EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4113482/2019

Held in Glasgow on 13, 14, 15, 16, 20, 21, 22, 30 June 2022; and 1 July 2022
Members' Meetings on 7, 19 July and 5 August 2022

Employment Judge S MacLean
Tribunal Members R McPherson and D Frew

Mr Philip Creaney	**Claimant** **Represented by:** **Mr T McGrade -** **Solicitor**
Midland Steel Reinforcement Supplies (UK) Ltd	**First Respondent** **Represented by:** **Mr K Duffy -** **Solicitor**
Mr Gerard Tralongo	**Second Respondent** **Represented by:** **Mr K Duffy -** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:

(1) The discrimination claims under sections 26 and 13 of the Equality Act 2010 are dismissed.

(2) The claimant was unfairly dismissed by the first respondent.

(3) The first respondent shall pay to the claimant a monetary award of FIFTEEN THOUSAND AND FORTY FIVE POUNDS AND NINETY SEVEN PENCE (£15,045.97). The Employment Protection (Recoupment of Benefit) Regulations 1996 do not apply.

REASONS

Introduction

1. The claimant sent a claim form to the Employment Tribunal on 22 November 2019 claiming disability discrimination and unfair dismissal. Both respondents resist the claims.

2. The parties provided additional information which culminated in a preliminary hearing on disability status on 14 October 2021 following which Employment Judge Cowen issued a judgment that the claimant was a disabled person for the purposes of the Equality Act 2010 (the EqA). The relevant period for any disability was 2 July 2019 to 25 October 2019 when the claimant was dismissed.

3. After a preliminary hearing on 13 April 2022, the disability discrimination claims under sections 19 and 20 of the EqA were dismissed having been previously withdrawn.

4. It was agreed that the remaining claims were unfair dismissal, direct disability discrimination under section 13 of the EqA and harassment related to disability under section 26 of EqA.

5. The final hearing was conducted in person. It was previously agreed that due to personal circumstances, the evidence of two of the respondents' witnesses, Jane Parker and Steve Westmoreland would be given remotely by cloud video platform.

6. The witnesses provided witness statements which were taken as their evidence in chief. Supplementary oral questions were asked of some witnesses. Cross examination and re-examination took place in the usual way.

7. The claimant gave evidence on his own account. His wife, Theresa Creaney, and his brother in law, Denis Ferrie, gave evidence on his behalf.

8. The second respondent, Director of the first respondent, gave evidence on his own behalf. For the respondents the Tribunal heard evidence from Michael

Tonner, Depot Manager (Motherwell); Stuart Watson, Commercial Director Midland Steel Reinforcement Supplies (UK) Limited; Steve Westmoreland, Prefab Manager; Daniel Hall, Sales Manager (Bishop Auckland); Tony Donkin, Depot Manager (Bishop Auckland), Lee Martin, Regional Manager, Jane Parker, Sales Coordinator, Donna Taylor, Finance Manager, Jill Bailey, Sales Coordinator, and Ruth Brion, Sales Coordinator.

9. The Tribunal was also referred to a joint set of productions to which additional documents were added during the final hearing.

10. The Tribunal heard a substantial amount of disputed evidence. The Tribunal has set out facts as found that are essential to the Tribunal's reasons or to an understanding of important parts of the evidence. The Tribunal carefully considered the submissions during its deliberations and has dealt with the points made in submissions whilst setting out the facts, the law and the application of the law to those facts. It should not be taken that a point was overlooked, or facts ignored, because the facts or submission is not part of the reasons in the way it was presented to the Tribunal by a party.

The Issues

11. The parties prepared a joint list of issues which was included in the productions. The Tribunal agreed with the list of issues but has set out below the questions in the order that the Tribunal asked when deliberating.

Continuous employment

a. From what date does the claimant have continuous service? The claimant says it was November 2014. The respondent said it was 8 August 2016.

Harassment related to disability

a. Did the second respondent do the following things?

i. On 20 June 2019 make the remark in reference to the claimant's COPD diagnosis, "You must have got that from all those years working in that smoked filled office in BRC."

ii. On 26 June 2019 on the claimant's arrival at Bishop Auckland, criticise the claimant and again made the remark about the claimant contracting the disease from BRC, "sitting in a smoke-filled office".

iii. On 3 July 2019 make the comment to the claimant, "I think you have been focused too much on your health the past couple of weeks which isn't doing my business any good, I need you focused on your work".

iv. On 10 July 2019 being annoyed and shaking his head because the claimant was wearing a mask.

v. Around 10 July 2019 make the comment to the claimant, "Pity about your health but in saying that your performance and the performance of the depot is not good enough. You need to get the finger out and focus or we have a problem".

vi. On 11 July 2019 make the comment to the claimant, "I don't give a fuck about them, you are just giving another excuse. I need to get out of here before I sack somebody else".

vii. On 11 July 2019 make the comment to the claimant, "It is a pity about your health but I need you on your game, do you understand?" which is alleged to have been made by the second respondent to the claimant on 11 July 2019.

viii. On 22 July 2019 make the comment to the claimant, "Your health is obviously an issue. You need to deliver or there will be changes. I can't afford a production manager who is not delivering".

ix. On 23 July 2019 make the comment to the claimant, "I want you and your mask in the factory six hours a day keeping on top of those fucking piss takers".

x. On 23 July 2019 make the comment to the claimant before five members of staff, “No it is not thumbs down, what is the problem. We can always get round it. That is the totally wrong way to look at it. It is always the same down here” and “It is always the same, not prepared to work things out”.

xi. On 23 July 2019 make the comment to the claimant, “I think your health has been a problem. I need you more focused or else”.

xii. On 25 July 2019 make the comment to the claimant, “I think you are scunnered and into the bargain your health issues are having an effect on your performance. I need you on your game?”.

xiii. Questioning of the claimant as to why he had not achieved his goal of turning the depot round, which is alleged to have took place on 25 July 2019.

xiv. The redundancy consultation process and the manner in which it was conducted.

xv. The decision taken to end the secondment two months early on 9 September 2019.

xvi. The claimant’s dismissal.

b. If so, was that unwanted conduct?

c. Did it relate to disability?

d. Did the conduct have the purpose of violating the claimant’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

e. If not, did it have that effect? The Tribunal will take into account the claimant’s perception and the other circumstances of the case and whether it was reasonable for the conduct to have that effect.

Direct disability discrimination

a. The claimant is a disabled person. He compares himself to either Dan Hall or someone who does not have a disability.

b. Did the respondent do the following things?

i. On 20 June 2019 make the remark in reference to the claimant's COPD diagnosis, "You must have got that from all those years working in that smoked filled office in BRC."

ii. On 26 June 2019 on the claimant's arrival at Bishop Auckland, criticise the claimant and again made the remark about the claimant contracting the disease from BRC, "sitting in a smoke-filled office".

iii. On 3 July 2019 make the comment to the claimant, "I think you have been focused too much on your health the past couple of weeks which isn't doing my business any good, I need you focused on your work".

iv. On 10 July 2019 being annoyed and shaking his head because the claimant was wearing a mask.

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xiii. Questioning of the claimant as to why he had not achieved his goal of turning the depot round, which is alleged to have took place on 25 July 2019.

xiv. The redundancy consultation process and the manner in which it was conducted.

xv. The decision taken to end the secondment two months early on 9 September 2019.

xvi. The claimant’s dismissal.

c. Was that less favourable treatment? The Tribunal will decide whether the claimant was treated worse than someone else was treated. There

must be no material difference between their circumstances and the claimants. If there was nobody in the same circumstances of the claimant, the Tribunal will decide whether the claimant was treated worse than someone else would have been treated. The claimant says that he was treated less favourably than Mr Hall or alternatively someone who does not suffer a disability.

Unfair dismissal

a. The first respondent accepts that the claimant was dismissed. The Tribunal needs to decide what was the reason or principal reason for the dismissal.

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

    i. The first respondent adequately warned and consulted the claimant.

    ii. The first respondent adopted a reasonable selection decision including its approach to a selection pool.

    iii. The first respondent took reasonable steps to find the claimant suitable alternative employment.

    iv. Dismissal was within the range of reasonable responses.

Remedy

a. What financial loss has the dismissal caused the claimant?

b. Has the claimant taken reasonable steps to replace his loss of earnings? If not, for what period of loss should the claimant be compensated?

c. Is there a chance the claimant would have been fairly dismissed anyway if a fair procedure had been followed or for some other

reason? If so, should the claimant's compensation be reduced? By how much?

d. Did the ACAS code of practice on disciplinary and grievance procedures apply? Did the respondent or the claimant unreasonably fail to comply with it? If so, is it just and equitable to increase or decrease any award payable to the claimant?

e. If the claimant was dismissed unfairly, did he cause or contribute to the dismissal by the blameworthy conduct? If so, would it be just and equitable to reduce the compensatory award?

f. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that? How much interest should be awarded?

The Law

Continuity of employment

12. Section 212(1) of the Employment Rights Act 1996 (the ERA) provides that any week during the whole or part of which an employee's relations with the employer are governed by a contract of employment counts in computing the employee's period of employment.

13. Employment under successive contracts with the same employer will be continuous, provided there is no gap that breaks the continuity between the contracts. Continuity will be preserved if the employee is retained under a contract of employment during at least part of each "week" in question as defined in section 253 of the ERA: a "week" means a week ending on a Sunday.

14. *Welton v Deluxe Retail Ltd (t/a Madhouse)* [2013] IRLR 166 held that a contract of employment can exist even where there is no performance. The EAT held that an employee's service under two contracts of employment with the same employer was continuous even though he did not start work under the second contract until more than a week after the end of the first contract.

The EAT found that the second contract of employment had been created when the employee accepted the job offer, which meant that there was not a week's gap between the two contracts.

15. The Tribunal was referred to the following cases: *Chapman v Letheby & Christopher Ltd* [1981] IRLR 440 EAT, that if the wording of a letter is truly ambiguous, the words are to be interpreted most strongly against the person that uses them; *Leech v Preston Borough Council* [1985] IRLR 337 EAT, following *Chapman,* that the question to be answered is: how would any reasonable employee in the claimant's position have interpreted the terms of his dismissal as a whole, looking to the spoken words of dismissal and confirmatory language of the subsequent letter; *Booth v United States of America* [1999] IRLR 16 EAT, it was held that in the absence of an arrangement to treat a break in employment as continuous, employment could not be treated as continuous, even where the underlying purpose of the break was to defeat the application of employment protection legislation. Also, that the arrangement must be made before or at the time of the absence, i.e. it cannot be made retrospectively.

Harassment related to disability

16. Section 26 of the EqA provides that a person harasses another if they engage in unwanted conduct related to a relevant protected characteristic (in this case disability) and the conduct has the purpose or effect of violating the person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

17. In deciding whether the conduct has the effect, the Tribunal must take into account the person's perception, the other circumstances of the cases and whether it is reasonable for the conduct to have that effect.

18. The EHRC Code of Practice at paragraph 7.7 provides, "unwanted conduct covers a wide range of behaviour, including spoke or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour."

Direct disability discrimination

19. Section 13 of the EqA provides that direct discrimination is where a person discriminates against another if because of a protected characteristic, they treats that person the less favourably than they treat or would treat others.

20. In relation to the less favourable treatment being dismissal, a person does not need to prove that their disability was the sole reason or even the main reason for the dismissal. All they has to show is that it has had a "significant influence" on the outcome.

Unfair dismissal

21. The onus is on the first respondent to show the reason (or if there is more than one the principal reason) for dismissal and that it was a potentially fair one under section 98 (1) (a) and (b) of the ERA.

22. The reason for dismissal has been described as a set of facts known to the employer, or it may be that the beliefs held by him, which caused him to dismiss the employee (see *Abernethy v Mott, Hay and Anderson* [1974] ICR 323, CA).

23. The potentially fair reason set out in section 98(2) of the ERA include an employee was redundant. The first respondent asserts that this is the reason for dismissal.

24. At this stage, the employer does not have to prove that the reason actually did justify the dismissal.

25. Section 139(1) of the Employment Rights Act 1996 (the ERA) states that an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the requirements of the business for employees to carry out work of a particular kind has ceased or diminished or is expected to cease or diminish.

26. The guidelines that a reasonable employer might be expected to follow making redundancies are set out in the case of *Williams & another v Compare Maxim Limited* [1982] ICR 152.

27. If on the face of it the reason the employer shows for dismissal is potentially fair, the Tribunal has to consider section 98 (4) of the ERA and the question of reasonableness. As the first respondent is asserting that dismissal was for redundancy, it must show that what is being asserted is true, that the claimant was in fact redundant as defined by statute.

Findings in Fact

Background

28. The first respondent is a private limited company, registered company number SC338524. It is an established steel fabricator and offers a range of reenforcing steel products and services to the UK construction sector and a diverse range of other sectors. It has two depots: one in Motherwell the other originally in Blaydon then Bishop Auckland. The first respondent is part of the same group of companies as Midland Steel Reinforcement Supplies (GB) Limited which operates sites in London and Ireland.

29. The second respondent and Anthony Woods are directors of the first respondent. The second respondent is also the Managing Director of the first respondent and is based at the Motherwell depot.

30. The first respondent employed the claimant on 3 November 2014 as Depot Manager based at Blaydon. The claimant's gross salary was £45,000 each year.

31. The claimant was very fit and a non-smoker. He maintained his fitness by training regularly. He regularly walked his large dog during lunchtimes.

32. The second respondent is interested in sport therapy and dealing with people with medical issues. The second respondent undertook training in this field with Glasgow Caledonian University. He is now qualified as an advanced remedial and sports therapist.

33. Around early July 2016 due the claimant's conduct regarding the explanation for his absence from the business ostensibly for a personal (dental) appointment, the second respondent terminated his employment at a meeting

that was also attended by Lee Martin, Regional Manager. The second respondent told the claimant that he was not required to work. He would be paid until the end of the month.

34. On 21 July 2016, Donna Taylor, Finance Manager wrote to the claimant enclosing his final payslip and P45. The letter stated that the claimant's final day worked was 4 July 2016 and he had been paid up to and including 31 July 2016. The P45 referred to a leaving date of 4 July 2016. The effective date of termination was 31 July 2016.

August 2016

35. Before 4 August 2016 there were discussions between the claimant and Mr Martin and then the second respondent, following which the claimant was offered the role of Operations Manager at the Motherwell depot at a salary of £35,000 each year by letter dated 4 August 2016 (the Offer Letter). The Offer Letter stated that the start date was 8 August 2016; basic hours were Monday to Friday, 7am to 5pm with daily break of 60 minutes and reporting to the second respondent. The Offer Letter included a three month probationary period during which parties required to give each other one week's notice of termination. After three months probationary period the notice period would be extended to one month for both parties. Enclosed with the Offer Letter was a bank details form. The claimant signed and returned a copy of the Offer Letter on 8 August 2016.

36. The claimant started working as Operational Manager at Motherwell depot on 8 August 2016.

37. Around 12 August 2016 the second respondent signed a statement of terms and conditions of employment for the claimant which stated that his employment commenced on 8 August 2016 (the T&Cs). No other period of service was counted towards continuity of service. The T&Cs referred the hours of work as Monday to Friday 8am to 5pm with an hour lunch break. The notice period during the first month of employment of no less than one day's notice to be given by either party should they wish to terminate. After the first month, the notice required to be given by either party was no less than one

month subject to the employee being entitled to the statutory period if this was longer because of the employee's length of service at the time. The T&Cs also provided for the first six months of employment to be treated as a probationary period during which job performance would be continually monitored. A review was to be taken after the first 13 weeks of employment if job performance is not up to required standard, the respondent reserved the right to terminate employment at appropriate notice at any time at the end of this period. The T&Cs were not signed by the claimant.

