RM

EMPLOYMENT TRIBUNALS

Claimant: **Mr R Harper**

Respondent: **Ground Control Ltd**

Heard at: **East London Hearing Centre (by CVP)**

On: **23 March 2022**

Before: **Employment Judge Jones**

Representation
Claimant: Mr J Duffy (Counsel)
Respondent: Mr J Wynne (Counsel)

JUDGMENT having been sent to the parties on 30 March 2022 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

This judgment has been reconsidered under Rules 70 and 73 of the Employment Tribunals Rules 2013. A reconsidered judgment is attached.

REASONS

1. This was a remedy hearing following the Claimant's success in his complaints of unfair and wrongful dismissal.

Evidence

2. The Tribunal heard from the Claimant in support of his claim for a remedy award. The Tribunal also heard from Dr Watson on behalf of the Respondent. The Tribunal had a bundle of documents and witness statements from both witnesses.

3. From the evidence, the Tribunal made the following findings of fact.

Findings of Fact

4. The Claimant was born on 25 March 1965. He was 50 years old at the date of dismissal. The Claimant had been employed by the respondent between 9 September 2015

and 6 August 2019 and therefore completed three full years' service. The parties disagreed on the amount of the Claimant's weekly gross pay with the Respondent stating that it was £1,396.42 and the Claimant claiming the sum of £1,403.76. The net gross weekly pay the Claimant claimed was £978.41.

Mitigation

5. By the end of July 2019, when he received the letter inviting him to the disciplinary hearing, the claimant began to worry about his employment with the respondent. He began to feel that he needed to be prepared to move on. He did not apply for another job until 6 August. Around that time, he called a recruitment consultant to see what opportunities were available to him. Within 24 hours he had interview arranged with Allard. He met with them for an interview the following week and was offered employment. It all happened quite quickly and the claimant had not been prepared for that. He delayed for a period of four weeks before starting because of the way in which his dismissal affected him mentally. In the interim, he was able to do tasks around his home. His social life was affected as he found that he had difficulty socialising. He sought medical advice from his GP and was put on medication.

6. By a letter dated 13 August 2019, Allard Construction Limited offered the Claimant the position of business development manager. The Claimant was invited to indicate the date on which he wished to begin his employment. The remuneration was to be £72,000 per annum. In addition, the offer of employment included a bonus, which was to be paid annually. The bonus would be calculated on minimum sales of £2million and the Claimant had a minimum sales target of £2million, including achieving the agreed minimum profit margin. For example, if he delivered £3million gross sales then he would be entitled to £8,000 less deductions, assuming a minimum of 20 percent profit margin. If he achieved the target of £4million in sales, then he would get a second bonus of £20,000 less deductions. The offer letter stated that he would get a gross payment bonus of £20,000 for each additional million pounds of sales, assuming a minimum 20 percent profit margin. The targets were to run concurrently with Allard's financial year i.e. from 1 September to 31 August each year. The bonus would be calculated on income brought in by qualifying projects and the projects brought to the business by the Claimant's endeavours. Allard's offer of employment was on the basis of six months' probation, with the provision of a company car, fuel card, desktop computer or laptop and mobile phone. There was no pension provision.

7. Although he received the job offer on 13 August, the Claimant felt unable to start work with Allard until 30 September as he continued to suffer mentally because of the unfair dismissal. The liability judgment referred to the Claimant's shock and upset at being in this position. He confirmed in evidence, that if the appeal against dismissal had gone favourably, he would not have taken the job at Allard as he would have preferred to stay with the Respondent. He found the whole disciplinary process uncomfortable and wanted to continue with his employment. Starting with a new company was the least desirable option for him but as a person with financial responsibilities, including a family, he felt that he had to accept the job with Allard. The claimant began working for Allard on 30 September. Unfortunately, Allard Construction was a new company and it developed financial difficulties. On 17 January 2020 and the company confirmed its decision to cease trading and file for insolvency. The Claimant was paid wages up to 24 February 2020. I had no evidence that the Claimant received any bonuses during his employment at Allard

Construction.

