



EMPLOYMENT TRIBUNALS

Claimant: Mr A Albu

Respondent: London Underground Limited

Heard at: Reading (by CVP) **On:** 24 – 26 March 2025

Before: Employment Judge Baran (sitting alone)

Appearances:

Claimant: Ms A Hindley (FRU Representative)

Respondent: Ms L Whittington (Counsel)

RESERVED JUDGMENT

The complaint of unfair dismissal under Part X Employment Rights Act 1996 is well-founded. The Claimant was unfairly dismissed.

REASONS

A. INTRODUCTION

1. By ET1 dated 21st July 2023, the Claimant Mr Adrian Albu brought a complaint of unfair dismissal arising out of the termination of his employment effective from 17th March 2023. By ET3 dated 17th October 2023 the Respondent, London Underground, resisted Mr Albu's claims.
2. The claim was listed for final hearing and determination on 24th – 26th March 2025. Mr Albu attended to give evidence in support of his claim. He was represented by Ms Hindley of the Free Representation Unit. London Underground was represented by Miss Whittington of Counsel. Miss Janine

Lewis, Depot Maintenance Unit Area Manager, and Mr Jonathan Elliott, Programme Delivery Manager gave evidence for London Underground. Mr Elliott gave his evidence from Malaysia, pursuant to permission granted by Employment Judge Quill on 19th March 2025.

B. PRELIMINARY MATTERS

3. This case was before Employment Judge Partington for case management on 29th July 2024. At the hearing, Mr Albu, via his representative Ms Hindley, confirmed that his case was one of ordinary unfair dismissal only. This has also been confirmed in writing. Following further discussion, the issues arising were identified. The case was set down for this hearing with a proposed timetable covering the 3 days.
4. At the outset of this hearing, I took the parties to the case management order made. The parties confirmed that the issues for determination are listed at paragraph 43. Further, it was confirmed that in respect of issue 1.5.2, Mr Albu agreed that at the time of his dismissal by Miss Lewis he had not satisfied the 'Experienced Worker Route' to formal qualification as an approved electrician. The status of his qualifications and whether he was sufficiently qualified for the role he had with London Underground remained in issue between the parties. In particular, the situation at the time of the appeal against dismissal would need to be considered on the evidence.
5. I determined to deal with issues of liability first, leaving questions of any remedy to follow as required. I indicated that I proposed to deal with findings in relation to the 'no difference' or Polkey rule and contributory fault when considering my judgment on liability. I proposed to reserve evidence, submissions and findings on other remedy issues until I had given my decision on liability. Both parties agreed to that approach.
6. A preliminary issue was raised as to the admissibility of text redacted from an email dated 6th April 2022. I was not required to make a ruling on this, as by the time evidence started London Underground had pragmatically acknowledged that I could see what was behind the redaction in another document elsewhere.
7. After hearing detailed evidence, which was complex and took longer than expected, I indicated to the parties that I would be reserving judgment. I also observed that now I was fully apprised of the issues in relation to Mr Albu's qualifications I had reflected on whether I could properly make findings in relation to the 'no difference'/Polkey point at this stage. I heard submissions from the parties as to whether I should do so. My conclusions in this regard will be evident from the judgment below.

C. THE EVIDENCE AND THE DOCUMENTATION

8. In terms of evidence, I was provided with an agreed bundle of documents running to 751 pages. In addition, witness statements were provided by Mr Albu, Miss Lewis and Mr Elliott. I read and considered the statements and the documents they referred to before the hearing started.
9. I was also provided with a Claimant's List of Key Documents, List of Key People and Skeleton Argument. I received a document containing the Respondent's Closing Submissions prior to hearing oral submissions from both parties on day 3.
10. I heard oral evidence from Miss Lewis, Mr Elliott and Mr Albu on oath over the course of days 1 to 3. All witnesses confirmed that the witness statements that they had submitted were true. I took this evidence as their evidence in chief. The witnesses were then questioned.

D. THE TRIBUNAL'S FINDINGS OF FACT

11. I make the following findings of fact based on the documentary and witness evidence. I apply the civil standard of proof, namely on the balance of probabilities, considering in relation to matters in dispute what likely happened. I have confined these findings as far as possible to matters that are relevant to the legal issues that must be determined to decide the claim, as agreed and set out in EJ Partington's order.
12. It is not in dispute that Mr Albu accepted an offer of employment with Tube Lines Limited as a Depot Plant Maintenance Fitter in March 2017. He worked at the Northfields depot. His employment was transferred to London Underground under a TUPE transfer shortly afterwards. Later on in 2017 Mr Albu expressed a wish to be transferred to work at the Cockfosters depot, which was nearer to his home.
13. By September 2019, no transfer had taken place. Mr Albu then applied for a job as a grade AT12 Depot Maintenance Unit Plant Fitter based at the Ruislip depot. He responded to a job advert. The job advert contained a list of essential experience criteria to be required of a successful applicant. The criteria included a qualification requirement that the applicant '*...Must hold formal qualifications (minimum of City & Guilds) in an electrical, electronic or mechanical discipline*'.
14. Miss Lewis confirmed in evidence that a job description would be attached to the job advert. The job description for the role in the bundle cites a different qualification requirement to that in the advert. It reads '*Must hold formal*

qualifications (minimum of City & Guilds Part 1 & 2) in an electrical or mechanical discipline’.

15. Under cross-examination, Miss Lewis initially maintained that the job description in the bundle was the same one that was sent out with the job advert that Mr Albu applied for. She went on to concede however that she could not be certain it was exactly the same. She accepted that there was a change to it at some point. She told the Tribunal that the word ‘*electronic*’, found in the job advert, was removed from the job description following Mr Albu’s dismissal. She maintained however that a City & Guilds level 1 and 2 was always a minimum requirement in the job description.
16. Mr Albu told the Tribunal under cross-examination that he accepted that a job description was attached to the advert, but that he did not have access to it. He has not seen the job description so was unable to say if minimum City & Guilds level 1 and 2 was on it.
17. I consider it unlikely that the job advert reflected the job description essential requirements as they were at the time in some respects but not all. It is more likely that the job description circulated with the job advert simply reproduced the requirements as they stood, and that all differences between the advert and the job description provided are because of later changes to the job description to address the issues arising in Mr Albu’s case. These include removing the word ‘*electronic*’ and adding ‘*Part 1 & 2*’. This is consistent with the way that the job description is recorded in the appeal outcome letter, which is the same as the original job advert. I find as a fact that both aspects of the job description were amended after the appeal outcome of August 2023.
18. I accept Miss Lewis’ evidence that other employees in this Plant Fitter role had the ‘*minimum City & Guilds Part 1 & 2*’ qualifications or their equivalent as set out in paragraph 26 of her witness statement. Whilst she was challenged on this in cross-examination, in particular in relation to employee D, I accept her explanation that they were qualified, and any apparent lack of documentation was because they had subsequently left employment.
19. In making his application for the Plant Fitter role Mr Albu provided his CV and details of his formal qualifications as required by London Underground’s ‘Taleo’ application portal system. He listed 4 relevant qualifications as follows:
 - a. Degree in Electrical and Electronic Engineering – this being his university degree awarded by the Universitatea “Dunarea de Jos” din Galati, Romania in September 1999. I will refer to this as ‘the Romanian degree’
 - b. NVQ City & Guilds 2391 Inspection and Testing Level 3 pass – awarded in April 2007. I will refer to this as ‘the 2391’

