EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Thomas Batsford	**v**	J D Wetherspoon Plc

Heard at: Bury St Edmunds **On:** 13,14,15, 16 August 2024

Before: Employment Judge K J Palmer

Members: Mr A Fryer and Mrs C A Smith

Appearances
For the Claimants: In person
For the Respondent: Mr K Zaman (counsel)

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The Claimant was employed by the Respondents as a kitchen shift leader in one of the Respondent's pubs in St Ives, Cambridge, between 15 September 2018 and 1 June 2023 when he was summarily dismissed without notice, purportedly by reason of gross misconduct. The Respondents are a National chain of pub providing food and alcohol across the UK.

2. The Claimant presented this claim to the Tribunal somewhat unusually on the same date that he was dismissed, having complied with ACAS early conciliation, also done on the same day. The Claimant is not represented and the claim is home made, albeit the Claimant did receive some legal advice along the way.

3. At a Preliminary Hearing before Regional Employment Judge Foxwell, on 23 February 2024, the claims were clarified and an agreed list of issues was set out. The claims were for unfair dismissal, direct age discrimination and direct sex discrimination. The issues are set out in the summary of that Preliminary Hearing in detail.

4. It transpired, at this hearing, that the Claimant did in fact write to the Tribunal on 18 March after receiving that summary and raised certain points about the accuracy of the summary and how the issues that had been recorded had been recorded. That email sadly, was not on the Tribunal file and it appears that the administration did not in any way deal with it and it was therefore necessary for us to deal with it. After some discussion, the Claimant indicated that he was content that the issues set out in the summary of Regional Employment Judge Foxwell accurately reflected the Claimant's claims save for the fact that the Claimant withdrew those claims marked 5.2.3 and 6.1.4.

5. Regional Employment Judge Foxwell listed this four day hearing which was to take place in person, originally at the Cambridge Employment Tribunal but it was transferred here for a hearing.

6. We had before us a bundle running to some 371 pages and two further tranches of documents handed up by the Respondent's counsel during the course of the proceedings which we marked C1 and C2. We heard evidence pursuant to witness statements from the Claimant, from Theresa Temperley, the Pub Manager, and the investigating officer and instigator of the disciplinary process against the Claimant and also from Sam Kelman, the dismissing officer and from Rachel Turner who conducted the grievance process which the Respondent's chose to handle entirely separately from the disciplinary process.

7. The Claimant, who was off sick for some time in the latter part of 2022 with a broken ankle, had been a kitchen shift leader in the pub for about 8 months under the then pub manager, Michael Loveridge. He applied in October 2022 and again in January 2023 for the role of kitchen manager and we heard that the application remained live between October and January. He was not interviewed for that role on either occasion. Theresa Temperley took over as pub manager in December 2022 when Michael Loveridge left. The Claimant gave evidence that he had largely been trained by Mr Loveridge and looked up to him. When Miss Temperley came in it is correct to say that there was something of a new broom approach. The Claimant was away until January and then off again for most of March, after the birth of a child. Two of those weeks off in March were taken as paternity leave and two weeks as holiday and both were authorised by Miss Temperley.

8. The incidents, which led to the Claimant's dismissal, took place in April 2023 and May 2023 and are set out in the invitation letter to a disciplinary hearing sent to the Claimant by Miss Temperley dated 26 May 2023. This followed a disciplinary investigation process initiated by Miss Temperley and a second investigation by Mr Ormrod.

9. The first investigation initiated by Miss Temperley and conducted by her in accordance with the Respondent's standard operating procedure took place on 3 May 2023. No prior warning was given to the Claimant about the content of that meeting. Miss Temperley started by discussing the Claimant's absence on 27 April, when he had failed to attend for work. He

called in and gave a reason for his absence which, when questioned, he admitted was not the truth or the real reason. The real reason was his perception that he was being mistreated and bullied by Miss Temperley and Jess Lent and had been reduced to tears by the treatment he had received at Jess Lent's hands and had left on 26 April in tears and couldn't face coming into work the following day. He told Miss Temperley all about this at the meeting that she was conducting as the process of the investigation continued. Miss Temperley knew, at that point, that the Claimant was concerned about his treatment at her hands and at the hands of Miss Lent. She also raised the issue that the Claimant had falsified documents by signing off on the system electronically, that he had completed two tasks on closedown when he hadn't, that of the cleaning of the canopy in the kitchen and the defrosting and cleaning of freezers. The canopy issue took place on 26 April. He explained that the way he had been trained under Michael Loveridge previously was that it was acceptable to sign off on tasks and do them later and that others had also been trained in that way. He once again raised the issue that he had not being treated fairly by Jess Lent and Miss Temperley at that investigation meeting.

