RESERVED JUDGEMENT

EMPLOYMENT TRIBUNALS

Claimant: Mr Jason Rodber

Respondent: Network Rail Infrastructure Limited

Heard at: Southampton ET (via CVP)

On: 6,7 March 2023

Before: Employment Judge Horder

Appearances
For the Claimant: In person
For the Respondent: N.Singer (Counsel)

JUDGMENT

The judgment of the Tribunal is that:

1. The Respondent's name shall be amended to Network Rail Infrastructure Limited.

2. The Claimant's application to amend his claim to add a claim of Disability Discrimination under the Equality Act is refused.

3. The Claimant's claim for unfair dismissal succeeds.

4. An 80% reduction in the compensatory award will be made under the principles in *Polkey v AE Dayton Services Ltd 1988 ICR 142*, to be applied only to compensatory losses arising from 11 April 2022. This reflects the date upon which the Claimant is likely to have been dismissed had the Respondent adopted a fair procedure.

5. There shall be no increase in the Claimant's compensatory award under section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA).

A separate Case Management Order has been issued with directions for a further remedy hearing if required.

REASONS

Preliminary Issues

1. At the start of the hearing, it was agreed by both parties that the correct name of the Respondent is Network Rail Infrastructure Limited, rather than simply Network Rail as named in the Claimant's ET1 claim form. The Respondent's name was therefore amended by consent.

Claimant's Application to Amend

2. By way of email dated 20.2.23 the Claimant wrote to the Tribunal seeking to amend his claim as follows: "*If it is possible to add disability discrimination to my ongoing claim I apologies for any inconvenience that this may cause. The reason for my late request is I am representing myself, and am doing all the research myself. I have realised that I should have made a claim for disability discrimination as part of my claim."* No further detail as to the additional disability discrimination claim was provided.

3. Upon receipt of that email the Tribunal directed the issue to be dealt with at the start of the 2-day final hearing.

4. After discussing the matter with the parties, the Claimant gave evidence under oath as to the nature and timing of the proposed amendment. He was then cross-examined by Mr Singer. He stated that he had had assistance from a Union representative at the time of his Appeal against dismissal and thereafter from the Citizen's Advice Bureau. He had not been able to secure any legal representation and his request for legal assistance from the Union had been declined.

5. He stated that he had first become aware of the potential for a disability discrimination claim as a result of recent correspondence from the Respondent who, in answer to a request he had made for additional disclosure, had replied pointing out that he was not making such a claim. As a result, he wrote to the Tribunal. He did however accept that at the time of drafting his ET1 Claim form he had read, and decided at the time not to tick the box at section 8 marked discrimination on the grounds of disability. He had not done so because a discrimination claim had not been mentioned to him before and he was not sure whether it was relevant.

6. As to the nature of his proposed claim, the Claimant stated that it was the Respondent's failure, when taking the decision to dismiss him, to consider and put in place reasonable adjustments as result of his ill-heath. He had had a disability, namely the diagnosis of Post-Traumatic Stress Disorder.

7. The Tribunal was referred to and considered a number of well-known authorities regarding amendments including *Selkent Bus Co v Moore [1996] IRLR 661*, *Abercrombie v Aga Rangemaster plc [2013] EWCA 1148*, *Galilee v Commissioner of Police of the Metropolis [2018] ICR 634*, *Adedeji v University Hospitals NHS Trust [2021] EWVA Civ 23*, *Cox v Adecco Group & Ireland [2021] ICR*.

8. The Tribunal also considered the following principles set out in ***Vaughan v Modality Partnership [2021] IRLR 97***, namely:

a. The fact that an amendment would introduce a complaint which is out of time is a factor to be taken into account in the balancing exercise, but is not decisive

b. The ***Selkent*** factors should not be treated as a checklist, but must be considered in the context of the fundamental consideration: the relative injustice and hardship in refusing or granting an amendment

c. The Tribunal may need to adopt a more inquisitorial approach when dealing with a litigant in person.

d. That balancing exercise should be underpinned by consideration of the real, practical consequences of allowing or refusing an amendment.

e. It is important to consider the ***Selkent*** factors in the context of the balance of justice.

f. Where the prejudice of allowing an amendment is additional expense, consideration should generally be given to whether the prejudice can be ameliorated by an award of costs, provided that the other party will be able to meet it.

g. An amendment that would have been avoided had more care been taken when the claim or response was pleaded is an annoyance, unnecessarily taking up limited tribunal time and resulting in additional cost; but while maintenance of discipline in tribunal proceedings and avoiding unnecessary expense are relevant considerations, the key factor remains the balance of justice

9. In arriving at a decision on the claimant's application, and having heard the Claimant give evidence on the issue, the Tribunal reached the following conclusions:

a. The claim of disability discrimination was not raised or set out in the Claimant's ET1. It was first raised almost 12 months after the Claimant's ET1 had been drafted.

b. On 25.10.22, the Tribunal invited the Claimant to set out his case in more detail, in particular the reason why he asserted the dismissal was unfair. The Claimant responded by letter dated 31.10.22 [p.39]. In that letter he did not set out or seek to add a disability discrimination claim [p.39].

c. In order for the Claimant to pursue a claim under the Equality Act an amendment was required. This is not simply a re-labelling or re-bagging exercise.

d. Whilst any such claim shares some common ground with the Claimant's current unfair dismissal claim, it would in fact require a different and more extensive factual enquiry, i.e. identifying the relevant Provision, Criteria or Practice and necessary reasonable adjustments.

e. Any claim under the Equality Act is now out of time. The latest possible date of any act of discrimination would be the date of the Claimant's employment terminating on 11.1.22. Taking into account the ACAS conciliation period in this case, any claim should have been brought before 22.4.22.

f. The Respondent's letter sent to the Claimant shortly before the 20.2.23 did alert him to the fact of a potential discrimination claim and caused him, at that stage, to re-asses the claim he had made.

g. Whilst the Claimant is representing himself, he did have initial Union assistance and he took steps to seek out assistance from other agencies including the CAB.

h. If the amendment were not granted the disadvantage to the Claimant would be that he is unable to bring a disability discrimination claim and receive compensation/seek appropriate remedy for any act of discrimination established. However, a refusal would not dispose of his entire claim as he would still have his unfair dismissal claim.

i. If the amendment were granted, the two-day final hearing listed for today could not fairly or properly proceed. Further disclosure, evidence and case management directions would be required and a timetable set for a hearing before a Judge and members. That would result in significant delay and further work and expense for the Respondent who would be dealing with a claim made significantly out of time.

j. The Claimant is not currently in work at the moment. It is unlikely that any award of costs, even if appropriate, would be successful in meeting any additional costs incurred by the Respondent.