2018

38. Around March/June 2018 the first respondent moved from its depot in Blaydon to a depot in Bishop Auckland. The claimant spent some time at the Bishop Auckland depot following the move. He then returned to Motherwell depot around July 2018.

39. Mr Martin was primarily based at the Motherwell depot although his role involved overseeing both depots. He worked closely with the claimant who reported to him on production matters. Also reporting to Mr Martin was Michael Tonner, Depot Manager at the Motherwell depot and Daniel Hall, Manager who had responsibility for production, transport, health and safety and sales at the Bishop Auckland depot.

40. Mr Martin has a lifelong respiratory condition for which he takes medication and attends hospital clinics. While this makes him susceptible to respiratory infections his health condition has never been an issue at work. He also has a child with a disability and frequently requires to accompany his child to hospital appointments.

41. Ms Taylor was also based at the Motherwell depot. She has two financial administrators reporting to her.

42. At the Bishop Auckland depot Mr Hall was supported by the sales team who at that time consisted of Jane Parker and Jill Bailey. They were supported by Julie Shacklady, Sales Administrator. Tony Dorkin, Depot Manager reported to Mr Hall. Steve Westmoreland was the Prefabrication Manager. He was

originally based at the Bishop Auckland depot until around 2019 when he worked from Hull which was nearer to where he lived.

43. Ms Taylor prepared monthly forecasts for the first respondent which she discussed with the second respondent around 10 days before the end of each month. They looked at all areas of the business to make cost saving provisions by cutting discretionary costs such as bonuses, corporate entertainment and travel.

44. In December 2018 the second respondent attended a Group Board Meeting at which there was discussion about the poor performance of the first respondent and the need to meet budget or there would be cutbacks/redundancies.

January 2019 until the end of March 2019

45. In January 2019 the second respondent held a meeting at the Motherwell depot which was attended by the senior operational managers including Mr Martin, Mr Hall, Mr Tonner and the claimant. The main purpose was to discuss how the business was performing against budget. There was discussion about matters arising from the previous meeting. The relevant managers provided an update. The discussion focussed on the need to increase sales and output while keeping costs down. The message from the second respondent to all present was that budgets must be met to avoid cutbacks. At the Motherwell depot a member of the sales team was leaving and not being replaced.

46. The Bishop Auckland depot was having particular trouble. Mr Martin was attending the Bishop Auckland depot twice a week. Due to his family commitments he would drive down and return to Scotland on the same day.

47. Ryan Gormally, Apprentice Sales Support was recruited to assist the sales team at the Bishop Auckland depot. On 28 January 2019 David Bray, Sales Executive (Motherwell) resigned and was not replaced. Around February 2019 Peter Phillips was recruited to Bishop Auckland depot in a new role as Sales Specialist in accessories.

48. Mr Martin was finding the twice weekly visits to the Bishop Auckland depot an onerous task. The claimant was aware of this from discussions with Mr Martin. The claimant was not interested in going to the Bishop Auckland depot.

49. Around March 2019, at his family's insistence the claimant consulted his GP regarding a chronic cough. The claimant had a chest x--ray at Monkland Hospital on 25 March 2019. Overall there was no significant findings when compared to a radiograph dated 16 October 2017.

50. Mr Martin was aware that the claimant was taking time off for medical appointments and was undergoing tests.

April 2019

51. A regional meeting took place on 8 April 2019 which was attended by the operational senior managers. The Quarter 1 (1 January to 31 March) results for each depot were discussed. Both depots were behind the sales budget. The Motherwell depot was performing marginally less worse than the Bishop Auckland depot.

52. At the Motherwell depot, Mr Bray had not been replaced and there was no plan to do so given the results. This left only Mr Martin and Mr Tonner from a sales perspective.

53. Mr Hall accepted that the Bishop Auckland depot was carrying too many people. He needed to grow sales but was pushed between production and sale issues. He proposed to make Ms Shacklady redundant and Mr Gormally's employment would be terminated. The second respondent did not want this to be at the expense of sales. He wanted Mr Hall to spend time in sales. He acknowledged that given the output production it would need to be managed.

54. After the regional meeting the second respondent decided to take some measures. The second respondent and Mr Hall had a discussion about reorganising the management and sales team of the Bishop Auckland depot. Ms Shacklady was made redundant. Mr Gormally's employment was terminated. Ruth Brion, an experience sales administrator who worked for a

competitor was recruited to join the sales team. Mr Hall was finding his role increasingly stressful. He was struggling with all his responsibilities. It was agreed that he would relinquish responsibility for production, transport and health and safety which would allow him to focus on sales and work with the newly appointed team. Mr Hall agreed to take a reduction of £10,000 each year on his salary.

55. The second respondent considered that as there was a need to improve performance at the Bishop Auckland depot, the claimant's experience in production would be best utilised there. The second respondent decided that the claimant should be seconded to the Bishop Auckland depot and assume responsibility for the areas which Mr Hall had relinquished. The claimant would be based at the Bishop Auckland depot for around six months with a view to ensuring that the production side of the business was capable of meeting the needs of what was hoped to be the improved sales generated by the reconfigured sales team.

56. Rather than spending time travelling Mr Martin would focus on the Motherwell depot which was also not meeting budget. Given the level of production at the Motherwell depot the claimant's role there would be redistributed to Mr Martin and Mr Tonner who were already covering sales.

57. The claimant attended Monklands General Hospital for an heart scan (echo report) on 18 April 2019.

58. Around mid/late April 2019, the second respondent and Mr Martin met with the claimant to discuss the claimant working at the Bishop Auckland depot. The second respondent explained the issues and how he thought they could be solved. This included the claimant going to the Bishop Auckland depot and helping to improve performance to meet the hoped for improved sales. The claimant asked for the second respondent's proposal. The claimant was looking for a salary increase. The second respondent agree to increase the claimant's salary by £5,000. The claimant wanted to delay starting at the Bishop Auckland depot as he was going on leave for around 10 days on 8

May 2019. The second respondent asked him to start as soon as possible. It was anticipated that the secondment could last up to six months.

May 2019

59. The claimant's secondment to the Bishop Auckland depot commenced on 2 May 2019. He was provided with the use of a company flat during the proposed period of the secondment which was six months. His salary was increased by £5,000 to £40,000 each year.

60. Ms Shacklady was made redundant on 3 May 2019. Ruth Brion join the sales team at the Bishop Auckland depot on 3 May 2019. She reported to Mr Hall.

61. On arrival it was apparent to the claimant that the task was significant and worse than he expected. He worked at the depot until 10 May 2019 then returned on 20 May 2019 following annual leave.

62. The claimant advised the second respondent of what was needed. The claimant's concern was the poor skill level of workers due to a high level of turnover of production workers; poor work content that did not support the tonnage required; and ongoing issues of plant causing production down time. The claimant considered that it could take months of sustained effort to turn things around.

63. The second respondent told the claimant that they were where they were. The claimant knew what had to be done and to get on with the job. The priority was to reduce costs and get the tonnes out of the door. The second respondent advised the claimant to do what he could subject to authorisation. The second respondent said that the business did not have months to turn around. The claimant was to stop making excuses and get the job done.

June 2019

64. On 5 June 2019 the claimant attended Monkland General Hospital for a spirometry (breathing test).

65. The second respondent was on annual leave between 10 and 24 June 2019. He attended course in Oxford and Derby.

66. The claimant was asked to attend an appointment with his GP on 17 June 2019 to discuss the spirometry report. The test showed mild airflow obstruction consistent with stage 1 COPD. The claimant was advised of this. He was informed that he would need to take mediation (incruse inhaler). A consultation was made for the claimant to see a COPD nurse on 26 June 2019.

67. The claimant was devastated to be diagnosed with COPD. According to his notes he could not believe that it was happening to him. He was angry and struggling to accept the diagnosis which he understood from researching was irreversible and progressively got worse. The diagnosis was on his mind "24/7" as he considered that it could eventually kill him.

68. The claimant informed Mr Martin of his diagnosis shortly afterwards and advised that he would need to attend further medical appointments. Mr Martin was supportive.

69. The claimant informed the second respondent of his diagnosis in late June 2019. The claimant was trying to understand his situation. The second respondent suggested that it could be related to working at British Reinforced Concrete.

70. Around 20 June 2019 Ms Taylor prepared the management accounts for Quarter 2. The financial position was becoming unsustainable. The business could not continue without making some changes.

71. The second respondent and Ms Taylor discussed ways of making the business more profitable. This involved looking at reducing the finance function and making the role of Operations Manager at the Motherwell depot redundant. Ms Taylor was unaware of the claimant's diagnosis and the second respondent did not mention it in discussions.

72. The claimant informed Mr Martin that he had a medical appointment on 26 June 2019. The claimant was aware that senior management were visiting the Bishop Auckland depot that morning. The claimant decided that it was

more important for him to attend his medical appointment. He was allowed to do so.

73. On 26 June 2019 Mr Woods and Pat Farrell, Chairman of the first respondent visited the Bishop Auckland depot in the morning then travelled to the Motherwell depot. The second respondent was concentrating on this visit.

74. On 26 June 2019, the claimant consulted the COPD nurse and then had bloods taken and an eyesight test. He arrived at the Bishop Auckland depot around 1.30pm.

75. The claimant and the second respondent met shortly after the claimant's arrival. The second respondent advised of the various work concerns arising from the visit and gave directions to the claimant. The claimant was annoyed about the second respodnent's lack of interest in his medical condition and recent appointment. The claimant told the second respondent that his appointment had been informative and helpful.

July 2019

76. At the relevant time (2 July 2019 to 28 October 2019) the claimant was a disabled person in terms of section 6 of the EqA.

77. On 2 July 2019, the first respondent issued the claimant with a "potential redundancy" letter stating that his position was at risk of redundancy. The letter invited him to a meeting on 3 July 2019 which would be conducted by the second respondent at which Mr Hall would take notes. The claimant read this letter before meeting with the second respondent.

78. On 3 July 2019, the second respondent asked the claimant to meet with him in the "Lads' Canteen" (the 3 July Meeting). The second respondent said that the claimant's role as Operations Manager at the Motherwell depot was at risk of redundancy. There were cost pressures in the business. They would meet again to discuss what happened next and look at alternative roles.

79. There was then some discussion about the performance of the Bishop Auckland depot. The claimant referred to the influencing factors affecting

production. The second respondent said that he did not want excuses; he wanted the claimant to do what he paid him to do.

80. Around 5 July 2019 the claimant received an email from Ms Taylor attaching a letter from the second respondent dated 3 July 2019 inviting the claimant to a further meeting on 10 July 2019 (the 10 July Meeting) at which the second respondent would be asking the claimant for suggestions to avoid the need for redundancy and discussing suitable alternative roles. The claimant was informed of the right to be accompanied at the 10 July Meeting.

81. The claimant attended a medical review on 8 July 2019. He was advised to continue using the incruse inhaler.

82. Around the week commencing 8 July 2019, the claimant began wearing a mask in the factory.

83. The claimant contacted Mr Westmoreland and asked if he would accompany him at the 10 July Meeting. Mr Westmoreland agreed to do so. The claimant told Mr Westmoreland about his diagnosis.

84. The 10 July Meeting was conducted in the company flat. Mr Hall and Mr Westmoreland attended and took notes.

85. The claimant said that the Motherwell depot had been doing well because of action taken by him before May 2019. The second respondent said that Mr Martin was flexible in moving jobs and organising different shifts. The second respondent acknowledged the claimant's work at the Motherwell depot but explained that there was a need to look at reducing overheads at the Motherwell depot and one of the options was the role of Operations Manager. The second respondent said that it was not personal. It was not about the claimant's performance but the performance of the business and the losses that were being made. The claimant acknowledged that it was a difficult market, poor work contend and reduced margins. The claimant asked how the Operations Manager role would be covered. The second respondent said that the tonnes were up and the work was being covered by Mr Martin and Mr Tonner. The claimant said that they would burn out if he was not there.

86. The claimant suggested a role for him as Production Manager/Transport Manager at Bishop Auckland depot. The figures were not being achieved but he did not become incompetent overnight, the conditions were difficult. The second respondent said that the performance of the Bishop Auckland depot was well below expectation. The plan was for the claimant to get it back on track, running smoothly and control cost. This had not yet happened. The business was not where it needed to be. The claimant said that he did not yet have enough time. There was discussion about existing poor skills on the shop floor, recruitment (increased labour cost) and training of staff. The claimant said that he was doing all that he could but it would take time. The second respondent that he was not questioning the claimant's effort, commitment or loyalty but time was running out. The claimant said that the problems at the Bishop Auckland depot would only get bigger if he was let go. The second respondent took on board that "there will be big problems coming to Bishop Auckland without someone looking after Production/Transport". The claimant was surprised as he thought that if the position at the Motherwell depot was gone it would be down to the Bishop Auckland depot "on a take or leave it basis". The second respondent asked if it was worth exploring a new position at the Bishop Auckland depot. The claimant said it was.

87. On return to the Bishop Auckland depot the claimant and the second respondent went to the factory. The claimant wore a mask. He told the second respondent that this was on the advice of the COPD nurse. The second respondent indicted that the claimant's diagnosis was pity. The second respondent said that the claimant needed to improve the performance at the Bishop Auckland depot or there would be a problem.

88. On 11 July 2019 the second respondent met the owner of a haulage business with a view to exploring new haulage options to see if costs could be reduced.

89. The claimant considered that in the past he individually had been able to improve performance at the first respondent's depots. His competence had not changed. This time he felt that he had been given an impossible task of improving production and turning round the Bishop Auckland depot. The claimant repeatedly told the second respondent that the three issues greatly

influencing production were plant, workforce skill level and quality of work. The second respondent did not want hear excuses. He instructed the claimant to do what need to be done.

90. On 15 July 2019 there was an accident in the factory at the Bishop Auckland depot. An employee sustained an injury while using a machine. There was a health and safety investigation. A prohibition notice was served prohibiting the first respondent for using the machine. This had significant impact on production.

91. A further meeting about the potential redundancy was scheduled between the claimant and the second respondent on 17 July 2019. This was cancelled as the second respondent was attending the funeral of Mr Wood's mother. The second respondent wrote to the claimant by letter dated 22 July 2019 advising that the meeting would be rescheduled.

92. During the week commencing 22 July 2019 there were ongoing discussions between the claimant and the second respondent regarding production. The claimant felt that he was being constantly criticised by the second respondent.

93. At a staff meeting around 23 July 2019 Mr Donkin informed the claimant that a machine had broken down and it would take a couple of days to get the parts. The claimant gestured with a thumbs down. The second respondent interjected saying that it was not a thumbs down. It was the wrong approach. There was always a solution. The claimant felt embarrassed as the comment was made in front of the staff. He was not given a chance to respond. The claimant felt that he could not say or do anything to please the second respondent.

94. The second respondent spoke to the claimant shortly afterwards. The second respondent reiterated his concerns about the performance of the Bishop Auckland depot. He needed improved tonnage and for the claimant to keep on top of the workforce and focussed. The claimant said that he was very stressed. He could not take the constant criticism from the second respondent. He had not become incompetent overnight. Everyone was anxious when the second respondent was around. The claimant had said

what were the influencing factors but the second respondent was not listening. The second respondent pointed out that he too was under stress.

95. There were was a telephone conversations between the claimant and the second respondent around 25 July 2019 regarding the performance of the Bishop Auckland depot; the poor workforce; poor figures and the claimant needing to be focussed on the job.

