



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Balogun  
**Respondent:** Credentia Foods Ltd  
**Heard at:** East London Hearing Central (by CVP)  
**On:** 13, 14, 15, 16 December 2022  
**Before:** Employment Judge Emery

## Representation

For the claimant: In person  
For the respondent: Mr M Haywood (counsel)

# JUDGMENT

The claims of constructive unfair dismissal and claim of unlawful deduction of wages are well-founded and succeed.

# REMEDY JUDGMENT

The claimant is awarded the following sums:

|                                    |                   |
|------------------------------------|-------------------|
| Basic award:                       | £7,344.00         |
| Loss of statutory rights           | £500.00           |
| Compensatory award                 | £7,359.00         |
| Unpaid paternity pay               | £2,830.45         |
| Loss of pension contributions      | £1,221.90         |
| TURCLA Uplift of 10% on £11,911.35 | £1,191.14         |
| <b>TOTAL AWARD:</b>                | <b>£20,446.49</b> |

# REASONS

## The Issues

1. The claimant alleges that he resigned in response to a series of breaches of contract by his employer, which amount together to a repudiatory breach of contract, entitling him to resign. He alleges he suffered an unlawful deduction from his wages in the failure to pay wages for what he contends was his entitlement to 8 weeks paid paternity leave. The respondent denies all allegations. The issues are:
  - 1.1 Was the Claimant dismissed?
    - 1.1.1 Did the Respondent do the following things:
      - 1.1.1.1 Withhold the Claimant's paternity leave pay, despite the Claimant providing all the requested documents;
      - 1.1.1.2 Contact the Claimant on his work email while he was on leave, knowing he had limited access to his email and that his wife was going into, or due to go into, labour;
      - 1.1.1.3 Fail to give prompt redress to his grievance (Vodafone);
      - 1.1.1.4 Fail to conclude the disciplinary process within a reasonable time (the process started on 14 March 2021);
      - 1.1.1.5 Fail to notify the Claimant of the outcome of the disciplinary process within a reasonable time;
      - 1.1.1.6 Fail to notify the Claimant of the outcome of the disciplinary process at all until the response to his grievance given on 30 November 2021;
      - 1.1.1.7 Refuse to provide the Claimant with an appeal against the grievance outcome;
      - 1.1.1.8 Reaching a decision on the disciplinary matter without holding a hearing, or taking into account his explanation;
      - 1.1.1.9 Only inform the Claimant that the disciplinary allegation had been treated as gross misconduct (implying that a decision or conclusion had been reached that he had committed gross misconduct) in the response to the Claimant's grievance on 31 November 2021;

- 1.1.1.10 Require the Claimant to provide evidence to prove he had been granted 8 week's paternity leave by Vodafone (the transferor) when the Claimant no longer had access to his Vodafone email account;
  - 1.1.1.11 Put the onus on the Claimant to provide proof that he had been granted paternity leave rather than the Respondent obtaining them from Vodafone; [duty to cooperate];
  - 1.1.1.12 Invite the Claimant to a disciplinary meeting on 14 December 2021 in relation to unauthorised absence in respect of the paternity leave authorised by the transferor, despite the Claimant having provided documents on 10 December 2021 to show that the leave had been granted by Vodafone.
- 1.1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:
- 1.1.2.1 whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and
  - 1.1.2.2 whether it had reasonable and proper cause for doing so.
- 1.1.3 Did that breach the duty:
- 1.1.3.1 to pay wages;
  - 1.1.3.2 to time off during a period of annual leave/paternity leave;
  - 1.1.3.3 to provide prompt redress of grievance;
  - 1.1.3.4 to conclude disciplinary process within a reasonable time;
  - 1.1.3.5 of cooperation;
- 1.1.4 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end.
- 1.1.5 Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.

- 1.1.6 Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that they chose to keep the contract alive even after the breach.
  - 1.2 If the Claimant was dismissed, what was the reason or principal reason for dismissal - i.e. what was the reason for the breach of contract?
  - 1.3 Was it a potentially fair reason?
  - 1.4 Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?
2. Remedy for unfair dismissal:
- 2.1 If there is a compensatory award, how much should it be? The Tribunal will decide:
    - 2.1.1 What financial losses has the dismissal caused the Claimant?
    - 2.1.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
    - 2.1.3 If not, for what period of loss should the Claimant be compensated?
    - 2.1.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
    - 2.1.5 If so, should the Claimant's compensation be reduced? By how much?
    - 2.1.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
    - 2.1.7 Did the Respondent or the Claimant unreasonably fail to comply with it?
    - 2.1.8 If so, is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?
    - 2.1.9 If the Claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?
    - 2.1.10 If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion
  - 2.2 What basic award is payable to the Claimant, if any?