10. After considering all of the circumstances including the conclusions set out above, the Tribunal determined that the balance of justice fell in favour of rejecting the Claimant's amendment application. In doing so the Tribunal took full account of the fact that the Claimant is a litigant in person. However, the relative hardship and injustice faced by the Respondent of allowing an amendment of this nature at this very late stage in proceedings outweighed the relative injustice faced by the Claimant.

Claims and Issues

11. The Claimant worked for the Respondent between 10.7.2009 and 11.1.22 as a Mobile Operations Manager.

12. By way of ET1 Claim form dated 23.2.22 he made a claim for unfair dismissal, namely that his dismissal on the grounds of ill-health was unfair because the Respondent failed to explore *"all avenues listed within my terms and conditions".*

13. In response to the direction of EJ Livesey dated 25.10.22, the Claimant provided further detail of his claim by way of letter dated 31.10.22. There he asserted that the claimant failed to follow their own procedures (Including Conditions of Service Stood Off arrangements), failed to fully consider alternative roles suitable for him and failed to conduct a fair appeal procedure.

14. The Respondent asserts that the Claimant was absent due to ill-health from 18.3.20 and 11.1.22. It correctly and fairly followed an absence management policy and an ill-health severance process. That resulted in a decision to terminate the Claimant's employment from 11.1.22. A full and fair appeal process took place and the decision was upheld on appeal.

15. The Respondent therefore argues that the Claimant was dismissed for a potentially fair reason under section 98 of the Employment Rights Act, namely capability.

16. At the start of the hearing a list of issues was discussed and agreed by the parties as set out below. It was also agreed that the Tribunal should hear evidence on, prior to reaching a decision on liability, the issues of (1) re-engagement (a remedy sought by the Claimant) and (2) whether there should be any adjustment to any compensatory award in accordance with *Polkey v AE Dayton Services Ltd [1987] UKHL:*

List of Issues

1. What was the reason or principal reason for dismissal? The respondent says the reason was capability (ill-heath).

2. If the reason was capability, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:

    a. The respondent genuinely believed the claimant was no longer capable of performing their duties;

    b. The respondent adequately consulted the claimant;

    c. The respondent carried out a reasonable investigation, including finding out about the up-to-date medical position;

    d. Whether the respondent could reasonably be expected to wait longer before dismissing the claimant;

    e. Dismissal was within the range of reasonable responses.

Remedy

3. Is a re-engagement order an appropriate remedy?

4. What loss, if any, has the Claimant suffered because of any alleged unfair dismissal?

5. If the Claimant has suffered financial loss, by what % should any basic and/or compensatory award be reduced? In particular: -

    a. If the dismissal was procedurally unfair, 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, in accordance with the principles in *Polkey v AE Dayton Services Ltd [1987] UKHL*;'

    b. To what extent has the Claimant mitigated his loss?

    c. Would the Respondent have dismissed fairly in any event and if so, by when?

6. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

7. Did the respondent or the claimant unreasonably fail to comply with it?

8. If so is it just and equitable to increase or decrease any award payable to the claimant? If so, by what proportion, up to 25%?

Evidence

17. The Tribunal was provided with an agreed bundle, totaling 300 pages. That was significantly in excess of the 100-page limit set down by the original Case Management Order. In the context of a 2 day hearing in which a significant part of the morning had been taken up by hearing and determining the amendment application, the Tribunal decided to proceed with that bundle. However, it was made clear that if either party wished to specifically rely on any page beyond page 100, they would have to refer the Tribunal to it at the appropriate time and explain why it was a relevant and necessary document for the Tribunal to consider.

18. The Respondent sought to rely on a supplementary statement of Stuart Tautz dated 6.3.22 that primarily dealt with the issue of re-engagement. The Claimant indicated that he had no objection and confirmed that he had been able to read and consider it. On that basis the Tribunal allowed the Respondent to rely on it.

19. The Tribunal heard evidence from the Claimant, Brad Smith, the Respondent's Head of Public and Passenger Health and Safety and Stuart Tautz, Local Operations Manager.

Fact finding

20. The following findings of fact were made on the balance of probabilities. Findings were limited to matters relevant to determine the key issues between the parties.

21. The Tribunal starts by observing that it found the Claimant to be a straight forward, careful and credible witness. When cross-examined he made concessions when it was appropriate to do so. An example was his admission that at the time of his dismissal, despite having made progress with Cognitive Behaviour Therapy, he was not ready to return to work. Another was his acceptance that there were times during his absence when he did not like receiving calls from the Respondent and would not answer. He was also willing to indicate when matters fell outside his knowledge and was prepared to defer to the greater knowledge of others including the Respondent's Mr Tautz.

22. Save for a dispute about the level of contact between the Respondent and Claimant during the Claimant's absence from work, there was relatively little challenge to the evidence of either Mr Tautz or Mr Smith. As is set out further below, the Tribunal accepted that Mr Tautz was particularly well placed to comment on the Claimant's suitability for alternative roles and current vacancies.

23. The Claimant started work with the Respondent on 14.1.05 as a Trackman. Since about 2007 he had been employed as a Mobile Operations Manager. That was a safety critical role that involved responding to incidents and events on the railway network. An example given during the hearing was a car hitting a railway bridge, requiring urgent repair and inspection by the Claimant's team.

24. It was not in dispute that prior to an incident on 6.3.20 (detailed below) the Claimant had had an excellent attendance record. He had previously missed only one day off work in the last 15 years.

25. The Respondent is a very large and well-known organisation responsible for the infrastructure of the Nation's railways. Mr Tautz in his evidence agreed with the estimate of 42,000 employees employed the length and breadth of the UK.

26. On 6.3.20, whilst at work and travelling in the front cab of a train, the Claimant saw a person jump out into the path of that train. Tragically, the person involved was killed. The Claimant remained on duty for the remainder of the day and then continued working as normal until 9.3.20. However, he continued to have flashbacks and was suffering from mixed emotions and sought help from his GP.

