EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102760/2023

Held in Glasgow on 14 and 15 August 2023

Employment Judge M Kearns (sitting alone)

Mr M Swan	**Claimant** **In Person**
Caledonian MacBrayne Crewing (Guernsey) Limited	**Respondent** **Represented by:** **Ms G Watson - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal was to dismiss the claim.

REASONS

1. The claimant - who is aged 51 years - was employed by the respondent from 10 May 2010 until 13 February 2023, when he was dismissed for a capability (ill health) reason. On 17 April 2023, having complied with the early conciliation requirements, the claimant presented an application to the employment tribunal in which he claimed that his dismissal was unfair.

Issues

2. The respondent admitted dismissal. The issues for the employment tribunal were:

   (i) Whether the dismissal was unfair contrary to section 98 Employment Rights Act 1996 ("ERA");

   (ii) If it was unfair, what remedy would be appropriate; and

(iii) If the dismissal was unfair, the percentage or other chance a fair procedure would have reached the same result.

Applicable Law

Unfair Dismissal

3. Section 98 of the Employment Rights Act 1996 sets out how a tribunal should approach the question of whether a dismissal is fair. There are two stages. The first stage is for the employer to show the reason for the dismissal and that it is a potentially fair reason (s.98(1)). A reason relating to the capability of the employee for performing the work he was employed to do is a potentially fair reason under s.98(2). In terms of s.98(3)(a) "capability" is assessed by reference to "Skill, aptitude, health or any other physical or mental quality".

4. If the employer is successful in establishing the reason, the tribunal must then move on to the second stage and apply section 98(4) which provides:

"…where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

shall be determined in accordance with equity and the substantial merits of the case."

5. The test is an objective one. The tribunal has to decide whether, in the circumstances, the employer's decision to dismiss the employee fell within the band of reasonable responses that a reasonable employer might have adopted in those circumstances (Iceland Frozen Foods Ltd v Jones [1982] IRLR 439). The tribunal must not substitute its own view for that of the employer.

6. The band of reasonable responses test applies both to the decision to dismiss and to all aspects of the procedure by which that decision is reached.

Evidence

7. The parties had prepared a joint bundle of documents (J) and referred to them by page number. The respondent called the following witnessesCaroline Barry, HR Business Partner; Gordon Smith, Retail Development Manager, who chaired the final contract review meeting; and Craig Ramsay, Director of Fleet Management, who conducted the appeal. The claimant gave evidence on his own behalf.

Findings in fact

8. The following relevant facts were admitted or found to be proved:

9. The respondent is the employer of the crew-members who work aboard Caledonian MacBrayne ferries on the west coast of Scotland. The claimant was employed by the respondent from 10 May 2010 until 13 February 2023, latterly as chief cook aboard the MV Isle of Arran. He was dismissed on 13 February by reason of intermittent sickness absence.

10. The crews of the Caledonian MacBrayne vessels work continually for two weeks and are then on rest time for two weeks. For the whole of the two week working period, they live on the boat and are fed by the vessel's cook(s). Most of the roles undertaken by the crew members (including the claimant's role of chief cook) are muster roles. This means that over and above their normal duties, they have safety duties in the event of emergency, for which they receive training. Because of the muster duties of each role and the respondent's legal obligations, a vessel cannot sail if crew members who are necessary for muster are missing.

11. The respondent has a "call-back" overtime system under which crew members on rest time can volunteer to work. The respondent pays three times the normal daily rate for call-back. If a crew member is absent at short notice, the respondent tries to replace them using the call-back system.

12. The respondent has a generous sick pay policy (J66). Because of his length of service, the claimant was entitled to sick pay for up to six months on full pay and six months on half pay.

13. In the three years leading up to the claimant's dismissal he had been absent on 96 working days through sickness (not including 19 days when the claimant sustained a head injury in an accident at work). The absences were all accepted by the respondent to be genuine sickness absences but there was no one underlying cause.

