



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Jutsum

**Respondent:** O3Biotech Limited

**Heard at:** Bristol (by VHS) On: 13 - 14 September 2023

**Before:** Employment Judge D Gray-Jones

## Representation

Claimant: In person

Respondent: S Clarke – Counsel

# JUDGMENT

1. The Claimant's continuous service with the Respondent commenced on 16 April 2016 and pursuant to s.12 Employment Rights Act 1996 the Claimant's particulars of employment are amended accordingly.
2. The Claimant's claim for unfair dismissal fails and is dismissed.

# REASONS

## Introduction

3. In an ET1 presented on 03 February 2023 the Claimant, Mr Martyn Jutsum, brought a claim against the Respondent, O3Biotech Limited. The Respondent is a company which provides purification for air, feed and water supplies using ozone treatments to livestock in the agricultural

sector. The Claimant's job title at the date of his dismissal was Science Director.

4. The Claimant brought a claim for unfair dismissal. He also brought a complaint of what was described as a Failure to Provide Written Particulars of Employment under s.1 Employment Rights Act 1996. At the start of the hearing the Claimant clarified that this related to the fact that the Statement of Particulars of Employment issued to him by the Respondent was inaccurate in that it referred to his continuous employment commencing on 01 May 2021.
5. No doubt in reliance on the date stated in the Particulars the Respondent had stated in its Response that the Claimant did not have sufficient continuous service to bring a complaint of ordinary unfair dismissal. This was to be one of the issues dealt with at the hearing. However, in advance of the hearing the Respondent conceded via its solicitors that the Claimant did have more than 2 years' continuous employment at the date of his dismissal. At the outset of the hearing Miss Clarke, the Respondent's Counsel confirmed that the Respondent accepted that the Claimant's continuous employment commenced on 04 April 2016.

### The Issues

6. There was no list of issues so at the start of the hearing the issues in relation to the unfair dismissal claim were discussed and agreed with the parties.
7. The issues in the unfair dismissal claim were as follows:
  - 1) Has the Respondent shown the reason for dismissal and that it was a potentially fair reason under s.98 ERA 1996? The Respondent said that it dismissed the Claimant for misconduct, which is one of the potentially fair reasons identified in the section.
  - 2) If yes, was dismissal for that reason fair? In particular:
    - a) Did the Respondent honestly believe that the Claimant was guilty of the misconduct alleged and that it justified dismissal?

- b) If yes, was that belief based on an investigation which was reasonable in all the circumstances?
  - c) If yes, was dismissal for that reason within the range of reasonable responses of a reasonable employer?
- 3) Was the dismissal procedurally fair? In particular, did the Respondent comply with its own disciplinary procedure and the requirements of the ACAS Code?
- 4) If the dismissal was unfair should any award made to the Claimant be reduced to reflect the principles set out in the case of **Polkey v AE Dayton Services [1987] IRLR 503** and contributory conduct under s.123 ERA 1996. It was agreed that although the Tribunal would deal initially with liability only this would include any necessary conclusions on Polkey and contributory fault in the event that the dismissal was found to be unfair.

### The Hearing

8. The hearing was conducted by VHS. The Claimant appeared as a litigant in person. The Respondent was represented by Miss Sarah Clarke of Counsel. There was an agreed bundle of 96 pages. Page references in these reasons refer to the pages of this bundle.
9. The Claimant gave evidence and also called as witnesses his son, Mr Matthew Jutsum, Mr Jonathan Sullivan, another employee of the Respondent, and Mr John Hoyte, a friend. There were also written statements from Mr Dean Llewellyn and Andrew Price, both former business partners of Paul Draper, the Respondent's director and main shareholder. Neither attended to give evidence and I gave their statements, insofar as there was material relevant to the issues in the case, such weight as I considered to be appropriate.
10. The Respondent called as witnesses Paul Draper, Erik Helmink, the Respondent's Managing Director and Matthew West, the Respondent's Chief Financial Officer for the period relevant to the claim. All witnesses gave evidence under oath and were cross-examined.
11. It should be mentioned that in addition to these proceedings there is a dispute between parties about the Claimant's shareholding. I was informed that there may be separate proceedings in relation to this. An employment tribunal does not have jurisdiction to hear a shareholders' dispute in

relation to matters such as a breach of a shareholders' agreement or unfair prejudice to a shareholder. I made clear to the parties at the outset of the hearing that I only needed to make findings of fact in relation to the matters which are relevant to the complaints before me and that it would not be appropriate for me to make any findings about matters which were not relevant to these complaints.

