



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4103045/2020

Hearing on the Merits on the 20, 21 and 22 September 2022

10

Employment Judge Porter

15 **M Hewitt**

**Claimant
In Person**

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Lothian Health Board

**Respondent
Represented by:
Mr James, Advocate**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

It is the judgment of the Employment Tribunal that the claimant was unfairly dismissed. No basic or compensatory award is made to the claimant.

30 **Introduction**

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1. The claimant was employed by the respondents as a call handler on their e-health service desk between the 1 January 2007 and the 19 April 2020. In terms of an ET1 received on the 4 June 2020 the claimant brought multiple claims against the respondents arising from his period of employment with them.

2. The claimant's claims were resisted by ET3 received on the 3 July 2020. Thereafter there were a number of Preliminary Hearings ("PHs") in the case.

ETZ4(WR)

On the 23 February 2022 there was a PH on Case Management before EJ d’Inverno. At that PH EJ d’Inverno defined the remaining issues in this case as being issues of unfair dismissal only in terms of s95 and s98 of the Employment Rights Act 1996. Following that PH the case was listed for a
5 Hearing on the Merits on the issues between the 20 and 27 September 2022.

3. At the Hearing on the Merits the claimant represented himself and the respondents were represented by Mr James, advocate. The parties produced a Joint Bundle of Documentation numbered **1-487**. The Tribunal noted that
10 this Bundle contained several notable omissions such as the PH Note prepared by EJ d’Inverno following the PH on the 23 February 2022. The Tribunal also noted that the Bundle contained duplicates of several documents. In any event, most of this documentation in the Bundle was not referred to in the course of the Hearing on the Merits.

15 4. The Hearing on the Merits could not commence on the 20 September 2022 due to the fact that the claimant did not have a copy of the Joint Bundle of Documentation. To this end the Tribunal noted that there was a dispute on the facts as to whether the Bundle had been delivered to the claimant. The
20 parties made use of the additional time to agree a Joint Statement of Facts, which is to be found in the Annex to this judgment.

5. On the morning of the 21 July 2022 Mr James intimated several Minutes of Amendment to the Tribunal. The purpose of the Minutes of Amendment was
25 to update the ET3 to reflect the claimant’s Appeal against dismissal and its outcome. The Appeal had taken place in August 2020 after submission of the ET3, and in terms of the Appeal Outcome letter of the 8 October 2020 the Appeals Officer appeared to substitute different reasons for the claimant’s dismissal than those given by the Dismissing Officer.

30 6. Notwithstanding this, the ET3 as pled only identified the Dismissing Officer’s reasons for the dismissal of the claimant. There were 3 versions of the Minute of Amendment intimated by Mr James; however the first 2 versions contained factual inaccuracies in that they did not correctly reflect the wording of the
35 Appeal Outcome letter (**279**).

7. The Tribunal considered the 3rd version of the Minute of Amendment in the morning of the 21 September 2022. Both parties made submissions, and the Tribunal adjourned. After deliberating on the parties' submissions and on the well-known principles to be found in the case of **Selkent Bus Co v Moore (1996) ICR 836** the Tribunal refused the Minute of Amendment.
8. On the afternoon of the 21 September 2022 the Tribunal heard the evidence of Mr Iain Robertson, Head of Digital Operations and Infrastructure and the Dismissing Officer. On the 22 September 2022 the Tribunal heard evidence from Mrs Jackie Houston, Head of Human Resources who was present at the Appeal Hearing. The claimant himself gave evidence on the 22 September 2022. The respondents made submissions in the afternoon of the 22 September 2022 . The claimant chose not to make submissions.
9. Against this background and bearing in mind the facts agreed in the Joint Statement of Facts, the Tribunal makes the undernoted Findings in Fact.