96. Around 29 July 2019 the second respondent spoke to the claimant about the need for scrap to be controlled and for the claimant and Mr Donkin to manage this. The second respondent also raised the need to improve production. The claimant agreed that things could improve when the work force was fully trained. The claimant had succeeded in the past and the second respondent believed that he was capable to doing so again. It was not the claimant's normal performance and was well below what was expected and what the claimant knew was acceptable. The second respondent asked the reason for this. The claimant felt that the situation he had inherited was worse that he expected. He had lack of support and constant criticism which made him feel a failure. Mr Martin was too busy. The claimant reiterated that the issue was the turnaround of staff; breakdown of plant and the lack of quality work and skill to complete the work. The second respondent agreed that there were challenging factors but the business should still be doing better.

97. The second respondent mentioned to the claimant that he needed to get the redundancy matter out of the way. The second respondent was considering alternative roles for the claimant.

August 2019

98. On 1 August 2019, the claimant sent an email to the second respondent at 11:13 saying that he felt that the second respondent was pressuring him to the resign and this was at the forefront of his mind. He referred to the discussion on 23 July 2019 when he "pleaded" with the second respondent to stop "criticising and harassing" him in the manner that he did. The claimant referred to telling the second respondent that "he was ready to keel over and was totally stressed out by a combination of everyday pressures that exist in

attempting to turn around a failing depot" and the second respondent's management style. The claimant said he need the second respondent's "support, guidance and understanding". What was being communicated was "unreasonable criticism, harassment, bullying and threats of job loss". The claimant reiterated the influencing production factors. The claimant felt that the second respondent's responses "to be blaming and unhelpful in nature and rarely constructive". The email concluded that the claimant was committed and he hoped to develop the relationship that would turn around the depot and he had done previously.

99. The second respondent replied by email sent at 12:37 advising the claimant that he had made serious accusations that would have to be investigated one way or another. He suggested that they meet in late August to discuss and act on this.

100. The claimant was reminded that his position at the Motherwell depot was at risk of redundancy. The second respondent had agreed to look at an alternative role for the claimant. While this had been delayed the second respondent was and had been "exploring every avenue to find or create an alternative role" for the claimant. Ms Taylor would be writing with a date for the rescheduled meeting.

101. The second respondent reiterated what he expected of the claimant. The second respondent said that he was personally insulted by the claimant's email. He would put his feeling to one side as they deal with the issue. The second respondent asked the claimant to advise by return if there was anything he had written that the claimant disagreed with (the 1 August Email Exchange).

102. On 2 August 2019, the second respondent wrote to the claimant advising that it had been decided that his role was redundant (the 2 August Letter). He was invited to a meeting with the second respondent on 19 August 2019 to discuss potential other opportunities within the first respondent. The claimant was advised that Mr Martin would be present to take notes and the claimant was entitled to be accompanied by a work colleague.

103. Mr Hall was on a week' s annual leave during the week commencing 5 August 2019. The claimant was aware of this.

104. The claimant consulted his GP on 5 August 2019 complaining "of a few weeks history of stress and anxiety firmly felt to be related to stress at work". The claimant was issued with a statement of fitness to work advising that he was not fit to work for 28 days due to "stress at work". This was unrelated to the claimant's diagnosis of COPD.

105. The claimant sent email to the second respondent on 5 August 2019 at 20:30 in reply to the email sent on 1 August 2019 (the 5 August Email). The claimant said that he was not wanting to get into a "slanging match". He wanted the second respondent to have an understanding how he was experiencing the second respondent's management style. The claimant considered that the second respondent may be "unaware of how you impact myself and others" and having this knowledge the second respondent might choose to rethink his approach. The claimant then addressed the operational issues raised by the second respondent in the 1 August email, including workforce skill level severely lacking; the cutter being relatively inexperienced; the state of the housekeeping across the factory and the stock to scrap bin. The claimant concluded by referring to the talk of redundancy seemed only to have emerged since the second respondent was made aware of the claimant's COPD diagnosis which "up until this point has made no impact whatsoever on my attendance or job performance". The claimant said that he did not intend to be insulting in any way. He was aware that the second respondent was not accustomed to people holding up a mirror and was anxious about he the second respondent's reaction.

106. The claimant's access to his work email account was disconnected on 6 August 2019.

107. On 16 August 2019, the claimant sent a text message to Mr Martin requesting that the meeting rescheduled for 19 August 2019 be rescheduled once the claimant was deemed fit to return to work. The meeting did not take place.

September 2019 to October 2019

108. The claimant consulted his GP on 2 September 2019. He was issued with a statement of fitness to work advising that he was not fit to work for 28 days due to “stress at work”.

109. On receipt of the statement of fitness to work the second respondent wrote to the claimant advising that he would like to meet with him on 6 September 2019. It was acknowledged that the claimant was unfit to work but the claimant was being only asked to attend and participate in a meeting.

110. On 5 September 2019, Mr Martin sent the claimant a text message asking him to confirm whether he would be attending the meeting the following day. The claimant responded by email advising Mr Martin that his GP had advised that he was not fit to attend the meeting and therefore he would not be attending. He provided contact details for his GP.

111. On 9 September 2019 the second respondent wrote to the claimant expressing disappointment and offering to meet in person or remotely on 12 September 2019.

112. A second letter was sent to the claimant from the second respondent on 9 September 2019 confirming that the temporary secondment to the Bishop Auckland depot was finished.

113. The claimant sent an email to the second respondent on 11 September 2019 at 13:07 expressing surprise at the early termination of the secondment given that it was scheduled to run for six months. There was no mention of any bonus or what was to happen next.

114. The second respondent replied by email sent on 11 September 2019 at 14:30 saying that he had hoped to engage positively with the claimant about suitable alternative employment within the first respondent and outstanding matters. If the claimant did not want to engage in person or remotely the second respondent was happy to correspond by email although he felt the other options were preferable. He invited written representation by 9.30 the following day.

115. In the absence of a response the second respondent wrote to the claimant on 12 September 2019 encouraging him to engage and extended the time for an email response until 16 September 2019. The second respondent requested feedback from the claimant and stated in correspondence that a decision on the claimant's employment would be made in the claimant's absence on 17 September 2019

116. The claimant sent an email to the second respondent on 16 September 2019 stating that his GP's advice was that he was unfit to attend any meeting that may be stressful. The claimant was willing to engage in email correspondence but need time. The claimant did not know what to say about alternative employment.as the onus was on the respondent. He asked for a list of all vacancies including a short description of the roles and the salary package.

117. The second respondent wrote to the claimant by letter dated 25 September 2019 (25 September Letter). The 25 September Letter stated that the first respondent was in an exceptionally difficult position. Market conditions and continuing uncertainly was having a material and severe impact on the operation. Output was continuing to reduce and the financial pressure meant that costs have to be reduced. The second respondent could not foresee any material improvement in market conditions. Accordingly a decision had been made to remove the role of Operations Manager. There were no current vacancies of any type and in the current financial position it was not possible to create or fund an alternative position for the claimant. There was not suitable alternative employment. The claimant position was redundant and his employment was terminated. He was inform of the financial payments and of his right of appeal to Mr Martin.

118. The statutory redundancy payment was £2,362.50. The claimant was entitled to one month's notice. The claimant was not required to work during the notice period. He would be paid subject to deduction of tax and national insurance. His employment terminated on 25 October 2019.

119. The claimant consulted his GP on 30 September 2019. He was issued with a statement of fitness to work advising that he was not fit to work for 28 days due to “stress at work”.

120. The claimant appealed the decision to dismiss him by letter dated 2 October 2019 in which he raised a number of appeal points and asked for a different manager from Mr Martin to hear his appeal.

121. The claimant mentioned his COPD diagnosis in the appeal letter. He referred to being the only one made redundant; being told of pay cuts in the Motherwell depot (of which there were none) and there being no pay cuts or any measures in the Bishop Auckland depot. He was placed at risk of redundancy 12 days after telling the second respondent of his diagnosis. He referred to hostile and degrading comments about his condition being made to him from the moment of his diagnosis and throughout the redundancy process and the failure to make reasonable adjustments. He believed that the redundancy was motivated by his condition and was discriminatory. The claimant said that there was no meaningful consultation. Further he was not paid all sums to which he was entitled.

122. By letter dated 15 October 2019, the claimant was invited to an appeal hearing on 22 October 2019 and was afforded the right to be accompanied. The claimant’s request to have another manager hear the appeal was granted. It was confirmed that the appeal would be considered by Stuart Watson, Commercial Director, Midland Steel Reinforcement Supplies GB Limited.

123. The claimant also requested that due to stress, that he be accompanied by his brother in law who would answer questions on behalf of the claimant. The second respondent took the decision to mirror the statutory framework regarding accompanying to disciplinary and grievance meetings and agreed for the claimant’s brother in law to attend but not to speak for the claimant at the appeal hearing. It was agreed that the appeal would be considered on written representations.

124. The claimant sent an email to Mr Watson on 22 October 2019 attaching additional information to be considered at the appeal hearing. This included

reference to allegations of harassment and reference to the claimant's health for which he had supporting notes. These notes were not enclosed.

125. Mr Watson reviewed the information and upheld the original decision. This was communicated to the claimant by letter dated 28 October 2019.

126. The claimant's duties at the Bishop Auckland depot were redistributed to others while he was absent on sick leave and afterwards. Mr Hall did not receive an increase in salary.

127. At the date of termination the claimant was 59 years of age. He was continuously employed by the first respondent for four years. The claimant's gross weekly salary was £769.23. His net weekly wage was £551.18. The claimant received a statutory redundancy payment of £2,362.50.

November 2019 onwards

128. The claimant has not returned to employment since his dismissal.

129. Around January 2020, the claimant's GP confirmed to the claimant when he attended the surgery on 5 August 2019 it was not about COPD. All his medical certificates were for stress at work.

130. Around 21 January 2020, the claimant's respiratory consultant reviewed the claimant's medical notes. He disagreed with the pulmonary function test report in June 2019. He suggested withdrawing the COPD diagnosis and the claimant stopping the incruse inhaler.

131. He remained certified as unfit to work until around February/ March 2020. Since then he has applied for approximately 1,600 jobs and attended around 50 interviews.

132. The role to which the claimant was seconded at the Bishop Auckland depot and substantive role as Operations Manager at the Motherwell depot have not been backfilled.

Observation on witnesses and conflict on evidence

133. This case was remarkable as there were significant factual disputes even about uncontentious matters. The Tribunal had difficulty making findings because it was not convinced that the witnesses, with the exception of Mr Donkin and Ms Taylor were being completely candid. Accordingly the Tribunal was unable to say that it preferred all of one party's evidence over that of the other parties. The Tribunal therefore discussed credibility and reliability of the witnesses in respect of each of the relevant disputed issues and made an assessment about which version of events it preferred and why.

134. The Tribunal's impression of the claimant was that he was an experienced and competent Operations/Production Manager. He was extremely confident and had a high regard for his own abilities. He showed animosity towards the second respondent which predated the allegations of discrimination. While the Tribunal appreciated that the claimant's focus was on the production side of the business, with his seniority and experience, it was in the Tribunal's view surprising that he did not acknowledge his colleagues' contribution to the business or demonstrate any insight or empathy for them in what was a challenging and stressful time for all the workforce.

135. The Tribunal had difficulty recognising the description of the claimant by Mrs Creaney and Mr Ferris as having "OCD tendencies and an almost photographic memory". They did not provided examples. It was not the impression formed by the respondents' witnesses who worked with him at the time or indeed the Tribunal from the evidence. The claimant did not use a day book or routinely make notes at work. Mr Hall said that the claimant would forget things he did the previous week. Ms Brion described the claimant as disorganised. The claimant produced handwritten notes that he said were contemporaneous. These notes contained an outpouring of emotion and quotes of what people were alleged to have said from as early as May 2019. The notes were disorganised. While there was a notebook there were gaps; the writing was not continuous, dates were scored out and were erroneous. Changes were made using a different pen. There were also notes which were literally written on the back of an envelope or a piece of paper.

136. Given the numerous changes of dates, recording events out of sequence and lacking context along with the gaps in the notebook the Tribunal did not believe the notes in the notebook were made on the date the comments were alleged to have been made. The Tribunal also considered that the notes were very subjective, expressing anger, frustration and contempt for the second respondent.

137. The Tribunal noted that the claimant had been very fit and a non-smoker. He maintained his fitness by training regularly. The claimant was devastated and angry to be diagnosed with COPD. According to his notes he could not believe that it was happening to him; he was really struggling to accept the diagnosis which from researching he understood was irreversible and got progressively worse. The diagnosis was on his mind "24/7" as he considered that it could eventually kill him.

138. The Tribunal considered that following the diagnosis, the claimant was understandably anxious about his health and preoccupied about the consequences of the diagnosis. The Tribunal's sense was that at this time the claimant viewed everything through the prism of his health. He was self-absorbed and showed no insight to the pressure his colleagues were under at the time. His notes record frustration about "no interest or support shown" by his colleagues.

139. The Tribunal felt that the claimant had a tendency to embellish his evidence. He considered that his position was crucial to the functioning of the first respondent's business that was not the case. His role at the Motherwell depot was redistributed to Mr Martin and Mr Tonner. No one was appointed to the claimant's role at Bishop Auckland when his secondment and then employment were terminated.

140. The claimant gave evidence about his relationships with colleagues at the Bishop Auckland depot. The Tribunal was struck by the fact that the claimant said that these were good relationships whereas that was not the view shared by most of the respondents' witnesses at the time or at the final hearing. The

Tribunal's impression was that the claimant was tolerated as a colleague but not liked.

141. Turning to the claimant's witnesses, Mrs Creaney was visibly relieved once she had given her evidence. The Tribunal's had little doubt that she had been under considerable stress learning of the claimant's diagnosis; dealing with his response to the diagnosis and his workplace issues while she too was undergoing a redundancy process at her work. She candidly accepted that much of her evidence was based on what she had been told by the claimant.

142. The Tribunal did not consider that Mr Ferrie's evidence was entirely impartial. He is a close relative of the claimant. He did not know the second respondent. Mr Ferrie's advice was based on information provided by the claimant. It was Mr Ferrie who suggested to the claimant that the second respondent may be concerned that the claimant was about to take a personal injury claim against the first respondent and that comments were made to suggest that there was no link between the claimant's condition and his workplace. Mr Ferrie described the deterioration in the claimant's health at the point "at which he shared his diagnosis" with the second respondent. That was also the same period (according to the claimant), that the claimant was told of and was having difficulty coming to terms with the diagnosis. Mr Ferrie was also involved counselling to the claimant. The Tribunal found it surprising given Mr Ferrie's recommendation to the claimant to keep notes that Mr Ferrie did not retain his notes, particularly as the counselling was ongoing while the claimant remained employed by the first respondent.

143. As previously explained, the Tribunal found the evidence of Mrs Creaney and Mr Ferrie about the claimant's OCD and photographic memory was unconvincing. The Tribunal did however accept their evidence about the claimant's telephone call with Mr Westmoreland which was in the Tribunal's view more plausible for the reasons set out below.

144. Turning to the second respondent the Tribunal considered that he was a successful businessman who over the years had an ability to attract and retain faithful, competent employees. The Tribunal did not consider that the second

respondent could succeed to the extent that he had without being driven, assertive, and demanding expecting high standards from himself and those that he employed. The Tribunal thought that he was able and willing to make difficult decisions if he required to do so. Mr Donkin described the second respondent as "making himself perfectly clear and explains things slowly when he wants something done". Mr Westmoreland who has known the second respondent for around 20 years said, "He is not an aggressive person. He gets his point over and stresses it to get the point home, but I've never known him to lose his temper". Ms Parker said that if the second respondent disagreed with the claimant about a business matter, he would just have told the claimant "in a straight forward manner".

145. The Tribunal considered that it was significant that some of the witnesses left secure employment to work with the second respondent. Many had substantial lengths of service with the first respondent. Some had left, including the claimant, but returned to work with him. In the Tribunal's view, the second respondent understood that people were key to the success of the business. He was willing to be flexible, for example renting an office in Hull from which Mr Westmoreland could work rather than travelling to the Bishop Auckland depot; being supportive of Mr Martin's need to work flexibly because of family commitments; and agreeing to flexible arrangements for other employees and extra holidays.

