EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000912/2024

Held in Glasgow on 22 and 23 October 2024

Employment Judge L Doherty

Mr D McCallion	**Claimant** **In Person**
Menzies Distribution Solutions Limited	**Respondent** **Represented by:** **Mr G Dunlop - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the dismissal was unfair, but that no monetary award should be made.

REASONS

1. This was a final hearing conducted over two days to consider the claimant's a claim of unfair dismissal presented on 25/06/24.The claimant represented himself and the respondents were represented by Mr Dunlop, counsel.

Issues

2. This was a dismissal for the conduct related reason of the claimant removing his tachograph card from his vehicle. The reason for dismissal is not in dispute.

3. The reasonableness of the dismissal is in dispute the basis that:

    a. The respondents failed to follow their own procedure and to follow the ACAs code by not allowing the claimant an appeal;

b. There was disparity between how the claimant was treated and how the respondents dealt with other employees; and

c. The respondents failed to take sufficient account of mitigating factors and the claimant's unblemished record.

4. The issues are therefore whether the decision to dismiss was rendered unfair on account of a procedural failing in the dismissal process; and whether the decision to dismiss fell out with the band of reasonable responses open to a reasonable employer.

The Hearing

5. For the respondents, evidence was given by:

a. Shaun Rafferty: Transport Manager based at East Kilbride Depot, and the investigating officer;

b. Paul Evans: Transport General Manager, and the dismissing officer;

c. Fiona Reith: HR Business Partner; and

d. Andrew Hutchison: Head of Operations Scotland, who dealt with the appeal.

6. The claimant gave evidence on his own behalf.

7. The parties lodged a joint bundle of documents.

Findings in Fact

The respondents

8. The respondents are a company engaged in the haulage and distribution of goods .They operate UK wide but have 5 depots in Scotland and engaged around 170 employees. They are part of the Menzies Group of Companies.

9. Menzies Distribution Ltd (MDL) is also part of the Menzies Group. MDL is a separate company to the respondents. MDL shares at least one depot with the respondents and HR function is also a shared function. Employees of the

respondents and MDL work under different terms and conditions of employment. The two companies have separate certificates of incorporation.

10. The respondents have a disciplinary policy which gives a non-exhaustive list of examples of gross misconduct.

11. The disciplinary hearing provisions provide for a first stage hearing and a right of appeal. It provides that that an outcome of the disciplinary hearing will be issued within 5 working days of the hearing and that an appeal should be lodged within 5 working days.

12. The policy provides that the appeal will take place within 5 working days of receipt of the notice of appeal, and that if this is not feasible the manager will notify the employee in writing and give a date for the hearing to take place which must be within a reasonable time scale. It provides that employees will be advised of the outcome of the appeal in writing within 5 working days.

13. The respondents have an operator's licence from VOSA for the operation of heavy goods vehicles, without which they cannot operate. Tachograph infringements can put that licence at risk, and the respondents take such infringements seriously. Infringements can also carry Civil and Criminal penalties for the respondents and individual drivers. Every driver had his own tachograph card (driver card) which they insert when carrying out any driving of heavy goods vehicles. Tachograph information is downloaded and monitored by a compliance team and the respondents receive a report of any irregularities. It is well known by drivers that the ethos behind the tachograph rules is to ensure drivers take proper breaks in order to avoid the hazards of driving while tired.

The claimant

14. The claimant whose date of birth is 2 January 1969 and commenced his employment with the respondents on 29 July 2021 as a HGV class 2 lorry driver. The claimant had to undergo a training course to obtain this qualification, and he undertook annual CPD training. He was aware of the statutory requirements to take breaks from driving, the reason for the need to

take breaks, and of the importance of maintaining tachograph records. He was aware that he should not remove his driver card while driving.

15. The claimant's gross income from that employment was £490.50 per week and £421.29 net per week. The respondents contributed 3% of the claimant's gross salary to a pension. He was contracted to work 35 hours per week and worked nightshift. Overtime was available. The claimant was issued with written terms and conditions of employment which were updated in February 2024. The claimants shift pattern changed around this time to shorter shifts and one longer shift. Because of unforeseen circumstances, e.g. road works, shifts can sometimes overrun the set hours.

