



# EMPLOYMENT TRIBUNALS

**Claimant:** Reverend S Bozos

**Respondent:** The Greek Orthodox Community of Leeds

**Heard at:** Leeds (by video)

**On:** 21 to 23 October 2024

**Before:** Employment Judge Bright

## Representation

Claimant: In person

Respondent: Mr C Howells (Counsel)

# RESERVED JUDGMENT

1. The claimant was unfairly dismissed.
2. The respondent must pay to the claimant the sum of £2,232.67 gross in compensation, representing the basic award.
3. The claimant was not wrongfully dismissed. The breach of contract complaint fails and is dismissed.
4. The respondent did not unreasonably refuse to provide written reasons for dismissal. This complaint fails and is dismissed.

# REASONS

## Background

1. The claimant was a priest for the respondent. By a judgment sent to the parties on 26 January 2024, I found that the claimant was an employee of the respondent. The respondent conceded that, not having appreciated that the claimant was its employee, it unfairly dismissed him without following a proper procedure. This hearing was therefore to determine remedy in the unfair dismissal complaint and both liability and remedy in the claimant's complaints of wrongful dismissal (notice pay) and a failure to provide written reasons for dismissal.

2. The respondent is an unincorporated association. While it can be sued in its own name, the correct respondents are the members of the relevant committee from time to time, in this case the executive committee. Mr Howells confirmed at the hearing that the current members of the executive committee are Mr Costas Tsakirides, Mr Andreas Christou, Dr Christos Hadjicharitou, Mr Barry Paschali, Mr Konstantinos Karakousis, and Mr Charles Kyriacou.

### **Evidence**

3. The respondent called Mr George Karageorgis, Secretary of the Executive Committee, and Mr Barry Paschali, Chair of the Trustees.
4. The claimant gave evidence on his own account and called Mr Leonidas Angelou. He presented written witness statements from Mr Nigel Gotteri, Miss Alexandra D Gioutsou, Mr Pavlos Lykoudis and Miss Elli Konstantakopoulou. Only Miss Gioutsou and Miss Konstantakopoulou were present at the hearing to take the oath/affirm their evidence, but the respondent did not challenge any of the evidence in the statements of the claimant's witnesses, other than the claimant himself and Mr Angelou. I therefore accepted the evidence in the written witness statements of those witnesses who were not cross-examined.
5. The case management order dated 27 February 2024 had suggested the claimant should give evidence first. However, the parties agreed, after the claimant was given time to properly prepare, that the respondent's witnesses should give evidence first, as the central area of dispute was whether the claimant would have been dismissed in any event had a proper procedure been followed.
6. The parties presented an agreed file of documents, of 1172 pages. Further documents were added to the file of documents, by consent, during the hearing, at pages 1173 to 1186. I have read and taken into account those pages of the bundle to which the parties referred me, either by way of cross reference in their witness statements, verbally during the course of the hearing (including cross-examination) or in the claimant's email to the Tribunal on the first day of the hearing.

### **Issues**

7. It was agreed at the outset of the hearing that the issues to be decided were:
8. Unfair dismissal
  - 8.1. What basic award is payable to the claimant, if any?
  - 8.2. What financial losses has the dismissal caused the claimant?
  - 8.3. Has the claimant taken reasonable steps to replace his lost earnings, for example looking for another job?
  - 8.4. If not, for what period should the claimant be compensated?
  - 8.5. Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

- 8.6. If so, should the claimant's compensation be reduced? By how much?
- 8.7. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 8.8. If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- 8.9. Does the statutory cap apply?

9. Wrongful dismissal/notice pay

- 9.1. What was the claimant's notice period?
- 9.2. Was the claimant paid for the notice period?
- 9.3. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 9.4. If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion up to 25%?

10. Written reasons for dismissal

- 10.1. Did the employer unreasonably refuse to provide written reasons for dismissal? If so, the claimant is entitled to an award of two weeks' pay.

