EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100332/2023

Held by in Edinburgh on 26-27 September 2023

Employment Judge Sangster
Tribunal Member Brown
Tribunal Member Henderson

Mr L Wilson	**Claimant** **In Person**
Tesco Stores Limited	**Respondent** **Represented by** **Mr D James** **Advocate**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that:

- The claimant's complaint of constructive dismissal succeeds. The respondent is ordered to pay the claimant the sum of **£20,570.15** by way of compensation. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply to this award.

- The claimant's complaints of unlawful detriment and automatically unfair dismissal as a result of making protected disclosures, and unauthorised deductions from wages, do not succeed and are dismissed.

REASONS

Introduction

1. The claimant presented complaints of constructive dismissal, unlawful detriment and automatically unfair dismissal as a result of making protected disclosures and unauthorised deductions from wages.

2. The respondent resists the complaints.

3. A preliminary hearing for case management took place on 5 May 2023 and the respondent provided amended grounds of resistance on 21 June 2023.

4. A joint bundle of documents, extending to 161 pages, was lodged in advance of the hearing.

5. The claimant gave evidence on his own behalf.

6. The respondent led evidence from:

   a. Derek Butler (**DB**), Transport Team Manager for the respondent; and
   b. Karen Murphy (**KM**), People Partner for the respondent.

7. The other individuals referenced in this judgment are:

   a. Laura Stanton (**LS**) People Partner for the respondent.

Issues to be determined

8. Parties lodged an agreed list of issues, which was discussed at the start of the hearing. It was agreed that this reflected the issues to be determined. The issues to be determined were accordingly as follows:

(Constructive) Unfair Dismissal

9. Did the Respondent breach the implied term of trust and confidence?

10. Did the Respondent without reasonable cause conduct itself in a manner calculated or likely to destroy or seriously damage the trust and confidence

between the Claimant and the Respondent and therefore breach the implied term of trust and confidence?

11. The Claimant relies on the following act(s)/omission(s) as amounting to a breach of implied term of trust and confidence:

a. After 13 February 2021 treating his agreement to remove retained pay as binding upon him where his agreement was obtained whilst he was off sick without consultation and under the threat of dismissal, was subject to signature which he refused to give, and was immediately withdrawn on his return to work on 17 February;

b. From August 2021 and with increasing frequency, his manager Derek Butler keeping him on shorter local driving runs as opposed to longer remote driving runs which he expressly preferred (because it meant reduced contact with his manager);

c. From August 2021 and with increasing frequency, his manger Derek Butler calling him in to the office to chastise him particularly about not reporting to ask for more work;

d. On 20 October 2021 being falsely accused by Neil and Andy, both Managers, of refusing to do runs. After a period of sick absence, he tried to submit a grievance about this but on 18 January 2022 he was told by Derek Butler he was not allowed to do so;

e. On 9 March 2022 he was called into the office and chastised by Derek Butler for not reporting to ask for more work (he was washing his vehicle as expected) and was refused permission to bring in a colleague, James Lawrie, as witness to the meeting;

f. Failing to progress his grievances (see below);

g. From March 2022 Derek Butler failing to arrange a meeting with senior management as promised by him to discuss the Claimant's proposal for a change of manager or reduced days;

h. On 13 August 2022 discovering that despite his grievances they have continued to treat his unsigned agreement to remove retained pay as binding upon him (he was not aware of this previously because he was unable to access his payslips online);

i. In September 2022 failing to make him an offer of redundancy pay (which was made to others who had not agreed to the removal of retained pay);

j. Failing to deal with his grievance of 15 September 2022 despite having dealt with a colleague's grievance of similar date; and

k. On 3 November 2022 being advised by Derek Butler that he is unable to provide a response to his grievance of 15 September 2022.

12. If the Respondent did any of the things listed above, did that amount to a breach of contract?

13. If so, was the breach sufficiently serious to constitute a fundamental breach? (i.e., was the breach so serious that the Claimant was entitled to treat the contract as being at an end?)

14. Did the Claimant resign on 7 November 2022 in response to the breach?

15. Did the Claimant affirm the contract before resigning? Did the Claimant's words or actions show that they chose to keep the contract alive even after the breach?

Automatic Unfair Dismissal

16. Was the sole/principal reason for the Claimant's dismissal that he had made one or more of the protected disclosures (and if so, which ones)?

Whistleblowing

Jurisdiction (Detriment Claims Only)

17. Did the alleged detriments occur more than three months prior to the date on which the Claimant lodged his ET1 Claim form? (adjusted for early

conciliation)? The Respondent asserts that the Claimant's alleged detriments at 1.2.1(a) to 1.2.1(j) are out of time.

18. In respect of the Claimant's whistleblowing detriment claim:

    a. Was any of the out of time detriment part of a series of similar acts, the last of which was in time?

    b. If not, was it reasonably practicable for the Claimant to lodge his claim within the relevant time limit, and did he lodge it within a reasonable period thereafter?

Protected Disclosures

19. Did the Claimant make the following disclosures, and if so, did they contain a material "disclosure of information" for s43 (B) (1) ERA purposes?

    a. On 17 February 2021 he advised Derek Butler verbally at a meeting that reliance upon the phone call and emailed agreement to withdraw retained pay was unlawful because he was off sick, he was not consulted with and it was not signed. This complaint was accompanied by a written informal grievance addressed to Karen Murphy about retained pay;

    b. On 10 March 2021 he submitted a grievance addressed to Karen Murphy via Derek Butler complaining that the deduction of his sick pay ought to be pro-rated based upon his hours (he was being deducted 3 days at 12 hours compared to others who were deducted 3 days at 8 hours);

    c. On 13 April 2021 he submitted a grievance addressed to Lee Wilson via Derek Butler complaining that Karen Murphy had failed to follow the grievance procedure in breach of his terms of employment;

    d. On 20 April 2021 he submitted a complaint to Gordon, Manager, complaining that the threat of dismissal and re-engagement if he did not accept the removal of retained pay was unlawful in light of a recent

court ruling (further information on page 5 of the Case Management Orders dated 9 May 2023); and

e. On 15 September 2022 he submitted a grievance to Derek Butler complaining that retained pay had been taken off him without his written permission, without a 1 to 1 or representation and whilst he was off sick.

