Case Number: 3309956/2021
3306275/2021
2305150/2021

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr I Qurashi	**v**	Atalian Servest Security Limited

Heard at: Bury St Edmunds **On:** 18-20 July 2022

Before: Employment Judge S Moore
Mr A Hayes
Mr M Kidd

Appearances
For the Claimant: Mr M Qurashi,
For the Respondent: Mr A Sendall, Counsel

JUDGMENT

(1) The claim for unfair dismissal is dismissed.
(2) The claim for disability discrimination, failure to make reasonable adjustments, is dismissed.
(3) The claim for discrimination arising from disability is dismissed.
(4) The claim for unpaid holiday pay is dismissed.
(5) The claim for unpaid notice pay succeeds in the sum of £1,264.80 (gross)
(6) The claim for unpaid redundancy pay succeeds in the sum of £1,051.20.
(7) Pursuant to s. 38 of the Employment Rights Act 1992 the Tribunal increases the above award by four weeks' pay, namely £2,083.20.

REASONS

Introduction

1. This is a claim for unfair dismissal, disability discrimination, unpaid wages, a redundancy payment and holiday pay.

2. We heard evidence from the Claimant, Mr Mohammed Qureshi (the Claimant's father) and for the Respondent, Mr Craig Stride, an Account Manager. The Claimant and Mr Stride provided a witness statement (in the Claimant's case the statement was written with the help of a local law centre) and we were also referred to a bundle of documents. The Claimant's father had not provided a witness statement, however Mr Sendall did not object to him giving evidence.

3. On the basis of that evidence we make the following findings of fact:

The Facts

4. The Respondent is a provider of outsourced security services. At the relevant time Mr Stride was managing the Respondent's contract with Costain Skanska Joint Venture (CSJV), which entity was providing enabling works on the HS2 rail project, that is preparing sites for the drilling of tunnels and other projects.

5. The Respondent had responsibility for the CSJV sites at Euston station and Uxbridge. The Uxbridge sites were known as South Sustainable Planning, North Sustainable Planning and MSD.

6. The Claimant was employed by the Respondent with effect from 2 May 2017. There is a document in the bundle which purports to be some kind of contract. However, other than describing the Claimant as a Ruislip Cover Guard and stating an hourly pay rate of £9.76 it does not appear to set out any terms and conditions of employment. We were also shown a letter dated 23 October 2019 which states "To whom it may concern. Re Imran Qurashi. I can currently confirm that Imran has been employed with Atalian Services since 2 May 2017 and is currently employed as a Security Guard. Imran works an average of 48 hours per week. The contract is permanent." The Claimant's own unchallenged evidence was that he worked an average of 48 hours per week and was only paid for the shifts he undertook. There was no evidence or submissions made in respect of the obligation (if any) on the Respondent to offer the Claimant a minimum number of shifts per week (or month), the obligation on the Claimant (if any) to undertake the shifts he was offered, or the Respondent's right (if any) to transfer the Claimant to different locations depending on business needs.

7. At the time of the redundancy process the Claimant was employed as a cover guard at the South Sustainable Planning site in Uxbridge. The Claimant's home address is 9 Merlin Close, London, UB5 6JG, which meant that

according to AA Route Planner his place of work was a 5.4 miles and an approximate 12 minutes' drive from his house.

8. His date of birth is 7 May 1989, making him 33 years old at the date of the hearing. He said he lives with his wife, his father, his brother, and sister.

9. The redundancy process at issue in this case commenced in January 2021. At that time the UK was in the middle of the Covid 19 Pandemic. It is unclear from the evidence when, and for what periods of time, the South Sustainable Planning site was put into lockdown and/or the Claimant was unable to work there. At paragraph 14 of his statement the Claimant said he hardly worked after March 2020, however at paragraph 25 he stated the Respondent "had only given me a limited amount of work during Covid". Mr Stride's witness statement was silent on this issue and when I asked the Claimant about his work at the South Sustainable Planning site he could not remember when he worked there.

10. In any event it is clear that the Claimant's work at the South Sustainable Planning site was severely disrupted by Covid from March 2020 until the closure of the site at the end of January 2021. As a result of this disruption the Claimant wanted to be placed on furlough (or perhaps thought he had been furloughed) and repeatedly asked Mr Stride and other employees of the Respondents for furlough pay from early to mid 2020 onwards.