Findings in Fact

10. The claimant was absent from his employment from the 2nd October 2018 to his dismissal on the 19 April 2020 with stress at work. In this period the claimant raised a grievance about the causes of his stress at work. In evidence the claimant accepted that his grievance was fully investigated. The outcome of the claimants' grievance was intimated by letter dated the 18 September 2018 and is to be found at **110-113**.
11. On the 21 January 2019 there was an Occupational Health Case Conference at which the claimant attended. Notes of this Conference are to be found at **135**. The Notes record that one of the outcomes of the claimant's grievance was that he should be supported to return to his substantive role. In response, the claimant said that he was not returning to his role until the situation was 'safe' and, further, said that the grievance investigation was corrupt. It was noted that the claimant did not appeal the outcome of the grievance. It was further noted that attempts to redeploy the claimant had failed.

12. On the 7 July 2019 the claimant was invited by Mr Robertson to attend an Incapacity Dismissal Hearing on the 5 August 2019 **(117-118)**. The Hearing did not go ahead as the claimant was unfit to attend **(122)**.
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13. An Incapacity Dismissal Hearing in respect of the claimant took place on the 12 November 2019. Mr Robertson chaired the hearing and was supported by Elaine Hickey, ER Manager. The claimant was unrepresented. The hearing was adjourned as it was agreed that Mr Robertson would contact Unison with
10 a view to securing representation for the claimant. The Tribunal accepted that attempts were made to secure representation for the claimant following that hearing.
14. The Incapacity Dismissal Hearing was reconvened on Monday 27 January
15 2020. It was then noted that panel (being Mr Robertson, supported by Elaine Hickey) had been advised that Unison had withdrawn their representation from the claimant.
15. At the Hearing on the 27 January 2020 the claimant was dismissed by the
20 respondents. The letter of dismissal is dated the 30 January 2020 **(222-224)**. The reasons for dismissal are summarised at page **223**: *"I noted that you had been absent from work since 2 October 2018 and that you had not been in your substantive post since 11 August 2016. Based on the information from Occupational Health and your own declaration at the hearing the panel's
25 decision was to dismiss you on grounds of capacity, ie your inability to perform the duties of the post due to ill health. The panel listened carefully to the information presented at the hearing and based our decision solely on the health circumstances. We noted that despite support from Occupational Health Services, Staff Counselling, temporary work placements and
30 management support you remain unfit to work."* The claimant's last date of service, taking into account the notice period, was the 19 April 2020.
16. Mr Robertson gave evidence that he dismissed the claimant on the grounds
35 of his absence. In these circumstances the Tribunal concluded that the claimant was dismissed on the 27 January 2022 on the grounds of capability.

17. The claimant appealed the decision to dismiss him. The Appeal Hearing took place virtually on the 10 August 2020. The Appeal Hearing was chaired by Allister Short, Director with Jackie Houston, Head of Human Resources present. The decision to dismiss the appeal was taken by Mr Short alone. Mrs Houston drafted the Appeal Hearing Outcome letter which was dated the 8 October 2020 and is to be found at **276**. At **275** it was noted: *“On considering the written and verbal information provided, it is our belief that the reason behind your absences from the workplace is directly related to the unresolved difficulties you have had with our colleagues. This was an issue we discussed at the Hearing and it was for this reason that we explored what reasonable steps could be taken to allow these issues to be resolved, and by doing this facilitate a return to the workplace for you. At the Hearing you stated that you did not wish to be redeployed into another post and, when asked what you wanted from the appeal process, you advised that you wanted to do your substantive role and to do that from home.”*
18. The letter went on to state **(277)**: *“As noted above, my assessment of the reason behind your absence from work is that it is due to relationship issues with colleagues including your manager. These issues date back many years....Against this background, I have concluded that if you are to return to work in your role (redeployment having been rejected by you) then an essential part of your return is a process for rebuilding working relations.”*
19. The Appeal Hearing Outcome letter went on to analyse correspondence with the claimant and concluded that the claimant was not open to mediating with his former team members to rebuild working relationships with them.
20. In conclusion the Appeal Hearing Outcome letter stated: *“As outlined above, taking account of the circumstances which led up to your dismissal, I was willing to reinstate you into your role (modified to be working from home), provided that you agreed to participate in working to rebuild working relationships with your colleagues and manager. As you are not willing to do this, and have also advised that you do not wish to consider redeployment to another role within NHS Lothian, I must advise that I am unable to uphold*

your appeal and you will remain dismissed from your employment with NHS Lothian.”