146. The second respondent was under significant business pressure in 2019. The Tribunal considered that his focus was on ensuring that the Motherwell and Bishop Auckland depots met budget and the business was secure. The Tribunal believed that the second respondent was genuinely reluctant make redundancies and was seeking to secure as many jobs as he possibly could.

147. For that reason, the Tribunal found some of the second respondent's evidence difficult to accept. For example given the financial constraints in June 2019 the Tribunal did not believe that while on leave the second respondent would not contact the office. This evidence of the second respondent contradicted Ms Taylor's evidence on this point which in the Tribunal's view was more plausible given the that the management accounts

were due and he had to respond to Mr Woods and Mr Farrell whose visit to the depots was imminent.

148. The Tribunal considered that the second respondent came under further pressure around 15 July 2019 when the performance of the Bishop Auckland depot was under scrutiny, there was an accident in the factory followed by a prohibition notice served by Health and Safety Executive. The Tribunal felt that this put significant pressure on everyone working at the Bishop Auckland depot.

149. It was notable that all of the respondents' witnesses referred to the number of years that had passed and their difficulty recollecting events. The Tribunal found this understandable given that while the claimant's health was of significant importance to him, it would not necessarily be at the forefront of everyone else's mind particularly if during the period concerned the business was under pressure and the claimant was ostensibly attending and getting on with his work.

150. In the Tribunal's view, none of the respondents' witnesses was, as suggested by the claimant, coerced by the second respondent into attending the final hearing to give evidence. With the exception of Mr Tonner, Mr Watson, Mr Martin, Mr Donkin and Ms Taylor the Tribunal's impression was that the respondents' witnesses were more than willing to attend to express their views of the claimant and respond to what he alleged them to have said. The Tribunal felt that this was less about enthusiasm for the second respondent and more about their dislike of the claimant as a colleague while he worked at the Bishop Auckland depot in 2019.

151. The Tribunal heard a great deal of evidence about the regional and consultation meetings for which written notes were produced. The Tribunal considered that the parties had a cavalier attitude towards note taking.

152. As explained above the claimant did not take any notes at the meetings. He disputed the accuracy of what was recorded in the notes that were produced. However this was because he did not recall the meeting in the way that it was recorded in writing. He was accompanied by Mr Westmoreland at the 10 July

Meeting. Mr Westmoreland said that the notes that were produced for that meeting were taken by him. Mr Hall also claimed that these were the notes he prepared.

153. The Tribunal considered it more likely than not that some if not most managers would take their own notes at meetings. As the management team was relatively small and they had worked together for a number of years the Tribunal accepted that one of them would be nominated at the meetings to type up their notes of the meeting. The timescale for the notes being extended and circulated to relevant individuals was vague. That said, while there was a dispute about the accuracy of some of the notes that were provided, on the whole, the Tribunal did not consider it necessary to put much reliance on them. For example, the Tribunal did not know who produced the notes of the 10 July Meeting. However, the general accuracy of those notes was undisputed by those attending. There was a dispute about the accuracy of the regional meetings in January and April 2019. There was however no dispute that these meetings took place or that the alleged attendees were present. It was not disputed that following the regional meeting in April 2019 there was a reorganisation of staff at the Bishop Auckland depot including the secondment of the claimant and reallocation of the claimant's duties at the Motherwell depot. To that end, little weight was put on Mr Tonner's evidence about the minutes of the regional meeting that he prepared.

154. The Tribunal considered that Mr Martin was the most defensive of the respondents' witnesses. He was the only one of them who had had a good relationship with the claimant although the Tribunal's impression was that Mr Martin felt let down by him. Mr Martin had also worked with the second respondent for 23 years, the majority of which time was as an employee of the first respondent. The Tribunal felt that Mr Martin was in a compromising position because of his loyalty to the second respondent whom he, unlike the claimant, held in a high regard. The Tribunal's impression was that Mr Martin knew how to handle the second respondent who valued what Mr Martin contributed to the business. For example Mr Martin was able to facilitate the claimant returning to the business in 2016; Mr Martin's visits to the Bishop

Auckland depot increased in early 2019 but it was the claimant who was seconded there in May 2019.

155. From May 2019 Mr Martin stopped visiting the Bishop Auckland depot and focussed on the Motherwell depot. Mr Martin with support from Mr Tonner assumed responsibility for the work that the claimant had been undertaking at the Motherwell depot before his secondment. Mr Martin was not involved in discussions to make the claimant redundant.

156. The Tribunal felt that Mr Martin would be under considerable pressure to ensure that the depots were performing in early 2019. While not travelling to the Bishop Auckland depot would alleviate some of that pressure the Tribunal did not doubt that that Mr Martin was expected to ensure the performance of the Motherwell depot. He was accustomed to dealing with the second respondent and the Tribunal thought it was likely given their good relationship that Mr Martin would have made unguarded comments to the claimant expecting them to be in confidence.

157. The Tribunal considered that Mr Martin's evidence about an investigation into the claimant's complaint about the second respondent's management style was unpersuasive. If such an investigation took place the Tribunal considered that it was superficial as by that stage the relationship between the claimant and the second respondent had broken down.

158. The Tribunal considered while Mr Hall had worked with the claimant previously, they were not particularly close. Mr Hall had a good understanding about how to work with the second respondent. The Tribunal felt that Mr Hall was candid about the pressure under which he was working in early 2019. The Tribunal did not form the impression that the claimant's return to the Bishop Auckland depot was viewed with great enthusiasm but rather as necessity. Mr Hall appreciated that there was a need to radically reorganise the sales team at the Bishop Auckland depot. He was willing to take a significant pay cut and focus on sales. The Tribunal considered that Mr Hall's comments about the claimant leaving early on 2 August 2019 when Mr Hall

was going on leave as being a reflection of the claimant's lack of awareness of the stress and strains that others were also undergoing at that time.

159. The Tribunal considered that Ms Taylor gave her evidence in a professional manner and that on the whole, her evidence was persuasive. While she also showed loyalty towards the second respondent, she appeared to be more objective about the claimant although she too considered that his role was less crucial than he considered it to be. The Tribunal felt that while she was involved in writing letters regarding the redundancy consultation meetings, she did not have any significant involvement in the actual process or the decision to make the claimant redundant. The Tribunal felt that it was significant that in the discussions in late June 2019 which lead to the consultation meetings the claimant's diagnosis was not mentioned.

160. Mr Donkin in the Tribunal's view was a honest witness. Despite the relative small size of the first respondent Mr Donkin referred to certain matters being "above his level" and there being "a hierarchy". The Tribunal therefore considered that Mr Donkin would be given information on a need to know basis. He understandably was vague about dates and candidly said that he could not remember that something happened rather than denying it. The Tribunal considered that July 2019 would have been a stressful time for Mr Donkin given the accident at the Bishop Auckland depot and the subsequent Health and Safety investigation. Mr Donkin was however sure that his wife did not have COPD. He was clear about his experience of the second respondent's management style: always making himself perfectly clear in explaining things slowly when he wanted something done. The Tribunal considered that as depot manager, Mr Donkin would have had a working relationship with both the claimant and the second respondent. While Mr Donkin was present on two occasions when the claimant asserted that the second respondent made comments about the claimant's health and spoke in a loud, sarcastic and aggressive way, the Tribunal felt that it was significant that Mr Donkin remembered the occasions but did not corroborate the claimant's recollection of the second respondent's behaviour.

161. The claimant and Mr Westmoreland had shared accommodation in Bishop Auckland for around six months in 2018. Mr Westmoreland was based in Hull in 2019 and would attend the Bishop Auckland depot about twice per month. The Tribunal considered that while their relationship was not close or particularly friendly it was good enough for Mr Westmoreland who was in any event travelling to the Bishop Auckland depot that day to agree to act as the claimant's witness at the 10 July Meeting. The Tribunal considered that it was more likely than not that the claimant would have told Mr Westmoreland about his diagnosis shortly before attending the 10 July Meeting albeit that Mr Hall may have mentioned it to him separately after the meeting. The Tribunal's reasoning was that it was forefront in the claimant's mind at the time and it was common knowledge that Mr Westmoreland had a family member who had the condition. It was in the Tribunal's view likely given the nature of the meeting that the claimant was stressed on 10 July 2019 and Mr Westmoreland would have commented on this. The Tribunal felt that Mr Westmoreland was at this stage supportive of the claimant. There was no reason for Mr Westmoreland not to accurately note the 10 July Meeting. He said that the notes produced were his which the Tribunal thought was more likely to be the case given Mr Hall was noted as the notetaker but the document states, "SW Notes". Mr Westmoreland had experience of management processes and considered that the 10 July Meeting had been handled well. He had no subsequent involvement in the process. The Tribunal considered that having heard the claimant's assertions of what happened, Mr Westmoreland's support of him had dwindled. The Tribunal therefore considered that it was highly likely that the recollection of the claimant and his witnesses of the telephone call with Mr Westmoreland in February 2021 was what happened.

162. The Tribunal felt that Ms Parker's evidence was rather confused but considered that this was due to her medical treatment. Neither Ms Parker nor Ms Bailey and Ms Brion, had a particularly high regard for the claimant. The Tribunal did not consider that this was related to these proceedings but rather to their working relationship with the claimant. The Tribunal noted that Ms Brion had similar health concerns at the time and the claimant appeared to be

unaware or unconcerned about this. The Tribunal considered that the hierarchy of the Bishop Auckland depot meant that the sales team were junior to the claimant. They reported to Mr Hall and would not refer directly to the second respondent. The claimant probably did not need to interact significantly with them. The claimant job involved spending time in the factory and he took his dog for walks at lunchtime. Ms Bailey did not work on a Monday. They all took annual leave at different times: Ms Parker (11 to 21 July); Ms Bailey (mid to the end of June); and Ms Brion in August. Ms Brion was undergoing medical tests in late June 2019. The Tribunal considered that given the timing of annual leave, and Ms Brion's explanation why she recalled the timing it was likely that the claimant told her of his condition in early July 2019. Ms Bailey would also have been returning from leave about then. The claimant was also wearing a mask in the factory from around 8 July 2019 so it was in the Tribunal's view likely that this would have given rise to some comment about why he was doing so particularly as they were unaware of the claimant displaying any other symptoms.

163. The Tribunal considered that Mr Watson's evidence about the appeal hearing was unpersuasive. The Tribunal's impression was that Mr Watson went through the motions of an appeal but it was no more than that. While Mr Watson was independent, the Tribunal was unconvinced that even had he reached a different conclusion, it was unlikely that the appeal would have been upheld and the decision would have been overturned. The Tribunal did however consider that it was it was significant that in December 2018 Mr Watson was aware of the first respondent's difficult trading conditions; that there was likely to be cost cutting measures and there was likely to be risk of redundancy.

Continuity of employment

164. There was conflicting evidence about what the second respondent said to the claimant when terminating his employment in July 2016.

165. The claimant's evidence was that he was told on a Thursday that he was not to go to the Blaydon Depot until a meeting had taken place. His recollection

was that the meeting then took place the following week which was attended by the second respondent and Mr Martin. The claimant said that he was told that they would part company as the second respondent had lost faith in him. The claimant could not recall when this meeting took place nor the date from which he was told he was no longer to go into the Blaydon depot. He did however have a clear recollection that he would be paid until the end of July 2016 and that he was to treat that as garden leave. He did not attend work after the meeting and was paid in full for that month. The claimant could not recall receiving the letter dated 21 July 2016 or the P45. He assumed he had received it as he needed the P45 for an appointment at the Job Centre.

166. The second respondent's evidence was that he dismissed the claimant for a conduct matter. He was vague about what when the meeting took place and what he actually said to the claimant. The second respondent referred to the letter dated 21 July 2016 which stated that the claimant's final date of employment was 4 July 2016. This was the leaving date recorded on the P45. Mr Martin said it was a difficult situation. He had a good working relationship with the claimant but the trust had gone away. His recollection was that the claimant lost his job because he was telling lies. He was sacked and given his P45. He disagreed that the claimant was put on garden leave but confirmed that he was paid until the end of the month. Ms Taylor who was the author of the letter dated 21 July 2016 gave no evidence about what the second respondent relayed to her at the time and why she used the words that she did.

167. The claimant's recollection of dates and receiving correspondence was vague yet he specifically recalled being told that he was "on garden leave". The Tribunal felt that it was most unlikely the second respondent said to the claimant that he was on "garden leave". At the meeting on early July 2016, the second respondent believed that the claimant was telling him lies. That was why the claimant was dismissed. The second respondent did not say that he summarily dismissed the claimant; the claimant was paid up to and including 31 July 2016. The Tribunal considered that it was likely that the

claimant was told that would be paid to the end of the month and was not required to work.

168. The letter dated 21 July 2016 referred the final day worked, gross payments due and a final payslip that was not produced. There was no reference to pay in lieu of notice or the date of termination of employment. The P45 is dated 22 July 2016. It is a proforma that refers to a "leaving date" of 4 July 2016.

169. In 25 September Letter, the claimant was advised, "you are not required to work your notice and your employment terminates with effect from Friday 25 October 2019." The parties agreed that the effective date of termination was 25 October 2019. The claimant was not being given a payment in lieu of notice but rather being given notice and told that he did not required to work during that notice period. While that was the agreed position the Tribunal noted that the payslip for that pay period referred to a redundancy payment and a "payment in lieu of notice".

170. The Tribunal considered that it was more likely than not that the second respondent said something similar to the claimant in July 2016. The claimant was not told that he was being given a payment in lieu of notice but rather he was being told that he was being paid until the end of the month but did not require to work. The Tribunal did not believe the claimant was actually told he was being placed on garden leave but this is in effect what happened. His effective date of termination was 31 July 2016.

171. The Tribunal then considered the disputed evidence leading to the Offer Letter.

172. The claimant said that he was contacted by Mr Martin about a week or ten days later to ask if he was interested in the production manager's role at the Motherwell depot. The claimant was interested and two/three days later met with Mr Martin and the second respondent when he was offered the job. The second respondent did not want him to start immediately and said the claimant would start on 8 August 2016. The claimant now thought this was to avoid continuity of service.

173. Mr Martin said that he was approached by the claimant a couple of weeks later. The claimant said that he had let himself down. Mr Martin spoke to the second respondent and to Mr Martin's surprised the second respondent agreed to offer the claimant a new role at the Motherwell depot. This was confirmed by the second respondent who said that the start date was mutually convenient.

174. It was agreed that the claimant recommenced working at the Motherwell depot on 8 August 2016. The Tribunal accepted Mr Martin's evidence that he had a good working relationship with the claimant at that time. Given that relationship the Tribunal considered it likely that on being approached by the claimant, Mr Martin spoke to the second respondent. The Tribunal noted that Mr Martin thought the answer would be no. The Tribunal therefore considered that the second respondent was willing to listen to Mr Martin and was persuaded by him to offer the claimant a new position at the Motherwell depot. The Tribunal did not accept the suggestion by the claimant that the second respondent was deliberately trying to delay the claimant's start date to avoid continuity of employment.

175. All the witnesses were vague about dates. Mr Martin took annual leave in July. The Offer Letter is dated 4 August 2016. Although it bears to be from the second respondent it is signed by Ms Taylor. She gave no evidence about this. The Tribunal considered that it was likely that any offer was made to the claimant before on or before 4 August 2016.

176. The Tribunal felt that it was more likely that the second respondent and the claimant were not thinking about continuity of employment. The claimant wanted a job and took no issue about receiving the Offer Letter with a reduced salary and a probationary period. The second respondent was in the Tribunal's view likely to have moved on and delegated the administration to Ms Taylor who appears to have issued the Offer Letter and the T&C's (which were contradictory in some regards and not signed by the claimant) on the basis that the claimant was a new start.