11. In response Mr Stride told the Claimant that he had never been furloughed because he had been offered work which he had declined. An email dated 7 April 2020 shows the Claimant was offered a position at the Royal Free London Hospital (near Euston) which he declined the same day, saying he went to a special school, had problems travelling and requested work in the local area to which his father could take him. The Claimant was then offered work under a contract called the SCS Joint Venture based at Acton (a different contract from the CSJV contract), however he declined that work too.

12. In December 2020 the Respondent was informed by CSJV they were closing their sites at Uxbridge. The Respondent was given an end date of 29 January 2021. The decision affected 8 security officers, one of whom was the Claimant.

13. On 25 January 2021 the closure of the site was announced to employees, they were informed there were at risk of being made redundant and a consultation period was started.

14. On 28 January 2021 there were individual consultations. The Claimant was offered certain vacancies at Euston but declined them.

15. By email on 1 February 2021 he was offered further vacancies in the Euston/Hampstead Bridge Road area and in the Adelaide Road area (postcode NW3).

16. By email dated 4 February 2021 sent to a Mr Phil Walker the Claimant declined these offers and said he wanted a job in his local area.

17. On 22 February 2021 the Claimant was offered a position under the SCS JV contract based at Acton. This offer appears to be a direct response to the Claimant's email of 4 February 2021, since it says:

    "Phil has kindly offered a position as part of the bench team for SCS based from Acton, as you [are aware] with bench you are paid 4 hours for being on bench and a full shift if needed. You should have no issue picking up at least 24 hours a week and building from that."

18. The Claimant refused this offer.

19. By letter dated 1 March 2021 the Claimant was invited to a consultation meeting to be held via Microsoft Teams because of the Pandemic.

20. The Claimant did not attend, and on 3 March 2021 sent an email saying he wanted a job at certain specified locations local to him.

21. On 5 March 2021 the consultation meeting was rescheduled for 9 March 2021, again via Teams.

22. The Claimant sent emails dated 5 March 2021 and 7 March 2021 to the HR department saying he was not good at telephone calls and they made him panic, which was why he didn't attend the call, and he wanted a full-time job but he couldn't travel in the central London area. He said he didn't want redundancy and he wanted to talk face to face in the office.

23. HR responded to the Claimant by telling him it was in his best interests to attend the meeting, which otherwise could be held in his absence.

24. The Claimant didn't attend the meeting on 9 March 2021 and didn't answer Mr Stride's subsequent telephone calls.

25. On 12 March 2021 Mr Stride wrote to the Claimant setting out the jobs he had previously been offered and saying that now only a role based at Euston was available because the other jobs had been filled.

26. On or about 14 March 2021 a face-to-face meeting was arranged in a Portacabin on site in Uxbridge. At the time the Covid protocol was only to have two people in the cabin at any one time, and it was agreed that the Claimant would attend the meeting in person and the note-taker and the Claimant's father would attend via Teams. Unfortunately, Mr Stride found the Claimant's father to be uncooperative and difficult and after several warnings he terminated the meeting.

27. By letter of 19 March 2021 the Claimant and his father were invited to a further consultation meeting at the Euston site to take place on 22 March

2021. The Claimant did not attend and when Mr Stride called him the Claimant said he and his father did not know how to get to Euston. When Mr Stride asked where they could meet, the Claimant suggested his home, in his garden or the local SCS sites. Mr Stride said these locations were not possible because it was not appropriate to go to the Claimant's home (for Covid and general professional reasons) and while Covid restrictions were in place it was the Respondent's practice not to go to SCS sites which remained under SCS management. He told the Claimant any in-person meeting would need to be at Woking or Brookwood cemetery in Woking. The Claimant declined that offer.

28. The Claimant was offered a final consultation meeting via Teams scheduled for 26 March 2021. Unfortunately, this meeting had to be postponed as Mr Stride became unwell. The meeting was finally rescheduled for 1 April 2021.

29. As the Claimant did not attend, Mr Stride agreed to meet the Claimant outside of work on 2 April 2021 (we were not told the precise location) but the Claimant cancelled the meeting as his father could not attend. The meeting was postponed until 6 April 2021 but Mr Stride made clear that if the Claimant did not attend, Mr Stride would make a decision on the redundancy in his absence.