- 5 21. On the basis of the Appeal Hearing Outcome letter, it appeared that Mr Short dismissed the claimant’s appeal and substituted “Some Other Substantial Reason” for the reason for dismissal, being both the claimant’s refusal to participate in rebuilding working relationships with his former colleagues and his refusal to consider redeployment to another role within NHS Lothian. In the absence of evidence from Mr Short the Tribunal was unable to make any
10 findings as to his decision-making process and whether he intended to substitute alternative reasons for the claimant’s dismissal.
- 15 22. In evidence the claimant admitted that he had refused to mediate with former colleagues and, further, that he had not been open to being redeployed into the roles suggested by the respondents to him.
- 20 23. The claimant has applied for no other employment since his dismissal. His explanation was that he needed to concentrate on these proceedings. The claimant has communications experience and has completed further education in communications at Leith Nautical College. The claimant also has administrative experience.
- 25 24. At the time of his dismissal the claimant earned £1,667.92 gross per month. The claimant has been in receipt of universal credit since the date of his dismissal.

Observations on the Evidence

- 30 25. The Tribunal noted that Mr Robertson was clear in his evidence to the Tribunal that the reasons given by the Appeals Officer Mr Short in refusing the claimant’s appeal were the reasons for the claimant’s dismissal. In other words, his evidence was that the reasons given by him to the claimant for the claimant’s dismissal (to be found in the letter of dismissal **222-224** at **223**)

had been superceded for the reasons for dismissal given in the letter of the outcome of the Appeal **(276-279 at 279)**.

- 5 26. The Appeals Officer Mr Short did not attend the Tribunal to give evidence and explain the decision-making process in the Appeal. It was submitted that he was in France on holiday. The Tribunal observed that Mr Short remains an employee of the respondents and the fact that he was away at the material time must have been overlooked by the respondents when this case was listed. Further, it transpired that the necessary consents had not been
10 requested by the respondents in sufficient time for his evidence to be given remotely.
- 15 27. In his place Mrs Jackie Houston gave evidence. It was accepted that whilst she was present during the Appeal and drafted the letter giving the outcome of the Appeal, she did not take part in the decision- making process. In any event, even had Mr Short been present, the respondents faced the difficulty that, given the refusal of the Amendment, the reasons in the ET3 for the claimant's dismissal remained the reasons given by the dismissing officer Mr Robertson.
- 20 28. At the outset of Mrs Houston's evidence on 22 September 2022 she was questioned by the Employment Judge about an incident that had taken place on the 21 September 2022. To this end, the claimant had reported to the clerk that he had overheard a conversation with Mr Robertson and
25 Mrs Houston which took place at Platform 4 of Haymarket Railway Station after close of business on the 21 September 2022. The claimant reported that Mr Robertson had expressed to Mrs Houston that giving evidence at the Tribunal had been 'tough' and that the Employment Judge was 'really pedantic'. According to the claimant, the conversation had concluded with Mr
30 Robertson saying that he would call Mrs Houston.
- 35 29. Mrs Houston admitted that a conversation had taken place at Haymarket Railway Station at which Mr Robertson had expressed that giving evidence had been 'tough'. She said that Mr Robertson had said that the Employment Judge was 'really pedantic'. She denied, however, that there had been any

other communications between Mr Robertson and herself and submitted that as an HR professional she was aware that such communications could not take place. The Tribunal found the evidence of Mrs Houston on this point and indeed as a whole to be entirely credible.

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30. The Tribunal found the evidence of the claimant to have been given honestly. The claimant however found it difficult to keep to the issues as defined, despite being reminded of the same in the course of his evidence. The claimant mounted little by way of challenge to the reasons put forward for his dismissal and instead focused on historic issues.

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Submissions

The respondents provided a summary of their submissions which are replicated below.

