciplinary hearing.

28. Mr Dawson's explanation for his finding of gross misconduct was as follows:

    I am satisfied that your action of turning the press backwards was a deliberate act and although you did not intend to cause the damage you did cause damage by knowingly breaching all your training and company policies. I do not know see (sic) how the company can trust you to run the press in the future.

    Having considered all salient facts I have a reasonable belief that you committed gross misconduct. Nothing in the explanation you provided nor any mitigation leads me to believe that you should not be summarily dismissed for gross misconduct.

    Further I note that you admitted your guilt at the start of the investigation. I have given you some credit for that admission of guilt. However, that admission cannot of itself absolve you nor would it necessarily result on (sic) a lesser penalty than dismissal.

    It is inherent in what is stated in the letter that Mr Dawson did not accept the Claimant's explanation that he panicked, and therefore did not explore the reasons why the Claimant might have panicked or lost concentration. Mr Dawson confirmed in his oral evidence to the Tribunal.

29. The letter also explained:

    Further and/or in the alternative your position as Machine Minder means that your contract of employment contains an implied duty that neither employer you (sic) will act so as to breach the duty of mutual trust and confidence. By your actions you have breached the aforesaid duty and that the same amounts to a complete breakdown in trust and confidence such as to make the continuation of the employment relationship untenable.

30. The printing errors were not mentioned as part of the reasoning for dismissal and Mr Dawson confirmed in evidence that they did not affect his decision to dismiss. I accept that evidence.

31. By an email dated 8 September 2020, the Claimant appealed the decision to

dismiss. The core grounds of appeal raised were:

- *The damage to the machine was not intentional and definately (sic) not deliberate.*
- *I was working with limited lighting, in a moment of stress moved the crank in the wrong direction causing the damage.*
- *Your decision to summarily dismiss without notice after almost 19 years, where you had (up until that point) treated me as a trusted and valued employee was too harsh a penalty.*
- *I had also disputed the number print errors attributed to me over the previous 12 months as a number of these were clearly due to the ongoing issue which Impress has had for quite some time with the spray settings on the machine. All Impress printers, as you well know, have had exactly the same problem and you have had to call the engineers out on a number of occasions and so therefore I cannot be held accountable for these errors.*

32. The Claimant also asked for details of the documented maximum and average workload for overnight operations, details of documented minimum staff required to run levels of operation, and the Respondent's procedures for lone working with heavy machinery.

33. The appeal hearing took place on 25 September 2020, chaired by Mr Kille. The Claimant was not accompanied. Mr Webb was invited to give evidence at the hearing. The notes [96-102] record that the Claimant was invited by Mr Kille to explain why the conclusion of the disciplinary was flawed. The Claimant explained that his actions were not deliberate, that the lights above the press were out, and that he got confused and moved the press the wrong way, causing the damage. He also explained that he "*felt like [he] had to get it going and obviously [he] made that mistake and this is the outcome*". Mr Kille also questioned the Claimant about the error report. The queries raised by the Claimant regarding workload / minimum staff / lone working procedures were not discussed.

34. The appeal outcome letter was issued on 30 September 2020 [103]. Mr Kille upheld the decision to dismiss. The letter explains the reasons for that decision as follows:

> *I am satisfied that your misconduct on the night in question was an act of gross misconduct. You displayed blatant disregard for company procedures, including health and safety rules, and wilfully ignored the training you had received. The resultant cost to the business was highly significant and I can find no plausible excuse for your actions. Furthermore, I am also satisfied that, in reaching the disciplinary outcome, proper consideration was given for reasons to mitigate from a gross misconduct dismissal and that, while your length of service was a relevant factor, dismissal remained a fair conclusion once your previous work errors were also taken into account.*

It is inherent in what is stated in the letter that Mr Kille did not accept the Claimant's explanation that he panicked, and therefore did not explore the reasons why the Claimant might have panicked. Mr Kille confirmed in his oral evidence to the Tribunal.

35. It is also apparent from the letter (and Mr Kille confirmed in evidence) that, unlike Mr Dawson, Mr Kille did take into account the errors attributed to the Claimant in making his decision. Mr Kille did not, however, address the points raised by the Claimant in his appeal regarding whether those errors were properly attributable to the Claimant. Mr Kille also did not address in the letter the queries raised by the Claimant regarding workload / minimum staff / lone working procedures. Mr Kille's oral evidence was that the items raised by the Claimant were "*not appropriate to our industry*".

36. On 5 October 2020 the Claimant commenced ACAS Early Conciliation. The Early Conciliation Certificate was issued on 2 November 2020. The Claimant presented his claim to the Tribunal on 17 December 2020.

<u>Relevant law</u>

Unfair dismissal

37. Section 94(1) ERA provides that an employee has the right not to be unfairly dismissed by their employer. It is not in dispute that the Claimant was a qualifying employee and was dismissed by the Respondent.

38. Section 98 ERA deals with the fairness of dismissals. There are two stages within this section.

    38.1 First, the employer must show that it had a potentially fair reason for the dismissal, *i.e.* one of the reasons listed in section 98(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*" (section 98(1)(b)). Conduct is one of the potentially fair reasons.