**Findings of fact**

11. These reasons do not seek to address every point or fact about which the parties have disagreed. Nor do they mention all of the points or facts which, in his oral submissions, the claimant requested receive a mention. I only deal with points and facts which are relevant to the issues identified above. If I have not mentioned a particular point or fact it does not mean that I have overlooked it. It is simply because it is not relevant to those issues.
12. I have made the following findings of fact. Where there was a dispute of fact, I have resolved it on the balance of probabilities, on the evidence before me.
13. The respondent is a community which follows the teachings of the Greek Eastern Orthodox Church. The members of the respondent are all Orthodox Christians under the spiritual jurisdiction of the Archdiocese of Thyateira and Great Britain (the Archdiocese). The respondent is a registered charity, made up of two committees: the Trustee Committee and the Executive Committee. The Trustee Committee is responsible for the financial and administrative matters in the operation of the parish, as set out in the Trust Deed. The Executive Committee is responsible for the day-to-day operation of the respondent and operates in accordance with a constitution ("the Constitution") adopted and voted by the clergy-laity. The Executive Committee was elected by the community as a whole.
14. Priests, like the claimant, are seconded from the Church of Greece (where he is ordained and assigned to the Metropolis of Mesogaia and Lavreotiki under Metropolitan Nilolaos) to the Archdiocese and then assigned by the Archbishop of the Archdiocese to serve local communities. The claimant applied and was assigned to serve the Respondent community after consultation with the respondent's committees. The claimant, like other seconded priests, remained a priest of the Greek Orthodox Church in Greece,

throughout his secondment, but was, I found in January 2024, an employee of the respondent until his dismissal. I accepted the respondent's evidence that, at the time of the claimant's dismissal, the respondent genuinely did not understand that the claimant was an employee and that it had employment law obligations in that respect.

15. Both the Constitution (pages 100 – 101) and the claimant's contract of employment (pages 143 - 150) set out the claimant's duties. I accepted the undisputed evidence of the respondent's witnesses that the claimant's role was to provide spiritual and pastoral care, be registrar for weddings, baptisms and funerals, to conduct confessions and catechisms, and church services on Sundays and during weekdays/holy days. The respondent says the dates and times of services and duties were agreed between the priest and the respondent, to be on dates and at times to suit the community. While the claimant did not expressly challenge this evidence in cross examination, in his evidence he implied that it was his decision, as priest, when services and duties were to be carried out. The claimant's contract of employment (page 148) listed amongst his duties: holding church services and divine liturgies on Sundays and "Great Feast Days", delivering divine liturgy for the Greek School once a month or as agreed with the Greek School headteacher, preparing a monthly schedule of church services in collaboration with the church chanters, delivering sermons during divine liturgies, providing catechism for children and adults, helping and supporting the community and Church in its everyday and strategic functions and operations and taking care of the "cleanness and seemly appearance of the Church interior". I find, from the nature of his role, it must be implied that church services and other events would take place at times most convenient for the community, rather than solely to suit the priest or at his convenience.
16. I accepted the evidence of the respondent's witnesses that, once the Covid lockdown restrictions were lifted, it became apparent to the Committee that the claimant was not fulfilling the duties that were expected of him. In particular, the respondent became concerned that the claimant was not providing catechism on a regular basis at the Greek School. The respondent also formed the view that the claimant was reluctant to be in attendance at the Church other than on Sundays, was not readily available to engage with parishioners and was reluctant to provide services on feast days other than on Sundays.
17. I accepted the evidence of the respondent's witnesses that they had concerns about the claimant missing memorials, catechisms and church services at the school, failing to attend to school duties, being unavailable for community members to contact and failing to be physically present at the church. This was supported by the document showing concerns being raised by the Chair of the Greek School, Dr Trakoli (pages 174 – 175) about the claimant failing to provide catechism and hold church services at the Greek School and his refusal to attend school religious and national celebrations.
18. The respondent's concerns were raised with the claimant during Executive Committee meetings. In particular, a review meeting was held with the claimant on 9 December 2021 (pages 180 – 182) in which the respondent spelled out its concerns and what it expected of the claimant. I find from the evidence of the respondent's witnesses and the minutes of the meeting, that

the claimant was defensive and obstructive in the meeting. He made a number of different excuses for not being present at the Church, including that the community computer was at his house, it would be exhausting for him, he did not see the need in the community for him to be there, it would put a strain on his family and/or the commute would stop him working some hours. He did not accept the respondent's requirement that he spend more time at the Church so as to be readily available for parishioners.

