



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4103908/2022 & 4104543/2022**

**Held in Edinburgh by Cloud Video Platform on 15 & 16 May 2023**

**Employment Judge M Sangster**

**Ms L McLaren**

**Claimant  
Represented by  
Mr D Hay  
Advocate**

**Hendrie Legal Limited, t/a  
Ralph Hendrie Legal**

**Respondent  
Not present or represented**

**WRITTEN REASONS FOR JUDGMENT**

**Introduction**

1. A hearing took place on 15 & 16 May 2023. An oral judgment, with reasons, was given at the conclusion of the hearing. A written judgment, dated 16 May 2023 and sent to the parties on 19 May 2023, confirmed the judgment but did not provide reasons, as reasons were given orally at the conclusion of the hearing. On 19 May 2023, the claimant requested written reasons for the judgment. Written reasons are provided below.

**Background**

1. The claimant presented complaints of constructive unfair dismissal, breach of contract and failure to pay holiday pay. Early conciliation took place from 30 September to 13 November 2019. The claim was lodged on 14 July 2022.

2. The respondent resisted the complaints and lodged a counter claim. On 18 October 2022, an order was made that the claimant's claim and the respondent's counter claim be considered together.
3. Case management preliminary hearings took place on 28 November 2022 and 18 April 2023.
4. The final hearing was postponed on 2 separate occasions, as a result of requests from both parties.
5. The respondent was legally represented in these proceedings until 23 March 2023, when the representatives withdrew from acting. The respondent was not present or represented at the case management preliminary hearing held on 18 April 2023. A note of that hearing was sent to the respondent on 20 April 2023. That confirmed that the final hearing would take place from 15-19 May 2023 inclusive. A notice of hearing was sent to the respondent on 21 April 2023. In advance of the Tribunal hearing the clerk attempted to contact Mr Hendrie, director of the respondent to conduct a CVP test, but they were unable to do so.
6. The case then called for the final hearing on 15 May 2023. The respondent was not present or represented.
7. At the outset of the hearing, the claimant applied for the respondent's Employer's Contract Claim to be struck out, under Rule 47 of the Employment Tribunals Rules of Procedure (the **Rules of Procedure**), given the respondent's failure to attend or be represented, for the strike out of the ET3, on the basis that the response had not been actively pursued, under Rule 37(1)(d) and that a judgment be issued under Rule 21.
8. The Tribunal adjourned to consider these applications. Following the adjournment the Tribunal confirmed the following:
  - a. The respondent's Employer's Contract Claim (case number 4104543/2022) is dismissed under Rule 47 of the Rules of Procedure, given that the respondent failed to attend or be represented at the hearing.

5 b. The Tribunal was not prepared to strike out the response under Rule 37(d) of the Rules of Procedure, given that Rule 37(2) had not been complied with. This requires that notice must be given to the respondent of the application, so that they have a reasonable opportunity to make representations either in writing or, if requested by the party, at a hearing. Failure to observe that requirement may render any strike out order invalid.

10 c. The Tribunal determined that it was appropriate to proceed with the hearing in the absence of the respondent, in accordance with Rule 47. In reaching this conclusion the Tribunal took into account the fact that the respondent was aware that the final hearing would be rescheduled and that the notice of hearing had been sent to them, but the respondent had not engaged with the process since their representative withdrew from acting.

15 9. A bundle of documents was lodged by the claimant, extending to 162 pages. Reference was made to this during the course of the hearing.

10. The claimant gave evidence on her own behalf. No further witnesses were called. The Tribunal accepted the claimant's evidence as entirely credible and reliable.

20 **Issues to be determined**

11. The issues to be determined by the Tribunal were as follows:

*Constructive unfair dismissal*

12. Did the respondent's actions, cumulatively amount to a repudiatory breach of the implied term of trust and confidence in the claimant's employment contract?  
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13. If the cumulative effect of the respondent's actions did amount to a repudiatory breach of the claimant's employment contract, did the claimant resign in response to this alleged breach?