12. I also made clear to the parties that the complaint before me in relation to the termination of the Claimant's employment was a complaint of unfair dismissal. There is no claim of wrongful dismissal, that is, for failure to give notice. As such, the test is reasonableness, as set out in the issues at paragraph 7 above. The issue is not whether the Respondent has proven that the Claimant committed the misconduct alleged but whether it was reasonable for it to form the view that he had done so and to dismiss for that reason. It may be necessary for me to make findings of fact in relation to contributory conduct, but this would only be required if the claim was upheld.

#### Findings of Fact

13. The Claimant commenced employment with the Respondent on 04 April 2016. His background is in scientific research and he founded the Respondent with Paul Draper in 2016. Mr Draper already had a company, Draper Ventilation Ltd. At this time the Claimant and Mr Draper had equal shares. In 2017 Claimant became the Respondent's Science Director and his shareholding reduced to 32%.
14. In 2021 there was new investment in the Respondent and the Claimant's salary was increased and the focus of his role became research on poultry feed. He was issued with a statement of Particulars of Employment. This is in the bundle at pp.39 - 41. As stated at the start of this judgment the Respondent has conceded that Statement is inaccurate in relation to the Claimants' start date because it gives a start date of 01 May 2021 when in fact the Respondent has conceded that the Claimant's employment commenced on 16 April 2016.
15. In or around 2021 the Respondent rented a 5 bedroom house near Dorset Innovation Park in Weymouth and made it available for employees to stay in if they wished to do so. This was because a number of employees lived some way away from the Respondent's head office in Dorchester. The Claimant stayed at the property, as did Jonathan Sullivan, the Respondent's Technical Director and Erik Helmink, who joined

Respondent as a Business Development Director in October 2021 and was appointed Managing Director in April 2022. The Claimant's son, Matthew Jutsum also stayed at the property for a time.

16. In early 2022 Mr Helmink became concerned about what he saw as excessive behaviour at the property in relation to the consumption of alcohol and use of cannabis. Mr Helmink took the view that this behaviour was happening outside work but that it risked spilling over into the workplace and becoming detrimental to the business of the Respondent. Accordingly on 23 February 2022 he sent an email to the Claimant and Mr Sullivan [pp.59 - 61]. The email stated, amongst other things, that going forward there would be *"Zero tolerance of alcohol and joints in the weeks when we are working on the Chapman Mill, we will monitor each other on that."* Mr Helmink also informed them of this verbally.
17. Mr Helmink was concerned that the nature of the Respondent's work meant that they were working on a daily basis with explosive material (liquid oxygen) and heavy and dangerous machinery. As such there was a significant risk to health and safety if something went wrong and it was essential that those involved in the work had a clear head.
18. The Claimant accepted that he used cannabis recreationally. He did not object to Mr Helmink's instruction and made clear in his evidence that he understood that using cannabis during working time would not be acceptable conduct for any employee, and particularly not for someone holding his position of responsibility.
19. In May and June 2022 the Respondent's management were aware of rumours that the Claimant was using cannabis at work but did not take any action. Mr Helmink saw the Claimant in his car on 24 March 2022 in the Respondent's car park rolling what appeared to Mr Helmink to be a joint. He approached the Claimant and warned him not to use it because the Respondent had a hard line on this. The Claimant put the item away. The Claimant's evidence was that what appeared to be a joint was a roll-up cigarette. I don't need to decide whether it was or was not but it is clear that the Claimant was reminded that the Respondent had a zero tolerance approach to drug use at work.
20. Mr Helmink also said that there were occasions in May and June 2022 when he noticed a strong cannabis smell around the Claimant and suspected he had been smoking cannabis, but took no action. It was not really clear to me why he did not feel that this was sufficient information for

him to investigate further, but, as stated, he did not take any action in relation to these suspicions.