27. The events of 6.3.20 were bound to have had a significant impact on anyone who witnessed them. On 12.3.20 the Claimant was diagnosed by his GP as having Post Traumatic Stress Disorder (PTSD). Thereafter he was signed off work due to illness and, through no fault of his own, would never subsequently return. His entire period of absence was supported and confirmed by appropriate fitness to work statements completed by his GP.

28. The Claimant was referred to the Respondent's Occupational Health ('OH') provider. They arranged a total of 6 telephone counselling sessions. The Claimant also sought treatment from his local mental health team who referred him in September 2021 for a course of Cognitive Behaviour Therapy (CBT). At the start

of that treatment the Claimant's main symptoms were described as suicidal thoughts and flashbacks that he coped with by isolating himself. The Claimant subsequently attended 20 such sessions that concluded in April 2022.

29. On 9.3.21, (just over 12 months post incident), the Respondent's Occupational Health provider, Optima, provided an update on the Claimant's health by way of letter. It stated that the severity of symptoms *"such as poor concentration and worsening of symptoms if there are associations with work"* were such that he remained unfit for work. They also advised that there had been a referral to a psychiatrist and that it was *"too early to advise on a prognosis for returning to work…without information from the psychiatrist assessment"* [p.189[1]].

30. Optima provided the Respondent with a further update on 12.4.21 [p.191]. They advised that the Claimant had been taking medication for the last three weeks under the care of a psychiatrist and that he reported some symptoms improving, others deteriorating. It was not possible to advise on a return-to-work date at present and that a specialist report was awaited [p.191].

31. On 27.4.21 the Claimant met in person with Brad Smith who had been appointed his welfare manager and main point of contact from March 2021. Whilst recollections of that meeting differed between Mr Smith and the Claimant, they were relative minor and not material to the issues the Tribunal had to determine. At that hearing Mr Smith informed the Claimant that once a full Occupational Health report had been obtained a further meeting to discuss next steps would be held.

32. It took a significant amount of time for a full Occupational Health Report to be prepared. Mr Smith chased the progress of the report on 25.5.21 and had email communication about its progress with the Claimant on 14.6.21. The Claimant responded that he had sent all documents as requested and was waiting for further contact. He also advised Mr Smith that *"I am still not ready to commit to returning to my position"*.

33. There is no suggestion that the delay in the final OH report being available was due to any fault of the Claimant. However, it is clear from an internal email of 14.6.21 copied to Mr Smith that the Respondent wanted to progress matters; *"….Management need to progress this case, given the very long duration the employee has been off and the fact that he clearly needs support and help now……It sounds highly likely it is going down the IHS [Ill Health Severance] route, but we just need to get to the point where we can actually make some decisions sooner rather than later for the sake of both the employee and the business"* [p.196].

34. The Occupational Health Report that followed is dated 25.8.21 [p.200]. It is in the form of a brief two-page letter written by Dr Werner Stipp, a Consultant Occupational Physician.

35. The report stated that the Claimant was under the care of the Mental Health Services and a Psychiatrist. Dr Stipp had received a psychiatric report confirming

[1] Page references are to pages in the agreed hearing bundle

a diagnosis of PTSD. The Claimant was taking medication as advised and had support from a mental health coordinator. He was awaiting further therapy (CBT) sessions. It described the Claimant's current presentation as follows:

"He reports significant impairment in day-to-day functioning causing him to be demotivated and withdrawn. He experiences significant psychological symptoms. He has ongoing intrusive recollections of the event and avoids possible associations to the event in day-to-day life. His job would expose him to the risk of similar events in future. He is a lone worker as a MoM increasing vulnerability should he return to this job role."

36. The report concluded:

"There is no foreseeable date that Mr Rodber will be capable to return to his substantive role as a MoM or alternative trackside role. It is possible that Mr Rodber may be able to return to an alternative role with Network Rail, such as a non-trackside role. I am unable to advise when he is likely to return to work to an alternative role as this will depend on the outcome of therapy sessions with mental health team. If deployed in an alternative role (such as an office-based role) it is important that there no triggers that will bring back anxiety symptoms such as noise from passing trains or similar associations. I advise an occupational health referral once he has completed therapy sessions with the mental health team. It is for management to decide whether they are able to accommodate him in an alternative role.

My interpretation of the relevant UK legislation is that Mr Rodber's condition is likely to be considered a disability…."

37. Upon receipt of that report, the Respondent did not have any further contact with or seek any further information from Dr Stipp. There was no enquiry made of him as to the number of, or duration of, further therapy sessions likely to be required before the suggested further Occupational Health referral could be made. There was also no enquiry made as to the relevant or precise triggers that would likely bring back anxiety symptoms beyond Dr Stipps' general summary of "noise from passing trains or similar associations".

38. On 17.9.21, so approximately 3 weeks later, the Respondent wrote to the Claimant to discuss the possibility that *"you may be required to leave the organisation under the Ill Health Severance arrangements"* [p.202]. The Claimant was advised that at this meeting he would be "*invited to discuss any suitable alternative employment options which you believe could be considered in your circumstances".*

Respondent's procedures

39. The Respondent had in place written policies and procedures dealing with employee ill-health and capability as well as guidance issued to managers.

<u>Ill Health Severance Process Guidelines for Managers</u>

40. This guidance sets out in the form of a flow chart the required steps for managers to follow, including holding what is referred to as an "initial meeting" and then if necessary, an "ill health severance meeting". One of the steps prior to an initial meeting is to contact "HR direct" and to answer the following question "*Do HR direct agree that sufficient steps have been taken and all reasonable adjustments thoroughly investigated? (Including looking across the business for alternative roles and considering alternative working arrangements such as flexible working, even where that may incur some expense)"* [p.67].

41. Following an initial meeting the guidance states *"Continue to investigate any reasonable adjustments/suitable alternative employment for the employee. Ensure you document the methods used and the reasons why the adjustments are not suitable"* [p.67].

42. Under the heading of "Ill-health Severance meeting" one of the steps is to *"ask the employee is there any new information they wish you to consider"*. If the answer is yes, the guidelines require a manager to *"adjourn to consider this. Are further investigations required?"*. If further investigations are required then the guidelines suggest *"agree to complete these and arrange for the meeting to be reconvened".* Another step is a discussion of all reasonable adjustments considered and the attempts made to find alternative employment and why *"this has been unsuccessful"*.