Request to go to Bishop Auckland in early 2019

177. There was also conflicting evidence in relation to the claimant being asked to go to the Bishop Auckland depot.

178. The claimant's position was that he was repeatedly asked to go to the Bishop Auckland depot from January 2019 onwards but that he was unwilling to do so because of his health. The claimant also said that Mr Martin relayed the second respondent's unhappiness about this.

179. Mr Martin and the second respondent denied that such pressure was out on the claimant from January 2019 onwards. The claimant's description of the second respondent as aggressive and manipulative was denied by Mr Martin and the respondents' other witnesses.

180. The Tribunal considered that following the Group Board meeting in December 2018, it was more likely than not that all of the senior operational managers were well aware that neither depot was meeting budget and that the market was extremely difficult. The Bishop Auckland depot was particularly struggling. The Tribunal therefore considered that during Quarter 1 it would have been particularly challenging for Mr Martin to be overseeing the Bishop Auckland depot when he was unable to spend any prolonged time there due to family commitments and covering for sales at the Motherwell depot as Mr Bray had not been replaced. The Tribunal felt that it was highly likely given their working relationship that Mr Martin would have expressed concerns to the claimant and may even have hinted that it would be helpful if the claimant was willing to share some of that burden.

181. The Tribunal considered that while the claimant was not enjoying his usual good health, that was not the reason advanced to Mr Martin as to why the claimant was reluctant to go to the Bishop Auckland depot. The Tribunal's impression was that in early 2019 the claimant did not consider that his health was particularly poor; it was only on the insistence of his family in late March 2019 that he attended his GP. The Tribunal considered that it was more likely that the claimant would only be willing to do so if he was financially rewarded. The Tribunal was not convinced during Quarter 1 that the second respondent

was planning that the claimant work at the Bishop Auckland depot so there would not have been any financial incentive available for the claimant to go.

What was the claimant told at the 8 April Meeting

182. There was conflicting evidence about what the claimant was told about the post of Operations Manager at the 8 April Meeting.

183. The claimant's position was that there was no discussion about his post at the 8 April Meeting and that the minutes that were produced do not accurately reflect what was discussed.

184. The evidence of the respondents' witnesses was that the minutes produced were accurate and the second respondent said that due to the volumes being currently produced there was no need for a dedicated production manager at the Motherwell depot.

185. The Tribunal considered that by the 8 April Meeting, the second respondent knew that the Quarter 1 results were disappointing and he required to take action. The Tribunal's impression was that the second respondent's focus was on improving the performance of both depots. He was willing to focus money, resources and skills where they were most needed in the hope that business would improve and that there would be no need to make significant cutbacks. The Tribunal considered that the second respondent knew that tough decisions had to be taken and that all the managers needed to perform. Mr Hall was out of his depth. There was a need for him to focus on what he did best: sales. The Tribunal felt that it was unlikely that the claimant was told that his post was likely to disappear. However it would have been apparent to all attending that significant changes were on the way.

186. The Tribunal formed this view because some employees left the business and were not replaced. The focus was to bring in more experienced sales coordinators with a view to increasing and targeting sales. This involved undoubtably paying increased wages and whilst savings were found by terminating the employment of those members of staff were not essential in the administrative side this would not be enough.

187. The Tribunal felt that the second respondent would have decided shortly after the 8 April Meeting that Mr Hall was to focus on sales and work with the reconfigured sales team. Mr Martin who had been spending time travelling between the two sites was to be focused at the Motherwell depot where he was also to cover for sales and with the assistance of Mr Tonner to deal with production issues there. The claimant whose background was in production was to be based at the Bishop Auckland depot as he would be best placed to improve performance with a view to meeting what was hoped to be the improved sales generated by the reconfigured sales team.

188. All the witnesses were vague about the timings of various meetings they had with the second respondent in April 2019. The Tribunal's impression was that the discussion between Mr Hall and the second respondent took place first because that discussion would have released money that assisted in paying for the company flat and uplift in the claimant's salary. Against that background and given Mr Hall's willingness to take a pay cut and focus on sales the Tribunal thought it was unlikely that the second respondent would have made any comments to the claimant and Mr Martin about dismissing Mr Hall.

Terms of secondment

189. There was disputed evidence about the terms of the secondment.

190. The claimant's position was that he would receive a salary increase of £5,000, plus a one off payment of £5,000 on completion of the secondment. He said that Mr Martin took notes and the claimant asked for a copy of the notes then prepared his own.

191. Mr Martin could not recollect the detail of the financial discussion or any subsequent discussion about minutes. The second respondent's position was that only a £5,000 secondment allowance was offered. He did not agree a £5,000 bonus at the end of the secondment. Ms Taylor confirmed that she was only instructed to make the salary increase.

192. The Tribunal thought it was noteworthy that at this time, of the significant reorganisation, the claimant was the only manager who negotiated a pay rise. Others were either demoted or expected to assume additional responsibilities for the same salary. While the claimant was expected to relocate he had done so in the past without receiving a pay increase.

193. For this reason while the claimant negotiated an increase of £5,000, the Tribunal was not persuaded that he was also told that he would receive a bonus at the end of his secondment. Given the financial circumstances at that time, the Tribunal considered it most unlikely that the second respondent would offer to pay a bonus to the claimant in six months' time especially when bonuses had not been paid since 2018 as part of the cost cutting exercise. The second respondent may have indicated that in future a bonus might be paid. However the Tribunal considered it was highly likely that this would be discretionary and results based.

194. As regards the request for Mr Martin's notes of the meeting, as previously mentioned, the Tribunal considered the parties had a cavalier attitude towards notetaking. The general consensus which the claimant did not dispute that it was not his practice to take notes and indeed the notes that he produced of this discussion on his evidence prepared some weeks later. The Tribunal did not understand why the claimant would as he alleged have repeatedly asked for a copy of Mr Martin's notes. If as the claimant asserted that he wanted a record of what was discussed then in the Tribunal's view the simplest thing would have been for him to have taken his own contemporaneous notes or sent an email to the second respondent following the meeting setting out what he understood to have been agreed.

Disclosure of diagnosis

195. The claimant was told of his diagnosis of COPD on 17 June 2019. There was disputed evidence about what information, when and to whom the claimant disclosed his diagnosis.

196. The claimant's position was that he had told both Mr Martin and the second respondent that he had a medical condition and had taken time off from late

March 2019 to attend GP appointments and hospital tests. The claimant said he told his wife of the diagnosis after his GP appointment on 17 June 2019. He said that he also told Mr Martin about the diagnosis and that he required to attend an appointment on 26 June 2019. The claimant also said that he had a conversation with Mr Westmorland shortly after his diagnosis during which Mr Westmorland told him of his father in law having the condition.

197. Mr Martin was vague about when he first knew of the claimant's medical condition. He did however deny making the comments which the claimant attributed to him as it was not language that he would use. Mr Martin also explained that he was familiar with the medical condition of COPD having had experience of it from a close family member.

198. The second respondent's evidence was that he was on annual leave when the claimant was alleged to have told him of his medical condition. The second respondent said that the claimant did not show any symptoms that would have alerted the second respondent to the claimant having medical issues. The claimant continued to do his job, move about the depot and take his Rhodesian Ridgeback dog (which he kept by him in his office) for long walks at lunchtime. The second respondent's position was that he did not know of the claimant's medical condition until around 10 July 2019.

199. The Tribunal considered that Mr Martin and the claimant were in regular contact by telephone almost on a daily basis. Given that they had a good working relationship and that Mr Martin was line managing the claimant in his substantive role, it was more likely than not in the Tribunal's view that the claimant would have mentioned to him that at his family's insistence, he had consulted his GP and had been referred for tests. Given the circumstances surrounding the termination of the claimant's employment in July 2016, the Tribunal considered that the claimant probably mentioned to the second respondent that he was attending hospital appointments. The Tribunal did not consider that this would necessarily be memorable to the second respondent as the Tribunal felt that it was highly likely that the claimant was playing down any symptoms that he had and that it was not interfering with the claimant's work.

200. When the claimant was informed of his diagnosis, the second respondent was on holiday. The Tribunal considered that during this period, the second respondent would from time to time be unavailable. The Tribunal considered that it was highly unlikely that the second respondent would have had no contact with the business whatsoever during this period particularly given the fragile state of the business and the timing of the financial management reports that Ms Taylor was preparing.

201. The Tribunal considered that it was likely that the claimant informed Mr Martin of the diagnosis around 17 June 2019. Given their relationship, the Tribunal had no reason to believe that Mr Martin's comments would have been anything other than supportive in an attempt to reassure the claimant. The Tribunal thought that it was unlikely that Mr Martin would have mentioned the diagnosis to the second respondent as he was on holiday and there would have been no reason to do so at this point.

202. The Tribunal considered that it was more likely than not that if the claimant was speaking to the second respondent before 24 June 2019 he would have mentioned his diagnosis. The Tribunal's reasoning was that at this stage, the diagnosis was at the forefront of the claimant's mind and it was likely that he would have mentioned how shocked he was given that he was angry and could not believe that it was happening to him. The Tribunal felt that it was probable that in that context: the claimant considering that he was very fit, had never smoked but had worked in the construction industry for more than 30 years, that the second respondent made the comment about all the years that the claimant worked at British Reenforced Concrete to suggest that it may be industry related.

203. As indicated above, the Tribunal considered that it was more likely than not that Mr Westmorland was aware of the claimant's condition before attending the 10 July Meeting. The Tribunal felt that it was significant that the notes of that meeting which did not appear to be in dispute did not refer to the claimant's condition or him telling those present that he had been diagnosed with it. The Tribunal felt that at this stage, it was therefore more likely the claimant's colleagues working at the Bishop Auckland depot knew of the

claimant's diagnosis. The Tribunal formed this view because the claimant was accustomed to being fit and exercising. He would therefore be very aware of any changes to his fitness. It was therefore likely in the Tribunal's view that this would be something that he would mention because it was unexpected. The Tribunal also appreciated that his work colleagues who were not involved in any training activities with him may not have noticed on a day to day basis that there was any significant change to the claimant's fitness. The Tribunal noticed that all the witnesses on being informed of his diagnosis were surprised as the claimant did not overtly demonstrate having any symptoms of that condition nor was he seen using any medication. The Tribunal also felt that while this diagnosis was momentous for the claimant, it would not necessarily have been at the forefront of other colleagues' minds particularly when they had their own issues and concerns to deal with at this time.

Bishop Auckland depot visit on 26 June 2019

204. There was disputed evidence about what was discussed between the claimant and the second respondent following a depot visit by Mr Woods and Mr Farrell on 26 June 2019.

205. The claimant gave elaborate evidence about the circumstances leading to him taking time off work to attend a medical appointment on 26 June 2019 which coincided with a visit by Mr Woods and Mr Farrell to the Bishop Auckland depot. The claimant's evidence was that the second respondent was annoyed that the claimant had chosen to attend a medical appointment that morning. When the claimant arrived at the Bishop Auckland depot, the second respondent, acted aggressively and criticised the claimant for several minutes over all aspects of the depot functioning. The claimant was taken aback by the veracity of the attack. He believed that the second respondent had behaved this way because the claimant had been unwilling to cancel his medical appointment. The claimant changed the subject, saying that his appointment had been very informative and helpful. The second respondent responded by saying the claimant obviously got that working in that smoked filled office all those years working for BRC. The claimant responded that he

did not work in that office. He has a separate production office in the factory like here.

206. The second respondent admitted that the claimant had a medical appointment that morning. The second respondent was vague as to what exactly he said to the claimant when he arrived at the Bishop Auckland depot. His position was that he probably discussed work matters and would have given him directions on what he wanted the claimant to do better.

207. From the evidence before the Tribunal, there was no reason to believe that there was any issue in the first respondent's employees being allowed time off to attend medical appointments for themselves and/or close relatives. The Tribunal therefore considered that it was highly likely that while an employee is required to inform their line manager of any absence for medical appointments these are routinely granted.

208. Given the financial circumstances and the importance of the depot visits around 26 June 2019, the Tribunal thought it was possible that Mr Martin would have reminded the claimant of that visit but did not believe that there would have been any pressure on the claimant to reschedule the appointment unless he wished to do so.

209. Furthermore, while the Tribunal did not doubt that it would have been of assistance for the claimant to have been present for the visit, the Tribunal did not believe that his attendance was as crucial as the claimant considered it to be.

210. The Tribunal felt that the second respondent would have been under significant pressure on that day not only in relation to what was to be done at the Bishop Auckland depot but also then travelling to the Motherwell depot for a visit there. The Tribunal had no doubt that the second respondent was preoccupied by the business issues and the visit. The Tribunal felt it was more likely than not that the second respondent would have given an update on what happened during the visit and told the claimant what needed to be done. The Tribunal felt that this was likely to have been a rather robust discussion and the claimant would have understandably been annoyed at what he

perceived as being the second respondent's lack of interest in his medical appointment and the potential consequences of it. The Tribunal doubted that the second respondent would have repeated the earlier remark about how the claimant may have acquired the condition. It seemed to the Tribunal if anything it was the claimant who was mention his condition rather than the second respondent.

Was Mr Hall at the 3 July Meeting?

211. It was agreed that the claimant and the second respondent met on 3 July 2019 and the claimant was told that the role as Operations Manager at the Motherwell depot was at risk of redundancy. There was disputed evidence as to whether Mr Hall was present at the 3 July Meeting.

212. The claimant's position was that Mr Hall did not attend the 3 July Meeting. He was therefore not in a position to provide minutes. The claimant said that he approached Mr Hall afterwards and Mr Hall explained that he was not aware of the meeting.

213. The second respondent's evidence was that he telephoned Mr Hall on 2 July 2019 and asked him to attend the 3 July Meeting to take notes. Mr Hall said that the meeting took place in the canteen area. The claimant was sitting in a blue chair. The second respondent stood by the kitchen counter and Mr Hall stood by the door.

214. The email attaching the invitation to the meeting was sent by Ms Taylor. The Tribunal considered that the 3 July Meeting was more informal than the invitation suggested. In the Tribunal's view it was highly likely that the second respondent had a number of issues to deal with that day and decided to meet with the claimant earlier than planned. The Tribunal's impression was that the discussion about redundancy, which the claimant did not deny happened, was tacked onto the more general discussion about the performance of the Bishop Auckland depot. While Mr Hall may have been standing at the doorway, it was most unlikely in the Tribunal's view that he took notes as the discussion was very brief. They were not attached to email sending the invitation to the 10

July Meeting or produced at that meeting which given the attitude towards notetaking generally would not have been unusual.

215. The Tribunal did not consider that at the time the claimant was concerned about the informality of the 3 July Meeting. Had he been so the Tribunal felt that he would have raised the issue with the second respondent at the time or at the 10 July Meeting when others were present and taking notes.

Why was the claimant placed at risk of redundancy?

216. The reason for the claimant being placed at being risk of redundancy and subsequently dismissed was a fundamental issue of dispute in the case.

217. The claimant's position was that he was placed at risk of redundancy and dismissed because the second respondent was unhappy with the claimant's diagnosis of COPD. The claimant said that a significant factor was the decision to place him at risk of redundancy was taken 12 days after he told the second respondent of his condition. The claimant said that a number of critical comments were made by the second respondent between being told of the diagnosis and the end of July 2019.

218. The second respondent said that he was not aware of the claimant's condition when he placed him at risk of redundancy and he did so purely as a matter of cost saving.

219. The Tribunal considered what was the cost saving in July 2019 of placing the role of Operations Manager at the Motherwell depot at risk of redundancy.

