EMPLOYMENT TRIBUNALS

Claimant: **Mr B J Foulger**

Respondent: **Middlesbrough Council**

On: **19 August 2024**

At: **Newcastle Employment Tribunal (remotely by CVP)**

Before: **Employment Judge Sweeney**

Appearances
For the Claimant, Mr Sharples, Regional Legal Officer, GMB
For the Respondent, Mr Van Zyl, solicitor

JUDGMENT having been given on **19 August 2024** and written reasons for the Judgment having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided.

WRITTEN REASONS

1. By a Claim Form presented on **29 July 2024**, the Claimant brought a claim of automatically unfair dismissal arising out of the summary termination of his employment on **22 July 2024**. He claims, among other things, that his dismissal was automatically unfair within the meaning of section 152(1)(b) Trade Union and Labour Relations (Consolidation) Act 1992 (**'TULRCA'**).

2. The reason is referred to as an 'inadmissible reason'. In his Claim Form the Claimant made an application for interim relief under section 161 TULRCA, which is the application I have had to decide.

3. On **02 August 2024**, the Tribunal sent to the parties a Notice of Hearing to take place on **19 August 2024**. The parties were directed that, if they intend to rely on any documents at the hearing they must send copies to each other not later than 3 working days prior to the hearing.

4. On **16 August 2024**, the Respondent lodged with the Tribunal a number of documents consisting of a supplementary bundle of documents and statements from Erik Scollay of the Respondent and a draft statement from the Claimant. The documents contained an ET3 with grounds of resistance and written representations on behalf of the Respondent opposing the application for interim relief. The Claimant had earlier lodged a bundle of documents and a facilities agreement. There was no dispute as to whether the application was properly made.

The issue to be determined

5. The issue, taken from section 163 TULRCA can be described thus: '*does it appear to me that it is likely that at the Final Hearing the tribunal will find that, by virtue of section 152 the reason or principal reason for the Claimant's dismissal was that he had taken part in the activities of an independent trade union at an appropriate time"*?

Relevant legal principles

6. Section 152(1) TULRCA provides:

"For the purpose of Part X of the Employment Rights Act 1996 (unfair dismissal) the dismissal of an employee shall be regarded as unfair if the reason for it (or, if more than one, the principal reason) was that the employee –

…

(b) had taken part … in the activities of an independent trade union at an appropriate time."

7. Section 163(1) provides:

"If on hearing an application for interim relief it appears to the tribunal that it is likely that on determining the complaint to which the application relates that it will find that, by virtue of section 152, the complainant has been unfairly dismissed, the provisions apply."

8. The provision then sets out the available relief.

9. A reason for dismissal *'is the set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee'*: **Abernethy v Mott, Hay and Anderson** [1974] ICR 323, CA. In a more recent analysis in **Croydon Health Services NHS Trust v Beatt** [2017] ICR 1240, CA, Underhill LJ said that the 'reason' for dismissal connotes the factor or factors operating on the mind of the decision maker which causes them to take the decision. It is a case of considering the decision-maker's motivation.

10. There are a number of legal authorities on the approach to taken on an interim relief application (whether under section 163 TULRCA or 'section 129 ERA 1996).

    1.1. **Taplin v Shippam** [1978] IRLR 450;
    1.2. **Ministry of Justice v Sarfraz** [2011] IRLR 562;
    1.3. **London City Airport v Chacko** [2013] IRLR 610

1.4. **Hancock v Ter-Berg & anor** [2020] IRLR 97;

11. It is clear from the authorities that applications for interim relief are to be considered on a summary basis. A tribunal must do the best it can with such material as the parties are able to deploy by way of documents and argument in support of their respective cases. The Tribunal must carry out an assessment of whether the claimant is 'likely' to succeed in his complaint, bearing in mind that the evidence on both sides is as yet untested (see in particular, **London City Airport v Chacko** [2013] IRLR 610).

12. When considering whether a claimant is 'likely' to succeed, it is not a case of asking whether he has a more than 50% chance of success. In **Taplin v C Shippam Ltd**, the EAT (Slynn J) stated that the tribunal must ask itself whether the claimant has shown that he has a 'pretty good' chance of succeeding at the final hearing (see paras 22-23):

"it is wrong to assess the degree of proof which has to be established in terms of a percentage as we have been invited to do".

