EMPLOYMENT TRIBUNALS

Claimant: Mr Harith Taha

Respondent: Novatek Europe Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: London South Employment Tribunal (by CVP)

On: 3 January 2024 and in chambers on 17 January 2024

Before: Employment Judge Kelly (sitting alone)

Appearances
For the claimant: Mr MacMillan of counsel
For the respondent: Mr Crawford of counsel

RESERVED DECISION

The judgment of the Tribunal is that:

1. The claimant's claim for unlawful deduction from wages in relation to commission payable on 1 July 2022 is dismissed.

2. The respondent's defence of res judicata in relation to the claim for deduction from wages in relation to commission payable on 31 Jan 2023 fails.

REASONS

1. The claimant's claim (Second Claim) was presented on 28 June 2023, after a period of early conciliation.

2. The hearing considered whether the claim should be struck out on the basis of cause of action estoppel, issue estoppel or abuse of process as per Henderson v Henderson (1843) 3 Hare 100 following the previous decision (April 23 Judgment) of Employment Judge Taylor in East London Hearing Centre on 4 April 2023, case number 2304039/22 (First Claim) presented on 8 Nov 2022.

We refer generally to the contents of the April 23 Judgment and expressly refer to some specific parts of it below.

3. We heard oral submissions from both parties. In spite of the legal complexities of the issue to be determined, neither party produced a written skeleton argument or copies of the cases relied on. This was unhelpful to the Tribunal. The claimant relied on *Thoday*, *Arnold* and *Foster*. The respondent relied on *Johnson*. These cases are referred to in more detail below.

4. The First Claim concerned a claim for unlawful deduction from wages in relation to commission from 1 Jan 2022 to 30 Jun 2022, payable on 1 Jul 2022.

5. The Second Claim concerned a claim for unlawful deduction from wages in relation to commission from 1 Jan 2022 to 31 Dec 2022. In the Particulars of Claim, the claimant set out that:

    a. He lost the First Claim because of a finding of fact that the claim had not crystalised when the claim form was issued. A reading of the 23 April Judgment shows this is not correct. The actual issue on which the claimant lost the First Claim is identified below.

    b. The claimant said that he exceeded his invoice target for 2022. He claimed to have invoiced a certain figure and said that the respondent had not produced all relevant invoices or invoice information and so he may have to amend these figures.

6. As per para 10 of the April 23 Judgment, commission was paid twice a year on 1 July and 31 January.

7. At para 5, the April 23 Judgment appears to identify the issue on which a determination was required in order to reach a decision. This was the issue of whether commission was calculated on the basis of purchase orders or invoices. At para 29 - 33, the April 23 Judgment determined that commission was calculated on the basis of invoices not purchase orders and, therefore, the claimant's claim failed. It is implicit that, had the commission been based on purchase orders, the claimant would have met his sales target and been entitled to commission, whereas, if it was based on invoices, he had not. We deal with the question of which invoices counted for calculating the commission payment due in July 2022 below.

8. In the Second Claim, the claimant accepted that commission was based on invoices not purchase orders. However, he argued that he had in fact met his invoice target for 2022 and, therefore, was entitled to the commission claimed.

9. In today's hearing, there was no dispute that, in order to be entitled to any commission for 2022, the claimant had to have met his minimum invoice target. If he had not met it by the end of the first half of the year, he had the potential to do so by the end of the year, in which case he would be entitled to commission for the whole year, as stated in commission terms in the bundle for the First Claim hearing.

10. It was therefore possible to become entitled to commission for the first half of the year by catching up on invoices in the second half of the year, making invoices for the second half of the year relevant to entitlement to commission for the first half of the year (if the invoice target had not been met in the first half of the year). This aspect of the commission scheme, which we will refer to as the 'Catch Up Principle', was not set out in the April 23 Judgment. It only stated:

    a. at para 13, that 'To qualify for a commission payment the claimant … had first to exceed their personal sales target for each six month period.'

    b. at para 19 'Employees were entitled to commission if their sales reached the applicable minimum target. For each six month period commission would be based on what had been invoiced during *that period* (*our emphasis*)' This finding expressly appears to exclude the concept that, for the first six month period, commission could be based on what was invoiced in the second six month period as well as the first six month period, that is, the Catch Up Principle.