- c. NVQ BS 7671:2018, 18th ed of the IET Wiring Regulations Level 3 pass – awarded in April 2019. I will refer to this as ‘the 7671’
 - d. NVQ City & Guilds 2377 Inspection and Testing Level 3 pass – awarded in December 2007. I will refer to this as ‘the 2377’.
20. Mr Albu told the Tribunal that he believed he had the necessary formal qualifications for the Plant Fitter role, by reference to his academic qualifications.
21. Miss Lewis told the Tribunal that she was the Depot Maintenance Unit Area Manager. She oversaw managers and team leaders who in turn managed the Plant Fitters. She was on the interview panel involved in the appointment of Mr Albu. She accepted that Mr Albu was employed in the role at Ruislip by London Underground in full knowledge of his qualifications, although she observed that aside from the CV documents were not requested for review at interview. This was in line with Mr Albu's evidence that he was not asked to bring his qualifications to the interview. Miss Lewis accepted that his application was reviewed by recruitment staff who confirmed he satisfied the qualification requirements and put him forwards for interview.
22. I find as a fact that Mr Albu presented an accurate account of his paper qualifications and his work experience to London Underground. In reliance on his CV and job application, and following interview, London Underground offered the Plant Fitter job to Mr Albu. However, I also find that upon appointment Mr Albu did not hold formal qualifications minimum City & Guilds Part 1 & 2 in an electrical or mechanical discipline, in line with London Underground's approach to the job description requirements.
23. Mr Albu was offered the DMU Plant Fitter role in November 2019. He accepted the offer by signing a contract of employment in June 2020. He was deployed to work at the Ruislip depot. He maintained however a wish to work instead at the Cockfosters depot. He was not transferred. Frustrated, he lodged grievances in June 2020. Miss Lewis accepted that she was part of the management team involved in the transfer request and about whom Mr Albu lodged the grievances.
24. The grievances were considered and ultimately rejected. Following appeal, however, it was proposed on 25th February 2021 to transfer Mr Albu to Cockfosters on a temporary basis from 7th June 2021 until a full-time permanent position became available.
25. At this point Mr Albu had been in post at Ruislip for over a year. As Miss Lewis pointed out under cross-examination, this period coincided with COVID-19 restrictions and lockdown where work was ‘minimal’ with a skeleton staff. No shortcomings in Mr Albu's work were brought to his attention during that period.

No action was taken against him for failing to meet necessary competence or capability standards. Indeed, I find as a fact that at no point during Mr Albu's employment were capability issues ever formally raised with him. He did however fail a practical assessment for a City & Guilds 2391-52 qualification that he had been asked to undertake by London Underground. This was despite him holding an earlier version of the qualification – the 2391 – dating back to April 2007.

26. In preparation for the transfer, Mr Neil Clark, the Cockfosters Depot Facilities Manager, requested sight of Mr Albu's qualifications and training records in May 2021. It was this request that set in motion the chain of events that resulted in Mr Albu being dismissed around 21 months later.
27. Mr Albu started work at the Cockfosters depot on 7th June 2021. At this point, Mr Clark reiterated his request for Mr Albu to provide 'any relevant trade qualifications' by email. Mr Albu provided his 2391 and 2377 certificates and some other certificates. Mr Clark request was repeated on 7th July 2021, asking for formal copies of the City & Guilds certificates by 21st July 2021. Mr Albu was at this point doing duties presented to him by Mr Clark.
28. Following further email exchanges, Mr Albu was invited to a meeting on 1st October 2021 to provide originals of the certificates and to discuss trade qualifications. Mr Albu attended and submitted originals of his Romanian degree, the 2391, the 7671 and the 2377.
29. Mr Clark was dissatisfied with the documents provided. In an email to Euan Taylor, HR, on 8th October 2021 copied to Miss Lewis, he expressed concerns around suspected irregularities on the certificates. He questioned whether the Romanian degree was UK verified and whether it was in the disciplines required by London Underground for Mr Albu's post.
30. Miss Lewis and Mr Clark then suspended Mr Albu on full pay from 12th October 2021, whilst the qualifications issue was investigated. The suspension lasted over 6 months, until 25th April 2022. Mr Albu confirmed in cross-examination that he understood he was suspended because his certificates were 'not good enough'. It took time for enquiries of the awarding bodies to be replied to.
31. During the investigation, it was concluded by Mr Clark that no fraudulent documents had been provided. He confirmed this to Mr Taylor by email on 30th March 2022. I find as a fact that no irregularities were identified by London Underground in respect of Mr Albu's qualifications. Mr Albu was properly certified as having secured the qualifications he relied on when applying for and being appointed to the Plant Fitter role.

32. London Underground had continuing concerns, however, surrounding Mr Albu's qualifications to carry out the Plant Fitter role. This was not around whether his paper qualifications were genuine, but whether they were sufficient for the role in question. In particular, Miss Lewis had questions as regards whether the Romanian degree was equivalent to a sufficient trade qualification in the United Kingdom to authorise Mr Albu to perform the work expected of him in the role.
33. At a meeting on 25th April 2022, Miss Lewis explained that enquiries had been made. London Underground and a vetting agent had not been able to ascertain whether the Romanian degree could be converted to City & Guilds or a fully licenced electrician qualification for work in the UK. Mr Albu explained that he felt he was qualified based on his higher degree and experience working on electrical assets in the UK. It was agreed that he would be returned to work on alternate supported duties back at Ruislip, a larger depot, whilst the matter was resolved and the degree was converted into a UK recognised qualification.
34. In an email dated 6th May 2022, Mr Albu provided a NARIC (National Academic Recognition Information Centre) letter dated 14th April 2004. This confirmed the status of the Romanian degree as being comparable to a British Bachelor degree. He also provided a further copy of an expired JIB Gold Card evidencing qualification as an Electrical Fitter. Miss Lewis responded on 20th May 2022 reiterating that there was a need to convert the Romanian degree into a UK accepted diploma.
35. Unbeknown to Miss Lewis, in the meantime on 17th May 2022 Mr Albu also applied to an organisation called XS Training to complete a UK qualification – City & Guilds Level 3 in Electrotechnical Experienced Worker Qualification 2346-03 in Electrical Installation. I shall refer to this qualification as 'the 2346'.
36. On 9th July 2022, Mr Albu raised concerns about the handling of his situation by Mr Clark and Miss Lewis by email to Andrew Cunningham, Depot Plant and DMU Manager. Mr Cunningham referred the matter on to Mr Taylor in HR. Miss Lewis, copied into the email to Mr Taylor, asked that Mr Albu communicate with his own line managers over his concerns.
37. A further meeting took place on 2nd September 2022 to discuss further information in relation to Mr Albu's qualifications. At the outset of the meeting Mr Albu asserted that he had the qualifications to do the Plant Fitter job. He presented a 'Statement of Comparability' from the United Kingdom National Information Centre for Qualifications and Skills ('UKENIC') dated 24th June 2022. This confirmed that the Romanian degree was equivalent to a Bachelor (Honours) degree in Applied Electronics: Engineer, at RQF Level 6. It was confirmed that

the Romanian degree was not a City & Guilds equivalent or trade qualification. It did not make Mr Albu a UK paper qualified electrician or a mechanic.

