



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Andrew Tunnicliff

**Respondents:** R1) Baytree Car Sales  
R2) Baytree Car Sales Ltd  
R3) The Estate of Glenn Hamish Manuel  
T/A Baytree Car Sales

**Attended Full Hearing  
at the Employment Tribunal**

**Heard at:** Lincoln **On:** 2 November 2022

**Before:** Employment Judge Hutchinson (sitting alone)

## Representation

**Claimant:** Mr Lawrence, Counsel  
**Respondent:** Mr Stewart, Counsel

# JUDGMENT

The Employment Judge gave Judgment as follows.

1. The Claimant was employed by the 3<sup>rd</sup> respondent.
2. The claim of unfair dismissal succeeds, and the 3<sup>rd</sup> Respondent is ordered to pay to the Claimant;
  - 2.1 A Basic Award of **£9992.50.**
  - 2.2 A Compensatory Award of **£17263.38.**

Total Award for unfair dismissal is **£27255.88**

The Recoupment Regulations do not apply to this sum

3. The Claimant was dismissed in breach of contract in respect of notice and the 3<sup>rd</sup> Respondent must pay damages to the Claimant **in the sum £7,123.68**.

3. The 3<sup>rd</sup> Respondent has made an unauthorised deduction from the Claimant's wages and is ordered to pay to the Claimant **the sum of £3,849.68 gross**.

4. The 3<sup>rd</sup> Respondent is a is ordered to pay total compensation to the Claimant in the sum of **£38,229.54**

## **REASONS**

### **BACKGROUND TO THIS HEARING**

1. The Claimant presented his claim to the Tribunal on 7 June 2022. He said that he had been employed by Baytree Car Sales since 1 June 1998 when he was only 14 years old and was summarily dismissed on 3 March 2022 by which time he was engaged as Sales Manager.
2. He claimed.
  - Unfair Dismissal.
  - Notice Pay.
  - Wages.
3. In his claim form he explained that he had been employed by Mr Glenn Hamish Manuel who traded as Baytree Car Sales since he was 14 years old. Mr Manuel had died on 3 June 2021 and after he death he had been asked by the Manuel family to carry on running the business which he did until his summary dismissal on 3 March 2022. He alleged that he had been dismissed by text without any good reason.
4. He was dismissed without notice and without paying him his wages for February and March and he said that the dismissal was unfair.
5. The Respondent in their ET3 alleged that he had been employed by Baytree Car Sales, but the business had been transferred to the Limited Company.
6. They described in the ET3 various warnings that they say that the Claimant had had about his conduct and that he had received a final written warning on 20 February 2022.
7. They said that on 1 March 2022 Karen Manuel and Lee Manuel had met with the

Claimant at an investigatory meeting and that they then held a disciplinary meeting on 3 March 2022 when he was dismissed after being found guilty of the allegations of;

- Issuing himself with a cheque in the sum of £2592.00.
  - Issuing a further cheque in the sum of £967.85.
  - Failing to provide a DVLA code.
8. They said that a letter had been sent confirming the dismissal on 4 March 2022 which had given him his right to appeal which he had not exercised.
  9. All this was disputed by the Claimant.
  10. The matter had been listed for a 1 day hearing at Lincoln today and notification had been sent to all the parties on 13 June 2022.
  11. The length of the hearing had been extended to 2 days and this had been confirmed to the parties on 13 August 2022.
  12. On 16 August 2022 the Respondents Solicitor wrote to say that Mr Manuel who was they said the owner of the business and lead witness was not available because of a *“previous work commitment on the scheduled dates”*.
  13. On 30 August 2022 the Respondent Solicitor was written to and told that the final hearing would not be vacated. It was said that there was no explanation of the circumstances *“of the previous work commitment”* nor any explanation of why it had taken 2 months for this apparent diary conflict to be raised with the Tribunal.
  14. On 4 October 2022 the Respondents Solicitor wrote to ask again for a postponement of the hearing. They said that they were not ready for the hearing and repeated that the Respondents main witness was not available on the hearing date. They referred to their previous application but did not provide any further details as why their witness was not available.
  15. This application was considered by my colleague Employment Judge Camp who on 20 October 2022 wrote to the Respondents to say that the application was refused. He reminded the Respondents that the original application had been refused by Employment Judge Clark on 30 August 2022 because no proper explanation as to why he was not available had been given.
  16. On 25 October 2022 the Respondents Solicitor wrote again and said for the first time that Mr Manuel was not able to attend the hearing in person because he was not in the Country. He was on a cruise around the Mediterranean from 28 October until 8 November.
  17. With that letter they attached the confirmation that he was on a cruise at the time of the hearing.

