EMPLOYMENT TRIBUNALS

Claimant: Mrs Y Wright

Respondent: Deltec industries Limited

Heard at: **Manchester** **On:** **31 October 2022, 1 and 29 November 2022**

Before: **Employment Judge Leach**

Representation
Claimant: Mr Sangha (counsel)
Respondent: Ms Afriyie (Consultant)

JUDGMENT having been sent to the parties on 1 December 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

JUDGMENT - REASONS

Introduction

1. The claimant was dismissed from her employment with the respondent. She brings a complaint of unfair dismissal.

2. A complaint of unauthorised deduction from wages was dismissed on withdrawal by the claimant.

The issues

3. The issues for determination at this hearing were identified and agreed at the beginning of the hearing. They are set out below.

Unfair dismissal

1. What was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the

Employment Rights Act 1996 ("ERA")? The respondent asserts that it was a reason relating to the claimant's conduct

2. If so, was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the respondent in all respects act within the so-called 'band of reasonable responses'?

3. If the claimant was unfairly dismissed and the remedy is compensation:

3.1 What adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would still have been dismissed had a fair and reasonable procedure been followed and/or would have been dismissed in time anyway? See: Polkey v AE Dayton Services Ltd [1987] UKHL 8;

3.2 would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to ERA section 122(2); and if so to what extent?

3.3 did the claimant, by blameworthy or culpable actions, cause or contribute to dismissal to any extent; and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award, pursuant to ERA section 123(6)?

3.4 Should any increase or decrease be made to the compensation payable to reflect a failure by either party to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures, pursuant to s.207A Trade Union and Labour Relations (Consolidation) Act 1992?

The hearing

4. The hearing was by CVP. Connections worked well and a fair hearing was possible.

5. At the beginning of this hearing it was noted that the response form included an employer's breach of contract claim. This had not been processed by the tribunal.

6. Mr Sangha confirmed that the claimant's claim form did include a claim for notice and that this had been brought under the Tribunal's breach of contract jurisdiction.

7. Whilst neither party had raised any issue about the breach of contract claim not having progressed, or provided any evidence in support of/defence of the claim I noted that the claim had been validly presented and therefore the respondent was entitled

to proceed with the claim should it wish. Miss Afriyie took instructions and confirmed that the respondent wanted to proceed with the claim in the Tribunal.

8. Neither party wanted to then postpone this hearing (which had been listed for some time) and it was agreed that the breach of contract complaint would be dealt with separately and subsequent to the unfair dismissal complaint. The claimant would be served with the claim and would have an opportunity of submitting her response to it.

9. I am grateful to both parties for their pragmatic approach which ensured good use of the 2 days that this case was initially listed.

10. The respondent called 4 witnesses (as listed below) and we were only able to get through the respondent's evidence on 31 October and 1 November 2022. Again, with the cooperation of the parties, we were able to list the unfair dismissal hearing for a third day, 29 November 2022. We then heard from the claimant and heard submissions. I provided my decision at the end of the third day.

11. The following people gave evidence:-

11.1 Karen McGregor: Director of and shareholder in the respondent (KMcG)
11.2 Thomas France, KMcG's partner and the person who chaired the final disciplinary hearing (TF)
11.3 Glen Jenkinson (GJ)
11.4 Louise Morley, Finance Manager (LM)
11.5 Michelle Rostron (MR)

12. A file (bundle) of documents had been prepared for use at this hearing. Page numbers below are references to this bundle.

Findings of fact.

13. Set out below are my findings of relevant facts applicable at the times relevant to this claim.

The respondent

14. The respondent is a manufacturer, importer and seller of tools. It was set up by Mr Dell, father of Karen McGregor. Whilst Mr Dell was at all relevant times a director of the respondent company, he no longer played any part in its day-to-day operation.

15. The respondent has a small workforce of about 14, divided between the production workshop (about 6 employees), stores (about 2 employees) office (about 6 employees).

16. KMcG took over the running of the respondent from her father. However by 2018, she decided to pursue other business opportunities. She took a step back from the respondent and asked the claimant to step up to the role of office manager.