30. The Claimant did not attend the meeting and by letter of 22 April 2021 the Claimant was dismissed on grounds of redundancy.

31. It is unclear what work the Claimant did between the closure of the South Sustainable Planning site at the end of January 2021 and his dismissal. An email from the Claimant of 29 April 2021 indicates he did some work, but not the location of that work or how he travelled there.

32. The Claimant appealed the dismissal decision by email of 29 April 2021 saying that two weeks before his dismissal he had been offered and had agreed to take a job in Denham.

33. Having been postponed at the Claimant's request to allow him to consult with a solicitor, the appeal meeting took place on 28 May 2021 and was conducted by Mr Alan Ives (Security Director, south). The meeting was conducted via Teams. At the conclusion of the hearing Mr Ives dismissed the appeal.

34. In evidence Mr Stride stated that the job at Denham was in respect of the Align JV contract (different again from the CSJV contract and the SCSJV contract). He said while this option had initially been offered to the Claimant, the Align account manager had refused the transfer. The reason for that was because when the Claimant had previously worked in that role the client had asked for the Claimant be removed; Mr Stride's evidence was the role also required some traffic management with which the Claimant had struggled.

35. As regards disability, the disability relied upon is learning difficulties. In paragraphs 5-9 of his witness statement, the Claimant said:

1. I have had a learning disability since [I] was born. This is a mental impairment. My learning disability has a substantial and long-term adverse effect on my ability to carry our normal day-day activities. In particular, my ability to travel independently is severely limited. I rarely leave the house I share with my father. When I [do] need to travel, my father drives and picks me up. This has allowed me to work for the Respondent for shifts relatively locally, as my father can provide transport. I find transport systems, and in particular the underground, highly confusing and distressing. There is a strong likelihood that I would panic. I used to be able to take short local bus routes independently where I knew the area and was relatively close to home, but I have not done so for some years.
2. …
3. I attended a specialist school, Woodfield School, Glenwood Avenue NW9 7LY. This school caters for students who have Autism, Moderate Learning Difficulties and Severe Learning Difficulties. To be accepted into this school the local authority provided a Statement of Special Educational Needs. When I was student I had transport organised for me by the local authority in recognition that I could not travel to school independently.
4. I now receive a Personal Independent Payment due to my disability. This includes a “mobility amount” which reflects my need for travel assistance.
5. Due to my disability, I can read and write only to a basic level.”

36. When the Claimant was asked questions by Mr Sendall about his travelling difficulties, he said that he didn’t know where to get off and on the underground he got particularly nervous and panicky.

37. The bundle contains an Amended Statement of Special Educational Needs dated 9 September 2002 (when the Claimant was aged 13 years) describing the Claimant as having “moderate learning difficulties”. It further contains a Special Needs Assessment and Pupil Services Annual Review dated 7 December 2006 from Brent Council and a Sixth Form Report from Woodfield School dated June 2007 (when the Claimant was aged 18 years). The report states “Imran has made some progress towards achieving all his literacy targets…Imran’s writing skills are developing more slowly. He needs reminding of basic grammatical rules and struggles with spelling…Imran finds literacy a real challenge but he always tries hard and remains focussed in the lessons.” His learning targets include ‘to read, write and compare numbers up to 100 including zero”. The Statement refers to the Claimant being able to produce a poster on football rules with limited help.

38. The Claimant’s medical records refer to “Child Language Development Delayed moderate-severe delay” (in 1994), “learning disability” (twice in 2018) and “known learning disability” (in 2019).

39. The Claimant also produced an impact statement which states “I am writing to tell you about my learning disability. And travelling problem I get nervous when travelling underground I have learning disability it is reading and writing. I find it difficult to travel underground I get really nervous…”

Conclusions

Unfair Dismissal

40. The reason for the Claimant's dismissal was redundancy, which is a potentially fair reason within section 98(2) of the Employment Rights Act 1996.

