EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4102047/17

Held in Glasgow on 22, 23, 24, 29 & 30 January 2018

Employment Judge: Laura Doherty

Mr John MacLeod — **Claimant In Person**

Royal Mail Group Ltd — **Respondents Represented by: Mr. A Gibson - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant was not unfairly dismissed, and the claim is dismissed.

REASONS

1 The claimant presented a complaint of unfair dismissal on 26 June 2017.

2 The claim is resisted. The respondents accept that the claimant was dismissed; their position is that he was dismissed fairly by reason of gross misconduct, and on that basis the claim should fail.

3 The reason for dismissal is in issue and therefore the first issue for the Tribunal to determine is whether the respondent's establish a fair reason for dismissal.

4 Thereafter, in the event the Tribunal is satisfied there was a potentially fair reason for dismissal, it will have to consider whether dismissal was fair or unfair in terms of Section 98(4) of the Employment Rights Act 1996 (ERA).

5 In the event the claimant succeeds, the Tribunal will consider remedy, and in doing so, it will have to consider whether any compensation awarded should be reduced to the principles to be derived from the case of ***Polkey -v- A E Dayton Services Ltd*** (a ***Polkey*** reduction), or on the basis of the claimant's contributory conduct. It would also have to consider whether there should be an increase to the compensatory award on the basis of a failure to comply with the ACAS Code.

6 For the **respondents** evidence was given by:-

Ross MacDonald who at the relevant time was a Delivery Office Manager (DOM) at Glasgow G13, and the Investigating Officer in the disciplinary procedure;

Mr Ian Macgregor, Operations Manager with Royal Mail, the Dismissing Officer;

Ms Collette Walker, an Appeal's Manager with Royal mail.

The claimant gave evidence on his own behalf, and led evidence from;

Elizabeth McGill, GPO and a colleague;

David Cooper, GPO a colleague of the claimant;

Terry Bryson, GPO and colleague of the claimant,

A statement was provided from Shaun McGhee, a GPO colleague of the claimant and CWU representative.

The parties agreed a joint bundle of documents.

7 The remedy which is sought in this case is compensation. The claimant's pre-dismissal earnings are agreed, as are his earnings from his new employment, and the period between his dismissal, and commencement in his new job. It is agreed that while in employment, his gross pay was £440.85 per week, and his net pay was £354.80 per week. It was also agreed that he was part of the respondents pension scheme, into which his employers made a contribution of 1% of his earnings.

Findings in Fact

8 From the information before the Tribunal it made the following findings in fact.

9 The respondents are a large organisation with a responsibility, including statutory responsibilities, for the delivery of mail.

10 The respondents recognise the CWU and UNITE as a trade unions.

11 The respondents have a number of practices and procedures in place for the management of staff. These include the *"Royal Mail - Our Code - Business Standards;* the *"Royal Mail Group Conduct Policf* and the *"National Conduct Procedure Agreement between Royal Mail Group and CWU and Unite - CMA".*

12 The Conduct Policy provides for precautionary suspension, and provides that where an employee is suspended from work it is important that weekly contact is maintained, and when the case is passed to the second line manager the first line manager or another manager must maintain contact.

13 The Policy provides that in the event of a potential disciplinary issue a fact finding meeting should take place. If the manager who conducts the fact finding finds that there is a case to answer he must decide whether, if the allegation is proven, the penalty is likely to be within the level of his authority; if he feels a major penalty is the possible outcome he must at that stage pass it to another manager, normally the second line manager.

14 The second line manager then considers the information passed to him; considers what conduct is alleged against the individual (a conduct *notification* in terms of Policy); advises the employee of the conduct notification, and supplies him with any relevant document, and invites the employee to attend a conduct hearing.

15 The Policy also provides for an appeal, which is a rehearing of the disciplinary case. On appeal, the Appeals Officer can revoke or confirm the decision or reduce the penalty.

16 The Royal Mail Code of Business Standards (the Code) includes a non-exhaustive list of examples of gross misconduct which includes *intentional delay of mail.*

17 The Code also provides a definition of intentional delay in the following terms:-

> *"Intentional delay of mail is classed as gross misconduct which, if proven, could lead to dismissal. The test to determine whether actions may be considered as intentional delay is whether the action taken by the employee knowingly was deliberate with an intention to delay mail.*
>
> *Where proven, such breaches of conduct can lead to dismissal, even for a first offence; indeed intentional delay is a criminal offence and can result in prosecution"*

18 The respondents are subject to regulatory regime overseen by Ofcom, and can be subject to fines if they fail to comply with their regulatory standards.

19 The respondents can also be subject to a financial penalty In the event a customer complains because mail is not delivered timeously.

20 The respondents are party to a *National Conduct Procedure Agreement between Royal Mail Group and CWU and Unite -CMA,* the purpose of which is to help all employees maintain standards of conduct. It provides under a subheading - *"Royal Mail Delivery - Avoiding Delay"* the following **:-**

> **"*Prior to commencement of delivery***
>
> *On completion of their preparation, where an employee believes that they may experience difficulty in completing their delivery within the authorised time allotted, they should approach their manager as soon possible before setting out on delivery. It will be for the manager to discuss any problem and advise the employee what particular action should be taken, including the consideration of collection on delivery around associated post boxes to enable USO compliance.*
>
> *When an employee has requested assistance on delivery, but the manager believes that assistance is not required, the decision, along with the advice given to the employee, should be recorded and associated with the daily traffic volume record. The employee can have access to this record and may ask to see it prior to commencement of their delivery.*
>
> *The employee should be encouraged to see their union representative if agreement cannot be reached. Instances where there is a difference of opinion between the employee and the manager about what is possible during the shift will be looked at individually within the unit on the basis of factual evidence. Such differences will be addressed prior to the employee leaving the office for delivery.*

The employee and manager should agree a specified time to phone if full completion of delivery workload within the allocated time proves not to be possible. If it becomes obvious that the delivery may be a problem, the employee can contact the manager before the arranged time."

21 The respondents employ a large number of Postmen/women (GPOs) to deliver mail. In broad terms, the GPOs duties involve sorting the mail, tying it down (putting it into bundles) and delivering the mail on a particular route. A route is referred to as a duty and is identified by number. It is allocated to individual GPOs. A GPO would normally be responsible for sorting the mail for his own duty, prior to delivering it.

22 Each duty comprises a number of loops where the GPO delivers mail. In determining the routes on a duty, the respondents use a mapping system based on delivery points (GEO route) which an agreed tool with the CWU, to measure walks (loops).

23 Each duty comprises at least one COLOD (collection and delivery pillar box) which should be collected on the duty. On returning to the delivery office with the mail from the COLOD, the GPO completes a form to confirm he has returned all of the COLOD mail, which includes a signature and the time out, and the time back.

24 Deliveries are modelled on 'model traffic', which is a traffic forecast for each week, and is agreed with the CWU. During some periods of the year the model traffic week is exceeded, particularly around Christmas.

25 The Bearsden office, where the claimant worked, employed a number of means of dealing with the increased volume of mail around Christmas. These included the implementation of IPS (Inward Primary Sorting) which helped with mail sorting over the Christmas period; the employment of parcel drivers, to deal with the increased number of parcels so that these could be removed

from the duties; and bringing staff in earlier than normal. They also employed nightshift staff to help with the mail sorting.

26 The respondents employ a system of *'pairing'* whereby GPO's work together with the use of a van. One GPO is the allocated driver, and one is the walker. The driver's routes are designed to be shorter than the walker's routes, so that he can deviate in order to deliver parcels, or special deliveries. Special deliveries (SDs) are the respondent's premium product, which are guaranteed to arrive before 1pm.

27 It is the responsibility of the driver in this pairing to collect mail from the COLOD box, and he receives keys for the COLOD box before departing for his duty.

28 A GPO should sign out in the morning before he leaves for delivery to record the time of departure.

29 The respondents provide training and workplace learning for GPOs, on operational and other aspects of their job. This includes training on *"Correct Delivery of Mail; Premium Products Brief* and *Tortoise and Hare".* The claimant had attended workplace learning sessions on all of these.

30 *The Premium Products Brief* was training on the delivery of special deliveries which required to be delivered before 1pm.

31 *Tortoise and Hare* was training of GPOs on pairing where one was the driver, and one was the walker. The purpose of this training was to demonstrate how this pairing would work. The *hare* was the driver, whose route was shorter than the walker's; the driver would drop the walker off, to deliver mail on a loop of his duty; the driver would then deviate in the van to deliver mail including special deliveries and parcels. The routes were designed so that the driver would then and pick the walker up when they had both completed their loops, before driving to the next loop. More time was built into the driver's loop to allow time to deviate for delivery of parcels and SDs.

32 This was practice generally employed by GPOs in a pairing; they did not undertake delivery of the mail together but each delivered mail separately, one on a walking route, and the other on a driving route.

33 The Duties are planned to a time span which is agreed with the Trade Unions.

34 Duty 22 comprised 6 loops and was planned to take 3:57:41 hours (excluding travel). Duty 12 was planned to take 3:53:09 hours (excluding travel).

35 When Duty 12 and 22 were put together the plan for delivery was that duty 12 would be delivered first.

36 The claimant, whose date of birth is 3 April 1978, has been employed by the respondents as a GPO, from 18 June 2001. He has been employed for the majority of that period at the Bearsden delivery office. The claimant has for a number of years, been assigned delivery of mail on duty number 22. Through *"Revisions"* which had been carried out, the respondents have from time to time expanded or amended the duty 22. The respondents were in the process of implementing a Revision as at December 2016, which resulted in a walk being added into duty 22. The revision had been put on hold because of the Christmas pressure of mail.

37 On 15 December 201 6 the claimant returned to work after an absence of approximately 5 weeks, which was caused by a shoulder injury. On the 15th he worked alongside Mr Cooper and Mr Bryson, completing the duties 22 and 12. The planned way of delivering mail was to do duty 12 first, followed by duty 22.

38 On 15 December the traffic volume was 12% more, than on 16 December 2016. Mr Cooper had responsibility of delivering deviated parcels, and he also delivered part of duty 12. Mr Bryson managed to deliver a special delivery, prior to the 1pm deadline (however he delivered it to the incorrect address).

39 On Friday 16 December 2016 the claimant was allocated duty 22. He was paired with Mr Terry Bryson, who was allocated duty 12.

40 On the morning of 16th December 2016 the Bearsden Delivery Officer Manager (DOM) Jamie Lang, approached the claimant, and asked him how much mail he was going to leave in (not able to deliver). This was not an unusual type of enquiry. The claimant told Mr Lang that he did not think that he would get to duty 12 at all.

41 While it was not unusual for GPOs to indicate that they would not be able to achieve some loops of a duty, it was extremely unusual for a GPO to suggest that he would be unable to deliver an entire duty.

42 Mr Prior, another DOM at Bearsden was advised by Mr Laing about the position on his return to the office. He spoke to the claimant and voiced his disapproval of what the claimant was suggesting. Mr Prior said he was going to take advice from his line manager. He went into his office and telephoned Mr McGregor. He advised him the claimant had said that he was only prepared to do one duty that day. Mr McGregor advised Mr Prior to speak to the claimant to try to resolve the matter, and to understand why he took this extreme position. There was no resolution of the issue.

43 The claimant, having spoken with his trade union representative, Sean McGhee, left the office with Mr Bryson and took the special deliveries for duty 12 with him. Before the claimant left Mr Prior told him to keep his phone on, and he would be in touch.

44 Mr Bryson indicated to Mr Lang at some point before leaving that he believed they could deliver some loops of duty 12.