14. If so, did the claimant delay unreasonably before resigning?

15. If the claimant was constructively dismissed, was that dismissal unfair.
16. If the claimant was unfairly dismissed what compensation should be awarded and should any element of this be uplifted for failure to comply with the ACAS Code?

5 *Wrongful dismissal & holiday pay*

17. Was the claimant entitled to any further payments from the respondent in respect either of the following:

- a. Notice pay; and/or
- 10 b. Holiday pay.

18. If so, what sums are due to the claimant?

**Findings in Fact**

- 15 19. The Tribunal found the following facts, relevant to the issues to be determined, to be admitted or proven.
20. The respondent trades as Ralph Hendrie Legal, a firm of solicitors based in Edinburgh, specialising in real estate and conveyancing. The respondent  
20 commenced trading as Ralph Hendrie Legal in February 2019 and, at the time of the claimant's employment had approximately 60 employees.
21. The claimant commenced her traineeship in 2015 and qualified as a solicitor  
25 in 2017. She specialises in residential conveyancing and, from 2015, has built up a 'book' of referrers, such as mortgage brokers and estate agents. She works hard to maintain those relationships, as around 95% of the work undertaken by the claimant and her team come from referrals. The claimant's ability to move to an alternative legal firm is now predicated on the referrers she can bring with her.
- 30 22. The claimant commenced working with the respondent, as an Associate Solicitor, on 6 January 2020. The referrers, with which she had established relationships, continued to instruct her to undertake work when she did so.

23. Under the claimant's contract of employment with the respondent she was entitled to:

- 5 a. A salary of £38,400 (pro-rated from £48,000, as she worked a 4 day week);
- b. 10% commission of the net fee of any work personally brought in by her whilst employed by the respondent;
- c. 25 days' holiday per calendar year, inclusive of public holidays; and
- 10 d. 3 months' notice of the termination of her employment, after one year's continuous service.

24. The claimant was appointed as a statutory director of the respondent on 10 June 2020. At that time the only other director was Mark Hendrie. Her salary was increased to £44,000 (pro-rated from £55,000) at that time and she  
15 remained entitled to commission.

25. The claimant headed a residential conveyancing team consisting of her, a legal assistant, paralegal and two administrative assistants.

20 26. The claimant took annual leave during the month of January 2022. This was planned as her daughter was having a baby. She carried over some of her annual leave entitlement from 2021 to enable her to do so. This meant she would only require to use 4 days of her 2022 entitlement, but could take the whole of January 2022 as annual leave. She was very clear in her evidence  
25 that this was the calculation she had made and the Tribunal accepted this was the case. The remaining 12 days were accordingly carried over from her 2021 entitlement. The only other holiday she took in 2022 was the Easter weekend, with only Friday 15 April 2022 being deducted from her annual leave entitlement, as Monday 18 April 2022 was a non-working day for the claimant.  
30 The claimant accordingly used 5 days of her 2022 annual leave entitlement, prior to the termination of her employment.

27. On 31 January 2022, the claimant sent an email to all of the respondent's staff (via an 'All Staff' email address), indicating that she would be back in the office  
35 the following day and was looking forward to seeing everyone. She requested

that they ensure that her parking space was free, as she was aware that staff had been using this while she was absent in January.