20. Did the Claimant make a disclosure of information that they reasonably believed tended to show that:

a. a criminal offence had been, was being or was likely to be committed; or

b. there had been or was likely to be a failure to comply with a legal obligation; or

c. a miscarriage of justice had occurred, was occurring or was likely to occur; or

d. the health and safety of a person had been, was being or was likely to be endangered; or

e. the environment had been, was being or was likely to be damaged; or

f. information relating to the above was being or was likely to be deliberately concealed.

21. Did the Claimant reasonably believe that the disclosure was in the public interest?

22. The Claimant asserts that he reasonably believed that the protected disclosures were made in the public interest as other workers would be similarly affected and tended to show a breach of legal obligations.

23. Was the Claimant subjected to any detriment by any act or deliberate failure to act by the Respondent on the grounds that they had made a protected disclosure?

24. The Claimant asserts that he was subjected to the detrimental acts (described above under the Constructive Unfair Dismissal) on the ground that he made protected disclosures.

Unlawful deduction of Wages

25. Did the Respondent fail to pay the Claimant in full in respect of any wage entitlement? The Claimant alleges that he is owed £150 (£75 a month for two months) from September 2022 to his resignation on 7 November 2022. The Claimant alleges that this relates to what he would have received if his retained pay had not been removed.

26. Was any deduction required or authorised by statute?

27. Was any deduction required or authorised by a written term of the contract?

28. Did the Claimant have a copy of the contract or written notice of the contract term before the deduction was made?

29. Did the Claimant agree in writing to the deduction before it was made?

30. How much (if anything) is the Claimant owed?

Remedy

31. If the Claimant's claims are upheld:

    a. What financial compensation is appropriate in all of the circumstances?

    b. Should any compensation awarded be reduced in terms of ***Polkey v AE Dayton Services Ltd*** [1987] ICR 142 and, if so, what reduction is appropriate?

    c. Should any compensation awarded be reduced on the grounds that the Claimant's actions caused or contributed to their dismissal and, if so, what reduction is appropriate?

    d. Has the Claimant mitigated their loss?

Findings in Fact

32. The Tribunal found the following facts, relevant to the issues to be determined, to be admitted or proven.

33. The respondent operates a grievance procedure. The grievance procedure states that employees should seek to resolve their concerns informally in the first instance. Where grievances cannot be resolved informally, employees are directed to raise a formal grievance in writing. The grievance procedure states that employees may do this by email, on a Grievance Form or by letter, which should be given to the employee's manager, or another manager. The grievance procedure states:

'When a grievance is received, a relevant manager will arrange a meeting with you about it, in order for your concerns to be fully understood, and for you to agree what parts of your grievance will be investigated.

Your grievance will be taken seriously, and we'll start the investigation as soon as we are made aware of your concerns and conclude as soon as we can within a reasonable timeframe to allow the most thorough investigation possible. There will be a justifiable reason for any delay.

You will:

- *receive a written invite to the meeting which will take place as soon as possible (normally, within 14 days of us receiving your letter, unless a justifiable reason for the delay). You'll get at least 24 hours' notice of the meeting;*
- *have the option to be accompanied by either a colleague or trade union representative;*
- *receive a written outcome of the grievance investigation; and*
- *be able to raise an appeal if you remain dissatisfied with the outcome of this grievance investigation.'*

34. The grievance procedure also states that the letter confirming the decision in relation to the grievance will also confirm who the employee should raise an appeal with, if they remained unhappy.

35. The claimant was employed by the respondent as an HGV driver. His employment with the respondent commenced on 23 October 2000.

36. Between 2007 and 2009 the respondent reorganised its distribution centres, which included closures and relocations. For those staff who agreed to relocate to the respondent's new distribution centre in Livingston, including the claimant, the respondent agreed that they would be entitled to Retained Pay going forward.

37. In around 2019, the claimant moved to working 31.5 hours, over three days each week. His preference was to do longer runs, taking up the majority of his shift, but a practice developed whereby these longer runs were shared amongst all the drivers. Runs were allocated to individual drivers by a central planner.

38. In around July 2020, DB became the claimant's line manager. The claimant and DB did not get on particularly well. DB would, on occasion, call the claimant into his office to reprimand him for not repeatedly asking for work if he returned to the depot having undertaken a shorter run, which completed before the end of his shift. The claimant's view was that he had reported to the desk on his return, so they were aware he was free and at the depot awaiting allocation of further work.

39. Towards the end of January 2021, the respondent announced that it intended to commence a consultation process in relation to the potential removal of Retained Pay. In the consultation process, staff were informed that they could agree to the cessation of their Retained Pay, in return for a payment equivalent to 18 months' Retained Pay (to be paid as a lump sum or in installments over 18 months), failing which the respondent would simply terminate existing contracts and offer re-engagement on contracts without Retained Pay. The deadline for acceptance was 13 February 2021.

40. The claimant was absent from work due to illness at the start of February 2021 and was therefore unable to attend any consultation meetings. On Friday 12 February 2021, LS telephoned the claimant to ask whether he agreed to

his Retained Pay being removed and to highlight that the deadline for acceptance was the following day. He indicated that he had not received any correspondence in relation to this and had not attended any consultation meetings. It was agreed that LS would call the claimant again, the following afternoon, to see if he had received the correspondence which the respondent had sent to him by post.

