Case Number: 2501858/2024

EMPLOYMENT TRIBUNALS

Claimant: **Mr N Burnhope**

Respondent: **Seaton Hospitality Limited**

Heard at: **Newcastle Employment Tribunal (via CVP)**

On: **14 February and 21 March 2025**

Before: **Employment Judge L Robertson**

Representation
Claimant: Miss H Hickin, counsel
Respondent: Mr J Rodger, lay representative

RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

Unfair Dismissal

1. The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.
2. The respondent is ordered to pay to the claimant £5,561.20 made up as follows:
   a. A basic award of £5,401.20; and
   b. A compensatory award of £160 to compensate him in respect of the claimant's loss of statutory rights.

Notice Pay

3. The complaint of breach of contract in relation to notice pay is dismissed on withdrawal.

REASONS

The Claimant's Claim

1. By a claim form presented on 6 September 2024, the claimant, Mr Burnhope,

brought a claim for unfair dismissal. This is a claim for ordinary unfair dismissal under Part X of the Employment Rights Act 1996 ("ERA 1996").

The Hearing

2. The claimant was represented by Miss Hickin at the hearing. She was instructed by Evans & Co solicitors. The respondent was represented by Mr Rodgers.

3. The claimant gave evidence on his own behalf. The respondent called four witnesses:

    a. Mr Colin Liddy;
    b. Kate Bruns, Assistant General Manager at the time of the claimant's dismissal;
    c. Mr Sanghera, Managing Director of the respondent; and
    d. Alison Reynolds, HR Consultant.

4. I explained to the parties that I would only read documents to which I was referred in the statements or in oral evidence. The parties had prepared an agreed bundle of documents consisting of 118 pages. At the start of or during the hearing, the parties produced additional documents in the form of two spreadsheets relating to the disciplinary investigation, a TUPE employee liability information spreadsheet, the ACAS Code of Practice on Disciplinary and Grievance Procedures and an Employee Handbook. It was agreed that these would be admitted.

5. The claimant had prepared a schedule of loss in November 2024 but, for reasons which were not clear, neither the Tribunal nor the respondent had received this. This was submitted at the start of the hearing.

6. The case was stood down as appropriate to allow time to review the additional documents.

7. The claimant withdrew the claim of wrongful dismissal and I have dismissed that claim on withdrawal.

8. This is a claim of 'ordinary' unfair dismissal. The claimant claims that it was unfair pursuant to section 98 ERA. The respondent accepts that it dismissed the claimant and says that the reason or principal reason for dismissal was related to conduct. The claimant accepts that the respondent's reason for dismissing him was related to conduct and that conduct is a potentially fair reason for dismissal but contends the dismissal to be unfair on the basis of section 98(4) ERA.

9. It was common ground that the Claimant was employed by the Respondent as head chef from at least 10 June 2019 and so the claimant had the requisite service to bring a claim of unfair dismissal.

10. The issues were agreed at the start of the hearing to be as follows:

    a. If the Respondent has satisfied the Tribunal that the reason for dismissal related to conduct, did it act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will decide,

in particular, whether:

i. the Respondent genuinely believed that the Claimant was guilty of the misconduct for which he was dismissed;
ii. the respondent had reasonable grounds for that belief;
iii. at the time the belief was formed the respondent had carried out a reasonable investigation;
iv. the respondent otherwise acted in a procedurally fair manner;
v. If all those requirements were met, was dismissal within the range of reasonable responses?

b. If the claim of unfair dismissal succeeds, what basic award is payable to the claimant, if any?

c. Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

11. As to a compensatory award, Miss Hickin confirmed that the claimant was only claiming for loss of his statutory rights and was not seeking to recover loss of earnings as he had obtained alternative employment at the same rate of pay shortly after his dismissal. The claimant's schedule of loss sought a 25% uplift for breach of the ACAS Code, but both Miss Hickin and Mr Rodger accepted that those provisions (and Polkey reductions) are not relevant to the basic award.