41. The question is therefore whether the dismissal was fair or unfair in all the circumstances of the case.

42. We consider that the dismissal was fair. There was a clear redundancy situation. We accept Mr Sendall's submission that the Respondent followed a reasonable and thorough consultation process and made numerous attempts to engage with the Claimant via Teams meetings and at different locations. While the Respondent was not able to accommodate the Claimant's wish to meet at his home or at SCS sites, we do not consider this to have been unreasonable in the circumstances of the Covid Pandemic and the Respondent provided the Claimant with numerous alternative options. We also note that although the Claimant said that because of his learning difficulties conducting meetings via Microsoft Teams or by telephone was difficult for him, he did in fact conduct his appeal meeting via Microsoft Teams without difficulty (and also managed to conduct this CVP hearing). The Respondent had to progress the redundancy process and could not let it carry on indefinitely, and we don't see what else could reasonably have been expected of them in the circumstances.

43. Turning to alternative employment, the Claimant's father appeared to suggest that the Respondent had other jobs available it could have offered the Claimant, however we have seen no evidence of that and reject the suggestion. As regards the Denham job, it is very unfortunate that the Claimant appears to have been told he could have that job only for the position to have changed shortly afterwards. However, the Respondent could not reasonably be expected to put the Claimant into a post against the wishes of its client, particularly in circumstances where the Claimant had previously been removed from the post because he found aspects of the role challenging.

44. Notably the Respondent did offer the Claimant a position as part of the bench team for SCS based at Acton. According to AA Route Planner, the location of this role was only 7 miles from the Claimant's home and a 19-minute drive (compared to the location of his role at South Sustainable Planning at 5.4 miles from his home and a 12-minute drive). The Claimant's emails at the time suggest the reason he may not have accepted this role was because it was a "bench" position, rather than a full-time contract. However, at the hearing the reason given by the Claimant's father was that the journey time could be considerably longer than 19 minutes, and that since his wife died in January 2020 he did not have time to take the Claimant so far because he had to shop and cook for his family.

45. In any event, the Respondent could not offer the Claimant jobs it did not have and we consider it made reasonable efforts to find and offer the Claimant alternative employment.

46. It follows the claim for unfair dismissal is dismissed.

<u>Disability</u>

47. Section 6 of the Equality Act 2010 provides that a person has a disability if they have a physical or mental impairment which has a substantial long-term adverse effect on the person's ability to carry out normal day to day activities.

48. In this case the Claimant relies on having a mental impairment, namely learning difficulties. He says that this has a substantial and adverse long-term effect on his ability to carry out normal day to day activities, in particular his ability to travel independently.

49. Mr Sendall accepted that a mental impairment of the kind the Claimant has is capable of meeting the definition of disability but did not accept there was sufficient evidence the Claimant's inability to use public transport independently was connected to his learning difficulties or there was evidence his travel anxiety amounted to a disability in its own right.

50. We do not accept Mr Sendall's submissions in this respect. There is plenty of evidence of the Claimant's learning difficulties and the fact they necessitated he attend a special school. It is not disputed the Claimant can only and read and write to a basic level and has basic numeracy. While there is no medical evidence that the Claimant's learning difficulties have an effect on his ability to travel independently, we consider it to be obvious that such an effect arises directly and intrinsically from that impairment. Travelling independently requires the ability to read place names, and to read and decipher routes and timetables. It also requires the ability to understand routes and timetables sufficiently well to be able to deal with delays, cancellations, and diversions on any planned or familiar journey. Notably, the Claimant said in evidence that when travelling independently he became confused and did not know where to get off. We also note that the Claimant is in receipt of a Personal Independent Payment, which includes a mobility amount that reflects difficulties in getting around. Notably the mobility part is payable if the recipient needs help with "*working out a route and following it*, physically moving around, or leaving their home" (our italics).

51. We also reject the suggestion that the Claimant's travel anxiety was a mental impairment separate from his learning difficulties that required medical evidence. Again, it appears to us obvious that placing somebody in an environment in which they can't cope will made them anxious and potentially panicky, and that the Claimant's anxiety and sense of panic when travelling independently was a direct result of the fact his mental impairment of learning difficulties made him unable to cope with independent journeys on public transport rather than being a separate impairment.

52. We further consider that travelling independently on public transport is a normal day to day activity and that the Claimant's mental impairment of learning difficulties (with its consequent limitations in respect of literacy and numeracy) had a substantial and long-term adverse effect on his ability to carry out this activity.

53. It follows that the Claimant is, and was at all material times, a disabled person within the meaning of the Equality Act 2010.