- 5 28. The claimant returned to work on 1 February 2022 and attended the office that day. She worked throughout the month of February 2022. As was her practice, established as a result of the Covid-19 pandemic and excluding periods of lockdown, she worked 1-2 days in the office and the remaining time from home, depending on business requirements. On 16 February 2022, she sent a further 'All Staff' email highlighting that when she had attended the office that day 10 someone else was parked in her space, so she was unable to park in it. She indicated that staff should check the respondent's 'Timetastic' system to ascertain whether she would be attending the office or working from home, before parking in her space.
- 15 29. On Friday 8 April 2022, the claimant worked from home. After close of business, at 17.55, the claimant received an email sent to her work address, from the respondent. The body of the email was blank, but there was a letter attached. The subject line in the email was "Suspension". The claimant attempted to read the letter attached to the email, but was unable to access 20 the letter. She was unable to do so as her remote access permissions, enabling her to access the respondent's IT systems, had by then been withdrawn. She had not been informed this would be done.
- 25 30. The claimant contacted Mark Hendrie and Emma Jenkins, the respondent's HR Partner, from her personal email account. She requested that the letter be sent to her by Royal Mail.
- 30 31. On 11 April 2022, as she had heard nothing further, the claimant attempted to contact Emma Jenkins by phone, but was unsuccessful in doing so. At 15:30 that day Emma Jenkins sent an email to the claimant at her personal email address, providing a copy of the letter which the claimant had been unable to access the previous Friday.
- 35 32. The letter was dated 8 April 2022 and was from Mark Hendrie. It was entitled 'Suspension on Full Pay Pending Disciplinary Investigation' and set out that

the claimant was suspended until further notice, pending an investigation into an allegation of gross misconduct. The letter did not provide any information about the allegation or the possible consequences. The letter stated that the Disciplinary Procedure and Rules were enclosed, but they were not. The letter invited the claimant to consider whether any documents, witnesses or other information might be relevant to the matters under investigation, but did not specify what those matters were. The claimant was informed that she must not communicate with any of the respondent's employees, contractors or customers during her suspension, unless authorised by Mark Hendrie.

33. The claimant had not seen the respondent's Disciplinary Policy and Rules. She understood this was something which the respondent had not yet prepared or implemented. The claimant, by return email, informed the respondent that the Disciplinary Policy and Rules were not attached to the email and requested that these be provided immediately. The claimant also pointed out that the letter contained no information as to the basis for any investigation. The claimant did not receive a response.

34. On Friday 15 April 2022, the claimant received a text message from Dayle Henderson who asked if the claimant would be available to meet her for a coffee and a chat. She said that Mark Hendrie had asked her to make contact. The claimant understood that Ms Henderson was Mark Hendrie's girlfriend. The claimant had not met Ms Henderson before. She did not work for the respondent. The claimant did not respond to the text.

35. At 07:14 on 20 April 2022, the claimant received a text message from Mark Hendrie stating that he'd like to speak to her and clear the air, if possible. The claimant replied by email, at 09:02 that day, asking for clarification as to whether the text related to her suspension or a was a work related query. She stated that she had yet to receive any information about the allegations or investigation, and had not received a copy of the disciplinary policy, despite asking for this on several occasions. She stated that she looked forward to hearing from him.

36. The claimant did not receive a reply and was not contacted again.

37. By 27 April 2022, the claimant had become extremely concerned about the fact that she still had no detail of the allegations against her, that it appeared that no investigation had been commenced and that she remained suspended. She had requested further information and a copy of the policy being followed, but this was not provided. She was clear that she had not committed any acts of gross misconduct and felt that Mr Hendrie was seeking engineer her departure by making unfounded and unspecified allegations. She was aware that a number of other individuals in the firm had recently been summarily dismissed by Mr Hendrie, seemingly without reason. Throughout her suspension she had no access to the respondent's systems, so had no visibility as to how transactions were being managed, particularly those involving clients referred to her by her established referrers. She was concerned about the damage to her professional reputation and relationships, and that these would be further damaged by the respondent's inaction while she remained suspended with no foreseeable end date. She took the view that, for these reasons, she had no option but to resign.