14. The respondent has a written absence policy (J49) which is available to employees on its intranet. The Intermittent Absence Review Procedure at Appendix 2 to that policy states: "*This procedure will be followed in circumstances where absence levels have met the following triggers:"* The triggers at each stage are then set out. Where an employee has three periods of absence or 10 days of absence in a 12-month rolling period, this triggers a Stage 1 absence review meeting ("ARM"). At the ARM, the employee may be given a Level 1 attendance warning followed by a 12 month monitoring period. During the 12 month Level 1 monitoring period, if the employee has two periods of absence or 10 days of absence, it triggers a Stage 2 ARM at which a Level 2 attendance warning may be given and a further 12-month monitoring period imposed. If there are any absences of any duration in the Stage 2 monitoring period, it may trigger a Contract Review Meeting ("CRM") which may result in dismissal. A list of bullet points for discussion at a CRM includes "*to consider whether there is a likelihood of the employee achieving the desired level of attendance in a reasonable time"* and "*to consider any further relevant matters to be raised"*.

15. In this case, the claimant received a Level 1 attendance warning on 18 January 2022. The sickness absences that resulted in this attendance warning were: an absence of 14 days from 26 May to 9 June 2021 as a result of joint pain and an absence of 6 days from 5 to 11 January 2022 for influenza. During the 12-month period leading up to the warning, the claimant had also been off sick for 19 days in October 2021 with a head injury. However, this was not counted under the policy because it resulted from an accident at work.

16. In the Stage 1 12-month monitoring period that followed the claimant's Level 1 warning, the claimant was off sick from 2 to 8 March 2022 with a UTI and from 17 to 19 October 2022 when he had a chest infection and had to leave the boat feeling unwell. This triggered a Stage 2 absence review meeting on 8 November 2022, with the claimant's line manager, Mr Grant. At the end of the meeting, Mr Grant read the outcome to the claimant (J120), informing him that he was to be placed on a Level 2 attendance warning and 12 month monitoring period. The claimant was informed that continued poor attendance could potentially result in dismissal. A letter dated 22 November 2022 (J121) was sent to the claimant, confirming the Level 2 attendance warning and monitoring period (lasting until 19 October 2023). The claimant was informed that he had the right to appeal against this decision and he did so by email dated 25 November 2022 (J124).

17. On 23 November 2022, the claimant received news that his aunt was suffering from terminal cancer. The claimant's aunt was enormously important to him because she had looked after him from the age of five after he had been in care and she had been like a mother to him. He was hit very hard by the news and his doctor signed him off sick until 3 January 2023. The reason for absence given on the medical certificate was: "depressed mood". During this period, the claimant attempted to contact Gordon Smith, his second line manager by telephone and by email. Mr Smith was on annual leave for much of the period from late November until after Christmas and he did not respond to the claimant's email or return his calls for that reason. Shortly thereafter, the claimant also received news that his stepmother was gravely ill.

18. With effect from 23 November 2022, the claimant received regular calls from Tessa, one of the crew resource analysts ("CRAs") engaged by the respondent to give welfare support to employees who are off sick. The CRAs contact absent staff at the beginning of a period of absence and agree with them the frequency of welfare support calls going forward. Generally, CRAs will aim to call the staff member once a week and offer them support in getting back to work. In addition to the calls from Tessa, Caroline Barry, HR Business Partner had one or two calls with the claimant.

19. The respondent has an Employee Assistance Program available to staff twenty four hours a day, which offers a course of six free counselling sessions with an independent counselling service. The claimant was made aware of this service, and he contacted them. They returned his calls but unfortunately, he was unable to speak to them at the time because he was at the hospital visiting his aunt and he did not follow up with them thereafter.

20. The claimant's appeal against the Level 2 attendance warning was heard by Mr Smith, assisted by Caroline Barry, HR Business Partner at an appeal meeting on 9 December 2022. The appeal was not successful, and the original attendance warning was confirmed in a letter dated 15 December (J129).

21. On 23 January 2023, the claimant received a call from his sister while he was at work. His sister told him that it was time to come to the hospital and say his final goodbyes to his aunt. The claimant attempted to contact Mr Smith without success, but he did manage to speak to Ms Barry, HRBP. Ms Barry told the claimant that the respondent may be able to offer him unpaid compassionate leave. However, the claimant was too distressed to take this suggestion further. The claimant went to the hospital to be with his aunt, who died the next day (24 January 2023). The claimant obtained a medical certificate dated 23 January 2023 (J132) from his doctor, signing him off until 1 February 2023 by reason of "depressed mood". A further certificate was issued from 1 to 14 February 2023. The claimant remained off sick. By letter dated 6 February 2023 (J136) the claimant was invited to a Stage 3 Contract Review Meeting ("CRM"). The letter advised the claimant that dismissal was a possible outcome of the meeting and also told him of his right to be accompanied. The CRM was arranged for 10 February 2023.