16. The claimant has primary caring responsibility for his wife, which he shares with his son. These responsibilities require to the claimant be home for 7. am on the days when his son is working. The claimant's caring commitments restrict the hours he can work. At least one of the claimant's managers was aware of the claimant's circumstances.

Investigation

17. The respondents received a report of a tachograph infringement over 13-14 March 2024 from the claimant's records, which indicated that the vehicle had been driven without his drivers card. Video footage showed the claimant having stopped, look at his phone and a little later remove his driver's card from the tachograph and drive away.

18. Enquiry was made with the claimant's manager as to was to the reason for the infringement. He took a statement from the claimant on 19 March 2024, in which the claimant accepted that he had removed his drivers card and that this was a mistake. He said that it would not be repeated. The claimant explained that he had been caught in diversion in Leeds on his return trip and realised that he may have to take another break unless he made good time. He had reached Hamilton at the point when he needed to rake his break and due to his concerns that he was unable to get home in time for 7am to resume his caring responsibilities for his wife, he made the decision to remove his

driver card. The claimant's manager confirmed that the claimant held his hands up with no excuses or denial.

19. The claimant was suspended on 26 March 2024.

20. Mr Shaun Rafferty was asked by Mr Paul Evans to carry out an investigation, and the claimant was asked to attend an investigatory meeting by letter dated 27 March 2024. The meeting took place on 2 April 2024. The claimant accepted the conduct and apologised for it. He said that that it was not an excuse but that his wife had health issues which require 24 hour care and that it was only himself and his son at home. He explained that he had been asked to cover an Inverness run in the past which meant that he was late home. This in turn mean that his son was late for work and he had received a disciplinary sanction for that.

21. The claimant explained that on this occasion he knew that he would be late because of a road diversion. When he arrived at Hamilton he thought he could take a 15 minute break, but he needed 45 minutes. He said that he should have just kept driving and marked it manually on the printout. The claimant said that he did not have an excuse. He said that he panicked; he admitted it was wrong and he appreciated it was gross misconduct.

Disciplinary

22. On the conclusion of the meeting Mr Rafferty decided that there was enough to warrant disciplinary action and the matter was passed to Mr Evans to deal with.

23. Mr Evans invited the claimant to attend a disciplinary meeting on 9 April 2024 by letter dated 5 April 2024. He was given the right to be accompanied. In advance of the meeting the claimant was provided with the disciplinary policy, the tachograph reports and the investigatory meeting notes. He was also told that he could view the dashcam footage.

24. In the course of the meeting, the claimant was taken through the dashcam footage. He accepted the conduct and that he knew the consequences for himself and the company, and that it was gross misconduct. The claimant

explained that he should have been home for 7am from the run that day, had it not been for a road diversion. He said he should have known when he saw the diversion that there would be an issue with his time getting back but he just did not think. He also said that on the day of the incident he was very nervous, tired and stressed. He said that prior to 13 April 2024 he had advised the office that he could only work from 7pm to 7am, stressing that he needed to be home by 7am not finished by 7am. He said that it could be seen from the forage that he had stopped at Hamilton and he intended to take break, and it was only after he sat for a few minutes he realised he needed to take 45 minutes and not 15 minutes. The claimant said that he should have continued to drive and mark it manually on the record or call someone from the office.

25. Mr Evans, having thanked the claimant for his honesty, adjourned the meeting to consider his decision. He contacted Ms Reith of HR for guidance. He concluded that the claimant had deliberately removed the drivers card and driven on without it. He decided that given potential consequences of the claimant's action and the gravity of the offence, summary dismissal was the appropriate sanction. He took into account the claimants clean disciplinary record and the mitigation the claimant had advanced but did not consider these sufficient to avoid dismissal.

26. Mr Evans then resumed the meeting and delivered his decision in person. He told the claimant that he would receive a letter confirming the outcome and that he had 5 working days from receipt of that letter within which to lodge an appeal.

27. Due to IT issues, Mr Evan's letter confirming the outcome was not issued until 20 April. The claimant was told he had 7 calendar days to lodge an appeal and that his appeal should be to either Dave Nixon (an operational manager) or Fiona Reith of HR.