18. The Claimant objected to the postponement and the matter was considered afresh by my colleague Employment Judge Adkinson who refused the request again. He pointed out that the Respondent had already made 2 applications for a postponement which had been refused. The respondent appeared to be under the impression that if he asked often enough the Tribunal would relent. He reminded the Respondents that the tribunal could not vary a case management order on the application to adjourn absent a change in circumstances or some other exceptional reason. He said that there was no exceptional reason to revisit the decision of the 2 previous applications because there was no real change in circumstances.
19. At the start of the hearing today Mr Stewart for the Respondents made another application to postpone the hearing because Mr Manuel was not available and on his cruise. I again refused that request because there had been no change in circumstances since my three colleagues who had previously considered the matter had made their decision not to postpone the hearing.
20. As a result, the Respondents were not able to call any evidence and I only heard evidence from the Claimant. I did consider though the witness statement of Mr Manuel put preferred the evidence of Mr Tunnifcliff. I would also mention that I noted from the documents produced by the Respondents that the letter of dismissal dated 4<sup>th</sup> of March 2022 was signed by Karen Manuel on behalf of the late Glenn Hamish Manuels Estate. No explanation was given to me as to why she could not have appeared before me to give evidence as to why she dismissed the Claimant.
21. I also had before me the Respondents bundle of documents and an additional bundle provided by the Claimant of documents that had not been included by the Respondent. If I refer to page numbers, it is mainly from the Respondents bundle.

## **THE ISSUES**

### **Unfair Dismissal**

22. It is for the Respondents to establish the reason for the dismissal and that it was a potentially fair reason. It is not in dispute in this case that the Claimant was dismissed. The Respondent say the reason for dismissal was gross misconduct.
23. If they satisfy me that was the reason for his dismissal, I then go on to consider whether the dismissal was fair. This would mean applying the usual test in ***BHS v Birchell***. I would have to be satisfied that the Respondents had a genuine belief on reasonable grounds that the Claimant had committed the act of misconduct complained of and that at the time that they formed that belief they had carried out a reasonable investigation. I would also have to be satisfied that dismissal fell within the band of reasonable responses.
24. If he was unfairly dismissed, I then go on to consider whether there should be an uplift on the grounds that the Respondent had failed to follow the ACAS Code of Practice for disciplinary procedures, and I should then go on to consider whether there should be a reduction in any of the awards because of contributory conduct or for reasons related to ***Polkey v A R Dayton Services***.

**Notice Pay**

25. It is not in dispute that the Claimant was dismissed without notice. The Respondents' case is that they were justified in dismissing him without notice because he was dismissed for gross misconduct. If he was not dismissed for gross misconduct, then he is entitled to 12 weeks' notice.

**Wages**

26. This is a straightforward matter of whether he had been paid his wages for the month of February and the 3 days in March that he was employed by the Respondents. The Respondents in this case do not dispute that they have not paid him for this period.

**FINDING OF FACTS**

27. The Claimant began working for Glenn Manuel when he was 14 years of age. This was in 1998. At that time Mr Manuel owned a car lot which traded as Baytree Car Sales from its premises at 65-67 High Road, Moulton, Lincolnshire.

28. He initially worked for Mr Manuel as a car valet and when Mr Tunnicliff left school at the age of 16, he went to work for Mr Manuel on a full-time basis. He developed a very close relationship with him over the years and became a salesperson and then General Manager.

29. He signed a contract of employment on 21 September 2007 which acknowledged that he was employed by Mr Manuel. T/A Baytree Car Sales. At that time, he was described as a General Assistant/Salesperson.