38. Discussion then turned to alternative roles for Mr Albu, with Miss Lewis confirming that 'The safety implications of not having this qualification to be a Plant Fitter is too great'. Miss Lewis put forwards a Train Maintainer role which could be offered for Mr Albu to be considered for. In evidence Miss Lewis confirmed that the role of the Train Maintainer was different to that of a Plant Fitter. It was more routine, and was performed as part of a team. It did not require fault finding abilities. At the meeting, she confirmed that redeployment could also be considered.
39. Mr Albu told the meeting that he had looked into alternative qualifications and courses. The note of the meeting does not specifically record that he mentioned the 2346 or his booking with XS Training. Miss Lewis expressed caution about the adequacy of the courses on offer. She confirmed that she was reluctant to give more time for retraining. Mr Albu requested further information about the bullying and harassment policy. The process was explained in the meeting.
40. Under Tribunal questioning, Miss Lewis confirmed that Mr Albu's situation was unprecedented. There was no situation she could refer to where it had been found that an employee was not qualified for the job he had been employed to undertake. There was no specific HR process to follow as it had not happened before.
41. Following the meeting, Miss Lewis emailed Mr Albu on 6th September 2022 with a copy of the relevant policy and procedure to use in respect of bullying and harassment complaints. There is no evidence that Mr Albu used this procedure or lodged any formal complaint under it. Mr Albu accepted under cross-examination that he did not make a formal complaint, explaining that he had lost faith that it was going to be dealt with properly.
42. In addition, following the meeting Miss Lewis made enquiries about alternative qualifications and courses, as raised by Mr Albu. She contacted Mr Shahid Khan, Managing Director of Tesla Technical Training Limited ('Tesla'). Tesla was London Underground's preferred training provider. Following a telephone conversation, Mr Khan emailed Miss Lewis on 5th September 2022 to set out his understanding of the 4 potential routes to being recognised as an 'approved electrician'. The relevant one in this case is the '2346 Experienced Worker Route' – the 2346. This is what Mr Albu had signed up for in May 2022. According to Mr Khan this was for those with verifiable experience and part qualifications. The route required a candidate to present and demonstrate a portfolio of work. In Mr Khan's view, 'From experience, I am not sure plant fitters working on the underground would be exposed to the variety of installation jobs required to

complete this'. Mr Khan stated that a candidate with a 2346 would also need a 7671 and an AM2S trade qualification.

43. Miss Lewis also stated in her witness statement that she considered the City & Guilds document setting out the requirements for obtaining the 2346, and that she contacted XS Training by telephone to ask for an explanation of the 2346 qualification. I accept this evidence, as it is consistent with the matters discussed at the following meeting on 16th September 2022.
44. In summarising her understanding of qualifications required to be a 'fully qualified electrician in the UK', at paragraphs 19 to 21 of her witness statement, Miss Lewis recognised that the 2346 was new, having only been introduced in 2020. She noted that the 2346 was one of the '...other ways by which an employee can demonstrate that they are a UK qualified electrician, meeting the industry standards and regulations required to work safely and competently as an electrician in the UK'. She also stated at paragraph 66 that Mr Khan told her that Tesla did not offer the 2346.
45. At a meeting on 16th September 2022 Mr Albu and Miss Lewis had further discussions about the requirements to start the 2346. Miss Lewis noted that 'The trainer says you need level 1 and 2 so based on that we cannot wait for someone to do a 2-3 year course'. It was proposed that Mr Albu would go onto redeployment based on his qualifications. The Train Maintainer role discussed at the previous meeting was no longer available. Mr Albu asserted that he had enquired with colleges about the 2346. Based on his 10 years' experience and body of work he said he could do the course in 3 – 8 months in college. Miss Lewis expressed concerns over XS Training, and recommended that Mr Albu should speak to Tesla. She confirmed under cross-examination that she had her own concerns about the timeframes being discussed, based on the 4 years it took people she worked with to obtain the necessary experience and qualifications.
46. Following the meeting, Mr Albu was referred for redeployment support on 30th September 2022. He confirmed in cross-examination that this was a voluntary process. I accept his evidence that he fully engaged with the redeployment team by telephone and text message.
47. During redeployment, dispensation was secured for a late application for the Train Maintainer role discussed previously on 6th October 2022. Mr Albu applied by email on 13th October 2022. He stated that he was not sure that the position would be suitable for him, because '...I do have a BEng (Hons) in Electronics and applying for a job where qualifications are not required might well be below the ones I have'. He ultimately withdrew from consideration for this role.

48. Over the course of the following months Mr Albu was referred to around 13 roles in total for application. He was offered a Train Maintainer role at Stratford Market Depot on 20th December 2022. By email dated 4th January 2023 he withdrew from consideration as he did '...not see how the Train Maintainer position would be beneficial for my career and I also fail to understand if I could be using my qualifications and experience should I accept it'.
49. In February 2023, with no alternative role having been secured for Mr Albu, Miss Lewis took steps to draw the redeployment process to a close. After a short extension for an outstanding application to be considered, a meeting was arranged for 23rd February 2023. Mr Albu was warned that 'At the end of redeployment if you have not found alternative, suitable employment your employment at London Underground is terminated'.
50. Meanwhile, on 16th February 2023, Mr Albu emailed Miss Lewis to inform her that '...in parallel to the redeployment process I successfully completed C&G 2346, Electrotechnical Experienced Worker NVQ 3'. He had previously emailed the redeployment team on 19th January 2023 to confirm that he had '...passed 65% of my NVQ3'. Mr Albu was completing the qualification alongside his usual duties and whilst on redeployment. He was challenged over this in cross-examination. He asserted that he had informed the redeployment team of his retraining. He had been pursuing the 2346 on his own time at his own expense, working at various locations to enable him to complete the portfolio of work he was required to submit. He said that he managed to complete the 2346 in 'record time' because he had the experience to complete it.
51. On receipt of the email, Mr Clark and Miss Lewis contacted Mr Khan for further input. Mr Clark questioned whether it would be possible to complete the 2346 in 13 weeks in an email of 16th February 2023. Mr Khan responded that day, expressing that the likely real timeframe was 12-18 months, '...with the operative word being an individual who is experienced and not somebody with no formal electrical qualifications!'. Mr Khan also confirmed that a 7671, 2391 and AM2E assessment would be required along with the 2346 '...to be deemed an approved electrician' and '...to be eligible to apply for a gold card and be recognised by industry as competent electricians'.
52. At the meeting of 23rd February 2023, it was confirmed that the redeployment process could be extended for 4 weeks to accommodate some more ongoing application outcomes. Mr Albu confirmed that he had achieved the 2346. Miss Lewis confirmed her understanding of the need for the additional qualifications (up to date wiring regulations 7671, test and inspect qualification 2391 and the AM2E assessment). Mr Albu was asked if he was saying that he had the electrical qualification. He replied that 'I am not saying that, I am not saying

anything at the moment'. Mr Albu did not provide any certificate or portfolio relating to the 2346 to Miss Lewis for consideration at this point or at all.