12. The claimant's case is that his dismissal was unfair on the basis of section 98(4) ERA. His case was that the decision was reached before a reasonable investigation had taken place (specifically, before the reconvened disciplinary meeting and therefore before the claimant had had an opportunity to comment on the further investigation that had taken place during the break between meetings, as the decision was confirmed to him during that meeting) and was almost a foregone conclusion. The claimant's case was that, because the decision was confirmed by Mrs Reynolds who was not an employee of the respondent during the meeting, she must have done so under the instruction of the respondent's director who was not present at the meeting. As such, his case is that the ACAS Code was not followed. His case is also that the decision to dismiss him was outside of the band of reasonable responses taking into account the overall impact of the claimant's conduct to the incident which took place, his long service and that he had no prior disciplinary record.

13. The respondent disputes the claim. In summary, the respondent says that the claimant was dismissed for gross misconduct and that a fair procedure was followed. It says that Mrs Reynolds was authorised to deal with the disciplinary process on its behalf.

14. It was agreed that the hearing would proceed with me hearing the issues of liability and remedy at the same time. The case was adjourned part-heard at the end of the initial one day hearing, and re-listed subsequently for a further one day hearing. At the end of the second day, there was insufficient time to hear the parties' submissions and for deliberations. I directed the parties to send any written submissions they wished to make to the Tribunal and the other side by 4 April 2025 (in the event, this deadline was subsequently delayed following an application). I informed the parties that judgment would be reserved.

Findings of Fact

15. I record the following facts either as agreed between the parties or found by me on the balance of probabilities.

Findings relevant to fairness

Background

16. The respondent's business is the operation of the Roker Hotel. The respondent acquired the hotel on 17 October 2023. The claimant's contract of employment transferred to the respondent on that date pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE").

17. At the time of the events which were the subject of this claim, the claimant was employed as Head Chef. The Claimant's duties included the duties described in the Respondent's Alert 65 Food Safety Policy under the heading 'Head Chef'. These may be summarised as ensuring the effective implementation of a food safety management system. The food safety management system included checking temperatures of poultry using digital temperature probes and recording them. The respondent opted to record temperature checks using the Alert 65 app.

18. The Head Chef and Sous/Assistant Chefs (the only chef roles specified in the policy) were responsible for ensuring the Critical Control Points (CCPs) as identified in the policy were being monitored. Under the policy, Sous/Assistant chefs assumed the responsibilities of the Head Chef in the Head Chef's absence from the kitchen.

19. Miss Bruns, as acting General Manager, was responsible for ensuring that all members of staff were aware of their responsibilities under the Alert 65 policy, including monitoring the CCPs. Miss Bruns believed that the Head Chef was responsible for training new staff about the requirements of the food safety policy.

20. On 10 February 2025, Anthony started work for the respondent. He was engaged as a chef. Mr Sanghera's father-in-law had recommended Anthony to Mr Sanghera. It was understood by those involved in the claimant's disciplinary process that Anthony had worked as a head chef for 14 years and had significant previous experience of running a carvery service.

21. At the claimant's suggestion, on 10 March 2024 there was to be a Mothers' Day carvery event in the hotel ballroom. The same day, Sunday lunches and afternoon teas were also to be served to the main hotel.

22. There were two kitchens in the hotel. One is referred to as the 'ballroom kitchen' and the other is referred to as the 'main kitchen'. They are separate kitchens which are not located next to each other. To get from one kitchen to another, staff either walked through the hotel or walked down the external back lane. On 10 March 2024, the main kitchen was serving plated Sunday lunches and afternoon teas to the main hotel, and the ballroom kitchen was serving the food for the carvery event.

23. Prior to the event, the claimant had produced the rota which listed at least six chefs, plus kitchen porters, to be on duty that day. Miss Bruns and Mr Sanghera had seen and approved the rota. The rota did not specify which kitchen each of those chefs would be allocated to, but at the time both Mr Sanghera and Miss Bruns were satisfied that there were sufficient chefs in each kitchen. Miss Bruns and the claimant had had a discussion in advance about which kitchen he and Anthony would work from. From that discussion, Miss Bruns was aware that the claimant would be working from the main kitchen and Anthony would be working in the ballroom kitchen. Anthony had only worked in the respondent's main kitchen prior to that, and not the ballroom kitchen.

24. On 9 March 2025, some food preparation was done in the ballroom kitchen for the carvery the next day.

25. At the Mothers' Day carvery event, Anthony had been carving the meat and poultry, and Miss Bruns had been serving the vegetables. Undercooked poultry was served to guests on four different tables. Of these guests, a child had eaten the undercooked turkey, a pregnant lady had it in front of her and an elderly couple had also been served it. Miss Bruns refunded around six families as a result.