38. By email on 27 April 2022 to Mark Hendrie, the claimant resigned both as an employee and director, with immediate effect. In her letter she stated:

*'I write to notify you and the Company that I am resigning with immediate effect as both a Director and employee of the firm. Unfortunately, as a result of your lack of response in relation to my suspension you have left me with no other choice but to resign. As you are no doubt aware, the period of suspension has now become not only damaging to my professional reputation but also to my professional contacts and clients. You suspended me by email after close of business on Friday 8th April without explanation. A letter was attached but because my remote access was disconnected, I was unable to read it. I requested a copy of the letter which I received on Monday 11th April and note a reference to gross misconduct. No details were provided. In addition, the disciplinary policy was not attached and although I have requested this on more than one occasion, it has yet to be provided.*



To date my suspension has not been reviewed and you have failed to keep me informed. As far as I am aware no investigation has commenced and I have not been invited to an investigation meeting. You have not set out the particulars of any allegations and have left me completely in the dark for nearly 3 weeks now. In addition, you have not replied to my email of 20 April 22.

I consider that the company are in breach of my contract of employment and I therefore have no other option than to resign. I also have wider concerns about the way the Company is being managed.

I have taken independent legal advice with regards to these unfortunate circumstances and my solicitor will now make contact with you directly.

39. For the avoidance of doubt, whilst the claimant stated in her letter of resignation and her evidence to the Tribunal that she also had wider concerns about the way the company was being managed, the Tribunal concluded that these concerns were not an effective cause of her resignation. The effective cause, as confirmed by the claimant in her evidence and stated in her letter of resignation, was her suspension and the related circumstances.

40. At the time of her resignation, the claimant's weekly gross salary was £846.15 (£44,000/52). She also received commission averaging £197.12 gross per week and discretionary bonuses averaging £35.65 gross per week (the latter two figures being calculated by reference to the last three months of the claimant's employment, as per the calculation of a week's pay contained in the ERA). Her average gross remuneration was accordingly £1,078.92 per week. Had she remained in employment with the respondent this would have resulted in net weekly remuneration of £758 per week in the tax year 2022/23.

41. The claimant did not receive unemployment benefits, following the termination of her employment with the respondent.

42. The claimant commenced alternative permanent employment on 20 June 2022, with another legal firm. While her preference was to work 4 days, this was not possible. She accordingly worked 5 days per week. Her salary in her new role was £68,000. She did not receive any further commission or bonuses. Her weekly remuneration was accordingly £1,308 gross or £886 net in that employment. Had she been able to work 4 days per week, and her salary reduced on a pro-rata basis, she would have had weekly remuneration of £1,046 gross or £740 net.
43. The claimant enjoyed that role and liked the people she worked with. She intended to remain working with that employer and would have remained there had it not been for the fact that it became apparent that the legal firm was to be taken over by a large international legal firm. Around the time that she became aware of this, she was approached by another firm, based close to where she lives, to head up their residential conveyancing team, on more attractive terms, in relation to hours, location and remuneration. She accepted that role and moved to a different legal firm, commencing employment with them on 20 February 2023. She earns £70,000 in this role, plus 5% commission on referrals brought in by her. Her weekly remuneration is accordingly now substantially more than she earned with the respondent.

### **Claimant's submissions**

44. Mr Hay, for the claimant, gave an oral submission. In summary he invited the Tribunal to accept the claimant's evidence as credible and reliable and uphold her complaint of constructive unfair dismissal as a result of the respondent's breach of the implied duty of trust and confidence, as established by the evidence. Any award should be uplifted as a result of the respondent's failure to follow the Acas Code. The claimant is also entitled to holiday pay.

### **Relevant Law**

#### *Unfair Dismissal*

45. Employees with more than two years' continuous employment have the right not to be unfairly dismissed, by virtue of s94 ERA. 'Dismissal' is defined in

s95(1) ERA to include what is generally referred to as constructive dismissal. Constructive dismissal occurs where the employee terminates the contract under which he/she is employed (with or without notice) in circumstances in which he/she is entitled to terminate it by reason of the employer's conduct (s95(1)(c) ERA).

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46. In order for there to be a constructive dismissal, there must be a breach by the employer of an essential term, such as the trust and confidence obligation, and the employee must resign in response to that breach (although that need not be the sole reason - see **Nottinghamshire County Council v Meikle** [2004] IRLR 703). The right to treat the contract as repudiated must also not have been lost by the employee affirming the contract prior to resigning.