21. On 09 June 2022, Mr Matthew West, who from February 2022 was providing Chief Financial Officer services to the Respondent, was informed by Thais Mardegan, who worked for the Respondent as a Research Analyst, that she had noticed a smell of cannabis around the Claimant that week. Mr West did not take any further action, although he was aware of the rumours that the Claimant was smoking cannabis at work. Again, it is not really clear to me why he did not consider this sufficient information to investigate further.
22. On 23 June 2022 the Claimant gave Thais Mardegan a lift back from the office. The Claimant was driving a company car. He had given Thais Mardegan a lift on a number of occasions before. On 24 June 2022 Thais Mardegan reported to Erik Helmink that on the afternoon of 23 June 22 she had gone to the Claimant's company car in the car park in order to leave a package in there. She said that on opening the car door she noticed a very strong smell of cannabis. An hour or so later when she took a lift back to Fleet with the Claimant she said that she was very frightened as he drove erratically, appearing not to concentrate, and that on a number of occasions she had to draw his attention to cars braking in front of them. Erick Hemink asked her to put her concerns in writing, which she did. Her statement is at p.58 of the bundle. In the statement it was also alleged that Thais Mardegan had smelt cannabis on the Claimant on a number of occasions at work.
23. Following this discussion Erik Hemink approached Paul Draper. Both agreed that Claimant should be suspended pending an investigation, as the reported behaviour was too serious to deal with informally.
24. Paul Draper and Erik Hemink met with the Claimant on 30 June 2022. He was informed he was suspended and the reasons for this, namely that it was suspected that he had been using cannabis at work. The Claimant said that "*he had not hurt anyone*" or words to that effect and appeared surprised at being suspended. He did not specifically deny being under the influence of cannabis at work. When the Claimant was asked to hand over the keys to his company car what Paul Draper said looked like a roach (a cannabis joint), but what the Claimant said in his evidence was the butt of an ordinary cigarette end, fell out of the pocket of his jacket. The Claimant retrieved it and put it back in his pocket. It is not possible to make a finding on whether it was a cannabis joint or an ordinary cigarette,

but I find that it was legitimate for the Respondent to view this as something which supported the decision to dismiss.

25. Following the Claimant's suspension the Claimant was taken to the railway station. Paul Draper and Matthew West checked the car being used by Claimant. They found a substance on the central console which, according to Mr Draper, looked like cannabis mixed with tobacco, and in the storage compartment of the driver's door what appeared to be a joint. Paul Draper said that it smelt strongly of cannabis. Paul Draper had used cannabis himself recreationally on a number of occasions and was familiar with the appearance and smell of it. They took photos of the material but did not otherwise test it or retain it.
  
26. The reasons for the Claimant's suspension were confirmed in a letter dated 30 June 2022 [p.46]. It stated the reason for the suspension, namely, *"The allegation is that on Thursday 23<sup>rd</sup> June 2022 you were under the influence of illegal drugs whilst at work and then drove a colleague in a company car whilst still under the influence of illegal drugs, potentially causing a serious health and safety risk to you and your colleague."*
  
27. Matthew West was appointed to investigate the allegation. He was provided with Thais Mardegan's statement, statements prepared by Erik Helmink in relation to the suspension meeting, Erik Helmink's email of 23 February 2022 and the photos taken of the items found in the Claimant's car.
  
28. On 15 July 2022 Mr West interviewed the Claimant. In the meeting the Claimant asked who had made the allegation and said that he believed that it was the security guard at the gate of the business park where the Respondent's offices were located. The Claimant said that the security guard had made a joking reference to the Claimant's car smelling of *"wacky baccy"* when the Claimant had returned from his lunch break. The Claimant denied the allegation that he had been using cannabis at work on 23 June 2022 and said that had been smoking a herbal cigarette. The Claimant said that outside work he could do what he liked. He suggested that Mr West interview Thais Mardegan (at this stage the Claimant did not know that she was the source of the allegation) and Jonathan Sullivan.
  
29. Mr West interviewed Thais Mardegan on 19 July 2022. She confirmed that the statement she had already provided was accurate. He also interviewed Jonathan Sullivan on 19 July 2022. Jonathan Sullivan confirmed that the Claimant smoked recreationally but he did not know what he smoked. He

said that he could not recall anything unusual about the Claimant's behavior on 23 June 2022. He agreed that the smell of cannabis was distinctive and could be distinguished from the smell of the herbal tobacco the Claimant used.

30. On 21 July 2022 Mr West emailed the Claimant requesting that he provide samples of the herbal cigarettes he smoked. He did this because he thought it important to investigate further whether the herbal cigarettes which the Claimant said he smoked, and had been smoking on 23 June 2022, could be mistaken for cannabis. He was due to go abroad on holiday for two weeks on 23 July 2022 and as he thought the investigation should be concluded as soon as possible he submitted his investigation report to Paul Draper and recommended that the herbal cigarettes used by the Claimant be obtained and tested with the witnesses to see if they could be mistaken for cannabis.
31. The Claimant provided samples of the herbal cigarettes to Mr Draper on 02 August 2022. Mr Draper then met with Thais Mardegan and asked her to smell the samples both lit and unlit. Thais Mardegan confirmed that they were not the substances she had smelt previously on the Claimant and in particular on 23 June 2022 and confirmed that what she had smelt inside the company car on 23 June 2022 was cannabis. A record of the meeting is at p. 68 of the bundle.
32. The Claimant was invited to a disciplinary hearing on 11 August 2022 [pp.69 - 70]. The Claimant was provided with a copy of Matthew West's investigation report and the statements obtained in the investigation. The allegation was the same as the one set out in the suspension letter. The Respondent informed the Claimant that it would not be calling any witnesses but that if he wished to do so he should let the Respondent know. The letter also informed him that he was entitled to be accompanied by a trade union representative or workplace colleague. The letter stated that a potential outcome of the hearing was dismissal.
33. The hearing was due to take place on 15 August 2022 but on the morning of 15 August 2022 the Claimant asked for a postponement as he wanted legal representation and felt that he had not had sufficient time to prepare. The disciplinary hearing was therefore postponed until 24 August 2022.
34. On 22 August 2022 Mr Draper received an email which appeared to have been sent by the Claimant's son, Matthew Jutsum. Matthew Jutsum had worked on a temporary basis for the Respondent earlier in the year. The



email stated that he wanted to “clarify my responsibility for several of the allegations against [my father].” It stated that he had on occasions smoked in the company car and so the substance found in the car on the day the Claimant was suspended probably belonged to him. The email also said that he had probably left a “roach” inside his father’s high-visibility jacket.

35. On receipt of this email Paul Draper was concerned about whether the Claimant’s son had actually drafted the email and considered that he could not take what it said at face value. He therefore replied, inviting Matthew Jutsum to attend the disciplinary hearing so that he could be questioned about what was stated in the email.
36. The Claimant attended the disciplinary hearing on 24 August 2022. He was accompanied by Mr John Hoyte, who was a friend of the Claimant but was not an employee of the Respondent. The evidence from the Claimant, Matthew Jutsum and Mr Hoyte was that Matthew Jutsum was going to attend the hearing but then needed to attend his GP surgery and it was not possible to wait for him. This was not explained to the Respondent at the hearing and the Claimant did not make any request to postpone the hearing until his son could attend.
37. The hearing was conducted by Paul Draper. The minutes are at pages 79 – 83 of the bundle. Mr Draper did not allow John Hoyte to attend the hearing, as he was not an employee of the Respondent. The Claimant denied the allegation and pointed out that Mr Draper had smoked cannabis in the past. Mr Draper accepted that he had, some time ago, but only at weekends and never at work or whilst driving or operating machinery. The Claimant suggested that smoking cannabis was not a serious matter. He said that the allegations against him were lies and denied that he had put anybody at risk. He said that his son had written the email to Mr Draper sent on 22 August 2022 in the Claimant’s presence. He was asked why he had not mentioned that his son may have been responsible for the material found in his car and the “roach” in his jacket when he was suspended and when he was interviewed. The Claimant did not give an explanation for this.
38. During the hearing the Claimant alleged that the Respondent was preventing him from calling “John” as a witness. Mr Draper assumed that he was referring to Mr Jonathan Sullivan and the Claimant was allowed to go and fetch him. However, when he returned he brought in Mr Hoyte. Mr Draper confirmed that Mr Hoyte was not allowed to attend the meeting as he was not an employee of the Respondent.

39. Mr Draper's decision was that the Claimant should be dismissed without notice for gross misconduct. The dismissal letter [pp.84 - 86] is detailed and sets out the evidence considered and Mr Draper's conclusions. He found that the Claimant had had cannabis on his possession at work, had smoked it at work and had put a colleague at risk whilst driving the company car under the influence of cannabis. He decided that this was serious misconduct justifying summary dismissal. He stated that he was unable to attach much weight to the email he had received from the Claimant's son as Matthew Jutsum had not attended the disciplinary hearing and so the veracity of the email could not be tested.
40. The letter stated that the Claimant had the right to appeal his dismissal. As there were no longer any independent directors available to hear an appeal it was proposed to form a panel of all three directors to hear an appeal. The Claimant did not appeal his dismissal. He said that the dismissal letter was only received by him shortly before the time limit to appeal and he wanted to get legal advice. He said he was told that he had run out of time. It was put to him in cross-examination that this was not the case and he could have asked for more time. The Claimant accepted that he did not ask for more time to submit an appeal.