- 2.3 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?
3. Unauthorised deductions
  - 3.1 Did the Respondent make unauthorised deductions from the Claimant's wages in respect 6 weeks of his period of paternity leave, how much was deducted?
4. Remedy
  - 4.1 How much should the Claimant be awarded
  - 4.2 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
  - 4.3 Did the Respondent or the Claimant unreasonably fail to comply with it?
  - 4.4 Is it just and equitable to increase or decrease any award payable to the Claimant?
  - 4.5 By what proportion, up to 25%?

## **The Facts**

5. The claimant worked for Vodafone UK Limited as a Senior Store Manager. He had worked for Vodafone since December 2020 at its Lakeside Shopping Centre store. He had ambitions for taking up a franchise with Vodafone as a Vodafone Partner, and he had applied for the same.
6. The claimant was told on 15 March 2021 that he must attend an investigation meeting for a potential gross misconduct issue, that he had credited what appeared to be a family account on two occasions. He attended two investigation meetings on 16 and 18 March 2021. Because of the ongoing investigation, he was told on 30 April 2021 that Vodafone was not going to progress his recruitment as a Vodafone Partner (172).
7. The claimant's partner was pregnant, and the claimant was entitled to paid paternity leave. There was a significant issue in the case about what was his entitlement to paid paternity leave, and whether this transferred under the subsequent TUPE process of the Lakeside store to the respondent.
8. The claimant argues that he was entitled to 8 weeks paid paternity leave, and he argues that he applied for and was authorised 8 weeks paternity leave by Vodafone prior to the TUPE transfer.
9. The Lakeside store was to transfer to the respondent on 1 November 2021. In Vodafone's TUPE transfer information given to the respondent on 11 October 2021, Vodafone provided a paternity leave policy (179). This states that

employees have a contractual entitlement to two weeks paid paternity leave. This policy two weeks policy required 8 weeks' notice to be given by the employee and consent to be given by their manager before the leave could be authorised.

10. The claimant says he gave 8 weeks' notice of his intention to take 8 weeks paternity leave, that his manager at Vodafone, AB, was fully aware of his partner's pregnancy and his desire to take 8 weeks paternity leave.
11. The respondent has not been provided by Vodafone with the claimant's written application for paternity leave. It has provided what the claimant says is an updated application, in which he asked to change the start date of his Paternity leave by one week – from 17 to 25 October 2021 (he was also taking leave before his paternity leave started). It also states he will be taking 8 weeks leave. The claimant submitted this updated form on 22 September 2021 (176-7).
12. A copy of the covering email for this application on the Vodafone HR gateway shows the claimant saying: *"thank you for approving my paternity leave. Can I make a slight adjustment to the start date please... can you please see an updated form..."*. HR respond, saying that *"we have updated your paternity request to 25 October 2021."* (204)
13. HR forwarded this request in its internal system to AB on 23 September saying that this was an updated request *"can you please approve the same here"*. AB's response on 28 September said, *"This can't be approved yet"*; the immediate response from HR is that the change of date *"has been updated already"*.
14. On 15 October 2021 AB emailed HR in response saying that he had *"looked into"* the policy, that the leave should have been approved by him and asking, *"can you please find out how we retract this paternity leave"*, saying he had not been given the minimum 8 weeks' notice required. On 18 October 2021 HR asked whether AB wanted the notice to be rescinded *"Ideally the employee had to discuss this with you before getting it booked by us"*. He was asked to discuss this with the claimant and then inform HR if the leave was to be cancelled. *"In case it has to be cancelled please inform me here and we will get it done."* (277-278).
15. There is no record of AB either speaking to the claimant or informing HR that he had done so, or requesting HR cancel the claimant's Paternity Leave.
16. In a grievance letter on 13 October 2021, the claimant complains about the length of time that the disciplinary process was taking. He also complains that he asked for *"my paternity leave to be moved forward after it had already been approved... which AB delayed approving on purpose..."*. He said the reason it had been delayed was because *"we were scheduled to [TUPE transfer] ... However HR had already approved my eight weeks amended Paternity leave ..."*. He says AB told him that the 8 weeks leave *"would not be transferred ... as this is a Vodafone benefit and the new Partner will only honour two weeks paternity leave"*. The claimant pointed out that his right to 8-week paternity pay transferred under TUPE (181-4).