45 The claimant and his partner completed duty 22, and a small part of duty 12.

46 On return to the delivery office the claimant was asked to attend a discussion with Mr Prior, to discuss events leading to him not being able to complete his duty on time. In the course of the discussion the claimant confirmed that he was off the following day. He was asked to confirm the times that he departed from the office and when he and his partner started to deliver the first walk. The claimant said that he had started his first loop at 10:45 but had delivered SDs for duty 12 before starting duty 22. The claimant was asked if he could confirm the address of the special deliveries, which he did. Two of the addresses were in Drymen Road. The claimant was asked what time he finished duty and what he did after the finished the duty. The claimant said he finished at 13:45 and that he then picked up a COLOD box for the duty while his partner delivered a part of duty 12, at Drymen Road.

47 The claimant was asked about his activity in the morning, when he started work, and his preparing duty 22. In the course of the discussion the claimant confirmed there were no deviated parcels other than special deliveries (SD's).

48 Mr Prior advised the claimant that the model week was 28,000 items, and the traffic for that day was 35,000.

49 At this point, Mr Prior decided to bring the discussion with the claimant to an end, and he advised the claimant that from what he had told him, he believed there was a temporary loss of trust and that this could affect the quality of service which the respondents provided to customers. Mr Prior took the decision to suspend the claimant and he was advised that the next meeting would establish whether the claimant was to resume duty or to be precautionary suspended.

50 Mr Prior wrote to the claimant on 16 December 2016 with a record of that discussion.

51 Mr Bryson was also suspended.

52 The matter was referred to Mr Ross MacDonald, who at the relevant time was the DOM for Glasgow G13/14. Mr MacDonald did not work in the same delivery office as the claimant but had managed him approximately 5 years previously. Mr MacDonald was appointed as the Fact Finding Officer for the claimant and Mr Bryson.

53 Mr MacDonald met with the claimant and Mr Bryson on 22 December 2016. Notes of his meeting with the claimant are produced at pages 33 to 46 of the bundle.

54 In the course of that interview the claimant was asked about the events of 16 December 201 6 and the preparatory work which he carried out before leaving. Mr MacDonald asked the claimant who delivered the SDs, and the claimant confirmed that these had been delivered in a pair. He was asked why he delivered SDs together, when a clear instruction had been given not to do so. The claimant replied that there was no clear instruction not to do so. He said that Mr Bryson had asked Jamie Lang what to do with SDs for the second duty, and Mr Laing did not respond.

55 Mr MacDonald asked him why he delivered the SDs for the second duty prior to starting the first walk he was due to start delivering; the claimant responded it was to prevent SD failures as this had happened the day before.

56 Mr MacDonald asked the claimant if this was something which he normally did. The claimant he said no, but he just wanted to get the special deliveries delivered on time and that he didn't get any instructions from Mr Laing.

57 Mr MacDonald asked the claimant if he understood that delivering in this way builds in a delay and inefficiency. The claimant responded "Yes" and said that when he worked previously he would do it this way sometimes and sometimes he would do them alone, but no one ever asked him how he did them.

58 The claimant was asked to explain how the SDs were delivered when there were 2 people in the van; the claimant explained that he was the driver, and Mr Bryson was the passenger and he confirmed that essentially he used Mr Bryson as a runner.

59 Mr MacDonald asked the claimant why the non-driver was not carrying out delivery work whilst the driver deviated to do the special delivery items. The claimant responded he thought it was quicker and 22 duty would take over 3 hours/3 hours 15 minutes based on the day before, and how long he was taking to do the loops.

60 Mr MacDonald put to the claimant that if he was away delivering SDs for 20 minutes the non-driver could have delivered a loop in that time. The claimant responded he could not disagree with this, but he did not intentionally do it to delay the mail. He said he made a decision that he thought was right at the time.

61 Mr MacDonald asked on a normal day how long it would take to deliver duty 22, the claimant responded anything between 2.30 hours to 2.45 hours. Mr MacDonald asked him was there any issues in delivery that caused him to take longer than usual. The claimant said *"No",* he got a bit stuck with road works, which caused 5 minutes delay. He said he did not start his delivery until 10.50am.

62 Mr MacDonald asked the claimant if he was saying it took 2 people 3.45 hours delivery time each totalling 7.5 hours between them to deliver one walk, and the claimant confirmed *"Yes".* He was asked if that was normal, and the claimant responded *"No"* but he had an abnormal amount of door chaps and recorded deliveries.

63 Mr MacDonald then took the claimant through a number of figures in relation to the mail traffic for Bearsden, which impacted on sorting and tying down the mail. He asked him the claimant if he could justify leaving nearly a whole duty.

The claimant said with the time it took to get ready and to go, and he made a judgment based on how long the loops took to do the day before.

64 Mr MacDonald asked him how he justified such a long delay in one delivery, and asked the claimant if he had any other explanations which he wanted to offer as to why his indoor performance and outdoor performance was below the expected standards. The claimant said not being 100% fit and just being back after 5 weeks off and not been offered a phased return to work/rehab.

65 The claimant was accompanied by his trade union representative Mr Davidson at this meeting.

66 Following this interview Mr MacDonald decided to precautionary suspend the claimant, and he wrote to him confirming this and giving the reasons for doing so that the details from the fact finding interview needed to be verified and other witnesses needed to be interviewed.

67 After interviewing the claimant, Mr MacDonald carried out other fact finding interviews. He interviewed Mr Lang, notes of this at pages 51 to 60 of the bundle.

68 At the outset of the interview Mr MacDonald asked Mr Lang what discussions took place between himself and the claimant and Mr Bryson about leaving mail in. Mr Lang said he noticed that around 9.30am Mr Bryson helping the claimant tie down the mail, which was later than it should have been. He said he expected both of them to be ready and to have departed. He asked the claimant which loop he was looking for assistance to deliver that day, and the claimant responded *"it will be more than a loop, more like a full duty'.* Mr Lang said this happened around 9.30am.

69 Mr Laing said there was no conversation with him about how the claimant and Mr Bryson would deliver the SD's. He was asked if he authorised either the claimant or Mr Bryson to deliver SD's for the second duty first, and was he

aware they were doing so, and responded *"No".* He was asked was this a common practice, and he said "/Vo".

70 He was asked if there was any doubt that this practice is not allowed, and he responded that he believed that Mr Bryson had been counselled for this before and also the revision staff had been instructed that the driver has time built in after the first duty to deviate for SD's if he needs to.

71 He was asked why it wasn't acceptable to deliver in pairs, and he said because it wastes time.

72 Mr Lang was asked why the claimant stated he wasn't given a clear instruction not to deliver SD's. Mr Lang responded that claimant would not have needed an instruction as he was an experienced Postman and he never asked for one.

73 Mr Lang was asked why he would say that he had asked the manager what to do with the SDs but had received no answer. Mr Lang responded that the claimant had never asked him, and he said there were no special delivery failures the day before.

74 Mr Lang was also asked if it was reasonable that the claimant and Mr Bryson were just trying to avoid SD failures, and that is why they delivered the SD's for the second duty first. Mr Lang responded "/Vo" that the driver should have carried this out on his own if he thought they were at risk. He said that if two experienced postman were driving around together delivering specials it was just time wasting.

75 Mr Lang was asked why it was unreasonable for the pair to deliver only one duty. He said they were 2 experienced Postmen on the walk, and one is the duty holder and they have 8 hours between them to deliver the mail. One walk should only have taken 5 hours between them at the very most, as they did not have any deviated parcels. The fact that the claimant and Mr Bryson believed they could only manage one duty, means they were taking 8 hours

for one walk. Mr Lang said that he believed this was deliberate and they slowed down to prove a point. He said that even Mr Bryson had agreed that they should have managed part of the other walk (duty 12) but that the claimant was adamant about this.

76 Mr MacDonald asked if the claimant had at any point said he struggling with his indoor work because of his shoulder injury, and Mr Lang said "/Vo". Mr Laing said the claimant had not asked for any assistance, and had said at the welcome back meeting that he was *okay* and fit to return.

77 Mr MacDonald interviewed Mr Prior on 4 January 2017. The notes of the meeting are at pages 56 to 60 of the bundle. Mr Prior advised that he was out of the office but on his return, he was told by Jamie Lang that he had spoken to the claimant and Mr Bryson who were looking to leave in a full duty. He was asked about the practice of delivering SD's, and confirmed it is not an acceptable practice to deliver SD's in pairs. He said it created inefficiency: the process was that they deliver the first duty and if there are SD's for the second duty the driver cuts off to do them before 1pm and meantime the passenger carries on with the delivery work. He denied that the claimant had ever raised any issues about special deliveries with him.

78 Mr MacDonald also carried out a fact finding interview with Mr Bryson on 22 December 201 6. In the course of that interview Mr Bryson said he had asked Mr Lang what to do with special deliveries, and received no reply from him. He was asked when he delivered his first letter. Mr Bryson said he did not deliver his first letter on duty 22 until just after 10am as the claimant had wanted to do the SD's for duty 12 first, as he was worried about them failing the 1pm deadline. He was asked if he had deviated on the way to his first delivery point, and he said "Yes", in order to do the special deliveries in duty 12.

79 Mr Bryson was asked why special delivery items were done together when a clear instruction was given not to do so, and that the claimant should have deviated to do special deliveries and left Mr Bryson to deliver mail. Mr Bryson

said that the claimant's decision to do it this way would prevent the SD's failing. He said the previous day they had failed the 1pm deadline because they had parcels to deliver.

80 In the course of the interview Mr Bryson confirmed he had been told not to deliver special deliveries in this way, and he had been told this before by Danny Prior, but he said that the claimant was the driver and he wanted to do it that way.

81 When asked if he understood this build in delays and inefficiency, he responded *"Yes".* He thought on this occasion it was the right thing to do taking into account the Christmas volume.

82 Mr Bryson was asked about the time it took to deliver the duty, and it was put to him it took about 7.5 hours to deliver one walk. Mr Bryson agreed that that was excessive and he thought they should have done duty 12 first and then would have eaten into duty 22 as well. He said the claimant was the duty holder and he made the decisions to do walk 22, and said that we would not have time to touch duty 12. Mr Bryson said that he told Mr Prior that he could manage more.

83 Mr Bryson was asked if there was a deliberate delay in their departure and he said no and that he was *"champing at the bif* to get out and Danny Prior could confirm this. He was what delayed him, and he said he was waiting for his partner. Mr Bryson was asked how he justified leaving a whole duty. He said he did not have any say in this, and he did deliver a bit of the second duty. Mr Bryson was asked if he had any explanation for the events of 16 December 2016. He responded that the believed the duties were delivered the wrong way round but he could not control this as the claimant was the duty holder. He said that he believed that if they had delivered duty 12 first they would not have had to leave as much on the second walk. He was tied into something he could not control and if he had been out on his own he would probably have cleared it. He said he believed that because he was prepped in time, and was ready to go and was in good shape.

84 Mr McDonald also carried out some further investigations. He considered the signing out sheets for 16 December 2016 which demonstrated the claimant and Mr Bryson had not signed in and signed out; the SD scanning details for two items for special delivery on 16 December 2016, which showed an SD had been delivered at 10:17am; the traffic summary report, which showed the traffic volume of mail was 12% higher on the 15th than the 16th of December; and the prep plan details.

85 After he concluded his investigations, Mr MacDonald concluded that the matter should be referred for both employees to manager with authority to impose more serious disciplinary sanctions for his consideration, and he forwarded the papers to Mr Macgregor.

86 Mr Macgregor considered the papers which he had, and thereafter formulated the charges which he intimated both to Mr MacLeod, and Mr Bryson.