Criteria for suitable alternative roles

43. In addition to those guidelines, the Respondent provided managers with a shorter one-page flowchart to follow [p.67]. This included a list of criteria for suitable alternative roles. The criteria included: current skills knowledge and experience, the practicality of training the employee for work in other grades, comparable hours worked, level of renumeration and travel time. As to travel time, that should not increase by an average of more than 30 minutes in each direction with total daily travelling time from home to work not exceeding more than 1hr 15 in each direction or, if travelling time already exceeds that, travel in excess of that.

44. The Tribunal accepted the explanation given by Mr Tautz, the Respondent's Local Operations Manager, that that travel time proviso was intended to guard against employee fatigue, an important consideration in the rail industry where many employees have safety critical roles. When asked whether there could be any flexibility, he replied there could but it would have to be limited for those reasons.

45. In his evidence the Claimant referred to other employees who had been redeployed from different locations, including someone from Yeovil to Salisbury. This involved an agreed extension to the permissible travelling time to 1 hour 30. Whilst the Tribunal accepted the Claimant's evidence about this, it did not find comparison with a single incident involving a single employee to be material to any of the issues it had to consider. Further, it was not inconsistent with Mr Tautz's evidence that there could be some limited flexibility.

Managing for Health; Monitoring and Managing Absence Policy – April 2003

46. This Policy provided that *"each case needs to be examined to understand all the issues and we need to work with the individual employee and our occupational health providers to understand each case. There can never be one-size fits all policy. The Company must judge each case on its merits"* [p.72]. The section dealing with those employees that are absent with an underlying medical reasons includes the following [p.78-79]:

    We need to be aware that the person may have a disability that we need to help them overcome, (Disability Discrimination Act) which may involve making workplace adjustments that continue to help them to perform their role.

    Employees who are off on long term illness must continue to be monitored by the line manager and BUPA….We must keep in touch with these employees and a home visit every 8 weeks should be made by HR and line manager – not to seek to influence their return to work -but rather to show that we value them as an employee and that we genuinely care about their well-being.

    There will be occasion when the employee will be unable to return to work in their own role and a suitable alternative role should be sort. It should always be the last option to exit an employee using the ill health severance scheme.

Conditions of Service – Stood Off Arrangements, Network Rail

47. As a result of historic notifications and agreements between the Respondent and The National Union of Rail, Maritime and Transport Workers (RMT), Stood Off Arrangements became contractual conditions of service. A booklet explaining those conditions of service was included in the agreed bundle [p.111]. In short, the Stood Off arrangements provide that if employees, due to ill-health, cannot perform their current role, steps shall be made to find alternative roles. If an alternative role is identified but there is no current vacancy, the employee will be stood-off for up to 2 years with basic pay. If the employee cannot be accommodated within that 2 year period, notice will be served, employment terminated and an ill health severance payment made.

48. The explanatory booklet includes the text of an agreement between the RMT and the Respondent that sates as follows: "*The underlying principle of the stood off arrangements – that every possible endeavour will be made by Network Rail to accommodate the employee in suitable alternative work in an existing or templated role".*

5.10.21 Initial Ill Health Severance Meeting'

49. The "Initial Ill Health Severance Meeting" took place virtually on 5.10.21 and was conducted by Stuart Tautz, Local Operations Manager. Minutes were taken and neither party has taken issue with the accuracy of them [p.204].

50. The minutes record Mr Tautz referring to the OH report and the possibly of a return to an office-based role, albeit "*this needs to avoid any connection with trains and the noise of trains*". He added that that *"would be very difficult to avoid in Network rail"* and that he did not think there were *"any suitable roles to bring the Claimant*

back to based on the OH report". The Claimant is recorded as responding *"I am not aware of any roles"*.

51. At the end of the meeting the Claimant was asked if he wanted to add anything and replied that he had just "*started CBT and he had been told that that would help."* The response from Mr Tautz was "*as there is still no end even with therapy, we cannot sustain the level of absence and with the latest report stating that there is no end date"*.

52. That reply reveals the decision the Respondent had clearly arrived at by that stage, namely that the Claimant's continued absence from work could and would no longer be sustained. Mr Tautz added in his evidence, and was not challenged on this point, that the Claimant's absence had put pressure on the rest of the team with others having to work extra hours and shifts.

53. A further 'Formal Ill Health Severance' meeting was held on 18.10.21 [p.208]. Minutes were again taken and no issue has been taken with their accuracy. Mr Tautz informed the Claimant that there were no alternative roles that could *"avoid trains and train noises"* and so "*we are not in a position to discuss re-deployment".*

54. The Claimant raised the possibility of a planner role. This was met with Mr Tautz stating that *"the location would still go against the OH report. Cannot have you in a depot near trains or train noise".* The Claimant was then informed that he would be dismissed with his end date the 2nd week in January. He was informed of his right to appeal and ended the meeting by saying he felt numb and that he had only previously had 1 day off sick.

55. As to Mr Tautz's search for and consideration of potential alternative roles for the Claimant, the Tribunal concludes that he only considered those on the Respondent's 'Wessex' route (from Waterloo to the West Country including Yeovil where the Claimant had been based). Mr Tautz explained in evidence that the Respondent does not routinely re-deploy from one route to another, workers in different regions have different terms and conditions and he was advised by HR that consideration of other routes was "not an option". As a result, any vacancies anywhere else, including on the Respondent's Western Route that included depots in Taunton and Westbury (both within 1 hour 15 of the Claimant's home) were not considered.

56. The Tribunal does accept that Mr Tautz was familiar with all of the Respondent's places of work on the Wessex Route. He concluded that as all were at or near railway stations or train tracks, there were no available roles where noises from trains or other *"similar associations"* could be avoided. He interpreted the OH report as meaning that "*similar associations*" to be avoided by the Claimant as potential triggers included "*working with and discussing trains and tracks"* [see his first witness statement at paragraph 4.2]

57. Having reached that conclusion, he did not, to any significant extent, actively investigate whether there were any reasonable adjustments that could be made to accommodate the Claimant in any potential non-track side roles. He did not seek any further assistance or information from Dr Stipp or any other OH professional

on that topic or on potential ways to avoid triggers. Any such reasonable adjustments considered and/or rejected should have been recorded according to the Guidelines for Managers. No such records were placed before the Tribunal.