26. The Claimant was on duty and at work on that day. When the issue arose, the claimant was called from the main kitchen to attend the ballroom. He checked the rest of the meat, which was properly cooked.

27. The meat and poultry for the Mothers' Day carvery event had been cooked in the ballroom kitchen.

28. On the day of the event, Mr Sanghera was not in the hotel but observed from the photographs which were sent to him that the poultry was obviously undercooked.

29. Mrs Reynolds was contacted by Mr Sanghera after the carvery event. This was because Mr Sanghera and Miss Bruns recognised the serious nature of the situation and believed that matters needed to be investigated and disciplinary proceedings might follow, and they wanted the process to be carried out fairly by someone with HR experience. The respondent did not have a dedicated HR department. Mrs Reynolds was aware from that discussion that undercooked poultry had been served to guests. It was agreed that Miss Bruns would carry out the investigation, so that Mrs Reynolds could be independent to deal with any disciplinary hearing which might follow.

30. The claimant was not suspended. Mr Sanghera considered that the hotel did not have sufficient cover to enable them to suspend the claimant, but he introduced additional checks across both kitchens to ensure that food safety standards were maintained.

Investigation

31. The respondent's assistant general manager Kate Bruns carried out an investigation into what had gone wrong. Together with Nick Angus, Food and Beverage Manager, she interviewed the claimant, Anthony and Joel (apprentice chef, who had been involved in food preparation in the ballroom kitchen). Following those interviews, she typed up her notes and these were

set out in an email to Mrs Reynolds.

32. As Miss Bruns considered that it was important that interviews were carried out promptly and she was unable to meet Mr Liddy within a reasonable timeframe, Mr Angus interviewed Mr Liddy himself. Mr Angus also interviewed David Hillman, a sous chef, himself. Mr Angus' notes of those two interviews were not made available during the disciplinary process, although it was unclear why. The notes of those two interviews were also not before me.

33. As part of Miss Bruns' investigation, it was found that Anthony was set the task of cooking the meat and poultry on the Saturday and the Sunday in the ballroom kitchen, and carving and serving them at the carvery event on the Sunday. This included the three turkey crowns for the carvery event.

34. The claimant told Miss Bruns and Mr Angus that: Anthony was in charge of cooking all of the meat for the carvery; on the Saturday Anthony had steamed the meat and then cooled it before refrigerating it; and then Anthony started roasting it at 9.30am on the Sunday before service.

35. As part of Miss Bruns' investigation, it was found that the seals on the oven in the ballroom kitchen did not work well because the trays did not fit correctly, and this meant that the oven did not reach the correct temperature. Although this was known to most staff and they could work around that, the claimant accepted during the investigation that Anthony had not worked in the ballroom kitchen before and that he had not told Anthony about this.

36. The investigation identified that the poultry had not been properly temperature checked with a temperature probe before service.

37. The claimant told Miss Bruns that the turkeys arrived frozen. He also told her that the temperature probes on the side of the ballroom kitchen oven were working. The claimant also told Miss Bruns that he was not 100% sure that Anthony checked the temperature of the poultry. The claimant accepted that he (the claimant) had not temperature checked the poultry before it was served. The claimant told Miss Bruns that he had been to the ballroom kitchen to check on preparations three times prior to service on the Sunday, but he had only checked two of the three turkeys and did so by touch (that is, touching the outside of the meat with his hand to see if it was hot), not by probe. Miss Bruns did not believe that touch testing was sufficient – temperature testing by probe was required.

38. Anthony told Miss Bruns and Mr Angus that the turkeys had arrived frozen. He told them that he had cooked the turkey on the Saturday, then cooled, covered and refrigerated it. Anthony also told Miss Bruns that he had found the oven seal not to be working properly; it leaked and did not reach the correct temperature. He described cooking the turkey further on the Sunday; following which, he said that he had checked it with a temperature probe but the probe was not working. Anthony also explained that he could not tell that the turkey was under-cooked under the lights of the carvery station.

39. As to temperature checking records relating to 10 March, Miss Bruns confirmed that there were temperature records for the main kitchen on the Alert 65 app, but none existed for the ballroom kitchen. The claimant told Ms Bruns that temperature checks were not recorded on the ballroom side. It was common

ground that the absence of records does not mean that no checks had been carried out.