    38.2 Second, if the employer shows that it had a potentially fair reason for the dismissal, the Tribunal must consider whether the employer acted fair or unfairly in dismissing for that reason. Section 98(4) provides that the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) shall depend 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 shall be determined in accordance with equity and the substantial merits of the case. The burden of proof at this stage is neutral.

39. In cases relating to conduct (as this case is), the Tribunal should apply the test set out in *British Home Stores Ltd v Burchell* [1978] IRLR 379. In summary, the employer must demonstrate that:

    39.1 it genuinely believed that the employee was guilty of misconduct;

    39.2 it had reasonable grounds for that belief; and

    39.3 it had carried out an investigation into the matter that was reasonable in the circumstances of the case.

40. The issues identified in paragraph 9 above were framed so as to apply the principles set out in *Burchell*.

41. It is not for the Tribunal to substitute its own view of what it would have done in the position of the employer, but to determine whether what occurred fell within the range of reasonable responses of a reasonable employer, both in relation to the substantive decision and the procedure followed (*J Sainsbury plc v Hitt* [2003] IRLR 23; *Whitbread plc v Hall* [2001] ICR 699).

42. An investigation must be even-handed to be reasonable, and particularly rigorous when the charges are particularly serious (*A v B* [2003] IRLR 405). The employer must consider any defences advanced by the employee, but whether and to what extent it is necessary to carry out specific inquiry into them in order to meet the *Burchell* test will depend on the circumstances as a whole – the investigation should be looked at as a whole when assessing the question of reasonableness (*Shrestha v Genesis Housing Association Ltd* [2015] IRLR 399).

43. The size and administrative resources of the employer's undertaking are relevant, as is the ACAS Code of Practice on Disciplinary and Grievance Procedures (the "ACAS Code"). The ACAS Code recognises that an employee might be dismissed even for a first offence where it constitutes gross misconduct. The employee's length of service is a factor to be considered (*Strouthos v London Underground Ltd* [2004] IRLR 636) but is not determinative. The employer is entitled to take into account the attitude of the employee to his/her conduct (*Paul v East Surrey District Health Authority* [1995] IRLR 305).

44. The approach to be taken to procedural fairness is a wide one, viewing it if appropriate as part of the overall picture, not as a separate aspect of fairness. Any procedural defects in the initial disciplinary hearing may be remedied on appeal provided that in all the circumstances the later stages of a procedure are sufficient to cure any earlier unfairness (*Taylor v OCS Group Ltd* [2006] IRLR 613).

Wrongful dismissal

45. An employee is not entitled to notice of termination if they have fundamentally breached the employment contract, *e.g.* if the contract is terminated because the employee is guilty of gross misconduct. It is not enough for the employer to show (as for unfair dismissal) that it reasonably believed that the employee committed gross misconduct, but that the misconduct was actually committed (*British Heart Foundation v Roy* UKEAT/0049/15).

Conclusions

Unfair dismissal

Issue 1: Did the Respondent conduct a reasonable investigation and was the procedure adopted by the Respondent fair and reasonable in all the

circumstances?

46. The Respondent's position was that a reasonable investigation had been carried out – it was established that the Clamant had caused damage to the press by his actions (which the Claimant accepted from the outset), and the Claimant was unable to provide an explanation for why he did what he did, contrary to his training and the warning sign on the machine itself. The Claimant argued that there was no reasonable investigation because there was no proper investigation by the Respondent of the Claimant's explanation for why he cranked the machine backwards.

47. I have found that, from the initial event report prepared by Mr Webb on 13 August, through the investigation meeting, the disciplinary meeting and the appeal, the Claimant consistently asserted that he panicked. He didn't know why he did what he did, notwithstanding that he had been trained and was aware of the various warnings not to do that.

48. However, notwithstanding this consistent assertion, the Respondent did not properly investigate why the Claimant – a highly experienced operator with 19 years' service with the Respondent – might have panicked in that moment. The nearest there is to an attempt by the Respondent to explore this is a question from Mr Dawson to the Claimant in the disciplinary hearing regarding whether there were any circumstances outside of work that might have affected the Claimant's judgement. However, this was not explored further and, in particular, the Claimant was not asked about any in-work circumstances that may have led to the asserted panic state. The issue was not explored by Mr Kille in the appeal either. Instead, Mr Dawson (and subsequently Mr Kille) simply disbelieved the Claimant's explanation.

49. I find that a reasonable employer in the circumstances of the Respondent would have investigated further the circumstances that led to the incident before disbelieving the Claimant's explanation. Instead, Mr Dawson in his mind ruled out the possibility that the Claimant panicked, because the Claimant was an experienced operator. He said as much in cross-examination. Considered objectively, there was no reasonable basis for disbelieving the Claimant, at least without a deeper investigation of the circumstances and why they may have led to the Claimant panicking. I make this finding being fully conscious that it is not the role of the Tribunal to step into the shoes of the employer, but to consider the situation objectively and to determine what a reasonable employer would have done in the circumstances.