19. A further executive committee meeting was held on 18 January 2022, at which members further indicated concerns about the claimant's attitude and that he was being controlling and uncooperative (pages 185 – 191). The claimant produced a report (pages 192 – 207) in which he dismissed many of the complaints received by the respondent about him as "rumours and their 'mud'", blamed others and defended his actions. He produced an alternative proposal as to how he would carry out his duties which did not fully address the respondent's concerns about the pastoral care he was providing, the amount of time he spent at the Church, his accessibility to parishioners or the provision of catechism and services at the Greek School. There is a dispute about whether the claimant delivered on the proposals in his report but, even if he did, those proposals did not satisfy the respondent's requirements, for example for catechism to be delivered each week.
20. I accepted the evidence of the respondent's witnesses that they genuinely believed the claimant was not conducting services for feasts on days other than Sundays, or performing divine liturgy classes on Saturdays. The claimant suggested in cross examination that the evidence of the respondent's witnesses was not credible because there was no statistical documentary evidence to support their assertion that he failed to deliver services on feast days which fell during the week. I preferred the evidence of the respondent's witnesses because it was corroborated by the contemporaneous documentary evidence showing that this was an issue which was raised with the claimant at the time. Although there was a dispute about the regularity of the divine liturgy classes the claimant delivered, even on the claimant's own evidence, he failed to provide divine liturgy classes during January, February and March 2022, despite the issue having been raised with him at the review meeting on 9 December 2021. This evidence supports the evidence of the respondent's witnesses that they had genuine concerns about his performance of his duties.
21. I find, from the respondent's evidence and the documentary evidence, including the claimant's own report (pages 192 – 207) that, although the respondent tried on a number of occasions to address its concerns with the claimant and find ways forward, the claimant was obdurate and evasive when challenged. Although the claimant gave evidence that this was not the case, I preferred the evidence of the respondent's witnesses for the following reasons. The claimant was unable to account properly at the hearing for his failure to accede to the respondent's stated wishes for him to provide catechism at the Greek school on at least two Saturdays per month from January 2022 onwards, or for his failure to provide divine liturgy classes. While he gave general explanations at the hearing, those reasons were not recorded in his report. The documentary evidence supported the respondent's evidence that the claimant was reluctant to make himself available for parishioners. A Facebook post (page 1184 – 1186) shows the

claimant making efforts to restrict his parishioners access to him, in particular by limiting unplanned face-to-face contact. I agreed with Mr Howell's submission that the claimant adopted an entrenched position and was not prepared to meet the respondent's requirements.

22. I accepted the evidence of the respondent's witnesses that relations between the Executive Committee and the claimant had deteriorated to such a degree by mid March 2022, that the Executive Committee clearly felt that the claimant could not continue in post. An Extraordinary General Meeting was called on 14 March 2022, with the Trustees and Executive Committee. The minutes of that meeting (page 211 - 214) record that, after the claimant left the meeting, they voted to approach the Archbishop to discuss the problems with the claimant. One member suggested putting the issues to the claimant to give him the right of reply, but was outvoted. I find that the Trustees and Executive Committee members effectively made up their collective mind at this meeting to remove the claimant from his post.
23. The claimant suggested that the Executive Committee did not have the power to make decisions determining issues regarding his priesthood and that such a significant issue must be a community wide responsibility. However, the claimant was unable to direct me to any such provision in the constitution, his contract or otherwise. I concluded that, the Executive Committee having been elected to represent the community, they were mandated to manage the respondent's affairs, including matters relating to the priest. The Executive Committee were the representatives of the respondent in matters of employment and must, therefore, in the absence of any contractual provision to the contrary, be responsible for the claimant's employment. In my judgment the Executive Committee, voting at the EGM on 14 March 2022, were exercising their right as employers to decide matters relating to the claimant's employment.
24. A delegation of Executive Committee members and Trustees went to see the Archbishop on 17 May 2022 to convey their concerns about the claimant. I accepted the evidence of the respondent's witnesses that the Archbishop asked them what they wanted and they indicated to him that they did not want the claimant's assignment to the respondent to be renewed after the expiry of his secondment at the end of August 2022 (page 223). I accepted Mr Karageorgis' evidence that, by this stage, the Trustees and Executive Committee members were resolute that they could not work with the claimant any more. The Archbishop asked them to put their wishes in writing, which they duly did. I find that the respondent in effect informed the Archbishop that the claimant's contract of employment should be terminated, although they did not understand that the claimant was their employee. The Archbishop told the delegation that he would speak to the claimant.
25. The Archbishop contacted the claimant on 18 May 2022 and told him that he would be transferred to another Greek Orthodox Community when his secondment expired at the end of August 2022. I find that the claimant was therefore given notice on 18 May 2022 of the termination of his contract of employment with the respondent, to take effect on 31 August 2022. Although the claimant was informed by the Archbishop, it was the respondent who had made the decision to terminate his employment. Although the respondent's delegation believed that the Archbishop had the final say with regard to the