40. Joel had been preparing vegetables and was working between the ballroom and the main kitchen on the Saturday. He told Miss Bruns that he did not see any temperature checks of the meat on the Saturday before it went into the oven or at any time on the Sunday. He said that the turkey had been steamed on the Saturday, then cooled, covered and refrigerated. He said that, usually, they steamed half crowns but Anthony had steamed the full crown. He told Ms Bruns that he had told David that Anthony was steaming the turkeys, and that David had then informed Joel that Anthony was going to roast the turkeys on the Sunday.

41. On the Sunday, Joel appears to have been stationed in the main kitchen. He described being in the ballroom kitchen at one point, during which Mr Liddy had asked Anthony where the turkey was and Anthony had replied that it was all done. Joel thought that the oven probe should have been used (including after steaming on the Saturday) rather than working on cooking time alone. Joel told Miss Bruns that there are processes in place and practised in the ballroom kitchen but he was not sure where they are recorded.

Disciplinary process

42. Miss Bruns spoke to Mrs Reynolds following her investigation. Following that discussion, Mrs Reynolds responded that she certainly thought there was a disciplinary case to answer. The respondent appointed Mrs Reynolds to deal with the disciplinary hearing. Miss Bruns sent her investigation notes to Mrs Reynolds by email and Miss Bruns stepped back from the process. I accept Mrs Reynolds' evidence that Miss Bruns' email and the photographs of the undercooked turkey were the only documents she received about the investigation. Mrs Reynolds created excel spreadsheets using the information which Miss Bruns had sent to her.

43. Mrs Reynolds asked Miss Bruns to check the rotas for the claimant, Mr Liddy and Joel and said that she would need to speak to Anthony if possible.

44. Mrs Reynolds gave evidence that, to satisfy herself, she had spoken to other independent kitchen people to understand the process that would normally be carried out. There were no notes of those discussions. Mrs Reynolds also pointed out that she cooks meat herself so she is familiar with the process.

45. On 21 March 2024, Mrs Reynolds invited the Claimant to a disciplinary hearing on 23 March 2024. The invitation referred to the following matters of concern:

    a. gross negligence;
    b. failure to follow process;
    c. failure to adhere to food safety guidelines.

46. The letter included a copy of an excel spreadsheet which summarised the evidence gathered by Miss Bruns. The letter also stated that the claimant had the right to be accompanied by a colleague or trade union official.

47. The letter stated that, "You are advised that if the allegations are believed to be proven, it will be considered Gross Misconduct under the Company Disciplinary

Rules and your employment may be summarily terminated."

48. The respondent could not locate its disciplinary policy at the time of the disciplinary proceedings, and so Mrs Reynolds enclosed a copy of the ACAS Code on Disciplinary and Grievance Procedures.

49. In oral evidence, Mrs Reynolds accepted that the allegations set out in the letter did not include the date that each allegation related to; did not clarify what the claimant was alleged to have done which amounted to gross negligence; did not set out which process he was alleged not to have followed; and did not set out how he was alleged to have failed to adhere to food safety guidelines. Mrs Reynolds considered that the allegations were serious and felt that everyone knew what they were. Although vague, I find that the claimant understood that the allegations related to the preparation and service of the undercooked turkey for the Mothers' Day carvery event.

50. The disciplinary hearing was conducted by Mrs Reynolds. The claimant was accompanied by a colleague. Notes of this meeting were in the bundle. During the hearing, Mrs Reynolds summarised the evidence which had been gathered during the investigation.

51. At that hearing, the claimant told Mrs Reynolds that the turkeys were delivered frozen. He confirmed that testing by temperature probe was the correct process, but he had not cooked the turkeys and had only touch tested them. When Mrs Reynolds asked why a new member of the team had been placed in a new area unsupervised, the claimant pointed out that Anthony had been a Head Chef for 14 years in his previous organisation which used the same oven. The claimant also challenged the 'failure to follow process' allegation, suggesting that this was the responsibility of the General Manager. The claimant said that the Alert 65 app was used every day and that they had a 4 star food rating.