8. The Claimant refused to provide the Respondent and the Tribunal with bank statements covering the period of time between his dismissal and his employment with Allard. The Claimant did not feel comfortable sharing such personal information and stated that he did not use online banking. He had only recently found out how to download copies of his bank statements online. The Tribunal had the Claimant's sworn evidence that he had no financial income from any other source during this period and that he had not been in a fit state to earn income elsewhere. He reassured the Tribunal that he had not received any bonuses from Allard as Allard went out of business before it could pay him and, in any event, he had not worked there for long enough to be eligible for a bonus

9. The Claimant started another job on 2 March 2020 with Blue Cube Contracting Ltd, earning approximately £947.86 per week. He was paid between April and July 2020 and those payslips were in the remedy bundle. The Claimant was furloughed from that job as his employment there coincided with the start of Covid-19 pandemic. He was furloughed until 25 May 2020 and returned to work until July. The Claimant was not paid any other benefits or a bonus at that job.

10. In autumn 2020, the Claimant was approached by Marcon Construction Limited and was offered a role as business development manager beginning on 9 November 2020. The claimant was still in that role at the date of the remedy hearing. In that role, the Claimant was paid £70,000 per annum with 10% commission on any contracts he secured, which met the minimum requirements. He was also entitled to a basic pension and company car. At the liability hearing the Claimant had not yet received any commission or bonus from Marcon.

The claimant's entitlement to a bonus

11. In 2015, according to Dr Watson, SRG was acquired by various buyers, including some of the respondent's shareholders. SRG was not a subsidiary of the respondent but there was an overlap of shareholders and the two companies worked well together. SRG had been profitable at the time of purchase of the shares, but by the end of 2017, it was apparent that the business was not doing as well.

12. By a letter dated 16 October, the respondent informed the Claimant that the business had faced a number of challenges in 2017, '*including the uncovering of previous financial irregularities which meant that our financial performance for the financial year ending 31 August 2017 was significantly less (than) desired*' (See liability judgment para 11). The Respondent decided to show its confidence in everyone's resilience and their faith that they would be able to turn the situation around, by awarding salary increases. From 1 September 2017, the Claimant's salary was increased to £71,190pa.

13. The respondent also created a Leadership Incentive Scheme (LIS) in October 2017. This was separate from any commission that was due. The claimant had to sign up and agree to the terms of the LIS, which were sent to the claimant on 16 October. The claimant accepted those terms. As Dr Watson confirmed in evidence, the claimant was *'enthusiastic, active and instrumental in convincing other SRG senior leaders to sign up to this scheme (phone calls, conversations with individuals)'.*

14. Under the LIS the claimant was to receive a percentage of all profits generated by the business between 1 September 2017 and 31 August 2018, uncapped. In order for this to be due, the business would have to achieve a minimum of £500,000 operating profit in that financial year and a satisfactory cash conversion with 75% of the operating profit traded, being converted into cash. The LIS was created to incentivise the claimant and other SRG staff who all could have a significant impact on the company's profitability. They wanted them to remain in employment through this difficult period.

15. For the financial year 2017/2018, the claimant's sales target was £4million which he exceeded as he achieved a turnover of approximately £6milion. However, although the claimant had personally done well, SRG had not achieved the level of profits required for the LIS to pay out. SRG did not perform well in the financial year 2017/2018. As a result, the Respondent did not pay anyone out of the LIS scheme. The claimant was paid his commission.

16. Discussions began in early 2018 about restructuring the business. The board discussed relocating the office and investing in new premises as ways of reducing costs. The board was also developing a different approach to the payment of bonuses. They no longer wanted to simply reward sales staff for winning work but to reward those who contributed to the business' return to profitability on a more sustainable basis. A revised LIS scheme offer was sent to the claimant by letter dated 4 December 2018.

17. The Claimant confirmed that by the time SRG was taken over by Ground Control on 1 April 2019, he was aware that the Respondent wanted to change the focus of its sales teams. The respondent wrote to the claimant on 26 April to inform him of the changes that were going to be made. In addition to selling roofing services, he would also be required to sell the full range of services at Ground Control. At the time, the claimant was not aware of the full range of services offered by the respondent. Nevertheless, he was extremely confident that had he remained in the respondent's employment, he and his team would have achieved their targets and he would have earned and been paid his bonus.

18. The Claimant felt that he had made a good start at the respondent and recalled that shortly after the transfer, Dr Watson gave him a bottle of champagne for settling in the team so well.