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47. The test for whether an employee is entitled to terminate his contract of employment is a contractual one. The Tribunal requires to determine whether the employer has acted in a way amounting to a repudiatory breach of the contract, or shown an intention not to be bound by an essential term of the contract (**Western Excavating (ECC) Ltd v Sharp** [1978] ICR 221). For this purpose, the essential terms of any contract of employment include the implied term that the employer will not, without reasonable and proper cause, act in such a way as is calculated or likely to destroy or seriously damage the mutual trust and confidence between the parties (**Malik v Bank of Credit and Commerce International Ltd** [1998] AC 20).

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48. In **Morrow v Safeway Stores pic 2002 IRLR 9, EAT**, the EAT held that, if the employer is found to have been guilty of conduct that seriously undermines trust and confidence, that is something that goes to the root of the contract and amounts to a repudiatory breach entitling the employee to resign and claim constructive dismissal and/or breach of contract.

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49. If an employee establishes that they have been constructively dismissed, the Tribunal must determine whether the dismissal was fair or unfair, applying the provisions of s98 ERA. It is for the employer to show the reason or principal reason for the dismissal, and that the reason shown is a potentially fair one within s98 ERA. If that is shown, it is then for the Tribunal to determine, the

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burden of proof at this point being neutral, whether in all the circumstances, having regard to the size and administrative resources of the employer, and in accordance with equity and the substantial merits of the case, the employer acted reasonably or unreasonably in treating the reason as a sufficient reason to dismiss the employee (s98(4) ERA).

#### *Wrongful Dismissal*

50. Wrongful dismissal is a claim for breach of contract - specifically for failure to provide the proper notice provided for by statute or the contract (if more).

#### *Holiday Pay*

51. Regulation 14 of the Working Time Regulations 1998 (**WTR**), sets out the entitlement where a worker's employment ends during a leave year and provides, at 14(2), that *'where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph 3.'*

#### **Discussion & Decision**

#### *Holiday Pay*

52. The Tribunal reached the following conclusions in respect of the claimant's holiday pay complaint:

- a. The respondent's holiday year ran from 1 January to 31 December;
- b. The claimant was entitled to 25 days' holiday per annum;
- c. Her employment terminated on 27 April 2022, at which point her pro-rata entitlement was 8 days ( $117/365 \times 25$ );
- d. In addition, with the respondent's consent, the claimant carried 12 days forward from her 2021 entitlement to 2022;
- e. The claimant was absent for the whole of January 2022. She works Tuesday to Friday, so this amounted to 15 working days (4 January 2022 being a public holiday). In addition, the office was closed for the public for

the Easter weekend. Tuesday 4 January and Friday 15 April 2022 were accordingly additional dates of annual leave;

- f. As at the date her employment terminated, the claimant had accrued but not taken 3 days of her 2022 annual leave entitlement;
- g. The claimant was not paid for this entitlement on the termination of her employment;
- h. The claimant's daily remuneration was £269.73 gross (£1,078.92/4); and
- i. The sum outstanding, and payable to the claimant by the respondent in respect of holiday pay, is accordingly **£809.19** gross.

10 *Unfair Dismissal*

53. The claimant claimed that the respondent was in breach of her contract of employment by their actions which, cumulatively, breached the implied duty of trust and confidence.

15 54. In considering the claimant's claim of constructive dismissal, based on actions which she asserts cumulatively breached the implied duty of trust and confidence, the Tribunal considered the following issues.

*Was there a fundamental breach of contract on the part of the respondent that repudiated the contract of employment?*

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55. The Tribunal considered whether the respondent had reasonable and proper cause for their actions. In their ET3, the respondent stated that *'the primary reason for suspension was [the claimant's] unauthorised absence from work for the whole of February 2022 for which she had provided no explanation.'*

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It was clear from the claimant's oral evidence and the documents relied upon that she had been working throughout February 2022 and was not absent. The respondent had no reasonable and proper cause for suspending the claimant, primarily as a result of absence. Having suspended the claimant, the respondent had no reasonable and proper cause for their actions in failing to inform her of the basis for the allegation of gross misconduct, failing to respond to the claimant's requests for copy of the disciplinary policy, and failing to progress an investigation.