52. The claimant suggested that Joel and Anthony were the appropriate people to speak to about preparations on the Saturday, and Mr Liddy and Anthony were the appropriate people to speak to about the Sunday. The claimant also told Mrs Reynolds that he and David had gone to the ballroom kitchen to check on progress. The notes record that – in relation to the second and third allegations – the claimant referred to using an app, process and guidelines but no further detail about these matters is recorded. The claimant provided the Alert 65 policy to Mrs Reynolds for her review and told Mrs Reynolds about the Alert 65 app.

53. The hearing on 23 March 2024 was adjourned to enable Mrs Reynolds to interview Mr Liddy, Anthony and Joel and to look into the Alert 65 app.

54. Following that hearing, Mrs Reynolds spoke to Joel. The notes refer to Joel having been concerned that Anthony was cooking the turkeys whole, not halved, but for the same amount of time as had they been halved. The notes record that Joel spoke to David about Joel's concerns; David had in turn spoken to Anthony; and Anthony had told David that he was going to finish cooking the turkeys the following day. At one point in her evidence Mrs Reynolds indicated that she thought that Joel had also spoken to the claimant because the notes say "spoke to him"; however, this comment is next to her own initials and so I find that this was her question, not Joel's answer. The notes also indicate that

Joel told her that Mr Liddy had asked Anthony about the turkey and Anthony had replied that it was finished.

55. Mrs Reynolds also spoke to Anthony. He told Mrs Reynolds that the seals on the oven were not working; he had probed the meat but the probes were not working; the timers did not work; and he needed to be told if the equipment was working. Anthony accepted that he should have asked.

56. Mrs Reynolds also spoke to Mr Liddy on 28 March. He told Mrs Reynolds that, on 10 March, he was allocated to the ballroom kitchen with Anthony. He said that he had not known that Anthony had not known what he was doing, and observed that there was a need to know the equipment. The notes also refer to Mr Liddy having been told that someone had probed the meat but it is unclear who had said this. Mrs Reynolds could not recall what was meant by this comment by the time of the Tribunal hearing, but it would have been clear to her at the time that Anthony had said this, as he was the only person who had said he had probed it and the claimant had been clear that he had not probed it.

57. Mrs Reynolds thought that the Alert 65 app was not widely used to record temperature tests (even in the main kitchen). The claimant had conceded that temperature checks were not recorded in the ballroom kitchen, but he had told Mrs Reynolds that the Alert 65 app was used daily. However, I find that Mrs Reynolds had not checked the Alert 65 app records; had she done so, she would have given evidence that she had, in response to being asked on two occasions about it during her oral evidence. Mrs Reynolds did not interview Mr Hillman and, by the time of the Tribunal hearing, could not recall why she had felt this was not necessary.

58. On 1st April 2024, Mrs Reynolds invited the Claimant to a reconvened hearing on 3 April 2024. She believed that the 'detail had come out' after the initial letter had been sent out and she had intended to provide more detail about the allegations in this letter. The invitation referred to the following matters of concern:

    a. Gross negligence – allowing the raw poultry to be served;
    b. Failure to follow process – there continues to be confusion around processes in the kitchen which could result in public health being compromised;
    c. Failure to adhere to food safety guidelines.

59. The letter warned the Claimant that, if the allegations were believed to be proven, it may be considered gross misconduct and his employment may be summarily terminated. He was also informed that he had the right to be accompanied.

60. On or around 2 April 2024, Mrs Reynolds and Mr Sanghera spoke about the disciplinary process involving the claimant. Mrs Reynolds informed Mr Sanghera that she believed that the correct outcome was for the claimant to be dismissed. Although both Mr Sanghera and Mrs Reynolds each believed that they had been the person who made the decision to dismiss the claimant, I prefer Mrs Reynolds's cogent evidence that Mrs Reynolds had reached the decision and Mr Sanghera had given her authorisation to do so.

61. At the time of their discussion, Mrs Reynolds felt that she had enough to make a decision on all three allegations. I accept her evidence that she had reached that decision during this discussion with Mr Sanghera, "unless something overwhelming was presented to [her]." Had something 'overwhelming' been presented to her, she would have adjourned for further investigation. In the event, nothing was said in the final hearing to change that view. The respondent had not begun the process of recruiting a replacement chef at that point in time.