87 The charges were drafted on the same terms, and sent to the claimant in a letter of 17 January 2017, pages 61 and 62. The charges, or notification (in terms of the Code) were in the following terms:-

> *"1. It is believed that you intentionally attempted to delay mail delivery on duty 12 by being deliberately unproductive on your indoor tasks, with the aim of delivering less mail outdoor on Friday 16 December 2016, which demonstrated behaviours in contravention of our code of business standards.*
>
> *2. It is believed that you intentionally attempted to delay mail delivery on duty 12 by being deliberately unproductive on your outdoor tasks, specifically by delivering Special Delivery items for your 2nd duty, with the aim of delivering less mail outdoor on Friday 16 December 2016, which demonstrates behaviours in contravention of our code of business standards.*

3. *It is believed that you intentionally attempted to delay mail delivery on duty 12 by being deliberately unproductive on your outdoor tasks specifically by agreeing the collection of a COLOD box, which had already been passed earlier in the day, with the aim of delivering less mail outdoor on Friday 16 December 2016, which demonstrates behaviours in contravention of our code of business standards"*

88 In his letter to the claimant Mr Macgregor provided copies of his initial discussion notes of 16 December 2016, the traffic survey reports, prep plan details, signing out sheets, the special delivery scanning details, and the Royal Mail Code of Business Standards.

89 The claimant was advised that if substantiated, any notifications would be regarded as gross misconduct which could lead to formal conduct action up to and including dismissal.

90 The claimant was asked to attend a meeting on 20 January 2017, and was advised he could be accompanied by a trade union representative. Meantime he was advised his suspension was continued.

91 The claimant met with Mr McGregor on 20 January 2017. There was a delay of around an hour and a half from the appointed time of the meeting, and Mr McGregor's actually meeting with the claimant.

92 The notes of the claimant's meeting with Mr McGregor are produced at pages 61 to 83.

93 In the course of the interview Mr McGregor asked the claimant if was it fair to say that he had indicated he would be leaving the whole of duty 12. The claimant responded that duty 22 was going to take in excess of 3 hours. He said it takes a lot of time to tie down duty 22. He thought by the time they left the office they would have no time to do any of duty 12. He said there were

3 people on the same duties the day before, and David Cooper had done 3 loops of duty 22.

94 The claimant was asked who made the decision to not deliver the duties of duty 12. He said it was his decision to concentrate on duty 22 as he knew it a lot better and 12. Mr McGregor put to him that his partner Mr Bryson thought he would be able to deliver more, and asked if that was correct. The claimant said he did not recollect discussing that but he did recall putting both duties in the van. Mr McGregor put to him that Mr Bryson reckoned that he could have delivered 3 or 4 more loops and asked him to comment on that. The claimant said he did not think so. He was asked if he discussed this with his partner and he said he didn't believe so. They only agreed to put the duties in the van and to go with the plan to start the duty.

95 Mr McGregor asked him was he saying that he and his partner had discussed and agreed to do duty 22. The claimant said that Mr Lang asked if there were loops they would need to leave; the claimant told him duty 12, or the second duty, won't be done.

96 The claimant was asked who made the decision to deliver the SD's for duty 12 first, and he confirmed it was him, and that his partner had agreed to it. The claimant was asked was it normal practice to deliver SD's for the second duty first, and said "No". He said he thought it was important to get them done first; when asked why, said Mr Bryson and David Cooper had said that an SD had failed to the previous day. This had also happened the previous year and that Danny Prior had said that it could lead to conduct action and he did not want this happening.

97 Mr McGregor asked if he accepted that delivering in this way was a wrong practice. The claimant said he had never been told it was wrong. He said it was not something he normally did, it was just there were 9 specials and he would not have got to that duty until after 1pm and they would all have failed.

98 Mr McGregor put to him that as a driver, he had time booked into the duty and it was the driver's place to break off to deliver the SDs, and he asked him why he did not drop Mr Bryson and let him get started with mail delivery on foot. The claimant said he did not have a clear plan and it was a *"spur of the moment'* decision. He said he thought it was important to get them done as soon as possible. He said he had no idea of the lay out the van and where there was a bundle to give Mr Bryson. He thought it was important to get the specials done as quickly as possible. Mr McGregor asked the claimant if he thought the delivery of SD's was efficient and the claimant said "Yes" to get them done as quickly as possible. He was asked to explain this and responded he could not explain, he just thought it was important to get them done quickly.

99 In the course of the interview Mr McGregor asked the claimant why he stated that that he had to leave so much mail. The claimant said it was because he had most of the duty to tie down, and calculating what happened the day before he felt that he could not do duty 12. He was well aware that he was taking more time to tie down, plus over 3 hours to do duty 22.

100 Mr McGregor put to the claimant in the course of the interview that by delivering the SD's together the claimant deliberately built inefficiencies to reduce the amount of delivery time he had to do outdoors, and asked him for comment. The claimant said it was a spur of the moment decision; he was stressed out as time was ticking by and he decided there and then to get them out of the way first.

101 Mr McGregor then put to the claimant that by not collecting the COLOD boxes when delivering the SD's to 50 Station road, he deliberately built in inefficiencies to reduce the amount of delivery time he had outdoors, and asked him to comment on this. The claimant said he was not used to collecting from COLOD boxes, it was his partner who did this and it was only when he dropped Mr Bryson off that he realised that he had boxes back on duty 12 to clear. He confirmed there were 2 boxes, one in Drymen Road, and one in Station Road. He was asked if he had ever collected boxes, and confirmed

he had collected them in October. He was asked who collected the COLOD box keys. He said there was one spare key in the pouch which you were given, and he was given keys as he left. Mr McGregor asked the claimant who had delivered the SD's to 50 Station Road. The claimant said that Mr Bryson ran up and he turned the van and went to Ledcarmach to deliver specials. He was asked if this was near the COLOD box at 20 Station Road. The claimant said that 50 Station Road is a few 100 yards from the box. Mr McGregor asked the claimant why he delivered the SD's to Station Road and then went back to collect the COLOD boxes later in the day. The claimant said that he knew that he had to go back to collect them. He said that he finished at 15.45 and it was decided that Mr Bryson would deliver mail for Drymen Road as he did the box.

102 He was asked why he did not clear the boxes when he was in Station Road earlier in the day. The claimant said it didn't register with him as he didn't usually collect the boxes in Station Road and Drymen Road. Mr McGregor confirmed with the claimant that he worked in the Bearsden Office for 15 years and delivered regularly in that area, albeit on a variety of duties. The claimant accepted that he had extensive knowledge of the Bearsden area.

103 Mr McGregor then put various points in the respondent's code of business standards to the claimant. The claimant said that he had worked for 15 years and had worked to high standards and that he understood the repercussions of wilful delay. He said he would not on one day not work as hard as he could and then on another day not bother. He was not that type of person and he comes to work with a good attitude, and work well with others and works hard.

104 After this interview Mr McGregor sent the claimant a copy of the interview notes to confirm their accuracy. He also sent the claimant the notes of the fact finding interviews which had taken place with Mr MacDonald and the two managers, which he had omitted to send the claimant prior to his interview with Mr McGregor.

105 The claimant received these, and wrote to Mr McGregor on 1 February 2017, making additional comments. This included a comment to the effect that the clamant had been followed throughout the morning by Jamie Lang and another manager, and he had performed the loops at a reasonable pace without delay. Both Mr Bryson and he worked past their time that morning so he could correct the mistake for not collecting from the COLOD boxes earlier.

106 Mr McGregor wrote to the claimant on 2 February continuing his precautionary suspension.

107 Having interviewed the claimant, Mr McGregor decided to carry out further investigations, and he interviewed Mr MacDonald, Mr Logan, Mr Prior, Mr Lang, Mr Arnott and Mr Falconer, who had all been managers of the claimant at the Bearsden office asking if they accepted that the claimant's statement was a true reflection of how he worked. The majority of the manager gave statements to the effect that the claimant's description of how he worked did not reflect how they considered the claimant worked, and the majority of the statements contained comments which suggested the claimant was a difficult employee to manage.

108 Mr McGregor also asked the delivery managers if they were aware if staff at Bearsden were aware of the process for delivering SDs and if staff knew the correct procedure was not to do them in pairs in the van. All the managers confirmed that as far as they were aware GPOs were aware of the process for delivering SDs, and they all confirmed that GPOs in Bearsden were aware that it was the driver's responsibility to collect the special deliveries as time was built into the loop to enable him to do this.

109 Mr McGregor also asked Mr Prior if at any time prior to departing for the mail had the claimant changed his view of being able to deliver duty 12 or approached him to review this assessment, and Mr Prior answered "No".

110 Mr McGregor also asked Mr Prior whether the claimant had collected the COLOD box at Station Road before, and Mr Prior confirmed that he had done so on several occasions. He was asked if he considered that the claimant was aware the COLOD box was there, and if he knew when to collect it and if so how. Mr Prior responded to the effect that the claimant was a regular duty holder on duty 22 and was also a driver, covering a walking delivery duty. He said the claimant had covered the role on several occasions and there were signatures to prove that he had signed out the daily. Mr Prior expressed the view that he was 100% sure that the claimant knew where the box was, that it was part of the duty to empty the box each day.

111 Mr Prior was also asked was there a plan in place for duty 12 or 22 to be provided with assistance on 16 December 2016; he replied duty 12 and 22 was to dispatch before 9.30am, which was the normal despatch time. He said that the claimant had the sole task of preparing his own delivery and tie down. Mr Prior said leaving a whole duty was unacceptable. He said he would have expected that the pairing would have required some help but it was unacceptable that they could not deliver a whole duty and this caused unnecessary discussion, debate and delay.

112 In addition to interviewing these managers, Mr McGregor undertook other enquiries. He had information as to the extent of duty 12 and 22 (pages 143 of the bundle). Each duty had six loops; the estimated the duty time in total for duty 12 as 3:53:09 and 22 as 3:57:41 , both excluding travel.

113 Mr McGregor checked if there were any SD failures on 17 December 2016 and he received an email from a delivery partner, confirming that there were none (page 144).

114 Mr McGregor also checked if the claimant had previously signed for collection of mail from a COLOD box, 145A, and found that he had in October 2016.

115 Mr McGregor forwarded the claimant copies of the manager's statements.

116 In response to these the claimant, with the assistance of a CWU representative, approached a number of colleagues (Shaun McGhee CWU representative, Callum Mackay, David Cooper, Adam Torrance), all of whom gave statements to the effect that in their experience the claimant was a good worker and a good employee.

117 Mr McGhee was asked if he had ever attended a meeting in which issues of performance or attitude had been raised by a manager in relation to Mr MacLeod, and confirmed that he had. The claimant forwarded these to Mr McGregor with the letter of 22 February 2017 making the point that he had never been counselled or managed in relation to performance or attitude issues throughout his 15 years with the respondents. He also stated that in relation to training videos and correct delivery procedures in relation to SDs, he could not recall this being highlighted as of high importance. He stated the Tortoise and Hare was used to show the benefits of using lightweight trolleys over the van or drop boxes. Had he made aware of the importance of not delivering in this way, he would not have done so.

118 Mr McGregor thereafter considered the evidence which he had and decided not to uphold notification 1, on the basis that although there was delay in preparing the mail, there were a number of factors which contributed to this which involved others in addition to the claimant, and he did not conclude that there was any deliberate act on the part of the claimant which justified notification one being upheld.

119 He decided that notification 2 and 3 should be upheld, and he concluded the appropriate sanction was dismissal. He wrote to the claimant on 3 March 2017 confirming his decision and providing his reasons at some length as to why he took this decision (page 103 to 113).