19. The Claimant was confident that he would have achieved a bonus if he had remained employed with the Respondent. He believed that within the first month of the financial year, he had reached his target for the whole year from selling roofing services. That was 1/3 of his total target. Roofing was the aspect of the respondent's business that the Claimant was most familiar with, which meant that he was able to meet that part of his target quickly. His total target also relied on the sales achieved by the other two individuals who were part of his team. They would also have to meet their individual targets. The Claimant believed that the individual salesman had also met their targets but he would not have been given that information before his dismissal.

20. The respondent and the Claimant did not agree on what work would be most useful in restoring the business to more sustainable profitability. The claimant believed that the *major* jobs that he secured were lucrative and should have been sufficient to turn the SRG business around. The respondent considered that although those jobs brought in large

sums of money, they were not recurring or sustaining jobs because the contracts had to be tendered for and won on an annual basis. The business could not be sure of that income until the job was won, which made it risky and uncertain. The work also had lower profit margins. By contrast, small, recurring jobs and regular maintenance jobs would need to be done on a permanent, ongoing basis, which meant that even if the income generated was small on a monthly or yearly basis; over time, it would amount to significantly more. In paragraph 28 of the liability judgment the Tribunal confirmed that there had been discussion with the claimant towards the end of 2018 about his role in helping to turn the business around. The claimant had to find 2 or 3 key people to develop a new business development team, meet his personal sales target of £4million and ensure that the rest of his team met their individual targets.

21. After further discussion between the Claimant and the board, the Respondent decided offered the Claimant and he accepted an ex-gratia payment of £30,000 which was to recognise his contribution to turning around the performance and the stability of SRG. The Respondent recognised that senior staff at SRG would feel unsettled by all that was happening and it is likely that the ex-gratia payment was also to maintain the Claimant's morale with the hope that he would encourage the staff who transferred with him to remain with and have confidence in the Respondent.

22. On 4 December 2018, the claimant was given the terms of the LIS for the financial year 2018/2019. The company would have needed to achieve a minimum of £450,000 operating profit in the period for any payments under the scheme to be paid out to senior staff. The claimant transferred to the respondent under the TUPE Regulations on 1 April 2019. The claimant received the second part of his ex-gratia payment in his May salary.

23. As already stated, after the TUPE transfer, the respondent wrote to the claimant on 26 April 2019 to inform him that although his role would remain unchanged and he would continue to be a specialist in the sale of roofing services, he would also be required to sell the full range of Ground Control services and that he would be given any training necessary to support him to do so.

24. The Claimant's target changed. He was given a personal target of £1.25million and the rest of the team had their own targets, which the claimant was responsible for helping them achieve.

25. The respondent produced figures which showed that between September 2018 and March 2019, SRG made losses (see pages 167 of remedy bundle), which meant that no profit share was payable under the LIS. That was Dr Watson's position and his evidence was that the other directors shared his view. It was also the respondent's position that the claimant was also not entitled to sales commission for the same period and Dr Watson produced figures of the respondent's sales to confirm it.

26. In the period up to the end of the Claimant's employment, between 1 April 2019 and 30 September 2019, the evidence produced by the respondent showed that the claimant was required him to bring in £1,250,000 of new work for the year 2019-2020. The wins needed to be made up of recurring revenue as follows: Ground Maintenance (£600,000), Winter Maintenance (£200,000), Potholes (£25,000), Electric Vehicles (£25,000) and Roofing (£400,000). All reactive works (i.e. non-recurring, non-maintenance, one-off

projects) won by any member of the sales team would be counted as 1/3 of the order value. The respondent did this to incentivise the Claimant and his team to focus on minor, recurring work as well as roofing contracts. This '*weighting'* system had not applied to work brought into the company, before the TUPE transfer. The respondent decided to do this after the transfer as it wanted to discourage the sales team from focussing on non-recurring work.

27. As already stated above, the information produced by the Respondent shows that the Claimant's personal target for the year 2019 – 2020, was £1,250,000 of new work. The target for the Claimant's team was £2,270,000. To achieve 90% of his target the Claimant would have had to bring in £1,125,000 and his team, £2,043,000; with team member A's target being £729,000 and team member B's target being £1,314,000. Unfortunately, the respondent confirmed that its records showed that in the period leading up to the end of his employment, the claimant achieved sales of £483,981. This meant that the Claimant met his target of roofing revenue but had not generated anywhere near the total amount he was required to achieve overall. Also, he achieved below 90% of the £1,250,000 target in that year, i.e. below £1,125,000, which meant that zero bonus was due to him.

28. The Claimant's evidence was that had he been at the Respondent, he would have got his team members to perform as required but I find that the evidence shows that they were performing poorly. Team member A did not complete his probationary period as the respondent was not satisfied with his performance. He began his employment on 11 February 2019 and his employment was terminated on 17 July 2019, before the Claimant's dismissal. The respondent's evidence was that team member A did not receive any bonuses in November 2019. Team member B received zero bonus in November 2019, also due to lower than desired performance and not having achieved his targets. Team member B did not receive any commissions either. Team member B was placed on a PIP (Personal Improvement Plan) as his performance was not up to the standard because against a projected intake of £1,314,000, he had achieved an order intake of £377.000.

29. Dr Watson's sworn evidence was that a search through the Respondent's records confirmed that the claimant achieved £5,000 non-roofing wins/contracts, against his annual target of £850,000 for this period. This was from a single reactive order from the customer named *"Parr Reactive Contract*". As this was reactive work, it was counted as 1/3 value.

30. The Claimant believed that there were at least two contracts that he had won or where he was in the process of "sealing the deal" and those had not been included in the respondent's calculations. He referred to discussions with HC One and with Boots/Integral. He believed that these should be counted towards his targets. The Respondent disputed that it had ever signed a contract with HC One after the claimant's employment terminated. In addition, Dr Watson's evidence was that the Respondent did not want the contract with HC One because it would have been another of those one-off contracts which the Respondent was trying to move away from. Dr Watson also confirmed that the Respondent had not received any emails from HC One and that they had not secured any contracts with HC One. The Respondent confirmed that the Claimant won the sales credited to him on page 170.

31. Even if the contracts with HC One and with Boots/Integral were counted, it is unlikely that they would have taken the amount brought in by the Claimant up to the figures that he needed to win in order to be entitled to a bonus or commission.

32. Also, the Respondent's evidence in the remedy bundle showed that the Claimant was tracking below targets to achieve his bonus. It was likely that if the Claimant's performance continued as it had been earlier that year, he would have had an order intake lower than the 90% hurdle which means that zero bonus would be due to him.

33. There is no evidence that the Claimant's won the contracts for HC One and Boots C/o Integral. The only evidence he had was his belief in his ability to generate sales. He was a confident salesman but the Tribunal had to weigh the Claimant's belief in his ability against the figures produced by the Respondent. In order to show that his entitlement to the £30,000 bonus which he claims as part of his remedy, the Claimant would need to prove that not only had those contracts been won due to his efforts, but also, that those contracts would have generated sufficiently large order intake in the second half of the year to close the gap left by what he earned in the first half of the year and meet the total order intake requirement. The Respondent's evidence was that HC One had not traded with either SRG or the Respondent during that financial year even though the Claimant had diarised a first meeting with them before his dismissal. Boots C/o Integral was already one of the Respondent's clients and in the charts provided by the Respondent, the Claimant was credited with one of its orders.

34. Dr Watson's evidence was that the total sales included all the work secured from Integral, which included all sub clients, not just Boots, actually decreased by £160,000 in the year 1 April 2019 to 31 March 2020 when compare to the previous year. There was no evidence to suggest that there were any significant orders coming in from the Claimant's efforts in the second half of the financial year to enable him to bridge the significant gap of £641,000 to meet the full year target, before any bonus could be due to him. The Claimant had no evidence to counteract the figures produced by the Respondent. Although the Claimant had an unwavering belief in his ability to achieve sales, as his most recent experience with the Respondent was not in the recurring work which the Respondent wanted but was in achieving major contracts; it was unlikely that had he remained in the Respondent's employment, that he would achieved the sales necessary in that financial year, to be entitled to a bonus. It may have taken him a few more years to make the targets set for him across the range of the Respondent's products.

Law relating to remedies

35. In a successful unfair dismissal claim where neither reinstatement nor re-engagement would be an appropriate remedy for the claimant, any award by the tribunal will be monetary. A remedy award in an unfair dismissal case is made up of two main elements: a basic award and a compensatory award.

Basic award

36. This is set out in ***Section 119 of the Employment Rights Act (ERA)*** and is calculated using a formula that relates to the age and length of service of the successful claimant. It is calculated in units of a week's pay up to a ceiling. If the amount of a claimant's week's pay exceeded that ceiling then the amount of the award is restricted to it.

37. Under section 122(2), the Tribunal can reduce the basic award in certain circumstances where it is expressly permitted by statute. This is where one or more of the following circumstances exist in the particular case: i.e. the claimant's conduct before

dismissal makes a reduction just and equitable, the employee has unreasonably refused an offer of reinstatement, the employee has been dismissed for redundancy and already received a redundancy payment or the employee has been awarded an amount in respect of the dismissal under a designated dismissal procedures agreement.

38. Section 3 of the Employment Act 2008 contains provisions giving employment tribunals the discretion to vary awards for unreasonable failure to comply with any relevant Code of Practice relating to workplace dispute resolution. This is enshrined in section 207A and Schedule 2 to TULR(C)A 1992. The relevant code is the ACAS Code of Practice of Disciplinary and Grievance Procedures.

39. Section 207A(2) provides that an employment tribunal may, if it considers it just and equitable, increase any award to an employee by up to 25% if it appears to the tribunal that the employer has unreasonably failed to comply with the ACAS Code on Disciplinary and Grievance Procedures.

Compensatory award

40. This is set out in ***Section 123 and 124 of the ERA***. The amount of the compensatory award shall be such amount as the tribunal considers to be just and equitable in all the circumstances having regard to the loss sustained by the claimant in consequence of the dismissal in so far as that loss is attributable to action taken by the respondent. It should not be used to punish the respondent. There are two questions to be answered by a tribunal considering what should form part of a successful employee's compensatory award: firstly, whether the dismissal caused the employee's loss (a question of fact) and secondly, what compensatory award would be just and equitable (a question of discretion).

41. Such losses as can be compensated would include not just wages lost due to being unfairly dismissed but also any additional benefits attached to the employment that had been lost i.e. company car, health benefits, pension, travel allowances etc. In addition, the tribunal can compensate the claimant for any additional expenses occasioned by the loss of employment i.e. expenses incurred in seeking alternative employment. The compensatory award can take into account losses extending into the future. The tribunal has to make findings of fact based on the evidence before it, in order to determine how much and for how long it would be just and equitable to award to the claimant compensation for such future losses.

42. The claimant is under a duty to mitigate his loss and the tribunal would need to consider whether this has been done. The employee is under a duty to make diligent searches for alternative employment following dismissal.

ACAS uplift

43. The Claimant sought an ACAS uplift to his remedy for unfair dismissal. The Claimant asked for the full 25% as an uplift. Section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 (TUL(C)RA) deals with this. Subsection (1) and (2)(a) to (b) give the tribunal the power, if it considers it just and equitable, to increase any award it makes to an employee by no more than 25% if the claim concerns a matter to which a relevant Code of Practice applies and the employer has failed to comply with that code and the failure was unreasonable.

Reconsideration

44. Under Rule 73 of the Employment Tribunals Rules of Procedure 2013, where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with Rule 72(2) (as if an application had ben made and not refused).

45. Rule 70 states that a Tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so.

Remedy Judgment

46. The Claimant was unfairly dismissed on 6 August 2019.

47. The Claimant also succeeded in his complaint of wrongful dismissal.

48. The Claimant's compensatory award is uplifted by 15% to reflect the Respondent's failure to follow the ACAS Code of Practice.

49. The Respondent is to pay the Claimant the following sums as his remedy for his successful complaints.

Basic Award

50. The Claimant is entitled to his full wages in respect of the notice period applying the principles as set out in the case of *Norton Tool Co Ltd v Tewson [1972] IRLR 86* and confirmed by subsequent courts. The Claimant is therefore entitled to a basic award of £2,362.50 which is 1.5 week's pay for every year employed as he began his employment after the age of 41 x 3 years employment capped at £525 = **£2,362.50**.