22. The claimant's aunt's funeral took place on 8 February 2023. When Ms Barry spoke to the claimant on the telephone, she offered to postpone the CRM. However, the claimant said he would prefer it to go ahead on 10 February so he could get it out of the way. Accordingly, the CRM went ahead on 10 February. It was chaired by Mr Smith, assisted by Caroline Barry. The claimant was accompanied to the CRM by a colleague, Mr Paul Shaw. A note

was taken by Ms Barry (J137). In relation to his sickness absence from 17 to 19 October, the claimant explained that he had gone off sick a day and a half before a week's leave that had been granted and that he had done call back when he was ill to try and help.

23. The claimant said that he had tried to contact Mr Smith a couple of times but that Mr Smith had not got back to him. He confirmed that he had had calls from Tessa Urquhart (CRA) and Ms Barry. Mr Smith explained to the claimant that his absence impacted his team and also the respondent, in that absence caused difficulties for the team working on the vessel. Call back meant that colleagues who picked up extra shifts during their rest periods were liable to fatigue. In addition, call back presented a very high cost to the business. The claimant said that he understood and that it would not happen again. He said he was in a better place physically and mentally. The claimant's colleague, Mr Shaw suggested to Mr Smith that the additional days the claimant had worked as call back probably matched the number of days he had been off sick. He stated: "*Working all that call back creates fatigue*". Mr Shaw also stated: "*Mark needed time off for a dependent but the company don't provide that.*" Ms Barry responded: "*They do, however it is unpaid. Were the options explained to you Mark?*" The claimant replied: "*Yes, but I decided to get a sicknote and that's what's brought me to the Level 3".* Mr Smith did not regard Mr Shaw's argument that the claimant's call back service should be taken into account when assessing his sick absence as valid because if someone with the claimant's length of service is off sick, they are still paid their salary. However, a replacement has to be found at short notice and so, in addition to the absent worker's salary, a call back colleague must be paid three times the rate to replace them. Furthermore, if the respondent is unable to find call back support and fill the role, it might potentially stop the ship from sailing, both for legal muster reasons but also because there may be no one to cook for the crew, who live on the boat and must be fed. It was Mr Smith's view that it was more important for an employee to attend for their rostered days than to work overtime. At the end of the meeting, Mr Smith told the claimant he would let him know the outcome by Monday 13 February.

24. Mr Smith considered what to do. He thought about whether to extend the claimant's Level 2 monitoring period but he discounted that because of the pattern of the claimant's absences and the variety of different reasons for them. He did not identify any underlying health issue. He was aware that the claimant was having a difficult time because of the death of his aunt. However, he considered that that had not been the absence that triggered the CRM on 17 October. When it came to the claimant's bereavement, he took the view that it would not be consistent with the treatment of other employees suffering bereavements to disregard a lengthy period of sick leave for that reason. He reasoned that bereavements happen fairly regularly and that the policy allowed unpaid leave for this and also for care of dependents. The difference with sickness absence was that it was paid. He was aware that Ms Barry had offered the claimant the opportunity to take unpaid leave but that the claimant had refused it. In all the circumstances, Mr Smith decided that he had no alternative but to dismiss the claimant.

25. At around one minute to 5pm on Monday 13 February, Mr Smith telephoned the claimant to let him know that his decision was to dismiss him and the reasons why. The claimant was very upset. Mr Smith's decision was confirmed in a letter dated 14 February 2023 (J144), which was emailed to the claimant on Wednesday 15 February. The letter informed the claimant of the decision and the reasons for it and notified him of his right of appeal. It quoted his absence history from 2015 to 2023. The letter stated: "*At the meeting, all your absences and warnings leading to the Level 3 / Contractual Review meeting were discussed and we have summarized your absences and warnings in the table below:…"* There followed a table showing the claimant's absences and the dates, length and reasons for each of them, going back to 7 August 2015.

26. The claimant appealed against his dismissal by letter dated 19 February 2023 (J148). The appeal hearing was originally scheduled for 9 March 2023. However, it was rearranged when it became clear the claimant had not received all the necessary documentation. The hearing took place on 23 March and was chaired by Craig Ramsay, who at that time held the post of

Head of Marine. Brenda Connor, HR Business Partner assisted and took a note (J156). The appeal was unsuccessful and this outcome and the reasons for it were confirmed to the claimant by letter dated 24 March 2023 (J164).

Discussion and Decision

27. As set out above and discussed at the outset of the hearing, the tribunal's task in this case is to consider whether the reason or principal reason for the claimant's dismissal was capability arising from ill health; and if so, to assess whether the process and decisions of the respondent in relation to his dismissal for that reason were within the band of reasonable responses a reasonable employer might have made to that reason in those circumstances.

Reason for dismissal

28. In his appeal against dismissal (J149), the claimant suggested that Mr Smith had targeted him and wanted him removed from the business. The grounds he put forward for thinking this were that (i) in September 2022 he had applied for another position within the business and had not received a response. He said that when he had chased Mr Smith, he was then given an interview four weeks after the other applicants and had never been told the outcome. (ii) Mr Smith had not returned his telephone calls or answered his email; and (iii) he had not received any welfare calls from Mr Smith, whereas he was aware of Mr Smith providing welfare checks to other staff managed by him.

29. With regard to (i), Mr Smith's explanation was that a new process had been introduced in 2022 for promotions to cut down the amount of management time spent interviewing. Promotion boards had been introduced based on information contained in staff annual appraisals. A new section had been put in the appraisal forms asking the appraiser to indicate whether the appraisee was recommended for promotion. If a vacancy arose, the person with the top recommendation score would be interviewed for the vacancy. If there was no vacancy, the recommended names would be retained on a list pending a vacancy arising. I accepted Mr Smith's explanation but did wonder whether

there could have been better communication with the claimant about the process. In any event, it did not appear to me that this was relevant to the reason for the claimant's dismissal. With regard to (ii) and (iii), the claimant is clearly quite a sensitive person and he felt hurt by what he perceived as Mr Smith's lack of care or interest when he was going through a very difficult time. Unfortunately, as I think he now accepts, he put two and two together and made five. There was no cogent evidence that Mr Smith had any ulterior motive or other reason for the claimant's dismissal than his intermittent absences.

30. I concluded that the respondent had shown that it dismissed the claimant by reason of his ill health absences which affected his capability for performing the work he was employed to do. Under s. 98(3)(a) Employment Rights Act 1996 ("ERA"), capability may be assessed by reference to health. Capability is a potentially fair reason for dismissal under s 98(2). I therefore find that the respondent has shown the reason for dismissal and that it is a potentially fair reason as required by section 98(1) ERA.

Reasonableness

31. Turning to the question of whether the dismissal was reasonable in all the circumstances for the purposes of section 98(4) ERA, the claimant raised the following arguments as to why he considered that the dismissal was not reasonable in all the circumstances and I considered them carefully in turn:

    a) The claimant argued that he did not know that dismissal was a possible outcome of the Contractual Review Meeting;

32. I looked at the letter of 6 February 2023 inviting the claimant to the CRM J136). The letter contained the following paragraph: "*I must also advise that in line with the Absence Policy, if after carefully considering all relevant facts and any mitigating circumstances, you may be dismissed from the company. However, you will be fully advised in writing at each stage.*" The claimant was an honest witness, who made appropriate concessions. He fairly conceded that when he got the letter he probably did not read it properly, owing to his anxiety and distress following the death of his aunt. It is fair to say that the

paragraph was somewhat buried in the letter and that it could have been clearer and more prominent. However, the letter did also contain a link to the Absence Policy and the claimant was accompanied by a colleague. On balance it seemed to me that the steps taken to alert him to the seriousness of his situation were within the band of reasonable steps a reasonable employer might have taken in the circumstances.

b) The claimant felt that the respondent had delayed in advising him of his dismissal;