120 In reaching this conclusion, Mr McGregor had regard to the manager's and the employee's statements. He concluded on balance it was likely that the claimant could be a difficult employee to manage, but this was not a factor to which he attached significant weight in reaching his conclusions.

121 Mr McGregor concluded that the claimant had acted unreasonably in stating he did not intend to deliver one of the duties of his pairing on 16 December 2016.

122 Mr McGregor concluded that the claimant was the decision maker in relation to this, and that he placed his partner, Mr Bryson at risk of receiving a similar conduct warning. In reaching this conclusion, Mr McGregor concluded that it was only the claimant who stated none of the mail for duty 12 should be delivered, as Mr Bryson had estimated that 3 or 4 loops could be delivered. Mr McGregor accepted that the duty and volume of mail was such that that some of the duty would have to be removed, but not the whole duty, and he inferred that it was the claimant's intention to do as little work as possible.

123 Mr McGregor concluded that the claimant had deliberately adopted an inefficient approach of delivering SD's with a partner in the van which built in delay. Mr McGregor did not accept the claimant's explanation in relation to the SD's, that it was a spur of the moment decision, or that he had not been given a direction as to how to deal with them. He did not consider that a GPO of the claimant's experience required a direction as to how to deliver SD's and he was satisfied that it was well known within the business how this should be achieved, with the driver deviating to deliver SD's. In reaching his conclusion, Mr McGregor attached weight to the fact that when the claimant was asked why he though delivering SD's in the way he did was efficient, he stated that he could not explain; and that the claimant had accepted that it was the driver who was expected to deviate with SDs as close tolpm as possible. Mr McGregor concluded that the claimant as an experienced GPO would have known the practice was not to carry out deliveries in the manner in which he did, and he drew the inference that his doing so was a deliberate act on his part.

124 Mr McGregor concluded that a GPO of the claimant's experience, and with his with experience of duty 22, would have been aware of where the COLOD boxes were on that route, and of his obligation as a driver to collect mail from the COLOD boxes. He took into account that the claimant had collected the

keys for the COLOD box before leaving the delivery office. He did not accept the claimant's explanation as to why he had not collected the COLOD boxes in light of these factors.

125 Mr McGregor concluded that the claimant failed to collect mail from COLOD, boxes which he passed on his way around the special deliveries, building in more delay and inefficiencies. He concluded that that the claimant's failure to collect the COLOD boxes on his way round with special deliveries was a deliberate act, based on the claimant' experience, his knowledge of the route and where COLOD boxes were, and on the basis that he was aware that he had the responsibility of collecting them.

126 Mr McGregor concluded that the fact that one delivery, designed to take 3 hours 57 minutes (duty 22) took two postmen a total of 6 hours and 40 minutes was unacceptable, and unrealistic.

127 Weighing all these Mr McGregor concluded that the conduct identified in notifications 2 and 3 amounted to deliberate delays in delivering mail on the part of the claimant, and were built in to ** pad out'* the duty 22 which would avoid having to work, and to prove his point to the manager that duty 12 could not be delivered.

128 Mr McGregor took into account the claimant's clean service and length of service, but was satisfied that given the severity of the offence, and the potential consequences for the respondents which included potential customer complaints, financial penalties, and regulatory infringements, that the appropriate sanction was dismissal.

129 Mr Bryson received the same notifications as the claimant, and his disciplinary hearing was conducted by Mr McGregor. Mr Bryson had received a previous conduct notification for delivering SDs as a pair.

130 Ultimately Mr McGregor upheld the second notification only. He did not uphold the third notification against Mr Bryson as Mr Bryson had no responsibility for collecting mail from COLOD boxes.

131 Mr McGregor decided not to dismiss Mr Bryson, but to impose a sanction of a two year suspended dismissal, which is the most serious sanction the respondents can impose short of dismissal. In reaching this conclusion, Mr McGregor took into account firstly that notification 3 was not upheld against Mr Bryson. Secondly, he concluded that Mr Bryson had not displayed the same intransigent approach as the claimant had about the ability to deliver duty 12, prior to leaving the delivery office.

132 In reaching this conclusion, he attached significant weight to the fact that Mr Bryson had indicated to Mr Lang, that he thought 3 loops of duty 12 could have been delivered. He also took into account Mr Bryson's position that the claimant as duty holder made the decision to do duty 22 first, and it was the claimant who said he did not intend to do duty 12, but that Mr Bryson (on his own evidence in the fact finding interview) said that he told Mr Prior that he thought he could manage more.

133 Mr McGregor also took into account that it was the claimant's decision to deliver the SDs in the manner in which they were done. He took into account that the claimant was the driver, and therefore in control of driving the van.

134 Looking at these elements Mr McGregor concluded that it was the claimant who was the decision maker on the day, and while Mr Bryson had received a previous conduct notification in relation to SDs that dismissal was not the appropriate sanction, but that 2 years suspended dismissal was appropriate in his circumstances.

135 The claimant was advised of his right to appeal the decision to dismiss, and after consulting with his trade union, the claimant lodged an appeal.

136 The papers were passed to Ms Collette Walker, who is an Appeals Manager based in Northern Ireland. In terms of the respondent's code, the appeal is a re-hearing of the disciplinary case.

137 Ms Walker wrote to the claimant on 13 March 201 7 (159) inviting him to attend a meeting on 21 March 2017 and he was advised of his right to be accompanied by a trade union representative. The claimant was supplied with all the documents which Ms Walker had, and which Mr McGregor had had at the point when he took the decision to dismiss him.

138 The claimant attended the interviewed accompanied by a trade union representative, and presented a written submission to Ms Walker which is produced at page 167 to 169 of the bundle. The claimant read this submission, and provided it to Ms Walker at the appeal hearing.

139 In the submission the claimant made a number of points.

140 Firstly, he said that it was alleged that he was the decision maker on that day, but that Mr Bryson was employed on the same operational grade, and could make his own decisions. Mr Bryson had already been warned about some of the alleged conduct, whereas he had not and the claimant submitted that his being dismissed, while Mr Bryson was given a lesser sanction, was unfair.

141 Secondly, the claimant submitted he followed the correct procedure in relation to alerting management on the day what was achievable that day. He said this was deducted from the previous days' time span which was 3 hours to deliver 22 with a third person doing a loop and part of another. After doing prep, the claimant believed there would be little time if any for duty 12. He stated that he did not refuse to enter discussions or was invited to resolve the issue. He submitted that this showed that managers failed to follow the correct procedure, and placed him in an unfair position.

142 Thirdly, the claimant had not been aware that delivery of SDs in this manner warranted a serious offence and it had never been communicated to him as unacceptable.

143 Fourthly, other members of staff (Alan Ponton and Shaun McGhee) faced no disciplinary action, despite completing only one duty on 16 December 2016 and the claimant submitted that he thought this was because they were willing to work overtime, and he could not because of childcare. He submitted he was treated inconsistently which was unreasonable and unfair.

144 Fifthly, the COLOD boxes being missed was a mistake, and had he been doing duty 12 in the normal way, then they would have been collected as they usually were as part of the driver's delivery loops. He submitted he corrected his mistake by collecting them later in the day while also delivering part of duty 12 with Terry.

145 The claimant complained he was treated unfairly during his suspension and no contact was made with him. He submitted it was unfair investigation, and there was no investigation of his comments relating to Alan Ponton and Shaun McGhee delivering less mail than him.

146 The claimant submitted it was a stressful time for him to be in the office because of lack of direction from managers, he had forgotten to sign out, and he also forgotten lightweight trolleys and drop bags for the COLOD boxes. He submitted this showed that there were not on his mind to do, and supported that it only occurred to him after the COLOD boxes had been missed.

147 The claimant also submitted that Mr McGregor's decision was based on opinions and interpretations, and not on evidence. He reiterated that he had no deliberate intention and did not plan delay. The claimant submitted that he did not *pad out* his duty and he submitted it would not make sense that he would leave SD's after getting no response from Jamie Lang about what to

do with them. He submitted this would have left him open to possible misconduct had this been the case.

148 Secondly, Mr Bryson had told him an SD had failed the previous day. There was no reason for him to say so if this was not the case. Thirdly, he said no staff had assisted him (with mail prep). Fourthly, the suggestion that a long weekend was a motive for his alleged behaviour was unfair and there was never any previous issue which would lead anyone to think of this.

149 Fifthly, the claimant did not change his view throughout the morning and a sensible approach would be to listen to managers and Mr Bryson. He stated that the managers did not offer further advice or discussion around how to accommodate this i.e. he was not offered the opportunity to reason with them and was to offered information or counsel which would allow a change of opinion. He was not offered advice, and it was not the case that he ignored the advice as stated. He said that he was approached by another member of staff Stephen Love claiming the manager had instructed him that he was doing *"his duty'* which created confusion.

150 Mr McGregor stated that on 10 minutes of duty 12 had been delivered, but the claimant did not believe this was true, and he provided photographs which he said showed most of the top row had been delivered including some of the shops on duty12 which had been delivered by the claimant himself.

151 The management was instructed that the duty should be taken out, and that he and Mr Bryson made the decision while they were waiting for manager's decision which was not forthcoming.

152 The claimant's judgment that duty 22 is slightly less than 3 hours, which was stated in the formal interview, was based on a normal working week, and not during Christmas pressure.

153 In the course of the appeal hearing Ms Walker also asked the claimant a number of questions. It was put to him that all managers Mr McGregor interviewed advised that GPOs in the Bearsden office were aware the practices of pairing up to deliver SDs was not acceptable, and she asked him to comment. The claimant responded that he knew that Mr Bryson had been spoken to and counselled about this practice, but he had never been spoken to regarding it. He said if there been any work time learning regarding this, then there would be records of them.

154 Ms Walker also put to the claimant, that he had said that neither he nor his partner had received any advice or guidance how to deliver special delivery items. She stated that all the managers interviewed by Mr McGregor told him that neither he nor Mr Bryson had asked for guidance on how best to deliver SD items. The claimant responded that he knew Mr Bryson had asked Jamie Lang.

155 Ms Walker asked the claimant why he had passed the COLOD box on Station Road, and then had to backtrack to collect them. The claimant responded that he had not planned or thought about it, it was just the way it happened. He said it was a busy and stressful morning and he had not signed in or out of the delivery.

156 He stated the previous day it had taken 3 GPO 3 hours to deliver duty 22 and 12.

157 The claimant also made reference to the statement of his colleagues, which are supportive of him, and asked that Ms Walker take these into account.

158 After interviewing the claimant, Ms Walker decided to carry out further investigations.

159 Firstly she decided to obtain information relating to the training the claimant had undertaken, and she obtained information about the work time learning course which he had attended, which confirmed he had been trained in

Tortoise and Hare in 2003 (176A), The Correct Delivery of mail, (79A) and Premium Products (177A).

160 Ms Walker also considered that the claimant's welcome back (174) which confirmed that he felt *"okay to be back at work'* and was coping with work.

161 Ms Walker also decided to carry out a further investigation with Mr Daniel Prior. She emailed him on 15 April 2017 with a number of questions, about events of 16 December 2016. Mr Prior responded to these questions and the questions and answers are included in a statement at page 181 to 184 of the bundle.