17. Within 30 minutes of emailing this grievance, the claimant was contacted by Vodafone and told to attend a disciplinary hearing (180). In the event this did not take place – either before or after his employment transferred. While there was a conversation between AB and Mr Sachdeva about the disciplinary issue, after the TUPE transfer Vodafone refused to provide any further details about the disciplinary issue to Mr Sachdeva.
18. The claimant took booked holiday from 17 October 2021 and his paternity leave started on 25 October 2021. At this date, he believed that any delay with his paternity leave was not about his 8 weeks entitlement, but the delay by AB in approving the amended start date for his 8 weeks leave. It was his belief when he started his paternity leave that he had validly booked and was entitled to 8 weeks paid paternity leave. He had not been told that his 8-week leave had been rescinded.
19. The claimant denied in evidence that his original paternity leave request must have been for 2 weeks leave. The limited evidence shows that the claimant had asked for 8 weeks (177), and it was this that was approved and was not rescinded. I accepted the clear evidence of the claimant that his original request for paternity leave was for 8 weeks, that this had been approved, and that he applied to change then start date, which again was approved by HR, as communicated to AB.
20. Prior to the 1 November 2021 transfer, the claimant was contacted by Vodafone when on paternity leave about the grievance, including calls and emails. It was clear by his references to his baby that he believed he was on Paternity Leave, and this was not in any way challenged by Vodafone.
21. Mr Sachdeva spoke to the claimant on 17 November 2021. The claimant told him that the paternity policy given in the TUPE process was out of date. The claimant was asked to “... *advise where the 8 weeks paternity leave came from and provide evidence of approval of it from your previous line manager...*”, to enable him to be paid. Two days later Mr Sachdeva told the claimant that Vodafone “*cannot provide evidence of consent to eight weeks paternity leave. If you have the authorisation ... please provide it.... If you cannot provide this evidence, then it would be treated as absent without permission and liable to a disciplinary process and deduction from pay*” (194).
22. On 25 November 2021 the claimant sent Mr Sachdeva his application for 8 weeks paternity leave, saying that this is all he had as his account had been deactivated. He said the policy was an entitlement to 16-week paternity leave (196).
23. Mr Sachdeva contacted Vodafone HR, who told him on 26 November 2021 that their “*newest policy*” entitled employees to up to 16 weeks paid paternity leave, but that this “*is not contractual under TUPE, however the two-week entitlement is*” (189).
24. Mr Sachdeva emailed the claimant the same day, saying that he had failed to provide evidence the leave had been approved, that the evidence he had “...

*indicates you were entitled to two weeks paternity leave on full pay.” He asked for “written confirmation” from the claimant that his leave had been “... granted. Failing which there can be no alternative to conclude that you are and have been absent without leave since 15 November 2021...”*

25. On 2 December 2021 the claimant provided a picture to Mr Sachdeva of the HR portal screen showing HR’s message to the claimant that his paternity leave had been “updated” to 25 October 2021 (204).
26. On 6 December 2019 AB informed Mr Sachdeva that the claimant’s paternity leave had not been approved by himself “*which is the process*”, that he had not given 8 weeks’ notice; “*I only found out his wife was pregnant a few weeks before him going off.... He just booked this on Vodafone’s HR system and then requested a date change.*” He reiterated that the 8-week leave was not contractual (207).
27. On 9 December 2019 Vodafone HR confirmed to the claimant that “*we have booked 8 weeks of paternity leave effective 18 October 2021 for you in the system.*” The claimant forwarded this to Mr Sachdeva (212).
28. The claimant’s grievance was dealt with by Vodafone. On the paternity pay issue, he was told that he had not sought approval from his line manager and that HR had requested this from AB, “*which he was not in a position to approve due to [the claimant] moving across under [TUPE] and therefore the request was rejected.*” (203). He was also told that the delay in the disciplinary process was because of the covid lockdown.
29. On 11 December 2021 the claimant was informed that he was required to attend a disciplinary hearing on 17 December 2021 “*to discuss your unauthorised absence*”; that he had failed to provide evidence that his leave had been approved, “*your request had not been formally approved*” by AB (214). The claimant responded, saying that he was still on paternity leave until 19 December.
30. The claimant resigned on 20 December 2021 with immediate effect, saying he had been treated unfairly, his income had been jeopardised, he had been made to work throughout his paternity leave, he said his pay was being deducted because his paternity leave was classed as “*not authorised*”. He said he had no access to his Vodafone emails. He said that the issues had caused “*a great deal of stress*” during his paternity leave, including the disciplinary threats. “*... I have been made to feel that my job is untenable*”. He said he had no other choice but to leave with immediate effect.
31. Thereafter, the claimant did attend a grievance hearing, his grievance was dismissed on the basis he had not followed the correct process to apply for his paternity leave.