13. This approach was endorsed in **Ministry of Justice v Sarfraz** where the EAT (Underhill J) as he then was) said in paragraph 16:

"In this context 'likely' does not mean simply 'more likely than not' – that is at least 51% - but connotes a significantly higher degree of likelihood. Slynn J understandably declined to express that higher degree in percentage terms, since numbers can convey a spurious impression of precision in what is inevitably an exercise depending on the tribunal's impression."

14. A claimant applying for interim relief must satisfy the Tribunal that it is likely (in the sense described above) that he will be able to satisfy each of the elements of his complaint, and not just the reason for dismissal: see **Hancock v Ter-Berg** [2020] IRLR 97, para 42).

15. If the fact that an employee had taken part in trade union activities was merely a subsidiary reason to the principal reason for dismissal, then the employee's claim under section 152 will fail.

Relevant context: undisputed facts and the documents/statements that will be adduced at a final hearing

16. I have used the initials of names in these reasons as they were used in the hearing before me. The initials are known to and well understood to the parties.

17. There are some undisputed facts. The Claimant commenced his employment with the Respondent on **30 June 2004**. He was summarily dismissed on **22 July 2024** by a director of the Respondent, Erik Scollay, Director of Adult Social Care and Health Integration. At the time of his dismissal he had over 20 years' continuous employment and was employed by the Respondent as a Senior Transport Officer. He was an active lay representative for the GMB union, having been the union convenor for approximately 15 years. A facility time agreement was in place between the Respondent and the union.

18. The Claimant contends that the principal reason for dismissal was his union activities on **26 February 2024.** Those activities consisted of:

    18.1. calling SA and discussing with her matters concerning SH and the review discussed with CH on **06 February 2024**

    18.2. sending the joint letter on **pages 60-61**.

19. In its Grounds of Resistance ('**GOR**') served on **16 August 2024**, the Respondent contends that Mr Scollay dismissed the Claimant for his conduct, pleading in the alternative that it was for some other substantial reason following a complete breakdown in the Respondent's trust and confidence in the Claimant.

20. On **06 February 2024**, the Claimant met with the Respondent's interim Chief Executive, Clive Heaphy ('**CH**'). The Claimant was at that meeting in his capacity as a trade union representative. Also at the meeting was Paul Thompson ('**PT'**), a Unison union representative and, '**SH**' an employee and member of Unison'. It is common ground that, at the meeting, **SH** raised an allegation of race discrimination as well as other things (paragraph 9 of the GOR).

21. **CH** subsequently emailed a number of people, including the Claimant on **21 February 2024** by way of follow up to that meeting. The subject of the email was '*confidential issue'* and it was given high importance. The email was at **pages 58-59** of the bundle prepared for the Interim Relief application. **CH** proposed three actions, which he set out in the email. Where he referred to 'the aggrieved party', this was a reference to **SH**. At point number 3 of his emails, **CH** said he was "*working with HR colleagues, in particular Saadia Azam ('**SA'**) to raise awareness of issues related not just to race but all of the other protected characteristics*."

22. On **26 February 2024**, the Claimant emailed **CH**, attaching a letter on behalf of the GMB, Unite and Unison concerning potential equal pay claims or a mass grievance [**pages 60-61**]. Shortly after that, on the same day, the Claimant had a telephone conversation with **SA**. He called **SA**, who is an inclusion and diversity officer in HR. During this conversation, he discussed the circumstances of the allegation made by **SH** at the meeting of **06 February**. **SA** reported the conversation to her manager, Kerry Rowe. The following day, **27 February 2024**, the Claimant was suspended.

23. Sam Gilmore, the Respondent's Head of Economic Growth, was appointed as investigating officer. He was to investigate the conversation between the Claimant and **SA** on **26 February 2024**. The allegation was phrased as follows:

    " … *that Brian Foulger shared personal and highly confidential information from a meeting and email from the Chief Executive with another member of staff, including whistleblowing and grievance details and allegations against another member of staff*."

24. I was shown a copy of Sam Gilmore's investigation report dated **01 May 2024** [**pages 137 to 144** of the Respondent's Supplementary Bundle. In paragraph 9 Mr Gilmore found that:

"*The conversation between the Claimant and **SA** included discussions around (i) the service review to which SH was subject; (ii) the complaint involving an accusation of misleading the Corporate / Independent Transformation Board(s); (iii) claims of racial discrimination; and (iv) that details of correspondence with the Chief Executive and Unions was disclosed. This is not disputed by either SA or Brian Foulger*."