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56. The claimant was a senior individual in the respondent's organisation. She is a solicitor who requires to abide by professional standards and has a professional reputation. Her ability to move to alternative firms is predicated on the clients/referrers she can bring with her. She has worked hard to establish and maintain these relationships. Suspension in these circumstances was not a 'neutral act', as asserted in the respondent's letter to the claimant informing her that she was suspended.

57. The respondent's actions in:

- a. accusing her of gross misconduct;
- b. failing to inform her of the basis of that accusation;
- c. suspending her so that she has no contact with her team or the clients and referrers (relationships which she brought with her when she commenced working for the respondent and has long standing relationships with);
- d. removing her access to all of the respondent's IT systems; and then
- e. failing to respond to the claimant's requests for information and a copy of the disciplinary policy, or progress an investigation,

all without reasonable and proper cause were, without doubt, likely to destroy or seriously damage trust and confidence. They were quite possibly also calculated to do so.

58. In these circumstances the Tribunal had no hesitation in concluding that the respondent's actions, cumulatively, breached the implied duty of trust and confidence and that the breach was a fundamental and repudiatory breach.

*Did that breach cause the claimant to resign?*

59. The Tribunal accepted that the claimant resigned in response to this breach. She clearly set out these issues in her letter of resignation as being the reasons for her doing so. Her evidence to the Tribunal, confirming this, was also accepted.

*Did the claimant delay and affirmed the contract before resigning?*

5 60. The Tribunal found that the claimant had not affirmed the contract before resigning. She reasonably sought to obtain information following her suspension and, when this was not forthcoming and no indication was provided as to when she may receive this, she resigned.

*Conclusions re unfair dismissal complaint*

10 61. Given these findings the Tribunal concluded that the claimant was constructively dismissed by the respondent. It is for the employer to show the reason or principal reason for the dismissal, and that the reason shown is a potentially fair one within s98 ERA. They have not done so. The Tribunal accordingly concluded that the claimant was unfairly dismissed.

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*Wrongful Dismissal*

20 62. Having found that the respondent's actions amounted to a repudiatory breach of the claimant's contract of employment, the claimant's wrongful dismissal complaint also succeeds.

*Remedy for Unfair Dismissal*

63. The Tribunal considered the appropriate remedy for unfair dismissal.

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*Acas Code*

30 64. The Tribunal firstly considered whether the respondent had unreasonably failed to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures (2015) (the **Acas Code**). The Tribunal noted that the claimant had never seen any disciplinary procedure. She understood this was something which the respondent had not yet prepared or implemented. She requested a copy, when it was referred to in the suspension letter, but it was not provided. Suspension was alluded to on 8 April 2022 and she received

Notification of this on 11 April 2022. As at 27 April 2022, no investigation had commenced and the claimant remained suspended for an unspecified allegation of gross misconduct. The respondent's position is that the principal reason for suspension was unauthorised absence. In these circumstances, and taking into account the claimant's position and standing in the respondent's business, the Tribunal concluded that a delay of almost three weeks in the respondent commencing any investigation into an apparently straightforward matter, was an unreasonable delay and the claimant's suspension was not as brief as possible. Given these findings, the Tribunal accepted, as asserted by the claimant, that the respondent had failed to comply with the following requirements of the Acas Code:

- a. Section 2, which states that employers have written rules and procedures and that employees understand what these are and where they can be found.
- b. Section 5 which states that investigations into disciplinary matters should be carried out without unreasonable delay; and
- c. Section 8 which states that any period of suspension which is considered necessary should be as brief as possible and kept under review.