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The burden of establishing the reason for dismissal lay with the employer. However, what the employer had to establish was the set of facts known to or beliefs held by the employer which cause him to dismiss the employee (*Abernethy v Mott Hay and Anderson* 1974 ICR 323, at 330C). The task of the Tribunal is to make findings as to the employer's reasons then seek to characterise them in terms of s98(1) (*UPS Ltd v Harrison* UKEAT/0038/11, at [25]). The label is a matter for the Tribunal. It is accordingly possible for the Tribunal to find that the employer's reason for dismissal in terms of s98(1) was not one that was pled, provided that certain requirements are met (*Hannan v TNT-IPEC (UK) Ltd* [1986] IRLR 165, at [22]). Given that the Tribunal makes findings in fact about the employer's reasons for dismissal, it is not fatal to a Respondent if a decision maker does not give evidence (*Elmore v Governors of Darland High School* UKEAT/0209/16, at [22]). The question of reasons is one of fact, to be ascertained in the usual way, by assessing the evidence adduced and determining whether the relevant fact is proved using that evidence on the balance of probabilities.

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The reason for dismissal was that given by the dismissing manager. He was the one who dismissed the Claimant. He gave evidence. His reasons were the pled reasons. If the Tribunal was not with the Respondent on that, the reason for dismissal was sickness absence, albeit given by the appeal manager. If the

Tribunal considered that the reason for dismissal was that given by the appeal manager in the conclusion of the appeal letter, then the Respondent had established that as a matter of fact. All of the adminicles of evidence that had been adduced supported the position that the reasons set out in the appeal outcome letter were the appeal manager's reasons. There was no evidence to the contrary. Notwithstanding that it was not the Respondent's pled case, the Respondent had established on the balance of probabilities that the reason for dismissal was that given by the appeal manager in the appeal outcome. That was a substantial reason justifying dismissal.

The dismissal was fair in all the circumstances. The Respondent was entitled to into account the Claimant's own views on his fitness to work (*BS v Dundee City Council* 2014 S.C. 254, at 269). Even if any ill health was caused by the Respondent, that did not of itself render any dismissal unfair (*McAdie v Royal Bank of Scotland* [2007] IRLR 895). The Claimant was seen by the Respondent's Occupational Health department on a number of occasions. Following the appeal hearing, he refused to be seen by Occupational Health. He told the dismissal hearing he was unfit. Various alternative roles were explored, within the confines of what the Claimant could or was willing to do. None of those were successful. The Claimant's case was, at its highest, a disagreement with the grievance outcome. He refused to come back to work until the issues he raised in the grievance were addressed and he felt safe. He also refused redeployment. The Respondent was put in an impossible position. Any reasonable employer would have dismissed. Dismissal fell within the range of reasonable responses.

If the dismissal was found to be unfair, a range of reductions fell to be made to any award. A reduction ought to be made to the basic award in terms of s122(2). The Claimant's consistent refusal to attend work rendered a reduction just and equitable. The Claimant ought to have mitigated his loss. He had not applied for any jobs. He would have been able to find an administrative role at a salary broadly equivalent to his role with the Respondent within 6 months. A 100% *Polkey* reduction ought to be made to the compensatory award. The Respondent was faced with the impossible combination of the Claimant refusing to attend work while simultaneously refusing redeployment. Dismissal was inevitable. No uplift ought to be made for any failure to comply with the ACAS code. The claim did not

relate to grievance proceedings. No evidence had been shown of any failure, or that any failure was unreasonable. The figure for a week's pay the Claimant had given in his Schedule of Loss was slightly too high. The compensatory award was in any event subject to the statutory cap, as calculated in line with that revised figure for a week's pay.

The claimant chose not to provide submissions

The Law

31. Section 98 of the Employment Rights Act 1996 indicates how a tribunal should approach the question of whether a dismissal is fair. There are normally two stages. Firstly, the employer must show the reason for the dismissal and that it is one of the potentially fair reasons set out in s98(1) and (2). Secondly, if the Tribunal is successful at the first stage, the tribunal must then determine whether the dismissal was fair or unfair under s98(4), which requires the tribunal to consider whether the employer acted reasonably in dismissing the employee for the reasons given.