17. There was little by way of handover. The claimant had by then worked at the respondent for some time. She was however shown how to make orders from overseas suppliers, principally in China

18. I accept the claimant's evidence that KMcG's decision was not announced or signposted in advance. In 2018 when the claimant returned from annual leave KMCG was absent and would be for some time.

19. There were gaps in effective communication at the respondent. A stark example here is the monthly management/financial reporting that KMcG received from 2018 onwards. Whilst it is apparent from this Tribunal that significant responsibilities were placed on the claimant, she was not a recipient of the monthly finance reports. Similarly the finance manager who put them together, was not given access to certain finance accounts, relying on the claimant to provide access to statements or balances. I accept what the claimant says, it was not within her gift to widen those communication lines.

The claimant.

20. The claimant stated working for the respondent in 2007 as an office administrator. She worked closely with KMcG and they got to know each other well. KMcG had sufficient confidence in the claimant to ask her in 2018 to take over those operational responsibilities that she had looked after.

21. The claimant was also provided with an employment contract in 2018 (pages 43-54). It was a template contract for a senior employee. However it did not provide an annual salary amount. The claimant continued to be paid on an hourly basis - £14.33 an hour, rising to £14.76 an hour in 2021, the date of her dismissal. Whilst clauses in her contract indicated work without additional remuneration (a clause more familiar with a salaried position) KMcG told me in her evidence that the claimant would be paid for every hour she worked.

22. The claimant's contract was vague about her duties. Clause 1.1 of the contract provided as follows

"the Company will employ you as office manager. You will be required to undertake any such duties under responsibilities as may be determined by the Company from time to time. The Company reserves the right to vary your duties and responsibilities at any time and from time to time according to the needs of the Company's business."

23. For the 18 months or so before the first coronavirus lockdown, no issues arose in relation to the claimant's management of the business. I conclude that it was "business as usual" and that the business was predictable and healthy.

<u>March 2020</u>

24. The first Covid lockdown had a huge impact of the respondent's operation. Production stopped and work in the office stopped. Employees were placed on furlough. Notwithstanding that the terms of the Furlough scheme when introduced did

not permit beneficiaries of the scheme to undertake any work for their employer, , the claimant continued to carry out some work. This was mainly limited to simply being a contact for any customers or suppliers, ensuring a personal contact if only to tell a customer or supplier that the business was closed.

25. There was little acknowledgement in the respondent's evidence of the impact that Covid inevitably had. During the lockdowns, orders from customers and to suppliers effectively stopped.

26. As employees had been on paid furlough and a government business loan had been obtained, the respondent appeared in a relatively healthy state at the end of the first lockdown and the ordering of stock resumed.

March 2021

27. At the end 2020 and beginning of 2021, another lockdown occurred. This also impacted on the respondent's business. It ended on 31 March 2021.

28. It is not in dispute that the claimant did not place any orders for stock from reopening until prior to her suspension on 26 May 2021. I accept that she was concerned to ensure that the respondent business had sufficient funds to pay for the deposit and then, some 3-4 months later, the full price for orders.

29. Stock was bought in dollars from suppliers internationally. The respondent had a dollars account called a Capitex account. In mid-May 2021 the claimant asked the respondent's finance manager (LM) about buying a tranche of dollars - £20,000 - particularly noting the exchange rate was reasonable. Those funds were made available and the dollars were bought and deposited. The claimant was intending to use these funds to make stock purchases and for no other purpose.

30. In late May KMcG became concerned about the state of the respondent's business. She built up a long list of concerns, as allegations against the claimant. She did this without speaking with the claimant, without raising her concerns, without a meeting with the claimant to discuss the business, without issuing any instructions to the claimant.

31. In her evidence at the Tribunal KMcG said that she would frequently contact the claimant to make sure all was OK with the business. The claimant's evidence was different on this – that there was little contact with KMcG and when there was it was about matters that were unrelated to the respondent's business. She gave examples of emails from KMcG asking about sending parcels relating to her other businesses and then ending with a line – asking how everyone is or something similar. That was reasonably seen by the claimant as a friendly hello type gesture/comment and not a genuine query in to the progress of the respondent business.