162 Ms Walker had asked Mr Prior if there was a difference of opinion between management and the claimant regarding how much of duties 22 and 12 could be completed within the delivery timescale. Mr Prior responded:-

> "Ves *there was a difference of opinion between myself and Mr MacLeod regarding how of much of the delivery he could be able to complete on duty 12 within the allocated time. I would like to add at the time Mr MacLeod's partner, Mr Terry Bryson had commented to me and the office union representative Mr Shaun McGhee that he agreed with me that they would be able to complete more delivery on duty 12, but Mr MacLeod was adamant that he would not be able to do any of duty 12. Mr Bryson stated that he believed that approximately 3 loops on duty 12 could be completed. This confirmed my view that Mr MacLeod was being excessive in his claims."*

163 Ms Walker asked was a management decision made and communicated to the claimant of management's expectations of how much delivery, considering traffic volume that day, could be achieved within the delivery timescale. Mr Prior responded that a management decision was made and communicated to the claimant and Mr Bryson, and they were advised that as they had loaded the vehicle with the duty which the claimant said could not be delivered, they were to continue loading duty 22 and not to waste any more

time. They were told to follow the delivery process and a manager would be in contact with them when they were out on the delivery to monitor their progress. He said that before leaving the office he told the claimant that due to traffic levels that day he would be expecting duty 22 to be completed along with loops 1, 2 and 3 of duty 12.

164 Ms Walker asked if there was a difference of opinion was the union representative involved in the discussion. Mr Prior responded that Mr McGhee the TU office rep. was involved in discussions between him, the claimant and Mr. Bryson.

165 Ms Walker asked was there a record kept of that conversation and could a copy be produced. Mr Prior responded there was an initial discussion and a fact finding meeting was conducted when Mr MacLeod returned.

166 Ms Walker put to Mr Prior that the claimant had alleged that he was not afforded the opportunity of discussing his concerns regarding the delivery on 16 December 2016 and he was asked for his comments on this.

167 Mr Prior responded that when he returned to the officer at 9.45am Mr Jamie Lang had spoken to him and told him that the claimant had said that he would not be able to deliver any of duty 12. Mr Prior said he had then approached the claimant and his partner Mr Bryson and asked them what the matter was. The claimant said that he would not be getting anywhere near duty 12. When asked why, he said it was too busy. At this point the claimant was still tying the last of the frame. Mr Prior said he told the claimant that he would be consulting with his line manager (Mr McGregor) as he believed this was unacceptable and he wanted to seek guidance and advice on the matter. Mr Prior's position was that the claimant had plenty of opportunities to discuss his concerns.

168 Ms Walker put to Mr Prior that the claimant alleged he was unaware of the seriousness of adopting the practice of doubling up on delivery of SDs. She

asked him how he could be sure that he was aware of the seriousness of this practice.

169 Mr Prior responded that the claimant had been taken through numerous training activities and briefs of how park and loop delivery works. He said the claimant had signing training records to show he had been through the Premium Products brief, Correct Delivery of Mail, and the Revision Story board. Mr Prior said that furthermore in August 2016 two members of staff were suspended for failing mail, and they had been driving around together delivering SDs and not following the correct procedure. One of the individuals involved had been Mr Bryson.

170 Ms Walker asked how much of duty 12 had been delivered, and Mr Prior confirmed that part of a loop was delivered by Mr Bryson, which amounted to 15 calls in total. He said that Mr Bryson had done this while the claimant was collecting the COLOD boxes in Station Road.

171 Ms Walker put it to Mr Prior that the claimant had drawn a comparison to Alan Pontin and Shaun McGhee completing one delivery duty on 16 December, and asked for his comment on this. Mr Prior responded there was no comparison. He said that Mr McGhee and Mr Ponton had work assigned to them other than their own duty, and this was a short term fix due to Christmas pressure. He also said the due to Mr McGhee being the union representative and being involved in discussions between Mr MacLeod and Mr Bryson this affected parts of time of both Mr McGhee and Mr Ponton, meaning the workload that was assigned to them had to be moved elsewhere.

172 Ms Walker asked whether the claimant had signed for the keys for the COLOD boxes on 16 December 2016. Mr Prior confirmed that he should have signed for the COLOD boxes but he failed to do so and he had also failed to sign in and out on that day and he provided copies of the claimant signing for COLOD boxes in previous weeks leading up to his absence on 10 October 2016. He confirmed the claimant had experience in collecting COLOD boxes for the pairing.

173 On 24 April 2017 Ms Walker sent the claimant a copy of the statement from Daniel Prior, a copy of the welcome back meeting notes of 14 December 2016, and copies of his signature on the work time learning briefs noted above, and asked for his comments on these.

174 The claimant responded at length and his reply to Ms Walker is produced at page 188 of the bundle. He stated that among other things that he believed Mr Bryson said to Mr Prior that 'we *would struggle'* we to make an impact on duty 12.

175 In relation to the involvement of Shaun McGhee, the claimant said there was not a group/four way discussion. He said that the union representative Mr McGhee, would confirm this if required.

176 He also asked Ms Walker to consider why Mr Prior had not mentioned this alleged conversation in his fact finding interview with Ross MacDonald.

177 The claimant also submitted that the respondents had failed to follow the procedure, in the event an employee is concerned about his ability to complete his duties and he submitted that due to lack of communication and failure on the manager's part, he appeared to be trying to mislead the investigation.

178 The claimant wrote again to Ms Walker, reiterating his position that the fact that he had forgotten lightweight trolley and collection bags for COLOD boxes supported the position that this was not at the forefront of his mind, and he pointed to the fact that he had not collected the COLOD boxes for some time.

179 Ms Walker then considered the information before her, and decided to uphold the decision to dismiss.

180 In doing so, she took into account the managers statements which were not generally supportive of the claimant's view of how he performed at work, and she also took into account the supportive statements from his colleagues.

While ultimately Ms Walker did not attach a significant amount of weight to this element, she concluded that the relationship between the claimant and his work colleagues, and between the claimant and his managers were likely to be different, given the managers role is to ensure the employees work to business standards, and she concluded on balance that the evidence of the managers supported the notifications of conduct for the claimant.

181 Ms Walker had regard to the evidence given by Mr Prior, including his evidence about contacting his line manager, and the claimant. She preferred the evidence of Mr Prior. She was satisfied the claimant was adamant that he would not be able to complete duty 12, and would not enter into any discussion to compromise. Ms Walker took into account that the management team at Bearsden were familiar with the routes, and they were willing to accept that the claimant and his partner would require help with completing the delivery, but not to the extent of one full delivery.

182 Ms Walker did not consider it necessary to interview Mr McGhee as she considered she had no reason not to accept what Mr Prior had said in his statement, in the context of what had taken place. She took into account that that Mr McGregor had gone through the traffic figures and identified 't/me *wasted'* by the claimant arguing with management about delivery.

183 Ms Walker concluded that the respondents had followed their procedures for the situation where there is a difference between management and a GPO about the delivery of mail.

184 In relation to the claimant's position that he had not been aware that deliveries of SD's in pairs was a serious breach of procedure and that this had never been communicated to him, Ms Walker concluded that this was not correct. She took into account her enquiries in relation to the training which the claimant had received and she considered the Tortoise and the Hare training which the claimant had attended, explained the correct delivery process for SDs. Ms Walker also took into account that all of the managers interviewed by Mr McGregor confirmed that members of the delivery team in Bearsden

had been briefed on and were well aware of the correct procedure for SD items. Ms Walker also took into account that notwithstanding the claimant's position was that he had received no instruction on the special deliveries, he said in the fact finding interview that he understood the method he used to deliver them built in delay and inefficiency. Ms Walker took into account that the claimant was not subjected to disciplinary action on the basis of the method used for special delivery, but because it was said that by using a delivery method which was inefficient, the claimant was intentionally unproductive in carrying out his delivery duties which resulted in intentional delay in delivery of mail.

185 Ms Walker concluded that the delivery team at Bearsden were aware of the correct procedure for delivering SDs, and she did not accept that the claimant was being honest when he claimed that he did not know this method of delivery (delivering in pairs) was incorrect, and that he had never received any communication from managers which outlined that it was unacceptable. Ms Walker formed the opinion that the claimant was not credible in this aspect of his evidence at the appeal.

186 Ms Walker also considered the claimant' s position that he was treated unfairly in comparison with Mr Ponton and Mr McGhee who had only completed one delivery on 16 December 2016. Ms Walker accepted Mr Prior's evidence in relation to this, and concluded there was no relevant comparison to be made.

187 In relation to the COLOD boxes, Ms Walker considered the claimant's position. She took into account the claimant's experience and she concluded that this meant that he was fully aware of the procedures and the importance of making effective efficient decisions to avoid unnecessary delay to mail. She concluded that the claimant had used an inefficient practice in passing the COLOD box and returning later to collect it in an attempt to *pad out* his delivery duty and this amounted to a deliberate intention to delay the mail.

188 Ms Walker also considered the claimant's representation that he had not been supplied with copies of the fact finding interviews of Mr Prior and Mr Lang prior

to the meeting with Mr Macgregor on 25 January 2017. Ms Walker concluded this was a procedural error, but she was satisfied it was a minor one, and the claimant was supplied with copies of the interview notes and had been given an opportunity to comment on them, prior to the decision to dismiss being taken by Mr McGregor.

189 From the attitude which Ms Walker found the claimant displaying prior to leaving the delivery office, and the manner in which he delivered the mail, Ms Walker concluded that the claimant, had deliberately been unproductive in order to slow down completion of delivery of mail on 16 December 2016, and in doing so, had intentionally delayed delivery of mail.

190 She considered the test in the Code, which is "*whether actions can be considered as intentional delay is whether the action taken by the employee was knowingly deliberate with the intent to delay mail",* She concluded that this test had been met and that the claimant had intentionally delayed mail.

191 Mrs Walker took onto account the seriousness of that charge, and the potential implications for the respondents in terms of regulatory infringements, customer complaints and financial penalties. She also took into account that the Code provided that where proven, such breaches of conduct can lead to dismissal, even for a first offence.

192 Ms Walker balanced the claimant's length of service and clean conduct record against this, and concluded that the appeal should be rejected and the decision of dismissal stand. She considered that imposing any sanctions less than dismissal was not appropriate given the seriousness of the conduct she had found established.

193 Following the termination of his employment the claimant obtained new employment after a period of 8 weeks and is now employed by a Government Agency (Student Loans) in an administrative capacity. The claimant's weekly income from that employment is £292.24.

194 While in his employment with the respondents the claimant was allocated shares. Had he remained in employment for a period of 3 months beyond the date of termination of his employment, further shares would have been vested in him, with a value of £1,220.

Submissions

Respondents Submissions

195 For the respondents Mr Gibson made extensive submissions, and took the Tribunal to the relevant law, and the test which is applied in considering whether the reason for a dismissal had been established, and thereafter whether the dismissal had been unfair under Section 98(4) of ERA.

196 Mr Gibson submitted that the respondents had identified a potentially fair reason for dismissal, and had a genuine belief in that reason. He submitted the respondents had conducted a reasonable investigation, and he referred to the steps taken by Mr MacDonald, Mr McGregor and Ms Walker on appeal. Any procedural failure by Mr McGregor in failing to provide the claimant with the statements of the fact findings conducted with the managers by Mr MacDonald was remedied and the claimant was given an opportunity to comment of the statements prior to Mr McGregor making his decision to dismiss.

197 In relation to the failure to investigate further with Mr McGhee, Mr Gibson submitted that there was no need for the respondents to investigate every line of defence. The claimant was saying was that Mr McGhee could back up what he was saying about the conversation not taking place. Ms Walker already had two accounts (the claimant and Mr Prior), and Mr McGhee could not have told her anything in addition to what the claimant had told her happened. Mr McGhee could therefore not have assisted Ms Walker as to any advice given to the claimant by Mr Prior.

198 It is not incumbent upon the respondents to investigate every line advanced by an employee, and the respondents had carried out a thorough and full investigation.