10. The issue of signing off on a freezer cleaning before completing the tasks was also raised. This had happened on two occasions in April. The first occasion the Claimant explained that he didn't have time to clean the freezer and that the duty Manager had agreed the sign off and said it could be done later. This was Billy Parr. He said the second week he just forgot. These incidents took place on 16 and 23 April.

11. There was one other allegation touched upon in that investigation meeting which was not taken forward and did not ultimately form part of the disciplinary process.

12. Miss Temperley informed the Claimant there and then, that she felt there was sufficient to move the matter forward to a disciplinary hearing and she told the Claimant that this would take place on 9 May at 11.00 am. She also decided to suspend the Claimant at that point. The Claimant then raised a grievance during the early hours of 5 May 2023. This consisted of a five page email which highlighted the treatment the Claimant said he had been subjected to my Miss Temperley and Jess Lent. He had also referred to a number of WhatsApp messages in two WhatsApp chats, including messages of a highly unprofessional nature sent out by both Miss Temperley and Miss Lent. We had these messages before us.

13. In that grievance the Claimant claimed that he was on a hit list of employees that Jess Lent and Miss Temperley were seeking to get rid of. In essence, the grievance included serious allegations against Miss Temperley and Miss Lent about their behaviour. Unfortunately, the Claimant sent the email to Jedd Murphy, who is a Regional Manager but also to the entire pub region that he manages rather than just to Jedd Murphy himself. He sent it from a personal device at home in the early hours of 5 May. He immediately realised his error and sent a following

email asking for the original email to be deleted and explaining that it was only meant for Jedd Murphy and not the entire region. Sadly, the email had, by that time, been disseminated to some 180 pubs. The grievance had arisen directly out of the treatment the Claimant felt he had suffered under Miss Temperley and Miss Lent and was, of course, prompted by the initiation of a disciplinary process against him by Miss Temperley which the Claimant felt was part of that treatment. It is worth mentioning that the Claimant had previously asked Miss Temperley and Daniel Howells, the note taker at the investigation meeting, instigated and conducted by Miss Temperley, for Jedd Murphy's email address but they refused. He then concluded and conducted a search of email on his personal device to find Jedd's address. He was using a personal device as he was at home, having been suspended. He used the email that the search threw up and, of course, it turned out to be the email for the whole region. Albeit that the email reads Pub Region Jedd Murphy and does contain the name of Mr Murphy.

14. The Tribunal accepts that the distribution of this grievance email to the whole region was not deliberate or malicious and was a mistake that any employee might have reasonably made when sending an email late at night from a personal device. We accept that it was just a mistake.

15. Despite the fact that this grievance contained allegations about Miss Temperley and her behaviour, which one might reasonably believe was directly relevant to the disciplinary process the Claimant was undergoing at the instigation of Miss Temperley, the Respondents didn't stay the disciplinary proceedings until the grievance issues had been heard or dealt with. Instead, they proceeded to engage a second investigation process conducted by Mr Ormrod into breaches of the Respondent's internet email policies and data policy. In light of the Claimant sending the email on 5 May mistakenly to Jedd Murphy's Pub Region rather than him personally.

16. The original disciplinary meeting was postponed and subsequently, after seeing the notes of the Ormrod investigation, Miss Temperley determined that the disciplinary process should include allegations of breach of those policies by the sending of that email as part of the conduct charges the Claimant was to face at the disciplinary hearing. She then wrote to the Claimant under cover of a letter dated 26 May 2023, inviting him to a disciplinary hearing on 1 June 2023 to be conducted by Mr Sam Kelman, a pub manager from another area, Milton Keynes. In that invitation the allegations against the Claimant were ranged as the falsification of the electronic records, signing off the cleaning of the canopy and the two freezer cleans before the jobs had actually been done, the false reporting of the sickness absence on 27 April and breaches of the three Respondent's policies, the internet policy, the email policy and the data policy as a result of sending the email to Jedd Murphy's entire region on 5 May. The Respondents decided to proceed with the disciplinary process in parallel and entirely separate from the grievance process, despite the fact that there were allegations of treatment and behaviour in that

grievance which were directly relevant to issues to be considered in the disciplinary process.