50. The Claimant also raised a criticism of the Respondent for taking into account the 15 errors recorded against the Claimant's name as part of the disciplinary process. Mr Dawson was very clear in his evidence that this was no more than background and did not affect either way his decision to dismiss and I accepted that evidence.

51. The position however is less clear in respect of the appeal. The appeal outcome letter makes clear that Mr Kille did take account of the Claimant's previous work errors when considering the appropriate sanction. I find that Mr Kille did do so. That being so, I find that there was a procedural failing in

Mr Kille not properly considering the attribution of the print errors to the Claimant, which was a point specifically identified in the Claimant's appeal email. I make no finding whether or not the attribution was correct, but simply that Mr Kille should have properly considered the Claimant's points and come to a reasoned decision in respect of them. He did not do so.

52. There was a further procedural failing in the appeal, in that Mr Kille failed to address in his outcome letter the queries raised by the Claimant regarding workload / minimum staff / lone working procedures. The first explanation for why these points were not addressed came in Mr Kille's oral evidence before the Tribunal. If (as Mr Kille said) the points were not appropriate in this industry, a reasonable employer would have addressed this in the appeal outcome.

53. I therefore conclude on Issue 1 that the Respondent did not conduct a reasonable investigation and the procedure adopted by the Respondent was not fair and reasonable in all the circumstances.

Issue 2: Did the Respondent genuinely believe that the Claimant was guilty of the misconduct complained of?

54. I can deal with this briefly. While there was a suggestion in the pleadings that the Respondent had an ulterior motive – namely to avoid a redundancy payment – this was not put to any of the Respondent's witnesses nor mentioned in the Claimant's closing submissions. I find that the Respondent did, in fact, believe that the employee was guilty of the misconduct.

Issue 3: Did the Respondent have reasonable grounds for that belief?

55. The Respondent submitted that it was reasonable for the disciplinary officer to conclude that the admitted serious damage to the machine was sufficient for a finding of gross misconduct. The Claimant submitted otherwise: particular reference was made to the Respondent's own characterisation of "gross misconduct" in the dismissal letter as "behaviour by an employee which is so serious that it goes to the root of the contract and destroys the relationship between an employer and employee".

56. I find that the Claimant is correct on this point. Although not expressed in the disciplinary policy itself, it is clear that the standard that the Respondent was purporting to apply was something more than 'strict liability' but involved consideration of whether trust had been broken by the Claimant's actions. There is express reference in the dismissal to the company not being able to trust the Claimant to run the press in future in the dismissal letter, so the issue was plainly in the mind of Mr Dawson. Further, Mr Kille also mentioned in his oral evidence that the Claimant had "breached our trust".

57. It follows then that identifying the relevant misconduct required not just a consideration of what happened, but also of whether that could reasonably be said to be conduct that goes to the root of the contract.

58. I have already found on Issue 1 that the Respondent failed to reasonably investigate the Claimant's assertion that he panicked. Having failed to carry

out such an investigation, and considering matters objectively, there was no reasonable basis for disbelieving the Claimant.

59. Both Mr Dawson and Mr Kille treated the cost of the damage, combined with the Claimant's admission that his actions caused the damage, as effectively settling the question of whether the Claimant's conduct met the definition of gross misconduct. However, it is clear from the definition in Mr Dawson's letter that both Mr Dawson and Mr Kille needed to go further and consider the question of whether the damage was deliberate (it was never suggested on either side that it was) or gross negligence, but they failed to do so. I find that no reasonable employer would have failed in that way.

60. I therefore conclude on Issue 3 that the Respondent did not have reasonable grounds for believing that the Claimant had committed the misconduct alleged.

Conclusion on unfair dismissal

61. It follows from my conclusions on Issues 1 and 3 that the Respondent did not act reasonably in all the circumstances in treating the alleged misconduct as a sufficient reason to dismiss the claimant. The Claimant was unfairly dismissed.

Wrongful dismissal

Issue 4: Did the Claimant do something so serious that the Respondent was entitled to dismiss without notice?

62. It follows from my findings in relation to unfair dismissal that there was no factual basis for a finding that the Claimant committed gross misconduct. I accept the Claimant's evidence that he panicked in the moment – this is the explanation he has consistently given since 13 August 2020 and I have no reason to doubt the Claimant's sincerity on this point. A momentary panic – albeit with quite serious consequences in terms of damage to the machine – is not enough to break the relationship of trust between the Claimant and Respondent. The breach does not go to the heart of the employment contract.

63. I therefore conclude that the Claimant was dismissed in breach of contract in respect of notice.

Remedy

64. Issues of remedy (including *Polkey* and contributory fault) were not addressed at the hearing due to lack of time. I indicated to the parties following my oral judgment that, if they are unable to agree the appropriate remedy taking account of my findings, a further hearing shall be listed to determine the issue.

65. The parties shall write to the Tribunal within 21 days of receipt of these reasons to confirm whether a hearing is required and, if so, their time estimate and available dates.

Employment Judge Abbott

Date: 9 December 2021