220. The Tribunal appreciated that around April 2019, there was a substantial reorganisation of the senior operations managers. The claimant's experience in production was best utilised at the Bishop Auckland depot. The production role at the Motherwell depot did not at that time justify a dedicated production manager and that work could be absorbed by Mr Martin and Mr Tonner. The role undertaken by Mr Hall was split so that he focussed on managing a reconfigured experienced sales team. The remaining part of his role (production, transport and health and safety) was to be covered by the claimant. The reorganisation was possible because Mr Hall took a pay cut.

There was an expectation that there would be improved performance at the Bishop Auckland depot as a result of these changes.

221. From the evidence the Tribunal understood that the claimant's role was reallocated to Mr Martin who was spending his time at the Motherwell depot and even when the production increased there he and Mr Tonner had capacity to do the work. It seemed highly likely to the Tribunal that in late June 2019 when the management accounts were being reviewed and the depots were being visited by Mr Woods and Mr Farrell, that there would be discussion the effectiveness of the reorganisation on the figures and what if any other changes could be put in place.

222. The Tribunal could understand why the role of Operations Manager maybe at risk of redundancy if there was no need for a manager to be dedicated to production at the Motherwell depot. There was however a need for a someone to be managing production at the Bishop Auckland depot. The issues at the Bishop Auckland depot were significant. While this was being covered by the claimant on a temporary basis there needed to be consideration about how the management team at the Bishop Auckland depot were to be organised. In particular, going forward how was production transport and health and safety to be managed.

223. In the Tribunal's view, the claimant anticipated from early 2019 that he would require to return to the Bishop Auckland depot to assist with the production. The claimant had been reluctant to work at the Bishop Auckland depot despite being ware of the pressure under which Mr Martin was working. The Tribunal reached this conclusion based on the claimant's own comments at the 10 July Meeting, when he indicated that he expected that he would be offered some production role at the Bishop Auckland depot on a take it or leave it basis. .

224. The claimant went to the Bishop Auckland depot in May 2019 on the basis of an increased salary. It was offered in the expectation that there would be a significant improvement in production. This had not occurred. This was not due to the claimant as there were significant problems to be addressed. The Tribunal therefore felt that the second respondent was considering how the

Bishop Auckland depot should be managed going forward. While the Tribunal acknowledged that the claimant had disclosed his medical condition the Tribunal's impression was that this was not a factor being considered by the second respondent.

225. At the 10 July Meeting the second respondent acknowledged the need for continued management of production at the Bishop Auckland depot and was looking at a role for the claimant there. Any such role was likely in the Tribunal's view to have a reduced remit and reduced salary. The second respondent was looking at how to make cost savings and was exploring alternative options in relation to transport.

226. While this was ongoing an issue arose in relation to health and safety at the Bishop Auckland depot. The Tribunal therefore considered that the second respondent would have been considering how health and safety at the Bishop Auckland depot should be managed going forward.

Discussions between the claimant and the second respondent in July 2019

227. There is a very substantial dispute about the discussions that took place between the claimant and the second respondent in July 2019.

228. The Tribunal spent a considerable amount of time when deliberating reviewing the witness statements, notes of cross examination and submissions when making its findings. The Tribunal did not accept that the only rational explanation was one of the parties was lying.

229. The Tribunal acknowledged that the claimant's recollection of events was extremely detailed. However, as previously explained, the Tribunal was not convinced that was because he was a very good historian but rather because this was challenging time for him and that he has replayed the events over in his head and that his perception is now his reality. It was also suggested that the claimant had very little to gain from some of the comments that he attributed to the respondents' witnesses. The Tribunal also did not accept that to be the case. Throughout the claimant's employment with the first respondent, the claimant's salary expectation had continually been an issue

initially in relation to termination of his employment in July 2016, the level at which he was paid when appointed Operations Manager and the fact that it had not increased until he insisted on a "proposal" before moving to the Bishop Auckland depot in May 2019. From the claimant's notes, some of which predated his diagnosis, it was clear that he considered that the second respondent was a bully and had made disparaging comments about him and his management style.

230. The Tribunal also considered that while the claimant was undoubtably in shock about his diagnosis, there was no ostensible sign that his diagnosis was affecting his attendance or ability to do his job. At the time, his colleagues were unaware of him displaying any symptoms that affected his work nor indeed did he suggest that was the case. To the contrary, the claimant was explicit in the 5 August Email that his diagnosis had made no impact whatsoever on his attendance or job performance. While the Tribunal was in no doubt that the second respondent was demanding of all the employees during this period, it was not convinced that the claimant was singled out for any particular treatment or that any comments that were made to him related to his health.

231. The Tribunal acknowledged that there was likely to have been discussion about performance. That performance was particularly in relation to the workforce at the Bishop Auckland depot. The Tribunal also felt that it was likely there would have been discussion about why in the past the claimant had succeeded in turning around the Bishop Auckland depot but that this was not happening or at least not happening soon enough this time. The Tribunal considered that the claimant would have set out repeatedly why he considered this to be the case. Some of these factors were acknowledged by the second respondent but he remained of the view that the claimant could do more and he needed to deal with some of the basic issues.

232. In the Tribunal's views the 1 August Email Exchange was significant as it was the only correspondence before the Tribunal which was contemporaneous and accurately demonstrated the parties' positions at the time.

233. The Tribunal did not accept the suggestion that the claimant was not mentioning his health condition in the email he sent on 1 August 2019 out of any apprehension about the second respondent's response. The claimant had robust discussions with the second respondent about the performance of the Bishop Auckland depot. The claimant decided to complain to the second respondent about his management style. The Tribunal thought that had the claimant believed that the second respondent's management style was related to claimant's health condition, then the claimant would have specifically raised that. If anything, the Tribunal suspected that the claimant's health and condition was below the second respondent's radar and that he was only focused on turning around the business.

Why was the secondment ended on 9 September 2019?

234. There was disputed evidence about the reason for the secondment being terminated two month's early.

235. The claimant's position was that it was an act of harassment. The second respondent said that the claimant was absent from work due to stress and was likely to remain so. The secondment salary was charged to the Bishop Auckland depot. When the secondment ended the claimant's salary was charged to the Motherwell depot for payroll coding purposes. Ms Taylor confirmed that both sites operated financially on a consolidated basis.

236. By 9 September 2019 the claimant had been absent since 5 August 2019. His duties were being redistributed to other members of the management team. The claimant was not able to attend meetings with the second respondent. He thought the claimant was unlikely to return before the secondment ended. The Tribunal considered that it was likely that the second respondent wanted the cost of the claimant to be attributed to the Motherwell depot along with any potential redundancy payment.

The anonymous letter

237. The Tribunal heard a good deal evidence about an anonymous letter received by the claimant around November 2020. The claimant believed the

anonymous letter was from a former colleague at the Bishop Auckland depot. From his comments to Ms Parker in his letter of July 2021 the anonymous letter came at a good time because he was overwhelmed at everything and was disheartened by the sense of isolation. None of the respondents' witnesses admitted to authoring the anonymous letter. Indeed some went as far as to say that they believed it was fabricated and authored by the claimant. Reference was made to the similarity in type face and content to the letter from the claimant to Ms Parker in July 2021.

238. The Tribunal was not convinced that any of the respondents' witnesses sent the anonymous letter. The Tribunal did not form the impression that any one of them would have described the claimant to be, "pleasant, funny, kind, understanding and a pleasure to work with". The Tribunal also felt that the content of the anonymous letter was too convenient for the claimant.

239. The Tribunal considered Mrs Creaney's evidence about the steps taken to identify the author. The Tribunal found Mrs Creaney's involvement in the investigating the identity of the author of the anonymous letter surprising given her disinterest in reading the claimant's notes. While she said the claimant was not good with the Facebook app the Tribunal noted that he did have one and he recalled having had a friends request.

240. The Tribunal felt that if the anonymous letter was sent by an employee of the first respondent it was clear that the author wished to be and remain anonymous. Despite this Mrs Creaney and the claimant made enquiries and then eventually wrote to Ms Parker. In that letter the claimant said that if Ms Parker was not the author, he asked that the communication between them remained private between them as the claimant was "keen to protect this person's identity". Ms Parker chose to bring this letter to the second respondent's attention. The Tribunal considered that had she been the author it is most unlikely that she would have done so.

241. While the Tribunal noted the similarities to the claimant's letter sent to Ms Parker the Tribunal did not make findings about the author of the anonymous letter.

Communication after dismissal

242. The Tribunal also heard much evidence about communications after the claimant's dismissal. The Tribunal has already made observations on the telephone conversation with Mr Westmoreland.

243. In relation to alleged discussions between the claimant and Ms Bailey and the claimant and Ms Brion the Tribunal did not consider that these were significant. The Tribunal's impression was that neither Ms Bailey nor Ms Brion liked the claimant. While the claimant was employed by the first respondent they had a working relationship. Given the hierarchy the Tribunal had no doubt that Ms Bailey and Ms Biron would have been polite to the claimant. The Tribunal did not however consider that the claimant's health condition and when they became aware of it some three years earlier would have been at the forefront of their minds.

Deliberations

Continuous employment

244. The Tribunal first considered the date from which the claimant had continuous employment. The Tribunal found that the second respondent terminated the claimant's employment at a meeting in July 2016. He told the claimant that he was not required to work and he would be paid until the end of the month. The letter dated 21 July 2016 stated that the claimant's final day worked was 4 July 2016 and he had been paid up to and including 31 July 2016. The P45 referred to a leaving date of 4 July 2016.

245. The Tribunal appreciated that the second respondent may have intended that 4 July 2016 be the claimant's effective date of termination and he was to be paid in lieu of notice. However that was not what was said or confirmed in the letter dated 21 July 2016.

246. The Tribunal therefore considered that the question to be answered is: how would any reasonable employee in the claimant's position have interpreted the terms of his dismissal as a whole, looking to the spoken words of dismissal and confirmatory language of the letter dated 21 July 2016.

247. In the Tribunal's view a reasonable employee would have interpreted the second respondent's comments that he was being dismissed with notice but did not require to attend work. He was to be paid at the end of the month. The Tribunal considered that the effective date of termination was 31 July 2016.

248. 31 July 2016 was a Sunday. The claimant recommenced employment with the first respondent on 8 August 2016. Accordingly there is no week ending with a Saturday that was not governed by a contract of employment. The Tribunal agreed with the parties' submissions that having made these findings the date when the claimant employment started is 3 November 2014.

Discrimination

249. The Tribunal then turned to consider the discrimination claims.

250. The claims of harassment and direct discrimination are based on the same conduct. The concept of detriment does not include conduct that amounts to harassment. Accordingly the claimant cannot succeed in a harassment claim and a direct discrimination claim based on the same conduct. The claimant made submissions about the harassment claims and then the direct discrimination claims. Accordingly the Tribunal considered the harassment claims first then considered the direct discrimination claims in the alternative.

251. The Tribunal did not find on a balance to probability that all of the allegations occurred. Given the extent of the conflicting evidence the Tribunal set out in detail why it made the findings that it did. The Tribunal considered the issues to the facts as found.

Harassment related to disability

252. In late June 2019 the second respondent suggested to the claimant that his diagnosis (of COPD) could be related to working at BRC.

253. The Tribunal was not convinced this conduct was unwanted. The claimant told the second respondent about his diagnosis. The claimant expressed shocked given his fitness and lifestyle. The second respondent commented that it may be related to working at BRC. While the Tribunal accepted that the

comment was related to the claimant's disability the Tribunal was not satisfied that that the second respondent made the comment with the purpose of violating the claimant's dignity or creating an intimidating, hostile degrading or humiliating or offensive environment for the claimant. The Tribunal also did not consider that it had that effect. The claimant initially did not take any offence. The cause might have been industrial related. It was only sometime later following discussion with Mr Ferrie that the claimant considered that there was any significance to the comment.

254. Around 10 July 2019 the second respondent commented to the claimant that the claimant's diagnosis was "a pity". The second respondent said that the claimant needed to improve the performance at the Bishop Auckland depot or there would be a problem.

255. The Tribunal accepted that it was unwanted conduct. The Tribunal considered that the comment about pity related to the claimant's disability. In the Tribunal's view the conduct did not have the purpose or effect of creating a proscribed environment for the claimant under section 26. The conversation took place as they were walking around the factory. The claimant said that he was wearing a mask on the advice of the COPD nurse. He had not previously done so in the second respondent's presence. The Tribunal felt that given the claimant's explanation for wearing the mask was entirely reasonable for the second respondent to express sympathy for the claimant. While the Tribunal accepted that the claimant said the comment had that effect the Tribunal felt objectively in the context of the claimant and the second respondent walking around the factory discussing the performance of the Bishop Auckland depot it was not reasonable to have that effect.

256. During the week commencing 22 July 2019 there were ongoing discussions between the claimant and the second respondent about production. The claimant felt criticised. The second respondent made comments at a meeting attended by other employees on 23 July 2019 followed by a conversation when the second respondent reiterated to the claimant his concerns about the performance of the Bishop Auckland depot. The claimant needed to improve tonnage and to keep on top of the workforce and be focussed. The claimant

said that he was very stressed. He could not take the constant criticism from the second respondent. He had not become incompetent overnight. Everyone was anxious when the second respondent was around. The claimant reiterated what were the influencing factors but the second respondent was not listening. The second respondent pointed out that he too was under stress. This was followed by telephone conversations on 25 July 2019 regarding the performance of the Bishop Auckland depot and the need for the claimant to focus on the job. There was further discussion on 29 July 2019 about the need for the claimant and Mr Donkin to control the management of scrap. The second respondent commented that it was not the claimant's normal performance and was well below what was expected and the claimant knew this. The second respondent asked for the reason for this.

257. The Tribunal considered that the conduct was unwanted but was not convinced that the conduct was related to the claimant's disability.

258. During this period there was robust discussion about the need for the performance of the Bishop Auckland depot and in particular the workforce to improve. The second respondent did not want to hear any excuses. The Tribunal's impression was that in the past the claimant had succeeded in improving performance at the first respondent's depots. For this reason at some cost the claimant had been parachuted into the Bishop Auckland depot. On this occasion the task was more challenging that the claimant had expected. The Tribunal considered that the claimant gave legitimate reasons for the challenges to improving performance. None of these "excuses" related to the claimant's health. The second respondent did not disagree with the claimant's comments on the challenges. His position was that time was of the essence and the claimant was to get on with the job.

259. The Tribunal had no doubt that towards the end of July 2019 the second respondent put all the first respondent's employees under significant pressure to deliver what they were paid for. The Tribunal accepted that there were numerous discussions about the claimant's need to deliver what he was sent to the Bishop Auckland depot to do. While these discussions referred to "performance" and "focus" the Tribunal did not consider that this related to

disability. While the claimant was concerned about his health condition and how it would affect him, the Tribunal did not find that it was having any ostensible effect on his ability to do his work in July 2019. To the contrary he was clear about what had to be done and how. That was also the claimant's position at the time. When the second respondent specifically asked the claimant why he had not improved productivity as he had done before the claimant repeated the previous explanation and referred to lack of support, criticism and Mr Martin being too busy.

260. There was a redundancy process in which the claimant was involved. The Tribunal accepted that undergoing the redundancy process and the manner in which it was conducted was unwanted conduct. The Tribunal then turned to consider whether this was related to disability.

261. Following a reorganisation of the management team in April 2019 the performance of both depots continued to be under review. The second respondent was informed of the claimant's diagnosis around late June 2019. This coincided with the second respondent reviewing the June management accounts and depot visits by Mr Farrell and Mr Woods. At this stage the claimant had been at the Bishop Auckland depot for almost two months and was expected to continue working there for another four months. His work at the Motherwell depot had been reallocated to Mr Martin and Mr Tonner.