### The Law

41. The test which an employment tribunal should apply when determining whether the dismissal was fair is set out in **British Home Stores v Burchell [1978] IRLR 379** and **Iceland Frozen Foods Ltd v Jones [1982] IRLR 439**. This means that the employment tribunal will need to be satisfied:
- a. That the Respondent honestly believed that the Claimant was guilty of the misconduct alleged and that dismissal was the appropriate sanction;
  - b. That this belief was based on reasonable grounds, the employer having carried out such investigation as was reasonable in all the circumstances;
  - c. That dismissal was within the range of reasonable responses, which means that a reasonable employer, in the circumstances in which this employer found itself, would have dismissed for this misconduct.
42. When judging whether an employer's conduct is reasonable a Tribunal must not substitute its own decision as to what a reasonable outcome would be for that of the employer.

43. The reason for dismissal is, *“the set of facts known to the employer or, it may be, of beliefs held by him which cause him to dismiss the employee”*: **Abernethy v Mott, Hay and Anderson [1974] ICR 323.**
44. The range of reasonable responses test applies to the investigation as well as the decision to dismiss: **Sainsburys Supermarket Ltd v Hitt [2003] IRLR 23.** As with the decision to dismiss, the question for the tribunal is not how it would have carried out an investigation but rather whether the investigation carried out by the employer was reasonable in the circumstances.
45. Although the onus is on the employer to show a potentially fair reason for dismissal, the second and third stages of the **Burchell** test are neutral as to the burden of proof: **Boys and Girls Welfare Society v McDonald [1996] IRLR 129.**
46. In assessing fairness under s.98(4) the Tribunal has to consider whether the Respondent complied with the provisions of the ACAS Code on Discipline and Grievances as well as any relevant internal policy of the Respondent.

### Conclusions

47. The Claimant alleged in his evidence to the Tribunal that the reason for his dismissal was because of advice he gave about the Respondent's unrealistic expectations of tests on material for animal feed and that this had led to a disagreement in relation to these tests. There was no evidence of this disagreement in relation to this at the time. I find that the Respondent has shown that the reason for dismissal was misconduct, namely the Respondent's belief that the Claimant was using cannabis whilst carrying out his duties for the Respondent, which included operating machinery, and had driven his company car, with another employee in it, whilst under the influence of cannabis. The Respondent's disciplinary policy stated that being in possession of or under the influence of drugs at work would be regarded as serious misconduct. As stated above, the Claimant accepted before the Tribunal that if an employee did this it would amount to serious misconduct.
48. I also find that Paul Draper honestly believed that the Claimant had been using cannabis at work, and in particular on 23 July 2022, and had driven his colleague, Thais Mardegan, home, whilst under the influence of cannabis, and that in the circumstances it was reasonable to terminate the Claimant's employment.
49. It is then necessary to ask whether that belief was reasonable. The Claimant's case was that the disciplinary investigation was not reasonable. He pointed out that nobody had seen him smoking cannabis and that the material found in his car had not been retained and tested, although he did not tell the Respondent in the disciplinary hearing that the material should be tested. Paul Draper accepted that in retrospect it might have been

better if the material in the car had been retained and tested, although he said that the Respondent did not have ready access to facilities which would be able to carry out a test.

50. I have also considered carefully whether the fact that Paul Draper had some involvement in the investigation made the investigation unfair, given that he conducted the disciplinary hearing. Paul Draper was present when the material in the car was found and also tested the herbal cigarette samples provided by the Claimant with Thais Mardegan. The ACAS Code states that in misconduct cases different people should carry out the investigation and disciplinary hearing.

51. However, I am mindful that the range of reasonable responses test applies as much to the investigation as to the decision to dismiss. The fact that the Respondent could have taken other steps to investigate the allegation but did not do so does not mean that the investigation was unfair. The test is not whether the Respondent carried out a perfect investigation but whether the investigation was sufficient for it to form a reasonable belief that the misconduct in question had occurred. In my view the investigation was sufficient to form such a belief. It was not necessary for the Respondent to have the material subjected to scientific testing before forming a reasonable belief that it was cannabis.