17. There was a grievance hearing before Rachel Turner on 10 May 2023. Sadly, however, the outcome of that grievance was not then forthcoming until well after the Claimant had been summarily dismissed on 1 June 2023, it was sent out on 7 July 2023. In it, Miss Turner rejected some of the Claimant's grievances but partially upheld others. As part of that grievance investigation Miss Turner interviewed others at the pub, including Miss Temperley. These interviews took place on 12 May. Matters were touched upon which have direct relevance to the issues that would be the subject of the Claimant's disciplinary hearing on 1 June, including the fact that the allegations concerned falsification of records involving three others who had also countersigned those various records at the same time. These were Arran Batsford, Shared Javid and Billy Parr and she opined that they should all be treated equally. Moreover, she commented on the very unprofessional nature of some of the comments made by Miss Temperley and others during the exchange of WhatsApp messages that were before this Tribunal.

18. The disciplinary hearing then took place before Mr Kelman on 1 June 2023. He decided to summarily dismiss the Claimant there and then without notice.

19. At this point we are minded to comment on the nature of the evidence that we have heard from the various witnesses. We consider that the Claimant gave his evidence very clearly and he did not, in any way, attempt to avoid questions or obfuscate when matters were put to him. He admitted his errors and misdemeanours in the process, openly and honestly. We regard him as a compelling witness and an honest witness. We also accept his evidence that on the balance of probabilities, Jess Lent and Theresa Temperley had an animus against him and treated him poorly compared to others.

20. We also found the evidence of Miss Turner to be open and straightforward and without fault. We were less impressed by the evidence we heard from Miss Temperley who delivered her answers in a clipped tone. She attempted, in our view, to avoid difficult questions and sought to ignore them. Much the same can be said of the evidence of Mr Kelman who told us he had vast experience in conducting disciplinary procedures. He sought to avoid answering difficult questions but did reveal in his live evidence, some very significant points. He said that he knew and was aware of the disciplinary hearing and that the Claimant had raised a grievance but that he hadn't read it and didn't know the contents of it. Despite the fact that the sending of that grievance was one of the main allegations against the Claimant, he chose not to investigate the matter further by looking at the contents of that grievance, whether the contents of that grievance may or may not be relevant to the issues he had to consider. He admitted that his mind was already made up about the Claimant's guilt in respect of the breach of the various policies as he had

been told by Mr Ormrod that the Claimant had disseminated defamatory material about other members of staff and that this amounted to a breach of those policies. He knew, due to the documents, that he had seen that three others had also countersigned the falsified documents. When asked whether he satisfied himself that the others had all been similarly disciplined, he said he had verbally mentioned it so that it could be followed up. We are not inclined to believe him on that point and yet he knew that two others had equally falsified documents. He also knew that the Claimant said that he felt he was being unfairly treated and singled out by Miss Temperley and Miss Lent, both in the way she treated him and in initiating and following through a disciplinary process. The Claimant raised this several times throughout the disciplinary hearing. He was aware that the absence misreporting followed incidents when the Claimant said he had been mistreated and that he had gone home in tears. The Claimant raised this at the disciplinary hearing and therefore it was before Mr Kelman. He knew, also that it was the Claimant's position that everyone trained by Michael Loveridge had signed off items as done before they were done and that others working under him had also had done this consistently. The Claimant mentioned this at the disciplinary hearing.

21. He knew that the Claimant had once talked about these issues and had changed the way he had approached the cleaning of the canopy and the freezers once he had been admonished by Miss Temperley for it and that essentially he had changed his ways.

22. All of this is clearly stated in the disciplinary notes and was before Mr Kelman. We were unimpressed with Mr Kelman's attempt to suggest that the notes had been passed to the Claimant and had been signed off and agreed when this clearly hadn't happened. Yet despite all of this Mr Kelman didn't adjourn to make any further enquiries or consider these points. He decided on the spot to dismiss the Claimant without notice.

23. In terms of evidence we have heard and despite the Claimant's position and despite certain unprofessional comments made by Miss Temperley in the WhatsApp messages about people who go on maternity leave, on the balance of probabilities we do not consider there was sufficient evidence before us to convince us that the animus against the Claimant, pursued by Miss Temperley, was motivated by the fact that he took paternity leave. She signed that off and also allowed him a further two weeks holiday. We think it far more likely that the animus was motivated by desire to clean out all remnants of Mr Loveridge's previous regime and the methods that he had espoused.