41. At around 13:20 on Saturday 13 February 2021, LS called the claimant again. He indicated that he had still not received any correspondence. She stated that she would email the relevant letters to the claimant and stressed that the deadline for acceptance was that day. She sent an email to the claimant at 13:30, enclosing a letter dated 31 January 2021, inviting the claimant to a first consultation meeting on 4 February 2021 and two letters dated 5 February 2021: the first inviting the claimant to a rescheduled consultation meeting on 9 February 2021 and the second inviting him to a final meeting on 11 February 2021, which stated that he had the option to agree to the proposal by 13 February 2023, by signing and returning the acceptance detailed at the bottom of the letter, failing which the respondent '*will enter into a dismissal and re-engagement process with colleagues to remove Retained Pay (subject to individual and collective consultation where necessary), where no incentive will be offered.'*

42. The claimant sent an email, with the assistance of his son, at 13:42 on 13 February 2021, stating *'Hi Laura. I Lee Wilson accept the offer of the one £10 payment and the retained payment spread over 18mnth, as I don't know how to sign and send photos this is the best I can do, being as I'm off on sick at the moment.'* LS responded at 13:46 stating *'That's no problem we will take that as confirmation, thank you very much. When your post arrives, please do sign and bring back with you to the site.'*

43. The claimant returned to work on 17 February 2021. He discussed matters with his trade union on his return and they indicated that their advice would have been that he should not agree to the removal of his Retained Pay. The claimant understood that he still required to sign the letter to confirm his acceptance. As he had not done so, he felt he would be able to wtihdraw the

agreement set out in his email of 13 February 2021. The claimant had a return to work meeting with DB that day. At the meeting, the claimant indicated that he wished to withdraw his agreement to the cessation of his Retained Pay, and would not be signing the acceptance detailed on the letter dated 5 February 2021. DB stated to the claimant, having reviewed his file, that his email of 13 February 2021 had been taken as acceptance, as confirmed by LS, and that acceptance could not now be withdrawn. The claimant indicated that he was unhappy at this, as there had been no consultation with him and he had agreed to this while off sick. No further action was taken, and the respondent's position remained that the claimant had agreed to the cessation of Retained Pay, in return for a payment equivalent to 18 months' Retained Pay, paid over 18 months. From the claimant's perspective, given that he received a payment equivalent to his average Retained Pay over the next 18 months, there was no change to his take home pay in that period.

44. At the start of March 2021, the claimant indicated to DB that he was unhappy that he had been deducted 6 days' pay for being off in respect of the same illness. He felt it was unfair that, as he only worked 3 days per week, a full week's pay was deducted whenever he was off sick and, on this occasion 2 weeks' pay had been deducted. DB informed the claimant that this was due to the fact that, whilst his absences related to the same illness, he had returned to work for at least a day between absences. The claimant remained unhappy at DB's explanation and requested a Grievance Form. On 10 March 2021, the claimant handed a completed Grievance Form to DB. The form stated *'Why am I being deducted 3 days sickness for a sick continuation of same sickness. If this is the case why is not pro rata like holiday/sickness'.* No action was taken in relation to the claimant's grievance. He was not invited to a meeting and he received no response to the concerns he raised.

45. On 13 April 2021, the claimant handed a further Grievance Form to DB stating he had tried to raise concerns verbally and by a grievance form, but the grievance procedure had not been followed. He stated that he believed this was a breach of his terms of employment. No action was taken in relation to

the claimant's grievance. He was not invited to a meeting and received no response to the concerns he raised.

46. On 20 April 2021, the claimant wrote a letter, which he handed to DB. The letter stated as follows:

'I am writing to you following the recent judgement at Court of Session where you have been found to have acted illegally with your threat to unilaterally withdraw my Retained Pay. You informed me that, if I did not accept the removal of Retained Pay, Tesco would enter into a dismissal and re-engagement process to remove it. Subsequently Court of Session has ruled that you are legally prohibited from unilaterally withdrawing entitlement to Retained Pay and/or terminating my contract to re-engage me on inferior terms. It is clear that the information communicated by Tesco to me since February 21 was misleading and incorrect. It cannot be reasonable to conclude that Tesco consulted with me honestly and integrity and in good faith, I have not consented to change of my contract of employment. Please provide written confirm that you agree to rescind the imposition of a contract on inferior terms. I believe that your actions are in breach of the interdict granted at the Court of Session on Friday 12th Feb.'

47. Whilst the respondent stated in their revised grounds of resistance that the claimant's letter of 20 April 2021 was treated by them as a grievance, the respondent did not follow their grievance procedure in relation to that letter: The claimant was not invited to a grievance meeting in relation to the concerns he raised, nor was he informed of his right to appeal and who he could raise an appeal with, if he remained unhappy. Instead, KM wrote to the claimant, by letter dated 21 April 2021, setting out the respondent's position and confirming that they considered that the claimant agreed to the removal of Retained Pay, that his agreement remained binding and the agreement reached *'remains the best offer we will make in relation to the removal of retained pay.'*

48. In October 2021, the claimant raised with DB that he felt he had been victimised in the way he had been treated by two other managers. The

claimant understood that he required to raise his concerns informally with DB, as his line manager, before being able to raise a grievance and that, if the matter was not resolved informally, DB would provide him with a Grievance Form, which he could use to raise a formal grievance. DB indicated to the claimant that one of the managers had left the respondent's employment, but he would arrange a meeting between the claimant and the other manager, to see if the matter could be resolved informally. The meeting did not happen and the claimant was then absent from work due to illness from 19 October 2021 to January 2022. On his return to work, the claimant had a meeting with DB. He indicated to DB that he would like to raise a grievance in relation to the incident in October 2021. DB informed the claimant that he could not raise a grievance about the incident as he was not treated unfairly: the managers were simply managing him. DB stated to the claimant that it was appropriate for them to do so, to ensure that he undertook productive work during his contracted hours. DB stated that it was accordingly not appropriate for the claimant to raise a grievance in relation to this.