53. Mr Albu's 2346 certificate is dated 24th February 2023. He received his authorisation from XS Training to commence the AM2E assessment, upon completion of the 2346, on 26th February 2023. On 13th March 2023 he received confirmation of his booking to attend the AM2E 2 day assessment centre at Woodford Green on 5th – 7th May 2023. Miss Lewis was not informed about these matters.
54. The final applications for redeployment roles were unsuccessful. On 10th March 2023, Mr Alba was invited to a 'Case Conference' meeting. He was warned that consideration would be given to termination of his employment at the meeting. He was given the opportunity to be accompanied by a Trade Union Representative or Colleague.
55. Mr Albu sought postponement of the meeting by email on 15th March 2023. He suggested that he didn't have enough time to prepare. Miss Lewis wrote to refuse the postponement request shortly afterwards. She noted that Mr Albu had called the previous day to inform her that he had '...nothing different or new to share with me and therefore didn't feel meeting me was going to make much difference'. Miss Lewis accepted in cross-examination that she had not requested that Mr Albu provide his portfolio of evidence for qualifications purposes in advance of the meeting.
56. The meeting went ahead on 16th March 2023. Mr Albu attended with his trade union representative Mr Walsh. They did not request any further postponement of the meeting. Miss Lewis attended with Warren McVeigh of HR and a note taker.
57. At the meeting, the unsuccessful redeployment process was noted. Mr Albu confirmed that he had not pursued the Train Maintainer roles because they were 'beneath my qualifications'. Under cross-examination Mr Albu said that this was not the only reason for refusing to be considered for such roles. He told the Tribunal that he thought that if he accepted the role without having an apprenticeship or equivalent this would give London Underground a reason to dismiss him.
58. At the meeting, Mr Albu was further questioned about his qualifications. His 2391 qualification was discussed. Miss Lewis asserted that it would have to post-date 2020 because the 2346 was introduced in the year 2020. 'You did sit an inspect and test a couple of years ago and you failed it with Tesla. This cannot be accepted as part of the 2346 validation. Doesn't matter how many times we go

through it; you are unable to show me the AM2E assessment pass out and gold card'. Mr Albu agreed that he had not completed the AM2E. He did not mention that he was booked to undergo the AM2E assessment. He confirmed that he had a portfolio of work for the 2346 and had been observed by an assessor. He was asked by Miss Lewis to give details of the college that he had done the 2346 with. His answers were not forthcoming on the point – 'I will need to check' – before conversation circled back to XS Training who had been discussed previously.

59. Miss Lewis considered the matter and concluded in the meeting that Mr Albu's employment should be terminated. She referenced safety concerns and the support given during redeployment in applications for alternative roles. She concluded that there was 'not enough evidence that you are an electrician'.

60. Mr Albu was issued with a letter on 17th March 2023 confirming the outcome of the meeting. The reasons for termination of employment were given as follows:

You are not qualified to the required standard for the role that you were employed to undertake

The options for you becoming qualified, with the required knowledge and experience, to that standard have been explained to you and they are not viable for reasons of time

We cannot permit you to continue in that role due to the nature of the role being safety critical in a safety critical environment with health and safety risks for yourself, others and the business being potentially severe

You have been in the redeployment pool for 17 weeks during that time you were offered the role of a Fleet Heavy Overhaul Train Maintainer, but you refused it. You were unsuccessful in obtaining any other role.

The business is not able to continue to sustain the current situation and therefore has no choice but to dismiss you because you are not able to perform the role you were appointed to because you are not properly qualified for that role, you have rejected other roles that were available to you and that you have not found any position that you felt appropriate for you to accept.

61. I find as facts that, at the time of Mr Albu's dismissal by Miss Lewis on 16th March 2023:

- a. Miss Lewis considered that the formal qualifications required for the Plant Fitter role, described in the job advert and job description as '*minimum of City & Guilds*', were a minimum of City & Guilds Part 1 & 2 or the equivalent;

- b. Mr Albu did not hold City & Guilds Part 1 & 2 or an equivalent trade qualification based on experience or time served;
 - c. despite being given the Plant Fitter job by London Underground in November 2019, and his experience and capacity to do the electrical work required of him by his employer (evidenced by the absence of any formal capability or other concerns being raised against him during his time in the role), Mr Albu did not at this time have the formal paper qualifications for the Plant Fitter role that London Underground required of him;
 - d. Mr Albu had embarked upon the route of obtaining equivalent experience or time served trade qualifications to City & Guilds Part 1 & 2 by obtaining the 2346 in February 2023. He did not however hold all of the other qualifications required for equivalence, notably the AM2E assessment which he was not scheduled to undertake until May 2023;
 - e. Mr Albu had not presented his 2346 to Miss Lewis for consideration, nor had he informed her that he was due to undertake his AM2E in May 2023.
62. The dismissal letter confirmed Mr Albu's right of appeal against the decision. He exercised it by email dated 23rd April 2023 with grounds. He raised points in relation to the process adopted, his qualifications for the Plant Fitter role and bullying and harassment. The appeal was referred to Mr Elliott to determine.
63. Mr Albu submitted documents for consideration at the appeal as attachments with his email. These included the qualifications that he had previously put forwards to Miss Lewis – the Romanian degree, the 7671, the 2391 and the 2377. He also included the 2346 that he had not sent to Miss Lewis, and a document described as an 'ECS (JIB Gold Card) – Approved Electrical Fitter JIB grade'.
64. Subsequent to lodging his appeal, on 7th May 2023 Mr Albu achieved his AM2E: Assessment of Occupational Competence Electrotechnical – 'the AM2E'. On 22nd May 2023 he received a new ECS JIB Gold Card. This recognised that Mr Albu was a registered approved installation electrician holding the 7671 and the 2391. It is not entirely clear when these documents were submitted for consideration. They could not have been submitted with the appeal, as it was lodged before the documents were available. There is an undated email that contains attachments in the bundle. Mr Albu submitted folders of documents to Mr Elliott on 22nd June 2023 which he asserts in paragraph 148 of his witness statement contained all of the certificates and qualifications evidence.
65. I find as a fact that Mr Elliott was sent these documents to consider before meeting with Mr Albu to discuss the appeal. This was before having his discussions with Mr Khan of Tesla about qualifications that followed the appeal meeting, as Mr Elliott sets out in paragraph 22 of his witness statement.