33. At the end of the CRM on Friday 10 February, the claimant was told by Mr Smith that he would telephone him with the outcome by Monday 13 February. The claimant's expectation was that he would hear by 3pm, whereas Mr Smith telephoned him at one minute to five. By this stage, the claimant had been feeling anxious about the call for the whole weekend and was in a state of some distress. Mr Smith's position was that he had wanted to take his time considering all aspects of the matter and had not wanted to rush the decision. Whilst I understood how the claimant must have felt waiting anxiously for Mr Smith's call, it did not appear to me that delivering the outcome decision at the end of the next working day following the meeting was outside the band of reasonable time periods a reasonable employer might have adopted.

c) The respondent looked at the claimant's sickness absence dating back 8 years, rather than only his absence during the monitoring period;

34. In his appeal letter, the claimant complained that the respondent had extracted sickness history dating back eight years. He stated that formal monitoring is over a two year period and that the respondent had presented history that exceeded the period. He argued that this was non-admissible for the purposes of the contractual review. The starting point for considering this is Appendix 2 of the respondent's absence policy which sets out the 'intermittent absence review procedure'. It begins: "*This procedure will be followed in circumstances where absence levels have met the following triggers:"* The triggers at each stage are then set out. A list of bullet points for discussion at the CRM includes "*to consider whether there is a likelihood of*

the employee achieving the desired level of attendance in a reasonable time" and "*to consider any further relevant matters to be raised"*. It seemed to me that this was broad enough to cover looking at an employee's full absence history and that nothing in the policy precluded the respondent from doing so. The absences in the monitoring period were described as "triggers" for formal action. In other words they would 'trigger' or give rise to formal action but that action was not confined to considering the triggers alone. Under cross examination, Mr Smith said that it was important to look at an employee's full absence history when considering what action to take. For example, it might be the case that although someone has had a lot of absence during the monitoring period, that could be down to 'a run of bad luck'. If the person had no sickness absence prior to the monitoring period, that would be relevant. I did not conclude that any issue of non-admissibility arose here. I also concluded that looking at the full absence picture over eight years was within the band of reasonable actions of a reasonable employer in the circumstances.

d) The claimant received no welfare support while on sickness absence;

35. The claimant accepted that he had received regular calls from Tessa, one of the crew resource analysts ("CRAs") engaged by the respondent to give welfare support to employees who are off sick. The CRAs contact absent staff at the beginning of a period of absence and agree with them the frequency of welfare support calls going forward. Generally, CRAs will aim to call the staff member once a week and offer them support in getting back to work. In addition to the calls from Tessa, Caroline Barry, HR Business Partner had calls with the claimant on one or two occasions.

36. The respondent also has an Employee Assistance Program available to staff twenty four hours a day. This offers a course of six free counselling sessions with an independent counselling service. The claimant was made aware of this service and he contacted them. They returned his calls but unfortunately, he was unable to speak to them at the time because he was at the hospital visiting his aunt and he did not follow it up thereafter.

37. The claimant's particular complaint was that he had not been assisted to access the alternatives to taking sickness absence in relation to the difficult situation with his aunt. Ms Barry explained to him on the telephone in January 2023 that he could ask for unpaid compassionate leave. He could also have applied for unpaid 'time off to help dependents' leave (J58). If he had accessed either of these instead of taking paid sickness absence, he might not have triggered the CRM. (Although given the length of the absences, it may have ended in the same result. Ms Barry testified that she had had in mind that she could have offered the claimant two weeks' unpaid leave if he had accepted her suggestion in January. Ultimately, the absences he took were 41 days with effect from 23 November 2022 and 21 days from 24 January.) I understood the point the claimant was making here and if it is correct, it is most unfortunate. However, Ms Barry did make the claimant aware of the possibility of taking unpaid leave and he very fairly and honestly accepted that he had not taken it up because of his distress about his aunt. I concluded on this point that, whilst the claimant did not manage to speak to Mr Smith during this period, he did have welfare support which was well within the band of reasonable support a reasonable employer might have offered in the circumstances.

e) The reasons for the claimant's absences were genuine;

38. There was no suggestion by the respondent that the claimant's absences were anything other than genuine. If they had not been so, they would have been dealt with under the disciplinary policy, so there was nothing in this point.

f) No recognition was given to the claimant's 13 years of service, or to the fact that the claimant worked regular overtime;