199 Mr Gibson submitted the respondent's belief in the misconduct was based on reasonable grounds. They were entitled to take evidence from the managers, and Mr Gibson asked the Tribunal to accept the evidence of Mr MacDonald and Mr McGregor to the effect that leaving one whole duty undelivered was unheard of and extreme. The Christmas volume of mail could not explain the length of time which it took to deliver duty 22 on 16th December 2016. The claimant accepted that delivering specials in the way in which he did built in delay and inefficiency. He had been trained how to deliver SDs and he was acting contrary to a policy and practice on which he had been trained; it was reasonable for the decision maker to conclude that he had done so deliberately given his stated position on leaving the office.

200 The same reasoning applied to the claimant's decision not to collect mail from the COLOD boxes which he passed when completing the special deliveries. The respondents were entitled to reach the conclusions which they did.

201 There was no inconsistency of treatment, and Mr McGregor looked carefully at the claimant's case against that of Mr Bryson and analysed how the two cases differed. In this regard Mr Gibson referred to the case of ***Hadijioannou -v- Coral Casinos Ltd [1981] IRLR 352,*** and ***Paul*** -v- ***East Surrey District Health Authority*** (Court of Appeal unreported 23 October 1994).

202 Mr Gibson submitted that the dismissal was procedurally fair and pointed to a number of matters in support of his position, including the fact that Mr McGregor took into account the points put forward by the claimant and decided on appropriate action, and had not upheld notification one. Mr Gibson also referred to Ms Walker's evidence in this regard.

203 In relation to remedy, Mr Gibson submitted that in the event the claimant succeeded there should be 100% contribution for conduct, and the same

reduction should apply applying the principles derived from ***Polkey*** -v- ***A E Dayton Services Ltd.*** In relation to quantification of the claim no issue was taken for mitigation, but Mr Gibson submitted the loss should be restricted to 6 months.

Claimants Submissions

204 The claimant also took the Tribunal to the relevant law and the test which the Tribunal has to apply. He submitted that the investigation was flawed, in that firstly Mr MacDonald believed that 16 December 201 6 was the claimant's first day back at work, and he failed to properly consider whether the claimant's assessment of a true workload on that day could have been an accurate and honest assessment based on the fact that it took three people on overtime the day before to complete both duties.

205 The claimant referred to the evidence given by Ms McGill, Mr Cooper and Mr Bryson, and explained how the Revised duties at Bearsden had not worked in practical terms and the duty 22 was a major issue.

206 The claimant submitted that Mr MacDonald failed to establish a declaration of intent. As part of the practice at the depot Mr Lang had asked the claimant what he would be able to deliver, and the claimant said he believed he would not get duty 12 done. The claimant submitted this was not a point blank refusal. He submitted that Mr Lang and Mr Prior failed to handle the situation and communicate expectations clearly.

207 The claimant also submitted that Mr MacDonald did not keep him up to date on a weekly basis throughout his suspension.

208 The claimant then turned to the disciplinary hearing and evidence. He submitted that Mr McGregor had not provided him with all the documentation which he had prior to his conduct meeting. He referred to the fact that there were no interview notes provided to him from Terry Bryson, or the COLOD signing sheet in October 2016. The COLOD signing sheet of October

supported the fact that the last time the claimant had collected the boxes was 8 weeks before, and he had not been able to put this forward during his conduct meeting due to COLOD signing sheet dated October 2016 not being supplied.

209 The claimant submitted that Mr McGregor could not recall why the claimant was kept waiting for almost 2 hours prior to the disciplinary meeting and this put him at a disadvantage in his conduct meeting

210 In relation to the investigation the claimant submitted that Mr McGregor failed to conduct a thorough investigation and his evidence was that although he believed a 15 minute meeting happened with management the claimant and his union representative which was in line with CWU/RM conduct, he had not interviewed Mr McGhee and could not verify a record of this meeting being held. Mr Bryson gave evidence that this had not happened, and Mr McGhee had provided witness testimony to the same effect in document form. The claimant submitted this was an important fact and he believed it showed that management failed to communicate a clear decision and direction, which in turn led to ambiguity in expectation.

21 1 The claimant submitted Mr McGregor had failed to properly investigate the position with Mr Ponton and Mr McGhee, and had failed to prove intent. He submitted Mr McGregor had not produced evidence of clear practice, and the work time learning sheets from 2013 were not helpful in this regard. It was never suggested that a failure to follow the Tortoise and Hare would result in wilful delay or gross misconduct.

212 Mr Cooper confirmed the claimant had not been collecting COLOD boxes on duty 12 and 22 since the revision period and he had only signed the COLOD sheets in October.

213 In relation to the appeal the claimant submitted he was not afforded a thorough investigation and a fair process at the appeal stage. He submitted that Ms Walker did not interview a key witness, Mr McGhee, and in hindsight

admitted this was unfair. She did not follow up or conduct any investigation as to why managers had not followed any disciplinary process with him. Management statements were produced after the disciplinary process with Mr McGregor, and not before it, as claimed. The claimant submitted that these were produced to portray him as a particular kind of person, effectively to suit their purposes in portraying the events of 16 December 2016.

214 The claimant also submitted that it was unfair for Ms Walker to have regard to the testimony of the managers. She said in evidence it helped her form her view, and thus she was not impartial when she conducted the appeal. He submitted that she failed to investigate the evidence which came to her as part of the appeal process.

215 The claimant dealt with the reasons for the decision to dismiss. He submitted that it was well known that the duties 12 and 22 were not capable of being delivered on busy days without additional support and that this had happened the day before.

216 Managers had failed on the day to handle the situation properly before the claimant's departure, which delay and had a knock on effect on time. There was no dishonesty in the claimant's recording of time which was from memory, and the claimant did not have intent to delay the mail, and had "no *position to prove"* on that day.

217 The claimant referred to what he said was a disparity in treatment between him, and Mr Bryson. In addition on a previous occasion, a driver had been given a lesser charge than a partner. Mr Bryson was given a lesser charge even though he had previously been counselled for this, and he had not raised it with the claimant on the day.

218 The claimant also referred to the difficulties caused by the Christmas volume and the revision in Bearsden, which he submitted had to set aside his considerable experience as a postman.

219 The claimant referred to the terms of the Code in relation to the intentional delay of mail. He submitted that was introduced to deal with situations where GPOs was disposing of mail by hiding it, and this was not what he did; the respondents were fully aware of this at the time of his dismissal. He was simply seeking assistance when he prioritised SD items, as they were the most important to deliver. Duty 12 was closer to the office, and he denied that he and Mr Bryson were driving around together in the van as they were both out of the van delivering specials to separate addresses. The reason why he missed the COLOD box was simply that he forgot to collect it.

220 The claimant submitted the managers' statement asked for by Mr McGregor after his conduct meeting were in order to help inflated charges stick against him. The claimant submitted that most he was guilty of was poor judgment and he was not given traffic figures or given the opportunity to discuss the volume in relation to his workload. The claimant submitted that the respondents have accused him of being dogmatic in his approach, but this remains unsubstantiated, and they procedurally failed to give him a fair chance and he had no other evidence supplied in support of his defence.

Note on evidence

221 The Tribunal heard a number of witnesses in this case and with the exception of Mr Bryson, did not form the impression that any of them deliberately attempted to mislead the Tribunal on any material point, and that in the main where their evidence it was relevant, it was credible and reliable.

222 For the respondents, the Tribunal heard from Mr MacDonald, who carried out the fact finding investigation, Mr McGregor, who conducted the conduct interview and took the decision to dismiss the claimant, and Ms Walker, who dealt with the appeal.

223 Other than one issue, which is dealt with below, there were no significant issues of credibility in relation to the evidence given by any of these witnesses about how the disciplinary procedure was conducted. However there were

some issues of fact, arising from the evidence of Mr MacDonald and Mr McGregor, which went to operational matters, and formed the background to their decision to dismiss the claimant, and these are also dealt with below.

224 The claimant gave evidence on his own behalf, and led evidence from Ms McGill, a GPO and work place coach, who was involved in work place learning; Mr Cooper, a GPO of very considerable experience; and Mr Bryson who was paired along with the claimant on 16 December 2016. A statement was produced from Mr McGhee, but he was unable to attend as a witness, and as his evidence has not been subject to cross examination the Tribunal could attach little weight to it.

225 The Tribunal did not form the impression that any material credibility issues in relation to the evidence of Ms McGill, or Mr Cooper albeit on some matters their perception of operational matters differed to that of Mr McGregor, and Mr MacDonald.

226 The Tribunal formed the impression that Mr Bryson's evidence at times lacked credibility and there were inconsistencies which were unexplained, between the evidence he gave to the Tribunal, and the position he adopted at the fact finding hearing, which impacted on his credibility. For example whether delivering SDs in pairs occasion delay. Ultimately, however, a great deal could not turn upon this.

227 There was one issue of credibility in relation to the decision makers which arises from the claimant's submission to the effect that managers statements which were adverse to the claimant, were been produced in order to show him as the kind of person who the respondents were trying to portray in relation to the events of 16 December 2016, and to make inflated charges stick.

228 The Tribunal however, was not satisfied this was the motivation for the production of these statements. It accepted Mr McGregor's evidence that he sought to investigate the position advanced by the claimant at the disciplinary

hearing, as to what sort of worker he was. This position was advanced in support of the claimant's position that it could not be reasonably concluded that he had intentionally delayed delivery of the mail. It was therefore not unreasonable for Mr McGregor to investigate this, and the Tribunal drew no inference adverse to his credibility on the basis that he did so.

229 Similarly it did not conclude that Ms Walker was biased in her approach to the appeal on account of the manager's statements. She was reasonably entitled to take them into account and weight them against the claimant's colleague's statements in reaching her decision, and the Tribunal was satisfied that it what she did.

230 One of the relevant issues of fact in this case was whether as suggested by Mr McGregor and Mr MacDonald, it was *"unheard* of' for postmen to state that a full duty of mail could not be delivered, or not to deliver a full duty. Ultimately it did not seem to the Tribunal that there was a great deal of dispute on this point. While the claimant's witnesses gave evidence and this was less robust than their managers on this point, the flavour of their evidence was not inconsistent with that given by the managers, and was to the effect that it was unusual (albeit they may not have accepted it was unheard of) for this to occur. Mr Copper was asked in evidence in chief about how mail was declined, and said mangers asked at the tie down stage, if there are any issues, or any mail that has to be left in. He explained that often people say they cannot manage a number of loops and generally mangers are ok with that, (which was consistent with the evidence of respondent's witnesses). When pressed on the point in cross examination he accepted he had never left in a whole duty.

231 The Tribunal also heard evidence about the delivery of SDs. Again while the claimant's witnesses suggested that they were not always delivered in the standard way envisaged by the training (and on occasions it made sense to depart from this), the flavour of their evidence supported that the practice was generally for the driver to deviate with the SDs while the walker delivered mail.

232 The Tribunal also heard evidence from the claimant's witnesses the difficulties occasioned by the revision at Bearsden, and in particular, duty 22. The Tribunal in determining the issues in this case is however concerned with the information which was before the disciplinary officers at the time, and therefore it is unnecessary to make detailed findings in relation to the Revision and its effect on particular duties in the Bearsden post office.

Decision

233 Section 94 of the Employment Rights Act 1996 (ERA) provides that an employee has a right not to be unfairly dismissed by his employer.

234 In terms of Section 98(1) of ERA, it is for the employer to show the reason for dismissal, and that it is a potentially fair reason, within subsection (2) of Section 98, or some other substantial reason which justifies dismissal of the employee holding the position which the employee held. A reason fall within Section 98(2)(b) if it relates to the conduct of the employee.