66. An appeal meeting took place on 26th June 2023. Mr Albu attended with his trade union representative Paul Jackson. Mr Elliott chaired the meeting and was assisted by Mr McVeigh. During the meeting Mr Elliott confirmed that he had seen the AM2E document dated May 2022 and the new JIB Gold Card expiring on 21st September 2025 [503]. Mr Jackson asserted that Mr Albu's qualifications were higher than City & Guilds 1 and 2. The various other appeal points were explored.
67. Following the meeting, on 5th July 2023 Mr Elliott exchanged emails with Miss Lewis on the issues arising. He also contacted Mr Khan of Tesla to discuss the qualifications issues on a date unknown.
68. There is no note of what was discussed between Mr Elliott and Mr Khan. There is no email following the meeting to confirm what advice Mr Khan gave with regards to qualifications. It is wholly unclear what Mr Khan was presented with by way of Mr Albu's qualifications documents, what he saw, what was discussed and what he advised. This is very unfortunate. Under cross-examination Mr Elliott quite fairly conceded that he himself was confused over some of the matters relied on in his witness statement and the appeal outcome. He confirmed that the appeal outcome was based on Mr Khan's advice.
69. In his witness statement at paragraph 20, Mr Elliott stated that he had '... a fairly lengthy telephone discussion' with Mr Khan. Under cross-examination, he stated that he had had 2 discussions with Mr Khan – one lasting 40 minutes, and a second one lasting in the region of 5 – 10 minutes '...to clarify my understanding ahead of writing the appeal outcome'. Despite these apparently extensive discussions, there is uncertainty over why Mr Khan advised as he did, in the absence of notes or evidence from him.
70. In addition, Mr Elliott suggested under cross-examination that (contrary to his witness statement) he was 'quite confident' that the discussions took place on a Microsoft Teams call, with documents in relation to qualifications being shared on screen. He did however concede that there was a 'possibility' that the discussion was on the telephone with document titles being read through for discussion.
71. In his witness statement at paragraph 22, Mr Elliott confirmed that for the purposes of discussions Mr Khan sent him a copy of the Electrotechnical Assessment Specification (EAS) Qualifications Guide. This is a document that sets out guidance on whether a person has acceptable qualifications to be a UK electrician.
72. Mr Elliott was clear under cross-examination that Mr Khan took him through the Guide, and told him that Mr Albu would need to satisfy the requirements under

Tables 4C, 4D, 4E and 4F of the Guide to satisfy the experienced workers route requirements. At paragraph 23 of his witness statement, Mr Elliott confirmed that after going through documents with Mr Khan, he concluded that Mr Albu had not evidenced the requirements of Table 4E and 4F. He further confirmed that a JIB Gold Card that listed the holder as having the occupation of 'Installation or Maintenance Electrician' could evidence compliance with the requirements of Tables 4B to 4E. If the holder is listed as an 'Approved Electrician', that may be sufficient to satisfy Table 4F.

73. As found above, Mr Albu had submitted to the appeal the new JIB Gold Card. This gave his occupation as 'Installation Electrician, Electrical Fitter, JIB Grade Approved Electrician, Registered Electrician'. He held his 2391 and the AM2E. Mr Elliott accepted under cross-examination that on the face of the Guide Mr Albu satisfied the requirements of Tables 4B to 4F. Mr Elliott's evidence, however, in paragraphs 24 and 27 of his witness statement and under cross-examination was that he and Mr Khan concluded that the requirements of Table 4E and 4F were not met by Mr Albu.
74. Under cross-examination, Mr Elliott was unable to explain this apparent discrepancy. He could not recall the specifics of why Mr Khan had advised that the Table 4E and 4F requirements was not satisfied by Mr Albu's 2391. He recalled taking Mr Khan through the Gold Card. Mr Khan made the clear point to him that this was an electrical fitter card, not an electrician card. Mr Elliott could not explain why Mr Khan would have done this if the new Gold Card had been sent. He accepted that on the face of it the requirements were satisfied by the 2391 which was held by Mr Albu in any event.
75. With Mr Elliott being unable to assist the Tribunal on this point, I have no evidence at all as to why Mr Khan rejected Mr Albu's 2346 and Gold Card as satisfying the Table 4E and 4F requirements. I have not heard evidence from Mr Khan. There is no note or email of the reasons why he took the view he did, or of the advice he gave to Mr Elliott. Tesla did not offer the 2346, which may explain why Mr Khan was not convinced as to whether it was a sufficient qualification. However, I find as facts, in the absence of evidence to the contrary and upon considering the certificates presented in the documents, that the 2346 that Mr Albu was certified as having achieved, along with the AM2E, were recognised and valid qualifications. There is no evidence that XS Training was not a recognised training supplier or that the award of the qualifications to Mr Albu was in any way improper or inadequate.
76. It is however unlikely that Mr Khan would have given the clear advice to Mr Elliott that Mr Albu did not satisfy the Table 4E and 4F requirements if he had seen the May 2023 JIB Gold Card. For this reason, I find as a fact that he did not see it. I

consider it likely that when giving his views to Mr Elliott, Mr Khan was presented with, and was referring to, Mr Albu's expired May 2011 JIB Gold Card. This would have been the only Gold Card available for submission with Mr Albu's appeal email on 23rd April 2023. I find that the old Gold Card was the one sent in with the appeal. Mr Elliott probably sent the old Gold Card document to Mr Khan, rather than the new one sent in subsequently. This would explain why Mr Khan was clear in his view that the card was an Electrical Fitter card, not an Electrician card. Mr Elliott, however, had the new Gold Card available to him to consider, when discussing the appeal with Mr Albu and subsequently when discussing matters with Mr Khan.

77. I am unable however to say why Mr Khan concluded that Mr Albu did not satisfy the requirements of Table 4E and 4F. The old Gold Card confirmed that Mr Albu possessed his 2391. According to the Qualifications Guide, Mr Albu's 2391 satisfied both the Table 4E and 4F requirements. No explanation has been given to me in evidence as to why Mr Khan considered the 2391 inadequate in this regard. Mr Elliott makes no reference to any discussions of the 2391 with Mr Khan at all in his witness statement paragraph 23.

78. Following the advice from Mr Khan, Mr Elliott made his decision on the appeal without further reference to Mr Albu. Mr Albu was issued with a letter on 9th August 2023 confirming the outcome of the appeal. Mr Elliott dismissed the appeal. His reasons included the following:

As part of my investigation, I spoke with a Subject Matter Expert at 'Tesla Technical Training Ltd' to determine whether the above qualifications gave you the necessary credentials to meet the following bullet point listed as 'essential' on the Job

Description:

- Experience in a time served apprenticeship environment:
Must hold formal qualifications (minimum of City & Guilds) in an electrical, electronic or mechanical discipline.*

It is noted that you had not evidenced City & Guilds Part 1 & 2 which would demonstrate evidence of a time served apprenticeship. However, I was advised that an equivalent route is available for experienced workers, and directed to the below guidance document (see Appendix B):

Electrotechnical Assessment Specification (EAS) Qualifications Guide -Qualifications Guide for EAS Appendix 4 - Requirements for Qualified Supervisors and persons carrying out Electrical Inspection and Testing – December 2022'

Whilst you have now evidenced the 'AM2E Assessment of Occupational Competence Electrotechnical' (achieved in May 2023, after your termination date),

you have not evidenced the requirements of Table 4E and Table 4F which are required to support the experienced worker's route.