58. There is no record of any discussion at all of reasonable adjustments, remote or flexible working or of re-training at either the 5.10.21 or 18.10.21 ill health severance meetings. The Tribunal concludes that whilst Mr Tautz did consider all existing or potential future vacancies on the Respondent's Wessex route, he did not pro-actively consider or investigate any changes or adaptations to current roles or working arrangements that could potentially accommodate the Claimant in the future. He did not do so because of his interpretation of the OH report and his conclusion that the Respondent could not sustain further continued absence.

Appeal

59. The Claimant communicated his intention to appeal by way of email dated 10.12.21. In it he stated that in initial termination conversations there had been no mention of retraining or redeployment to other locations, nor of the stand-off arrangements. He also stated that he did not believe that sufficient consideration had been given to the possibility of his ongoing treatment improving his illness.

60. An appeal hearing was held on 31.1.22. It was conducted by Brad Smith, Operations Manager. The Claimant attended with Wayne Dixon, a Union Representative. There was no further medical evidence or evidence from Occupational Health referred to at the Appeal hearing.

61. The Claimants' Monitoring and Managing Absence policy refers to appeals only in the context of dismissal where there is no underlying medical reason and provides that appeals will be "*heard by a manager unconnected with the case"* [p.77]. However, Mr Smith's understanding was that the instant appeal should also be held by an independent manager wherever practicable.

62. However, Mr Smith was Mr Tautz's direct line manager and had been the Claimant's welfare manager during his absence between 15.3.21 [p.164] and 4.9.21. In that role he should have visited the Claimant at home every 8 weeks. Despite that, Mr Smith did not consider that there was any conflict of interest as he had only previously be involved with the Claimant in a welfare capacity.

63. Minutes of the appeal hearing were taken. The Claimant set out his position consistently with the issues raised in his email dated 10.12.21. He added that the only discussion he had had about re-deployment had been with Sam Glaister (a previous welfare manager) about a planning role. Roles on other routes had not been considered at all.

64. The Claimant also stated that the Respondent had not supported him whilst on leave and he had not had frequent welfare meetings with his welfare manager. In his evidence Mr Smith described disputing this as he had made attempts to remain in contact with the Claimant [w/s para.5.7]. He clearly did not think that that dispute of fact compromised his objectivity to hear or determine the Claimant's appeal. At the end of the hearing the Claimant described the Respondent's professed support

for the mental health of their workers as "bullshit". He also stated that he was getting better and was building up his confidence via CBT.

65. In closing submissions, Counsel for the Respondent made the point that Mr Dixon was an experienced Union Rep who knew the Respondent's operations very well. It was therefore significant that he did not identify or suggest any alternative suitable roles for the Claimant at that hearing. However, Mr Dixon himself is recorded in the minutes as stating *"we do not know what alternative roles may be available"*. Further, the Tribunal accepts that the Claimant was, in comparison to the Respondent, at a material disadvantage in identifying possible alternative office-based roles. He did not have access to the Respondent's internal computer systems/network on which vacant posts would be listed. In addition, there is no note and no evidence of him ever being sent any vacancy lists or such lists being brought to or discussed at either the initial or final severance meetings.

66. In his oral evidence Mr Smith stated that he checked Mr Tautz had applied the correct process. He had not seen any written record of reasonable adjustments having been considered nor of re-training. His understanding was that the Claimant was unfit to continue in work and that it was impractical to avoid an association with trains. He also stated that he had not thought that the Claimant had had a disability. This was a surprising answer that was in conflict with the conclusion of the OH report that expressly stated that Claimant's condition was likely to be considered a disability [p.201].

67. The Claimant was notified by way of letter dated 2.2.22 that his appeal had been dismissed and the decision to dismiss him upheld [p.228]. That letter did not provide any reasons or explanation in support of that decision.

68. As to events post dismissal and findings of fact relevant to re-engagement, they are set out below under the heading of 'Is re-engagement order an appropriate remedy?'.

Law

Dismissal – capability

69. Section 98 of the Employment Rights Act 1996 provides that it is for the employer to show the reason for dismissal. It must be a reason falling within subsection (2) or some other substantial reason which justifies the dismissal of an employee.

70. In this case the reason relied upon by the Respondent is capability which is a potentially fair reason falling within subsection (2).

71. S.98(3) provides that capability *"in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality".*

72. In order to decide whether the dismissal is fair or unfair, having regard to the reason shown by the employer, the Tribunal must consider 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 that question shall be determined in accordance with equity and the substantial merits of the case (section 98(4)).

73. In *S v Dundee City Council [2014] IRLR 131* the Court of Session set out the matters to be considered in a case where an employee has been absent from work for some time owing to sickness, namely:

    a. Whether the employer could be expected to wait any longer and, if so, for how much longer. This is the key question to be decided in dismissals of grounds of ill-health. Relevant factors could include whether the employee has exhausted his sick pay, whether the employer was able to call on temporary staff, and the size and resources of the employer.

    b. Whether the employee had been consulted with, whether his views had been taken into account, and whether such views had been properly balanced against any medical professional's opinion.

    c. Whether reasonable steps had been taken to discover the employee's medical condition and likely prognosis. It would not be necessary for the employer to pursue a detailed medical examination as the decision to dismiss is not a medical question but a question to be answered in the light of the available medical evidence.

    d. The Court also pointed out that length of service is not automatically relevant. The important question is whether the length of service, and the manner in which service was rendered during that period, yields inferences which indicate that the employee is likely to return to work as soon as he can.

74. As to how long an employer may reasonably be expected to wait for an employee to be fit to be able to return to work, this is a fact-sensitive issue. In *O'Brien v Bolton St Catherine's Academy 2017 ICR 737, CA*, the Court of Appeal did not interfere with a Tribunal's decision that an employer, 14 months in to an employee's absence through ill-health, had unreasonably failed to wait a few months longer to obtain its own medical evidence.

75. Unless medical evidence indicates no possibility of an employee being fit to return to work in any capacity, a failure by an employer to consider alternative employment may render a dismissal unfair. However, there is no onus to create a job where none previously existed (*Merseyside v Taylor 1975 ICR 185, QBD*) albeit employers must be prepared to be somewhat flexible (*Garricks (Caterers) Ltd v Nolan, 1980 IRLR 259, EAT*). Further, where ill health arises because of the nature of work, employers may be acting unreasonably if they do not take reasonable steps to remove the cause, eg. *Rubery Owen-Rockwell Ltd v Goode EAT 112/80*.