30. The contract provides for disciplinary and grievance procedures and the contract is at pages 68 to 76 of the bundle of documents. Mr Manuel placed Mr Tunnicliff in charge whilst he had other business interests away from the garage including a property portfolio.

31. Mr Manuel allowed the Claimant to run the business for him and he signed cheques on his behalf.

32. Mr Manuel died on 3 June 2021.

33. I have seen the Mr Manuel's will which is at page one of the Claimant's bundle and records that he appointed Karen Manuel as his sole executrix of the will.

34. He left the business of Baytree Car Sales to his 3 sons and a legacy of £25000 to Mr Tunnicliff.

35. After his death it was agreed in a meeting between the Claimant and Karen and Lee Manuel that Mr Tunnicliff should continue to run the business. At that time, they had a good relationship.

36. Also, in June there was a further meeting between Mr Tunnicliff, Karen Manuel and Lee Manuel. At that meeting Mr Tunnicliff explained to them that he did not have a

full driving licence. They discussed helping Mr Tunnicliff obtain a full driving licence.

37.They agreed that Mr Tunnicliff would keep them informed each day of what had happened at the business and I am satisfied that on most days he visited Karen Manuel's house to explain what transactions he had undertaken.

38.It is said by the Respondents that a meeting took place on 23 June 2021 and they have provided me with the alleged notes of that meeting at page 79. I am satisfied that the note of the meeting is a fabrication and that no such meeting took place. I am satisfied that the note as with the notes of various other meetings has been created subsequently for the purpose of this Tribunal hearing.

39.I am satisfied that no such formal meetings took place on.

- 10 June 2021 (page 78).
- 23 June 2021 (page 79).
- 13 July 2021 (page 80).
- 20 July 2021 (page 81).
- 3 September 2021 (page 82).

40.I am satisfied that around 3 September 2021 there was a conversation between Mr Tunnicliff and Karen Manuel about the state of the premises next to the garage. It was overgrown with weeds. It was very untidy. I am not satisfied that as the note described that Mr Tunnicliff used abusive language either about the valet or Karen Manuel.

41.I have seen a note of the alleged meeting that took place on 17 September 2021 at page 96. I am satisfied that the note has subsequently been created for the purposes of this Tribunal. As Mr Tunnicliff described to me, I am satisfied that he had a conversation with Karen Manuel at that time when she spoke to him about putting his feet up on the desk. I am satisfied that she was not happy about this and that he had explained to her the circumstances which led to him doing so. I am also satisfied that at that time there was no discussion about his phone contract. This conversation happened later.

42.I have seen the note of the alleged meeting on 28 September 2021 at page 97. Again, I am satisfied that no such meeting took place although I note that Mr Tunnicliff admits that there were several vehicles which he owned which were registered in the Company's name. This had often happened, and no one had ever raised any issue about it.

43.On the 26 October 2021 Glen Manuel Junior arrived at the car lot and told Mr Tunnicliff that they were sending him home and that he was to have a week off. He described how *"There's some stuff we need to look at"*.

44.On the following day 27 October 2021 Mr Tunnicliff received an email from Lee Manuel, Glen Manuel and Jamie Lee Manuel purporting to be Directors of Baytree Sales saying that the Claimant was suspended from work as part of an investigation process into allegations of gross misconduct. The email explains that they have not

provided any specific details and no details at all were ever provided.