As such, with the support of the Subject Matter Expert, I concluded that you had not met this requirement of the job description and therefore did not have the required qualifications.

Additionally, I also noted the following which compounded my decision:

- Your ECS JIB card recognises you as an Approved 'Electrical Fitter' and not an Approved 'Electrician'

Mr Elliott also dismissed Mr Albu's appeal in relation to unfair process and the allegations of bullying and harassment.

79. I find as facts that at the time of the dismissal of Mr Albu's appeal by Mr Elliott in the letter of 9th August 2023:

- a. Mr Albu held, on paper, a valid 2346 and an AM2E. He presented these to Mr Elliott.
- b. On the face of it, Mr Albu held equivalent qualifications to the City & Guilds Level 1 and 2 required by London Underground for the Plant Fitter role, obtained via the experienced worker route.
- c. By reference to the new 2023 JIB Gold Card (Installation Electrician, Electrical Fitter, JIB Grade Approved Electrician, Registered Electrician), his 7671, his 2391 and his 2377, Mr Albu had on the face of it satisfied the requirements of Table 4E and 4F to support the experienced worker's route to qualification. He had presented this Gold Card to Mr Elliott.
- d. Going back to Mr Khan's email of 16th February 2023, these qualifications on paper were sufficient '...to be deemed an approved electrician'.

80. In view of these findings, there are 2 clearly apparent and unexplained errors in the letter dismissing the appeal – first in relation to satisfying Table 4E and Table 4F, and second in relation to the Gold Card being an Electrical Fitter one rather than an Electrician one.

81. I also find that Mr Albu was presented with rejection of his 'new' qualifications (i.e. the 2346 and the AM2E obtained after Miss Lewis had decided to dismiss him), and the decision that they were not good enough to satisfy the job requirements for the Plant Fitter role, for the very first time in the appeal outcome letter. This is because Mr Elliott had not at any point discussed with Mr Albu either Miss Lewis' observations on the appeal or Mr Khan's advice on to the qualifications that Mr Albu now held. In particular, Mr Elliott never discussed the EAS Qualification Guide with Mr Albu, or Mr Khan's assessment of whether the new qualifications satisfied the Table requirements.

82. I find as a matter of fact that at the time of the dismissal of the appeal Mr Albu held qualifications equivalent to those required by London Underground for the Plant Fitter role. I find however that Mr Elliott dismissed Mr Albu's appeal on the qualifications point because based upon Mr Khan's advice he believed that Mr Albu did not hold qualifications to satisfy the EAS Qualifications Tables to be a qualified electrician. I accept Mr Elliott's evidence that he relied on Mr Khan. In turn, I find that Mr Khan's advice was given on a mistaken basis in part because he could not have considered Mr Albu's up-to-date JIB Gold Card.

E. THE LAW

83. In relation to unfair dismissal, the relevant statutory provisions are s94, 98 Employment Rights Act ('ERA') 1996. I have reminded myself of the potentially fair reasons for dismissal under s98(2), and the definition of qualifications under s98(3).

84. Further, in considering the correct approach to s98(4) ERA I have borne in mind the approach set out in Iceland Frozen Food v Jones [1982] IRLR 439 and Post Office v Foley [2000] ICR 1283. I have reminded myself that the role of the Tribunal in an unfair dismissal claim is not to substitute its view for that of a reasonable employer acting reasonably in all the circumstances. I must instead approach s98(4) by assessing the employer's actions in dismissing an employee by reference to a hypothetical range or band of reasonable conduct and responses open to a reasonable employer in the circumstances. If the dismissal falls within the band, it is fair. If the dismissal falls outside the band, it is unfair.

85. In submissions, representatives for the parties pointed out various authorities in relation to the reason for dismissal. I have considered them all, but note in particular:

- a. Abernethy v Mott, Hay and Anderson [1974] IRLR 213: a reason for the dismissal of an employee is a set of facts known to the employer, or it may be a set of beliefs held by him, which cause him to dismiss the employee;
- b. West Midlands Co-Operative Society Limited v Tipton [1986] IRLR 112: when assessing the reasonableness of an employer's decision to treat a particular reason as a ground for dismissal, the matters which come to the employer's knowledge through the process of operating an internal procedure must be considered. Account must be taken of information coming to the employer's knowledge at the hearing of the appeal (see too O'Brien v Bolton St Catherine's Academy [2017] ICR 737);
- c. Cobley v Forward Technology Industries plc [2003] ICR 1056: identification of the reason for dismissal does not require consideration of the fairness of

the dismissal, which falls to be considered under s98(4) rather than at the prior stage of identifying the reason for dismissal.

86. On contributory conduct, the relevant statutory provisions are s122(2), 123(6) ERA 1996. I have reminded myself of the principles behind a finding of contributory fault and reductions to compensation set out in Optikinetics Ltd v Whooley [1999] ICR 984 and Steen v ASP Packaging Ltd [2014] ICR 56. I note that for a finding of contribution an employee must be found guilty of culpable or blameworthy conduct. This conduct must be known to the employer at the time of the dismissal and must have been a cause of the dismissal.

87. In relation to any alleged failure to comply with a relevant ACAS Code, I have reminded myself of the provisions of s207A Trade Union & Labour Relations (Consolidation) Act 1992.

F. THE ISSUES

88. It is not in dispute that Mr Albu was an employee of London Underground who was dismissed effective on 17th March 2023. In line with the case management order, the issues that I must determine are as follows:

- a. What was the reason or principal reason for Mr Albu's dismissal? London Underground says the reason was capability (qualifications) or some other substantial reason. That substantial reason is said to be that Mr Albu was dismissed because he could not demonstrate he was an approved electrician, and that he had the necessary formal qualifications as reasonably required by London Underground in order to undertake the DMU Plant Fitter role. The burden is on London Underground to establish a potentially fair reason for dismissal.
- b. If the reason was capability, or indeed some other substantial reason, did London Underground act reasonably or unreasonably in all the circumstances of the case, including their size and administrative resources, in treating that as a sufficient reason for dismissal? EJ Partington's order notes that 9 matters that the Tribunal will consider in this regard. I shall consider them below, in no particular order.
- c. Is there a chance that Mr Albu would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason – and if so, should his compensation be reduced? This is the so-called 'no difference' or Polkey rule;

- d. If Mr Albu was unfairly dismissed, would it be just and equitable to reduce any compensatory award on the basis that he caused or contributed to his own dismissal by his own blameworthy conduct? If so by how much?
- e. Did the ACAS Code on Disciplinary and Grievance Procedures apply? If so, did either party unreasonably fail to comply with it? If so, is it just and equitable to increase or decrease any award payable to the Claimant? If so by what proportion?