Claims made in respect of not putting the Claimant on furlough

54. Mr Sendall submits any claims made in respect of furlough are out of time. He submits that the job in respect of which the Claimant asserts he should have been furloughed began again at some point between May 2020 (at the earliest) and December 2020 (at the latest), at which point, if the Claimant had been furloughed, he would have returned from furlough. However, the Claimant's first claim was not submitted until 24 April 2021 and he has not advanced a case as to why it would be just and equitable to extend the time.

55. As stated above, the evidence in respect of what work the Claimant did and where after March 2020 is unhelpfully vague and as a result, as it apparent from Mr Sendall's submission, we do not know when the time limit started to run and/or how far out of time the claim was made. Nevertheless, we have decided it would be just and equitable to extend time. All the relevant correspondence in respect of this claim is contained in the bundle amongst the evidence on the redundancy and the Respondent has been well aware from 2020 and throughout the case that the Claimant was unhappy about the fact he was not placed on furlough and that he did not appear to understand why.

Section 20 Equality Act 2010

56. Under section 20 Equality Act 2010, it has to be considered whether the Respondent had a provision, criterion or practice (PCPs) that put the Claimant at a substantial disadvantage in relation to persons who were not disabled.

57. At a Preliminary Hearing on 11 April 2022, the PCPs were identified as being:

- A requirement to travel some distance to work
- A requirement to engage in the redundancy process generally and to attend consultation meetings

58. At that hearing Judge Alliott noted that since the Claimant was acting in person and was assisted by his father it had not been easy to identify the issues and it would be a matter for the Tribunal judge to deal with the case and issues as appropriate. At this hearing, the Claimant was again assisted/represented by this father and it was similarly difficult to identify the issues.

59. In the light of this, as regards the periods of time when the Claimant said he should have been placed on furlough (“the furlough period”) it appears to us that the first PCP relied upon is better understood as being a requirement that employees (who were not shielding) attend work at a place required by the Respondent (in order to be paid). This, it is said, placed the Claimant at a substantial disadvantage in comparison with persons who are not disabled in relation to travel and the Respondent should have, but did not, make the reasonable adjustment of putting him on furlough.

60. We are satisfied that the requirement to attend work at a place required by the Respondent during the furlough period did place the Claimant at a substantial disadvantage in relation to travelling compared with persons who are not disabled. Unlike non-disabled persons, the Claimant was not able to travel independently so requiring him to attend a place required by the Respondent meant that he may not be able to get to work and would not be paid.

61. However, we are not satisfied that by not placing the Claimant on furlough the Respondent failed to make reasonable adjustments. After the Claimant told the Respondent that he could not travel to the Royal Free Hospital on 7 April 2020 and needed local work (see above at paragraph 11), the Claimant was offered work at Acton on the SCS JV contract, which was only 1.6 miles further from his home than his normal workplace and only an approximate 20-minute drive from his home. Although the Claimant’s father said the journey time could be much longer and he did not have the time to take the Claimant to this location, we consider it was reasonable of the Respondent to expect the Claimant to be able to attend work in such a location, either with help from his father or using the assistance of another member of the family to accompany him. The Respondent was entitled to consider the public expense of the furlough scheme, that the scheme was optional for employers and that it had available work for the Claimant which he could do at a location close to his home.

62. As regards the period of time when the Claimant was at risk of redundancy (“the redundancy period”), it appears from the Preliminary Hearing of 11 April 2021 a potential claim was identified that the offers of alternative employment made by the Respondent incorporated the first PCP, being a requirement that the Claimant travel some distance to work.

63. In this respect, we agree with Mr Sendall’s submission that these offers of alternative employment did not incorporate any kind of PCP. The Claimant was not required to accept any of the jobs offered or told that if he did not do so he was at risk of not receiving a redundancy payment. He was simply made an offer of alternative roles which he rejected.

64. As regards the second PCP identified at the Preliminary Hearing, a requirement to engage in the redundancy process, it appears to us this is better understood as being a requirement that the Claimant engage with the process via Microsoft Teams and/or by way of telephone calls or at locations not at the Claimant’s home or at SCS sites.