28. The claimant was also asked to agree the notes of the meeting, which he did.

Appeal

29. The claimant lodged an appeal on 24 April 2024. He addressed it to both Mr Nixon and Ms Reith. His letter of appeal sated that he believed the decision was unfair for a number of reasons including the following:

1. *My decision to remove my tachograph card was solely based on preventing a medical emergency concerning my wife (I' am my wife's registered carer between 7.30am - 7.30pm).*

2. *At the initial interview in July 2021 for the HGV 2 position, I informed the manager that if successful, I would only be able to accept the job if the hours are strictly between 7pm - 7am, I have also informed other supervisors and managers on multiple separate occasions in the past, how important these times are to my family.*

3. *I believe the disciplinary action was disproportionate to the offence due to the disparity of treatment between colleagues at Menzies Distribution and that this amounts to an unreasonable decision to dismiss me, I have attached a statement letter from a work colleague (James Curran) detailing a similar action/activity to mine, please review this as it is to present new evidence that was not considered in the initial decision.*

4. *There are other similar examples of disparity of treatment between employees (regarding previous tachograph card removal, gross misconduct disciplinary hearings), however I 'am unable to confirm this at this time due to time restrictions with my appeal, however as stated in the headline of section: Scope in the DP&P "The procedure is designed to establish the facts quickly and to deal with disciplinary issues consistently".*

5. *Whilst the following examples (a, b ,c, d) of gross misconduct hearing involving five employees (names can be supplied on request) in my department don't directly come under the disparity of treatment between employees, they are still however (within my time at Menzies Distribution) listed as gross misconduct actions in the company's Disciplinary Policy & Procedure, All of the five gross misconduct*

hearings resulted in each individual employee receiving a Final Written Warning.

30. The claimant went on to list four instances of conduct of other people, unrelated to tachograph offences, which did not result in dismissal.

31. In the letter of appeal, the claimant enclosed a letter signed by a Jim Curran which stated:

"On the night of the incident I was on the Newcastle/Stockton run, after I had used my total allocated driving hours I removed my tachograph card and continued to drive for a further 75km with the card removed, I then reinserted my card for the remainder of the return journey to the depot.

Upon conclusion of my gross misconduct disciplinary hearing, I accepted the Transport Managers decision of an Eighteen Month, Final Written Warning."

32. Both Mr Nixon and Mr Reith received the appeal, however it was overlooked due to holiday commitments and not dealt with within the timescale in the Policy. No contact was made with the claimant advise the time scale would not be met.

33. The claimant obtained advise from the CAB and contacted ACAS on 9 May 2024. An ACAS certificate was issued on 20 June 2024 and the claimant lodged his ET claim on 25 June 2024.

34. At some point after the ET1 was served, HR realised that the appeal had not been dealt with. Ms Reith contacted the claimant on 15 July 2024 to apologise saying that it appeared that a colleague forgot to hold the appeal on their return from leave. She invited the claimant to an appeal hearing on 18 July 2024. The claimant declined to attend the hearing. He emailed Ms Reith on the 15 July providing his reasons for this, which were that the delay was unreasonable and that the drawn out nature of the procedure had caused him and is family untold stress and that he would not add to this. He requested all further communication by email.

35. Mr Hutchison was appointed to deal with the appeal. Albeit he knew that the claimant was not going to attend, he arranged an appeal meeting which he attended with Ms Reith. He formulated question and answers, which were based on the information he had from the disciplinary investigation and meeting and these were produced in the form of notes.

36. Mr Hutchison considered the grounds of appeal.

37. In relation to the point that that the claimant decided to remove the drivers card due to a family medical emergency, he concluded that this was not a sufficient mitigation for the gravity of the offence taking into account the potential consequences of removing the card.

38. Mr Hutchison considered that albeit the claimant may have informed his managers about having to be home by a certain time, this was not reasonable given the nature of the claimant's job and the uncertainties associated with driving such a traffic delays, which meant that he occasionally may have had to overrun his scheduled hours. Even if that happened, he was still legally required to take breaks.

39. Mr Hutchison considered that the claimant's clean disciplinary record did not outweigh the seriousness of the offence.

