



EMPLOYMENT TRIBUNALS

Claimant: Mr D Maguire

Respondent: Greater Manchester Combined Authority

2400430/22

Heard at: Manchester

On: 13,14 and 15 May 2024
31 May in chambers

Before: Employment Judge Feeney

REPRESENTATION:

Claimant: Ms A Niaz-Dickinson, Counsel

Respondent: Ms A Smith, Counsel

JUDGMENT

The judgment of the Tribunal is that the claimants claim of unfair dismissal fails and is dismissed

REASONS

Background

1. The claimant brought an unfair dismissal and race discrimination claim in respect of his dismissal by the respondent for an alleged racially discriminatory comment. At the hearing the race discrimination complaint was withdrawn. After consideration I decided to discharge the two non-legal members who had, by the stage the claim was withdrawn, completed the reading.

2. There was a discussion before the reading started about how the claimant put his race discrimination claim, as it was not clear and there had been some lack of agreement about how this complaint could be put between the parties. The case management records that the claimant contended that he had been treated less favourably because of the race of NG (the complainant) in his employment. However, the claimant argued that his claim form also included a claim that it was because of his own race.

3. There was also a discussion about who was the comparator at the case management. The claimant contended for a hypothetical comparison with how he would have been treated as a Watch Manager had been speaking to a Crew Manager with whom he had the past relationship as with NG and who was attending the same funeral but who was not black. It was argued that had the complainant been white, the claimant would simply not have been dealt with as he was. This was problematic as the whole context of the comment potentially being discriminatory was because the complainant was black and the claimant white – it would not have had the same potential meaning had the complainant been white.

4. After a break for the reading, when we reconvened the claimant's representative confirmed he was withdrawing the race discrimination claim and therefore we made no decisions as to the parameters of that claim.

The Issues

5. The issues for the Tribunal to decide are as follows:

Unfair Dismissal

- (1) Given that the reason was misconduct, did the respondent act reasonably in all the circumstances in treating the misconduct as a sufficient reason to dismiss the claimant? In particular,
 - (a) Were there reasonable grounds for that belief?
 - (b) At the time the belief was formed, had the respondent carried out a reasonable investigation?
 - (c) Did the respondent otherwise act in a procedurally fair manner (including the appeal stage)?
 - (d) Was the dismissal within the range of reasonable responses open to a reasonable employer?

Witnesses

6. For the claimant, the Tribunal heard from the claimant himself. For the respondent the Tribunal heard from Val Hussain (the investigation manager -VH) and Leon Parkes (the appeal hearing manager). The Chair of the disciplinary hearing which decided to dismiss the claimant Mr Dave Keelan (DK) did not attend, and no witness statement was submitted in respect of him.

The Bundle

7. The parties had agreed a bundle of documents, to which two character references were added during the hearing.

Tribunal's Findings of Fact

8. The claimant began working for the respondent in January 1996. He was promoted and his last role was as Watch Manager at Agecroft Fire Station. Until his

dismissal on 28 October 2021 he had a clean record with no disciplinary conduct and had been awarded a 20 year good conduct medal due to his hard work.

9. On 18 June 2021 the claimant attended a funeral of a former colleague (AR) at Blackley Crematorium. Covid restrictions were in place and therefore only a small number of people were actually allowed into the service, and the claimant was standing outside talking to colleagues. The claimant had agreed to give some family members a lift back to the family home after the service. The claimant was wearing what is described as his full undress uniform, which is less than the full uniform but still includes items which make it Fire Service related. The claimant never challenged that what happened (whether it was discriminatory or not) happened in the course of employment.

10. The claimant then spoke to NG, who was also attending the funeral. NG later made a complaint about what was said. NG (NG was subordinate to the claimant) said in the complaint lodged on 19 June that he was talking to Watch Manager GK from Bury when he was approached by the claimant who said to him, "I bet you feel at home here, don't you?" to which he says he replied "what, in a cemetery?". The complainant then said that the claimant glanced around at the trees and started laughing. NG looked at GK, who had a horrified look on his face. NG said, "wow" and walked away. GK spoke to NG and said that he thought the claimant's behaviour was unacceptable. NG stated:

"I believe that Darren was implying because I am a dark skinned person that I would feel at home around trees like a monkey. I believe GK was of the same opinion."

11. PF who was also present made a statement about the incident on 19 June 2021.

12. On 30 June 2021 there was an informal meeting with the claimant to discuss the complaint. The claimant was advised that there would be an investigation and that Val Hussain would conduct it. The claimant was told that the complaint was that he had made a racist comment directed at NG. At this informal meeting the claimant was not given the specifics, as he was told this would be part of Mr Hussain's investigation. The claimant said he had known NG for years, considered him a friend and would never have said anything to upset him, and he had no idea what the comment could have been but was sure whatever it was it must have been misunderstood or misinterpreted.

13. The investigation terms of reference stated that the allegation was that the claimant had said to NG "I bet you feel at home here, don't you?" to which NG had replied, "what, in a cemetery?" and that the claimant had looked up and around at the trees and started laughing. NG had been horrified by the inference and walked away. The claimant had followed him for a few steps, patting him on the back while still laughing.

14. The claimant was suspended from duty on 7 July 2021 with a broad description of the allegation – simply a racist comment or action to a colleague in the letter of suspension. The letter said this could be gross misconduct for the following

reasons – a serious breach of confidence, unlawful discrimination or harassment, potential to bring the organisation into serious disrepute.

15. Mr Hussain met with NG on 6 July 2021. NG was asked about his relationship with the claimant and said he had known the claimant for about 25 years “and I’ve always found him to be just one of those people who wants to be everyone’s mate, having a laugh and a joke at other people’s expense. To be honest, I am not a great fan of him anyway. To be fair, I’ve always thought there were racist undertones ever since I had known him”. NG was asked if he had suffered any racist behaviour from the claimant in the past and he said he had – just little snipes, “nothing as serious as this. Virtually every time I see him he makes a snipe about race or colour or something along those lines, and anyone who knows him as long as I have will not be surprised that these words have come from his mouth. He will say something and because its between me and him there isn’t much...I think he has been allowed to get away with this for a long time”. NG was asked for examples but at that point he could the only immediate one he could recall was during a poppy appeal when the claimant had said something along the lines of ‘you should be grateful’. NG repeated the allegation, which was:

“He came over and said, ‘I bet you feel at home here’. I said ‘what, in the cemetery?’ confused, and he looked up and around and at the trees and started laughing.” NG was asked if the claimant visibly started looking up and he said, “he kind of walked past me, looking up at the trees and around and was laughing, looked at GK, and I looked at GK and said ‘wow’. I walked off, he patted me on the back as I walked off and away from the area. GK came along and said, ‘I just wanted to let you know that that was unacceptable’. I said to GK ‘he’s a dickhead’ but I didn’t was to go there as conscious of the occasion. I took myself away from the area.”