24. Finally, Mr Kelman, in evidence, stated that he regarded each and every one of the allegations put to the Claimant in the disciplinary hearing, as alone being sufficient to constitute summary dismissal. This is despite the fact that the allegations concerning the breach of policies were on his own evidence, something he didn't consider as Mr Ormrod had already told him the Claimant had disseminated defamatory material about other staff and that was in breach of the policies.

THE LAW

25. We are very grateful to Mr Zaman for his closing submissions and his setting out of the legal position and we do not propose to repeat each and every aspect of those submissions save for to touch upon them.

26. With respect to the direct discrimination claims, age discrimination and sex discrimination, these are under section 13 of the Equality Act and we are also minded to consider section 123 of the Equality Act because we have some time limit issues that we need to consider in respect of certain of those discrimination claims. We are grateful for Mr Zaman for referring us to the leading case of Hendricks v Commission of the Police for the Metropolis [2002] EWCA Civ 1686 with respect of the consideration of whether acts are of a continuing nature and whether a continuing act means that the time limit runs from the end of that act and we are also grateful to him for referring us to the leading cases on unfair dismissal which we will touch on.

27. Unfair dismissal is governed by section 98 of the Employment Rights Act 1996 and essentially we are concerned with 98(1), 98(2) and 98(4).

Section 98 General.

(1)In 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)relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b)relates to the conduct of the employee,

(c)is that the employee was redundant, or

(d)is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of

> his employer) of a duty or restriction imposed by or under an enactment.
>
> (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.

98(1) tells us that it is for the employer to show what the reason for the dismissal was,

98(2) tells us that we then have to determine, on a neutral basis, whether there is sufficient evidence for us to determine that the dismissal was for a potentially fair reason, and that if we are satisfied that that hurdle has been cleared.

We then go to 98(4) to determine the fairness of the dismissal.

28. In assisting us in coming to a conclusion on the 98(4) test, we are directed to a number of authorities.

29. Leading authorities are, of course, British Home Stores Ltd v Burchell [1978] IRLR39379, which is pertinent in conduct dismissal cases, Iceland Frozen Foods v Jones [1983] ICR17 and also we are grateful to his reference to other cases.

30. Employers have at their disposal a range of reasonable responses to matters such as the conduct or incapability of an employee which may span from summary dismissal down to an informal warning. It is inevitable that different employers will choose different options. In recognition of this fact and in order to provide a standard of reasonableness the Tribunals can apply, the band of reasonable responses approach was formulated. This requires tribunals to ask whether the employers actions fell within the band or range of reasonable responses open to an employer. The approach was first put forward in the case of British Leyland UK Ltd v Swift [1981] IRLR 91, where Lord Denning said the correct test is: was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him then the dismissal was unfair but if a reasonable employer might reasonably have dismissed him then the dismissal was fair. It must be remembered that in all cases there is a band of reasonableness within which one employer might reasonably take one view and another, quite reasonably, might take a different view. This test was then reapplied in Iceland Frozen Foods v Jones where a Tribunal had phrased its finding of unfair dismissal in such a way as to prompt Mr

Justice Brown-Wilkinson to summarise the law concisely as to the approach the Tribunals need to take. He said:

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

(1) The starting point should always be the words of section 98 "for themselves".

(2) In applying the section the Tribunal must consider the reasonableness of the employer's conduct, not simply whether they, the members of the Tribunal, consider the dismissal to be fair. In judging the reasonableness of the employer's conduct the Tribunal must not substitute its decision as to what the right course of action would be to adopt for that of the employer. In many, although not all cases, there is a band of reasonable responses of the employers conduct within one employer might reasonably take one view and another might be reasonably take another view. The function of the Tribunal as an industrial jury is to determine whether, in the particular circumstances of each case, the decision to dismiss the employees fell within the band of reasonable responses which a reasonable employer might have adopted in those circumstances. If the dismissal falls within that band the dismissal is fair, if it falls outside that band it is not fair".

31. We are very mindful of those authorities and very cognisant of the fact that it is not our place to re-hear the disciplinary process and it is not for us to consider matters afresh. We are not here to substitute our view as to what we would have done in the circumstances but, to judge whether what the Respondents did, fell within that band of reasonable responses.