32. I have not seen any reference to KMcG's alleged regular contact in either the bundle or witness statements. There is no reference to it in the disciplinary hearing notes. It was not put forward in evidence this final hearing. I prefer the claimant's evidence.

The claimant's suspension.

33. In May 2021, KMcG was contacted by MR and LM who told her of their concerns that the business did not have enough stock in order to meet sales expectations. Neither spoke with the claimant first about their concerns. Their decision was not to do this but to speak directly with KMcG.

34. KMcG then went in to the business (without the claimant knowing) and carried out some limited investigation. As a result of this she identified what she considered to be 15 or so deficiencies, She decided the claimant was to answer for all of them. She listed them in a letter inviting the claimant to a disciplinary hearing. There was some confusion about what letter was provided to the claimant and the correct letter was added to the bundle during the hearing. It is numbered page 260. KMcG put this letter together with assistance from the Federation of Small Businesses (FSB).

35. Another letter was also drafted, suspending the claimant (page 125).

36. Having prepared these letters, KMcG told the claimant that she was coming into the business on 26 May for a "catch up." This catch-up meeting was a meeting for KMcG to tell the claimant she was being suspended and to provide her with the prepared letters. There was no attempt to "catch up," to discuss various concerns with the claimant to establish whether there was any cause for concern. Further, I accept the claimant's evidence that on her arrival at the office on that day, she found that her desk had been cleared.

37. The respondent did not make any notes of the suspension meeting. The claimant made a note the following day (page 126). I find that note to be an accurate summary of the meeting.

38. The respondent has criticised the claimant for "storming out" of the meeting. She did not storm out. She went to retrieve office keys and a password book because that is what the suspension letter directed her to do. She then returned with these.

39. The respondent has criticised the claimant for not answering questions at the meeting. The claimant was asked some questions but this was seconds after she had been handed the suspension letter and was in the course of reading it. The claimant was not provided with an opportunity later in the meeting and once she had been able to digest what was happening to her, to engage in a discussion about KMcGs concerns which led to her making the various allegations.

40. The suspension letter referred to a period of investigation. In this meeting, the claimant was also handed the letter inviting her to a disciplinary hearing (page 259-260, see above) and setting out the allegations of misconduct. In the light of this, the reference in the suspension letter to a process of investigation is difficult to understand.

41. KMcG's evidence is that this was a meeting to discuss the concerns that she had about the claimant's performance. I do not accept this but even if it was, then her management of that meeting was flawed. The claimant was provided no proper opportunity to discuss KMcG's concerns about the business.

42. The respondent has criticised the claimant's conduct at this meeting. I have no criticisms. She was undoubtedly upset. She sought to remain composed, do what the suspension letter instructed her to do.

43. This letter lists 15 so called allegations. Some are in the form of questions. For example, allegation 8 "*Checking buying prices ie Screwdriver sets purchased for £3.15 are being sold to Fyfes for £3.71. Why?"*

44. Without being asked to do so (but understandably, given what was being alleged against her) the Claimant provided her written response to the 15 items (pages 129-133). No investigation meeting was set up to discuss the claimant's responses. The respondent moved to (what transpired to be) a first disciplinary meeting but now with 5 allegations made against the claimant. (Page 123). These 5 allegations are described in the disciplinary invitation meeting in very broad/vague terms as follows:-

1. *Change of procedures*
2. *Management structure*
3. *Working from home 'in' your own 'time' comment on point-3 of the response, more information is needed*
4. *Job roles*
5. *No Stock ordering*

The First Disciplinary Hearing

45. This took place on Tuesday 1 June 2021.

46. The claimant attended that meeting having handed in her written answers and ready to provide responses to questions put, now about the reduced, vague list of allegations noted above.

47. I do not accept as accurate the account of this meeting that KMcG gave in her witness evidence. See para 13 of her witness statement when she refers to the claimant as refusing to communicate for example. The claimant communicated fully. The meeting was recorded with the consent of attendees and I have the benefit of the agreed transcript.

48. The first disciplinary hearing ended with no outcome.

The Second Disciplinary Hearing.

49. Following the first hearing, the respondent decided to change the person responsible for hearing and deciding on the allegations against the claimant. TF took over. I accept this was a surprise to the claimant. She know TF was KMcG's relationship/life partner but did not regard him as involved in the business. I accept the claimant's account that she had not seen him attend work there (or being involved in the respondent business) for a couple of years although he did remain on the payroll.

50. Having heard from TF, read the transcript of this second hearing and the outcome letter, I find that the part TF played was to finish was what effectively KMcG's decision. He started his involvement heavily influenced by KMcG. He relied on the version of events to date that she had told him. In his evidence, TF said that the claimant had admitted to making changes to the stock ordering procedure. Having also heard from the claimant and reviewed the notes, I find that no such admission was made. In fact when put to her that she had changed the process, she flatly denied it (appeal meeting transcript at page 168).

51. The following passage at the end of KMcG's witness statement is very telling:

> *"I was disappointed with Yvonne's behaviour and the fact that she did not accept that she was at fault. I could not trust her with the running of the business any longer. I concluded that she had broken the trust between her and Deltec. For that reason I terminated her contract of employment with Deltec."*

Yet, the respondent asks me to accept that the decision to dismiss the claimant was TFs decision and KMcG did not influence it.

52. I do not accept (as is alleged) that the claimant was not interested in cooperating at the second disciplinary hearing. The claimant was very keen to get across her side. She did so forcefully at times, but in doing so she was ensuring she played a full part in the disciplinary hearing process.

53. The disciplinary outcome was to dismiss the claimant. The reasons for dismissal differed again. They are in the version of the dismissal letter at page 177.

> 53.1 *Changing business practices that had been in place for years.* This was a reference to the claimant not having placed a stock order in 2021.
> 53.2 *Due to low stock levels authorising stock items to be made in the factory which resulted in financial loss.*
> 53.3 *Inability to perform at a managerial level.* The only specifics here relate to the stock ordering and factory order sheets.
> 53.4 *Dishonest behaviour – resulting in directors being unaware of all issues discovered throughout this investigation*. No specifics were provided. It became apparent during this Tribunal hearing that this was a reference to the claimant telling KMcG that all was fine or similar.

54. It became apparent during this Tribunal hearing that the principal complaint that the respondent had was the absence of stock orders between 1 April and 26 May 2020. Effectively 3 of the 4 dismissal reasons relate to that. The other reason relates to a decision to instruct the production workforce to produce certain items that would be sold albeit possibly for a small loss but nevertheless ensured that the production workforce was productively engaged following their return to work.

55. The claimant decided not to appeal. Her evidence (which I accept) was that she genuinely believed at the time that it was obvious that KMcG wanted the claimant

removed from her post from 26 May 2021, when she attended work to find her desk cleared and her being given a long list of disciplinary allegations.

The Law

Unfair dismissal, misconduct.

56. In a case such as this, a respondent bears the burden of proving, on the balance of probabilities, the reason why it dismissed the claimant and that the reason for dismissal was one of the potentially fair reasons stated in s98(1) and (2) ERA. If the respondent fails to persuade the Employment Tribunal that it had a genuine belief in the reason and that it dismissed the claimant for that reason, the dismissal will be unfair.

57. The reason for dismissal is a set of facts known to the respondent or a set of beliefs held by it, which caused it to dismiss the claimant.

58. If the respondent does persuade the Employment Tribunal that it held that genuine belief and that it did dismiss the claimant for one of the potentially fair reasons, the dismissal is only potentially fair. Consideration must then be given to the general reasonableness of that dismissal, applying section 98 (4) ERA.

59. Section 98 (4) ERA provides that the determination of the question of whether a dismissal is fair or unfair depends upon whether in the circumstances (including the respondent's size and administrative resources) the respondent acted reasonably or unreasonably in treating misconduct as a sufficient reason for dismissing him. This should be determined in accordance with equity and the substantial merits of the case.

60. In considering the question of reasonableness of a dismissal, an Employment Tribunal should have regard to the decisions in **British Home Stores v. Burchell [1980] ICR 303 EAT; Iceland Frozen Foods Limited v. Jones [1993] ICR 17 EAT; Foley v. Post Office, Midland Bank plc v. Madden [2000] IRLR 827 CA** and **Sainsbury's Supermarkets v. Hitt [2003] IRLR 23** ("Sainsbury).

61. In summary, these decisions require that an Employment Tribunal focuses on whether the respondent held an honest belief that the claimant had carried out the acts of misconduct alleged and whether it had a reasonable basis for that belief having carried out as much investigation into the matter as was reasonable. A Tribunal should not however put itself in the position of the respondent and decide the fairness of the dismissal on what the Tribunal itself would have done. It is not for the Tribunal hearing and deciding on the case, to weigh up the evidence and substitute its own conclusion as if the Tribunal was conducting the process afresh. Instead, it is required to take a view of the matter from the standpoint of the reasonable employer.

62. Part of a fair process is to abide by the basic principles of natural justice – to ensure the claimant knows what is alleged, to provide an opportunity for her response to those allegations to be heard and to consider matters in good faith.

63. The function of the Tribunal is to determine whether, in the circumstances, the respondent's decision to dismiss the claimant fell within the band of reasonable

responses. This band applies not only to the decision to dismiss but also to the procedure by which that decision was reached.

64. I also note (and have taken account of) the ACAS Code of Practice on Disciplinary and Grievance Procedures and the ACAS Guide on Discipline and Grievances at work 2015. I note particularly the following extracts:-

From the Code

> "*9. If it is decided that there is a disciplinary case to answer the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence which may include witness statements with this notification*
>
> *……...*
>
> *"21. A first or final warning should set out the nature of the misconduct or poor performance and the change in behaviour or improvement in performance required (with timescale). The employee should be told how long the warning will remain current. The employee should be informed of the consequences of further misconduct or failure to improve performance within the set period following a final warning. For instance, that it may result in dismissal or some other contractual penalty such as demotion or loss of seniority.*
>
> *22. A decision to dismiss should only be taken by a manager who has the authority to do so. The employee should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.*
>
> *……..*
>
> *"26 where an employee feels that disciplinary action taken against them is wrong or unjust they should appeal against the decision. Appeals should be heard without unreasonable delay and ideally at an agreed time and place. Employees should let employers know the grounds for their appeal in writing."*

From the Guide

> *The opportunity to appeal against a disciplinary decision is essential to natural justice and appeals may be raised by employees on a number of grounds for instance new evidence, undue severity or inconsistency of the penalty. The appeal may either be a review of the disciplinary decision or a rehearing depending on the grounds of appeal.*
>
> *An appeal must never be used as an opportunity to punish the employee for appealing the original decision and it should not result in any increase in penalty as this may deter individuals from appealing."*

65. When determining compensation for unfair dismissal, employment tribunals must apply s123 ERA

> *"s123(1) ….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.*
>
> *….*
>
> *S123(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."*

66. Compensation is reduced under just and equitable principles under s123(1) in 2 broad categories of cases:-

(1) Where the employer can show that the employee was guilty of misconduct which would have justified dismissal, even if the employer was not aware of this at the time of the dismissal.

(2) Where it is just and equitable to apply a "Polkey" reduction (applying the case of **Polkey v. AE Dayton Services Limited [1988] AC 344)**.

Both categories potentially apply here.

67. Provisions providing for an adjustment to the basic award are at section 122(2) ERA which requires a tribunal to reduce the amount of a basic award where it is just and equitable to do so, having regard to the claimant's conduct before the dismissal.

Conclusions

1. Did the respondent honestly believe in the claimant's misconduct?

68. I find that it did not. These are my reasons.

68.1 The respondent asks me to find that the decision maker is TF. I do not accept that. He was simply asked to finish the process that his partner had begun and which would inevitably lead to the claimant's dismissal. It is very telling that KM's statement ends with the conclusions noted above. TF was influenced to such an extent that his decision was not genuine. Even before TFs involvement (and probably well before) and before the final reasons for dismissal were formulated, KMcG had decided that the claimant would be dismissed.

68.2 I also accept Mr Sangha's submission that TF has asserted an admission by the claimant that she had changed the stock ordering procedure. She did not make such an admission. Even if (which I do not find) TF had a genuine belief, it was not held on reasonable grounds.

68.3 It is also clear from the evidence that TF (and KMcG before him) paid little (if any) regard to the extensive work carried out by C in explaining the position. See para 13 of KMcG's statement. see also TF questions in the second disc hearing.

69. A crucial part of a reasonable investigation is to receive the claimant's explanation and to consider objectively what the claimant has to say. That did not happen in this case.

70. Also and crucial to an employee accused of misconduct, being given a chance to provide an explanation of events/conduct is to set out clearly what it is that the employee needs to answer. The claimant had answered extensively the initial 15 allegations. Those vague allegations later set out in the invite to the second disciplinary hearing do not provide the claimant with much chance of understanding what precisely is alleged.

71. The reason for dismissal also mentions matters not put to claimant in such a way that she could understand what was alleged. Specifically, the allegation of dishonesty. We learned that this was an allegation that claimant, when asked allegedly on numerous occasions about the respondent business, that she responded by saying everything was fine. Further, dishonesty was <u>not</u> one of the vague allegations of misconduct put in the second invite letter (see para 44 above). The respondent could not have honestly believed the claimant had been dishonest. If it did so, that belief was not based on any reasonable grounds.

2. If so, was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the respondent in all respects act within the so-called 'band of reasonable responses'?

72. The respondent did not act within the so-called band of reasonable responses.

.

72.1 No reasonable employer could, on the evidence available and process followed, have reached a decision that the allegations were proven – see my conclusions above.

72.2 There was a conscious decision made by the claimant to delay stock ordering for a short period of time (April and May 2021). It is not clear that the claimant was expected to engage in a different strategy. The claimant was not told. As noted in my findings of fact, there was poor communication in the business. Had the respondent wanted the claimant to adopt a particular strategy then it should have told her. The respondent had faced an unprecedented trading time (like many other businesses) through the pandemic. The claimant acted to the best of her abilities and in what she believed were the interests of the business.

72.3 KMcG and others may have disagreed with the claimant's strategy but that was a matter for discussion and, if necessary, taking out of the claimant's hands, for board to make decisions and to communicate that strategy to the

claimant. When she found out the claimant was not acting as she would want her to, she could and should have instructed the claimant to act differently.

3. *If the claimant was unfairly dismissed and the remedy is compensation:*

   3.1 What adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would still have been dismissed had a fair and reasonable procedure been followed and/or would have been dismissed in time anyway? See: Polkey v AE Dayton Services Ltd [1987] UKHL 8;

   3.2 would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to ERA section 122(2); and if so to what extent?

   3.3 did the claimant, by blameworthy or culpable actions, cause or contribute to dismissal to any extent; and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award, pursuant to ERA section 123(6)?

   3.4 Should any increase or decrease be made to the compensation payable to reflect a failure by either party to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures, pursuant to s.207A Trade Union and Labour Relations (Consolidation) Act 1992?

73. I have decided that a fair procedure would not have resulted in the claimant's dismissal. It would not be appropriate therefore to make any adjustment to the compensation payable on this basis.

74. I have also decided that the claimant did not, by blameworthy or culpable conduct, contribute to her dismissal. She acted to the best of her abilities and in a way she believed to have been in the interests of the respondent business. KMcG decided that the business should adopt a less cautious approach. That does not make the claimant's actions wrong, let alone as actions contributing to her dismissal.

75. Finally, regarding the ACAS Code and potential adjustment to any award made. The claimant did not appeal. However the respondent's purported decision maker was not fair or impartial. There are some failings on both sides and I have decided that it would not be appropriate to make any adjustment (up or down) to any award payable.

Employment Judge Leach
Date: 7 March 2023

REASONS SENT TO THE PARTIES ON
9 March 2023

FOR THE TRIBUNAL OFFICE

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