11. The April 23 Judgment noted that the claimant had submitted that 'The invoices had not been disclosed by the respondent'.

12. The April 23 Judgment included, at para 20, a finding of fact that the claimant's invoices did not reach the minimum target for the first half of 2022 or the second half of 2022. 'Therefore, the claimant was not entitled to any commission' for the first half of 2022. However, as above, this was not identified as an issue at the start of the judgment and did not form part of the conclusions. We can see no explanation within the Judgment of what relevance, if any, the finding had that the claimant did not reach the minimum target for the second half of 2022.

13. At para 27 of the April 23 Judgment, it is recorded that the claimant submitted that 'The invoices have not been disclosed by the respondent'. 'The invoices' appears to relate to those for the first half of the year because that is the time period identified in the second sentence of para 27.

14. In the course of the First Claim, the claimant wrote to the respondent asking it to provide 'the invoices for the entire year of 2022, as I have a strong belief that [you] have failed to invoice for my projects'. He also wrote asking for all the his client invoices for the period January 2022 to December 2022 for the purpose of the First Claim.

15. In the Second Claim, on 26 Sep 2023, the claimant applied for specific disclosure of certain alleged 2022 invoices from the respondent. The claimant said these invoices had not been disclosed. The respondent replied that there were no invoices which had not been disclosed to the claimant. No order for specific disclosure has been made.

Relevant law

16. Harvey on Industrial Relations and Employment Law states:

    a. At para 1007: '*In Virgin Atlantic Airways Ltd v Zodiak Seats UK Ltd (formerly Contour Aerospace Ltd) [2013] UKSC 46, [2014] 1 AC 160,*

*Lord Sumption JSC, with whose analysis the other members of the Supreme Court agreed, explained the general principles of **res judicata** (see paras 17–26). **Res judicata**, he said, is 'a portmanteau term which is used to describe a number of different legal principles with different juridical origins', adding that, 'as with other such expressions the label tends to distract from the contents of the bottle' (para 17). Three of those principles relate to cause of action estoppel, issue estoppel and the rule in Henderson v Henderson (1843) 3 Hare 100. According to Lord Sumption, 'cause of action estoppel' means that once 'a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings … It is properly described as a form of estoppel precluding a party from challenging the same cause of action in subsequent proceedings'. The term 'issue estoppel' means that 'where the cause of action is not the same in the later action as it was in the earlier one, some issue which is necessarily common to both was decided on the earlier occasion and is binding on the parties'. The rule in Henderson v Henderson (see para [1030] ff below) 'precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones'. Lord Sumption added that, finally, there is 'the more general procedural rule against abusive proceedings, which may be regarded as the policy underlying all of the above principles'.'*

b. At para 1022: '*In cases where issue estoppel is raised as a defence in subsequent proceedings, it is normally essential that the issues in those proceedings are identical with those that were determined in the earlier proceedings and also that the findings of fact in the judgment in those earlier proceedings are clear and precise. In either event, if they are not, the plea will fail (see Turner v London Transport Executive [1977] IRLR 441, [1977] ICR 952, CA; see also Nelson v British Broadcasting Corpn (No 2) [1979] IRLR 346, [1980] ICR 110, CA); Munir v Jang Publications Ltd [1989] IRLR 224, [1989] ICR 1, CA); O'Laoire v Jackel International Ltd [1991] IRLR 70, [1990] ICR 197, CA; Methilhill Bowling Club v Hunter [1995] IRLR 232, EAT (**res judicata**); Jones v Mid-Glamorgan County Council [1997] IRLR 685, [1997] ICR 815, CA; Air Canada v Basra [2000] IRLR 683, EAT). It is likewise essential that the findings in the first proceedings are necessary for the decision in that case, and also that the decision itself is intra vires the court or tribunal making it; again, if they are not, there can be no estoppel (see O'Laoire).*'