claimant's employment, in fact the Archbishop merely gave effect to the wishes of the respondent, reflecting the legal reality that the respondent was the employer and had the power to dismiss. I accepted the evidence of Mr Karageorgis that, had the claimant's secondment been renewed, the Executive Committee would have pursued the termination of the respondent's relationship with the claimant in any event. I accepted his account that the Executive committee "wanted a divorce" and, although they would "rather have a consensual divorce", they were "prepared for an acrimonious one".

26. On 22 May 2022, the claimant issued a public announcement on Facebook, without consultation with the diocese or the respondent, accusing the respondent's delegation to the Archbishop of rejecting and ousting him and suggesting that they did not represent the respondent as a whole. However, there was insufficient evidence that the claimant made any request, either in May 2022 or later, for written reasons for dismissal.
27. It was not disputed that the community consisted of over 300 families, comprising some 600 people. Of these, 32 people signed a petition calling for an extraordinary general meeting to discuss the claimant's position (page 245). The respondent rejected that proposal.
28. On 1 June 2022 the Archbishop wrote to the claimant (page 232) confirming that his secondment would expire at the end of August 2022. The Archbishop informed the claimant that, rather than remain with the respondent for the remaining duration of his secondment, he would be transferred to the Hull Community with immediate effect. The Archbishop asked the respondent to continue paying the claimant his full salary until the end of August 2022 because the Hull Community was not in a position to do so at that time. The respondent agreed. I find that, in transferring the claimant, the Archbishop gave notice that the claimant would not work out his notice period on assignment with the respondent, but would be paid for the remaining two months of his salary. The respondent did not, on the evidence, have any involvement or input into the Archbishop's decision to move the claimant to Hull. The claimant recognized the authority of the Archbishop to determine where he was assigned and accepted that he would obey his ecclesiastical superiors (page 226).
29. On 4 June 2022 the claimant made a further public announcement on the respondent's Whatsapp group, again without consultation with the diocese or the respondent. He informed parishioners that he was being transferred immediately to Hull and was "forbidden to do anything in Leeds" (page 233).
30. On the evening of the same day, Bishop Maximos of Melitini telephoned the claimant to inform him that the Archbishop had suspended his priesthood. It was confirmed by email on 8 June 2022 (page 237) that, "as long as you are on a suspension, de facto you cannot officiate". There was no evidence presented at the hearing from either Archbishop Nikitas or Bishop Maximos as to why the Archbishop changed his mind about the claimant remaining with the respondent until the end of his secondment and decided to transfer him to Hull from 1 June 2022, or why he then abandoned the transfer to the Hull Community and suspended the claimant's priesthood from 4 June 2022. However, from the timeline of events, shown in the documentary evidence, I find that, on the balance of probabilities, it is most likely that it was the

claimant's indiscrete public announcements on social media on 22 May 2022 and 4 June 2022 which antagonized the Archbishop and caused him to re-think his plans for the claimant. There was no other plausible explanation for the Archbishop's change of heart and, in my judgment, the indiscrete nature and timing of the claimant's announcements means it is more likely than not that the Archbishop's decisions were a reaction to those announcements. The respondent had no input or involvement in the Archbishop's decision to suspend the claimant's priesthood.