65. In this respect we are not satisfied such a requirement put the Claimant at a substantial disadvantage compared to persons who are not disabled. As noted above the Claimant was able to engage with the appeal process by Microsoft Teams and was able to engage with this hearing by CVP. We further note that the Respondent was able to hold a one-one meeting in a Portacabin, (although in the event the meeting was abandoned because of difficulties with the Claimant's father.) In any event even if the Claimant was put at a substantial disadvantage by the process followed, we consider the Respondent made reasonable adjustments in the circumstances. The chronology set out above lists the numerous attempts the Respondent made to consult with the Claimant by different means and in different places, and in the light of the Covid Pandemic and restrictions in place it was reasonable of the Respondent not to hold a meeting at the Claimant's home or at the SCS sites.

66. It follows that the claim for failure to make reasonable adjustments is dismissed.

Section 15 Equality Act 2010: Discrimination Arising from Disability

67. Under section 15, the questions are (1) whether the Respondent treated the Claimant unfavourably because of something arising in consequence of his disability and if so, (2) whether the Respondent can show the treatment was a proportionate means of achieving a legitimate aim.

68. The alleged unfavourable treatment relied upon appears to be:

    (a) Not placing the Claimant on furlough, despite the fact he was not working (or working only minimally); and
    (b) Dismissing him on grounds of redundancy.

69. As regards not placing the Claimant on furlough, we first have to ask *why* the Claimant was not placed on furlough despite the fact he was not working (or working only minimally) and secondly whether that reason was something that arose in consequence of the Claimant's disability.

70. The reason the Claimant was not placed on furlough was because the Respondent considered there was work available for him to do at a location close to his home. This - the existence of available work at a location close to the Claimant's home - was not something that arose in consequence of the Claimant's disability. While we understand the Claimant said he couldn't travel to that place of work, this was not the reason he was not placed on furlough – he was not placed on furlough *although* he said he couldn't travel to work, not *because* he couldn't do so. Accordingly, we do not see that a section 15 claim arises on the facts; in our view the claim better falls within section 20, which we have addressed above.

71. As regards dismissing the Claimant on grounds of redundancy, the reason the Claimant was dismissed was because he refused the jobs that were offered to

him. Even if a significant cause of his decision to reject them was the Claimant's disability (the fact he couldn't travel independently) in the circumstances the Respondent was left with no choice but to make the Claimant redundant because the Claimant's old job had disappeared and it had explored all alternative options. Accordingly, the dismissal was a proportionate means of achieving a legitimate objective.

72. The claim for disability discrimination is therefore dismissed.

Notice Pay

73. The Respondent accepted at the outset of the hearing that it underpaid the Claimant's notice pay in the sum of £1,093.68 gross. However, whereas the Respondent had calculated the Claimant's weekly pay on the basis of the Claimant working a 42-hour week, namely 4 days on/4 days off and 12-hour shifts, the balance of evidence before the Tribunal was that the Claimant worked an average of a 48-hour week. Since his hourly rate was £10.85 (gross) his average weekly wage was £520.80. Further, since he was not given notice until 22 April 2021 and only worked and/or was paid until 3 May 2021 he is therefore entitled to another 2 weeks and 3 days' pay. This comes to £1,264.80 (gross).

Redundancy Pay

74. Again, at the outset of the hearing the Respondent accepted it owed the Claimant redundancy pay. The Claimant is entitled to 4 weeks redundancy pay which in the light of a gross weekly wage of £520.80 is £2,083.20. Since he has already been paid £1,032.00, he is entitled to a further sum of £1,051.20.

Holiday Pay

75. Mr Stride gave evidence as to why no holiday pay is due to the Claimant, and this has not been challenged or any contrary evidence given by the Claimant. The claim for holiday pay is therefore dismissed.

Section 38 Employment Act 2002

76. When proceedings were begun the Respondent was in breach of its duty under s. 1 of the Employment Rights Act 1996 to provide the Claimant with a written statement of employment particulars and the Tribunal has made an award to the Claimant in respect of his claim. Accordingly, we must increase that award by an amount equal to two weeks' pay and may increase the award by an amount equal to four weeks' pay (section 38(3)).

77. In view of the fact the Claimant was employed by the Respondent for four years, the Respondent is a large organisation with dedicated HR resources and the particulars provided to the Claimant were woefully inadequate we consider it just and equitable to increase the award by four weeks' pay, namely £2,083.20.

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Employment Judge S Moore

Date: 22 July 2022…………………….

Sent to the parties on: 7 August 2022

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For the Tribunal Office