76. The onus to take reasonable steps to obtain up-to date medical evidence about an employee's condition falls on the employer rather than on the employee – *Mitchel v Arkwood Plastics (Engineering) Ltd 1993 ICR 471*, EAT.

77. In *Taylor v Alidair Ltd (1978) IRLR 82*, the Court of Appeal framed the test to be applied in capability cases as follows: *"whenever an employee is dismissed for incapacity or incompetence it is sufficient that the employer honestly believes on reasonable grounds that the employee is incapable or incompetent. It is not necessary for the employer to prove that he is in fact incapable or incompetent"* (per Lord Denning at para.20).

36. The Tribunal must consider the reasonableness of the employer's conduct, not simply whether the Tribunal considers the dismissal to be fair - *Iceland Frozen Foods Ltd v Jones [1982] IRLR 439*.

42. The Court of Appeal in *London Ambulance Service NHS Trust v Small [2009] EWCA Civ* 220 re-stated the importance of the Tribunal not substituting its views for that of the employer. The process must always be conducted by reference to the objective standards of the hypothetical reasonable employer, and not by reference to the Tribunal's own view of what they in fact would have done as an employer in the same circumstances see *Post Office v Foley [2000] IRLR 827 Pinnington v City* and *County Council UKEAT/0561/03*.

43. Defects at the dismissal stage can be rectified on appeal. See for example: *Taylor v OCS Group Ltd [2006] IRLR 613 CA* in which it was said that the Tribunal must assess the disciplinary process as a whole and where procedural deficiencies occur at an early stage, the Tribunal should examine the subsequent appeal hearing, particularly its procedural fairness and thoroughness, and the open-mindedness of the decision maker.

44. If an employer was in any way responsible for the employee's illness that led to dismissal that may be a relevant factor when deciding on the fairness of a dismissal and reasonableness. However, such a factor is not determinative of whether a dismissal is unfair or not – see *Royal Bank of Scotland v McAdie 2008 ICR 1087, CA* and *Iwuchukwu v City Hospitals Sunderland NHS Foundation Trust 2009 IRLR 1022 CA*.

45. Whether the ACAS Code of Practice on Disciplinary Procedures to ill health dismissals is a moot point. The Code itself does not refer to dismissals on grounds of ill-health, albeit the non-statutory ACAS guide "Discipline and Grievance at Work" does. However, that guide distinguishes between persistent short-term absences and longer term absences. Case law sets out that it is the actual reason for dismissal that should determine the applicability of the code rather than the label placed on it – see for example *Lund v St Edmund's School 2013 ICR D26 EAT*. Further, it is worth re-stating that the ACAS code refers to issues relating to "misconduct" and "poor performance".

Polkey

46. If the Tribunal finds that a dismissal was unfair, it is open to it to reduce any compensatory award to reflect that the employee may have still been dismissed had the employer acted fairly (known as a *Polkey* reduction following *Polkey v AE Dayton Services Limited (1988 ICR 142*). The

Tribunal needs to consider both whether the employer could have dismissed fairly and whether it would have done so.

47. When applying Polkey, the Tribunal should consider whether the employer could fairly have dismissed and, if so, what were the chances that the employer would have done so? The tribunal is not called upon to decide the question on balance. It is not answering the question what it would have done if it were the employer: it is assessing the chances of what another person (the actual employer) would have done – *Hill v Governing Body Great Tey Primary School [2013] IRLR 274*.

48. The Tribunal should have regard to any material and reliable evidence that might assist in assessing just and equitable compensation, even if there are limits to the extent it can be confident about the world as it might have been; a degree of uncertainty is an inevitable and the mere fact that an element of speculation is involved is not a reason for refusing to have regard to the available evidence - *Software 2000 Ltd v Andrews and ors [2007] ICR 825*

Re-engagement

49. Section 113 of the ERA 1996 provides that the Tribunal may make an order for re-engagement.

50. Section 116(2) details that a Tribunal may, after considering whether an order for re-instatement should be made, consider whether to make an order for re-engagement and if so, the terms of such re-engagement. In doing so the Tribunal shall take into account factors including any wishes expressed by the Claimant as to the nature of the order sought and whether it is practicable for the employer to comply with such an order.

51. The test to be applied when reinstatement or re-engagement is sought is not whether it is *possible* to reinstate or to re-engage the claimant, but whether it is *practicable* to do so. *In Coleman v Magnet Joinery `Ltd [1975] ICR 46* it was held that practicable in this context means *"capable of being carried into effect with success"*. When considering whether reinstatement or re-engagement are practicable, the tribunal must give due consideration to the commercial judgement of the respondent - *Port of London Authority v Payne and Others [1993] 11 WLUK 35.*

52. Re-engagement cannot be used as a means of imposing a duty on the employer to find a generally suitable place for a dismissed employee irrespective of actual vacancies - *Lincolnshire County Council v Lupton 2016 IRLR 576, EAT*.

53. The Tribunal must consider and determine the issue of re-instatement and/or re-engagement prior to dealing with the issue of compensation, including *Polkey* – *Arriva London Ltd v Eleftheriou UKEAT/0272/12/LA..*

Conclusions

78. The Tribunal now applies the law to the facts to determine the issues in this case.

What was the reason or principal reason for dismissal?

79. The reason for the Claimant's dismissal was capability, namely his ill-health arising from the tragic events of 6.3.20. This was not in issue between the parties.

If the reason was capability, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?

80. The Tribunal reminds itself that it must determine this issue not by reference to its own view as to what it would have done but by the objective standards of the hypothetical reasonable employer. In doing so the Tribunal recognises that there is a band of reasonable responses in which one employer might reasonably take one view and another quite reasonably take another.

81. The function of the Tribunal is to decide whether in the particular circumstances of the case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within that band, then the dismissal is fair; if the dismissal falls outside that band, it is unfair.

82. The nature of the Claimant's long-term illness was not in dispute before the Tribunal. Further, the Claimant did not argue that he was, at the date of his dismissal in a position to return to work in his previous role.