31. I accepted the evidence of the respondent's witnesses that they felt the need to issue a statement of their own, to quell any rumours and confusion that arose from the claimant's announcements. They issued a statement dated 6 June 2022 (page 236) on the respondent's Facebook page stating that the claimant was no longer priest in charge of the community, thanking him for his service and wishing him well. The respondent continued to pay the claimant for the remainder of his notice period, until 31 August 2022.
32. On 6 June 2022 the Archbishop's office wrote to the Hull Community informing them that the claimant would no longer be assigned to them. The claimant subsequently applied to the Metropolitan of Mesogaia and Lavreotiki for canonical release so that he could be seconded by the Church of Greece to the Antiochian church, one of the other Orthodox dioceses with a presence in the UK. However, on 24 October 2022 (page 189 – 290) the Metropolitan refused the request and informed the claimant, with reference to his position as a priest of the Church of Greece, that "the ecclesiastically fitting solution is to return in humbleness and repentance to the Metropolis of Mesogaia and Lavreotiki to which you belong, at least for the time being, and until you take mature decisions. If this, for whatever reasons, is considered impossible, the only way is to resign from your incumbent-priest position or, so be it, to apply for a non-paid leave".
33. The claimant did not return to Greece, as proposed by the Metropolitan. The respondent put to the claimant that he had failed to mitigate his losses by failing to seek work as a lay-person in the UK from 24 October 2022, when it became clear that he could no longer work as a priest in the UK. The claimant gave evidence on this point that he did not seek work as a lay-person from October 2022 until October 2023 because, having been an active priest for 18 years, a period of adjustment was required. He also gave evidence that he did not seek work during that period because he was continuing to pursue canonical release and was busy with his employment tribunal claim.
34. While I accepted the claimant's evidence that there would inevitably be a period of psychological adjustment from working as a priest to seeking work as a lay-person, in my judgment it was not reasonable to expect to work as a priest in the UK from the point at which the Metropolitan made it clear that the claimant was expected to return to Greece and would not be seconded to another diocese. Separately, on the claimant's own evidence, he had the assistance of a solicitor in these proceedings until July 2023, so it is not clear why his employment tribunal claim precluded him from seeking work prior to that date. There was insufficient evidence, in my judgment, that the claimant was not capable of pursuing his canonical release and managing the employment tribunal proceedings at the same time as looking for employment



as a lay-person. I accepted his evidence that he took steps to become a taxi driver from mid June 2023 but, having failed the test three times, he became an Amazon courier from October 2023. However, he has not explained what change took place in June 2023 that enabled him to start seeking to mitigate his losses at that date, rather than earlier. The claimant accepted that he has a PhD in History from a UK university and is qualified to teach up to A Level at a Greek school, although it was unclear if he can teach in UK schools. He accepted that he did not investigate whether he could work in education in the UK because he was not confident about teaching at his age.

## **The Law**

### Unfair dismissal

35. Section 98(1) ERA provides that it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason falling within section 98(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”. Subsection (2) lists capability, conduct, redundancy, and illegality as other potentially fair reasons for dismissal.
36. Section 98(4) provides that the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) 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 shall be determined in accordance with equity and the substantial merits of the case.
37. Section 123 of the Employment Rights Act 1996 (“ERA”) provides that the compensatory award 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 insofar as that loss is attributable to action taken by the employer’.
38. In unfair dismissal cases, a compensatory award may be reduced where the Tribunal determines that, had a proper procedure been followed, there is a chance that the employee would have been dismissed in any event. This is called a ‘Polkey’ reduction after the case of *Polkey v AE Dayton Services Ltd* [1987] IRLR 50 (HL). This may take the form of a percentage reduction, or a finding that the employee would have been dismissed fairly after a further period of employment (for example, the period in which a fair procedure would have been completed), or, in respect of different periods of loss, a combination of those approaches. The key questions for the Tribunal are: 1) If a fair process had occurred, would it have affected when the claimant would have been dismissed? And 2) What is the percentage chance that a fair process would still have resulted in the claimant’s dismissal? In considering how to assess a Polkey deduction, a Tribunal should take account of the guidance of the EAT in *Software 2000 Ltd v Andrews* [2007] IRLR 568.

39. Section 123(4) provides that, in ascertaining the loss for the purposes of the compensatory award:

‘...the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland.’

40. Thus, a reduction to the compensatory award can be made where a claimant has failed to mitigate the loss they have suffered as a result of the unfair dismissal. An unfairly dismissed employee is expected to search for other work, and will not receive compensation to cover losses beyond a date by which the Tribunal concludes they ought reasonably have been able to find new employment at a similar rate of pay.