40. Mr Hutchinson did not find that the claimant had called the office or made any effort to mitigate his offence, which was discovered via a tachograph report.

41. With regard to disparity of treatment, Mr Hutchison was unable to access Jim Curran's personnel record as Mr Curran he worked for MDL, not the respondents. He did not attach any significant weight to his letter as it contained information he was unable to verify. Mr Hutchinson looked at other instances in the respondent's business where drivers had removed their driver card. Some, which in the respondents view were attributable to genuine error, did not result in dismissal. On review he found that on one occasion a driver had momentarily forgotten to insert his card and then immediately did so, and another where the driver had collected the vehicle from Service and realised he did not have his card, and contacted the office and informed them of what

had happened. He did not consider these instances were compatible with the claimant's circumstances, as the claimant had made a deliberate decision to remove his card.

42. Mr Hutchison issued his outcome letter to the claimant on 23 July 2024.

Post Employment

43. After his employment came to an end, the claimant applied for approximately 22 jobs via the website Indeed.

44. The claimant has to date been unsuccessful in obtaining alternative employment. He has previously worked as a taxi driver and a delivery driver. His search for attentive employment has been restricted in the main to heavy goods lorry driving because of the rate of pay. The claimant would lose benefits if he obtained employment which paid the national minimum wage or thereabouts and be worse off financially than he would be if he did not work at all.

45. There was a period over and two months when claimant did not apply for work.

46. The work which the claimant can apply for is also restricted as a result the restricted hours he can work because of his caring responsibilities.

Note on Evidence

47. There were no significant issues of credibility or reliability arising from the evidence of any of the witnesses. Ms Reith on occasion could not recall how matters had occurred, for example she could not recall whether the respondents dealt with the appeal as a result of having received the ET1, and she was unable to accept that Mr Curren's statement had not been received before the claimant's letter of appeal, however the degree to which she could not recall matters was not material to the Tribunal's factual conclusions.

48. The claimant cross examined Mr Evans and Mr Hutchison as to the involvement of the same HR officer at the disciplinary and appeal heaings, however the Tribunal was satisfied that they both made their own decisions, independently notwithstanding any guidance they obtained from HR.

49. The tribunal also accepted the evidence of Mr Hutchison and Ms Reth to the effect that they did not know Mr Curan and could not access HR records. While the claimant and Mr Curran may have worked alongside each other, from the same depot, as put by the claimant in cross examination, the Tribunal accepted the evidence of Ms Reith and Mr Hutchison to the effect that Mr Curran was not an employee of the respondents and that MDL, while part of the Menzies Group, was a different company. The Tribunal was satisfied this was the case despite the fact that the two companies had shared functions and had at least one depot in common. In reaching this conclusion it takes into account that the companies were separately incorporated and its general impression of the witnesses credibility.

50. The claimant impressed the Tribunal as a credible witness. Mr Dunlop took issue with parts his evidence on the basis that some of the matters he gave evidence about were not advanced during the disciplinary proceedings. An example of this is the claimant's evidence that his shift pattern had changed in February and the fact that his first long shift under the new pattern work on 13 March 2024. He also gave evidence as to how tired he felt when he arrived at Hamilton and that he had tried to phone the office but had in all likelihood dialled a wrong number due to fatigue. While this evidence was not relevant to the fairness or unfairness of the dismissal as the Tribunal has to consider the information the respondents had at the time they decided to dismiss, the fact that the claimant presented it at the Tribunal hearing but not before, did not adversely impact his credibility in the Tribunal's view.

Submissions

51. Mr Dunlop handed up some written submissions which he supplemented with oral submissions. In summary, his position was that dismissal was fair; any

procedural failing made no difference to that. In the event dismissal was found to be unfair, there should be 100% reduction in compensation to the compensatory and basic awards on the grounds of Polkey and 100% reduction to the basic and compensatory award on the grounds of contributory conduct.

52. In summary, the claimant referred the Tribunal to the mitigation he presented. He submitted that the respondents had acted not fairly in terms of the ACAS code and their own procedure in failing to hold an appeal, and that this rendered his dismissal unfair, particularly taking into account the size of the company and the resources at their disposal.

Consideration

53. Section 94 of the Employment Rights Act 1996 (the ERA) creates the right not to be unfairly dismissed.

54. Section 98 (1) provides:

"(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) …..

(b) relates to the conduct of the employee,

…….

(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."

55. There is no dispute that the claimant was dismissed for a conduct related reason, which was removing his driver card and carrying on driving. The Tribunal was satisfied that the respondents had established the reason for dismissal, and that it was a potentially fair reason.

56. The issue for the Tribunal is whether the decision was fair or unfair under section 98(4) of the ERA. In considering this, the Tribunal reminded itself that the burden of proof was neutral and that the objective test of reasonableness judged by the standards of a reasonable employer applies to consideration of the test of fairness under Section 98(4).

57. As this is a conduct dismissal the Tribunal took into account the guidance given in the well-known case of *British Home Store v Burchill to* the effect that:

- The employer must believe the employee guilty of misconduct;
- That the employer must had in mind reasonable grounds upon which to sustain that belief; and
- at the stage at which that belief was formed on those grounds, the employer had carried out as much investigation into the matter as was reasonable in the circumstances.

58. The Tribunal concluded that that the respondents had reasonable grounds upon which to conclude that the claimant guilty of the misconduct and that

they had reasonable grounds in which to hold that belief. The claimant candidly admitted the conduct.

59. In considering whether the respondents had carried out as much investigation as was reasonable in the circumstances, the Tribunal had regard to the investigation carried out and the disciplinary procedure applied. Until the stage of the appeal process the investigation carried out and the procedure adopted was reasonable. The claimant was invited to attend an investigatory meeting; he was provided with all of the evidence which the respondents had: he was told of the allegation against him and given an opportunity to respond and he was given the right to be accompanied at the disciplinary hearing.

60. In his cross examination, the claimant made reference to the length of time between the offence and his suspension, however it could not reasonably be concluded that this affected the fairness of the process. The respondents were entitled to carry out their own investigations before deciding to suspend.

61. The claimant raised the delay in Mr Evan's letter in his cross examination.. The Tribunal did not find that anything turned on deviation from the timeline in the policy to the extent that Mr Evan's dismissal letter was late. He provided an explanation for it and there was no prejudice to the claimant as the time limit for appealing ran from the date of the letter.

62. The claimant also questioned the witnesses about the involvement of the same HR officer at the disciplinary and appeal stages. The Tribunal did not conclude that anything turned on this. The respondent's disciplinary officers were entitled to take advice from HR and the Tribunal accepted that they, and not HR, were the decision makers.

63. The claimant also relied on the respondent's failures with regard to the appeal process.

64. It could not reasonably be concluded that the appeal, thought held, was held within a reasonable period. It was lodged on 24 April 2024 but not held till 18 July 2024 and then it was only dealt after the claimant's ET1 was served on the respondents. On that basis, the Tribunal concluded that that the

respondents failed to adhere to their own disciplinary policy in that an appeal was not conducted within a reasonable period and there was no contact from a manager as envisaged by the policy to explain why the hearing was not being held within 5 days.

65. The right to an appeal is embedded in the ACAS Code of Practice.

66. Applying the objective standards of a reasonable employer, the Tribunal concluded that in failing to contact the claimant to advise the time scale for the appeal could not be met and falling to hold an appeal within a reasonable period, as provided for in their own policy, the respondents acted unreasonably. In reaching this conclusion, the Tribunal take into account that the respondents are a sizable employer with dedicated HR support. The claimant had complied with the 7 day time limit in submitting his appeal; his appeal provided detailed grounds of appeal and new information; he had taken the precaution of submitting it to both individuals identified in his dismissal letter; the appeal had been received by both of those individuals but forgotten about; and that it was only after the claimant raised a claim in the Employment Tribunal and his ET1 was served on the respondents that they did anything about the appeal.

67. For these reasons, the Tribunal did not accept that it could conclude, as submitted by Mr Dunlop that the absence of an appeal made no difference, but rather concluded applying an objective test of reasonableness that this procedural failing rendered the decision to dismiss unfair under section 98(4) of the ERA.

Compensation

68. Having reached this conclusion, the Tribunal then went in to consider the question of compensation. The claimant is entitled to a basic award and a compensatory award in terms of section 118 of the ERA.

The compensatory award

69. The compensatory award is calculated under Section 123 of the ERA and shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

70. There is a dispute as to the quantum of the compensatory award, the respondents arguing that the claimant that failed to mitigate his loss.

Polkey Reduction

71. Before assessing the amount of any compensatory award, the Tribunal considered if in principle there should be any reduction to it. It firstly considered if there should be any reduction under the principles to be derived from *Polkey v AE Dayton Services 1988 142 ICR HL*. Following that case, if the Tribunal concludes that there is a 'procedural unfairness' and dismissal is held to be unfair, it has to consider whether compensation should be reduced to reflect the likelihood that the employee would still have been dismissed in any event had a proper procedure been followed. The Tribunal reminded itself that in considering *Polkey* , the burden of proof is on the employer.

72. On the basis of the evidence, the Tribunal was satisfied that if a fair procedure had been followed and the appeal had been heard within the 5 day timeframe specified in the policy or within a reasonable period, then the same reason for dismissal would have emerged. The claimant accepted the conduct which led to his dismissal.

73. The Tribunal then considered whether, but for the unfairness found, the employer acting reasonably would have dismissed for that reason. The appeal was not held within a reasonable period, however the evidence demonstrated that Mr Hutchinson had, albeit late, considered the grounds of appeal, which included an additional ground of disparity of treatment and a statement from Mr Curran. The Tribunal was satisfied that Mr Hutchison considered the basis of appeal and that he considered circumstances of other employees of the respondents who had not been dismissed for tachograph offences, as narrated in the findings in fact. It was objectively reasonable for Mr Hutchison

to consider that their circumstances not the same as the claimant's on the basis that it had not been found they had deliberately removed the driver's card and continued to drive, which were the circumstances pertaining to the claimant. Nor was it unreasonable for Mr Hutcheson to conclude that Mr Curran's letter did not add to his consideration of matters on the basis that Mr Curran was not employed by the respondents; he did not have access to his personnel file; and he did not consider that he could attach any significant weight to the statement in the letter, which he could not verify.

74. The Tribunal was satisfied on the basis of the evidence that had the respondents conducted the appeal hearing within a reasonable period, the result would have been the same, and given the gravity of the offence and the potential consequences of the claimant's actions that they would and could and have reasonably concluded, that the conduct was properly regarded as gross misconduct. Notwithstanding the mitigation advance by the claimant, dismissal for that reason fell within the band of reasonable responses as referred *Iceland Frozen Foods v Jones 1983 ICR.*

75. The effect of that conclusion is that the Tribunal considered that even if the respondents had followed a fair procedure, there was 100% chance that they would have dismissed the claimant and that it was just and equitable to reduce the compensatory award by that amount under Section 123 (1) of the ERA.

Contributory Conduct

76. Section 123 (6) of the ERA provides:

> *"(6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding."*

77. The Tribunal considered whether there should be any reduction to the compensatory award on the grounds that the claimant by his conduct caused or contributed to his dismissal. Mr Dunlop submitted that the contributory element was 100%.

78. The Tribunal was satisfied that the claimant deliberately removed his drivers card and continued to drive, in the knowledge that he should not have done so, and the potential seriousness of the consequences of this action. He accepted this in the course of the disciplinary proceedings. The Tribunal concluded that this conduct was culpable and blameworthy.

79. The Tribunal was also satisfied that it was this conduct which caused him to be dismissed. The effect of that conclusion is that the Tribunal found the appropriate level of reduction to reflect contributory conduct was 100%.

The Basic award

80. The basic award is calculated under Section 119 to 122 and 126 of the ERA. The amount the basic award was agreed at £1,471.50.

81. Under Section 122 (2) of the ERA, a reduction on the ground of the employee's conduct must be made where *'the tribunal considers that any conduct of the complainant before the dismissal was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent'.*

82. The Tribunal concluded that the claimant's conduct was culpable and blameworthy and that given the serious nature of that conduct and the potential consequences of the offence, it was just and equitable to reduce the basic award to zero.

83. The effect of these conclusions is that no monetary award is made against the respondents.

L Doherty
_____
Employment Judge

30 October 2024
Date

Date sent to parties **30 October 2024**