Breach of contract

51. As the Respondent agreed in its most recent counter-schedule (page 69, remedy bundle), the claimant's notice entitlement is of 12 weeks at the rate of £978.41 net wage = 12 x £978.41 = **£11,740.92**

Compensatory Award

52. The number of weeks loss of earnings awarded to the claimant is calculated from the date on which the wrongful dismissal damages period ends through to the date the Claimant started his new job. The claimant's wrongful dismissal damages are for 12 weeks (6.8.19 – 29.10.19).

53. It is this Tribunal's judgment that the Claimant mitigated his loss by starting the new job on 30 September. The claimant was unwell because of the unfair dismissal and he was not mentally able to take up employment before then. The Tribunal accepted the Claimant's evidence that he started his new job as soon as he was able to.

54. The claimant secured alternative employment on 30 September at a reduced salary and claimed his ongoing losses. He is entitled to his ongoing losses, in order to put him back into the position he would have been had he not been unfairly dismissed. The Respondent paid the Claimant the net sum of £978.41. The new job at Allard paid the Claimant £956.07. The loss is therefore the sum of £22.34 per week between 29 October 2019 *(the end of the notice period)* and 2 March 2020 when he started the new job with Blue Cube. This was a total of 18 weeks. The loss is £22.34 x 18 = **£402.12**

55. The Claimant lost his healthcare payments, car payments and pension payments that he would have been entitled to receive from the Respondent. Those were losses arising directly from his unfair dismissal. The contract with Allard contained similar provisions. The claimant lost car payments for one month, from 6 August 2019 – 30 September 2019, of *£300*. The Tribunal therefore awards the Claimant the loss for the period between the end of the job with Allard (24.2.2020) and the start of his employment with Marcon on (9.11. 2020), as Blue Cube did not give the Claimant those benefits. Allard's contract did not include a payment towards the Claimant's pension therefore the Claimant is entitled to his pension contributions from the date of his dismissal up to the date that he started with Marcon. The sums awarded are as follows: - Loss of private healthcare from date of dismissal (6.8.19) to hearing date (23.3.22) = £695 per year or £58 per month x 31 months = *£1,798.00*. The Claimant is also awarded loss of pension from 6.8.19 – 23.3.22 = £41.89per week or £181.53 per month x 31 months = *£5,627.43.*

56. These figures are different to the ones given in the judgment given on the day on 23 March and in the written judgment. The Tribunal reconsiders that judgment as the calculations were incorrect and the losses in relation to the compensatory award were calculated for incorrect periods. As the Claimant was not provided with pension contributions for the whole period, including the period covered by the notice pay, he is entitled to those payments, where the Tribunal has decided that he mitigated his loss by taking up employment with Allard on 30 September. The claimant only claimed the loss of the car payments for the period up to the date that he started with Allard and therefore that payment had to be adjusted. The claimant lost the benefit of private healthcare from the date of his dismissal to the date of the remedy hearing and so it is appropriate for it to be awarded to him for the whole period.

57. These all equate to a total compensatory award of £300 + £1,798.00 + £5,627.43 + £402.12 = **£8,127.55**.

58. It is this Tribunal's judgment that the Claimant had been paid bonuses when he worked for SRG. He was SRG's best salesman when he was employed by that company.

59. In his last year working for SRG he achieved a total figure of £6billion when his target had been £4million. This resulted in a bonus payment for the Claimant. The Claimant's job at SRG was to generate sales. Usually he focused on one-off sales and SRG management were content with that. The Claimant's position changed after the TUPE transfer. The evidence at the liability hearing was that the Claimant had not been told about the shift in focus before the transfer and that he was unfamiliar with the products he was expected to sell under the heading of "*winter maintenance*" and others.

60. Nevertheless, the Claimant was confident in his ability to turn matters around and indeed his statement that he was given champagne by Dr Watson because he made a good start at settling the team in and working out a strategy to make the sales; was not challenged by the Respondent.

61. The Tribunal does not have enough evidence from which it can rest a reasonable belief that the Claimant would have earned a £30,000 in the last financial year of his employment. The Tribunal cannot award a bonus of £30,000 as a loss solely on the basis of the Claimant's confidence in his ability or his past performance when he was selling different products for a different company.