25. Mr Gilmore recorded what the Claimant considered the purpose of the conversation (paragraph 13 and 15) and the impression SA had of the Claimant 'itching to tell' someone about the matters and that he wanted to talk to someone, 'citing that relationships had broken down with him and the council's human resources' (paragraph 14). In paragraph 23, Mr Gilmore concluded that privileged and confidential information was disclosed during the discussion by the Claimant to SA. He finished by saying:

"*Brian may have believed that this was a legitimate conversation with SA believing that she was privy to the case, involved characters and information. This belief may arise from the misinterpretation of CH's email. However, it is not reasonable to infer this meaning from the text of that email*."

26. Of the four options apparently available to Mr Gilmore, he recommended the matter proceed to a formal disciplinary hearing.

27. In a letter dated **09 July 2024**, the Claimant was informed that he was to attend a disciplinary hearing on **22 July 2024** regarding the allegation:

"*that you have shared personal and highly confidential information from a meeting and emai from the Chief Executive with another member of staff, including whistleblowing and grievance details and allegations against another member of staff*."

28. Towards the end of the disciplinary hearing notes is a reference to Mr Scollay, who chaired the disciplinary hearing, concluding that the Claimant's actions in discussing private and confidential matters with **SA** amounted to a breach of GDPR and amounted to gross misconduct [**page 125**]. He confirmed the decision in writing on **29 July 2024** [**pages 128 – 129**]. In that letter, Mr Scollay says:

"… it is clear to me, despite understanding CH's direction and the sensitivity of the case that you initiated a conversation regarding information that you knew to be privileged and confidential and during which the identity of the subjects were either revealed by you or inferred by SA from what you were saying…"

"Further … you did not stop the conversation when the subject's identity became apparent, as you should have done …. In obvious contravention of CH's email of 21.02.24 and in contravention of the principles of GDPR and the Council's own information and GDPR policies … you did not have consent from SH to discuss her details with Human Resources. …"

"I have seen no evidence of your suggestion that this disciplinary process is in some way motivated in response to your historical activities as a union representative."

29. Mr Scollay said in his letter that, having taken the Claimant's explanation and any mitigating circumstances into account, he concluded that his conduct constituted gross misconduct and justified dismissal. There is no reference to considering any lesser sanction. Nor is there any reference in the concluding notes of the disciplinary hearing to consideration of any lesser sanction. It simply says: "*Erik came to a decision that this issue is about gross misconduct and will terminate employment with immediate effect*" [**page 125**].

30. Mr Scollay produced a statement of the evidence he proposes to give at the final hearing of the Claimant's claim for unfair dismissal. Although there is no reference to lesser sanctions in the notes produced or in the letter of dismissal, in paragraph 13 of his statement, it apears that Mr Scollay will say that he 'considered the possible sanctions with particular focus on the distinction between misconduct that may lead to a final written warning and gross misconduct that would lead to dismissal'.

31. He will also give evidence as to the reason for dismissal. He sets out the beliefs that resulted in the Claimant's dismissal in paragraph 17 of his statement as follows:

"… I believed that the Claimant had discussed information of a confidential and sensitive nature to SA which included discussion about:

a. The service review to which SH was subject;
b. The complaint involving an accusation of misleading the Corporate / Independent Transformation Board(s);
c. Claims of racial discrimination by SH; and
d. Details of correspondence between Chief Executive and Unions.

This conversation was not part of the process that CH had determined should be followed in his email of 21st February 2024 … at that time a formal grievance had not been received from SH and SH was not a member of the union the Claimant represented."

32. Finally, in paragraphs 20 and 21, Mr Scollay will say that he believed that the Claimant appreciated the sensitivity of the information being discussed, that he was aware of the confidential nature of the meetings with the Chief Executive and was aware of the actions proposed by CH. He felt that this was in contravention of CH's email and that the Claimant's conduct fundamentally breached his employment contract and as such immediate dismissal was the appropriate sanction.

Discussion and conclusion

33. I was told that by Mr Van Zyl that there will be a dispute as to whether the activities referred to in paragraph 18.1 above amount to trade union activities (i.e. the act of discussing and the content of the discussion with **SA**). As for paragraph 18.2, there is no dispute as to whether the Claimant was engaged in union activities when sending the letter at **page 60-61**. However, the Respondent will contend that this had absolutely nothing to do with the Claimant's dismissal.