45. There is a note at page 101 which says it was delivered by hand dated 29 October 2021 inviting Mr Tunnicliff to a disciplinary hearing on 1 November. I am satisfied that document was also created for the purposes of this Tribunal.
46. I have also seen the alleged notes of a meeting dated 1 November 2021 at pages 102-108. The note alleges that a decision was made by Karen Manuel to issue Mr Tunnicliff with a final written warning. I am not satisfied that any such meeting took place. On balance I am satisfied that again these notes were prepared for this Tribunal hearing. In coming to my conclusion, I have considered the fact that there is no letter or emails confirming the decision to issue him with a warning and there is no documentary evidence concerning the allegations that are referred to in the notes.
47. I prefer Mr Tunnicliff's version that a week after his suspension he received a telephone call from Glen Manuel Junior telling him to come back to work. During his period off work, he had been in Skegness with his partner and no meeting had taken place.
48. There is a note of a conversation alleged to have taken place on 7 November 2021 at page 145. The conversation is between the Claimant and Karen Manuel. Again, this note has been created for the purpose of this hearing although I note that Mr Tunnicliff accepts that the Company had received a parking fine notice in respect of his car. The car was registered under the Company as it always had been, and the change of address had not been processed.
49. There is a note of a conversation on 14 December 2021 at page 147 between the Claimant and Karen Manuel. This note has also been created for the purposes of this Tribunal hearing. Mr Tunnicliff does not doubt that there was an issue around this time with a customer complaint from a Mr Popple. The complaint was supposed to be dealt with by Lee Manuel and he had not done so, and Mr Tunnicliff had been as he described "*Stringing the customer along as Lee had not given me authority on what to do about this complaint*".
50. The note at page 147 has again been created for the purpose of this hearing.
51. Relations between Mr Tunnicliff and the Manuel family were mainly cordial until Christmas 2021. Karen Manuel was annoyed that Mr Tunnicliff had gone to Scotland with his partner on holiday. There then became an issue about his phone contract. Mr Manuel Senior had purchased Mr Tunnicliff's phone for him at Christmas 2020 as a gift and the Company was paying for his use of the phone because it was primarily used for business purposes.
52. Karen Manuel said that she wanted Mr Tunnicliff to get his own phone and pay for his own contract and Mr Tunnicliff did make arrangements subsequently to do so.
53. I have seen a note of the alleged meeting of 28 January 2022 at page 165. I am satisfied that no such discussion took place, and this document was created for the purpose of this Tribunal. At about this time Mr Tunnicliff recalls a conversation where

Mrs Manuel asked Mr Tunnicliff if he needed support with the business. Mr Tunnicliff said that he was fine but was concerned about Lee Manuel and Glen Manuel Junior interfering with the way that he was operating the business. He just wanted to operate the business the same way as he had done for the last 20 years or so and they were trying to change the way that he operated. He felt that he was being micromanaged at the time.

54. There is another note of a meeting dated 19 February 2022 at page 166. I am satisfied that no such meeting took place. At around this time there was a discussion with Karen Manuel about one of Mr Tunnicliff's cars which had been registered to the business which he had sold in December 2021. There had been an issue with DVLA which Mr Tunnicliffe had to sort out and pay a fine in respect of. The documents in respect of that are at page 167.

55. Mr Tunnicliff admits that on or around 20 February 2022 he went to the Post Office to collect a letter which was a notice of a final written warning at page 168-170. The letter was sent by Lee Manuel on behalf of the late Glenn Hamish Manuel estate. The letter does not refer to any meeting that took place prior to the warning being issued or any advanced notification of any of the allegations including paperwork. The letter makes several serious allegations against Mr Tunnicliff none of which had been investigated or discussed with Mr Tunnicliff before issuing him with the warning.

56. On receipt of the letter Mr Tunnicliff spoke to Glen Manuel Junior about the contents of it but was told not to worry that Lee Manuel was just Lee being Lee being pedantic. The claimant decided to leave well alone and went back to work.

57. It is alleged that the Claimant was sent a letter dated 1 March 2022 inviting him to attend a disciplinary hearing on 3 March 2022 at page 172. I am satisfied that no letter was sent. That letter was also created for the purpose of this Tribunal.

58. It is alleged that there was a meeting on 3 March 2022 between Mr Tunnicliff, Karen Manuel and Lee Manuel. It is alleged to be concerning signing cheques on behalf of Glenn Manuel after his death. I am satisfied there was no such meeting on 3 March 2022. Mr Tunnicliff does not deny that he signed cheques in Mr Manuel's name. He had done so for many years prior to Mr Manuel's death and he also signed other documents on behalf of Baytree Car Sales using Mr Manuel's signature. Mr Manuel Senior was also aware that Mr Tunnicliff signed cheques to himself for business related expenses.