G. THE TRIBUNAL'S CONCLUSIONS ON THE ISSUES

a. The reason for dismissal

89. Based on the evidence of Miss Lewis and Mr Elliott, taken with the letter of dismissal and the letter dismissing Mr Albu's appeal, in my judgment London Underground has established that the reason for Mr Albu's decision was capability (qualifications).
90. At the heart of the decisions by Miss Lewis and Mr Elliott, and indeed the very reason why events behind this claim began to unfold from May 2021 when Mr Clark was actioning Mr Albu's transfer to the Cockfosters depot, were Mr Albu's formal paper qualifications. In my judgment, the principal reason for dismissal was Mr Albu's lack of qualifications. Had he held formal City & Guilds level 1 and 2 qualifications, or equivalent, on paper, and presented them to Mr Clark on request or Miss Lewis at the dismissal meeting, he is unlikely to have experienced any difficulties when transferring to Cockfosters at all. It is not of course in dispute that Mr Albu never held those specific qualifications on paper.
91. The belief held by Miss Lewis when terminating Mr Albu's employment, and Mr Elliott when dismissing his appeal, was that Mr Albu lacked the necessary formal qualifications to undertake the role he had been employed to do. I accept the evidence of these witnesses on the point. This was the principal reason for Mr Albu's dismissal.
92. I reject any suggestion that the decision made by Miss Lewis, or the dismissal of the appeal by Mr Elliott, was in any way motivated by animus or ill-will towards Mr Albu. In my judgment, this would run contrary to the facts I have found in relation to attempts to find Mr Albu alternative employment and a role to avoid his dismissal. Nothing in the records of any meetings between Mr Albu and Miss Lewis suggests that there was ill-will on her part. Miss Lewis put forward the Train Maintainer role option in September 2022. Miss Lewis extended the conclusion of the redeployment process to allow applications to be considered. Mr Elliott was an independent manager appointed to hear the appeal. All of these

matters are inconsistent with there being any reason for dismissal related to animosity towards Mr Albu. I do not find that any emails referred to by Mr Albu's representative in submissions are sufficient to cause me to depart from my conclusions based on Miss Lewis and Mr Elliott's evidence as to the reason why they dismissed Mr Albu.

b. Did London Underground act reasonably in all the circumstances in treating the reason for dismissal as a sufficient reason to dismiss Mr Albu?

93. I will address the issues highlighted in the list of issues and drawn to my attention by the parties in their submissions, insofar as I consider them to be relevant, as follows.

94. **1.5.1 - Whether London Underground acted reasonably in suspending Mr Albu for 6 months.** I find that the suspension was reasonable, was not part of any dismissal process and was unrelated to the reason for dismissal. Mr Albu accepted under cross-examination that he understood that the suspension was because his certificates 'were not good enough'. He also accepted that it took time for London Underground to hear back from third parties including City & Guilds in relation to the certificates. In my judgment a reasonable employer is entitled to suspend an employee on full pay for investigations to be carried out if it suspects irregularities in the qualifications presented to secure a job role. This is particularly so where the qualifications relate to safety critical aspects of the employee's ability to perform a job role. Further, in my judgment the duration of the suspension was not unreasonable as London Underground had no option but to await confirmation from third parties as to the status of the certificates in question.

95. **1.5.3 - Whether London Underground can show that the role required an approved electrician, and that requirement was communicated to Mr Albu at a reasonable time prior to dismissal.** In my judgment, London Underground was reasonably entitled to require Mr Albu to hold approved electrician qualifications to perform the Plant Fitter role. It is unfortunate that the job advert and description did not clearly set out requirements for '*...minimum of City & Guilds Part 1 & 2*'. In my judgment however an employer is reasonably entitled to set the standards for qualifications of its workforce as it sees fit, particularly where technical and safety critical matters are concerned as here. Regardless of whether the advert or job description included the additional words '*...Part 1 & 2*' or not, London Underground were reasonably entitled to interpret it that way and insist on that requirement for those in Plant Fitter roles.

96. **1.5.5 - Whether London Underground adequately warned Mr Albu and gave him a chance to improve prior to his dismissal, and 1.5.8 - Whether London Underground supported Mr Albu in requalifying as an approved electrician.** In my judgment, the process adopted by London Underground was reasonable, and gave Mr Albu a fair opportunity to improve and demonstrate necessary qualifications for his role over the course of at least 10 months from April 2022 prior to dismissal.
97. Mr Albu knew from correspondence and meetings that his continued employment was at risk because his formal paper qualifications did not meet London Underground's requirement for the Plant Fitter role. He knew that he needed equivalent or additional qualifications from this point, and enrolled on a course to obtain them in May 2022. By the time of dismissal of his appeal in August 2023 he had obtained the equivalent qualifications.
98. In respect of support and improvement I find that the process adopted by Miss Lewis to address the situation was a reasonable one in the absence of a formal procedure to fall back on in the unusual circumstances of Mr Albu's case. It was similar to the approach a reasonable employer might take in any capability situation involving competence of an employee. It was of a reasonable duration. It was reasonable that Miss Lewis oversaw the process as being the Depot Maintenance Unit Area Manager. As I have already found, her conduct was not motivated by animus or ill-will towards Mr Albu.
99. Further, in my judgment, London Underground were not reasonably required to offer any additional support to Mr Albu with retraining to satisfy the basic qualification requirements of his role. There is no evidence that Mr Albu asked for any support or for assistance in arranging his portfolio assessments. It is to his credit that he did these on his own initiative. Miss Lewis was not told that he was undertaking the 2346 until it was completed. In my judgment, a reasonable employer would be entitled in the circumstances to look at redeployment rather than retraining to address the apparent lack of formal qualification of an employee for the role they were employed in.
100. **1.5.9 - Whether London Underground reasonably considered alternative employment for Mr Albu.** Mr Albu was able to apply for numerous roles appropriate to his qualifications as they stood at that time during the redeployment process that lasted a little over 5 months. He was offered Train Maintainer roles which he declined. In my judgment, the process adopted gave a more than adequate and reasonable opportunity for Mr Albu to take up alternative employment.