235 It is the respondent's position that the claimant was dismissed for a conduct related reason, as set out in notification 2 and 3 of the conduct charge. It is their position that the claimant's conduct (intentional delay of mail) amounted to gross misconduct, justifying summary dismissal.

236 The first matter which the Tribunal has to consider is whether the respondents have established the reason for dismissal.

237 The onus on the respondents to establish the reason for dismissal is not a heavy one. The reason for dismissal can be a set of facts known to the employer or beliefs held by him which cause him to dismiss the employee.

238 The Tribunal accepted the evidence of Mr McGregor and Ms Walker to the effect that the reason the respondents dismissed the claimant was because of his conduct, based on what they believed to be the intransigent position he adopted about delivery of duty 12 prior to leaving the delivery office, and

thereafter the manner in which he delivered the mail, and they concluded from this that the claimant had intentionally delayed delivering mail on 16th December 201 6. The Tribunal was satisfied that it was these elements which the respondents had in mind, when they took the decision to dismiss the claimant.

239 The Tribunal was supported in its conclusion, having regard to the extent of the investigations which were carried out prior to dismissal. While the reasonableness of this investigation, and the reasonableness of the respondents belief are matters which are dealt with below, the fact that a not inconsiderable investigation was carried out (and the Tribunal was satisfied carried out in good faith) supported the conclusion that the claimant was dismissed for the misconduct alleged against him, and not for any other reason. It was suggested by the claimant in submission that the reason for his dismissal was related to his inability to do overtime, but there was no evidence at all to support this.

240 The Tribunal was therefore satisfied that the respondents had discharged the onus of proving the reason for dismissal.

241 Having reached that conclusion, the Tribunal went on to consider the fairness of the dismissal under Section 98(4) of ERA. Section 98(4) states:-

> *%1) 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;*

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

242 This is a conduct dismissal, and the Tribunal considered the test laid down in the well-known case of ***British Home Stores Ltd v Burchell***

243 What was said in that case is that where an employee is dismissed because the employer suspects or believes that he has committed an act of misconduct, in determining whether the dismissal is unfair an Employment Tribunal has to decide, whether the employer who discharged the employee on the grounds of the misconduct in question, entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. This involves three elements. Firstly, it must be established by the employer the fact of the belief; that the employer did believe it. Secondly, it must be shown that the employer had in his mind reasonable grounds upon which to sustain that belief, and thirdly, the employer at this stage, when he formed that belief on those grounds must have carried out as much investigation into the matter as was reasonable in the circumstances of the case.

244 The Tribunal also took into account the guidance given in the case of ***Iceland Frozen Foods Ltd v Jones*** What was said in that case was:-

"(1) The starting point should always be the words of Section 57(3) themselves;

(2) In applying this section an Industrial Tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the Industrial Tribunal) consider the dismissal to be fair;

(3) In Judging the reasonableness of the employer's conduct an Industrial Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;

(4) In many (although not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonable take another;

(5) The function of the Industrial Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band a dismissal is fair; if a dismissal falls out with the band it is unfair"

245 The Tribunal reminded itself, that in considering the reasonableness of the dismissal it must apply an objective test, and furthermore that in considering reasonableness under Section 98(4) the burden of proof is neutral.

246 The first part of the **Burchell** test deals with the reason for dismissal, and as noted above, the Tribunal was satisfied on that point.

247 The Tribunal therefore considered the second and third elements of the ***Burchell*** test, and began by considering whether at the point when the respondents formed the decision to dismiss the claimant they had carried out as much investigation as was reasonable in the circumstances.

248 The steps taken by the respondents to investigate the claimant's conduct are set out above in the findings in fact.

249 The investigation is not confined simply to the fact finding investigation which Mr MacDonald carried out, but incorporates all the investigations which were carried out from the commencement of the disciplinary process, up until the appeal, and includes the interviews and correspondence with the claimant which gave him the opportunity to put forward his position.

250 The claimant made a number of criticisms of the investigation. He began by criticising what he said were Mr MacDonald's failures, as noted above in his submission.

251 Mr MacDonald did incorrectly believe that the claimant's first day back at work was 16 December 2016, however it did not appear that anything material turned on this error in terms of the investigative process. The claimant referred to making a judgment based on how long the loops took the previous day, and Mr MacDonald investigated the traffic volumes, which showed 12% more mail on the 15th December than the 16th. It was not in dispute that Mr Cooper had delivered parcels on the 15th, and there were no parcels in the duties on the 16th of December.

252 The claimant also criticised Mr MacDonald for failing to establish the correct facts, however Mr MacDonald was not the decision maker on dismissal, and his involvement was confined to interviewing the claimant and the managers, and deciding whether the matter should be referred on further consideration. While it would be correct to say that Mr MacDonald's fact finding interview notes did not extract all the evidence which was ultimately taken into account by the appeal stage, this of itself objectively was not capable of rendering the investigation unfair.

253 The claimant submitted that Mr MacDonald failed to give consideration to changes made by the Revision, and the evidence of Mr McGill, Mr Cooper and Mr Bryson at the Tribunal, which explained how the revised routes did not work. This was not however, put before Mr MacDonald in the course of the fact finding interview.

254 The claimant also criticised Mr MacDonald for failing to keep him advised on a weekly basis throughout the suspension period. This on the face of it is a failure in terms of the respondent's procedure, but it was not one which objectively went to the reasonableness of the investigation, and decision to dismiss.

255 The claimant criticised the investigation carried out by Mr McGregor, in that he failed to provide the claimant with the interview notes from the managers Mr Lang and Mr Prior, at his conduct interview. Mr McGregor did fail to provide these notes, but he did provide them to the claimant prior to taking his decision to dismiss, and gave the claimant an opportunity to comment on them, and therefore albeit this was a failure in the first instance it was remedied before the decision to dismiss was taken.

256 Further, it was not in dispute that the appeal amounted to a re-hearing of the disciplinary case, and the claimant had these statements in advance of the appeal. The conduct of the appeal forms part of the disciplinary process, and is capable of remedying earlier failures in the disciplinary procedure.

257 The claimant also submitted that he was not given a copy of the email confirming SD figures (page 144). This was, however, provided to the claimant as part of the appeal bundle.

258 The claimant also criticised the investigation on the basis that he was not provided with a copy of the fact finding interview from Terry Bryson. In assessing the reasonableness of the investigation, the Tribunal takes into account that the relevant parts of Mr Bryson's statement, which were to the effect that he considered that some of the loops of duty 12 could be done, was put to the claimant for comment at the Conduct Hearing. Objectively it was not unreasonable for the respondents not to disclose the whole conduct interview of another employee to the claimant, but to extract the relevant parts for comment.

259 The claimant also criticising the investigation because he was not provided with a copy of the sheet which he had signed confirming he had collected a COLOD box in October 2016 months prior to his dismissal. Objectively, however, this did not render the investigation unfair, in that the claimant was not prevented from advancing the defence (which he did in fact did) to the effect that he had not collected mail from the COLOD boxes for some time, and the absence of the October sheet did not prevent him from advancing this

position. In addition Mr Prior in his statement at the appeal stage, on which the claimant commented at some length, indicated that the claimant had signed the COLOD sheet in October.

260 The claimant also criticised Mr McGregor's investigation, in that he failed to contact Mr McGhee, the same criticism was levelled at Ms Walker at the appeal.

261 In terms of the investigation which was carried out, Ms Walker acted reasonably in contacting Mr Prior in order to make further enquiries, on the basis of what was said by the claimant in his appeal submission. This was not giving Mr Prior another chance, as suggested by the claimant, but was a legitimate inquiry of him in light of the points raised by the claimant. The questions which Ms Walker asked Mr Prior were reasonable, in the context of what had been said by the claimant in his appeal.

262 The Tribunal considered whether it was reasonable for Ms Walker to adopt the approach which she did, that it was unnecessary for her to investigate the position further with Mr McGhee as she had no reason to doubt what Mr Prior had told her.

263 It was the claimant's position that no 4 way discussion took place with him, Mr Prior , Mr Bryson and Mr McGhee place, and he stated in his comments on Mr Prior's further statement *"the union representative, Shaun McGhee will be able to confirm this if required'. .*

264 Mr Prior however did not suggest that Mr McGhee was present throughout his discussions with the claimant; the most significant element of his evidence was that there was a disagreement with the claimant as to whether he could deliver any of duty 12, with the claimant stating it could not be delivered.

265 Mr McGhee had already produced a statement on behalf of the claimant (albeit prior to Mr Prior's expanded statement being produced to the claimant). There was nothing to suggest the claimant could not have

produced a further statement from him. It is not unreasonable for an employer not to follow every line of defence offered by a claimant, and it is not every failing that renders an investigation unfair. The Tribunal is concerned with what the respondents did, judged against the standard of a reasonable employer, and not whether a better or fuller investigation could have been carried out.

266 From the information Mrs Walker had from the statements, including the claimant's statement, she was entitled to conclude that the claimant had indicated that duty 12 could not be delivered, and that Mr Prior had sought advice from his line manger about what to do about this. The fact that Mr Prior had done this supported the conclusion that the claimant's position did not change after he discussed it with his managers, but as Mr Prior said he remained adamant in his position, and in these circumstances it was not unreasonable for Ms Walker to adopt the approach which she did.

267 It was reasonable for Ms Walker to investigate the point which the claimant raised about the amount of duty which had been delivered by a different pairing of GPOs the previous day and she did this. She was reasonably entitled to accept Mr Prior's evidence that there was no comparison, on the basis that Mr McGhee and Mr Ponton had work assigned to them other than their own duty, which was a short term fix due to the Christmas pressure.

268 The claimant also criticised Ms Walker at the appeal stage, for not following up or conducting any investigation into why managers had not disciplined him earlier. Again, the investigation which the respondents carried out is judged against an objective standard of reasonableness, not whether a fuller or different investigation could have been carried out. Objectively, it was not unreasonable for the respondents to obtain statements from the managers in response to the claimant's submission at the Conduct hearing that he was a good employee and therefore would be unlikely to engage in the type of conduct which was alleged against him. The Tribunal were satisfied that both Mr McGregor, and Ms Walker took into account these statements alongside the statements produced by the claimant from his work colleagues, in order

to reach a conclusion as to the reliability of the claimant's statement. Such an exercise did not reasonably require them to investigate further as to why there had been no previous disciplinary procedures against the claimant.

269 Furthermore the Tribunal did not accept that Ms Walker's taking into account the managers' statements in forming her view rendered the appeal impartial, as submitted by the claimant. The Tribunal accepted Ms Walker's evidence that the manager's statements were an element in her decision making, but it was not an element to which she attached significant weight.

270 The Tribunal was satisfied that applying an objective test the respondents had carried out as much investigation as was reasonable in the circumstances. The claimant had been given notice of what was alleged against him, had been given an opportunity to state his case and reasonable enquiry had been made into the events of the 16th December, including enquiry on the basis of the position he advanced. Where there had been any procedural errors, these had been remedied at appeal.

271 The Tribunal then went on to consider the third leg of the ***Burchell*** test and considered whether at the point they formed their belief in the misconduct for which the claimant was dismissed, the respondents had reasonable grounds upon which to do so.

272 The reasonableness of the respondents belief in this case rests not just on whether they were reasonably entitled to conclude that the claimant had taken a certain stance in relation to delivery of duty 12, or delivered mail in a particular way, but also whether they were reasonably entitled to draw the inference which they did, that he intentionally delayed the delivery of mail.