62. The Claimant failed to prove to this Tribunal that he won sufficient work within the financial year 2019 – 2020 that entitled him to a bonus. Even if the Claimant is correct and he secured the contracts with HC One and/or Boots Integral, the evidence was that the income brought in by these contracts, coupled with the work the Claimant brought in before his dismissal did not take him anywhere near to the targets that he had been set across the range of the Respondent's products. The Claimant had achieved his target in roofing sales but that was only weighted as 1/3 of the total sales that he and his team was expected to achieve.

63. The Tribunal would need to have evidence to show that the Claimant had either already earned/brought in the amount of business to meet his target or had been well on his way to doing so, before it can award him the bonus.

64. I am satisfied that the Claimant knew before his dismissal, even if he did not know at the time of the transfer, that the basis on which his bonus was to be calculated in future was going to change and that his targets were weighted between majors, minors and reactive work and was also calculated on the amount of income that the two members of his team brought him. The Claimant was not happy about this but he was prepared to do the work to achieve the sales target.

65. Although he was unhappy, there was no immediate plans to leave the Respondent. However, it is likely that had he not been paid any bonus in 2020, for a second year, he would not have remained in the Respondent's employment.

66. The Tribunal was not satisfied at the end of this remedy hearing that the Claimant and those in his team would have met their financial targets in the financial year 2019 – 2020, so as to be entitled to commission and to the bonus payments he claims. That is not to question the Claimant's abilities as a salesperson. However, the Tribunal acknowledges that he was being asked to work in a different way from the way in which he had worked for many years previously and to generate income from different clients for different work. The Claimant's team was also new. The Claimant and his team were likely to have needed some time to adjust before the income hit the levels the Respondent were expecting. The Claimant has failed to prove that he and his team reached that level of sales or were on the way to do so, before his dismissal.

67. It is therefore this Tribunal's judgment that the Claimant is not entitled to a bonus for the financial year, 2019 – 2020.

Loss of Statutory Rights

68. The Tribunal awards the Claimant the sum of **£500** for the loss of his statutory rights.

ACAS Uplift

69. It is this Tribunal's judgment that the Claimant is entitled to an increase in his compensation because of the Claimant's failure to conduct a reasonable investigation into the serious allegations made against him. The Respondent also failed to show him all the statements made against him and failed to give him any details of his accuser so that he could defend himself against the allegations he faced. Those allegations were serious and potentially career-ending. It is therefore this Tribunal's judgment that the Claimant is entitled to an uplift to his compensatory award for significant breaches of the ACAS Code.

70. The Claimant is awarded an uplift of 15% on his compensatory award because of the significant breaches of the ACAS Code which caused the Claimant to have sleepless nights and to be extremely anxious and in need of medication while navigating the disciplinary process. The Tribunal does not award the Claimant the full 25% increase because the Respondent held disciplinary and appeal hearings and therefore made some attempt at a fair disciplinary process although there were serious flaws as already outlined.

71. The Claimant's remedy is therefore as follows:

72. Basic award: **£2,362.50**

73. Award for wrongful dismissal: **£11,740.92**

74. Compensatory Award:

Loss of wages from 30 September to 2 March = **£402.12**

Loss of benefits (healthcare, pension and car allowance) = a total of **£7,725.43**

Loss of statutory rights = **£500.00**

Total Compensatory Award = £402.12 + £7,725.43 + £500 = **£8,627.55**

The ACAS uplift of 15% has to be applied to the compensatory award. £8,627.55 x 15% = £1,294.13. The total compensatory award is £8,627.55 + £1,294.13 = **£9,921.68.**

75. The Respondent is ordered to pay the Claimant a total sum of £9,921.68 (Compensatory Award) + £2,362.50 (Basic Award) + £11,740.92 (damages for breach of contract = £24,025.10.

76. Under Rule 73 of the Employment Tribunals Rules 2013, the Tribunal reconsidered this remedy judgment on its own initiative to correct the miscalculations and to correct the

elements in the compensatory award to reflect the Claimant's actual losses. The Claimant is entitled to a remedy judgment of £24,025.10 as set out above and the Respondent is to pay him that amount.

Employment Judge Jones

13 October 2022