59. I am satisfied that after his death Karen Manuel and Lee Manuel were happy for him to continue signing cheques on Mr Manuel Senior's bank accounts. The banks had not been notified of his death. These cheques included cheques for Mr Tunnicliff's wages and other cheques were for expenses of the business for example for parts that he had purchased of Ebay for vehicle repairs.

60. I am satisfied that Mr Tunnicliff was dismissed summarily by Glen Manuel Junior on 3 March 2022.

61. On that day one of the staff was working on a car that had parking sensor issues.



Glen Manuel Junior and Mr Tunnicliff had an argument about this.

62. After Mr Tunnicliff finished worked on that evening, he received a telephone call from Glen Manuel Junior. It concerned a gift that Glenn Manuel Senior had left to Mr Tunnicliff in his Will which I have referred to above. This had not been paid to him. Mr Tunnicliff had been asking Karen Manuel about the gift for some time and when it would be paid. I have also seen a copy of correspondence with the solicitors Hunt and Coombs who had acted in the estate of Mr Manuel. There is also correspondence between the Claimant's solicitor and that firm and with Mrs Manuel. This is at pages 9 to 23 of the Claimant's bundle. It be seen from these documents that the Claimant was chasing up at that time, the payment of the legacy that was due to him.

63. In the conversation Glen Manuel Junior started swearing at Mr Tunnicliff and was trying to intimidate him.

64. I have seen in the bundle of documents the text messages between Mr Tunnicliff and Glen Manuel Junior on that date (pages 224-226).

65. In particular Mr Manuel Junior sent a text message to the Claimant saying;

*"U parked the cunt up after picturing it and sorting it and that shit flyes does it (sic)"*

66. This was referring to a car that Mr Tunnicliff was dealing with and Mr Manuel Junior was angry about Mr Tunnicliff taking pictures of the vehicle for the website before it had been valeted. Mr Manuel Junior then threatened Mr Tunnicliffe saying;

*"Mug me I tell ya mug me family and I show ya (sic)" and "insult me some more I dare ya (sic)".*

67. Later Mr Manuel Junior sent a message saying;

*"hand (his) keys in tomoz (sic)" and that he was "done".*

68. Mr Tunnicliff interpreted this to mean that he had been required to hand his keys back and that he was no longer employed by the Respondent.

69. Later Mr Manuel Junior reiterated this saying;

*"hey don't forget it fail without ya keys tomoz or I pay visit to Ramsay (sic)"*

70. Mr Tunnicliff believed this was a reference to a threat to assault him resulting in him having to visit Ramsay Hospital or Mr Manuel Junior coming over to visit him at his home.

71. Later a further message was received as follows;

*"and u think I'm stupid ur worst mistake hand keys in tomoz u no longer work for us or my family (sic)"*

72. The message is unambiguous. Mr Tunnicliff's employment had been terminated.

73. He heard nothing further and did not receive any pay for February or March 2022 or any letter of dismissal or a P45.
74. The Respondents say that they held a meeting with the Claimant on 3 March 2022 with Karen Manuel. The notes are alleged to be at page 173-184.
75. I am satisfied that no such meeting took place and that the notes had been prepared only for this Tribunal. The notes referred to sending him his P45 but no P45 was ever sent to him.
76. I have seen a letter dated 4 March 2022 at page 190-191 which has also been prepared for the purpose of this Tribunal. I am satisfied that no such letter was sent to the Claimant.
77. It can be seen from the above that the Claimant was dismissed by text message and not because of any disciplinary process. The dismissal letter was only sent to Mr Tunnicliff's Solicitor on 10 May 2022.
78. Since his dismissal the Claimant has not worked, and he has applied for several jobs which he has not been successful with. He has only been employed ever at Baytree Car Sales and at the age of 38 has no qualifications, no driving licence and no reference from his previous employers. The Respondents have not provided me with any evidence concerning any failure to mitigate his loss. I am satisfied that he has not been able to find any employment up to the date of the hearing.