262. While the Tribunal considered that the 3 July Meeting was informal this was due to the second respondent having other matters to deal with that day. The 10 July Meeting took place as arranged. The meeting scheduled for 17 July 2019 was cancelled due to a funeral. The decision to make the role of Operations Manager redundant was communicated to the claimant by the 2 August Letter. In the Tribunal's view the decision was prompted by the 1 August Email Exchange which did not relate to the claimant's disability. A further meeting was proposed for 19 August 2019.

263. The 19 August 2019 meeting and others rescheduled for 6 and 12 September 2019 did not take place as the claimant was sick absent from work because of stress at work. The sick absence was not disability related. As the claimant

was unable to attend any meeting it was proposed that he make written representations by email. The period for so doing was extended until 16 September 2019. The decision to terminated the claimant's employment was communicated to the claimant in the 25 September Letter. The claimant was offered a right of appeal.

264. The claimant remained absent from work. He was again assessed by his GP as unfit to work from 30 September 2019 for 28 days because of stress at work. The claimant exercised his right to appeal. He objected to Mr Martin hearing the appeal. The appeal hearing was conducted by Mr Watson. The claimant said on 18 October that his GP advised that he remained unfit to attend meetings that were important or likely to cause him stress. The claimant asked to be accompanied at the appeal hearing by Mr Ferrie on the basis that he would put forward the claimant's position and answer question on his behalf. The second respondent advised that notwithstanding that Mr Ferrie was not a work colleague or trade union representative he could attend but his role was to take notes/provide moral support. Alternatively the appeal could be by way of written submission. In those circumstances the claimant agreed to proceed by written submissions.

265. While the Tribunal considered Mr Watson's approach to the appeal was superficial the Tribunal did not consider that this was related to disability. The Tribunal's impression was that Mr Watson was aware from the Group Board Meeting in December 2018 of the first respondent's difficult trading conditions; that there was likely to be cost cutting measures and there was likely to be risk of redundancy. Mr Watson also believed that the claimant was aware of the financial difficulties as this had been discussed at the claimant's management level. The claimant was a high earner and his duties had been redistributed to other members of the management team and not backfilled. Mr Watson accepted the second respondent's position that there were no suitable alternative vacancies. He acknowledged that the claimant's diagnosis was a significant blow for him but that it had little to no impact on the claimant's attendance or performance. Mr Watson understood that the claimant's

concerns about the behaviour of the second respondent had been investigated and offered to re-visit this if the claimant wanted him to do so.

266. The Tribunal did not consider from its findings that the redundancy process and the manner in which it was conducted was related to the disability.

267. On 9 September 2019 the claimant's secondment was terminated early. The Tribunal considered that this was unwanted conduct. It then turned to consider whether it was disability related.

268. The claimant was seconded to the Bishop Auckland depot on 2 May 2019 for six months to taking over duties that Mr Hall had relinquished. The claimant was to help improve the performance at the Bishop Auckland depot to meet the hoped for improved sales. The target set had not been achieved, for a variety of reasons by the end the end of July 2019. The claimant was absent from work from 5 August 2019 for 28 days during which time his work was redistributed. The claimant submitted a further fitness note on 2 September 2019 for 28 days. He was not fit enough to attend meetings on 19 August and 6 September 2019.

269. The Tribunal considered that from 5 August 2019 the claimant's work had been reallocated to other managers. By 2 September 2019 the claimant was unlikely to return to work before the end of September 2019 and possibly later. The Tribunal did not understand that the claimant's absences related to his disability. The Tribunal's impression was that by this point "the big problems coming to the Bishop Auckland depot without someone looking after Production/Transport" mentioned at the 10 July Meeting had not materialised or were being effectively managed in the claimant's absence. Accordingly the second respondent decided to terminate the secondment. The Tribunal did not consider that this unwanted conduct related to disability.

270. The claimant was dismissed. The Tribunal accepted that this was unwanted conduct. The Tribunal then asked if it was related to disability.

271. There was a reorganisation of the first respondent's management team in April 2019. The performance of the depots had not improved by late June

2019. The Operations Manager role at the Motherwell depot was at risk of redundancy in early July 2019. The second respondent accepted that someone had to look after production and transport at the Bishop Auckland depot. He agreed to give consideration to this and explore alternative posts for the claimant there.

272. The decision to make the role of Operations Manager at Motherwell redundant was taken on 2 August 2019. As explained the Tribunal considered that this decision was a reaction to the 1 August Email Exchange which did not relate to disability. In the Tribunal's view the timeframe for improvement along with the added complication of the health and safety investigation was such that the second respondent acted precipitously as he considered that the email sent by the claimant on 1 August 2019 was insulting. Contrary to what the second respondent said in the reply the Tribunal did not believe that he was putting "his own feelings to one side". The Tribunal considered that the second respondent was under considerable stress and frustrated by what the lack of progress despite all his efforts. He had put faith in the claimant's ability to improve productivity at the Bishop Auckland depot but the claimant's personal criticism of him and attack on his management style was disconcerting.

273. The Tribunal considered from the 2 August Letter that the second respondent was still considering options for the claimant at the Bishop Auckland depot. The Tribunal noted that Mr Martin was to attend the proposed meeting on 19 August 2019. He had not been involved and in the past had been supportive of the claimant.

274. Mr Hall was on a week's annual leave commencing 5 August 2019. The claimant attended his GP that day and was given a fitness note for an absence of 28 days for "stress at work". That evening the claimant sent the 5 August Email which set out a detailed and robust response to the points raised in the 1 August Email Exchange. The claimant raised for the first time in correspondence the timing of the second respondent being made aware of the claimant's "current health condition of COPD" and redundancy. The claimant stated that his condition had had no impact whatsoever on his attendance or job performance. The claimant said that he did not intend to be

insulting in any way. He was aware that the second respondent was not accustomed to people holding up a mirror and was therefore anxious about the second respondent's reaction.

275. The second respondent's reaction was to disconnect the claimant's business email access. The Tribunal was unconvinced that this was solely to avoid causing the claimant further stress of the ongoing health and safety investigation. The Tribunal felt that the second respondent now questioned the claimant's dependability in resolving the problems at the Bishop Auckland depot. The Tribunal's impression was that for the second respondent the claimant was now no longer a solution to the situation but another issue he had to deal with.

276. While the second respondent went through a process of consultation with the claimant about suitable alternative employment the Tribunal did not consider that this was meaningful. The second respondent in the Tribunal's view did not continue after late August 2019 to explore possible options for the claimant particularly as in the claimant's absence his role was covered by the remaining management team. It appeared to the Tribunal that the second respondent had decided that the claimant was no longer a team player and decided to dismiss him. The Tribunal did not consider that this decision was related to disability.

Direct discrimination

277. Having considered the claims of harassment related to disability and having reached the conclusion that they did not succeed the Tribunal turned to the claims of direct discrimination.

278. During case management the claimant said that the less favourable treatment that he suffered was the level of criticism following the disclosure of his medical condition; the decision to place his role at risk of redundancy and his dismissal.

279. The claimant's written submissions on direct discrimination concentrated on the issue of the dismissal. There was no reference to a comparator. When

this was raised the Tribunal was advised that the comparator was Mr Hall particularly in relation to the claimant's dismissal.

280. For the direct discrimination claims to succeed the claimant must satisfy the Tribunal that because of his disability he was treated less favourably than the respondents treated or would treat others.

281. The Tribunal discussed how best to approach the question. Usually this involves considering whether the claimant has shown potentially less favourable treatment from which an inference of discrimination could be drawn. This involves identifying an actual comparator treated differently or in the absence of an actual comparator a hypothetical one who would have been treated differently. If a prima facie case of discrimination is established then the respondents must prove on the balance of probabilities that their treatment of the claimant was no sense what so ever based on his disability.

282. Not all of the alleged treatment alleged to have been direct discrimination was found by the Tribunal to have occurred. The Tribunal found that the following treatment occurred while the claimant was a disabled person in terms of section 6 of the EqA:

a. on 3 July 2019 the role of Operations Manager at the Motherwell depot was placed at risk of redundancy;

b. during the week commencing 22 July 2019 there were intense discussions between the claimant and the second respondent when the claimant was criticised;

c. the role of Operations Manager was made redundant on 2 August 2019;

d. on 9 September 2019 the claimant's secondment was terminated early on; and

e. on 25 October 2019 the claimant was dismissed.

283. The Tribunal was unclear whether the claimant relied on Mr Hall as a comparator for all the treatment that he said was less favourable. The

respondents made no submissions about the identity of a comparator. The Tribunal was not convinced that there were no material differences between the claimant and Mr Hall. While they were both managers of the first respondent, their substantive roles were at different depots. In April 2019 Mr Hall's remit included sales whereas the claimant's remit did not. Mr Hall remained at the same depot in May 2019 where he continued to undertake part of his previous role (sales) at a reduced salary. The claimant's role was reallocated to other managers at the Motherwell depot when he was seconded to the Bishop Auckland depot on an increased salary.

284. The Tribunal felt that a more appropriate comparator would be a hypothetical comparator based at the Motherwell depot who did not have the claimant's disability but because of their experience they were seconded to the Bishop Auckland depot for six months during which the substantive role at the Motherwell depot was reallocated to other managers who then absorbed the work.

285. In the Tribunal's view given uncertainty about the appropriate comparator and its earlier deliberations it was sensible to go straight to the explanation for the treatment.

286. First the Tribunal considered the reason why test to place the role of Operations Manager at risk of redundancy in July 2019.

287. In 2019 both depots were underperforming but the Bishop Auckland depot was particularly struggling. The claimant had previously spent time at the Bishop Auckland depot. There was management reorganisation in April 2019 to maximise the existing management resources/skills by allocating them to where they were most needed. The role of Operations Manager at the Motherwell depot was reallocated to Mr Martin with assistance from Mr Tonner. The claimant was seconded for six months to the Bishop Auckland depot to assume responsibilities for production, transport and health and safety the duties relinquished by Mr Hall who was focussing on sales.

288. The Tribunal considered that the reorganisation was because of the needs of the business and the claimant was seconded to the Bishop Auckland as that was where he was needed most.

289. In early May 2019 the claimant considered that the assessment of the Bishop Auckland depot he had been given was a gross underestimate of the extent of the problems. He told the second respondent that it would take months to turn the depot around. The second respondent said that that the business did not have months; immediate improvement was required.

290. The Tribunal considered that before the claimant was a disabled person he knew that he had been tasked with a job that was more challenging than he had previously encountered and time was of the essence.

291. The second respondent and Mr Martin knew of the claimant's diagnosis of COPD in late June 2019. This coincided with the ongoing review of the depots and potential cost cutting if performance was not improving.

292. There was a site visit to the depots by Mr Woods and Mr Farrell in late June 2019. There were cost pressures as neither depot was performing as was required. In the claimant absence Mr Martin and Mr Tonner were able to deal with production along with their other duties at the Motherwell depot. The issues at the Bishop Auckland depot remained of concern.

293. The Tribunal's considered that it was understandable that towards the end of Quarter 2 the respondents continued to look at the resources and how best to use the workforce to maximise performance.

294. Following discussion with Ms Taylor at which the claimant's diagnosis was not mentioned the second respondent decided that the Operational Manager's role should be placed at risk of redundancy. The role was created in August 2016. While the Tribunal appreciated that there was no immediate cost saving at this point the Motherwell depot was already running without a dedicated Operations Manager. The resources were needed at the Bishop Auckland depot. That was acknowledged by both the claimant and the second respondent at the 10 July Meeting.

295. While it was unfortunate from the claimant's perspective that the role of Operations Manager at the Motherwell depot was placed at risk of redundancy that Tribunal did not consider that this decision was because of the claimant's disability.

296. Next the Tribunal considered the reasons for the claimant's treatment during discussions in the week commencing 22 July 2019 when the second respondent was critical of the claimant.

297. The claimant was seconded in May 2019 to work with Mr Hall to improve performance at the Bishop Auckland depot. On arrival the claimant knew that this was a bigger challenge that he had been led to believe despite previous efforts by Mr Hall with assistance from Mr Martin. The claimant made recommendations and considered that it would take months to turn things around. From the outset (and well before he was disabled) the claimant knew that the second respondent's position was that they did not have months to make improvements. The second respondent told the claimant to get on with the job.

298. By 22 July 2019 the performance at the Bishop Auckland depot had not significantly improved. The situation was exacerbated by a health and safety investigation resulting in a prohibition notice being served on the use of a machine. Another machine was reported as needing repairs. Steps had been taken to train the workforce and improve staff retention. The claimant felt unsupported. The second respondent agreed there were challenging factors. He was pushing the claimant to deliver the result he wanted.

299. The Tribunal considered that the findings of the staff meeting on 23 July 2019 while in response to the claimant's thumbs down gesture, reflected the second respondent's general frustration about his perception of the negativity at the Bishop Auckland depot. The Tribunal did not consider that the frustration at that meeting was directed only to the claimant.

300. The second respondent was telling the claimant that he needed improved tonnage and to keep on top of the workforce and focussed. The claimant said that he was very stressed. He could not take the constant criticism from the

second respondent. He had not become incompetent overnight. Everyone was anxious when the second respondent was around. The claimant reiterated the mitigating factors preventing progress but the second respondent was not listening. The second respondent pointed out that he too was under stress. This was followed by telephone conversations on 25 July 2019 regarding the performance of the Bishop Auckland depot and the need for the claimant to focus on the job. There was further discussion on 29 July 2019 about the need for the claimant and Mr Donkin to control the management of scrap. The claimant was relaying information to the second respondent that he had given in May 2019 and repeatedly afterwards. The second respondent was seeking solutions not excuses regardless of how justified and reasonable they might be. He acknowledged the challenges but considered that the claimant was not dealing with some basics and wanted to know why.

301. The Tribunal considered that following the health and safety incident the week of 22 July 2019 was extremely stressful for everyone at the Bishop Auckland depot, including the second respondent. His frustration was not restricted to the claimant. The claimant acknowledged this in the 5 August Email when he referred to the second respondent may even being unaware of how he impacted on the claimant and others. While the second respondent was very critical of the claimant not achieving what he had been seconded to do the Tribunal did not consider that this criticism was because of the claimant disability.

302. The Tribunal then turned to the claimant's dismissal and the events leading up to it. The claimant relied on Mr Hall as a comparator.

303. Mr Hall had been struggling with his role in 2019. Following discussion with the second respondent in April 2019 Mr Hall's responsibilities were restricted to sales and his salary was reduced by £10,000. The claimant was seconded for around six months to deal with the responsibilities relinquished by Mr Hall at the Bishop Auckland depot. Mr Hall was not dismissed. The Tribunal did not find that the second respondent was contemplating dismissing Mr Hall in April 2019 or later.

304. The Tribunal again felt it was appropriate to consider the reasons why the claimant was dismissed.

305. The claimant was diagnosed with COPD on 17 June 2019. By the end of June 2019 there was further discussions about cost savings. Mr Martin with assistance from Mr Tonner had assumed responsibility for the Operations Manager role in the claimant's absence. The role of Operations Manager was put at risk of redundancy and the claimant was advised of this on 3 July 2019.

306. At the 10 July Meeting, the Operations Manager role being at risk of redundancy, the second respondent agreed to look at an alternative role for the claimant at the Bishop Auckland depot. A further meeting to discuss matters was scheduled for 17 July 2019. That did not take place due to a funeral.

307. The second respondent's email sent on 1 August 2019 referred to him having been "exploring every possible avenue to find or create an alternative role" for the claimant. The email also stated that Ms Taylor would write to confirm a rescheduled date for the delayed meeting. The 2 August Letter stated that it had been decided that the role Operations (Production) Manager at the Motherwell depot was redundant. A meeting to discuss "potential other opportunities within the company" was scheduled for 19 August 2019. The claimant was advised that the second respondent and Mr Martin would be present and he was entitled to be accompanied by a work colleague.