273 The two principal factual conclusions which underpinned the decision which Mr McGregor and Ms Walker took, were in summary, that the claimant indicated that he would not be able to deliver duty 12, and had adopted an intransigent attitude about this, and secondly, that he had thereafter employed

inefficient ways of delivering the mail, in connection with both SDs, and the collection of mail from a COLOD box.

274 At the point the decision to dismiss was taken, and upheld at appeal, the Dismissing and Appeal Officers had the evidence of two managers to the effect that the claimant indicated that he would not have time to do any of duty 12, The claimant's own evidence at the conduct hearing with Mr McGregor confirmed this. The claimant was asked who decided to deliver one of the duties, leaving duty 12. He responded it was his decision as he knew duty 22 a lot better than duty 12.

275 When it was put to him that his partner, Mr Bryson reckoned that 3 or 4 loops of duty 12 could have been delivered, the claimant said that he didn't think this was the case, and denied discussing it with Mr Bryson.

276 The claimant went on to say that Mr Lang had asked him how many loops he would need to leave in, and he had said it would be duty 12, or the second (duty) won't be done.

277 It was the evidence of Mr Lang, and also Mr Prior on further investigation at the appeal stage, that the claimant had said that duty 12 would not be delivered.

278 In light of this evidence, it was not unreasonable for Mr McGregor and Ms Walker to conclude that the claimant had indicated that duty 12 could not be delivered on 16 December along with duty 22.

279 The decision makers however also concluded that the claimant had behaved in an intransigent manner, and had refused to take on board advice from his managers.

280 In reaching the conclusion as to the unreasonableness of the claimant's position and the approach he adopted, the decision makers attached significant weight to the fact that it was extremely unusual to refuse to do a

whole duty. The Tribunal was satisfied that as a matter of fact this was correct, and they were reasonably entitled to take this into account, and attach significant weight to it.

281 Ms Walker went further than that, and concluded that the respondents had followed their recommended procedure *"prior to commencement of deliver ',* referred to above.

282 It did not appear to the Tribunal that this was a conclusion she was entitled to reach, in that this procedure provides for advice given to the employee being recorded, and traffic figures being discussed and it was accepted in this case that that did not happen.

283 Notwithstanding this however, on an objective view, there was sufficient evidence to allow Ms Walker to conclude that the claimant said that duty 12 could not be delivered; that he had an opportunity to discuss his concerns regarding delivery that morning, and that he indicated that he would not complete any of duty 12, and that he did not compromise on this position prior to leaving.

284 In reaching these conclusions Ms Walker was reasonably entitled to have regard to the claimant's statement in his fact finding and conduct hearing, where he confirmed that he said he would not get duty 12 done.

285 She was also reasonably entitled to have regard to the statement of Mr Prior, (confirmed by Mr Lang) to the effect that on his return to the office he spoke with Mr Lang, who told him the claimant was saying that he would not be able to deliver duty 12; that Mr Prior had thereafter approached the claimant, who said that he would not be able to deliver duty 12 because it was too busy; and that Mr Prior had then consulted his line manager about what to do about the position adopted by the claimant.

286 The fact that Mr Prior took this step reasonably supported the conclusion that there had been debate about non delivery of Duty 12 with the claimant, with the claimant refusing to change his view.

287 Ms Walker was also entitled to have regard to the fact that the managers accepted that assistance would be required with duty 22 and 12.

288 These were elements which reasonably supported the conclusion that there had been a discussion about delivery of duty 12 with the claimant, but he remained adamant on departure that it could not be delivered.

289 The inconsistency in the evidence between the claimant and Mr Prior related only to whether the claimant was given direction by Mr Prior just prior to leaving as to his expectation that the pair would complete 1, 2 and 3 loops of duty 12, and whether Mr McGhee was part of the discussion. However ultimately these (and whether there had been adherence to the recommended procedure) were not essential elements in the conclusions she reached, and was reasonably entitled to reach, regarding the position adopted by the claimant about delivery of duty 12.

290 The Tribunal went on to consider whether the respondents Dismissing and Appeal Officers were reasonably entitled to conclude that the claimant had delivered SD's in a manner in which he had been trained not to.

291 The Tribunal was satisfied on the general flavour of the evidence, including the claimant's witnesses, that while there could be exceptions, it was well recognised by GPOs that the driver deviated from the loop to deliver special deliveries, while the walker delivered mail.

292 The respondents were also entitled to take into account that the claimant accepted that he knew that delivering SD's in this way (in pairs) built in inefficiency and delay, and that he could not provide a cogent explanation as to why he adopted this approach on that particular morning.

293 The claimant said at the conduct hearing that he could not explain why he took the decision, and he accepted in hindsight, that it was the wrong call to deliver the SDs in that way and he accepted he could have been more productive.

294 The decision makes were reasonably entitled to attach weight to the claimant's experienced as a postman, and to conclude that he knew this was not the recognised method of delivering SDs, and that it was not an efficient manner of delivering SDs, notwithstanding his position that he had never been told not to do them in this way.

295 They were also reasonably entitled to attach weight to the statements from the managers to the effect that the correct method of SD delivery is well recognised by GPOs, and to the fact that the claimant had been trained on this method of delivery.

296 In light of these factors it was not unreasonable for the respondents to reject the position advanced by the claimant that he was concerned about delivering SDs before 1pm, and that he had in his mind the extent of the delivery of duties of 22 and 12 the previous day, as this did not reasonably explain why he decided to be accompanied by Mr Bryson on the delivery of SD's

297 While it was open to the respondents to reach a different conclusion, it was not unreasonable for them to conclude that the way in which the claimant delivered the SDs on duty 12 first, as a pair with Mr Bryson, was contrary to the normal practice, and was an inefficient way of delivering mail and was a deliberate act on his part.

298 The respondents were reasonably entitled to conclude that the claimant had not collected mail from the COLOD boxes in a manner which was efficient, in that he had driven past COLOD boxes when delivering the SDs and had then at the end of his duty returned to collect the mail from them.

299 In reaching the conclusion that this was a deliberate act, it was not unreasonable for the decision makers to attach weight to the claimant's experience in the Bearsden area; the fact that he collected the keys for the COLOD boxes before leaving; and the fact that he drove past the COLOD boxes when completing the special deliveries, but did not uplift mail from them.

300 Weighing these factors against the position advanced by the claimant, to the effect that he had not collected mail from that COLOD box for some time as this was his partner's duty; that he had been absent, and that he was stressed that morning, while the respondents could have reached a different conclusion, it was not unreasonable to reach the conclusion that his failure to collect mail from the COLOD boxes when he passed them was inefficient and was a deliberate act.

301 The key element in this case is whether the respondents were entitled, taking these matters together, to reach the conclusion that the claimant had intentionally delayed the delivery of mail. This was a very considerable inference which the respondents drew, and the Tribunal considered whether, acting reasonably, it was one which they were entitled to draw.

302 It was submitted by Mr Gibson that establishing an intention that an act is deliberate is always going to be based on assessing what is the most likely explanation for a certain course of conduct.

303 The decision makers in this case had reasonable grounds to conclude that the claimant's position after discussion remained unchanged, and was that duty 12 could not be delivered, and that this was a very unusual position for a GPO to adopt.

304 They also had reasonable grounds to conclude that the claimant had deliberately delivered the SDs on duty 12 in a manner which was inefficient, and that he had deliberately collected the mail from the COLOD boxes in manner which was inefficient.

305 It was not unreasonable to reach the conclusion that it was likely there was a link between the claimant's position on non-delivery of duty 12, and the inefficiencies in delivering duty 22 (which meant that the majority of duty 12 was not delivered), and to draw the inference that the claimant had deliberately delayed the delivery of mail.

306 While it would have been possible for the respondent to reach a different conclusion, it could not be said drawing on these elements that it was unreasonable for the respondents to reach the conclusion which they did, to the effect that the claimant deliberately delayed the delivery of mail, and to uphold notification 2 and 3 of the conduct charge.

307 The Tribunal were satisfied that the respondents satisfied the second and third limb of the ***Burchell*** test, and they went on to consider whether dismissal for that reason was within the band of reasonable responses.

308 In considering whether the decision to dismiss for misconduct was fair or unfair, the Tribunal reminded itself again of the test in ***Iceland Frozen Foods Ltd*** which is set out above.

309 It was submitted by the claimant that dismissal was for this offence was unfair, and this amounted to inconsistent treatment, and he referred in this regard, to disposal of Mr Bryson as the conclusion of his disciplinary hearing.

310 Mr McGregor conduced Mr Bryson's disciplinary hearing and gave cogent evidence as to why he distinguished the circumstances of the claimant from Mr Bryson. This encompassed that Mr Bryson was found guilty of one notification only; that unlike the claimant, he had indicated that some loops of duty 12 could be delivered; and that he was not the person who made the decision to deliver the SDs in the manner in which they were delivered.

311 The claimant criticised Mr McGregor on the basis that Mr Bryson was employed at the same grade as him, and there had been previous cases where the driver had not been sanctioned, but the walker had. The Tribunal

was satisfied however, that Mr McGregor was reasonably entitled to reach the conclusion that it had been the claimant who was the decision maker in relation to how duty 12 SDs were delivered, (he accepted this in the course of his disciplinary hearing), and therefore the Tribunal could not conclude that it was unreasonable for Mr McGregor to reach the conclusion that it was the claimant who was as he put it .the ***driving force*** behind the decisions that day.

312 Against this background, the Tribunal had regard to the guidance given in the case of ***Hadijioannou*** -v- ***Coral Casinos Ltd [1981] IRLR 352*** in which it was stated that a complaint of unreasonableness by an employee based on inconsistency of treatment can only be relevant in limited circumstances, which include decisions made by an employer where the parallel circumstances indicate that it was not reasonable for the employer to dismiss.

313 The Tribunal was satisfied that the respondents had reasonable grounds to conclude that the circumstances of the claimant and Mr Bryson were not truly parallel for the reasons outlined by Mr McGregor, and therefore the decision to dismiss was not one which fell out with the band of reasonable responses on the grounds of inconsistency of treatment.

314 The same reasoning applies to any comparison with the circumstances of Mr McGhee and Mr Ponton on the 16th of December. The tribunal was satisfied that the respondents were entitled to conclude that their circumstances could not be regarded as parallel to the claimants on account of the relative workloads and productivity.

315 The Tribunal also took into account the reasonableness of the respondent's decision on the basis of the Conduct Code, the conduct in question, and the claimant's length of service, and clean disciplinary record.

316 The claimant submitted that a deliberate or intentional delay of the mail was first introduced due to the fact that workers were discovered to be disposing of mail, or hiding mail. While the Tribunal had no evidence of this, it did have

the Code, which defined the test of wilful delay of the mail, which is set out above in the findings in fact.

317 Notwithstanding the claimant's clean record, and lengthy service, the respondents were entitled to attach significant weight to the severity of the offence which is classed In terms of the Code as gross misconduct, which could lead to dismissal even for a first offence.

318 The respondent's witnesses gave convincing evidence as to the potential consequences of the delay of mail and their regulatory obligations, and the financial consequences which may arise as a result of customer complaints.

319 The test which the Tribunal has to consider is whether the decision to dismiss is one which falls within the band of reasonable responses open to a reasonable employer. While it may be that not all employers would have dismissed in the circumstances of this case, it could not be said the decision to dismiss, where the respondent had found the claimant guilty of gross misconduct in that he intentionally delayed the mail, was one which fell out with the band of reasonable responses. The complaint of unfair dismissal therefore fails.

Employment Judge: Laura Doherty
Date of Judgment: 19 February 2018
Entered in register: 22 February 2018
and copied to parties