49. On 9 March 2022, the claimant had returned to the depot during his shift, having completed a short run allocated him. He reported to the desk on his return, but no further runs were allocated to him. He went to wash his vehicle. DB discovered that the claimant was at the depot, washing his vehicle. His view was that that should be done at the end of his shift and that the claimant should be waiting near to the desk, in case further work could be allocated to him, and checking in with them at regular intervals to see if any work had become available. He went to see the claimant and asked him to attend a meeting with him. The claimant asked if he could bring a witness. DB said he could not. In the meeting the claimant indicated that he was unhappy with DB's management of him. He asked if he could move to a different line manager and/or reduce the number of days he worked. DB indicated that he would not entertain a change of management for the claimant, as he felt that the claimant was simply unhappy at being appropriately managed. In relation to the claimant's request to reduce his hours DB indicated that he would need to discuss this with his manager and the resource manager, but he could not foresee any particular barriers to this. The claimant expected DB to do so and

awaited a response to his request to reduce his hours thereafter. None was however forthcoming.

50. The claimant was absent from work due to illness from the start of July 2022 until the start of September 2022.

51. On his return to work in September 2022, the claimant became aware that those who had refused to accept the cessation of their Retained Pay, in return for a lump sum payment, were being offered enhanced redundancy payments to leave the respondent's employment. He asked if he was being offered that, but was informed that he was not eligible, as he had accepted the offer in February 2021. The last payment to the claimant, in respect of the buy-out of his Retained Pay, was made on 16 August 2022.

52. On 15 September 2022, the claimant handed a Grievance Form to DB. In the section of the form stating *'Tell us why you want to raise a formal grievance',* the claimant wrote *'The retained pay has been taken off me without my written permission. I didn't have benefit of 1 to 1 or any representation as was off sick. Was phoned while on sick and told to sign on return to work. On return I didn't sign.'* DB stated to the claimant that he had already raised a grievance in relation to this issue in April 2021, so he did not feel that the claimant's grievance should/would be heard as a result. DB did however discuss the claimant's grievance with his manager, who in turn discussed it with KM. They agreed, through that discussion, that as another similar grievance was raised around the same time by a desk clerk, they would proceed to hear that grievance in the first instance, before deciding what to do about the claimant's grievance. This was not however fed back to the claimant and no grievance meeting was arranged in relation to the claimant's grievance.

53. The desk clerk's circumstances were different to that of the claimant. He had been at work at the time of the consultation process and had participated in consultation meetings, unlike the claimant who did not participate in the consultation process. The desk clerk was given letters during the course of the consultation process and had the opportunity to consider them in advance of

the deadline for acceptance, unlike the claimant who saw the letters for the first time on 13 February 2021. It is likely that the desk clerk signed the acceptance form, unlike the claimant who did not. The only similarity was that the desk clerk and the claimant both sought to retract their agreement immediately after the deadline.

54. On/around 3 November 2022, the claimant asked DB what was happening about his grievance. DB stated that he did not know, and that he did not think any steps were being taken. DB understood that the desk clerk's grievance was to be considered in the first instance, before a view was taken as to what, if any, action should be taken in relation to the claimant's grievance, but he did not say this to the claimant. The claimant felt extremely frustrated that his grievance was not being addressed. The claimant had heard that his colleague's grievance (the desk clerk) was being progressed. He felt aggrieved that his colleague's grievance was being heard, but his was not. He felt that he was not being listened to or heard, despite all his efforts to have this, and previous grievances, addressed and that no action was being taken by DB in relation to any concerns which he raised with him, including his request for a reduction in his working hours, which he had raised with DB in March 2022. He submitted his resignation on 7 November 2022 as a result. At that time, the grievance procedure in relation to the desk clerk's grievance was still ongoing.

55. At the time his employment terminated, the claimant's hourly rate was £16.266 and he worked 33.75 hours per week. His gross weekly pay was £548.98 and his net weekly pay was £450.44.

56. The claimant has not secured alternative employment since the termination of his employment with the respondent. From March 2023 to date he has been in receipt of incapacity benefit and not seeking work.

Observations on Evidence

57. The Tribunal felt that each of the witnesses presented their evidence honestly and to the best of their ability.

58. The only particularly notable conflict in evidence was between DB and KM. DB stated that he had passed the claimant's Grievance Form, dated 10 March 2021, to KM. She stated however that she had not seen this, or any of the claimant's Grievance Forms. Had she done so, she stated that she would have arranged grievance meetings in relation to each.

Submissions

59. Mr James, for the respondent, lodged a written skeleton submission, extending to 8 pages, which he supplemented orally. In summary he submitted that:

a. The claimant was not constructively dismissed. There was no breach of the implied term, whether considering the acts relied upon individually or cumulatively.
b. The claimant did not make any protected disclosures.
c. The treatment complained of cannot, objectively, amount to a detriment and was not on the grounds of his having made protected disclosures. The burden of proof, in relation to causation, is on the claimant.
d. The claimant's dismissal was not, in any way, connected to any protected disclosures, let alone them being the sole or principal reason for this.
e. In relation to remedy, the claimant has failed to mitigate his loss and contributed to his dismissal.

60. The claimant gave a brief submission stating that he tried to do everything he could to resolve the issues in the depot, but felt he was left with no option but to resign due to the stress.