16. NG said he did see the claimant later when MK, who had been a retired officer from years ago, was getting into the claimant's car. NG spoke to MK but he blanked the claimant – he could not speak or look at him – and then he went to the wake, where he was for a few hours.

17. NG agreed he had had quite a stressful time beforehand. He had done a challenge from Fort William to Inverness in canoes and before that had been away in Norfolk with his family. NG mentioned that he had lost his wedding ring on the trip and he was keen to make sure he had the chance to go home and speak to his wife before going to the funeral. Again, he felt stressed as the traffic was very bad, and he only arrived just in time. As he was a pallbearer, they had lined up a stand-in for him. NG said he had felt angry:

“I know DM and I don’t know why I was surprised. This was the straw. As you can imagine – annoyed, hurt, anger, deep anger, how dare he at this moment with Robbo? Just before I came down the steps it was clear I was trying to hold it together for Jane [the deceased’s wife] but then I got to her and I broke down, and they were meant to be consoling me, not the other way round. I saw GK and went over for a friendly chat and then DM came over and said this...I questioned if I would have brought the complaint forward if it had been in a different place, but this has been going on for years and a lot of

people have let him get away with it for years. I knew in that moment I would never speak to him again, that from that moment that was it.”

18. NG was asked if anybody else heard the comment and he said GK did and said it was disgusting, and he also spoke to another he had a call from PF who said he also heard what was said and he had written a statement. NG had spoken to a colleague SR about something different and told him about it, but SR was not there at the time. NG said he had not really spoken to PF about what he saw but PF said he heard it and said to him, “...I shouldn’t have to put up with it and he (PF) should have done something at the time”.

19. Mr Hussain asked, “did both the witnesses observe the look?”. NG said he knew GK did and that he came over to say he was not happy with the comments. NG agreed that no-one had said anything to the claimant at the time.

20. NG was then asked about SR’s unhappiness with the claimant about something else, and he referred to a potentially homophobic comment the claimant had made. NG agreed he would always say something back when the claimant said something to him, but he just tried to ignore him. NG felt that the claimant thought he was clever as he did not say anything offensive or wrong and NG went on to say, “I’ve always thought he was racist and unpleasant”. NG said he wanted the investigation completed and the outcome published. He did not want the claimant to leave and therefore there was no point in completing the investigation. Mr Hussain said, “I will give you my assurances that I will get this done”. The claimant suggested this meant Mr Hussain intended to dismiss the claimant come what may but it is clear from the minutes it was simply a commitment to continue with the investigation even if the claimant resigned.

21. PF had already made a statement on 19 June 2021- the day after the incident. NG gave Mr Hussain this statement at his interview on 12 July 2021. PF’s statement stated that he heard the claimant say, “I bet you feel at home in here”. PF said he was confused as to what he meant and who it was aimed at, and when he looked round other people looked confused and uncomfortable. While trying to understand the meaning of the remark his thought process turned quickly to something that he says he found far too outrageously obscene and offensive to comprehend and “regrettably I dismissed the remark and took myself away from the group of people as I did not like the way WM Maguire was behaving”. PF then said he spoke to NG and realised how upset and offended the comment made him feel and so he was writing this in support of him and to say that he also felt very offended by the matter. It is true that PF did not state in terms what he thought the claimant had meant in this statement.

22. It is noted that at this point PF did not say anything about the claimant looking up at the trees or any response from NG to the comment.

23. GK made a statement on 6 July as follows: “On Friday 18 June I attended the funeral of Retired CM AR. After the service I exited the crematorium having spoken with the family and stood next to CM NG. I started to catch up on how each of us were and how our families were. Watch Manager Maguire made his way over to us and greeted us. WM Maguire made a comment to NG about how he must feel ‘closer to home’ and glanced upwards towards the trees. Initially I didn’t understand

the comment. NG then said 'wow' and repeated 'wow'. At this point I understood what was being suggested. NG moved away and started to talk to someone else...I wanted to challenge the behaviour at the time but felt I wasn't able to due to the proximity of CM AR's family and the location we were in. I was also unsure of whether this 'humour' was acceptable between WM Maguire and CM NG. When NG finished talking...I pulled CM NG to one side and asked if that sort of comment was acceptable to him. He said it wasn't. I told CM NG I would support him if he wanted to go and challenge the behaviour. It was clear that CM NG was not in a suitable mood to challenge at that time. I said I would do whatever he needed to support him should he need it in the future."

24. The claimant was formally interviewed on 7 July 2021. The minutes record Mr Hussein saying that he summarised the complaint relating to the events on 18 June 2021 but the actual words he spoke at the time were not recorded. The minutes go on to say:

"NG says he had looked at another member of staff who was with him and who he described as 'horrified' and believed that because he was dark skinned and that it's some form of racism. That is a summary of the complaint. Could you tell me your thoughts on it."

25. The claimant replied:

"Can I clarify something, so NG asked, 'what in a cemetery?' – what happened after that?"

This comment means that VH did give the details of the incident as otherwise the claimant would not have known about the cemetery comment.

26. Mr Hussain's said NG's response was "what, in a cemetery?" and NG said DM looked at the trees and started laughing. No words, just looking at the trees and laughing. The union representative then said, "and NG has understood that as racism?". Mr Hussein asked the claimant did he recall leaving the service. The claimant said yes, and that when he came out of the crematorium his car was ten metres away and he was maybe giving family a lift as his car was black:

"...I recall saying what I said to NG. I meant that as every time I see him recently it is at funerals."

At this stage therefore the claimant did not say what exactly he had said, and it could be interpreted that he agreed he had said the words suggested. This maybe a deficiency with the minutes. Mr Hussain did not go back to he claimant and ask him exactly what he meant by these words. It was clear that Mr Hussain believed the claimant had agreed he had said the words as quoted by NG.

