Case Number: 1301910/2023

EMPLOYMENT TRIBUNALS

Claimant: **Mr Attiqur Rehman**

Respondent: **Malcolm Enamellers ACP Limited**

Heard at: **Brimingham Employment Tribunal (by Cloud Video Platform)**

On: **3 and 4 August 2023**

Before: **Employment Judge Hallen (sitting alone)**

Representation

Claimant: Ms. G. Cullen-Counsel

Respondent: Mr. H. Minhas- Company Secretary

RESERVED JUDGMENT

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was V by Cloud Video Platform. A face-to-face hearing was not held because the relevant matters could be determined in a remote hearing.

I find as follows: -

1. **The Claimant was unfairly dismissed on procedural grounds.**

2. **Had the Respondent followed a fair procedure, the Claimant would have been fairly dismissed by no later than one month after the effective date of dismissal namely by 31 January 2023.**

3. **The Claimant is owed 9 days accrued holiday pay.**

4. **The remedies hearing is listed for 18 January 2024 by way of CVP unless the parties reach an agreement on compensation given my findings in this judgement.**

3. **Directions will be sent out separately in respect of preparations for this remedy hearing.**

REASONS

Background and Issues

1. The Claimant commenced employment on the 26 March 1998. He was employed as a Line Operative. The Claimant was dismissed on the 3 October 2022. His effective date of termination was the 25 December 2022.

2. In his Claim Form received by the Tribunal on 3 February 2023, he claimed that he was unfairly dismissed by the Respondent. The Respondent in its Response Form disputed that the Claimant was unfairly dismissed. The reason cited and agreed at the Tribunal was that that the dismissal was some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held and that it was a fair dismissal.

3. The issues for the Tribunal were firstly to determine what the reason for dismissal was and whether it was by some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held as asserted by the Respondent ('SOSR'). The Respondent said that there was a requirement to restructure the business and change the terms and conditions of employees to maintain future competitiveness. The Claimant's case was that it was not a genuine SOSR reason, and that the Respondent wanted to dismiss a long-serving employee (without paying redundancy or being at risk of paying future redundancy payment).

4. If the Tribunal found that SOSR was the reason for dismissal, the Tribunal had to ascertain whether the Respondent acted reasonably in all the circumstances in dismissing the Claimant. In particular: -

   (i) Did the Respondent follow a fair procedure, in all the circumstances? The Respondent's case was that it followed ACAS guidance on changes to terms and conditions in employment contracts. The Respondent stated that the Notice dated 12 July 2022 stated the possible outcomes of not accepting the proposed terms and one of these outcomes was dismissal. The Claimant's case was that there was an unfair procedure for the following reasons: a. No proper consultation with the Claimant; b. No genuine and meaningful consultation with the Claimant; c. The Claimant cannot speak English and cannot read or write in English; d. The Claimant was not given a warning that he was at risk of dismissal; e. The Claimant was not allowed to be accompanied by his chosen representative (his uncle); f. The Claimant was not given a right of appeal.

   (ii) Was the decision to dismiss for that reason within the range of reasonable responses of a reasonable employer, pursuant to section 98(4) of the Employment Rights Act 1996?

   (iii) Did the Respondent comply with ACAS guidance? The Respondent says that they did comply with ACAS guidance. The Claimant says that the Respondent did not comply with ACAS guidance.

   (iv) Should there be any reduction to any compensation, and if so, on what grounds? Should there be a reduction on Polkey grounds?

(v) Is the Claimant entitled to payment for unused and unpaid holidays? The Respondent states that he was required to take his holidays in his notice period. The Claimant states that he was unable to take his holidays in his notice period because of his illness and is entitled to accrued holiday pay for nine days calculated up to the effective date of termination.

5. The Tribunal had two agreed bundles of documents in front of it. One was made up of 314 pages and one was made up of 306 pages. Reference was made to both bundles during the course of the two-day liability hearing. The majority of documents in these bundles were duplicated. There was also a supplementary bundle of documents made up of 27 pages. The Respondent also called the called the company secretary Mr Harjinder Minhas who was the dismissing officer and Mrs Jasbinder Kaur. These two witnesses prepared written witness statements and were subject to cross examination. The Claimant attended in to give oral evidence through an interpreter and had prepared a written witness statement as well and he was also subject to cross examination. I also asked questions of the witnesses as appropriate.

Facts

6. At the outset, I state that I preferred the evidence of the Respondent and its witnesses over that of the Claimant. Even though the Claimant gave evidence through an interpreter, I found that he failed on many occasions to answer the question put to him. This was not due to the fact that he used an interpreter. Rather, it was due to the fact that I concluded that he was not being truthful or was being deliberately obtuse. On many occasions he often gave an answer that he thought the Tribunal wanted to hear. I did not find him to be a credible witness. Having said this, I do find that the Claimant had a rudimentary ability to speak and understand English although he did not read or write it. As I said above, he had a Mirpuri interpreter assist him at the hearing.

7. The Claimant was employed as a Line Operator from March 1998. He was promoted to Line Supervisor and then demoted back to Line Operator in 2016, as a result of restructure and redundancy. The Claimant was dismissed on the 3 October 2023 and his notice was 12 weeks until the 25 December 2022. The Respondent is a company that provides enamelling services mainly to the car manufacturing industry and employed at the relevant time 47 shopfloor workers at its site in Wednesbury in the West Midlands.

8. The Respondent was acquired by KSM Holdings Limited in 2021 and the workforce was informed of this share purchase by the holding company by letter dated 1 March 2021. KSM Holdings Limited already owned a subsidiary company called Foleshill Metal Finishing Limited which continued to operate independently. The workforce of the Respondent was advised that business would continue as normal and that the directors of the company would get to know the entire workforce of the Respondent.

9. In March 2021, Mr Minhas along with his fellow Director and General Manager undertook a review of the Company structure and identified that the business was unsustainable in its current form and required significant restructure at a management level and redundancies were inevitable.

10. Between 9 March 2021 and 11 March 2021 Mr Minhas met with each employee individually as part of the initial redundancy consultation process. During this meeting he explained who KSM were and tried to provide some reassurance of the good intentions of

the new owners to employees. This included managers and all shop floor staff. Mr Minhas also met with the Claimant. During the meeting he discussed the Claimant's role, and the Claimant did indicate that he would accept redundancy if it was offered. He also explained that whilst he had volunteered for redundancy he had not been selected on several previous occasions. Mr Minhas explained that at this stage it was not certain that shop floor redundancies would be made.

11. On 11 March 2021, following a meeting with the Managing director, General Manager and Group Production Manager, the decision was made to make 3 management roles, 2 senior admin roles, 1 site caretaker role and 1 production role redundant. The individuals involved were notified and final consultations were held prior to issuing notices of redundancy. The production role was that of a production supervisor and not a shop floor role. The individual was responsible for production scheduling and workflow management. Accounts, Admin, Payroll, Maintenance and Production Planning functions were restructured to account for the redundancies. The Payroll/HR function was transferred to the parent company office in Coventry. Site cleaning was transferred to another associated Company.

12. After a review of the restructure at the end of July 2021, it was decided to make further changes and 1 further role in Production Planning and 1 role in Maintenance was made redundant. This was also a response to the slower than expected recovery from the Pandemic in the Manufacturing sector. Once again, no shop floor or direct employee redundancies were made, and the Claimant was once again not selected for redundancy.

13. From the onset of the Pandemic in March 2020 and through to November 2021, a combination of Lay Off, Short Time Working and Furlough was used to manage the return to work of all shopfloor employees. The Claimant was sent a 'Return to Work Notice' on 24 July 2020 following his furlough leave.

14. As a result of post Pandemic Supply Chain Issues, the recovery in customer orders was slow from August 2021. As a result, shifts were changed from 6am – 2pm to 8am – 4pm and 2pm – 10pm to 4pm – 12pm. Short Time Working was implemented to compliment the phasing out of the Government's Furlough Scheme as a response to the slow recovery in the economy and the impact on the Respondent's business.

15. Notices were issued about Short-Term Working on 26 August 2021 and 14 October 2021 and a notice regarding Covid absence and general travel abroad was issued in December 2021 alongside a Christmas message highlighting the risk of travel abroad. These notices were also placed on the company notice board as well as copies being given to all employees and extra copies left in the canteen.

16. On 24 May 2022, Mr Minhas received an email grievance from the Claimant. He responded to this notice on 25 May 2022 by email and initiated the Company grievance procedure. A formal Grievance hearing was held on 8 June 2022. The Claimant chose Mrs Kaur, a work colleague, to accompany him and to translate for him. The Claimant had chosen Mrs Kaur to assist him before and trusted her to translate accurately for him. The Claimant's grievance with respect to nonpayment Statutory Guaranteed Pay was upheld. Upon further investigation, Mr Minhas discovered that despite his email of 14 October 2021 to Payroll staff, they did not pay a number of employees Statutory Guaranteed Pay and failed to follow the correct procedure. This error was rectified on the next pay run and Line Managers were redirected to follow the correct procedure and Payroll was to ensure

that payments would be made correctly. The Claimant asserted that following his raising of this grievance, he was deemed as a troublemaker by the Respondent. However, I did not see any evidence of this and indeed, 30 shopfloor workers had their guaranteed payments rectified as a result of the Claimant's grievance. The Claimant's other grievances were not upheld. It should be noted that the Claimant did not complain about the accuracy of the minutes that the Respondent produced in respect of the grievance meeting, nor did he appeal against the outcome of the grievance. Furthermore, he did not complain about the support and assistance given to him by Mrs Kaur.

17. During the course of the hearing before me, the Claimant asserted that he did not receive all of the emails from the Respondent addressed to him to his personal email account. He said that he only received his wage slips to his personal email address. I did not accept this evidence. I found that the Claimant did in fact receive emails to his personal email address and I noted that he did not assert at the above grievance hearing that he did not receive emails to this address in relation to this grievance.

18. A meeting was held between Mr Minhas, his fellow Directors and Senior Managers on 7 July 2022 to discuss workplace arrangements and terms and conditions of employment. The outcome was that proposed changes to contracts of employment would be put forward to all employees. The changes to the terms were as a result off the current arrangements not being sustainable as they did not allow flexibility and responsiveness in the marketplace. The discussion points related to flexibility in shift patterns, removal of paid breaks, changes to overtime, potential removal of historic travel allowances, an increase in the current rate of pay. The proposed consultation period was discussed at six weeks with revisions being proposed to the company handbook and contracts of employment.

19. On 12 July 2022 a notice to change the terms of employment for all employees was issued and the rationale for the change was explained in this notice. Copies of the proposed contract, proposed handbook, old handbook, and ACAS guidance was sent by email to all employees. The Claimant asserted that he did not receive this information by email. I did not accept this evidence. I found that it was likely that he did receive this information but did not pay much attention to it. This was probably due to the amount of documentation attached to the email and the fact that the Claimant had difficulty understanding it. Furthermore, he was on holiday in Pakistan at the time and this was another reason why he did not pay much attention to it.

20. The notice of 12 July 2022 notified shopfloor workers that changes were necessary to their contracts of employment in order to enable the Respondent to compete in the current and future marketplace and to recognise what were industry wide practices. The changes that were proposed to all of the shopfloor workers contracts of employment were that all breaks would be unpaid which would mean that the paid hours would reduce from 40 hours per week to 37.5 per week. Overtime would only be paid after 45 hours of paid time and overtime rates would be reduced from Monday to Saturday to time and one third and Sunday to time and half. All travel allowances would be abolished. Redundancy pay calculations would be based upon a weekly payment of 40 hours rather than 37.5 hours and the hourly rate of pay would increase by 2 to 2.5%. The implementation time was proposed at as Monday 19 August 2022. A timetable for consultation was set out as well as a section setting out what would happen if no agreement was reached. This notified employees that if the new terms were not accepted the options would be that the old contract of employment would continue, the employee may be dismissed on notice and

offered the new contract as suitable alternative employment, or the employee could work under protest.

21. A series of group consultations were initially scheduled. The Claimant's meeting was scheduled for 9 August 2022 because he was on holiday. However, he failed to return to work following his authorised leave between 18 July 2022 to 1 August 2022. Of a total of 47 shopfloor employees, 45 were involved in either group or individual consultations and 1 employee on long term sick was contacted by phone but did not engage.

22. The changes to the contract of employment were discussed and there was general and widespread acceptance of the issues facing the Respondent and the need for change. The consultation period was extended to 19 September 2022 as a result of the discussions and the proposed changes were timetabled to be effective from 1 October 2022. This was to ensure that all employees had adequate time to consider the impact of the changes. Out of 47 employees, 46 employees accepted the changes and did not object further.

23. As said above, the Claimant was granted authorised paid leave between 18 July to 1 August 2022. However, he failed to return to work on 2 August 2022. He returned over 4 weeks later on 5 September 2022. Due to this unauthorised additional leave, the Claimant was given a final written warning by Mr Minhas dated 12 September 2022.

24. On 18 September 2022, Mr Minhas received an email on behalf of the Claimant outlining several grievances including one against the final warning that was issued on 12 September 2022. Mr Minhas responded to this email on 20 September 2022 and set a date of 28 September 2022 for a Grievance hearing. He did not arrange an appeal meeting to deal with the appeal against the final written warning. He decided to deal with the grievance made by the Claimant even though he was the officer administering the final written warning. He was also the officer who was instigating and running the consultation process in respect of the changes to the contacts of employment about which the Claimant also complained. Nevertheless, he deemed it appropriate for him to handle the Claimant's grievance. He gave evidence that he was the only person that could do it even though there were other individuals in the company at senior level including his brother who was the managing director who could have conducted the grievance albeit with it being a little delayed. It should also be noted that the invitation to the grievance meeting did not advise the Claimant that he could be dismissed if he did not accept the proposed changes to his contract of employment.

25. In his grievance, the Claimant complained that the company was deliberately targeting him and changing his contract of employment without prior consultation. He complained that he should not have been given the final written warning for unauthorised additional absence because he had submitted a sick note after suffering a motorcycle accident in Pakistan. He complained that the final written warning constituted harassment. He stated that the changes to his contract of employment would cause him undue hardship due to his duties looking after two disabled family members. It was stated that the proposed changes in his contract of employment amounted to a breach of contract and were proposed in order to avoid payment of redundancy pay.

26. On 26 September 2022, Mr Minhas received a further email from the Claimant requesting that his uncle, not a company employee, accompany him during the grievance because he required an interpreter and that his concerns over shift patterns be added to

the grievance. Mr Minhas responded to the Claimant on 26 September 2022 and advised him that he would ensure an interpreter was to hand and that he could not be accompanied by his uncle. This turned out to be Mrs Kaur who the Claimant had used at his previous grievance referred to above and with whom he was previously happy with. It was argued by the Claimant that he could not be accompanied by a representative of his choosing. However, I found that the company procedures did not allow for an external representative to attend an internal meeting but did allow for a work colleague or trade union representative to attend reflective of the statutory position.

27. The grievance meeting went ahead on 28 September 2022 chaired by Mr Minhas with Mrs Kaur as the companion and interpreter. The Claimant asserted at the Tribunal hearing that the minutes were incorrect and specifically that he did not confirm that he had received the proposed changes to the contract of employment on 12 July 2022. I found that the Claimant was likely to have received the proposed changes to the contract on 12 July by e-mail as stated above. Generally, I found that it was probable that the minutes of the grievance meeting were correct. These minutes were in similar format as those minutes of the grievance meeting on 8 June 2022 about which the Claimant has not objected and at which Mrs Kaur was also the companion and interpreter. In addition, Mrs Kaur gave evidence to the Tribunal which I accepted that the notes were correct.

28. With respect to the conclusions of the grievance meeting, Mr Minhas concluded that the final written warning should be reduced in its length from twelve months to six months and remain on the Claimants personnel record. In respect to redundancy not being offered to the Claimant, he concluded that the Claimant was not redundant from his position and that he had not been harassed by the Respondent. In relation to the changes to the contract of employment he found that the changes proposed were reasonable and that they had come into effect from 1 October 2022 for the shopfloor workers except the Claimant. He gave the Claimant an opportunity to discuss the changes once again with his family and to agree them. The minutes did not specify that the Claimant would be dismissed if he did not accept the changes to his contract of employment.

29. On 2 October 2022, the Claimant emailed Mr Minhas to confirm that he would not accept the proposed changes to his contract of employment and that those changes were rejected. At the Tribunal hearing, the Claimant gave evidence that he had lost trust and confidence in the Respondent by this time and that he did not think that he would ever have accepted the changes to his contract of employment. When asked if any resolution was possible on the changes proposed to the contract, he confirmed that there was no resolution possible. He said that he ‘did not trust the Respondent’, ‘how could I come back,’ I had no trust so no hope.’

30. On 3 October 2022, Mr. Minhas responded to the Claimant's e-mail rejecting the changes to the contract of employment that had been proposed and dealing with the other points raised in the Claimant's e-mail. He concluded the e-mail stating that as the Claimant had not accepted the offer of suitable alternative employment offered in the new contract of employment his employment was terminating with 12 weeks notice of dismissal making his final date of employment 25 December 2022. No right of appeal was specified in the e-mail. The Claimant was again notified by letter dated 4 October of his dismissal with 12 weeks notice ending on 25 December 2022. In the letter of dismissal, the Claimant was required to take all his outstanding holiday during his notice. The letter of dismissal confirmed that the Claimant could undertake whichever shift he required from 8:00 AM to 4:00 PM or 2:00 PM to 10:00 PM. In relation to the changes in the contract of

employment, Mr Minhas confirmed that they were reasonable and that any financial impact upon the Claimant would be nominal. Mr Minhas did not specify a right of appeal against dismissal albeit he did state that he was open to resolution and compromise. No further meetings to resolve the dispute in relation to the contractual changes took place before the effective date of dismissal.

31. On or around 5 October 2022, the Claimant submitted notes from his doctor saying that he was unable to work due to stress and anxiety. The Claimant did not work for the remainder of his notice period from that date albeit the Respondent continued to pay him his full salary. Due to his illness, the Claimant could not take his nine days holiday that had accrued up to the date of his dismissal on 25 December 2022.

Law

32. Section 98(1) Employment Rights Act 1996 (ERA) provides that it is for the employer to show the reason or principal reason for dismissal of the employee and that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held ('SOSR'). If the Respondent fails to do so the dismissal will be unfair.

33. If the Tribunal decides that the reason for dismissal of the employee is a reason falling within Section 98(1) or (2) ERA it will consider whether the dismissal was fair or unfair within the meaning of Section 98(4) ERA. The burden of proof in considering Section 98(4) is neutral.

34. Section 98(4) ERA provides: -

> *"the determination of the question whether the dismissal is fair or unfair (having regards to the reason shown by the employer) –*
>
> *(a) 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*
>
> *(b) shall be determined in accordance with equity and the substantial merits of the case."*

35. To establish some other substantial reason as the reason for dismissal where there has been a business reorganisation, the employer does not have to show that a reorganisation or rearrangement of working patterns was essential. In **Hollister v National Farmers' Union 1979 ICR 542, CA**, the Court of Appeal said that a '*sound, good business reason'* for reorganisation was sufficient to establish some other substantial reason for dismissing an employee who refused to accept a change in his or her terms and conditions. This reason is not one the tribunal considers sound but one *'which management thinks on reasonable grounds is sound'* — **Scott and Co v Richardson EAT 0074/04**.

36. It is not for the Tribunal to make its own assessment of the advantages of the employer's business decision to reorganise or to change employees' working patterns. In fact, the employer need only show that there were *'clear advantages'* in introducing a

particular change to pass the low hurdle of showing some other substantial reason for dismissal. The employer does not need to show any particular *'quantum of improvement'* achieved (**Kerry Foods Ltd v Lynch 2005 IRLR 680, EAT**). In that case, the advantage to the employer in introducing a new rota for managers was sufficient to show some other substantial reason for dismissing a manager following his refusal to accept new terms and conditions that included a move to a six-day week and a reduction in his holiday entitlement.

37. The Tribunal should not substitute its own factual findings about events giving rise to the dismissal for those of the dismissing officer (**London Ambulance NHS Trust v Small [2009] IRLR 563**).

38. A business reason behind a "*some other substantial reason*" dismissal does not need to be particularly sophisticated or strategic so long as it is genuine and rational. As long as it is not a section 98(2) of the Act reason, any reason for dismissal, however obscure, can be pleaded on grounds of some other substantial reason, with the proviso that it must be a substantial reason and thus not frivolous or trivial; and must not be based on an inadmissible reason such as race or sex (**Willow Oak Developments Ltd t/a Windsor Recruitment v Silverwood and ors 2006 ICR 1552, CA**). However, while the reason for dismissal needs to be substantial, it need not be sophisticated — merely genuine. For example, in **Harper v National Coal Board 1980 IRLR 260, EAT**, H was dismissed because he sometimes attacked fellow employees during his epileptic seizures. The employer held inaccurate beliefs concerning people suffering from epilepsy in general. The tribunal found dismissal to be fair either on the ground of capability or for some other substantial reason. The EAT said that an employer cannot claim that a reason for dismissal is substantial if it is a whimsical or capricious reason which no ordinary person would entertain. It stated that where, however, the belief is 'one which is genuinely held, and particularly is one which most employers would be expected to adopt, it may be a substantial reason even where modern sophisticated opinion can be adduced to suggest that it has no scientific foundation'. The EAT therefore upheld the tribunal's decision.

39. The employer is required to show only that the substantial reason for dismissal was a potentially fair one. Once the reason has been established, it is then up to the Tribunal to decide whether the employer acted reasonably under section 98(4) of the Act in dismissing for that reason. As in all unfair dismissal claims, a Tribunal will decide the fairness of the dismissal by asking whether the decision to dismiss fell within the range of reasonable responses that a reasonable employer might adopt. Depending on the circumstances, this may involve consideration of matters such as whether the employee was consulted, warned, and given a hearing, and/or whether the employer searched for suitable alternative employment. In other words, to amount to a substantial reason to dismiss, there must be a finding that the reason could, but not necessarily does, justify dismissal (**Mercia Rubber Mouldings Ltd v Lingwood 1974 ICR 256, NIRC**). Whether the reason, once established, justifies dismissal is to be answered by the Tribunal's overall assessment of reasonableness und section 98(4) of the Act.

40. Some other substantial reason is most often invoked where the employer is trying to reorganise the business and/or change the terms and conditions of employment in some way.

41. If a dismissal is unfair due to procedural failings but the appropriate steps, if taken, would not have affected the outcome, this may be reflected in the compensatory award,

Polkey v A E Dayton Services Ltd [1987] IRLR 503, HL. This may be done either by limiting the period for which a compensatory award is made or by applying a percentage reduction to reflect the possibility of a fair dismissal in any event. The question for the Tribunal 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.

Conclusion and Findings

42. In the first instance, I had to determine if SOSR was the reason for dismissal. I reminded myself of the guidance set out in the above caselaw. In **Hollister v National Farmers' Union 1979 ICR 542, CA**, the Court of Appeal said that a 'sound, good business reason' for reorganisation was sufficient to establish some other substantial reason for dismissing an employee who refused to accept a change in his or her terms and conditions. This reason was not one the tribunal considered sound but one 'which management thinks on reasonable grounds is sound'.

43. Given the preponderance in the evidence submitted by the Respondent in this case, I find that SOSR was the genuine reason for dismissal. Almost since the outset of the shareholding of the Respondent being acquired by KSM Holdings Limited in early 2021, the new owners of the Respondent entered into consultation with the workforce to make reductions in the higher levels of the management structure from March 2021 onwards leading to redundancies. Thereafter, for what appeared to be sound business reasons, the Respondent entered into consultations with the shopfloor staff to change their terms and conditions of employment. Such restructuring occurred after a period of short-term working and after the pandemic and further disruption to the business of the Respondent that had occurred as a result of the pandemic. I did not find any evidence that the Respondent had targetter the Claimant as a troublemaker and I noted that all of the shopfloor had been offered the same proposed changes to their contracts of employment. Furthermore, I find that all of these employees had accepted the proposed changes other than the Claimant.

44. Although SOSR was the genuine reason for dismissal, I find that the Respondent did not follow a fair procedure in dismissing the Claimant. Although I find that the Claimant had received the notice of proposed changes to his contract of employment sent to him by email by the Respondent on 12 July 2022 (along with other shopfloor workers), I am not satisfied that the Respondent had concluded a proper and genuine consultation with the Claimant in respect of the proposed changes. This could not have been the case, as the Claimant was in Pakistan during the time period when the collective and individual consultation had taken place. What consultation that did take place with the Claimant occurred at the grievance meeting on 28 September 2022 which was a few days before 1 October 2022 when the changes were to take effect. Even though the Claimant rejected the proposed changes by email dated 2 October 2022, it could not be said that a proper consultation process had been concluded by the Respondent by the time the Claimant was dismissed by email on 3 October 2022.

45. The Respondent should also have taken notice of the fact that the Claimant had rudimentary speaking ability in the English language not being able to read or write. I note that the changes to the contract had been explained to the Claimant by Mrs Kaur at the grievance meeting on 28 September 2022 and it was likely that the Claimant would have been aware of the proposed changes as he received the Respondent's email on 12 July

2022. However, I am satisfied that a fair dismissal process had not been concluded by the Respondent prior to the Claimant's dismissal as it should have taken proper account of the Claimant's language difficulties.

46. I also find that the Claimant was not given notice of the fact that he could face dismissal if he did not accept the proposed contractual changes in respect of the invitation to the grievance meeting dated 20 September 2022 or in any other correspondence to the Claimant prior to the grievance meeting on 28 September 2022. Furthermore, contrary to the ACAS code of practice relating to changes to contractual terms, the Claimant was also not given the right of appeal against dismissal. The email of dismissal of 3 October 2022 and the letter of dismissal of 4 October 2022 also did not make reference to a right of appeal as stipulated in the code.

47. Finally, I find that a fair procedure was not followed in respect of the Claimant's dismissal as Mr Minhas was not an independent dismissing officer. He was involved in the Claimant's grievances as well as being the main driver of the consultation process leading to the changes in the shopfloor employees' contracts of employment. This Respondent did have the administrative resources to ensure that another senior member of management was able to deal with the Claimant's grievance of 18 September 2022 although it may have meant that the grievance hearing of 28 September had to be delayed. It was not clear, for example why the Respondent's managing director could not have deal with this grievance even though he may not have been available on 28 September. It would have been easy enough for the Respondent to delay the hearing until the managing director was available.

48. For the reasons set out above, I find that the dismissal of the Claimant was outside the range of reasonable responses open to a reasonable employer and that the dismissal was unfair. However, I find that as the dismissal was unfair due to procedural irregularities, the Respondent was still likely to have dismissed the Claimant by no later than 31 January 2023. This would have given the Respondent enough time to adequately deal with the procedural irregularities that I have identified above. It was clear to me that the Claimant had by his own admission lost trust and confidence in the Respondent prior to his dismissal and did not think that any resolution was possible with respect to the changes that had been proposed to his contract of employment. In such circumstances, it was inevitable that the Claimant would have been dismissed had a fair procedure been followed. I noted in this regard that he was the only shopfloor employee out of 46 who did not accept the changes that had been proposed.

49. Finally, with respect to accrued holiday pay, I find that the Claimant is owed 9 days of holiday pay. He was unable to take his holiday during his notice period due to his sickness absence. The purpose of paid holiday leave is for a period of rest and relaxation. The Claimant was signed off sick during the full notice period and was unable to exercise his holiday leave even though he was instructed to do so by the Respondent. I find that pursuant to the Working Time Regulation 1998 and the case of **NHS v Larner [2012] EWCA 1034**, the Claimant is entitled to payment for accrued holiday pay when he could not take his holiday due to sickness absence. In the **Larner** case it was held that the employee was entitled to payment of holiday pay, which she was prevented from taking due to ill health.

50. Although I agreed with the parties that I would reserve 18 January 2024 as the date of the remedy hearing by way of CVP to suit the parties' requirements, I am of the opinion

that the remedy issue can be resolved without the need for this hearing. To assist the parties in this regard, I say that it appears to me that in respect to his unfair dismissal, the Claimant will recover his basic award, a further months pay and some kind of percentage uplift to the award due to the Respondent's failure to offer the Claimant an appeal as required by the ACAS code of procedure. I leave the amount of the uplift to the parties to agree as this seems to me to be the only substantive matter under dispute.

51. In any event, I have listed the case for a remedy hearing on 18 January 2024 and I will provide separate directions separately for this hearing.

Employment Judge Hallen on 09/08/2023