Relevant Law

Protected Disclosure

61. Section 43A of the Employment Rights Act 1996 (**ERA**) provides:

"In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

62. A qualifying disclosure is defined in section 43B ERA as *"any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following:*

a. *That a criminal offence has been committed, is being committed or is likely to be committed;*
b. *That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;*
c. *That a miscarriage of justice has occurred, is occurring or is likely to occur;*
d. *That the health or safety of any individual has been, is being or is likely to be endangered;*
e. *That the environment has been, is being or is likely to be damaged; or*
f. *That information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed."*

63. In ***Kilraine v London Borough of Wandsworth*** [2018] EWCA Civ 1436, at paragraphs 35 and 36, the Court of Appeal set out guidance on whether a particular statement should be regarded as a qualifying disclosure:

"35. The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a 'disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the matters set out in sub-paragraphs (a) to (f).' Grammatically, the word 'information' has to be read with the qualifying phrase 'which tends to show [etc]' (as, for example, in the present case, information which tends to show 'that a person has failed or is likely to fail to comply with any legal obligation to which he is subject'). In order for a statement or disclosure to be a qualifying disclosure according to this language,

it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1).”

“36. Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill J in Chesterton Global at [8], this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters, and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief.”

64. In ***Simpson v Cantor Fitzgerald Europe*** [2020] ICR 236, the EAT confirmed these principles, stating:

’43...As the Court of Appeal in Kilraine v Wandsworth London Borough Council [2018] ICR 1850 made abundantly clear, in order for a statement or disclosure to be a qualifying disclosure, it has to have sufficient factual content and specificity such as is capable of tending to show breach of a legal obligation.

69. The tribunal is thus bound to consider the content of the disclosure to see if it meets the threshold level of sufficiency in terms of factual content and specificity before it could conclude that the belief was a reasonable one. That is another way of stating that the belief must be based on reasonable grounds. As already stated above, it is not enough merely for the employee to rely upon an assertion of his subjective belief that the information tends to show a breach.’

Detriment Claim – Protected Disclosures

65. Section 47B ERA states that

'A worker has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.'

66. In ***Shamoon v Chief Constable of the Royal Ulster Constabulary*** [2003] IRLR 285 confirms that a worker suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work. An 'unjustified sense of grievance' is not enough.

67. Whether a detriment is 'on the ground' that a worker has made a protected disclosure involves consideration of the mental processes (conscious or unconscious) of the employer acting as it did. It is not sufficient for the Tribunal to simply find that 'but for' the disclosure, the employer's act or omission would not have taken place, or that the detriment is related to the disclosure. Rather, the protected disclosure must materially influence (in the sense of it being more than a trivial influence) the employer's treatment of the whistleblower (***Fecitt and others v NHS Manchester*** [2012] IRLR 64).

68. Helpful guidance on the approach to be taken by a Tribunal when considering claims of this nature is provided in the decision of ***Blackbay Ventures Ltd (t/a Chemistree) v Gahir*** [2014] IRLR 416 at paragraph 98.

Automatically Unfair Dismissal – Protected Disclosures

69. Section 103A ERA states that:

'An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or if more than one the principal reason) for the dismissal is that the employee made a protected disclosure.'

70. In ***Fecitt and others v NHS Manchester***, the Court of Appeal held that the causation test for unfair dismissal is stricter than that for unlawful detriment under s47B ERA: the latter claim may be established where the protected disclosure is one of many reasons for the detriment, so long as the disclosure

materially influences the decision-maker, whereas s103A ERA requires the disclosure to be the primary motivation for a dismissal.

(Constructive) Unfair Dismissal

71. 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).

72. 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).

73. Conduct calculated or likely to destroy mutual trust and confidence may be a single act. Alternatively, there may be a series of acts or omissions culminating in a 'last straw' (***Lewis v Motorworld Garages Ltd*** [1986] ICR 157).

74. As to what can constitute the last straw, the Court of Appeal in ***Omilaju v Waltham Forest London Borough Council*** [2005] IRLR 35 confirmed that the act or omission relied on need not be unreasonable or blameworthy (although it will usually be so), but it must in some way contribute to the breach of the implied obligation of trust and confidence. Necessarily, for there to be a last straw, there must have been earlier acts or omissions of sufficient

significance that the addition of a last straw takes the employer's overall conduct across the threshold. An entirely innocuous act on the part of the employer cannot however be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of their trust and confidence in the employer.

75. 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.

76. The Court of Appeal in ***Kaur v Leeds Teaching Hospital NHS Trust*** [2018] IRLR 833 set out guidance on the questions it will normally be sufficient for Tribunals to ask in order to decide whether an employee has been constructively dismissed, namely:

a. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?

b. Has he or she affirmed the contract since that act?

c. If not, was that act (or omission) by itself a repudiatory breach of contract?

d. If not, was it nevertheless a part (applying the approach explained in ***Omilaju***) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the implied term of trust and confidence?

e. Did the employee resign in response (or partly in response) to that breach?

77. 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 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). In applying s98(4) ERA the Tribunal must not substitute its own view for the matter for that of the employer, but must apply an objective test of whether dismissal was in the circumstances within the range of reasonable responses open to a reasonable employer.

Unauthorised deductions from wages

78. Section 13 ERA provides that an employer shall not make a deduction from a worker's wages unless:

a. The deduction is required or authorised by statute or a provision in the worker's contract; or
b. The worker has given their prior written consent to the deduction.

79. A deduction occurs where the total wages paid on any occasion by an employer to a worker is less than the amount of the wages properly payable on that occasion. Wages are properly payable where a worker has a contractual or legal entitlement to them (***New Century Cleaning Co Limited v Church*** [2000] IRLR 27).

Discussion & Decision

Disclosures

80. The Tribunal firstly considered each of the matters relied upon by the claimant as protected disclosures, to determine whether they were qualifying disclosures and, if so, whether they were also protected disclosures.

81. The Tribunal was mindful that five elements require to be considered in determining whether each asserted disclosure amounted to a qualifying

disclosure. The Tribunal noted that, unless all five conditions are satisfied, there will not be a qualifying disclosure.

82. The Tribunal's conclusions in relation to each asserted disclosure, and whether it was a qualifying and protected disclosure are set out below.

a. **On 17 February 2021 he advised Derek Butler verbally at a meeting that reliance upon the phone call and emailed agreement to withdraw retained pay was unlawful because he was off sick, he was not consulted with and it was not signed. This complaint was accompanied by a written informal grievance addressed to Karen Murphy about retained pay.** No evidence was given in relation to any written complaint submitted on/around that 17 February 2021. That was accordingly not established. The Tribunal's findings in relation to what was stated orally on 17 February 2021 are set out at paragraph 43 above. The Tribunal accepted that the claimant disclosed that there had been no consultation with him, that he was off sick at the time and wished to withdraw his agreement. This was a disclosure of information. The Tribunal concluded that the claimant believed that the information disclosed tended to show that there had been a failure to comply with a legal obligation, namely the obligation to consult with him. The Tribunal concluded that that belief was, in the circumstances, reasonably held. The Tribunal concluded however that the claimant did not believe that the information disclosed was in the public interest and any such belief would not have been reasonably held. The information disclosed related solely to the claimant's particular and personal circumstances. The Tribunal accordingly concluded that this was not a qualifying disclosure.

b. **On 10 March 2021 he submitted a grievance addressed to Karen Murphy via Derek Butler complaining that the deduction of his sick pay ought to be pro-rated based upon his hours (he was being deducted 3 days at 12 hours compared to others who were deducted 3 days at 8 hours).** The terms of the Grievance Form relied upon by the claimant are set out at paragraph 44 above. The claimant asked a number of questions in the form. He did not assert in those

questions that there had been or was likely to be a failure to comply with a legal obligation. He was simply requesting information and clarification. He was accordingly requesting, rather than providing, information. That does not amount to a disclosure of information. The Tribunal accordingly concluded that this was not a qualifying disclosure.

c. **On 13 April 2021 he submitted a grievance addressed to Lee Wilson via Derek Butler complaining that Karen Murphy had failed to follow the grievance procedure in breach of his terms of employment.** The Tribunal's findings in relation to what was stated in the claimant's Grievance Form are set out in paragraph 45 above. The Tribunal accepted that the claimant disclosed that he had tried to raise concerns verbally and by a Grievance Form, but no action had been taken by the respondent. This was a disclosure of information. The Tribunal concluded that the claimant believed that the information disclosed tended to show that there had been a failure to comply with a legal obligation, namely an obligation to address his grievances. The Tribunal concluded that that belief was, in the circumstances, reasonably held. The Tribunal concluded however that the claimant did not believe that the information disclosed was in the public interest and any such belief would not have been reasonably held. The information disclosed related solely to the claimant's particular and personal circumstances. The Tribunal accordingly concluded that this was not a qualifying disclosure.

d. **On 20 April 2021 he submitted a complaint to Gordon, Manager complaining that the threat of dismissal and re-engagement if he did not accept the removal of retained pay was unlawful in light of a recent court ruling.** The terms of the claimant's letter are set out at paragraph 46 above. The Tribunal accepted that the claimant disclosed information in this letter. The Tribunal concluded that the claimant believed that the information disclosed tended to show that there had been a failure to comply with a legal obligation, as he believed the respondent was legally prohibited, as a result of an interdict granted by the Court of Session, from withdrawing his Retained Pay. The Tribunal

concluded that that belief was, in the circumstances, reasonably held. The Tribunal concluded that the claimant believed that the information disclosed was in the public interest, as it similarly impacted a great number of the claimant's colleagues, who were also consulted with and asked to agree to changes to their terms and conditions, with no knowledge that an interdict had been granted the day before the deadline for acceptance. The Tribunal concluded that the claimant's belief was reasonably held in those circumstances. The Tribunal accordingly concluded that this was a qualifying disclosure. Given that it was made to his employer, it was also a protected disclosure.

e. **On 15 September 2022 he submitted a grievance to Derek Butler complaining that retained pay had been taken off him without his written permission, without a 1 to 1 or representation and whilst he was off sick.** The Tribunal's findings in relation to what was stated in the claimant's Grievance Form are set out in paragraph 52 above. The Tribunal accepted that the claimant disclosed that there had been no consultation with him, that he was off sick at the time and, on his return to work he did not sign to confirm his agreement. This was a disclosure of information. The Tribunal concluded that the claimant believed that the information disclosed tended to show that there had been a failure to comply with a legal obligation, namely the obligation to consult with him and a unilateral change to his contractual terms. The Tribunal concluded that that belief was, in the circumstances, reasonably held. The Tribunal concluded however that the claimant did not believe that the information disclosed was in the public interest and any such belief would not have been reasonably held. The information disclosed related solely to the claimant's particular and personal circumstances. The Tribunal accordingly concluded that this was not a qualifying disclosure.

Detriment Claim – S47B ERA

83. The Tribunal then considered whether the claimant was subjected to any detriment by an act, or a deliberate failure to act, by the respondent and, if so, whether this was on the ground that he made the protected disclosure

established, on 20 April 2021. The Tribunal was mindful of the fact that the test is whether a protected disclosure was a material factor (in the sense of it being more than trivial) for the treatment.

84. The Tribunal concluded that the claimant was not subjected to any detriment for doing so. The respondent felt they had fully and appropriately responded to the claimant's grievance when KM sent her letter to the claimant, dated 21 April 2021. As far as they were concerned, the matter was at an end and the claimant had agreed to the change to his terms and conditions of employment in relation to Retained Pay. Their actions thereafter were based on that belief. The fact that the claimant raised concerns about this in his letter of 20 April 2021 did not influence the respondent's actions thereafter in any way, as they believed those complaints had been addressed. There was no evidence to suggest that the established protected disclosure was a material factor in DB's actions towards the claimant. The claimant's evidence was that he and DB simply did not get on. The Tribunal accepted this was the case and DB was not influenced, in any way, by the terms of the claimant's letter of 20 April 2020, which he understood had been fully addressed by KM. For these reasons the claimant's complaint that he has been subjected to detriments as a result of making protected disclosures does not succeed and is dismissed.

Unfair Dismissal – s103A ERA

85. The Tribunal then considered whether the claimant had established, on the balance of probabilities, that the reason (or principal reason if more than one) for dismissal was that he made the established protected disclosure.

86. In considering this, the Tribunal was mindful that the principal reason is the reason that operated on the employer's mind at the time of the dismissal (***Abernethy v Mott, Hay and Anderson*** 1974 ICR 323, CA) and that, if the fact that the employee made a protected disclosure influenced, but was not the sole or principal reasons for dismissal, then the employee's claim under s103A ERA will not be made out (***Fecitt and ors v NHS Manchester (Public Concern at Work intervening)***).

87. Given the conclusions reached by the Tribunal, as set out above, namely that the respondent's actions were not, in any way, influenced by the established protected disclosure, the claimant's complaint must fail. It has not been established that the reason for dismissal, or the principal reason if more than one, was the established protected disclosure.

Constructive Unfair Dismissal Claim – s94 ERA

88. In considering the claimant's claim of constructive dismissal, the Tribunal considered the tests set out in ***Kaur v Leeds Teaching Hospital NHS Trust***. The Tribunal's conclusions in relation to each element are set out below.

89. **What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?** The Tribunal noted that the most recent act on the part of the respondent, which the claimant relied upon as causing or triggering his resignation, was the failure to address his grievance of 15 September 2022, but hear a similar grievance from another colleague. He was aware of this by 3 November 2022, when he asked DB for an update in relation to what was happening regarding his grievance. The Tribunal's findings in relation to this are set out in paragraph 54 above. The lack of any positive response from DB triggered his resignation.

90. **Has he or she affirmed the contract since that act?** The Tribunal noted that the claimant resigned on 7 November 2022. The Tribunal found that the claimant had not affirmed the contract before doing so.

91. **If not, was that act (or omission) by itself a repudiatory breach of contract?** The Tribunal found that the lack of a positive response from DB, regarding the steps being taken in relation to the claimant's grievance, was established, but was not, by itself, a repudiatory breach of contract.

92. **If not, was it nevertheless a part (applying the approach explained in *Omilaju*) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the *Malik* term?** The Tribunal noted that the Court of Appeal in ***Omilaju*** stated that

the act or omission relied upon need not be unreasonable or blameworthy, but it must, in some way, contribute to the breach of the implied obligation of trust and confidence. An entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of their trust and confidence. The test of whether the employee's trust and confidence has been undermined is objective.

93. The Tribunal concluded that the last act relied upon, on 3 November 2022, was not an innocuous act and could, in principle, amount to a final straw. That act did not 'land in an empty scale', it had to be considered in light of the other, previous, conduct relied upon. The Tribunal accordingly then considered whether the actions/omissions relied upon, viewed cumulatively, amounted to a repudiatory breach of the claimant's contract of employment. In doing so, it considered each of the other acts relied upon by the claimant as cumulatively breaching the implied term of trust and confidence. The Tribunal reached the following conclusions in relation to each:

a. **After 13 February 2021 treating his agreement to remove retained pay as binding upon him where his agreement was obtained whilst he was off sick without consultation and under the threat of dismissal, was subject to signature which he refused to give, was immediately withdrawn on his return to work on 17 February.** The Tribunal concluded that the claimant's agreement, stated in his email 13 February 2021, was clear and unambiguous. The respondent was entitled to rely on this and, once given, agreement cannot be unilaterally withdrawn.

b. **From August 2021 and with increasing frequency, his manager Derek Butler keeping him on shorter local driving runs as opposed to longer remote driving runs which he expressly preferred (because it meant reduced contact with his manager).** The Tribunal accepted that the claimant preferred longer runs but also accepted that the respondent required to share these runs amongst all the drivers. There was no evidence that DB influenced this. The unchallenged evidence was that runs were allocated by a planner.

c. **From August 2021 and with increasing frequency, his manger Derek Butler calling him in to the office to chastise him particularly about not reporting to ask for more work.** The Tribunal accepted that this was the case, as set out in paragraph 38 above.

d. **On 20 October 2021 being falsely accused by Neil and Andy, both Managers, of refusing to do runs. After a period of sick absence, he tried to submit a grievance about this but on 18 January 2022 he was told by Derek Butler he was not allowed to do so.** The Tribunal found, as set out in paragraph 48 above, that DB did state to the claimant that he was not allowed to raise a grievance in relation to the matters he sought to complain about.

e. **On 9 March 2022 he was called into the office and chastised by Derek Butler for not reporting to ask for more work (he was washing his vehicle as expected) and was refused permission to bring in a colleague, James Lawrie, as witness to the meeting.** This was established, as set out in paragraph 49 above.

f. **Failing to progress his grievances.** The Tribunal accepted that the claimant's grievances of 10 March 2021, 13 April 2021 and 15 September 2022 were not addressed at all by the respondent and grievance meetings, in accordance with the respondent's grievance procedure, were not arranged. The claimant's grievance of 20 April 2021 was not dealt with in accordance with the respondent's grievance procedure, as no grievance meeting was arranged and an appeal was not offered. In addition, the claimant was inappropriately informed by DB in October 2021 that he could not raise a grievance, when there was no basis in the respondent's procedures for him to do so.

g. **From March 2022 Derek Butler failing to arrange a meeting with senior management as promised by him to discuss the Claimant's proposal for a change of manager or reduced days.** The Tribunal's conclusions in relation to this are set out at paragraph 49 above. The claimant reasonably expected DB to meet with his superiors, or at least discuss the claimant's request to change his hours with them, as a

result of DB's comments to him. DB however took no action in relation to the claimant's request. DB's suggestion in evidence, that he expected the claimant to complete further paperwork in relation to the request was not accepted by the Tribunal, given DB's acceptance that no such documents were provided to the claimant by him and he did not inform the claimant of this requirement.

h. **On 13 August 2022 discovering that despite his grievances they have continued to treat his unsigned agreement to remove retained pay as binding upon him (he was not aware of this previously because he was unable to access his payslips online).** This is linked to a. above and covered in the Tribunal's conclusions regarding that.

i. **In September 2022 failing to make him an offer of redundancy pay (which was made to others who had not agreed to the removal of retained pay).** This is linked to a. above and covered in the Tribunal's conclusions regarding that.

j. **Failing to deal with his grievance of 15 September 2022 despite having dealt with a colleague's grievance of similar date.** This is linked to f. above and covered in the Tribunal's conclusions regarding that.

k. **On 3 November 2022 being advised by Derek Butler that he is unable to provide a response to his grievance of 15 September 2022.** This conduct was established and has already been addressed above.

94. In light of these conclusions, the Tribunal determined that the respondent's actions on 3 November 2022 were part of a course of conduct comprising several acts and omissions (particularly those at paragraphs 93. d, f, g, j and k above) which, viewed cumulatively, amounted to a (repudiatory) breach of the ***Malik*** term. Failure to address the grievances of employees in a full and fair manner can amount to a breach of the implied duty of trust and confidence (***WA Goold (Pearmak) Ltd v McConnell and anor*** 1995 IRLR 516, EAT and

Blackburn v Aldi Stores Ltd 2013 ICR D37, EAT). The Tribunal concluded that failure to progress the claimant's grievance, but to address those of a colleague in similar circumstances, viewed cumulatively with the respondent's previous and repeated failures to address the claimant's grievances in accordance with the respondent's policies, or respond in relation to his request to change his hours or work, did amount to a breach of 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. A breach of the implied term of trust and confidence, is generally, by its nature, a repudiatory breach (***Morrow v Safeway Stores plc*** 2002 IRLR 9, EAT). The Tribunal concluded that the respondent's conduct in this case amounted to a repudiatory breach of contract.

95. **Did the employee resign in response (or partly in response) to that breach?** The Tribunal concluded that the claimant did resign in response to the breach.

96. Given these findings the Tribunal concluded that the claimant was constructively dismissed by the respondent. The Tribunal found that this was an unfair dismissal.

Unauthorised Deductions from Wages – s13 ERA

97. The Tribunal then considered the claimant's claim that the respondent had made unauthorised deductions from his wages by failing to pay him Retained Pay in September and October 2022. The Tribunal noted that a deduction occurs where the total wages paid on any occasion, by an employer to a worker, is less than the amount of the wages properly payable on that occasion. Wages are defined in section 27 ERA and are properly payable where a worker has a contractual or legal entitlement to them. Given the terms of the claimant's email of 13 February 2021, in which he agreed to the buy-out of his Retained Pay in clear and unambiguous terms, the claimant has not demonstrated any contractual or legal entitlement to Retained Pay after August 2022. For these

reasons, the claimant's complaint of unauthorised deductions from wages in relation to this does not succeed and is dismissed.

Remedy - Unfair Dismissal

98. Having found that the complaint of unfair dismissal succeeds, the Tribunal moved on to consider remedy. The claimant presented a schedule of loss and the respondent lodged a counter schedule.

Mitigation

99. The respondent submitted that the claimant had not done enough to mitigate his loss of earnings and he ought to have been able to secure alternative work, as an HGV driver, within 8 weeks of the termination of his employment with the respondent. The claimant accepted that this was the case. In these circumstances, the Tribunal accepted the respondent's submission that any compensatory award ought to be limited to 8 weeks' pay.

Acas Code

100. The Tribunal then considered whether the respondent had unreasonably failed to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures (2015) (the **Acas Code**). In their schedule of loss, the respondent submitted that the grievance process was followed and there was no breach of the Acas Code. They accordingly stated that there should be no uplift for failure to follow the Acas Code. The Tribunal found however that the respondent failed to deal with the claimant's grievances in a number of respects (see paragraph 93.f. above). In light of these findings, the Tribunal concluded that the respondent had failed to comply with the following requirements of the Acas Code:

a. Section 33 which states that employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received; and
b. Section 40 which states that employers should communicate decisions in relation to the grievance to the employee without unreasonable delay

following a meeting, and inform them that they can appeal if they are not content with the action taken.

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

102. 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 size and resources of the respondent, and the fact that in relation to all but one of the claimant's grievances (where there was no meeting and no right of appeal offered) there was a complete failure to follow any procedure whatsoever. The Tribunal determined in these circumstances that a 20% uplift would be just and equitable.

Contribution

103. The respondent submitted that the claimant contributed to his dismissal and compensation should be reduced accordingly. 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 his 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 dismissal was not, to any extent, caused or contributed to by his actions, and his actions were not culpable or blameworthy in any respect. No reduction should accordingly be made to any award on this basis.

Basic Award

104. Given the claimant's age at the date his employment terminated (58 years' old), length of service (22 years) and gross weekly salary (£548.98) the claimant's basic award is **£15,645.93**.

Compensatory Award

105. The Tribunal calculated the compensatory award as follows:

Loss of earnings – 8 weeks at £450.44	£3,603.52
Loss of statutory rights	£ 500.00
Sub-total	£4,103.52
Uplift re Acas Code – 20%	£ 820.70
Total Compensatory Award	**£4,924.22**

Employment Judge: **M Sangster**
Date of Judgment: **12 October 2023**
Entered in register: **13 October 2023**
and copied to parties