## **THE LAW**

### **Unfair Dismissal**

79. The claim for unfair dismissal is made under section 94 of the Employment Rights Act 1996.
80. Section 98 provides;
- “(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*
- (a) the reason (or, if more than one, the principal reason) for the dismissal, and*
  - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
- (2) A reason falls within this subsection if it—*
- (a)...../*
  - (b) relates to the conduct of the employee,*
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*

*(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and  
(b) shall be determined in accordance with equity and the substantial merits of the case."*

81. In determining the issue of fairness especially where the dismissal is said to be by reason of conduct the Tribunal needs to consider the test in **BHS v Birchell**. This provides that the Tribunal should be satisfied that the employer had a genuine belief on reasonable grounds that the employer committed the act of misconducted alleged and that at the time that they had formed that belief they had carried out a reasonable investigation.

82. When considering the question of fairness, the Tribunal should always have in mind the test set out in Iceland Frozen Foods v Jones. That is that dismissal should fall within the band of reasonable responses.

83. In this case as in all cases of unfair dismissal I need to take into account the ACAS Code of Practice for disciplinary and grievance procedures issued in 2015. The principles are set out in that code. The applicable elements in this case are that.

- Employers should carry out any necessary investigation to establish the facts of a case.
- Employers should inform employees of the basis of any issues and give them an opportunity to put their case before any decision is made.
- Employers should allow employees to be accompanied to any formal disciplinary or grievance meetings.
- Employers should allow an employee to appeal against any formal decision made.

### **Breach of Contract Claim**

84. In respect of the breach of contract claim the Respondents in this case admit that they dismissed the Claimant without notice. I must be satisfied that the Respondents were entitled to dismiss the Claimant without notice because of his gross misconduct. If they did not dismiss him because of gross misconduct, then the Claimant is entitled to his notice pay. It is not in dispute that he is entitled to the statutory minimum notice period of 12 weeks.

### **Wages**

85. The Claimant has not been paid his wages for February or the 3 days in March that he worked. It is simply a question as to whether he is entitled to be paid for those wages and therefore whether there has been an unlawful deduction of wages made by the Respondents under the provisions of section 13 of the Employment Rights Act 1996.

## REMEDY

### Unfair Dismissal

86.I have considered the following sections of the Employment Rights Act 1996.

87.Section 122 provides for the possibility of a reduction in the basic award;

“(1) ...../

*(2) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.”*

88.There is a similar provision in respect of the compensatory award under section 123. The relevant provisions are;

*“(1)Subject to the provisions of this section and sections 124, 124A and 126, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.*

*(2)...../*

*(3) ...../*

*(4) In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland.*

*(5)...../*

*(6)Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.”*

89.The provisions of section 122 together with the case of ***Polkey v AR Dayton Services*** mean that I must consider an award of compensation that is just and equitable in all the circumstances of the case. If I was satisfied that if a fair procedure had been followed the Claimant would have been dismissed, then I can reduce the amount of compensation accordingly.

90.I need to take into account that the Claimant is under a duty to mitigate his loss. I must bear in mind that the burden of proof is upon the Respondent to establish that the Claimant has not mitigated his loss.

91.I can also as per 122(6) ERA reduce the award of compensation if I think that he has contributed to his dismissal in some way.

## **MY CONCLUSIONS**

### **The Employer**

92. The Claimant named 3 employers as Respondents to these proceedings. In this case the Claimant was issued with a contract of employment on 12 April 2004 and at that time his employer was Glenn Manuel T/A Baytree Car Sales. There was no change to that position during the life of Mr Manuel. Mr Manuel died on 3 June 2021 and Mr Tunnicliff after that date continued to be employed in the same position, on the same terms by Karen Manuel, the personal representative of Glenn Manuel who traded as Baytree Car Sales.
93. The Respondents say that Mr Tunnicliff's employment was taken over by Baytree Car Sales Limited which is a company set up after the death of Mr Manuel Senior.
94. I am satisfied that Mr Tunnicliff's employment did not transfer to that company. He was not issued with any contract of employment and he continued to be paid by Baytree Car Sales.
95. Baytree Car Sales itself is not a legal entity and I have seen the will of Mr Manuel and I see that he appointed his wife Karen Manuel as the sole executrix and trustee of his Will.
96. I have not seen any further documents about any subsequent transfer to the beneficiaries of the Will and as no transfer took place his employment continued to be by Karen Manuel the personal representative of Glenn Manuel T/A Baytree Car Sales. The employer in this case is therefore the Estate of Glenn Hamish Manuel trading as Baytree Car Sales.

### **Unfair Dismissal Claim**

97. I am satisfied that the Claimant was dismissed on 3 March 2022. The burden of proof is on the Respondent to establish the reason for the dismissal. The Respondents say that the reason for dismissal was misconduct. I have not heard any evidence from the Respondents to establish this and I am satisfied that the reason for his dismissal was not conduct.
98. I am satisfied he was dismissed by text message from Mr Manuel Junior who was clearly acting on behalf of Karen Manuel who was the Claimant's employer. The Claimant was told in clear terms that his services were no longer required, and the events subsequently show that they were not. That he was dismissed with effect from 3<sup>rd</sup> of March 2022.
99. The Respondent did not have any good reason for dismissing the Claimant. They did not invite him to any meeting. They did not carry out any investigation. They did not undertake a disciplinary hearing. He was not told of any outcome of any disciplinary hearing and he was not given any right of appeal.

100. The Respondents have failed to undertake any process at all either envisaged under the usual law of unfair dismissal or by the ACAS Code of Practice. His dismissal was therefore unfair.

### **REMEDY FOR UNFAIR DISMISSAL**

#### **Basic Award**

101. I am satisfied that the Claimant commenced his employment in 1998 and his employment ended on 3 March 2022. He was 37 years old at that time. The basic award that he is entitled to is 17.5 weeks times his gross weekly pay which is £571.00 per week. This amounts to £9992.50.

102. I decline to make any reduction to the basic award. I am satisfied that he has not contributed to his dismissal in any way.

#### **Compensatory Award**

103. The Claimant's net monthly pay was £2572.44 plus pension contributions of £89.70.

104. He has been unemployed for a period of 5 months up to the date of this hearing after the end of his notice period.

105. I am satisfied that he has not worked during the interim and has applied for many positions but has been unsuccessful. The Respondents have not provided any evidence that the Claimant has not mitigated his loss. This amounts to £12862.20. I also award him loss of statutory rights in the sum of £500.00.

106. I decline to make any award for future loss because the Claimant has not provided me any evidence of why he says that he should not be in employment from now.

107. I have decided in this case that it would be just and equitable to uplift the compensatory award by the maximum of 25%. This is because of the complete failure by the Respondents to undertake or abide by the ACAS Code of Practice particularly in the circumstances where they have an employee who had given loyal service to them for a period of 24 years. Their behaviour is nothing short of reprehensible and the maximum uplift on the award is appropriate in this case. The uplift in this case is therefore £3452.68 making a total compensatory award of £17263.38.

#### **Notice Pay**

108. The Claimant is entitled to a statutory 12 weeks' notice period of his net pay of £593.64. The Respondents have not satisfied me that they were entitled to dismiss him for gross misconduct. The Respondents were not entitled to dismiss him without notice, and he is entitled to his notice pay of £7123.68.

**Unlawful Deduction of Wages**

109. The Claimant is entitled to his for pay in February which was £3510.00 gross, and he is also entitled to a further 3 days gross pay for March amounting to a further £339.68. The total award for unlawful deduction of wages is therefore £3849.68.

**SUMMARY**

110.

- Basic Award                    **£9992.50**
- Compensatory Award **£17263.38**
- Notice Pay                     **£7123.68**
- Wages                            **£3849.68**
- **The total payment due to the claimant is £38229.54**

111. At the conclusion of the hearing the Claimant’s counsel said he wished to make an application costs and I told him that he should make that application in writing and after I had considered any submissions from the respondent’s representative, I would decide the issue on the papers.

\_\_\_\_\_  
Employment Judge Hutchinson

Date: 21 December 2022

JUDGMENT SENT TO THE PARTIES ON

.....

.....  
FOR THE TRIBUNAL OFFICE

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