83. The Respondent did make an appropriate referral to an Occupational Health specialist so as to get an objective view on the Claimant's current health, prognosis and the prospect of a future return to work. Obtaining such an opinion took a significant amount of time, meaning that at the point the OH report was received from Dr Stipp the Claimant had been absent from work for just over 17 months. However, no blame has been, or can be, directed at the Claimant for that delay.

84. The Respondent deferred making any decision on the Claimant's employment status until after receipt of that report. The Tribunal accepts that the primary decision maker, Mr Tautz, genuinely believed that the Claimant was no longer capable of performing his duties as a Mobile Operations Manager. Further, whilst there was a dispute about the frequency and level of contact between the Respondent and Claimant during his prolonged absence, the Tribunal concludes that there was adequate consultation with the Claimant up to the point at which the decision to dismiss him was made.

85. However, having received the final OH report, the Respondent chose not to investigate further the issue of the Claimant's CBT therapy sessions referred to in that report. No enquiry was made as to how many sessions were proposed, how long the course would take or how likely it actually was that the Claimant would be able to return to work in an alternative role post therapy.

86. The Respondent instead made a decision at that point, on the basis of the OH report, that the Claimant's absence could be sustained no longer. Mr Tautz, in the

5.10.21 meeting with the Claimant referred to there being "*no end date"* in terms of his ongoing therapy and a potential return to work [p.205]. However, he made that comment without making any of the further investigations referred to above.

87. The Tribunal recognises that at the point that the decision to dismiss him was made (18.10.21), the Claimant had been absent for a very long time. The Respondent could not have been expected to sustain such an absence indefinitely nor indeed for a significant further period of time. However, the relevant circumstances here were that this was an employee whose illness was caused during an incident at work, who had already been absent for a significant period of time and where, through no fault of his own, the preparation of the final OH report had taken a long time. In those circumstances, the Tribunal concludes that a reasonable employer of the size and resources of the Respondent would have made further enquiry as to the anticipated duration and current progress of the CBT therapy sessions. That would have allowed the Respondent to make an informed decision as to when and whether the further occupational health referral recommended in the OH report could and should be pursued.

88. The failure to make such enquiries was not rectified by or during the appeal process. The Claimant's appeal hearing was not held until 31.3.22 and there was no further medical evidence nor further investigation by the Respondent as to the progress of or likely end date of the Claimant's CBT.

89. The Tribunal also concludes that a reasonable employer of the size and resources of the Respondent would have investigated potential alternative non-trackside roles for the Claimant more thoroughly.

90. The Respondent's investigation proceeded on the basis, as described by Mr Tautz, that working with and discussing trains and tracks had to be avoided as potential triggers. The meaning of 'similar associations' as set out in Dr Stipps report was not investigated or clarified further. Nor was there any enquiry made of any OH professional as to potential adaptations or ways of working that could help to accommodate the Claimant in a non-trackside role. Instead, the conclusion was simply made that, based on the OH report and Mr Tautz's knowledge of existing roles, there were no currently available alternative roles for the Claimant.

91. In addition, the Respondent only considered alternative roles across a limited part of the Respondent's business, namely the Wessex route. Whilst the Tribunal accepts that Mr Tautz was advised by the HR department to only consider that route, there was no such 'route' limitation in any of the Respondents written procedures placed before the Tribunal. The Guidelines for Managers refer simply to "*looking across the business for alternative roles"* [p.67]. The Monitoring and Managing Absence policy states that *"there can never be [a] one-size fits all policy"* and the Stand-Off policy refers to "*every possible endeavour"* being made to find alternative work. Although other workers on other routes may well have enjoyed different terms and conditions, the Tribunal concludes that a reasonable employer would not act contrary to their own guidelines or so limit their search for alternative roles.

92. Under this heading the Tribunal also considers the conduct of the Claimant's appeal. The Tribunal does conclude that the ACAS Code of Practice on Disciplinary and Grievance Procedures does not apply in the circumstances here, namely a dismissal on the grounds of ill-health.

93. However, the Tribunal finds that the right to an appeal was clearly a part of the Respondent's ill-heath severance process and the conduct of that appeal falls to be considered as part of the consideration of the reasonableness of the Respondent's decision to dismiss on the grounds of capability. Further, the Tribunal finds that the Respondent's policy was, as expressed by Mr Smith, that any appeal should be conducted by an independent manager wherever practicable. That was clearly the Respondent's intention and expectation notwithstanding the fact that the Monitoring and Managing Absence Policy is silent on the point.

94. Unfortunately, that did not happen in this case. Mr Smith was Mr Tautz's direct line manager, and, more significantly, had been actively involved in the Claimant's case as his welfare manager for approximately 6 months. During that period he was highly likely to have formed a subjective view about the Claimant's case and his prospect of a successful return to work. Further, when the Claimant raised as part of his appeal the fact that he did not feel adequately supported and had not had the required level of contact during his absence from work, his case involved direct criticism of, and a conflict of evidence with, Mr Smith. In such circumstances Mr Smith's ability to act as an independent decision maker was further compromised.

95. In a case involving such a large employer, the Tribunal concludes that the Respondent could easily, and should have, appointed someone other than Mr Smith to conduct the appeal. By doing so the Respondent did not adhere to their own intended procedure.

96. On its own, the Tribunal would not have concluded that the fact that Mr Smith conducted the Appeal rendered the Claimant's dismissal unfair. However, when the decision to dismiss and the procedure adopted by the Respondent is looked at as a whole, the Tribunal considers this to be a relevant factor. When added to the failure to make further investigations as to the Claimant's therapy sessions and the failure to thoroughly investigate alternative roles, the Tribunal does conclude that the dismissal here fell outside the range of reasonable responses. As a result, the Claimant's dismissal was unfair.

Remedy

97. The Tribunal now goes on to consider remedy. However, the Tribunal considers it only appropriate based on the evidence heard during the 2 day hearing to consider the issues of re-engagement (issue 3), Polkey (issues 5a and 5b) and the applicability of the ACAS Code (issues 6,7,8). The quantum of any award, and the issue of whether the Claimant mitigated his loss will need to be determined at a further hearing.

Is re-engagement an appropriate remedy?