39. Mr Shaw, the claimant's accompanying colleague, made this point during the CRM, commenting that the additional days the claimant had worked on call back probably equalled the days lost through sickness absence. The point was also made by the claimant during his evidence to the tribunal. He stated that he had worked regular call back for the respondent, including throughout the pandemic and that he had worked at least as much call back over the

years as he had had sick days. Mr Smith did not regard this as a cogent argument. If someone with the claimant's length of service is off sick, they are still paid their salary but a replacement has to be found at short notice and so, in addition to the absent worker's salary, a call back colleague must be paid three times the rate to replace them. Mr Smith explained that if the respondent was unable to find call back support and fill the role, it might potentially stop the ship from sailing, both for legal muster reasons but also because there may be no one to cook for the crew, who live on the boat and must be fed. He explained and I accepted that it was more important for an employee to attend for their rostered days than to work overtime and that working overtime does not cancel out sickness absence.

g) Mr Smith personally targeted the claimant;

40. This point is discussed above. There did not appear to be any evidence to support it.

h) The claimant was treated inconsistently with other employees;

41. The claimant's evidence was that he knew other people in a similar situation to himself with more sickness absence who were given an extension of the monitoring period and were not dismissed. An argument [that a dismissal is not in accordance with equity] based on inconsistent treatment requires specific evidence to be led about actual cases where the circumstances were similar but a different decision was taken. There was no specific evidence led in this case about other actual cases and this point cannot therefore succeed.

i) The claimant's direct line manager was not involved in the process;

42. In his letter of appeal, the claimant stated: "*I find it difficult to understand how my direct manager, John Grant, was not involved in the process. Surely as my manager, his feedback to you would be important and his participation also..*" This point appeared to be based on a misunderstanding. It was clear from the evidence of all the respondent's witnesses that the claimant was good at his job and highly regarded by all who worked with him. The only reason for the action taken was the ongoing difficulties presented by his

absences. His absence record was a matter of objective fact, so that positive feedback from his manager was unlikely to assist. In any event, his line manager had been involved at earlier stages in the process, having conducted the stage two ARM. I did not think there was anything in this point that would render the respondent's process outside the band of reasonable processes a reasonable employer might have used.

j) The claimant was denied the opportunity to explain mitigating circumstances.

43. I did not find this point to be established. The claimant was called to a CRM and was accompanied by a colleague. The minute of the CRM shows that the claimant was given an opportunity to put forward mitigating circumstances and that he did so. Having considered the specific arguments the claimant put forward, I did not conclude that they placed the process and decisions of the respondent outside the band of reasonable responses for the reasons given above.

44. In relation to the issue of whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating the claimant's intermittent absence record as a sufficient reason for dismissing him, Ms Watson referred me to the case of International Sports Co Ltd v Thomson [1980] IRLR 340 EAT in which the EAT said this about the duties of an employer in a case of persistent intermittent absence:

"What is required, in our judgment, is, firstly, that there should be a fair review by the employer of the attendance record and the reasons for it; and, secondly, appropriate warnings, after the employee has been given an opportunity to make representations. If then there is no adequate improvement in the attendance record, it is likely that in most cases the employer will be justified in treating the persistent absences as a sufficient reason for dismissing the employee'.'

45. In this case, it appeared to me that the respondent had, indeed conducted a fair review of the claimant's attendance record, the pattern of absences and

the reasons for them. I further concluded that the claimant had received warnings at and following the stage 1 and stage 2 attendance review meetings, both verbally and in writing and that on both occasions he had been given an opportunity to make representations. There had not been an improvement in his attendance record. A further contract review meeting had then been held, at which the claimant was again given an opportunity to make representations. Ms Watson reminded me that a tribunal may not substitute its own view of the case for that of the employer, but must instead ask itself whether the process and decisions of the employer fell within the band of reasonable responses a reasonable employer might have adopted in the circumstances. I have concluded that dismissal was within the band of reasonable responses in all the circumstances of the case. However, whilst it is true that, as Mr Smith said: "bereavements happen fairly regularly", it did seem to me that the decision to dismiss the claimant against the background of the very recent death of his aunt in the claimant's particular circumstances, although within the band, was at the harsh end of it.

46. It remains for me to thank both the claimant, who should be proud of the exemplary way in which he presented his case, and Ms Watson for her clarity, efficiency and professionalism.

Employment Judge: **M Kearns**
Date of Judgment: **17 August 2023**
Entered in register: **21 August 2023**
and copied to parties