Discussion and Decision

The dismissal

32. S98(1) of the Employment Rights Act 1996 states that it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal. To this end, the respondents' ET3 reflects the reasons of the dismissing officer only. However, the dismissing officer, Mr Robertson, stated that the reasons given by the Appeals Officer Mr Short were the reasons for the claimant's dismissal. Those reasons were not foreshadowed in the ET3, and neither was evidence led from Mr Short. Against that background the Tribunal concluded that they were unable to make findings as to the respondents' real reasons for their dismissal of the claimant.

33. The respondents' position as set out in their submissions was that the reason for dismissal was that given by the dismissing officer Mr Robertson in

evidence and were foreshadowed in the ET3. The Tribunal considered this submission to be surprising in that it is contrary to the evidence led by them from Mr Robertson. Mr Robertson's evidence at the Hearing was that the reasons given by the Appeals Officer, Mr Short, were the reasons for the claimant's dismissal.

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34. Separately, the respondents submitted that it is possible for the Tribunal to find that the employer's reason for dismissal in terms of s98(1) was not one that was pled, and cited the case of **Hannan v TNT-IPEC (UK) Ltd (1986) IRLR 165** at **22** in support of this proposition. On consideration of this authority, the Tribunal observed that the case of **Hannan** involved the re-labelling of the same facts and could therefore be distinguished from the present circumstances where the reasons provided for dismissal by the Appeals Officer involved examination of entirely different facts. To this end, the Tribunal noted that the claimant at Tribunal was deprived of fair notice of the real reasons to be relied upon by the respondents in dismissing him in that the same were not foreshadowed in the ET3. Neither was he afforded the opportunity of cross examining Mr Short, who was effectively the sole decision-maker in this case.

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35. The respondents also cited the case of **Elmore v Governors of Darland High School UKEAT/0209/16** in support of the proposition that it is not fatal to the respondents if a decision maker does not give evidence. However, the Tribunal noted that the case of **Elmore** involved the failure to call an Appeals Officer in circumstances where the Appeal was dismissed for the same reasons given by the Dismissing Officer. In that respect, detailed findings in fact had been able to be made on the basis of the evidence of the Dismissing Officer. The Tribunal found the case of **Elmore** to be of no assistance in the present circumstances where the Appeals Officer had substituted entirely different reasons for dismissal but was not present to give evidence.

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36. The respondents also cited the case of **UPS v Harrison UKEAT/0038/11** at paragraph **25** as authority for the proposition that the task of the Tribunal is to make findings as to the employer's reasons then seek to characterize them in terms of s98 of the Employment Rights Act 1996, Paragraph **25** states: "25

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We have no doubt that the correct approach, when deciding whether an employer's reason for dismissal relates to conduct, or capability, or indeed is some other substantial reason justifying dismissal, is to make findings as to the employer's own reasons for dismissal. Once those findings have been made the Tribunal should then ask itself how the employer's reasons are best characterised in terms of section 98(1). It is not bound by the label the employer puts on its reasons; but is seeking to characterise the employer's reasons rather than to make findings of its own about the employee's conduct or capability."

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37. The Tribunal considered this authority and concluded that the dicta in para 25 was not in point in circumstances where the Tribunal is unable to make findings as to the employer's reasons for dismissal.

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38. In concluding that they were unable to make findings for the reasons for the claimant's dismissal, and that therefore the claimant's dismissal is unfair, the Tribunal had regard to the terms of the overriding objective and in particular the need to ensure that the parties are on an equal footing. To this end the Tribunal noted that the claimant remained unrepresented throughout these proceedings whilst the respondents had had the benefit of legal representation (and latterly counsel). Despite that representation, they failed to update their pleadings to reflect the real reason for the claimant's dismissal and, further, failed to call the individual who was the decision maker in this case notwithstanding the fact that he remained in their employment.