98. The Claimant frankly accepted that his health is such that he cannot return to work in his previous role. However, he argued that he could now return to work in roles that have associations to trains and railway as evidenced by his unsuccessful application for a guard's job. His ongoing biggest problem was proximity to a train when it approaches or passes him although he had no difficulty now travelling on a train. He thought he would be suitable for a planner's role or for a clerical or office support role. As a result, he was seeking re-engagement.

99. The Respondent, by way of detailed evidence from Mr Tautz, set out that the Claimant did not have up to date or suitable skills for the Planner or Planning Assistant roles. He required a Core Planning Skills Level 2 qualification that he did not have. The role also required experience of clerical and office management skills, something the Claimant did not require in his previous role. Further, the role requires understanding of the location of ongoing works and is based in an office environment at or adjacent to the railway.

100. Mr Tautz also detailed the fact that the Claimant did not have the experience or skill set for clerical or office support roles, such as that of roster clerk. Such roles were, in any event, at Basingstoke. That was outside the 1 hour 15 average travelling time from the Claimant's home in Yeovil.

101. Mr Tautz had also considered the role of Section Administrator. It was a role that could involve a very heavy work load and could involve work on major adverse incidents that took place on the railway including fatalities. As such it was not suitable on the basis that such work could be distressing.

102. A further role considered by Mr Tautz was that of Stores Controller. This was not something that the Claimant had experience of and Mr Tautz's further concern was that the stores are based at or near the railway lines, meaning it would not be practicable for the claimant to avoid passing trains.

103. The Tribunal accepted that the most reliable evidence about the types of roles realistically available to the Claimant came from the Respondent's Mr Tautz. The Tribunal also accepted that Mr Tautz was better placed that the Claimant to assess his current suitability for such roles.

104. The Respondent submitted that beyond the Claimant's own subjective assessment about his current health, there was no up to date evidence about his ability to cope with a return to full time work. They added that this was further evidenced by the fact that since his dismissal he had first applied for a new job in September 2022. Having failed to secure that role he had not worked in any alternative role since.

105. The most up to date medical evidence before tribunal was the letter from Dr Fosbraey dated 13.5.22. Whilst that details the Claimant's good progress it references some ongoing flashbacks and does not actually give an opinion on the Claimant's future suitability for work. The Claimant in evidence did admit that he did not think that the mental health difficulties he had will ever be solved and that he still had good and bad days, albeit he felt ready to return to work.

106. Having weighed up all of the available evidence, the Tribunal concludes that this is not an appropriate case in which to make an order for re-engagement. A conclusion that re-engagement is possible is insufficient here, it must be practicable with the Tribunal also taking note of current vacancies. Further, due weight must be given to the commercial judgement of the Respondent. Based on the evidence as to current vacancies provided by Mr Tautz, together with the evidence available as to the Claimant's current medical position, the Tribunal is unable to conclude that re-engagement in a suitable role is currently practicable.

If the Claimant has suffered financial loss, by what % should any basic and/or compensatory award be reduced?

107. That the Claimant's dismissal was unfair is not the end of the matter because the Tribunal has to go on to consider the likelihood of the Claimant being dismissed had a fair procedure been followed. The key question is whether this particular employer (as opposed to a hypothetical reasonable employer) would have dismissed the Claimant in any event had the unfairness not occurred.

108. The Tribunal is assisted by the Claimant's evidence that his course of trauma based Cognitive Behavioural Therapy continued until May 2022. A letter in the bundle from Dr Judith Fosbraey, a Clinical Psychologist [p.230], summarises the progress he made during that therapy. By May 2022 his ongoing symptoms were not severe enough to meet the diagnostic criteria for PTSD and he was described as rarely suffering flashbacks and no longer experiencing suicidal thoughts.

109. However, as previously stated the Claimant frankly admitted in his evidence that whilst he did make a lot of progress though having CBT, it did not fully solve his situation. It was time that had been the biggest healer and he did not think that he would ever be fully better. The first job he had applied for post dismissal was a job as a railway guard, in September 2022. The Tribunal concludes it was not until then that he felt able to return to work in a role directly linked to the railways.

110. The Tribunal concludes that had the Respondent conducted a fair process, it would have very likely resulted in the Claimant's dismissal on the grounds of ill-health. The earliest that the Claimant could have conceivably have returned to any form of work (in a non-trackside role) would have been after the conclusion of his therapy on or about 13.5.22. That would have been over 2 years post incident. The Tribunal concludes that whilst the Respondent is a large employer, they could not reasonably have been expected to sustain the Claimant's absence or defer a decision beyond 2 years post incident.

111. Had a 'fair procedure' been adopted by the Respondent, the Respondent is likely to have been advised that the course of CBT was ongoing and likely to continue beyond March 2022. However, that further enquiry, together with a more thorough consideration of alternative roles and the issue of reasonable adjustments would have, in the opinion of the Tribunal, extended the duration of the Claimant's employment by 3 months (so from 11 January 2022 to 11 April 2022).

112. However, the Tribunal cannot entirely exclude the possibility that, had a fair procedure been followed, the Claimant would have been retained and some form of current or future alternative non-trackside role identified. Such an outcome would have been based on the Claimant engaging positively with CBT and suitable reasonable adjustments being identified and applied to a non-track side role. Further, the Tribunal has, in reaching this conclusion had regard to the Stand-Off Arrangements and the prospect of them being used had a suitable role been identified but currently unavailable.

113. Taking into account the nature of the Respondent's business and the detailed evidence from Mr Tautz as to the type of roles potentially available, the Tribunal concludes that the prospect of the Claimant being retained remains a relatively small one. However, given the size and resources of the Respondent the Tribunal cannot conclude that there was no such chance. The appropriate % reduction in all the circumstances of this case is 80%, to apply to the compensatory award from 11 April 2022, the date of dismissal had a fair procedure been followed.

Issues 6,7,8. Did the ACAS Code of Practice on Disciplinary Procedures apply?

114. For the reasons already set out above, The Tribunal concludes that the ACAS Code of Practice on Disciplinary and Grievance Procedures does not apply in the circumstances here, namely a dismissal on the grounds of ill-health. As such there is no increase or decrease applied to the award payable to the Claimant.

Further hearing as to remedy

115. A separate CMO providing further directions as to remedy has been issued.

Employment Judge Horder
Written reasons dated 30.3.23

Judgment and Reasons sent to the Parties: 06 April 2023

For the Tribunal Office