34. At the Final Hearing, it will be for the Claimant to establish that:

    a. He was taking part in trade union activities

    b. They activities of independent union

    c. They were carried out at an appropriate time

35. Mr Van Zyl confirmed that it is accepted that the union is an independent trade union and that, if the activities of the Claimant in calling and discussing matters with **SA** are found to be trade union activities that they were done at an appropriate time. Therefore, the only controversial issue in this respect will be whether, in discussing the matters referred to in paragraph 31 a to d above, the Claimant was taking part in trade union activities. If he was, the next controversial and disputed issue will be whether the reason or principal reason for his dismissal was that he had taken part in those activities. I recognise that it is also part of the Claimant's case that the trade union activities consisted not only of the discussion with **SA** but also the fact that he sent the letter of **26 February 2024** [**pages 60-61**]. It is accepted that, in sending that letter, he was taking part in trade union activities. The controversial or disputed issue in that respect was whether it had anything to do with the Claimant's dismissal.

36. The Claimant was employed by the Respondent for more than two years. Unlike a person with less than two years' continuous employment, he does not have to prove that the reason or principal dismissal was for the inadmissible reason. He will have to raise some evidential basis for asserting that his dismissal was for the inadmissible reason. Aside from this, it will be for the Respondent to establish the reason or principal for dismissal in the normal way in any unfair dismissal case and that it was a potentially fair reason.

37. It is absolutely clear to me that the Claimant will be able to raise an evidential basis for asserting that his dismissal was for an inadmissible reason in light of:

    37.1. The context of the discussion with SA – namely, that it arose out of a meeting the Claimant and another trade union representative and SH had with the Chief Executive.

    37.2. The reference to SA in CH's email as being a person in particular with whom CH was working on matters of race discrimination.

    37.3. The timing of the Claimant's suspension and subsequent dismissal.

    37.4. The fact that the purported reason for dismissal focuses on the fact of and the content of discussions with SA and the confidential nature of the subject matter.

    37.5. The severity of the sanction imposed.

38. It will be for the Respondent to show what the reason for dismissal is and that it was a potentially fair reason. It will be for the Claimant, however, to establish he had taken part in

trade union activities [section 152(1)(b)] The other constituent elements of section 152(1)(b) are not in dispute.

The first disputed issue at final hearing: whether the Clamant was taking part in trade union activities?

39. Applying the legal principles set out above, I asked myself the question: is there a pretty good chance that the Claimant will show that he was taking part in trade union activities when:

    (a) He sent the letter at page 60-61?

    And

    (b) he discussed with **SA** the matters raised at the meeting with CH on **06 February 2024**? (i.e. the matters in paragraph 31a-d above)

40. The answer to (a) is 'yes'. Indeed, it is accepted and there is no dispute about that.

41. What then about (b)? In my broad assessment and judgement, the same answer applies to (b). There is a pretty good chance that the Claimant will show he was taking part in trade union activities on **26 February 2024** in discussing the matters for which he was dismissed with SA**.** My reasoning is as follows:

    41.1. The Claimant was calling about a specific matter that had been raised jointly by all three trade union representatives.

    41.2. The person he called (SA) was the EDI officer of the council and a member of HR. She had been expressly mentioned by CH in his email to the Claimant.

    41.3. The fact that SH was a member of a different union is likely to be insufficient to take any discussion regarding her circumstances outside the scope of the Claimant's trade union activities. The Claimant had attended a meeting with her and other trade union reps in a joint capacity – whether or not there were also other ramifications for GMB members. I do not accept the very absolutist position adopted by Mr Van Zyl – that because SH was in a different union it follows that the Claimant cannot be said to have been taking part in the activities of an independent trade union when discussing her case - is likely to succeed at the final hearing.

    41.4. Mr Van Zyl's submission that the Claimant called the EDI officer simply to engage in idle chit chat and gossip does not appear to be a conclusion expressed by Mr Scollay. It is not clear to me from where this submission derives (possibly from the reference by SA having the 'impression' that the Claimant was 'itching' to tell her things). Insofar as Mr Scollay is concerned however, he appeared to be in agreement with the investigator, Mr Gilmore, who expressed the following conclusion in paragraph 24 of his report:

"*Brian may have believed that this was a legitimate conversation with SA believing that she was privy to the case, involved characters and information. This belief may arise from the misinterpretation of CH's email. However, it is not reasonable to infer this meaning from the text of that email*."