32. With respect to the Claimant's wrongful dismissal claim for breach of contract, the law tells us that in circumstances where the employee has behaved in such a way that his behaviour constitutes a repudiatory breach of contract then the employer is entitled to dismiss the employee without notice. In this circumstance, we would have to determine that the Claimant's behaviour amounted to such a repudiatory breach and therefore entitled the Respondents to dismiss him without notice and the leading authority remains the case of Western Excavating v Sharp [1978] ICR 221.

CONCLUSIONS

33. The Claimant's claim in direct age discrimination appears at paragraphs 5.2.1 and 5.2.2 of the list of issues. We accept Mr Zaman's submission that 5.2.1 is manifestly out of time. The Claimant's claim was presented on 1 June so anything before the 1 March is, on the face of it, out of time. We heard nothing from the Claimant to support any argument that any failure to invite him for an interview in October 2022 was a continuing act under the Hendricks principle. Even on the most generous analysis and interpretation that this application remained live into January when he sent the email to Miss Temperley and she determined that he was not suitable

for that role for whatever reason and that was an end to the matter so January would still be considered to be out of time. We have had no evidence from the Claimant to suggest that it would be just and equitable for us to extend time. We therefore, do not and the Claimant's claim is dismissed as out of time and the Tribunal has no jurisdiction to hear it, that is at 5.2.1.

34. We are bound to comment that in any event we have insufficient evidence before us to conclude, on the balance of probabilities, that any failure to interview the Claimant for that role was in any way connected to his age. The Claimant has also struggled to cite an appropriate comparator in this respect.

35. We apply the same logic to the claim at 5.2.2. It is out of time and fails. Moreover, we have heard no evidence to support the assertion that any such failure was motivated by age. This claim fails.

36. Turning to the Claimant's direct sex discrimination claims, this is based solely on the assertion that he was discriminated against because he took paternity leave. The acts complained of and relied upon are set out in the list of issues at 6.1.1., 6.1.2 and 6.1.3.

    6.1.1 relates to the text of 5 January 2023 and is therefore out of time. There is no question of the continuing act and the Claimant has advanced no evidence or any arguments as to why we should consider extending time. We do not do so. This is therefore dismissed. It is out time and the Tribunal has no jurisdiction to hear it.

    As to 6.1.2, this is not particularised. We have no detail of which colleagues are have alleged to have been blunt or off with the Claimant and no detail of any incidents or acts relied upon. We cannot, therefore, find other than this is unparticularised and misconceived. There is no evidence before us to support it and this claim must fail. It does so.

    As to 6.1.3., that is the act of subjecting the Claimant to a disciplinary process. He asserts that this was because he took paternity leave. We have made a finding of fact on the balance of probability that this was not the case and therefore his claim in sex discrimination must fail along with his claims for age discrimination.

Unfair dismissal

37. Applying section 98.1 and 98.2, we conclude that there is no doubt on the evidence before us that the reason for dismissal was conduct and therefore a potentially fair reason and we then have to turn to section 98(4) and apply the various authorities that I have recited.

38. Applying the Burchell test to our findings of fact we find that the Respondent's belief in the Claimant's guilt was genuinely held. However, it was not reasonably held after a reasonable investigation. The Respondents failed to investigate issues properly which fed directly into

the issues which were the subject of the disciplinary process. The issues raised in the grievance were very pertinent as were issues raised by the Claimant at the investigation meetings and at the disciplinary hearing itself. These merited further investigation as part of the disciplinary hearing but they were ignored. The grievance was treated separately despite being highly relevant. As for whether the decision fell within the band of reasonable responses and the authorities set out above, we accept entirely the proposition that the band is sufficiently wide to commit different employers to arrive at different decisions and conclusions. Mr Zaman is quite right when he says that the Tribunal's task is not to rehear the disciplinary hearing or to consider matters afresh or to substitute its own view. We mustn't substitute our own view as to what we would have done in the circumstances faced by the same set of circumstances the respondents were faced with. That would be wrong. We have to look at what was before the dismissing officer at the time and assess whether his decision fell within the range or band of reasonable responses open to him faced with the information in front of him. So we need to look at what that information was.