27. The claimant went on to say that he did not remember anybody being with NG and he did not recall NG having any reaction. The claimant was asked what his response was, suggesting he was looking at the trees and laughing. The claimant replied to say he did not see him walk away, and went on to say, "I'm not going to do anything like that let alone to a friend at a funeral". Strictly he did not answer the

question about whether he looked up although the final comment could be a denial. Mr Hussain did not ask any more questions for clarification.

28. The claimant said he had no memory of looking up and laughing. He said, "I remember the comments for the reason and that was the only time". Mr Hussein indicated that there were two witnesses. The claimant said that he potentially had two witnesses, and Mr Hussain said he would speak to them. The claimant denied that he had touched NG.

29. Following this Mr Hussain interviewed GK on 12 July 2021. GK confirmed he knew NG outside of work but not the claimant. GK described NG as "easy going and relaxed, a nice person, would do anything for you", and the claimant was a jovial character. GK thought PF was around, but he could not remember who else was around. TH was close by and he had had a conversation with him. GK did not know if any members of the public were around. GK was asked what he recalled about the claimant coming over. GK said he was talking to NG and the claimant walked over and said along the lines of "you will feel closer to home" and glanced up to the trees quite suggestively. NG said "wow". GK said he did not understand what was actually being suggested at first, but then by NG's reaction he then understood it to be suggestive. GK was asked, "did you notice DM looking up? Was it obvious?". GK said, "Yes, it was a smile, a glance, like I said before Daz is very jovial and is always laughing and giggling. He was laughing and looking up at the trees". GK described NG's reaction of saying "wow" almost to say "wow, have you really just said that?". He said NG "repeated wow, shook his head and walked away. It was clear he was not happy". GK could not remember whether the claimant followed NG or touched him. GK then spoke to NG a short while later and asked him if he was ok, and whether NG wanted GK to speak to the claimant. NG did not want GK to do that. GK said he did not think that the claimant had said the things with venom and malice.

30. GK was asked in effect was his reaction because of NG's reaction, and he answered:

"It was clear Niall was taken aback and the response from Niall was almost 'have you really gone there, especially at a funeral?'. For Niall to walk off angry and knowing him like I do, I knew something was wrong."

31. GK was asked whether he thought it was racist or had racist connotations at first, and he said he did not understand it at first and it did not register until NG's reaction happened, and then he thought "ok, so that's what that meant". GK said he had never heard the claimant making racist remarks before.

32. On 13 July 2021 PF was then interviewed. PF agreed he was a good friend of NG but he also knew the claimant very well, organising events with him and running camps and he considered him to be a good friend as well. PF said that the claimant had said, "I bet you feel at home under here" and he had a grin on his face. PF could not be 100% where he was looking at, "As it says in my statement, I was a little bit confused. What did he mean? It didn't make sense. I thought I must have missed bits of the conversation".

33. PF was asked what NG's reaction was, but he said he did not notice and he looked around and then they all walked away. PF said he had not spoken to GK about it, and he did not speak to NG about it at the time. PF was asked, "do you understand Niall's perception of what was insinuated?", and he said "yes, I completely understand Niall's perception". PF said that the claimant was the sort of person who would say something for humour or banter but not to the extent that he felt the need to challenge it. Mr Hussein said:

"Going back to the comment, Darren is looking at the trees and Niall's interpretation is that was because Niall is dark skinned. Darren was likening him to a monkey."

34. PF said he regretted not challenging it at the time. He spoke to Niall on the phone and he told him everything he was feeling.

35. Mr Hussain then reinterviewed NG on 22 July 2021. He asked him how many times he had seen the claimant in the last 12 months, and NG answered, "maybe two or three times" at operations, and NG said they had not had any conversation other than about the operational incident. NG was asked, prior to the funeral in June when was the last time he had seen the claimant at a funeral, and he said it was Harry Greaves' funeral which was over five or six years ago. NG was asked how many times generally he had seen the claimant at funerals. NG thought there were two where he thought he had seen the claimant in the last five years.

36. Mr Hussain explained that the claimant has confirmed that he did say "I bet you feel at home here" (clearly Mr Hussein had understood from the interview with the claimant that he admitted he had said the words in question) and his reasoning is that it was said with a view that he only sees NG at funerals. NG said no and that he had not seen the claimant at funerals apart from Andy and Harry's funerals which were a number of years ago, and he said "why say it to me only? He would have said it to other people. It didn't seem plausible. He always has to say something". NG said that he did not accept that the comment had been misinterpreted. Why would the claimant be laughing then? NG stated he was not a big fan of DM and thinks he is racist and likes attention – he thinks he is funny and that he is everyone's mate.

"I've never gone out with him socially, I wouldn't call him a friend, I don't like him to be honest. As with a lot of people you know through the job, you are polite when you meet them but that's as far as it goes."

37. NG was asked again for examples of any racist comments. NG stated that the claimant had once said that one of his best pastimes is "watching two black guys kick the fuck out of each other" – that is what he likes to do on the weekend. NG said the claimant had said other things. NG said the claimant thinks he is funny and clever as he is not using a racist word and he jokes without using an offensive word. NG said the claimant thinks he is cute by not using the offensive word and thinks that he is getting away with it. NG struggled to find anything else specific. NG asked Mr Hussain, "Has DM explained why he was laughing – it doesn't make any sense why he would laugh?".

38. MK wrote a statement for the claimant. He said that the only interactions were cordial and pleasant, and he did not witness any incident between him and NG or anything that would be deemed to be offensive or of a racist nature.

39. TH also gave a statement but said he did not hear anything at all.

40. Following this Mr Hussain produced a report. He did not go back to the claimant and ask him about the funerals point, neither did he go back to ask about the allegedly racist comments. It was put to him quite forcefully that these allegations had influenced him in his recommendations but Mr Hussain denied it.

41. Mr Hussain noted that through the statements of the two witnesses it was established both heard the comment. One witnessed DM looking up whilst laughing/smiling and both witnessed a smile on DM's face. Both witnesses understood NG's interpretation and were left (what could be described as) "uncomfortable" at to what they had just witnessed.