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Loss

39. In calculating loss, the Tribunal had regard to the claimant's up to date Schedule of Loss.

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40. On the basis of their Findings in Fact, the Tribunal concluded that the claimant had failed to mitigate his loss in that he had applied for no jobs since his dismissal. However, there was no evidence led as to how long it might have taken the claimant to obtain another administrative job with a similar

salary and to this end Mr James' submissions that it would have taken the claimant six months to find alternative employment were made in a vacuum.

- 5 41. The Tribunal then considered whether any 'just and equitable' reduction in terms of s123(1) of the Employment Rights Act 1996 was applicable in the circumstances of this case. In doing so, they considered the well known principles arising from the authority of the case of **Polkey v AE Dayton Services Ltd 1988 ICR 142, HL.**
- 10 42. The Tribunal observed that '**Polkey**' deductions are applicable where there is a proven procedural irregularity in an otherwise fair dismissal. In the circumstances of this case the dismissal has been found to be unfair as the real reason for the dismissal was not foreshadowed in the ET3 and, further, the decision maker was not called to give evidence.
- 15 43. Whether or not '**Polkey**' truly applies in the facts of this case, the Tribunal retains a wide discretion in terms of s123(1) of the Employment Rights Act 1996 to award compensation "*as the Tribunal considers just and equitable.*" In determining that a compensatory award should not be made in this case
20 the Tribunal had regard to the fact that at the time of his dismissal the claimant had been absent from his employment from 2 October 2018. Accordingly at the time of his dismissal the claimant had been absent for eighteen and a half months. The Tribunal also had regard to the fact that by
25 the time of the Appeal it was not in dispute that the claimant was not open to attempts to redeploy him leaving the only option to the respondents to be to return him to his former employment. However, the claimant was candid in his evidence that he was not prepared to mediate with his former colleagues to rebuild his working relationships with them.
- 30 44. The Tribunal considered that no breach of the ACAS Code of Practice had been established in this case.
- 35 45. The Tribunal then proceeded to consider the issue of contributory fault. As the respondents have not established the reason for dismissal, no deduction for contributory fault is made under s123(6) of the Employment Rights Act

1996 on the basis that without the reason for dismissal being established, it cannot be determined whether the claimant caused or contributed to that reason.

5 46. After considering the facts of this case, the Tribunal determined that the claimant's basic award should be reduced to nil under s122(2) of the Employment Rights Act 2022. To this end, the Tribunal concluded that the length of the claimant's absence, coupled with the fact he was not open to redeployment nor to rebuilding his working relationships with his former
10 colleagues renders it just and equitable to reduce his basic award to nil.

47. It is for these reasons that it is the decision of this Tribunal that the claimant was unfairly dismissed. In the circumstances of this case no basic or contributory award is made.

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Employment Judge: Jane Porter
Date of Judgment: 28 September 2022
20 Entered in register: 29 September 2022
and copied to parties

STATEMENT OF AGREED FACTS

- 5 1. The Claimant has supplied a ticket for a London 2012 Olympic event. That ticket is at p88 of the bundle. It bears the address “Michael Hewitt, c/o ehealth service desk, st johns hospital, howden, Livingston, eh54 6pp”.
- 10 2. The Claimant has supplied a letter from the Department for Work and Pensions. That letter is at p417 of the bundle. That letter gives various dates in relation to a claim of Employment Support Allowance.
- 15 3. The Claimant raised a grievance. The grievance outcome letter is at pp110 – 113 of the bundle. The outcome letter states that a meeting was arranged to provide the Claimant with feedback on the outcome on 18 September 2018. The outcome letter states that the Claimant was accompanied by his trade union representative at that meeting. The letter is dated 18 September 2018.
- 20 4. The Claimant became absent from work. The management case for dismissal states that this absence began on 2 October 2018 (at p131).
- 25 5. A promoting attendance at work meeting was held. The outcome letter from the meeting is at pp194 and 195 of the bundle. The outcome letter states that the meeting took place on 12 November 2018.
- 30 6. The Claimant attended an Occupational Health appointment. The report of this appointment is at pp190 – 192 of the bundle. The report states that the appointment took place on 28 November 2018. The report states that the Claimant was assessed as unfit for work. The report states that the expected timescale of his return to work was unknown.