52. Although it was not ideal that Mr Draper had some involvement in the investigation, I take into account that this was a small employer, with a small management team. Most of the investigation was carried out by Matthew West. As such I don't consider that Mr Draper's involvement was such as to make the investigation or the dismissal unfair.

53. I consider that in deciding whether misconduct had occurred the Respondent was entitled to take into account the Claimant's evidence in the investigation and the disciplinary hearing. It was not disputed that the Claimant used cannabis. The issue was whether he had been under the influence of it at work. The Claimant's defence when interviewed in the investigation was that what was thought to be the smell of cannabis in his car on 23 June 2023 was herbal cigarettes. The Claimant then appeared to argue that it was his son who was responsible for any materials found in the car or which fell out of his jacket (an argument which appears to implicitly accept that the material found was cannabis). There was no proper explanation put forward for why the Claimant's case had changed. I find that it was reasonable for the Respondent to take this into account when considering the credibility of the Claimant's denial that he had been using cannabis at work.

54. I find that the Respondent acted reasonably in relation to the defences put forward by the Claimant. The herbal cigarettes used by the Claimant were tested to see if the smell could have been mistaken by Thais Mardegan for cannabis. I consider that it was reasonable for the Respondent not to accept the email from the Claimant's son as evidence exonerating the Claimant. The Respondent acted reasonably in inviting the Claimant's son to give evidence at the disciplinary hearing. The Respondent was not responsible for the fact that the Claimant's son did not attend the hearing and the Claimant did not explain the reason for the absence or ask for the hearing to be postponed.

55. The Claimant said that the disciplinary hearing was unfair because he was not allowed to bring in Mr Jonathan Sullivan as a "witness". I find that the Respondent did not prevent the Claimant from bringing Mr Sullivan to the hearing. I attempted to ascertain from the Claimant what Mr Sullivan would have said which would have made a difference to the outcome and the Claimant said that it would have been good to have someone there as support. Mr Sullivan was interviewed in the investigation and gave evidence to the Tribunal. The evidence which he gave in the investigation is set out at paragraph 29 above. I find that the Respondent took a reasonable view of the evidence provided by Mr Sullivan in the investigation.

56. As such I find that Mr Draper had reasonable grounds to conclude that the Claimant had been using cannabis at work on 23 June 2023 and had driven the company car, with another employee in it, whilst under the influence of cannabis. I find that he was entitled to view that as serious misconduct justifying summary dismissal, particularly given the nature of the work being carried out by the Respondent and the risks to health and safety that this work could involve.

57. As far as the procedure followed by the Respondent is concerned I have dealt earlier in this judgment with the involvement of Mr Draper in the investigation. My conclusion is that it was not such as to make the investigation or dismissal, looking at the process as a whole, unfair.

58. I have also considered the fact that it was proposed that the right of appeal given to the Claimant would have been to a panel made up of the directors of the Respondent. It is arguable that such an appeal, if it had taken place, might not have complied with the Code, which states that wherever possible an appeal should be dealt with by a manager who has not previously been involved in the case. However, the Claimant did not

appeal. Taking this into account, as well as the fact that this was a small employer with limited resources, and that it would only be possible to properly assess the fairness of the appeal if it taken place, I do not find that it was proposed that any appeal would be to a panel of the Respondent's directors made the dismissal unfair.

59. I find that overall the disciplinary process complied with the ACAS Code and was procedurally fair.

60. As such the claim for unfair dismissal fails and is dismissed. In light of my finding that the dismissal was fair it is not necessary for me to make any findings in relation to contributory fault or reach any conclusions in relation to Polkey.

61. As far as the complaint in relation to the Claimant's statement of particulars of employment is concerned the Respondent has formally conceded that they were inaccurate in relation to the date continuous employment commenced and so under s.12 Employment Rights Act 1996 the statement issued to the Claimant is amended to record that his employment commenced on 16 April 2016. However, as the complaint of unfair dismissal has been not been upheld no monetary award is made under s.38 Employment Act 2002.

Employment Judge David Gray-Jones  
Date 20 October 2023

Judgment sent to the Parties on 13 November 2023

For the Tribunal Office

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