42. Mr Hussain noted that of the two witnesses mentioned by the claimant neither of them had witnessed any specific interaction. Mr Hussain noted that the claimant stated he had made the comment and that this was aimed at NG due to the fact they were meeting at yet another funeral and there were no racist intentions to the comment. This is important (as noted above also) because the claimant claims he did not agree he made the comment as described. Mr Hussain also noted that NG did not accept the explanation DM put on the words. NG also said he would not describe the claimant as a friend and that he actually did not like the claimant, and he believed that comments had been made that were of a racist undertone or nature by him before. VH her was simply summarizing what had been said in the interview. NG said he had not seen the claimant recently and had only seen him at two other funerals – one in 2013 and one earlier. The report said:

"DM, when asked about the comment and the complaint was read out from NG, stated he recalled saying the comment 'I bet you feel at home here' to NG. He did not recall looking at the trees and laughing. He did not recall patting NG on the back while he was walking away, and that the comment was made because he always sees NG at funerals."

43. The claimant denied he had made other racist comments.

44. Mr Hussain recommended there should be a disciplinary hearing to consider the matter.

45. The disciplinary hearing was undertaken by ACFO Dave Keelan. The investigation report was completed on 3 August 2021 and the claimant attended the first disciplinary hearing on 4 October 2021. The claimant's union representative responded after Mr Hussain had summarised the position, pointing out that DM said he did not recall any reaction from NG after the alleged comment; that there was a long interview with NG but a fairly short one with DM, and the investigation was one-sided. He felt that confidentiality had been breached because the case was being talked about outside of the disciplinary process. PF and GS were interviewed in depth, whereas DM's witnesses stated they did not see anything, but nothing was followed up. Was this because it did not fit into the narrative of what the

investigation was looking for? The union representative said he did not understand the racial comment. He stated the comment had not been said in that way, and “you’re disciplining somebody for looking up. DM doesn’t remember looking up and smiling and nowhere can you say he was looking directly at the trees. He has gone over and made the comment along the lines of ‘here we are again’ and then just glanced up”. The union representative stated that the witnesses had not seen the comment or actions as racist until they had spoken to NG, and they could tell something was wrong from NG’s reaction and without that they would not have noted the comments. The union representative believed it was an emotionally charged event and that NG took it the wrong way. NG was exhausted from his previous activities and issues with his partner. It is likely he would take something the wrong way. It is clear he does not like DM and had not liked him for a long time, and that should be taken into account. They were disciplining somebody who was coming to end of their career with nothing previously against them and DM had many character references voluntarily sent in by his colleagues, one of which showed how he tried to increase diversity in the Fire Service.

46. Mr Keelan directly asked the claimant “did you say this comment?”. He said:

“In the interview I said to Nick ‘it was something like you do at funerals, like oh, we’re here again, roll of the eyes’. The only time we see it’s the anniversaries, it was just a comment.”

47. Mr Keelan said if he was black Caribbean and the claimant said to him “I bet you feel at home here” and looked at the trees and laughed, he would think the same as NG thought. Mr Keelan said to the claimant “do you not see that?”. The claimant said he did not remember laughing and looking up, and “No, I wouldn’t see that, it’s not in my brain to think or say that”. Mr Keelan said, “When NG walked off, did you not think you’d upset him?”. The claimant said NG went off to speak to TH and no, he did not think there was anything wrong. The claimant suggested DK’s comment showed he had made his mind up however he was saying that if it happened as described by NG it was a comparison to a monkey. The claimant himself in cross examination said if it had happened as described by NG it was racist.

48. DM said that his witnesses said they did not notice anything like that. Again, it was repeated that NG’s witnesses only saw something when NG told them.

49. Mr Keelan decided that they would have a break and when he came back he decided to make sure that the claimant’s witnesses were interviewed and to cover the elements of direct and indirect discrimination in this case, and he would look into the confidentiality issues.

50. Mr Hussain interviewed TH. TH stated that in reality the whole day was a blur because he was so upset about his colleague, and he did not notice that Niall was more upset at any point. He said he did not witness any interaction between them.

51. Mr Hussain interviewed the claimant again, and this was mainly about different types of discrimination and what training he had had. The claimant said he did not really know much about the Equality Act. The claimant was asked for examples of direct and indirect discrimination, and his example of indirect discrimination did not reflect the meaning of indirect discrimination, neither did he

understand discrimination by association nor discrimination by perception. The claimant said harassment could be good or bad. Victimisation he said would be bullying. Obviously, these did not reflect in total the meaning of the different types of discrimination. Mr Hussain said that he had been trained in 2020 and 2021 but the claimant said he did not recall.

52. Mr Hussain then interviewed MK, the claimant's other witness. Mr Hussain explained to MK exactly what was alleged to have been said, and MK said he did not hear that. He said that the claimant appeared normal in the car when he gave him a lift. It is not clear that VH put any other form of words to MK as by this stage the claimant had suggested he said something different.

53. The disciplinary hearing was reconvened on 28 October 2021.

54. The claimant's union representative pointed out that there was no suggestion that at any point DM has referred to NG as a monkey, which was agreed with. Also, at no point had the claimant made a monkey gesture. The union representative stated:

“Knowing DM, I imagine it was more of a rolling of the eyes rather than looking up.”

55. The union representative reminded Mr Keelan that there had been no complaints during the claimant's service, and he was coming near to the end of that service. This gesture could or could not mean something, and he did not believe that they could be really sure that something had happened particularly given the severity of the outcome for DM.

56. Following an adjournment Mr Keelan came back and stated that in reviewing the evidence the employee's complaint was corroborated by two other employees regarding comment and gestures, and he found on the balance of probability that the events did take place as described and they caused the complainant to feel a significant level of distress and whilst it took place at a funeral, this neither excused nor stood as mitigation for the individual's emotional response. There had been a lack of acknowledgement by DM regarding the impact or upset the comment had on the complainant: Mr Keelan stated, “You stated it was not your intention to offend but it caused significant offence”, and it was not the case that there was a longstanding friendship between DM and NG. The claimant had had sufficient training and could be expected to conduct himself in line with the organisation's core values. Mr Keelan also found that the claimant did attend as representing the Service at the funeral

57. Mr Keelan's conclusions were that through the additional witness interviews that no further evidence was established on the interaction between NG and DM. Mr Keelan concluded through the interview with DM that he is not well versed in, and gave a limited understanding of, some basic terminology relating to discrimination. It was recorded that he had attended two training sessions on the Equality Act and on equality, diversity and inclusion.

58. Regarding the confidentiality issue, Mr Keelan did not accept there had been a breach of confidentiality in the way suggested. Mr Keelan had not been privy to

any of these discussions in any event if they had taken place, and neither had Mr Hussain. Mr Keelan was satisfied that his investigation report and its addendum were balanced.

59. Mr Keelan found the allegations proven and that it was gross misconduct, consequently the claimant was being summarily dismissed. The claimant was advised about an appeal.

60. The claimant then received a letter dated 28 October 2021 setting out the same points as in the meeting. He appealed stating the grounds were:

- there was a defect in the procedure;
- the issue was not proven on the balance of probabilities; and
- the disciplinary sanction was too severe.

61. It was decided that Mr Leon Parkes, Deputy Chief Fire Officer, would be hearing the appeal. Management statement of case was set out by Mr Keelan, and he believed that the correct procedure had been followed and reiterated that he felt there was sufficient evidence to find the complaint proved and that he considered a range of sanctions including actions short of dismissal. A demotion was considered so that the claimant no longer held a managerial role, but he did not feel that was an appropriate outcome due to the expectation that “all GM FRS employees would demonstrate the highest standard of values and behaviours...so that colleagues from any background would feel safe from any form of discrimination”.

62. There was a hearing pack it was not clear that the testimonials had been included but LP was adamant he had seen them when cross examined.

63. The appeal hearing took place on 17 November 2021. It was not a full rehearing. The claimant’s union representative (MA) said that the procedure was biased from the start and that the claimant was not told exactly what he was accused of until the interview. The claimant was unhappy that he had been suspended as this isolated him whilst the complainant was allowed to go round telling everyone his side of the story. Only witnesses on one side were interviewed. The claimant believed only witnesses on NG’s side were taken into account. The claimant stated, “The investigation officer was caught out in a lie in the investigation and backtracked”. This was about whether the issue was discussed in a network group and eventually Mr Hussain had said it was not discussed in the group but maybe in a tea break. It was agreed NG was upset, but it did not mean he was upset about anything that actually happened or happened intentionally. There were only witness statements and no CCTV. The investigation officer also did not interview DM’s witnesses, just accepted statements from them. It was also commented that Mr Keelan had said, “If it was me, I’d feel the same as NG” and therefore they believed a decision had already been made. The claimant’s two witnesses had been deemed irrelevant – the fact that they did not see or hear anything was relevant. They also believed that the two witnesses did not know that it was racism until they had spoken to NG.

64. Leon Parkes then said to the claimant, “You don’t deny making a statement that you made these comments”. The claimant stated, “I said something like ‘we’re here again’. At this point therefore the claimant was saying that he had said something different from what NG recounted. Niall said ‘what, in a cemetery?’ and that was it”.

65. The claimant's union representative said, referring to “In regards to the gesture, he said ‘I bet you feel at home here’ but generally recalled looking at trees and laughing”, and the statement changes: “the first time he says I looked up and laughed; the second time that I smiled; the third time that I gestured. Even he is not clear”. He said the details of the incident had changed.

66. Mr Keelan said the witnesses are different ethnicities to NG so probably would not see the comment/gesture in the same way. On the balance of probabilities he said the events did take place as described and caused a significant level of distress.

67. The trade union representative said “just because someone from a different background didn’t perceive it as racial doesn’t mean it was. He didn’t look at the trees, he looked up and rolled his eyes – it does not mean he was looking at trees. Just because someone says it means looking at trees doesn’t mean he did”.

68. The union representative then said that the claimant would not go to any more functions to avoid the risk of being perceived in the wrong way.

69. The union representative also stated that a Sikh firefighter had been the recipient of an inappropriate comment with racial undertones but he was not dismissed and he only had three months’ service. Generally, the union representative then said:

“Looking at previous cases which are much more severe where people hadn’t been sacked yet here someone with exemplary service, not far off retirement, has been dismissed and he has actually tried to improve the racial diversity of this organisation.”

70. Mr Keelan repeated that once he had decided it was gross misconduct he had considered the penalty, and he considered demotion, but he decided that was not appropriate.

71. After an adjournment Mr Parkes made his decision. He said in relation to the grounds of appeal he said that the amount of information given to the claimant was in line with what would normally be done in an investigation and that he believed all four witnesses were considered in the hearing. The breach of the confidentiality in the network meeting was not relevant unless Mr Hussein was shown to be biased, which was not the case. Also, from the notes it was not apparent that there had been a discussion between NG and PF prior to the interviews. Whilst they would never be 100% sure, there was nothing apparent to suggest this was the case. Mr Parkes stated:

“With regards to the next grounds of appeal, you admitted to making the statement, you don’t deny making the gesture, therefore the hearing manager

has to take this into account. The gesture was observed. Niall was subsequently distressed.”

72. Regarding the sanction being too severe, Mr Parkes was satisfied that all options had been considered. Accordingly, the decision of the disciplinary hearing was upheld. In the letter confirming the outcome Mr Parkes said that ‘ I have confirmed there has been a significant breach of trust and confidence within the employment relationship and as such the decision of summary dismissal is upheld’

73. Finally it should be noted in the claimant’s claim form, drafted by his representative it says that ‘the claimant sought to break the sombre mood by saying to NG ‘I bet you feel at home here don’t you ‘.’ It goes on to say this was a reference to them only meeting at funerals.

The Law

74. Section 98 of the Employment Rights Act 1996 states that:

“General

- (1) Determining for the purposes of this part whether the dismissal of an employee is fair or unfair it is for the employer to show –
 - (a) the reason (or if more than one, the principal reason) for the dismissal; and
 - (b) that it is either a reason falling within subsection 2 or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if it –
 - (a) ...
 - (b) relates to the conduct of the employee;
 - (c) ...
 - (d) ...”
- (3) ...
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
 - (a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and

- (b) shall be determined in accordance with equity and the substantial merits of the case.”

75. In Iceland **Frozen Foods Limited v Jones** the Tribunal stated that:

“We consider that the authorities established that in law the correct approach for the Tribunal to adopt in answering the questions posed by section 98(4) is as follows:

- (1) The starting point should always be the words of section 98(4) themselves.
- (2) In applying the section a Tribunal must consider the reasonableness of the employer’s conduct not simply whether members of the Tribunal consider the dismissal to be fair;
- (3) In judging the reasonableness of the employer’s conduct a Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;
- (4) In many though not all cases there is a band of reasonable responses to the employee’s conduct within which one employer might reasonably take one view, another quite reasonably take another.
- (5) The function of the ...Tribunal as an industrial jury is to determine whether, 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.”

76. “Reasonableness” should be assessed by the facts or thought processes available at the time (**W Devis & Sons Limited v Atkins [1997]**).

77. The leading case on conduct is **British Home Stores v Burchell [1978] EAT** which sets out guidelines which have stood the test of time for the approaches in case of misconduct. This says that:

- (a) The employer must have had an honest belief at the time of the dismissal that there was a fair reason to dismiss;
- (b) The employer must have reasonable grounds for holding that belief; and
- (c) The employer’s reasonable grounds must be based on a reasonable investigation.

78. The employer can only take into account matters of which they were aware at the time of dismissal, and the Tribunal must look at the circumstances in the round

and procedural imperfections do not automatically render dismissals unfair (**Taylor v OCS Group Limited**).

79. The band of reasonable responses test applies to the procedure as well (**Sainsburys Supermarkets PLC v Hitt [2003]**).

80. The claimant referred to the case of **Gray -v- Secretary of State for Work and Pensions** 2012 Court of Appeal the Court of Appeal provided the following guidance in relation to misconduct dismissals. Once it is established that the employer's reason for dismissing the employee was a valid reason within the statute the Employment Tribunal has to consider three aspects of the employer's conduct. First, did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case. Secondly, did the employer believe that the employee was guilty of the misconduct complained of and thirdly, did the employer have reasonable grounds for that belief. If the answer to each of those questions is yes, then the Employment Tribunal must then decide on a reasonableness of the response of the employer in performing the latter exercise Employment Tribunal must consider by the objective standards of the hypothetical reasonable employer rather than by reference to the ET's own subjective views whether the employer has acted within a "band or range of reasonable responses" to the particular misconduct found of the particular employee.

81. If the employer has so acted then the employers decision to dismiss would be reasonable however this is not the same thing as saying that a decision of the employer to dismiss will only be regarded as unreasonable if it is shown to be perverse. The Employment Tribunal must not simply consider whether they think the dismissal was fair and thereby substitute their decision as to what was the right course to adopt for that employee. The Employment Tribunal must determine whether the decision of the employer to dismiss fell within the band of reasonable responses which "a reasonable employer might have adopted" an Employment Tribunal must focus its attention on the fairness of the conduct of the employer, the time of the investigation and dismissal or any internal appeal process and not on whether in fact the employee has suffered an injustice.

82. The claimant also referred to the case of **Tayeh -v- Barchester Health Care Limited** 2003 Court of Appeal which reiterates it is not the task of the Employment Tribunal to substitute its own findings about the seriousness of an allegation for that of the employer.

83. Whilst I have referred to the fact that these were cited by the claimant they are of course neutral in their effect and served to clarify longstanding principles.

84. There are a number of cases where the Tribunal can find the real reason for dismissal if the employer has incorrectly identified the reason for dismissal although the Tribunal is not obliged to ascertain the real reason for dismissal if there is insufficient evidence to do so, **Hurch UK Limited -v- Ferraoe** EAT 2005. The Tribunal may ignore the wrong label where the facts that are believed that led it to dismiss were known to the employer, the time of the dismissal and those facts or beliefs were fully aired in the Tribunal proceedings. **Abernathy -v- Mott Hey and Anderson** 1974 Court of Appeal emphasised also in **Britto Brito-Babapulle -v- Ealing Hospital NHS Trust**, the Court of Appeal said whether the label attached to

the conduct was fraud or dishonesty it was immaterial as the behaviour amounted to gross misconduct. Where an employee has not been confronted but the full and true nature of the allegations against him nor had an adequate opportunity to consider and answer those allegations the dismissal is likely to be unfair. Whilst these specific cases were not cited to me the respondent's counsel referred to the general principles.

Submissions

Claimant's Submissions

85. The claimant submitted that the dismissal was unfair for the following reasons:

- (1) The respondent could not establish that:
 - (a) the dismissal was for conduct as on the evidence it could not be established that the comment could be reasonably interpreted as race discrimination and offensive;
 - (b) it was not intrinsically racist and depended on context and gestures to make it so; and
 - (c) the appeal officer made the decision on the basis of breach of trust, not misconduct.

Grounds for belief in misconduct

- (2) There was insufficient investigation, for example:
 - (a) The respondent did not fully investigate the number of funerals the claimant had attended with NG. NG was asked about it, but not the claimant.
 - (b) It is not correct that the claimant admitted using the words alleged by NG. This seems to have resulted from drift and lack of focus in the investigatory meetings. The claimant did dispute it in the disciplinary hearing.
 - (c) The question of whether there was a history of discrimination and racism between the claimant and NG was not investigated. NG did not provide very specific examples – the ones he did provide were not explored with the claimant. On the balance of probabilities, it is likely that these allegations influenced the minds of the decision makers. Mr Keelan could not be challenged about it as he did not attend the tribunal.
- (3) GK and PF only interpreted the comment as racist after NG's reaction, and further after discussion with NG – they had not interpreted it as racist initially.
- (4) MK and AH were not interviewed until over two months after the investigation was concluded following a direction from the first

disciplinary hearing, and no weight was placed on their evidence in the investigation report and again in the disciplinary decision.

Band of Reasonable Responses

- (5) The claimant had worked for 25 years at the time and had never been disciplined for any offence, and this was not appropriately weighted when deciding to summarily dismiss the claimant. LP referred to a breach of trust when he determined that the claimant's summary dismissal should be upheld, yet the claimant was never given the opportunity to address that concern. The respondent focussed more on the distress caused to NG and the interpretation he placed on the comment, whether on the balance of probabilities the comment was discriminatory or racist. Accordingly, the weighing of factors was one-sided.
- (6) DK also adopted a one-sided approach concluding that two witnesses corroborated NG's complaint, however that was not correct – only GK corroborated the evidence of NG in relation to the claimant looking up. PK did not corroborate that the claimant looked up, although he did corroborate that the claimant was smiling but not laughing. DK did not consider the inconsistencies between the evidence relied on by the respondent.
- (7) DK did not give evidence to the Tribunal to establish that his decision to dismiss fell within the band of reasonable responses. LP simply based his decision on the decision of DK and that deficiency was therefore not remedied.
- (8) LP concluded the allegation was made out partly due to his finding that the claimant admitted looking up, but the words were actually used by the claimant's union representative and there were examples of the claimant denying that he had looked up. This was clearly expressed in the appeal hearing, therefore LP took into account an admission that was not actually made.
- (9) The evidence had established that the claimant had limited training in relation to equality and therefore it should have been considered whether the claimant should have been subject to a lower sanction, which included further training.

Respondent's Submissions

Reason

86. The respondent submitted the reason was clearly conduct and there was no challenge to this during the disciplinary hearing and the appeal. It was clear in the management statement of case and all the documentation. It was confirmed by the witnesses. Whilst LP referred to "trust and confidence", the Tribunal can find another

reason, but in any event every time there is a misconduct dismissal there will be trust and confidence issues. An allegation of a racist comment is conduct and is a breach of trust and confidence in the employee.

Genuine belief

87. VH's evidence stood up to scrutiny. It was clear that he approached it with an open mind. He interviewed the claimant twice. The investigation was detailed and fair. There was evidence supporting the complainant's case which warranted a decision to progress the matter to a disciplinary hearing.

88. In relation to genuine belief, there were two witnesses supporting NG's evidence. A number of lines of enquiry were followed up. VH denied that he had been influenced by the allegations of other racist scenarios. The claimant's two witnesses both said they saw nothing and had little to add to that when they were reinterviewed after the disciplinary hearing.

Reasonable Investigation

89. The claimant challenges it in terms of inconsistency in statements, however there will always be divergences between recollections. The divergencies were only in small ways.

90. NG's evidence was consistent throughout.

91. The claimant failed to put forward any further evidence in respect of the context of him saying it was all about them continuing to meet at funerals. He had the opportunity to do so at the disciplinary hearing and appeal as he had all the interviews in the information packs.

92. In respect of whether the claimant admitted what was said:

- (i) after being read the allegation he said "I recall saying what I said to NG".
- (ii) that he meant that "every time I see NG it's at a funeral"; and
- (iii) when it was put to him he was looking at trees and laughing, "I can't answer that, I didn't see him walk away".

93. In the disciplinary interview, in response to the question "did you say this comment?" the claimant stated, "in the interview I said it was something like you do at funerals, like 'oh, we're here again', roll of the eyes – the only time we see it's the anniversaries, it was just a comment".

94. The claimant did not remember laughing and looking up.

Evidence supporting NG's allegation

95. The evidence supporting NG's allegation was:

Evidence of PF

- (1) PF – he stated they were at a funeral and that he heard the claimant say, “I bet you feel at home in here”;
- (2) When he was interviewed, he heard the claimant say, “I bet you feel at home under here”;
- (3) That the claimant had a grin on his face;
- (4) That he could not be 100% sure where the claimant was looking;

Evidence of GK

- (5) He heard the claimant say how NG must “feel closer to home”;
- (6) That the claimant glanced upwards the trees;
- (7) That NG said “wow”;
- (8) That NG walked away.
- (9) In his investigation interview, he said the claimant said “you will feel closer to home”; “the claimant glanced up at the trees quite suggestively”; “NG said wow”; “NG walked away”.

Evidence of MK

- (10) In relation to MK, he said he did not witness any incident and in his interview he said “I did not hear that”.

Evidence of Anthony Hunter

- (11) In relation to AH, he said did not recall being present with the claimant and NG at the same time on that day and he confirmed that in his interview. He said the whole day was a blur because they were upset about the passing of AG.

Procedure

96. The respondent submitted this was fair. The claimant was represented at every stage and given multiple occasions to put his case forward. He had all the relevant documents. He attended all the meetings with full information. The stages of investigation, disciplinary and appeal followed, and the respondent’s policies were followed at each stage.

97. The claimant suggests that:

- (1) His witnesses were not interviewed or their evidence was not taken into account – they were interviewed prior to the decision to dismiss. AH did not even recall being present when the claimant and NG were together. MK says he was but did not hear the comment.

- (2) The disciplinary officer stated, “If you said what you said to NG I would have thought the same as NG” – this comment was not challenged. The inference is that it was not said at the start of the hearing in the way implied by the claimant. DK did say, “I will be honest, if I was black Caribbean and you said to me ‘I bet you feel at home here’ and look up at the trees and laughed I would think what NG thought. Did you not see that?”. That did not show a closed mind. The claimant accepted in cross examination that such a comment in that context is racist
- (3) The number of funerals attended was not put to the claimant. The claimant had all the notes of the interviews with NG and could have challenged this at any point.

The respondent failed to consider the supportive witnesses could have been influenced by NG

98. PF’s statement clearly records he had formed a view of the comment prior to speaking to NG and prior to NG’s response.
99. GK’s statement showed that he had formed a view when NG said “wow” – this was prior to speaking to NG.
100. The claimant has exaggerated the possible element of influence.

VH had discussed the allegation at a BAME conference

101. It was denied that he did so and there was no specific evidence to support this.

The disciplinary officer was present at the appeal hearing

102. This is following policy – he was there to be challenged and cross examined by the claimant’s representative.

Range of reasonable responses

103. Dismissal was clearly within the band of reasonable responses once it had been found that a serious racist comment had been made by a senior employee of a public service to a subordinate employee whilst in uniform in the presence of colleagues and the public. It was clearly within the range of reasonable responses of the reasonable employer.

Discussion and Conclusions

104. I thanked counsel for their detailed submissions, above is just a summary. My findings are as follows:-

In respect of whether sufficient investigation was carried out

- (1) I find there was; whilst VH could have gone back to the claimant about the funeral issue however the claimant clearly had all this information before the disciplinary hearing but did not address it.

- (2) In respect of the other alleged racist remarks described by NG the claimant had cut off all discussion of this when VH had tried to raise it with him. At the same time had there been a second interview with the claimant the two specific incidents could have been put to him. In any event again he had all the interviews with NG and could have rebutted these matters strongly in the disciplinary interview but did not do. In any event VH did not rely on the previous incidents, although the claimant suggests that he must have done there was no evidence that he had. This was a stand alone incident. If it had happened as the complainant said it did not require any background of discrimination. In any event the alleged matters were not clearly racial discriminatory ones. The claimant makes the point that he could not cross examine Mr Keelan on this point because he did not attend. However I find it is clear from the content of the disciplinary hearing that this remark was the only matter under consideration.
- (3) The claimant also complains about his witnesses not being interviewed, from this statement it was logical that they would not be as they both said they had not heard or seen anything. They eventually were interviewed so if this was a lacuna it was corrected. On being interviewed there was no change in the claimant's case, AH said he did not recollect the claimant being stood with NG at any point and MK although he said he was there when the claimant and NG were together did not recall any sort of remark made, as suggested by NG. Neither did he recall any comment at all from a conversation between NG and the claimant and therefore there was nothing in his evidence that could undermine NG's claim or corroborate the claimant's claim.
- (4) There were times when VH should have pinned the claimant down more when he did not answer a question clearly, I am not saying that the claimant was deliberately evading the question, this often happens but the interviewer should come back and pin the interviewee down and obtain some clarity of any ambiguous answers. It was clear that VH thought the claimant had admitted saying the words used by NG but not that there was any racist intention. Otherwise, there were no other investigatory steps the respondent could have taken.
- (5) On the evidence Mr Hussain had it was clearly reasonable of him to recommend that a disciplinary hearing take place to examine the issue and make a decision.

In respect of whether the respondent had a genuine belief in misconduct

- (6) I find they did, bearing in mind the test for their conclusions is on the balance of probabilities, on the following grounds. The claimant appeared to initially admit the comments. When he later said he had actually said something different, it was less plausible. By itself it would not have been determinative. He did not definitely state that he had not made a gesture and it was later suggested that he may have rolled his eyes, again that is not consistent with the comment the claimant stated

he was making which was a sober comment about the fact that they were meeting at funerals.

- (7) NG's witnesses confirmed his allegations in part, GK was entirely consistent with NG's account including his reaction at the time albeit his recollection was not as fulsome as the claimant's. Again there is nothing unusual in that. He was trying to make sense of the comment and processing NG's reaction. In respect of PF he also recorded essential details. In particular that DM had grinned, again that is not consistent with the type of remark DM alleged he had made, again, it was a sober remark about a meeting at funerals and grinning or smiling would not have been consistent with such a remark. It was entirely reasonable of the respondent to rely on NG's account plus those of these two witnesses often a complainant of discrimination has no witnesses at all and an employer would have to make a decision based on just the complainant's evidence.
- (8) As to the possibility that GK and PF had spoken to NG beforehand and that their recollections were influenced by him. On the balance of probabilities it was reasonable of the respondents to view this as unlikely. GK's original statement shows he formed an independent view and PF's statement also although he does not spell out why he thought the comment was outrageous. There was nothing to suggest it. The fact that both were puzzled by the remark again is not surprising and it took them some time to work out what the intention of the remark was. They registered it was an odd remark and were thinking about it when it became clearer in the whole context.
- (9) On the balance of probabilities their statements had been made closer to the event and there were factual details congruent with NG's account, the very fact that they differed from the complainant's account indicated that there was no collusion. It is correct that they remembered more when being interviewed however PF still did not recall the looking up at the trees and again that suggests that he was not influenced by NG and he was at pains to point out he was equally friendly with NG and the claimant which added objectivity to his statement

Procedural Bias

105. The fact that MK and AH were not interviewed initially was not evidence of bias as on the statements, they had nothing to add and this was plainly the case when they were actually interviewed. The fact that possibly the case was discussed at a BAME meeting was investigated and VH stated that it may have been as a tea break but he wasn't privy to it and there was nothing to suggest that there was any bias.

106. The other remarks relied on such as VH saying 'I'll make sure it's done 'I find were not indicative of bias, it was simply to say that if the claimant for example did resign VH was committed to completing the investigation. DK's remark that if it had

happened as described he would understand it as racism, again this is not bias itself evident and the claimant agreed with this in cross examination.

Reason for Dismissal

107. The invitation letter to the disciplinary hearing and disciplinary interview etc always gave three grounds for potential gross misconduct in this case, serious breach of trust and confidence, racial harassment and damage to the respondent's reputation. Mr Keelan relied on racial harassment and did not mention breach of trust and confidence and Mr Parkes having found that there was nothing wrong with the disciplinary hearing's finding of a racially discriminatory remark stated it was clearly a breach of trust and confidence. Accordingly, I am satisfied that the decisions were consistent with each other and that in any event the making of a racially discriminatory remark would inevitably undermine trust and confidence between employer and employee. If I am wrong on this I find the claimant was dismissed for making racially discriminatory remark, a gross misconduct offence by itself which made the respondent lose all trust and confidence in him

Range of reasonable responses

108. The dismissal was within the range of reasonable responses, where a racially discriminatory remark has been made of this nature its almost inevitable that an individual would be dismissed. Whilst DK who we have not heard from said he considered demotion it is clear it would not be appropriate in this case to demote the claimant in view of the nature of the comment made. In this context the fact that the claimant's long service does not rescue his situation. It is harsh to dismiss someone with 25 years' service and a clean record but having made their factual findings that the comment was said in the context stated the only mitigation would have been some sort of medical one- such as being on medication that had an effect on your thinking. Of course there may be other mitigation but the main plank of the claimant's case was that it was said as he described it and obviously it was contrary to his primary case to put forward mitigation other than his long service and clean record. A demotion was understandably rejected as the matter found to have occurred meant that the respondent could not have trust and confidence in the claimant as an employee.

109. In addition, the claimant's lack of understanding of indirect discrimination has and his apparent lack of understanding during the process of why the comment and the context was discriminatory can only mean that he was not committed to the respondent's anti discriminatory training as in my view it would not need training to understand that implying a black person was a monkey was a seriously racist remark.

110. It should be noted that I have no locus at this point to decide whether or not the claimant made the remark in question as suggested in the context of an unfair dismissal claim rather an unfair dismissal claim has to be analysed as above-considering in the light of Burchell whether it was a fair dismissal. Accordingly I am examining the actions of the respondent so although I have noted what was said in

the claim form this is not something which was relevant to the respondent's decision at the time.

111. Whilst the respondent's submissions touched on Polkey and contributory conduct I had no submissions from the claimant on this point and cannot make any finding. It would have been preferable if I could in order that I could have provided a view in the alternative i.e. had I found it was a fair dismissal.

Employment Judge Feeney
19 July 2024

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON 22 JULY 2024

FOR THE TRIBUNAL OFFICE

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