39. He had the Claimant's admission that he had signed for tasks electronically that were not completed and that he had misreported his sickness absence on 27 April and that he had inadvertently sent an email to a whole pub region containing sensitive material and individual allegations of mistreatment against other staff and colleagues. He also had knowledge that a grievance had been lodged but didn't know what was in that grievance or make any enquiries as to its contents. He knew that three others had also been guilty of precisely the same falsification of documents at the same time that the Claimant had yet failed to ascertain whether they been subject to disciplinary process as that might have affected how he viewed the Claimant's failures. Of course, we now know in hindsight that those other three were not subject to any disciplinary sanctions save for one received, a performance action plan, which mentioned that failure. We know that Mr Kelman was also aware that the Claimant stipulated that his failures in this respect had been due to the training and mentoring that he had received at the hands of Mr Loveridge and that when admonished he changed his processes and no longer signed off tasks that hadn't been properly done and that it also changed his approach to canopy cleaning and freezer cleaning. We know that Mr Kelman was well aware that the principal instigator of the disciplinary process against the Claimant was someone who the Claimant said was mistreating him and bullying him. The Claimant mentioned it throughout the disciplinary hearing. We know that the Claimant explained that the reason he had misreported his sick day was because the Claimant felt he could not face either Jess Lent or Miss Temperley due to the mistreatment, he felt, he had endured from them. Mr Kelman also knew that the dissemination of the email was a mistake but Mr Kelman had already formed a view that the Claimant was guilty after he was told by Mr Ormrod that the Claimant had disseminated defamatory material and was in breach of the various policies. Mr Kelman also said that any one of the allegations alone justified summary dismissal, yet the one concerning the

breach of policies was a fait accompli and therefore had to result in his dismissal and was bound to do so. Mr Kelman failed to consider any of these points when deciding to dismiss. The decision to dismiss, in the light of that, was not a decision reasonably open to Mr Kelman faced with what he was faced with. The decision did not therefore fall within the band of reasonable responses outlined. The dismissal was therefore substantively unfair.

Procedure

40. We also conclude that the procedure followed by the Respondent was fundamentally flawed. The issues dealt with in the grievance hearing were inextricably linked with the issues to be considered as part of the disciplinary hearing. The failure to conduct that grievance and arrive at an outcome in advance of proceeding with the disciplinary hearing was, in the circumstances, flawed. Moreover, despite the standard operating process stating that the PM should investigate any disciplinary issues, that is merely a guide not to be slavishly followed in every case. The Claimant had raised definitive issues about the treatment he had received from Miss Temperley, who was the person who initiated the disciplinary process, investigated it and decided to proceed to a disciplinary hearing. This was flawed.

41. For these reasons, irrespective of the above, we would find that the dismissal is unfair procedurally. However, this has little or no bearing on any remedy as we found that the dismissal is substantively unfair. There will be a remedy hearing and it will be listed for one day on **15 November 2024, in person, at the Bury St Edmunds Employment Tribunal** before this same Tribunal. We should point out that the Tribunal will have to consider whether compensation should be reduced as a result of the Claimant's contributory fault and will no doubt have to consider the fact that he failed to appeal the decision to dismiss him as part of that remedy hearing.

Wrongful dismissal

42. We found the dismissal to be substantively unfair. The Claimant was summarily dismissed without notice. The dismissal and the failure to pay notice, therefore, constitutes a repudiatory breach of the Claimant's contract and is entitled to damages equivalent to the sums he would have been paid had he received notice pay in lieu of notice worked. That sum will be assessed as part of the remedy hearing.

Directions for the Remedy Hearing

43. Remedy will be in person before this Tribunal on **15 November 2024 at the Bury St Edmunds Employment Tribunal.**

44. On or before **13 September 2024**, the Claimant is to produce a schedule detailing losses, including details of new employment and sums earned between the date of dismissal and the date of the Remedy hearing.

45. The Claimant should, by 27th September, produce such documents that are relevant to evidence that the Claimant attempted to mitigate his loss by finding work that similarly remunerated to that he enjoyed at the Respondents.

46. The Claimant should produce a short witness statement evidencing his attempts to mitigate loss by **27 September 2024**.

47. These documents should all be sent to the Respondent's advisors, not the Tribunal.

48. The Respondents will then produce a bundle properly paginated and indexed, including these documents for use at the Remedy hearing.

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Employment Judge K J Palmer

Date: 29 October 2024

Judgment sent to the parties on
30 October 2024

For the Tribunal Office

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/