7. A case conference was held with Occupational Health. A record of that meeting is at p135 of the bundle. That record states that the case conference took place on 21 January 2019.
- 5 8. A promoting attendance at work meeting was held. The outcome letter from that meeting is at pp197 and 198 of the bundle. The outcome letter states that the meeting took place on 27 March 2019.
- 10 9. A promoting attendance at work meeting was arranged. The outcome letter from that meeting is on pp200 and 201 of the bundle. The outcome letter states that a meeting took place on 7 May 2019.
- 15 10. A promoting attendance at work meeting was held. The outcome letter from that meeting is on pp203 and 204 of the bundle. The outcome letter states that the meeting took place on 6 June 2019.
11. An incapacity dismissal hearing was scheduled. The invitation letter to that hearing is at p117 of the bundle. The hearing was to be on 5 August 2019.
- 20 12. The management case for dismissal was produced. This is at pp127 – 204 of the bundle. A timeline is at pp130 and 131.
- 25 13. The incapacity dismissal hearing did not go ahead. The Claimant submitted a letter from his GP. That letter said that the Claimant stated he was unable to attend the hearing. That letter is at p121 of the bundle. A letter from the Respondent confirming that the hearing was postponed is at p122 of the bundle.
- 30 14. The Claimant attended an Occupational Health appointment. A letter written by the Occupational Health doctor following that meeting is at pp390 and 391 of the bundle. The letter states that the appointment took place on 2 September 2019.

15. The Claimant attended an Occupational Health appointment. The report of this appointment is at pp123 – 126 of the bundle. The report states that the appointment took place on 8 October 2019.
- 5 16. An incapacity dismissal hearing was convened. The outcome letter from that hearing is at pp205 and 206 of the bundle. The letter states that this hearing was held on 12 November 2019. The Claimant was unrepresented. The hearing did not proceed.
- 10 17. The Claimant's trade union withdrew representation from him. The trade union's email to the Claimant setting out reasons for this is at pp220 and 221 of the bundle. That email is dated 3 December 2019.
- 15 18. An incapacity dismissal hearing was convened. The outcome letter from that hearing is at pp209 – 211 of the bundle. The letter states that the hearing took place on 27 January 2020. The letter is dated 30 January 2020.
- 20 19. The Claimant was dismissed. His notice period ran from 27 January 2020 until 19 April 2020. The Claimant had outstanding annual leave. He was paid for this annual leave. The payslip for April 2020 is at p246 of the bundle.
- 25 20. The Claimant appealed against his dismissal. An appeal hearing was scheduled for 20 March 2020. This hearing was postponed at the Claimant's request due to the coronavirus pandemic. Emails relating to this are at pp225 – 228 of the bundle.
- 30 21. The Claimant's ET1 was received by the Tribunal on 4 June 2020 (p5).
22. The appeal hearing was rescheduled. An invitation letter is at p249 of the bundle.

23. The Claimant's trade union again withdrew their representation from him. An email confirming this is at p255 of the bundle. That email is dated 7 August 2020.
- 5 24. A hearing took place in relation to the Claimant's appeal. An outcome letter from the initial hearing is at pp261 and 262 of the bundle. The letter states the hearing took place on 10 August 2020. Following on from that meeting, various pieces of further information were sought.
- 10 25. The Claimant and the Respondent exchanged emails regarding that further information. The emails between the Claimant and the Respondent are at pp263 – 264, 270 – 275, and 341 of the bundle. The emails are dated between 24 August and 28 August 2020.
- 15 26. The Claimant's appeal against dismissal was not upheld. The outcome letter is at pp276 – 278 of the bundle. That letter is dated 8 October 2020.
- 20 27. The Claimant's gross monthly pay while in employment with the Respondent was £1,667.92. A payslip demonstrating this is at p245 of the bundle.