65. The Tribunal concluded that these failures were unreasonable. No reasonable explanation has been advanced.

66. In these circumstances, and being mindful of the guidance given by the EAT in the recent case of **Slade and anor v Biggs and ors** 2022 IRLR 216, EAT, the Tribunal considered that it was just and equitable to apply an uplift as a result of failure to comply with the Acas Code. Taking into account the fact that the process was at a very early stage when the claimant resigned, and the possibility that the respondent may have complied with the remaining elements of the Acas Code if the claimant had remained in employment, the Tribunal determined that a 10% uplift in respect of any award would be just and equitable.



*Polkey*

67. Whilst not put forward at the hearing, given that the respondent was not present or represented, the Tribunal considered respondent's assertion, in their ET3, that *'the claimant would have been likely to have been dismissed in any event given her unauthorised absence for which no reasonable excuse has been put forward.'* The Tribunal rejected this assertion, having found that the claimant was indeed working for the respondent throughout February 2022. If an investigation and disciplinary hearing had taken place, this would have been established. Given this finding, the Tribunal did not consider it appropriate to make any reduction to the award on the basis of Polkey.

*Contribution*

68. Again, whilst not put forward at the hearing, given that the respondent was not present or represented, the Tribunal considered respondent's assertion, in their ET3, that compensation should be reduced on account of the claimant's contributory conduct, in taking unauthorised absence and failing to explain this. The Tribunal accordingly required to consider whether the claimant's conduct, prior to dismissal was such that it would be just and equitable to reduce the basic award, or whether the claimant's dismissal was to any extent caused or contributed to by her actions, such that it would be appropriate to reduce the compensatory award. The Tribunal concluded that the claimant's actions, prior to dismissal were not such that it would be just and equitable to reduce the basic award. The Tribunal also concluded that the claimant's actions were not culpable or blameworthy in any respect. No reduction should accordingly be made to any award on this basis.

*Basic Award*

69. Given the claimant's age at the date her employment terminated (56 years' old), length of service (2 years), gross weekly salary (£1,078.92) and the applicable cap at the date the claimant was dismissed (£571) the claimant's basic award is **£1,713.**

*Compensatory Award*

70. The claimant's employment terminated on 27 April 2022. She secured permanent alternative employment commencing from 20 June 2022. She intended to remain working with that employer and would have remained there had it not been for:

- a. the fact that it later became apparent that that legal firm was to be taken over by a large international legal firm; and,
- b. the fact that, around the time that she became aware of this, she was approached by another firm, based close to where she lives, to head up their residential conveyancing team, on more attractive terms (in relation to hours and remuneration).

71. It was accordingly the claimant's intention, on taking up permanent alternative employment in June 2022, to remain with that employer. She was not actively seeking alternative employment. She was earning more in employment than she had while working for the respondent (her weekly pay with the respondent having been calculated by reference to the definition of a week's pay contained in the ERA, which the Tribunal determined was just and equitable in the circumstances). If she had worked for 4 days per week in her new employment she would have earned substantially the same, on a pro-rata basis, as she had when she worked for the respondent. Taking these points into account, the Tribunal determined that it was, in the circumstances, just and equitable to only make an award for losses in the period from the effective date of termination to 20 June 2022, a period of 7.7 weeks.

72. The Tribunal accordingly calculated the compensatory award as follows:

Loss of net earnings - 7.7 weeks at £758	£5,836.60
Pension contributions - 7.7 weeks at £25.40	£ 809.19
Loss of statutory rights	<u>£ 500.00</u>
Sub-total	£7,145.79

Increase re Acas Code - 10%

£ 714.58

**Total Compensatory Award**

**£7,860.37**

*Remedy for Wrongful Dismissal*

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73. The claimant's complaint in relation to wrongful dismissal relates to damages for failure to pay her notice period, which covered in the compensatory award for unfair dismissal. No further sums are accordingly due in respect of this.

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**Employment Judge: M Sangster**  
**Date of Judgment: 16 May 2023**  
**Entered in register: 25 May 2023**  
**and copied to parties**

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