41.5. His primary point there appears to be that the Claimant's belief that his discussion was a legitimate union activity was unreasonable.It appears that Mr Gilmore's conclusion was quite simply that the Claimant had divulged privileged and confidential information including names. Neither he nor Mr Scollay expresses any conclusion that the Claimant was simply engaging in idle chit chat. At its highest in terms of how matters were expressed by Mr Gilmore (and adopted by Mr Scollay) it was on the basis that the Claimant's view as to the legitimacy of his conversation with SA was unreasonable.

41.6. I consider it very unlikely that a tribunal will arrive at a conclusion that this was an exercise in idle chit chat or gossip. There is no suggestion that during what was apparently a lengthy telephone call, SA told the Claimant that he should stop talking or that he should not be calling her to discuss such things or that what he was saying was in any way inappropriate. I have had regard to what the Respondent will say regarding SA's 'impression'. Even if the tribunal were to conclude that SA had the impression that the Claimant had been 'itching' to tell her about the matters under discussion and even if he told her that relations between the employer and unions were not good and even if he divulged matters that were confidential, this is unlikely to lead to a conclusion that the Claimant called SA for non-trade union activity reasons or to engage in idle chit chat.

41.7. One of the issues taken by the Respondent is that the Claimant referred to individuals (in particular, SH) by name in breach of confidence. It is, nevertheless, pretty likely that by referring to the individuals directly by name (if indeed he did, and for these purposes I assume so but I repeat I make no findings of fact on that) that a tribunal will conclude that he was doing so as a trade union representative and in the course of and for the purposes of trade union activities. A tribunal is likely to accept that trade union representatives and HR officers have private conversations on a daily basis, in which confidential and private information is discussed. Common language often deployed by trade union representatives in relation to such discussion is that they are 'off the record'. That is the evidence that the Claimant will give at the final hearing (paragraph 21 of his draft statement). Such conversations invariably take place outside more formalised processes or settings. Therefore, even if what the Claimant did was not within the process set out by the council's chief executive following the meeting of **06 February 2024**, how, I asked myself, does that lead to a conclusion that his action falls outside the scope of trade union activities? It is not for an employer to dictate what are appropriate activities of a trade union. I struggled to understand the Respondent's argument on this point. Therefore, I asked – assuming that it was not within the process that the Chief Executive had in mind or mapped out - what was it about a trade union representative having a private

conversation with an HR officer (one who had a remit for equality and diversity) that brings it outside the scope of trade union activities? Mr Van Zyl said that by stepping outside the process this 'exposed' the whistleblower – that is SH. However, he was unable to say in any convincing way what it exposed her to, especially when there appears to be no evidence that SH was or would have been unhappy with the Claimant speaking to SA (indeed, it can be seen from the bundle, that evidence will be adduced to the contrary). Further, there was no suggestion of any risk that what the Claimant spoke to SA about in confidence would be spread inappropriately by her to others. There was indeed no suggestion that this was anything other than a private conversation between the Claimant (a trade union representative) and SA (an EDI officer).

41.8. Further, I do not accept that a tribunal is likely to agree with the point made by Mr Van Zyll in para 36-37 of his written submissions. In **Bass Taverns Ltd v Burgess** [1995] IRLR 596, the Court of Appeal held that an employee who was dismissed for being critical of his employer during an induction day, telling new recruits that it was the union, not the company, that would effectively pursue health and safety issues, was dismissed for trade union activities. The employee's admission that he had gone "over the top" in that case was not to be treated as an admission that he was acting outside his remit as a trade union representative. However, the court was keen to emphasise that not all activities taking place under the auspices of a union, "however malicious, untruthful or irrelevant", would fall within the definition of "trade union activities". In the other case referred to (**Mihaj v Sodexho Ltd** UKEAT/0139/14/LA) the EAT (Slade J) stated, in paragraph 20 the issue for the judge on an interim relief application is whether a tribunal at a full liability hearing was likely to find that the claimant was dismissed for carrying out trade union activities. In so considering this:

*'the way in which those activities was carried out was not relevant unless it was such as described by **Bass** (or **Lyon v St James Press**) that the employee was acting in bad faith, dishonestly or for some extraneous cause or in any other way such as to take those actions outside the proper scope of trade union activities'.*

41.9. It is a question of fact for the final tribunal to decide whether these were trade union activities – the assessment is not whether Mr Scollay reasonably believed them to be trade union activities. I consider it very unlikely that a tribunal will conclude that the Claimant was acting dishonestly, or in bad faith or that he was calling SA for some other cause (such as 'idle chit chat' – the only one suggested) such as to take his activities out of the scope of trade union activities. I do not consider there to be anything in the material I have seen or in the arguments that I have heard to suggest that a tribunal is likely to find a distinction between the doing of the trade union activities and any properly separable or severable 'conduct' of the Claimant in the course of carrying out his activities.

The second disputed issue at final hearing: whether the Clamant was dismissed for taking part in trade union activities?

42. We are not concerned here with 'reasonableness', only the reason. However, reasonableness of process and outcome may have an indirect bearing in that such things may throw light on the reason but essentially it is about identifying the 'reason'.

43. The Claimant has raised enough to put the tribunal on inquiry as to the reason for dismissal being an inadmissible one:

    43.1. The nature, purpose and content of the discussion with SA.

    43.2. The timing of the conversation with SA and of the letter at page 60-61 and his suspension,

    43.3. The conclusions in the report by Mr Gilmore that it was the content of what he discussed with SA that should form the basis of disciplinary action,

    43.4. The dismissing officer relied principally on the fact that the Claimant had revealed names, apparently in breach of GDPR and the principal or key component of that was the breach of confidentiality relating to SH, without inquiring as to whether SH consented.

    43.5. No one has been able to articulate what principles of GDPR were breached other than in broad terms that personal data (names) were mentioned.

    43.6. There is no reference in the dismissal letter to consideration of alternative sanctions; the Claimant had been employed for 20 years and the severity of the sanction has some bearing on the relevance of the decision such that it is likely to throw some light on the 'reason'.

44. As he will have done enough to put the Tribunal on inquiry, it will be for the Respondent to show the reason or principal reason for dismissal and that it was a potentially fair reason. This is not a case where there is any suggestion that the Claimant had lied to SA about anything that he said. He was telling her about the events discussed at the meeting with the Chief executive, a meeting he attended in his capacity as a trade union representative. Consideration of 152 TULRCA requires an inquiry by the final tribunal into what facts or beliefs caused the decision-maker (in this case, Mr Scollay) to decide to dismiss. Mr Scollay will say that he dismissed the Claimant because he had discussed confidential matters with SA – and not because of the letter at pages 60-61. He will say that he believed that in so discussing matters with SA (i.e. in doing what a tribunal is pretty likely to conclude was the taking part in trade union activities), the Claimant had breached confidentiality and acted outside a process determined by the interim chief executive. Even if that is right, there is a pretty good chance (even ignoring the letter at page 60-61) that a tribunal will conclude that the things for which he dismissed were nevertheless things which the Claimant was doing in the course of and for the purposes of trade union activities, as opposed to engaging in idle chit chat - or in bad faith, or dishonestly (which has not been alleged) – even if in the course of doing so, he mentioned names or stepped outside what CH had envisaged to be a process for managing what they had discussed. Therefore, it is pretty likely (in the sense understood by the authorities) that the Tribunal will conclude the Claimant was dismissed for taking part in trade union activities and therefore automatically dismissed.

45. I also accepted Mr Sharples' submission that the severity of the sanction in this case – instant dismissal of a long-serving employee and trade union official in circumstances where he had an off the record conversation with an HR officer even if names were mentioned – is likely to appear to a tribunal to be so severe as to shed light on the true reason for dismissal.

46. Therefore, as there is a pretty good chance that the Tribunal will conclude that the principal reason for dismissing the Claimant was that he had taken part in the activities of an independent trade union, the application for interim relief succeeds.

47. At the end of the hearing, I was told that the Respondent was unwilling to reinstate or reengage the Claimant in accordance with section 163(2)(b) TULRCA. Therefore, I made an order for the continuation of the Claimant's contract of employment meaning that the Claimant's contract of employment continues in force for the purposes in section 164(1) TULRCA on the terms set out in my order.

Employment Judge **Sweeney**

Date: 25 September 2024

JUDGMENT SENT TO THE PARTIES ON