101. **1.5.6 - Whether London Underground treated Mr Albu consistently compared with other colleagues doing the same role and where they were required to have the same qualifications.** The same qualification requirements were required pursuant to the job description of all London Underground employees in the Plant Fitter role. London Underground did not apply a different qualification requirement to Mr Albu. Consistent treatment of qualifications was in the circumstances here a reasonable approach.
102. **1.5.2 - Whether Mr Albu was ‘an approved electrician with a formal qualification from City & Guilds’ as required by London Underground, and 1.5.4 - whether London Underground adequately considered all the qualifications held by Mr Albu at the time of his dismissal and at the dismissal appeal stage – Mr Albu’s qualifications.** Based on my findings above, Mr Albu did not have the formal qualifications reasonably required by London Underground for the Plant Fitter role at the time of his dismissal by Miss Lewis. Miss Lewis expressly relied in the dismissal meeting on the fact that Mr Albu did not have an AM2E and a Gold Card. But by the time of the appeal, he had the AM2E and a new Gold Card. He had the additional formal qualifications which were equivalent to those required for the role in line with London Underground’s interpretation of the job description requirements.
103. In my judgment, in the circumstances as they stood at the time of the rejection of the appeal against dismissal, no reasonable employer could fairly dismiss Mr Albu for lacking the required qualifications. London Underground failed to adequately consider all of Mr Albu’s qualifications at the time of the appeal, including the new qualifications he had obtained since the dismissal decision. Pursuant to West Midlands Co-Operative Society Limited v Tipton (above) it was obliged to consider these new matters at the appeal stage.
104. Mr Elliott knew that Mr Albu had a new 2023 JIB Gold Card (Installation Electrician, Electrical Fitter, JIB Grade Approved Electrician, Registered Electrician), a 7671, a 2391 and a 2377. He had seen the Gold Card. He either failed to share that new Gold Card with Mr Khan, or allowed Mr Khan to be mistaken on the status of the Gold Card, so that Mr Khan’s advice to him was erroneous. This may have been inadvertent, but why he did this is irrelevant. It was in my judgment incumbent on Mr Elliott, who was the manager appointed to deal with the appeal, to check the accuracy of the reasons he gave to dismiss the appeal. He clearly failed to do so, in particular in relation to the Gold Card. The assertion in the appeal outcome that *‘..I also noted the following which compounded my decision- Your ECS JIB card recognises you as an Approved ‘Electrical Fitter’ and not an Approved ‘Electrician’* – was plainly wrong. In my judgment, Mr Elliott cannot reasonably rely upon any mistake by Mr Khan to justify as reasonable his own obvious error.

105. Further, in my judgment, it was unreasonable and unfair for Mr Elliott to rely on Mr Khan's advice when dismissing the appeal without putting it back to Mr Albu for his comments. Mr Elliott never went through Mr Khan's advice or evidence with Mr Albu. It was unreasonable for Mr Elliott to rely on Mr Khan's rejection of Mr Albu's other qualifications, in particular the 'new' ones obtained since Miss Lewis had dismissed him, without giving Mr Albu the opportunity to challenge these points.

106. In my judgment, basic natural justice requires that an employee be given the opportunity to consider and respond to the information presented against him before a decision is confirmed. Mr Albu was denied the chance to address the reasons given by Mr Khan that ultimately formed the basis upon which his appeal was dismissed. The appeal outcome, without explanation, was on the face of it wrong in 2 important respects – satisfying the Table 4E and 4F requirements, and the status of the Gold Card. Mr Albu would not have had any idea that these apparent errors would be reasons being considered as the basis on which to dismiss his appeal until he received the outcome. They were never discussed with him. In my judgment, this is unfair. No reasonable employer adopting a reasonable dismissal process could properly reject an appeal against dismissal based on relevant new information in this way.

107. **1.5.7 – Range of reasonable responses and conclusions.** Overall, considering the equity and substantial merits of the case, I find that Mr Albu was unfairly dismissed. No reasonable employer could treat capability/qualifications as a sufficient reason to dismiss Mr Albu in all the circumstances of this case, where on the face of it by the time of his appeal he had presented equivalent qualifications sufficient to meet London Underground's interpretation of the requirements of the job description for the role he was employed in, and without giving Mr Albu the opportunity to respond to the advice that his newly acquired equivalent qualifications were still inadequate. For these reasons, in my judgment and in the circumstances of this case, dismissal fell outside the range of reasonable responses open to a reasonable employer.

c. Is there a chance that Mr Albu would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason – and if so, should his compensation be reduced?

108. There must in my judgment be a significant chance that had Mr Khan's rejection of the JIB Gold Card as an 'Electrical Fitter' card been put to Mr Albu, he would have pointed out the error in that his new Gold Card left him more qualified and satisfied the Table 4E and 4F requirements. I am without evidence at present, however, as to what might have transpired had Mr Khan been presented

with accurate facts. I have no evidence from Mr Khan or indeed any witness as to whether, notwithstanding that they appeared to satisfy the Guide requirements, Mr Albu's qualifications were in fact adequate to meet London Underground's requirements for a Plant Fitter role. Mr Albu did not present his portfolio for consideration by Mr Khan or London Underground, and has not presented it in evidence here. The Tribunal may not of course be placed to make such an assessment in any event.

109. I will invite further submissions from the parties as to how they argue that my findings of fact and the elements of unfairness that I have identified above should be applied when considering the Polkey/no difference points. This will now form an issue for me to decide at the remedy hearing. It may be that in evidence the parties look to address this point. Whether or not Mr Albu is now formally qualified for a Plant Fitter role, and London Underground's view on his qualifications as they stand now, could also affect any decision on re-engagement or re-instatement as a remedy if the Tribunal is still invited to consider such matters.

d. Contributory fault

110. London Underground submitted that Mr Albu should bear some contributory fault for failing to provide relevant documents and being obstructive during the process. I have found that he did not disclose to Miss Lewis that he was undertaking his 2346 until he had completed it. Whilst this may have affected the conduct of the process, it was not however a cause of the dismissal. Mr Albu was dismissed after he told Miss Lewis he held the 2346. He disclosed all relevant information to Mr Elliott. He was not obstructive during the appeal process. Absence of formal qualifications was the reason for the dismissal and for rejection of his appeal. I do not find that any culpable or blameworthy conduct by Mr Albu caused or contributed to his dismissal for that reason.

e. ACAS Code

111. The ACAS Code of Practice on Disciplinary and Grievance Procedures (2015) applies to disciplinary and grievance situations in the workplace. In my judgment, the process that resulted in Mr Albu's dismissal was neither a disciplinary or grievance situation. Mr Albu did not lodge a formal grievance at any point. There was no allegation of poor performance against him. He was not disciplined.
112. In my judgment this is not a case concerning a matter to which a relevant Code of Practice applies under s207A Trade Union & Labour Relations (Consolidation) Act 1992. There is no basis upon which an uplift to compensation can be considered.

H. CONCLUSIONS

113. For the reasons given above I find that Mr Albu was unfairly dismissed by London Underground. Mr Albu did not cause or contribute to his dismissal, and no relevant ACAS Code applied to his dismissal. I remain open to further submissions at the remedy hearing as to whether the unfairness in relation to the dismissal that I have found made any difference to the outcome of the dismissal process. The case management directions that I gave on a provisional basis will now take effect, for a remedy hearing to take place as directed.

Approved by:

Employment Judge Baran

18 April 2025

Sent to the parties on:

24/04/2025

For the Tribunal Office: