EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105256/2022

Hearing Held on 16 January 2023

Employment Judge Hendry

Miss A M Murray	**Claimant** **Represented by:** **Mr J Murray**
MS and RK Ltd	**Respondent** **Represented by:** **Ms R Campbell**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is as follows:

1. The claimant was an employee of the respondent company at the date of her dismissal with sufficient qualifying service to claim unfair dismissal.

2. That the claimant's claim for unfair dismissal is well founded and that the respondent company shall pay to the claimant a monetary award in the sum of Seven Hundred and Thirty-Seven Pounds and Fifty Pence (£737.50).

REASONS

1. The claimant in her ET1 alleged that she had been unfairly dismissed from her job as a waitress/kitchen operative by the respondent company. The respondent company in their ET3 stated that they disagreed that the claimant had been unfairly dismissed. They suggested that the claimant was dismissed because of a lack of competence and her conduct ‘‘attitude and behaviour’’. In any event they indicated that “the claimant was not employed by the respondent; she was merely a worker”.

2. The issues for the Tribunal were whether or not the claimant was properly an employee and whether she had sufficient service to make a claim for unfair dismissal and if so to assess what the reason for dismissal was and whether the dismissal was fair or unfair in all the circumstances.

Witnesses

3. The Tribunal heard evidence from Mrs Sarah Morrison, a Director of the company, Ms Katie Wilson, a Director of the company and Josie Wilson, an employee in the business and from the claimant on her own behalf.

Facts

(1) The claimant was 17 at the date of the hearing. She began working at The Admirals, a public house and restaurant in Findochty immediately after her 14th birthday in 2019. She knew the then owners of the business ‘‘Wendy and Jimmy’’. She worked for them for almost 2 years. She was well thought of.

(2) The respondent company bought over the business (The Admirals) in October 2021. They are a small family company. The Directors had not managed a public house and restaurant before buying the business and have limited experience of employing staff. They employ four or five casual workers namely bar, waitress and kitchen staff and work in the business themselves.

(3) From the outset the claimant worked an evening shift on Thursday for 3 hours (unless it was agreed that she could take time off). She also worked at least one shift at the weekend. There was no documentation given to her to evidence the agreement the parties had. She was paid in cash. The arrangement was regular. The claimant expected to work every Thursday and at the weekend unless it had been otherwise agreed for her to take leave or to switch shifts with another waitress.

(4) On occasions the claimant would take time off for holidays. She was not paid holiday pay. She did not receive payslips. She was a member of the staff when the business was taken over by the respondent in October 2021. The business did not close and continued trading. After the respondents took over the business she continued on the same shift pattern at the same rate of pay.

(5) The respondents were aware that the claimant had worked in the premises for a number of years when they took it over. They had known the previous owners. They were aware that the claimant one of the regular members of staff. They did not issue the claimant, or other staff, with an employment contract nor with any policies including any disciplinary policy.

(6) The respondent's owners hoped to try and improve the way the business was run. They made various changes including giving waiting staff computer tablets to record orders. Ms Wilson's partner "Ross" used to work in the business generally behind the bar. They had a bar manager ''Maree''.

(7) The claimant is reserved by nature. At the time her employment was terminated she was 17 years old. She had found things difficult working in the premises for the previous couple of months. One of the reasons for this was that her relationship with another member of staff had deteriorated because of her behaviour calling the claimant names. This had affected the claimant's confidence and mental health. She had raised this behaviour with Mrs Morrison but no action had been taken to try and resolve matters. Mrs Morrison concluded that the claimant was unhappy in her work.

(8) The claimant found that there was often confusion in relation to the way in which the bar was run and what was expected of her. When the claimant as a waitress did not have waitressing duties she was expected to assist elsewhere. She was regularly asked by the bar manager ''Maree'' to collect glasses. She was also periodically asked to clean the glasses and do other work behind the bar such as stocking shelves. Ross told her that he did not want her working behind the bar as she was too young but she was still asked to do so by the bar manager.

(9) The respondents became dissatisfied with the claimant's performance. They thought that the claimant was too slow in carrying out her work.

(10) On one occasion Josie Wilson, Ross and Mrs Morrison met the claimant and asked her if she was enjoying the work. She told them that she was. They also told her that they thought she was too slow particularly the way she walked. They demonstrated how they thought the claimant walked by mimicking her gait. The claimant found this humiliating and upsetting.

(11) The claimant had attended on one occasion for arranged training as requested. It was carried out by Mrs Morrison. It only took a short period and consisted of Mrs Morrison going over checklist with staff.

(12) A few weeks later on the next occasion staff, including the claimant were asked to attend additional training. The claimant had arranged previously to go to a concert in Glasgow over that weekend. She told the respondents that she could not make the arranged training. She was offered training on the following Monday but as she was travelling back from the Glasgow that day she told the respondents that she could not attend. She was not asked to attend any rearranged training. Her inability to attend annoyed the respondent's owners but they did not raise this with her.

(13) On 26 March 2022 the claimant did not attend at her expected start time. The respondents contacted her through her parents and she attended late. She accepted that she was at fault.

(14) On 14 April the claimant had a driving lesson. She understood that someone else was covering her shift that day and didn't realise that they had not attended. Neither this occasion or the earlier one led to any disciplinary action.

(15) On 14 of August 2021 the claimant was at work. There were other staff on duty and the restaurant was quiet with only two tables occupied. The claimant had been helping collect glasses as she often did. Ross was working and she knew he did not like her cleaning glasses behind the bar. To keep busy she went into the cellar and carried out another routine task which was filling lemonade bottles for use in the bar and lounge bar from larger bottles. Ross noticed this and was short with her for doing this. He asked her to continue collecting glasses which she did.

(16) At a later point on the 14 August a customer asked the claimant for their bill. The claimant went to the bar area where the bills were kept after they were printed off. It was usual practice that if a customer had also ordered additional drinks that the bar staff would put another bill on top of the original bill to show additional items purchased. This was to allow

a final bill to be printed off. The bar staff had not done this so the claimant was unaware that the customers had purchased additional drinks. This caused some confusion. The claimant was spoken to again by Ross and told off that she hadn't asked for an updated bill. The claimant had understood that the bills would be updated by the bar staff either by running off an updated bill or by leaving another bill on top of the food bill. She had been unaware of the additional items purchased.

(17) At the end of her shift the claimant was upset. She felt that she was being given contradictory instructions. She emailed Katie Wilson. She emailed as follows:

> "*Hi Katie*
> *Sorry to bother you but just checking what my duties are when it's gae busy. Because tonight when it calmed down and didn't need 3 waitresses I filled up the lemonade bottles as there was only 2 left. Ross didn't seem happy about it or when I was helping with the glasses which I had been doing all day he wasn't happy about that either. I was only trying to help the girls out because it can be hard for them to keep up with glasses when it's busy and Maree would normally ask me to do stuff like that if I wasn't that busy so I was just using my initiative to keep myself right but I seem to be in the wrong – I also didn't know where to ask the bar staff for the bill every single time someone asked for it and thought it was only if it needed updated. Again sorry for bothering you but I thought I'd just pop a message just to double check what to see what I should be doing to save myself getting into bother next time as I was quite hurt tonight with the way I was spoken to as I was only trying to help out. xx*"

(18) Ms Wilson was annoyed at the terms of the text. She thought that the claimant should know what her duties were. She was annoyed that the claimant hadn't attended the recent training. She responded to the claimant on 14 August:-

> *"Hi Abby Ross asked you to see to customers as that is a big part of your role as a waitress as you know so it's priority they get seen to, there was 3 barmaids on today so there was plenty girls on that could of done that and glasses are the barmaid's job. We have told you on numerous occasions that you shouldn't be behind the bar, (1) because you aren't aloud and there just isn't enough space behind*

there. We have stressed that a lot to each individual. By now being in the job you have been in for a while now compared to the other girls you should know your role as a waitress, I have went through it on numerous occasions. You haven't been to any training I have offered which I don't know why? I have offered you this on a few occasions and you come back that you are busy. Now we have new kitchen staff our priority now is to ensure that the front of staff is on top form and know there roles and the customers foremost are getting well looked after …"

(19) Ms Wilson discussed the position with Mrs Morrison. They were disappointed that the claimant had not attended training. Mrs Morrison thought that the claimant was unhappy. They did not like the claimant's performance in her role. They decided that they should dismiss the claimant. They though they could do this without going through any process because they regarded the claimant as a casual worker. Ms Wilson texted the claimant on the 21st of August:-

"*Hello Abbie*

I'm sorry but the decision has been made that we are dismissing you from working at The Admirals, we have been reviewing your work over the past few months and there is a lack of progress and due to a few no shows/absences and no show to the training offered we will not tolerate and after receiving the message from you on Sunday was the last straw for me as we have to tell you what to do – you should know this by now you have been at the job a while and worked with us for nearly a year and couldn't handle Ross telling you what to do – Ross is your boss also and you have to take a telling when it is necessary. There has been a few complaints also about the service out front of house also which we cannot have as this is a major let down to us, we aim to put out the best service possible. Your attitude towards certain staff members has been a problem which we will not tolerate …"

(20) The claimant responded: "*To say I am disappointed is an understatement. I would ask you to reconsider your decision to dismiss me*." Ms Wilson responded on the 24th of August "*Sorry Abbie the decision has been made and it has been mentioned to you numerous times if things never changed this would be the outcome. Sorry again*."

(21) In the course of her employment by the respondents the claimant had received no written warnings about her performance, attitude, or attendance. She received no verbal warnings about her work or attitude.

(22) It was agreed that the claimant had a basic wage of £25 per week. She also regularly received a share of the tips. This sum varied.

(23) Following her dismissal the claimant was upset and depressed. She lost confidence in herself and found it difficult to motivate herself. With the encouragement of her parents she began looking for work. She registered with an online website "Indeed". She applied for various jobs from the 24 August onwards until she found comparatively paid employment in mid-November.

Witnesses

4. The claimant gave her evidence in a straightforward manner. She did not suggest that she might not have been at fault in not ensuring her shift was covered in March 2021 or at times she might have made mistakes. Overall although she struggled at times recollecting what had been to her minor incidents I found her evidence to be generally reliable and credible.

5. I did not find the respondents' witnesses particularly credible. They had tried to put together a log of events which was lodged but I formed the view that I could not rely on this as it was not contemporaneous and written very much in hindsight and for the current proceedings. Much of their evidence was not persuasive. It was also not reliable. No records had been made of the various alleged issues that they had allegedly occurred calling into question whether there were any serious issues in the first place. The reasons given for dismissal seemed confused and to vary from witness to witness.

Submissions

6. Neither side were legally represented. The submissions essentially were that I should believe their respective positions.

Discussion and Decision

Preliminary Issue/Status

7. In this case there was a preliminary issue which had been raised by the respondent and that was whether the claimant was at the relevant time an employee and over what period. The claimant was legally entitled to work from age 14 and there is no age bar on being regarded legally as an employee.

8. The starting point is the statutory language. Section 230 of the Employment Rights Act 1996 (ERA) is in these terms:

"***230 Employees, workers etc.***

(1) In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly.

(4) In this Act "employer", in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

(5) In this Act "employment"—

(a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and

(b) in relation to a worker, means employment under his contract;

and "employed" shall be construed accordingly."

9. For an individual to be a worker for another pursuant to section 230(3)(b) ERA they must have entered into or work under a contract (or possibly, in limited circumstances some similar agreement) and they must have agreed to personally perform some work or services. They are not a worker if they are a client or customer by virtue of the contract.

10. Helpful guidance was contained in the case of ***Quashi v Stringfellows Restaurants Ltd*** [2012] EWCA Civ 1735, [2013] IRLR 99, Elias LJ stated.

"Various tests for identifying when a contract of employment exists have been proposed in the cases, although none has won universal approval. These tests include, to use the shorthand descriptions, the following: the control test, which stems from the decision of Bramwell LJ in Yewens v Noakes (1880) 6 QBD 530 (which focuses on the nature and degree of control exercisable by the employer); the business integration test, first suggested by Denning LJ in Stevenson, Jordan and Harrison v MacDonald and Evans [1952] 1 TLR 101 (whether the work provided is integral to the business or merely accessory to it); the business or economic reality test, first propounded by the US Supreme Court in US v Silk 331 US 704(1946) (whether in reality the worker is in business on his or her own account, as an entrepreneur); and the multiple or multi-factorial test, reflected in the judgment of McKenna J in Ready Mixed Concrete (South East Limited) v Minister of Pensions and National Insurance [1968] 1 QB 497 (involving an analysis of many different features of the relationship).

Employment relationships come in such diverse forms that, whilst each of these tests may in any particular case cast some light on the problem of classification, none provides a ready universal answer. However, the test most frequently adopted, which has been approved on numerous occasions and was the focus of the Employment Tribunal's analysis in this case, is the approach adumbrated by McKenna J in the Ready Mixed Concrete case. He succinctly summarised the essential elements of the contract of employment as follows (p.515):

"A contract of service exists if these three conditions are fulfilled.

(i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master.

(ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master.

(iii) The other provisions of the contract are consistent with its being a contract of service."

He later added (p.516-517):

"An obligation to do work subject to the other party's control is a necessary, though not always a sufficient, condition of a contract of service. If the provisions of the contract as a whole are inconsistent with its being a contract of service, it will be some other kind of contract, and the person doing the work will not be a servant. The judge's task is to classify the contract (a task like that of distinguishing a contract of sale from one of work and labour). He may, in performing it, take into account other matters besides control."

This approach recognises, therefore, that the issue is not simply one of control and that the nature of the contractual provisions may be inconsistent with the contract being a contract of service. When applying this test, the court or tribunal is required to examine and assess all the relevant factors which make up the employment relationship in order to determine the nature of the contract.''

11. The law as we can see is by no means completely clear with no authoritative definition of a worker or employee that covers all circumstances. The issue of mutuality of obligation is an important one. It may be that that is why the respondents refer to the word 'casual'' in their ET3. Again in ***Quashie*** Elias LJ held:

"10. An issue that arises in this case is the significance of mutuality of obligation in the employment contract. Every bilateral contract requires mutual obligations; they constitute the consideration from each party necessary to create the contract. Typically an employment contract will be for a fixed or indefinite duration, and one of the obligations will be to keep the relationship in place until it is lawfully severed, usually by termination on notice. But there are some circumstances where a worker works intermittently for the employer, perhaps as and when work is available. There is in principle no reason why the worker should not be employed under a contract of employment for each separate engagement, even if of short duration, as a number of authorities have confirmed''.

12. The claimant gave unchallenged evidence that she had worked weekly for the business since just after her 14th birthday. She did not work ''intermittently''. She arranged for time off her agreed shifts habitually Thursdays and weekends. This was the situation that the respondent company ''inherited'' when they bought the business as a going concern. Despite the fact that there were no payslips or employment contract and the

arrangement was not formalised in writing it seems apparent that there was mutuality of obligation between the claimant and her employers. She expected work weekly and they expected her to work weekly. I reached the conclusion that the claimant was an employee and one with sufficient service to avail herself of employment rights.

Dismissal

13. It is for the respondent to prove the reason for a dismissal under section 98(1) and (2) of the Employment Rights Act 1996 ("the Act"). If the reason demonstrated by the employer is not one that is potentially a fair reason under section 98(2) of the Act, then the dismissal is unfair in law.

14. Conduct is a potentially fair reason for dismissal. If the reason for dismissal is one that is potentially fair, the issue of whether it is fair or not is determined by section 98(4) of the Act which states that it: "*depends on whether in the circumstances…..the employer acted reasonably or unreasonably in treating [that reason] as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case."*

15. That section was examined by the Supreme Court in ***Reilly v Sandwell Metropolitan Borough Council*** [2018] UKSC 16. In particular the court considered whether the test laid down in ***BHS v Burchell*** [1978] IRLR 379 remained applicable. Lord Wilson considered that no harm had been done to the application of the test in section 98(4) by the principles in that case, although it was not concerned with that provision. He concluded that the test was consistent with the statutory provision. Tribunals remain bound by it.

16. The Burchell test remains authoritative guidance for cases of dismissal on the ground of conduct. It has three elements (i) Did the respondent have in fact a belief as to conduct? (ii) Was that belief reasonable? (iii) Was it based on a reasonable investigation?

17. Tribunals must also bear in mind the guidance in ***Iceland Frozen Foods Ltd v Jones*** [1982] ICR 432 which included the following summary: *"in judging the reasonableness of the employer's conduct an Industrial Tribunal must not substitute its decision as to what the right course to adopt for that of the employer…….the function of the Industrial Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.*"

18. The way in which an Employment Tribunal should approach the determination of the fairness or otherwise of a dismissal under s 98(4) was also considered and the law summarised by the Court of Appeal in ***Tayeh v Barchester Healthcare Ltd*** [2013] IRLR 387.

19. Lord Bridge in ***Polkey v AE Dayton Services*** [1988] ICR 142, a Judgment of the House of Lords, referring to the employer establishing potentially fair reasons for dismissal, including that of misconduct: *"in the case of misconduct, the employer will normally not act reasonably unless he investigates the complaint of misconduct fully and fairly and hears whatever the employee wishes to say in his defence or in explanation or mitigation*."

> "*A fair investigation should be even-handed and take into account evidence that could be in the employee's favour (**A v B** [2003] IRLR 405, EAT), **Leach v OFCOM** [*2012] IRLR 839). 67."

20. Tribunals are required to take into account the terms of the ACAS Code of Practice on Disciplinary and Grievance Procedures. They are not bound by it.

21. The Code of Practice is supplemented by a Guide on Discipline and Grievances at Work, which is not a document that the Tribunal is required to take into account but which gives some further assistance in considering the

terms of the Code of Practice. Under the heading "Investigating Cases" the following is stated: *"When investigating a disciplinary matter take care to deal with the employee in a fair and reasonable manner. The nature and extent of the investigations will depend on the seriousness of the matter and the more serious it is then the more thorough the investigation should be. It is important to keep an open mind and look for evidence which supports the employee's case as well as evidence against. It is not always necessary to hold an investigatory meeting".*

22. It might be appropriate to begin by saying that the owners of the business were new to running such an enterprise. The picture painted by their evidence is that they thought they could dismiss the claimant with impunity. The evidence also made clear that the basis of the dismissal had not really been thought through and that when asked to justify their actions different reasons were given by the different witnesses. It was odd that the claimant who had worked for the business for some years, with no apparent difficulties, had gone from being a well-regarded member of staff to one who was thought of as being very poor at her work.

23. The dismissal txt says ''*we have been reviewing your work the past few months and there is a lack of progress and due to a few no show s/absences and no show at training offered we will not tolerate…*''

24. Looking more closely at these reasons the one clear and distinct complaint was missing shifts some months before the dismissal. No action seems to have been taken after this occurred in March and April. The claimant accepted responsibility for being late and that she thought she had arranged for her shift to be covered on the 14 April when she went for her first driving lesson. There was no evidence before the Tribunal how these matters had been treated at the time. Certainly, no recorded warning was given. The evidence seems to strongly suggest that these were two unfortunate and isolated occurrences that were not regarded as serious at the time but were resurrected to justify dismissal.

25. There are suggestions that the claimant was dismissed for capability reasons but these are too vague to identify. The txt then mentions the failure to attend training. There was no evidence that it was mandatory or that the claimant's reason for not attending wasn't accepted at the time. There was no evidence that she refused in some way to attend or had not agreed to attend at another point.

26. The next matter raised was the terms of the claimant's txt when she asked for clarification about her duties. No reasonable employer would have regarded this as a reason for dismissal.

27. The respondents have not convincingly made out a reason for dismissal whether conduct or capability but looking at the matter in the round I am prepared to accept that the alleged ''lack of progress'' amounts to capability being the reason for dismissal. It is a potentially fair reason. However, as is mentioned both in the ACAS Code and by Lord Bridge there should normally be a warning or warnings given and a chance for the employee to improve. This was simply not done. Nor was any fair process followed. The claimant had no formulated disciplinary charges to respond to, no hearing, no chance to put forward mitigatory factors or appeal.

28. The common thread running through the respondent's evidence was that any incidents of inadequate performance or misconduct had not been recorded at the time. A log or journal was produced. It was accepted that this was written up for the purposes of the Tribunal and had input from them all. The Tribunal could put little weight on either the log or on the evidence led to support the contents. The Tribunal was left with the strong impression that the witnesses for the respondent company were attempting to justify the dismissal by thinking back to any possible criticism, however, minor or transitory that they could recall whether or not the issues were serious or had been raised with the claimant at the time.

29. I would observe that even if the respondents had clearly set out the claimant's duties, which I do not accept occurred, and the claimant had unnecessarily asked for clarification of them, no reasonable employer would have dismissed on these grounds or seen it as some major failing. In their own evidence they say there had been numerous changes to the business. The claimant was only 17 years old. Her evidence strongly suggested that there might have been ''too many cooks'' in the sense that she was getting instructions from two or three people which were not always consistent. If further training was deemed essential there was no attempt to rearrange it and the claimant had expressed no resistance to undertaking it.

30. One witness stated the claimant was said not to have turned up to work with a white shirt on but when the issue was explored (it did not feature in the ET3) it turned out that the previous owners, although always intending to introduce a basic uniform, did not do so and had allowed staff such as the claimant to wear casual clothes. It was not challenged that when the respondents, as the new owners, asked waitressing staff to wear a white shirt or blouse the claimant purchased these and wore them. Certainly, there were no evidence of any specific occasion on which she had been pulled up for not wearing one.

31. It was apparent that the catalyst for the claimant's dismissal was her txt politely asking for some guidance about her duties. It seemed in the circumstances a reasonable request. The claimant's subsequent dismissal came out of the blue. At no point had the claimant been warned that her job was at risk because of her actions or capability or that the respondents were reaching the stage of formal action against her for some perceived inadequacy. She was given to chance to defend herself at any investigation or disciplinary hearing. She was given no right of appeal.

32. In all the circumstances I concluded that the claimant's dismissal was both procedurally and substantively unfair and outwith the band of reasonable responses open to the respondent company. Whatever their inexperience

and lack of knowledge of employment practices their actions could clearly not pass even a rudimentary understanding of fairness.

Remedy

33. Any award of compensation must be 'just and equitable' under Section 123(1) of the ERA. Accordingly, I considered whether any award to the claimant should be reduced on the grounds she might have been dismissed if a fair process had been followed. This is known as a ''Polkey'' reduction after the seminal case of ***Polkey v AE Drayton Services Ltd*** (1988 ICR 142). The evidence before the Tribunal was neither sufficiently clear or satisfactory to allow me to do this. Even after hearing evidence I was left in considerable doubt as to what the claimant was being dismissed for or why she was regarded as being incapable of doing her job. I also considered if the claimant had mitigated her loss. The duty to do so is a reasonable one. The claimant obtained work relatively quickly and my conclusion was that in the circumstances she had mitigated her loss.

34. I also considered the terms of Section 123(6) of the ERA and the issue of contributory fault and whether the claimant caused or contributed 'to her dismissal''. I concluded that the evidence of any fault on her behalf was poor for the reasons given earlier. I examined whether the incidents in March and April 2021 could be said to have contributed to her dismissal I reject that suggestion. Although mentioned in the dismissing txt that has to be seen against the background which indicated that the claimant's explanations appear to have been accepted at the time. There was no evidence of the matter being investigated or the claimant challenged about her explanations or any warning formal or informal. In short it seems likely that the matter was forgotten about until the respondents came to look for a justification to dismiss her some four or five months later. No increase in compensation was sought because of the respondents' failure to adhere to the ACAS Code. If such an application had been made the compensatory award would have been increased substantially.

35. The claimant was paid £25 per week for her two shifts. She was dismissed on the 21 August. She obtained work just after the 14 November. She lost 12 weeks' pay (12 x £25) amounting to £300. The claimant was also entitled to a share of the ''tips'' but the Tribunal had no evidence before it of what she might have earned had she stayed in employment. These figures had not been recovered from the respondent. In addition, the season was coming to a close and there was no evidence as to the possible level of tips led. This is unfortunate but in the circumstances the information before me is too speculative to decern an appropriate figure. The claimant is entitled to the sum of £400 for her loss of statutory rights. She is also entitled to a basic award based on what she would have received as a redundancy payment. This is based on age and service. The claimant was under 22 when she was dismissed. She had worked for three full years before dismissal. She is entitled to a half week's pay per year amounting to £37.50 (3 x .5 x £25). The total monetary award is therefore £737.50.

Employment Judge: Hendry
Date of Judgement: 30 January 2023
Date sent to Parties: 30 January 2023