308. The claimant was absent from 5 August 2019 initially for 28 days with work related stress. He sent the second respondent the 5 August Email. The claimant's access to his work email account was disconnected on 6 August 2019. On 16 August 2019 the claimant requested that the meeting rescheduled for 19 August 2019 be rescheduled once he was deemed fit to return to work. The meeting did not take place.

309. On 2 September 2019 the claimant remained absent for work for a further 28 days due to "stress at work". While acknowledging that the claimant was unfit to work the second respondent asked to meet with him on 6 September 2019. The claimant said that his GP advised that he was not fit to attend the meeting.

310. On 9 September 2019 the second respondent offered to meet in person or remotely on 12 September 2019. In a separate letter the claimant was advised that the temporary secondment to Bishop Auckland was finished. The second respondent did not anticipate that the claimant would return to work before the end of September 2019. The claimant's work continued to be covered by other colleagues.

311. The claimant remained unfit to attend any meeting that was stressful. He was invited to make written representations. The claimant was willing to engage in email correspondence but needed time. The claimant did not know what to say about alternative employment as the onus was on the respondents. He asked for a list of all vacancies including a short description of the roles and the salary package.

312. The 25 September Letter referred to the market conditions which the second respondent could not foresee any material improvement. The Operations Manager role had been made redundant. The second respondent said that there were no current vacancies of any type and in the current financial position it was not possible to create or fund an alternative position for the claimant. There was not suitable alternative employment. The claimant position was redundant and his employment was terminated with effect from 25 October 2019.

313. The claimant appealed but was unsuccessful. He remained absent from work due to stress. The Operations Manager role at the Motherwell depot was not backfilled. The claimant's duties at the Bishop Auckland depot were redistributed to others while he was absent on sick leave. Mr Hall did not received a salary increase. The role to which the claimant was seconded at the Bishop Auckland depot and the substantive role as Operations Manager at the Motherwell depot have not been backfilled.

314. The Tribunal's impression was that throughout 2019 the respondents were reacting to the situation and making short term decisions in the hope that there would be an improvement. The Tribunal considered that the second respondent knew that personnel changes had to be made; he did not want to

make anyone redundant but he had limited financial resources and had to play to people's strengths. The Tribunal had no doubt that had Mr Hall not been agreeable to the changes in May 2019 or had criticised the second respondent, Mr Hall would not have remained in the position that he held at that time because he was not delivering what was required. Mr Hall acknowledged that he was struggling and was willing to do what the second respondent considered was necessary.

315. The claimant was seconded to the Bishop Auckland depot. The Tribunal considered that the claimant was aware of the urgency in the performance improving. He was seconded before taking annual leave rather than waiting until later in the month which was what he had preferred. On arrival it was apparent to the claimant that the task was significant and worse than he expected. The second respondent told him they were where they were, the claimant knew what had to be done and to get on with the job. The priority was to reduce costs and get the tonnes out of the door.

316. The Tribunal considered that before June 2019 the claimant knew that he had been handed a poison chalice. While in the past he had improved productivity at the Bishop Auckland depot this time it was more challenging and the financial resources were tighter and the timeframe shorter.

317. In the Tribunal's view the decision to place the Operations Manager role at risk of redundancy was not because of the claimant's disability. By July 2019 the Motherwell depot was managing without a dedicated Operations Manager. That continued to be so at 2 August 2019 as the position was not and had not been backfilled.

318. Unlike the claimant, Mr Hall had a face to face meeting with the second respondent to discuss alternative roles which resulted in removing some of his responsibilities and agreeing a reduction in salary.

319. The second respondent offered on several occasions to meet with the claimant in person or remotely. The claimant declined as he said his GP advised that he should not do so because of his work related stress. This absence was not related to the claimant's disability. The second respondent

invited the claimant to make written representation but he said that he need more time and that it was for the second respondent to provided relevant information about what roles were available, the job description and salary.

320. The Tribunal's impression was that throughout the claimant's secondment he sought to hold others responsible for the failure in the performance at the Bishop Auckland depot. The Tribunal felt that the criticism may well have been justified. The second respondent knew that Mr Hall and Mr Martin had not succeeded in turning around the Bishop Auckland depot. However the claimant had been sent to "get the job done" and unlike the other managers who had had other responsibilities, that was the claimant's focus during the secondment.

321. The Tribunal considered that this was a temporary solution as the secondment was only for six months. However as part of the discussion at the 10 July Meeting the second respondent acknowledged that going forward the Bishop Auckland depot was likely to needed ongoing support.

322. The Tribunal felt that was what would have been discussed at the proposed meeting on 19 August 2019 which did not happen nor did any subsequent meeting. The reason for this was in the Tribunal's view the deterioration in the relationship between the claimant and the second respondent and the claimant's inability to attend any meeting because of stress that was related to work not his disability.

323. The Tribunal did not consider that the deteriorating relationship was because of the claimant's disability but rather the tone of the 5 August Email and the second respondent having to manage the ongoing situation in the claimant's absence. During this time the remaining managers dealt with the claimant's work and were able to do so making further cost savings for the business.

324. The Tribunal therefore concluded that the claimant's dismissal was not because of his disability.

325. Having reached the conclusions that it did the Tribunal dismissed the discrimination claims.

Unfair dismissal

326. The Tribunal then turned to the unfair dismissal claim. The first respondent accepted that the claimant was dismissed.

327. The Tribunal therefore asked what was the reason or principal reason for the dismissal.

328. The first respondent asserted that the reason was redundancy. The claimant said that it was related to or because of his disability.

329. For the reasons set out above the Tribunal did not consider that the reason or the principal reason for dismissal was related to or because of the claimant's disability.

330. As the first respondent asserted that the dismissal was for redundancy it must show what is being asserted is true: the claimant was redundant as defined by statute.

331. The Tribunal referred to section 139(1)(b) of the ERA. The Tribunal found that in April 2019 there was a reorganisation of the management team. The claimant was seconded to the Bishop Auckland depot from 2 May 2019. The Operations Manager role at Motherwell was redistributed to Mr Martin with assistance from Mr Tonner. By 20 June 2019 the financial position was becoming unsustainable. The business could not continue without making some changes. There were discussions about ways of making the business more profitable: reducing the finance function and making the role of Operations Manager at the Motherwell depot redundant. Mr Woods and Mr Farrell visited both depots around 26 June 2019. The Operations Manager role was already being covered by Mr Martin with assistance from Mr Tonner and would continue to be so until at least November 2019.

332. The Tribunal considered that by early July 2019 the first respondent needed fewer management level employees to carry out work at the Motherwell depot. The Tribunal was satisfied that a redundancy situated existed. The Tribunal then considered if that is what caused the claimant's dismissal.

333. In the Tribunal's view there were several changes in the business in 2019, the reconfiguration of the sales team at the Bishop Auckland depot and the reorganisation of the management team. The Tribunal had no doubt that against this background the second respondent as an shareholder in the business and the management team were under considerable pressure and relationships would be strained.

334. The Tribunal also considered that the relationship between the claimant and the second respondent was strained from May 2019 onwards. The claimant was initially reluctant to be seconded to Bishop Auckland depot. He has agreed to do so after being given an increase in salary. The Tribunal felt that the claimant was confident that he would be able to succeed where others had failed. On arrival at the Bishop Auckland depot the claimant appreciated the significance of the challenges he faced. The Tribunal felt that the second respondent accepted that the claimant had inherited a herculean task but that was why he was seconded to the Bishop Auckland depot and he was expected to get on with it.

335. The situation had not improved by late June 2019. The Tribunal did not consider that this was a criticism of the claimant but that time was tight and cost savings had to be made and tonnage increased.

336. The Operations Manager role was being undertaken by Mr Martin with assistance from Mr Tonner. This was anticipated for at least six months. Given the ongoing pressures at the Bishop Auckland depot the Tribunal felt that it was understandable that resources were being focused there but consideration was being given to where other savings could be made. In the Tribunal's view it was understandable that the Operations Manager's role would be at risk of redundancy given that was a role that had only been introduced in 2016, it attracted a significant salary and the work had been redistributed to other managers at no extra cost.

337. The Tribunal concluded that the reason for the claimant's dismissal was redundancy and that it was a potentially fair reason under section 98(2)(c) of the ERA.

338. The Tribunal then asked whether in all the circumstances did the first respondent acted reasonably in treating redundancy as a sufficient reason for dismissal under section 98(4) of the ERA. The determination of that question depends on the whether in the circumstances, including the size and administrative resources of the first respondent's undertaking, the first respondent acted reasonably in treating it as a sufficient reason for dismissing the claimant and shall be determined in accordance with equity and the substantial merits of the case.

339. The Tribunal was mindful that it had to ask if the dismissal lay within the range of conduct which a reasonable employer could have adopted.

340. The claimant's position, if the Tribunal decided that the reason or principal for his dismissal was redundancy was that the first respondent did not act reasonably in treating that reason as a sufficient reason for dismissal. In particular there was no meaningful consultation with a view to avoiding the need for redundancies.

341. The question of what constitutes a fair and proper consultation in each individual case is a question of fact for the Tribunal. The Tribunal considered that this would normally involve warning and consulting the employee affected, adopting a fair basis on which to select for redundancy and taking steps to avoid or minimise redundancy by redeployment within the organisation.

342. The Tribunal considered that the letter dated 2 July 2019 and the 3 July Meeting were no more than making the claimant aware that the role of Operations Manager was at risk of redundancy. The Tribunal felt that the claimant had a warning about redundancy.

343. The letter dated 3 July 2019 informed the claimant that the reason was cost pressures and invited him to the 10 July Meeting where there would consultation to avoid the need for redundancy and discussion about suitable alternative roles.

344. At the 10 July Meeting the Tribunal considered that the claimant had an opportunity to comment on the basis of selection. He considered that the Motherwell depot was doing well because of his previous actions. He also said that while his role was being covered by Mr Martin and Mr Tonner they would burn out. It was agreed that alternative roles for the claimant would be explored at the Bishop Auckland depot. The claimant also had an opportunity to raised issues about the challenges faced at the Bishop Auckland depot.

345. The Tribunal appreciated that it was intended to have a further meeting on 17 July 2019. That did not take place for understandable reasons. From the 1 August Email Exchange the Tribunal considered that the second respondent was considering alternative roles. The Tribunal felt that this was plausible because the secondment was scheduled to continue until November 2019 and the second respondent acknowledged at the 10 July Meeting that there were ongoing problems at the Bishop Auckland depot. Then there was the unexpected health and safety investigation.

346. Given that it was intended that there should be another meeting the Tribunal felt it was significant that the second respondent did not do so before making the Operational Manager's role redundant. The Tribunal considered that was a reaction to what was said in the claimant's email sent on 1 August 2019. The second respondent did offer to meet with the claimant on 19 August 2019 to discuss alternative employment.

347. The claimant was by then on long term sick absence. While there were attempts to reschedule meetings the Tribunal's impression was that that the second respondent had disengaged from the redundancy process. The Operations Manager role was redundant. While alternative roles may have been available at the Bishop Auckland depot the second respondent did not seem inclined to explore these with the claimant despite being willing to do so in July 2019.

348. The Tribunal appreciated the challenges in trying to engage with the claimant while he was sick absent and not able to attend meetings even remotely. Given that this was a redundancy process rather than a disciplinary hearing

the Tribunal felt that it might have been helpful to provide information about the options that might be available and include Mr Ferrie in that discussion. The Tribunal felt that the second respondent's approach reinforced the Tribunal's view that he was not meaningfully engaged in the process from early September 2019 but going through the motions.

349. The Tribunal noted that the claimant exercised his right of appeal which the Tribunal felt was an indication that notwithstanding his comments and feelings towards the second respondent the claimant was still willing to engage with his employment.

350. While the claimant was offered a right of appeal at which there could have been discussion about the need for redundancy the Tribunal did not consider that the appeal process undertaken by Mr Watson was thorough enough to cure this defect.

351. The Tribunal considered that in relation to alternative employment the first respondent required to do what it could so far as reasonable to seek alternative work. There was in the Tribunal's view a possibility of a role for the claimant at the Bishop Auckland depot. The Tribunal considered that the first respondent failed to give this reasonable consideration to this from early September 2019. The Tribunal felt it was likely that any alternative post would be at the Bishop Auckland depot and be an inferior position to that of Operations Manager. However in the Tribunal's view there was no reason for the first respondent to assume that the claimant would not accept it. The claimant had already indicated at the 10 July Meeting that he anticipate that he would be offered a role at the Bishop Auckland depot and was interested. The claimant had also in the past accepted employment at a different depot on lower salary. The Tribunal felt that when faced with the option of dismissal the claimant would likely reluctantly accepted it.

352. The Tribunal therefore concluded that the decision on 25 September 2019 to dismiss the claimant was not within the reasonable range of responses.

353. The Tribunal then turned to remedy. The claimant sought compensation.

354. The claimant was entitled to a basic award. At the date of termination the claimant was 59 years old. He had four years of continuous service. His gross weekly salary was £769.23 which is subject to the statutory cap of £525. The claimant's basic award is 6 weeks' pay at £525 per week, that of £3,150 from which should be deducted the redundancy payment of £2,362.50 leaving a balance of £787.50.

355. The Tribunal then turned to the compensatory award. The claimant sought past loss from the date of dismissal until the final hearing and three years' future loss and pension contributions of £55.71 per week along with loss of statutory rights of £300.

356. In relation to the past loss the claimant's schedule of loss set out: 25 October 2019 to 1 July 2022 (140 weeks) at £551.18 per week, that is £77,165.20 and pension loss of £7,799.40 (140 weeks at £55.71). The Tribunal noted that no issue had been taken in mitigation.

357. As indicated above the Tribunal considered that had a proper redundancy procedure been followed there was likely to have been an offer of alternative employment at the Bishop Auckland depot with responsibility for production and/or health and safety.

358. The Tribunal also considered it was likely that the even if there had been consultation about alternative employment at the Bishop Auckland depot it was likely that the claimant's employment would have ended by the end of the March 2020. In the Tribunal's view the first respondent would have continued to look at cost savings. The Motherwell depot managed without a dedicated Operations Manager as he claimant was not and had not been replaced. It was likely that during Quarter 1 in 2020 consideration would be given to whether the Bishop Auckland depot could continue to support the level of management that it had been allocated. When the claimant's employment was terminated on 25 October 2019, notwithstanding the ongoing issues Mr Hall assumed responsibility for the work being undertaken by the claimant. He was able to so do as he had previously had this responsibility. Unlike the claimant Mr Hall also had expertise in sales. The Tribunal therefore

considered that had the claimant not been dismissed by reason of redundancy in October 2019 it is likely that this would have been revisited in early January 2020 and a consultation process would have been followed and the claimant would have been fairly dismissed.

359. In the circumstances the Tribunal therefore limited the claimant's losses to 31 March 2020 being the end of the Quarter 1.

360. The Tribunal calculated the claimant's loss from 25 October 2019 to 31 March 2020 (23 weeks) at £551.18 per week, that is £12,677.14. The claimant is also entitled to pension loss of 23 weeks at £55.71 per week, that is £1,281.33. The claimant was awarded £300 for loss of statutory rights. The total compensatory award is £14,258.47.

361. The ACAS code of practice on disciplinary and grievance procedures do not apply to redundancy. The Tribunal did not need to consider whether to make any uplift to the compensatory ward under section 270A of the Trade Union and Labour Relations Act 1992.

362. The claimant did not in the Tribunal's view contribute to his dismissal. Accordingly there was no reduction in respond of contributory conduct.

363. The total monetary award is £15,045.97 (£787.50 +£14,258.47). The claimant did not receive any benefits. Accordingly the Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply.

Employment Judge: **S MacLean**
Date of Judgment: **18 August 2022**
Entered in register: **23 August 2022**
and copied to parties