41. The burden of proving a failure to mitigate is on the respondent to show that the claimant acted unreasonably, rather than merely failed to take a reasonable step. The Tribunal will consider: 1) What steps the claimant should have taken to mitigate their loss; 2) Whether it was unreasonable for the claimant to have failed to take any such steps; and 3) If so, the date from which an alternative income would have been obtained and the amount of that income.

42. The question of reasonableness is for the Tribunal to determine. The claimant’s views and wishes are not determinative, but merely one factor in the analysis (*Cooper Contracting Limited v Lindsey* UKEAT/0184/15).

43. Where an employee has failed to look for any jobs at all, the employer’s burden of proof is likely to be discharged and it is then for the claimant to explain why such a course of action was reasonable (*Hilco Capital Ltd v Harrington* [2022] EAT 156]

44. A percentage increase or reduction up to a maximum of 25% of the compensatory award can be made to reflect an unreasonable failure by the employer or employee to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures.

#### Wrongful dismissal

45. If an employee is given notice of termination of employment, they will usually be entitled to their normal pay during the notice period. They may work their notice and be paid their normal wage, be placed on garden leave and be paid as normal during the notice period or be paid in lieu of notice in circumstances when the contract is immediately terminated. If the contract is terminated, the employee does not work the notice period and does not get paid any or part of their normal wage for the notice period, they may be entitled to compensation for breach of the obligation to be paid under the contract.

#### Written statement of reasons for dismissal

46. Section 92 ERA provides that an employee is entitled to a written statement of reasons for dismissal from his employer where the dismissal arises from the employer giving notice, terminating without notice or the end of a limited term contract. Section 92(2) requires that, except in specific circumstances related

to pregnancy, maternity or adoption leave, the employee must have made a request for the written reasons.

47. An employee may make a complaint to a tribunal that his employer has unreasonably failed to provide the statement or that the particulars of the statement given are inadequate or untrue (section 93(1)). Where a tribunal finds such a complaint well founded, it may make a declaration as to what it finds the employer's reasons were for dismissing the employee and will make an award of two weeks' gross pay.

### **Determination**

48. In making my judgment, I have considered all of the evidence before me, taken account of the parties' useful submissions and the relevant law, and applied the burden of proof on the balance of probabilities to reach my conclusions on the issues to be determined.

### Unfair dismissal

49. The respondent has conceded that the claimant's dismissal was unfair, as no proper dismissal procedure was followed because the respondent did not appreciate that it was his employer. The issues to be determined in the unfair dismissal complaint therefore relate to remedy only.
50. The respondent concedes that the claimant is entitled to a basic award, and agrees the amount claimed by the claimant of £2,232.67, calculated on the basis of three years' service x 1.5 (age-related factor) x weekly gross salary of £496.15.
51. The central issue in this case is what financial losses the dismissal has caused the claimant, under section 123 ERA (the compensatory award). The claimant's schedule of loss (page 48) identified a loss of salary for a period of twelve months from his dismissal, amounting to £21,206.88, plus employer's pension contributions (unconfirmed) and £500 loss of statutory rights. The claimant gave evidence that he obtained replacement work as an Amazon courier in October 2023. These losses therefore represented the loss the claimant says he sustained during the period September 2022 to October 2023 in consequence of his dismissal by the respondent.
52. The respondent does not dispute the maths. Rather, it's position is that the claimant should not be entitled to any compensatory award on two counts: 1) He would have been fairly dismissed in any event had a fair procedure been followed or for some other reason (Polkey); and/or 2) He did not take reasonable steps to replace his lost earnings during the period September 2022 to October 2023 (failure to mitigate).
53. The first of these arguments requires me to consider whether there was a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason. I find as a fact that the relationship between the claimant and respondent had broken down to the point where the Executive Committee, who represented the respondent as a whole, and Trustees voted by a majority to speak to the Archbishop to request that the claimant be removed. The decision at the EGM on 14 March 2022 to

approach the Archbishop was, in my judgment, a decision to terminate the claimant's employment. The decision was made because the respondent genuinely believed that its relationship with the claimant had broken down, because the claimant was no longer performing core duties that were expected of him and refusing to engage reasonably with the respondent's efforts to address the issue. While the reason for the respondent's decision could have been conduct or performance, I find as a fact that it was the relationship breakdown which lay at the heart of the respondent's decision. The unique nature of the relationship between a community (represented by the respondent) and its priest is such that the breakdown of that relationship to the level displayed in the evidence before me could only result in a total rupture of the relationship. It was this that lay at the heart of the respondent's expression of wishes to the Archbishop that the claimant's assignment to the respondent be terminated. In my judgment the respondent therefore had a fair reason for dismissal, under section 98(1) ERA, for "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held", being the breakdown of the unique relationship between priest and community.

54. I find that the respondent had reasonable grounds for believing the relationship to have broken down. They had genuine concerns, supported by the evidence, that the claimant was not performing core duties (catechism, services on weekdays, being present at the Church for parishioners, and divine liturgy at the Greek school). They raised the issues with the claimant on 9 December 2021, but he continued to fail to do what was expected of him, as illustrated by his own report to the respondent (page 197) and his Facebook post to the community (page 1185). I agreed with Mr Howells' submission that the claimant sending this announcement (page 1185) to parishioners, knowing that it did not reflect what he was expected to do as part of his role and without the agreement of his employer, was precisely the kind of conduct which would seriously damage the relationship of trust and confidence between employer and employee. I agreed with Mr Howells' submission that, having spoken to the claimant and failed to resolve the differences, the respondent had reasonable grounds to conclude that the claimant would continue to fail to engage with their concerns, was looking to take control, was frustrating their instructions, undermining them and that the relationship was not sustainable.
55. The claimant submitted that the Executive Committee did not, in effect, have reasonable grounds to dismiss him because their views did not properly represent the views of the whole of the community. The claimant suggested that there was community-wide responsibility for determining matters relating to the priest's tenure and that the community's views were not fairly represented by the respondent. The fact that the respondent had received complaints and that the concerns about the claimant's performance of his duties were raised at the meeting on 9 December 2021 is evidence that there was concern in the community as a whole. The evidence of the claimant's witnesses that their voices were not fairly represented is not at odds with the respondent's position, as Mr Howells submitted. There were inevitably dissenting voices in the community who might, as Mr Howells submitted, have had reasonable grounds to wish to retain the claimant, but that does not mean that the respondent did not have reasonable grounds for dismissal. I find that the Executive Committee was elected and therefore mandated to manage the

respondent's affairs. The Executive Committee was the respondent's representative in matters of employment and was responsible for the claimant's employment. In taking the vote on 14 March 2022 to approach the Archbishop, they and the Trustees were exercising their right as employers to decide matters relating to the claimant's employment and, in notifying the Archbishop that they did not want the claimant's assignment to continue, they expressed to him their decision, taken on 14 March 2022, to terminate the claimant's employment.

56. I find that the only reason the Executive Committee did not take action to dismiss the claimant directly themselves was because they did not recognise that they were the claimant's employer and therefore had that power. I agreed with Mr Howells' submission that this was due to the unusual arrangement around secondment of priests from the Greek Church and assignment by the diocese to the local community. Had the respondent realized it had the power to dismiss the claimant, I find that they would have commenced proceedings to do so from the date on which they voted to take the issue of the breakdown in their relationship with the claimant to the Archbishop (14 March 2022).
57. I agreed with Mr Howells' submission that the respondent would not have continued to employ the claimant after 31 August 2022 because his secondment came to an end at that date. At the meeting with the Archbishop on 17 May 2022, the respondent indicated that it did not want the claimant's assignment to them to continue after the end of his secondment. The Archbishop told the claimant on 18 May 2022 that he would remain with the respondent only until 31 August 2022, when his secondment came to an end and was due to be renewed and that he would be assigned elsewhere from that date. This was in accordance with the term of the claimant's contract of employment that provided that, if his secondment ended, the respondent had the discretion to terminate the contract with immediate effect.
58. In fact, following the claimant's indiscrete public announcement on social media on 22 May 2022, the Archbishop notified the claimant that his assignment to the respondent was terminating with immediate effect on 1 June 2022. I find as a fact that this was the Archbishop's own decision, without consultation or input from the respondent, in response to the claimant's indiscrete public announcement, as explained to the claimant by Bishop Maximos. It was not, as the claimant submitted, for the same reason he was given notice on 18 May 2022. The claimant recognized the authority of the Archbishop to determine where he was assigned and accepted that he would obey his ecclesiastical superiors (page 226). The Archbishop went even further, following another indiscrete announcement by the claimant, and suspended the claimant's priesthood from 4 June 2022, rendering him unable to practice as a priest at all.
59. I find that, in these rather unusual circumstances, there was no chance that the claimant's employment with the respondent would have continued beyond 31 August 2022 at the latest. The secondment was to end on that date, the Archbishop would not have renewed it, because of the claimant's indiscrete announcements and other behaviour, and the respondent's relationship with the claimant had broken down to such an extent that they wanted to get rid of him. In my judgment, even if the respondent had understood that it was the