17. Relevant law is summarised by Lord Justice Elias in Bon Groundwork Ltd v Foster [2012] EWCA Civ 252:

a. *The principle of res judicata can be summarised as follows: where an issue has been litigated before a judicial body and determined as between the parties, it cannot be re-opened. It is binding as between them and the parties are estopped from re-opening it. The issue may be one of fact or of law. However, the parties are only bound by an issue which it was necessary for the court to determine in the earlier claim.*

In Arnold v. National Westminster Bank plc [1991] 2 AC 93 Lord Keith of Kinkel observed that the principle applies where:

"... a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant one of the parties seeks to reopen that issue."

It follows, therefore, that a finding of fact by an earlier court which is not a "necessary ingredient" in the earlier cause of action will not give rise to a 'fact estoppel'. Moreover, a finding cannot be a necessary ingredient of a cause of action if the earlier court or tribunal did not have jurisdiction to decide the matter at all: see the observations of Sir Nicholas Browne-Wilkinson, as he was, in O'Laoire v Jackel Ltd [1991] ICR 718 when he said:

"It is well established that there can be no estoppels arising out of an order or judgment given in excess of jurisdiction."

An exception to this principle is where a court makes an express finding as to jurisdiction which is not appealed. Any such finding is binding on the parties, even if it is subsequently shown to be wrong: see the observations of Lord Hoffmann in Watt v Ahsan [2007] UKHL 51; [2008] 1 AC 696, para 31.

The well-known principle enunciated in Henderson v Henderson was expressed in that case by Wigram VC in the following terms:

"[W]here a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matters which might have been brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce judgment but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."

The principle has frequently been considered by the courts. The only passage in any of the later decisions to which it is necessary to refer is the judgment of Lord Bingham of Cornhill in Johnson v Gore-Wood [2000] UKHL 65; [2002] 2 A C 1 where his Lordship identified the close inter-relationship between this doctrine and the principle of res judicata itself:

"But Henderson v Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest

is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in early proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before."

18. In Thoday v Thoday [1964] P.181:

a. Per Pearson LJ '…*however, apart from cases in which the same cause of action or the same plea in defence is raised, there may be cases in which a party may be held to be estopped from raising particular issues, if those issues are precisely. the same as issues which have been previously raised and have been the subject of adjudication. But, in formulating that proposition, I would go on to say that it is very necessary to look at the particular circumstances of the individual case. The reason for saying that is that the adjudication in the previous suit may have been arrived at for a number of different reasons. If it is not clear from the judgment in the previous suit that the particular issue has in fact been specifically dealt with, a party will not be held to be estopped from raising that issue again in a subsequent suit.'*

b. Per Diplock LJ: '*The particular type of estoppel relied upon by the husband is estoppel per rem judicatam. This is a generic term which in modern law includes two species. The first species, which I will call "cause of action estoppel," is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist, i.e., judgment was given upon it, it is said to be merged in the judgment, or, for those who prefer Latin, transit in rem judicatam. If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per rem judicatam. This is simply an*

application of the rule of public policy expressed in the Latin maxim "Nemo debet bis vexari pro una et eadem causa." In this application of the maxim "causa" bears its literal Latin meaning. The second species, which I will call "issue estoppel," is an extension of the same rule of public policy. There are many causes of action which can only be established by proving that two or more different conditions are fulfilled. Such causes of action involve as many separate issues between the parties as there are conditions to be fulfilled by the plaintiff in order to establish his cause of action; and there may be cases where the fulfilment of an identical condition is a requirement common to two or more different causes of action. If in litigation upon one such cause of action any of such separate issues as to whether a particular condition has been fulfilled is determined by a court of competent jurisdiction, either upon evidence or upon admission by a party to the litigation, neither party can, in subsequent litigation between one another upon any cause of action which depends upon the fulfilment of the identical condition, assert that the condition was fulfilled if the court has in the first litigation determined that it was not, or deny that it was fulfilled if the court in the first litigation determined that it was.

But "issue estoppel" must not be confused with "fact estoppel," which, although a species of "estoppel in pais," is not a species of estoppel per rem judicatam. The determination by a court of competent jurisdiction of the existence or nonexistence of a fact, the existence of which is not of itself a condition the fulfilment of which is necessary to the cause of action which is being litigated before that court, but which is only relevant to proving the fulfilment of such a condition, does not estop at any rate per rem judicatam either party in subsequent litigation from asserting the existence or non-existence of the same fact contrary to the determination of the first court. It may not always be easy to draw the line between facts which give rise to "issue estoppel" and those which do not, but the distinction is important and must be borne in mind. Fortunately, it does not arise in the present case.

19. In Arnold v National Westminster Bank plc [1991] 2 AC 93, the House of Lords held that the underlying principles on which estoppel was based, ie public policy and justice, had greater force in cause of action estoppel, where the subject matter of the two proceedings was identical, than in issue estoppel, where the subject matter was different.

20. Lord Bingham of Cornhill in Johnson v. Gore Wood & Co. [2000] UKHL 65 referred to the Court of Appeal's decision in Bradford & Bingley Building Society v. Seddon [1999] 1 WLR 1482 in which Auld LJ said:

"In my judgment, it is important to distinguish clearly between res judicata and abuse of process not qualifying as res judicata, a distinction delayed by the blurring of the two in the courts' subsequent application of the above dictum [of Sir James Wigram V.-C. in Henderson v. Henderson. The former, in its cause of action estoppel form, is an absolute bar to relitigation, and in its issue estoppel form also, save in 'special cases' or 'special circumstances': see Thoday v. Thoday [1964] P. 181, 197-198 per Diplock L.J. and Arnold v. National

Westminster Bank Plc [1991] 2 A.C. 93. The latter, which may arise where there is no cause of action or issue estoppel, is not subject to the same test, the task of the court being to draw the balance between the competing claims of one party to put his case before the court and of the other not to be unjustly hounded given the earlier history of the matter . . .'

Parties' arguments

Respondent's arguments

21. The respondent argued that:

    a. The para 20 finding of fact in the April 23 Judgment which we have referred to above was necessary in order to determine the claim it dealt with, and it was also determinative of today's claim. It was necessary for the April 23 Judgment because, even though the claimant had not met his invoice target for the first half of 2022, that pre condition of his commission payment could be rectified if he met the invoice target by the end of 2022. It was determinative of today's claim because no part of the claimant's claim for 2022 commission could succeed unless he had met his invoice target by the end of the year. The claimant was bound by that finding of fact;

    b. The claimant was attempting to relitigate in the Second Claim matters already considered in the First Claim, namely whether the respondent had disclosed all invoices relevant to his sales for 2022. We note that it was not in dispute that the claimant was attempting to raise for the second time the question of whether the respondent had disclosed all invoices relevant to his sales for 2022;

    c. In stating that the claimant had not proved his case, at para 31 of the April 23 Judgment, the Tribunal demonstrated that it had looked at all the 2022 invoices. We do not agree with this interpretation of para 31; there is no reference in the conclusions section of the April 23 Judgment to the 2022 invoices; it only deals with what the contractual terms of the commission scheme were;

    d. The claimant knew at the hearing of the First Claim that the date for payment of any commission for the second half of 2022 had passed. The claimant could have argued in the First Claim that the respondent had withheld invoice evidence, and it seemed that it he did make such an argument, as seen by para 27 of the April 23 Judgment which stated that the claimant submitted that 'The invoices have not been disclosed by the respondent';

    e. The claimant was causing the respondent to be vexed by the same matter and subjecting the respondent to unnecessary successive actions. The respondent relied on Lord Bingham and Lord Millett in *Johnson v Gore Wood 2002 2 AC 1 at para 31.*

Claimant's arguments

22. The claimant accepted that, if there were cause of action estoppel, it would be an absolute bar to litigation, but argued that, for there to be cause of action estoppel, he would have to be claiming the same sum of money in both claims. The claimant had not claimed commission for the last six months of 2022 in the First Claim. The claimant was indicated he accepted there was cause of action estoppel in respect of commission claimed in the Second Claim for the first half of 2022.

23. Regarding issue estoppel:

    a. This was not an absolute bar in the way that cause of action estoppel was. The claimant referred to Lord Keith in Arnold.

    b. The claimant first argued that the 23 April Judgment decision of fact on the question of whether the claimant had met his invoices target for the whole of 2022 was a determination in excess of what was required to determine the First Claim.

    c. Alternatively, if the April 23 Judgment necessarily involved a determination of the claimant's invoices in 2022 and whether he met his invoice target, para 20 of the April 23 Judgment was a finding of fact to a different end from in the Second Claim; it was not to determine whether commission was payable for the second half of 2022, but whether it was payable for the first half of 2022. This was a different issue.

    d. In fact, to determine whether commission was payable for the second half of 2022 would involve further factual exploration because the sums billed by any invoices which were not paid by the client in the three months following the invoice date would be deducted from his invoices for the purposes of calculating the invoice target. Therefore, what happened after the end of December 2022 would need to be taken into account. The respondent disagreed with this submission. There was insufficient emphasis on it in the hearing for us to determine this matter.

    e. The claimant relied on Thoday as authority for the proposition that no issue estoppel will arise where the issue was not necessary for the decision to be made.

24. Regarding abuse of process in *Henderson*, there was no special duty on the claimant to amend the First Claim as the situation evolved beyond the date of filing of the First Claim, to add a claim which was not conceivable when it was filed. Further, disclosure in the Second Claim would be largely the same as for the First Claim and so the burden on the respondent of defending the Second Claim would not be too onerous.

Conclusions

25. We consider it plain that cause of action estoppel applies to prevent the claimant from pursuing in the Second Claim a claim for unlawful deduction from wages relating to commission payments in the period 1 Jan 2022 to 30 Jun

2022 payable 1 Jul 2022 because this cause of action was determined in the April 23 Judgment. We do not consider that cause of action estoppel prohibits the claimant from bringing a claim for commission from 1 Jul 2022 to 31 Dec 2022 because this cause of action was not relied on in the First Claim.

26. Therefore, we must now decide whether the respondent has shown that issue estoppel or abuse of process in *Henderson* prohibits the claimant from bringing a claim for commission from 1 Jul 2022 to 31 Dec 2022 payable on 31 Jan 2023 in the Second Claim.

Issue estoppel

27. As summarised in Harvey, for issue estoppel to apply, the issues must be identical to the issues which have already been determined, the findings of fact in the judgment in the earlier proceedings are clear and precise and the findings in the earlier proceedings are necessary for the decision in the earlier case.

28. As we have identified above, the issue identified as determinative of the case in the 23 April Judgment was whether commission was calculated on the basis of purchase orders or invoices, and this was the matter dealt with in the conclusion to resolve the case. This is not an issue in the Second Claim.

29. Although, at para 22, the Tribunal in the April 23 Judgment found that the claimant did not meet the minimum target not only between 1 Jan 22 and 30 Jun 2022, but also for the period July 2022 to December 2022, there was no explanation as to why the reference to the second half of 2022 was relevant. There was no reference to the Catch Up Principle. This finding of fact was not relied on in the conclusions. It was not a necessary ingredient in the decision of the First Claim. We note that nowhere in the Judgment does the Tribunal state what it found the claimant's invoice total for 2022 to be, which would be a fact clearly required if the Tribunal were relying in its decision on the claimant failing to meet his invoice target for the whole year. We conclude that the finding that the claimant did not meet his minimum invoice target for the second half of 2022 was not relevant to an issue and it was not necessary for the decision.

30. Alternatively, as per Thoday, it is not clear from the 23 April Judgment that this particular issue has in fact been specifically dealt with. Therefore, the claimant is not estopped from raising the issue in the Second Claim.

31. The respondent argued that the calculation of the 2022 invoices was necessary to determine the issue of whether commission was based on invoices or purchase orders. We see nothing in the 23 April 2022 Judgment to support this contention and do not agree with it.

32. Therefore, we find that there is no issue estoppel to prevent the claimant bringing the Second Claim.

Abuse of process in Henderson

33. Turning to the defence of abuse of process as in Henderson v Henderson: The respondent argued that the claimant should have applied to add his claim for the second half of 2022 to the First Claim, because he would have been aware

of the Second Claim before the Hearing of the First Claim. We accept that the claimant would have been aware of the Second Claim before the hearing of the Second Claim.

34. We note Lord Bingham's comments in Johnson that the bringing of a claim may amount to abuse of process if the court is satisfied that the claim should have been raised in the earlier proceedings (the onus being on the respondent in this case to show it was an abuse). Lord Bingham said that it would be wrong to hold that because a matter could have been raised in earlier proceedings, it should have been. Rather, there must be a broad merits based judgment which takes account of the public and private interests involved, and of all the facts of the case. Auld LJ in Bradford & Bingley Building Society, described this as to draw a balance between the competing claims of one party to put his case and of the other not to be unjustly hounded.

35. So we consider the interests involved and the facts:

    a. We agree with the respondent that, according to para 27 of the April 2023 Judgment, the claimant raised an argument in the Hearing of the First Claim that the respondent had withheld invoices, and this is the same argument he relies on in the Second Claim, having made a request for a specific disclosure order. The respondent is therefore being required to deal twice with the claimant' contention that he was responsible in 2022 for more invoices than the respondent has disclosed.

    b. Although the matters relied on in the Second Claim could in theory have been raised in the First Claim, this would have required an amendment application. We doubt the practicability of this given that the claim for the commission for the second half of 2022 did not crystalise until 31 January 2023 and the hearing of the Second Claim was listed for 4 April 2023 leaving just over two months to accommodate the amendment application and, if granted, its practical implementation.

    c. Although it may be accurate that there will be relatively little additional work for the respondent involved in preparing for a second final hearing, we consider that the respondent is still being vexed by the process of dealing with litigation in the Second Claim.

    d. We agree with the claimant that a determination of the value of the invoices credited to the claimant was not necessary for the Tribunal's finding in the April 23 Judgment for the reasons set out above. We accept the claimant's argument that, therefore, the factual finding of the Tribunal that the claimant did not meet his annual invoice target is not binding on a subsequent Tribunal.

    e. We take into account the public interest in finality of litigation and in avoiding the additional cost of a second Hearing.

36. Weighing these factors, we determine that it is not an abuse of process per Henderson for the claimant to bring his claim for deduction from wages relating to commission for the period 1 Jul 2022 to 31 Dec 2022 payable on 31 Jul

2022. We consider that it is unrealistic to have expected the claimant to have sought to amend the First Claim to add a claim for commission payable on 31 January 2023, after that date and prior to the fixed final hearing date for the First Claim. Since the question of whether the claimant met his 2022 total invoice target was not a necessary ingredient in the First Claim, the Tribunal hearing the Second Claim is not bound by the finding at para 22 of the 23 April 2022 judgment. The claimant should have opportunity to 'put his case before the court' as it was described in Seddon. The respondent has not shown that these considerations are outweighed by public policy considerations or prejudice to the respondent.

Signed electronically by me
17 January 2024

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Employment Judge Kelly

Signed on: **17 January 2024**

Sent to the parties on:

23 January 2024

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For the Tribunal:

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Note
Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

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