## **Submissions**

32. Mr Haywood provided a written submission and spoke to it. He argued that the claimant could not show a repudiatory breach of contract by the respondent, as



it has acted reasonably in considering that the claimant had breached its processes in taking unauthorised leave.

33. He argued that the claimant received his contractual entitlement to 2 weeks paternity leave, and he cannot show that his leave had been authorised,
34. If there was an error it was a genuine error by the respondent, which was trying to reconcile two conflicting accounts between the claimant and Vodafone, and this cannot amount to a breach of contract.
35. The claimant resigned because he had lost pay, and for nothing else, there is express reference to his financial interests being jeopardised. No other issue, including the Vodafone grievance, is relevant to his resignation.
36. The respondent acted reasonably and properly, a Malik exception, if an employer has “good reason” to behave in a particular way, this may not amount to a repudiatory breach.
37. Mr Hayward accepted that the unlawful deductions claim will succeed, if the claim for constructive dismissal succeeds.

## **The law**

38. Employment Rights Act

s95 Circumstances in which an employee is dismissed.

- (1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) F1. . . , only if) –
  - (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.

s98 General

- (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.
39. ‘*Western Excavating (ECC) Ltd v Sharp* [1978] QB 761, [1978]: there is a difference between the contractual test for breach of contract and the reasonableness test in unfair dismissal. The test for ‘breach of contract’ dismissal has been developed as follows:

- a. There must be an actual breach of contract (or an anticipated breach) by the employer.
  - b. This must be a serious breach – enough to justify an employee resigning – or the last in a series of breaches.
  - c. The employee must resign in response to this breach – if it is found that the employee left for an unrelated reason (for example for a new job with more money) the claim will fail.
  - d. The employee must not delay resigning for too long; this may lead to the employee having ‘accepted’ what has happened, meaning there is no longer any breach of contract.
40. *Malik v Bank of Credit and Commerce International SA* [1997] IRLR 462 - the duty of trust and confidence:
- "The employer shall not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."*
41. *Baldwin v Brighton and Hove City Council* [2007] IRLR 232: from the *Malik* test, 'likely' is sufficient on its own, it is not necessary in each case to show a subjective intention on the part of the employee to destroy or damage the relationship.
42. *Leeds Dental Team Ltd v Rose* [2014] IRLR 8, EAT
- "The test does not require a Tribunal to make a factual finding as to what the actual intention of the employer was; the employer's subjective intention is irrelevant. If the employer acts in such a way, considered objectively, that his conduct is likely to destroy or seriously damage the relationship of trust and confidence, then he is taken to have the objective intention spoken of..."*

## Conclusion on the facts and the evidence

43. The further particulars at page 77 show that the claims against the respondent are:
- a. constructive dismissal – a last straw and repudiatory breach argument
  - b. withholding paternity pay, in circumstances where he had provided proof
  - c. loss of wages
  - d. contacting him during paternity leave on work email when work was ongoing
  - e. the respondent stating that his leave was not granted, when it had been approved

- f. TUPE related failures relating to the March 2019 disciplinary case including decision to treat it as a gross misconduct and a failure to inform of outcome in a reasonable timescale
  - g. Inviting him to a disciplinary hearing, calling his absence unauthorised, despite proof being provided to R
  - h. Failure to follow a fair process on grievance including failure to appeal
44. The claimant asserts that he told his employer (AB) that he wanted to take paternity leave on the birth of his child. His evidence is that this conversation happened on 18 August 2021 (87). While not giving evidence, I understand that AB's position is that this conversation never happened.
45. I accept that this conversation did happen, for the following reason: it would be absurd for the claimant, an experienced manager with the respondent, not to give any indication to his own manager that his wife was pregnant, and he wanted to take 8 weeks paternity leave. I accept that the claimant may not have given precise dates to his manager at this time.
46. The claimant says after this conversation he filled in the HR paternity leave form and sent it to HR. No evidence has been provided about this form. I accept that Vodafone may have access to this document, but it has not been disclosed.
47. I accept that the claimant submitted the application with a covering email, and that he received an email from HR to confirm this – and I accepted this. Again, there has been no disclosure by the respondent or Vodafone of this email.
48. The claimant updated his request for 8 weeks paternity leave, and this was updated on the HR system, the claimant was informed of this. The claimant as never told this leave was rescinded.
49. Therefore, on the date he transferred to the respondent, the claimant was both on paternity leave and this leave had not been cancelled, despite HR informing AB how to seek to do so. It follows that the claimant's right to 8 weeks paid paternity leave transferred to the respondent under the TUPE provisions. This was his contractual right at the date of transfer.
50. To be clear, I concluded that at the date of transfer, Vodafone was clearly aware that the claimant believed he was entitled to the 8 weeks paid paternity leave.
51. I accepted that the respondent was inadvertently involved in an issue about which it had little knowledge. But I also accepted that as the employer of an employee who had transferred to it under TUPE, the respondent was saddled with the decision of Vodafone to grant the paternity leave and Vodafone's failure thereafter to address any concerns it may have had over the claimant's process in booking paternity leave.
52. Mr Sachdeva was not assisted with Vodafone's failure to provide all records to him, for Vodafone to wrongly assert that a discretionary entitlement to paternity

leave did not transfer under TUPE, and Vodafone's failure to confirm that the claimant's 8-weeks paternity leave had, in fact, been booked and not rescinded.

53. The reference to the leave not being 'authorised' by AB: again this is misleading information provided by Vodafone, because at no time did AB take the steps to cancel the leave which had been granted to the claimant. But this comment suggested, wrongly, that the claimant was not entitled to this time off work; again, Mr Sachdeva was not told that the leave had been booked and had not been rescinded.
54. The disciplinary investigation hearing: the claimant was unformed this was to discuss his "*unauthorised absence*", he had failed to provide any evidence that the 8 weeks paternity leave had been approved. He had pay deducted from him.
55. The resignation letter is quite clear: the main issues of concern to the claimant, and were I concluded the reason he resigned were:
  - a. the respondent's failure to pay paternity pay
  - b. the reason the respondent gave for this – that it was not authorised
  - c. the disciplinary threats
  - d. being made to work at home, a reference to his being asked to provide his evidence to prove his entitlement to paternity leave and pay while on paternity leave.
56. I concluded that these things happened: the respondent failed to pay the claimant a contractual entitlement to 8 weeks paternity pay, he was wrongly told it was not authorised, and he was emailed during his paternity leave to prove his entitlement despite being locked out of Vodafone's systems. Whatever proof he provided was disregarded and he was told that he was subject to a disciplinary investigation.
57. I accepted that the respondent wanted to get to the bottom of the issue, that it was faced with completely contradictory information. But the genesis of this issue commenced during his employment with Vodafone, and the issue, and the liability of the employer, transferred to the respondent.
58. The fact that some of the information relied on was wrong does not change the fact that the respondent became liable for the acts of Vodafone which occurred pre-transfer and which continued thereafter. Prior to transfer AB queried the leave but did not take steps to cancel it before the transfer but continued to assert after the transfer that the claimant was not entitled to it. Vodafone failed to provide accurate information on the claimant's contractual entitlement to 8 weeks paternity leave.
59. I concluded that it was a breach of contract with withhold paternity pay. Again, the respondent is fixed with the knowledge of Vodafone that the leave had been booked and not cancelled, and Vodafone knew the claimant believed he was

taking his leave as booked. In this circumstance it amounts to a breach of a failure to pay contractual sums without a good reason for doing so.

60. I concluded it was a breach of contract to commence a disciplinary process; again the claimant was not absent without good reason, he had booked and been granted the leave and it has not been rescinded. While AB may have been unhappy about this, by not rescinding it he had de-facto authorised it. Again, the respondent is fixed with Vodafone's knowledge of the continuing issue at the date of transfer. In this circumstance it was clearly a breach of contract to discipline someone when the respondent had no good cause to do so. The issue is not what the respondent reasonably believed, as it is fixed with Vodafone's knowledge.
61. I concluded therefore that there were two specific breaches of contract – the failure to pay wages and the decision to constitute a disciplinary process.
62. The overarching issue is that this conduct also breached the requirement for trust and confidence. This clearly is not a case whether the respondent "calculated" to act in a way to seriously damage the relationship. However, the decision not to tell the claimant his leave was not authorised – when it clearly was; the decision to start a disciplinary investigation when one was unwarranted; the decision not to pay the claimant his contractual entitlement to paternity pay, amounted individually and cumulatively to conduct which was likely to, and did, destroy or seriously damage the relationship of confidence and trust between employer and employee.
63. I also accepted that the breaches were sufficiently important to justify the claimant resigning; clearly the claimant was faced with trying to prove an entitlement when Vodafone was not providing the respondent with the correct information which was that the leave had been booked and had not been rescinded. He had suffered a loss of pay and an unwarranted disciplinary process. All these factors are sufficiently serious to justify the claimant's resignation.
64. I also accepted that the clear evidence is that the claimant resigned because of these breaches, as his resignation letter says.
65. The claim of constructive unfair dismissal succeeds.
66. The claim of an unlawful deduction of wages succeeds, as the respondent failed to pay the claimant his contractually agreed wages for 5 weeks of his paternity leave and it had no lawful reason to do so.

## **Remedy**

67. The respondent accepted that the claimant had mitigated his losses in gaining a job within 3 months of his resignation. The only issue in evidence was what paternity leave he had received prior to his resignation. His evidence was that he received 3 weeks paternity pay, that he was paid 1 week's paternity pay

prior to the transfer and two weeks' paternity pay, to 14 November 2021, by the respondent. I accepted this evidence.

68. The claimant claimed a 10% uplift for a failure to follow fair disciplinary and grievance processes. The respondent invited no uplift, the claimant's resignation came prior to any process starting. Vodafone's efforts to deal with the prior disciplinary and the grievance were genuine. Mr Balogun argued that the disciplinary process and the grievance processes "... *did not follow through anything*". He said that the paternity leave issue was not properly investigated.
69. Mr Haywood referred to the 4-step process in Slade and Briggs; he argued that it was not just and equitable to make an uplift.
70. I concluded that that there were breaches of the ACAS Code of Practice on Disciplinary and Grievance Procedures. The Code states at

Paragraph 3:

Where some form of formal action is needed, what action is reasonable or justified will depend on all the circumstances of the particular case. Employment tribunals will take the size and resources of an employer into account when deciding on relevant cases and it may sometimes not be practicable for all employers to take all of the steps set out in this Code.

Paragraph 5:

Establish the facts of each case. It is important to carry out necessary investigations of potential disciplinary matters

(my underline)

71. I concluded that there was a failure on the part of the respondent, fixed with the knowledge of Vodafone, to consider whether the action it was considering was reasonable or justified. I also concluded that there was a failure to properly establish the facts of the case before concluding that there as a potential disciplinary issue. There had been no proper investigation before a decision to effectively sanction the claimant by failing to pay his paternity pay, and in treating his absence as unauthorised. I accepted the claimant's contention that, in these circumstances, there was a failure to follow the Code. I accepted that it was just and equitable to make an award.
72. Taking into account the size of the award, and the need for proportionality, I accepted that a 10% uplift was appropriate.

### Award calculation

73. Basic award:

11 years employment: aged 46 at date of resignation.

6 x 544 x 1                      £3264

5 x 544 x 1.5:                      £4080

|     |   |                   |
|-----|---|-------------------|
|     |   | <b>£7,344.00</b>  |
| 74. | Loss of statutory rights                      | <b>£500.00</b>    |
| 75. | Paternity pay (unlawful deduction from wages) |                   |
|     | Net monthly pay at Vodafone: £2453.06         |                   |
|     | x 5 weeks (£2453.16 x 12/52 x 5)              | <b>£2,830.45</b>  |
| 76. | Compensatory award                            |                   |
|     | Net monthly pay at Vodafone: £2453.06         |                   |
|     | x 3 months                                    | <b>£7,359.18</b>  |
| 77. | Employer's pension contributions (10%)        |                   |
|     | Paternity pay period – 5 weeks - £339.42      |                   |
|     | Notice pay period £294.16 x 3 months -£882.48 |                   |
|     |   | <b>£1,221.90</b>  |
| 78. | ACAS Uplift on compensatory award             |                   |
|     | £11,911.35 @ 10%                              | <b>£1,191.14</b>  |
|     | <b>TOTAL</b>                                  | <b>£20,446.49</b> |

**Employment Judge Emery  
Date: 03 February 2023**