claimant's employer and gone about the dismissal process in a fair manner, the outcome would have been the termination of the claimant's employment by 31 August 2022.

60. The claimant was paid his full wages by the respondent until 31 August 2022. In my judgment, the claimant is not entitled to recover any loss after that date because there is no chance that his employment with the respondent would have continued thereafter.
61. The respondent's second argument was that the claimant had failed to take reasonable steps to replace his lost earnings or mitigate his loss. For completeness, I address those submissions here. I find that it was clear to the claimant, from the message from the Metropolitan dated 24 October 2022 (page 189 – 290), that he would not be permitted to continue to practice as a priest in the UK and that, if he wished to continue as a priest, he would have to return to Greece. The claimant did not feel able to return to Greece for family reasons. The only option open to him was therefore to obtain alternative employment in a role as a lay-person.
62. I accepted the claimant's evidence that he required a period of adjustment, after 18 years as a priest, before being ready to seek non-clerical work. In my judgment, given the unique character of a priest's role and the length of time the claimant had served as a priest, it was not unreasonable for him to require a period of adjustment of some weeks or months before being psychologically or emotionally ready to search for non-clerical work. While the claimant did not give evidence as to how long he required to adjust to looking for lay work, in my judgment, given the Metropolitan's clear message that priest work in the UK was not an option, that period ought reasonably to have been a period of weeks or at most a few months.
63. The claimant did not account sufficiently for his total lack of effort to find alternative work until the time when he sought to train as a taxi driver and eventually found work in October 2023 as an Amazon courier. He said he was busy with his employment tribunal claim, yet he instructed solicitors until June 2023 and has been managing litigation and work together since October 2023. He said he was pursuing his canonical release to the Antiochian diocese, but did not offer sufficient explanation as to why it was not possible to do this at the same time as looking for alternative employment. The claimant should act as reasonable man and the claimant's reasons are not reasonable excuses for failing to pursue alternative avenues of income, in my judgment. Taking account of a period of adjustment, I consider that the claimant failed to mitigate his loss from 1 December 2022. If I am wrong on the Polkey issue, therefore, the claimant will be entitled to compensation for lost earnings for the period September, October and November 2022.
64. I agree with Mr Howells' submissions that this was not a disciplinary matter and the ACAS Code of Practice on Disciplinary and Grievance Procedures did not therefore apply and there was no breach of the ACAS Code. There is therefore no uplift in that regard. In light of my findings on Polkey, it is not appropriate to award any compensation for loss of statutory rights, as those statutory rights would have been lost in any event.

Wrongful dismissal

65. The claimant is not entitled to damages for breach of contract in respect of notice because he was not wrongfully dismissed. His contract provided for a notice period of two months. I find that the claimant was given notice by the Archbishop on 18 May 2022 that his employment contract would terminate at the end of August 2022, giving effect to the respondent's decision to dismiss the claimant. The intervening events were initiated solely by the Archbishop and were not decisions of the respondent. In transferring the claimant to Hull and subsequently suspending the claimant's priesthood, the Archbishop gave the claimant notice that he would not be working the remainder of his notice period with the respondent. However the respondent paid the claimant his full pay until 31 August 2022, in excess of the two month notice period set out in his contract of employment, so he suffered no loss from the Archbishop's decisions to transfer him to Hull and then to suspend his priesthood. This complaint therefore fails and is dismissed.

Written reasons for dismissal

66. The respondent did not unreasonably fail to provide written reasons for the claimant's dismissal. The claimant has not directed me to any evidence that he requested written reasons for dismissal. Section 92(2) provides that an employee is only entitled to a written statement of reasons for dismissal if he makes a request for one. This complaint therefore fails and is dismissed.

Employment Judge Bright  
20 November 2024

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