62. There was a dispute about whether Mr Sanghera spoke to the claimant on or around 2 April 2024 (before the reconvened disciplinary hearing) and told him that it was not looking good for him, and offered him the opportunity to resign. When asked about this in the Tribunal hearing, Mr Sanghera initially said that he did not recall any discussion with the claimant that day; then said that he had certainly not said that it was not looking good for the claimant; and then denied meeting with the claimant that day. The disputed discussion is referred to in Mrs Reynolds' contemporaneous notes from the reconvened hearing. I prefer the claimant's evidence on this matter, which is consistent with Mrs Reynolds' notes, and find that this conversation did take place.

63. On 3 April 2024, the reconvened hearing took place. At the start of the hearing, the claimant informed Mrs Reynolds about Mr Sanghera's discussion with him the previous day.

64. I accept Mrs Reynolds' evidence that she had then summarised her investigation meeting with Anthony and then confirmed her decision to dismiss the claimant. She did not give the claimant copies of her own investigation notes either before or at this meeting. The claimant was not given an opportunity to consider and respond to Mrs Reynolds' investigations before the decision was confirmed. She explained the reasons for her decision, which were summarised in a letter to the claimant dated 4 April 2024. Mrs Reynolds upheld all three allegations.

65. As to the reason why she dismissed the claimant, the description of the allegations remained vague, even in the second letter. However, on the basis of the evidence before me, I find that her decision in relation to the first and the third allegations related to the preparation and service of undercooked turkey for the Mothers' Day carvery event. Mrs Reynolds took a holistic view about what she believed to be a series of failures during the preparation process which had allowed undercooked turkey to be served, and for which she believed the claimant was responsible. This finding is consistent with the discussions and the evidence used in the disciplinary process. It is clear from the discussions that the claimant understood these allegations to relate to the undercooked turkey.

66. Mrs Reynolds recognised that Anthony had cooked the turkey and should have told someone that he had been unable to probe it. However she took the view that, as head chef, the claimant was responsible for the food that leaves the kitchen. She believed that the turkey should have been temperature probed before being served on the Sunday, albeit not necessarily by the claimant. She accepted that the claimant could not be in two kitchens at the same time but believed it was his responsibility to put in place robust measures and to have sufficient control and oversight over the process, so as to ensure that food was served safely. She was concerned that the undercooked turkey was served to

a pregnant woman.

67. Mrs Reynolds also believed that the claimant should have supervised Anthony as he was a fairly new member of staff, even though he was himself an experienced Head Chef, and told him about the process (including halving the turkeys). Mrs Reynolds was aware of the distance between the two kitchens but took the view that it was not a consideration as the claimant had confirmed he had gone to the ballroom kitchen and touch tested the turkey prior to service on the Sunday. Mrs Reynolds concluded that it was the Head Chef's responsibility for ensuring competency and adequate training. Although she accepted that she did not know who was responsible for training within the respondent's business, she believed that the claimant had failed in his responsibility to train Anthony about the equipment – specifically, the seal not working on the oven.

68. Mrs Reynolds found that there was no clarity about whether the turkeys arrived fresh or frozen. She was concerned about this as she believed that defrosting poultry was a significant thing to do. She accepted in cross-examination, however, that the claimant had been consistent in his discussions with both Ms Burns and Mrs Reynolds herself that the turkeys had arrived frozen. If Mrs Reynolds was relying upon the claimant being reported as having told Mr Angus initially that the turkeys had arrived fresh, Mrs Reynolds did not seek to clarify that with the claimant or Mr Angus.

69. The dismissal letter states that, "[Mrs Reynolds'] subsequent meetings highlighted that a junior member of the team had raised that the turkey had not been cooked using your normal processes and even at this point nothing was done." Mrs Reynolds believed at the time of her decision to dismiss the claimant that Joel's concern had been raised with the claimant at the time. However, she accepted in cross-examination that the investigation notes indicated that Joel had raised the matter with David, who had in turn spoken to Anthony. Although Mrs Reynolds accepted that it was incorrect to have said that "nothing was done" (as David had spoken to Anthony), she was clear in her view that sufficient action was not taken and that was a factor in her decision to dismiss the claimant.

70. As to the second allegation about 'failure to follow process', Mrs Reynolds did not at the time specify in writing which process she was referring to. Having heard her evidence, I find that what she meant was the Alert 65 policy which set out the food safety management system. The policy included requirements for temperature testing goods on receipt, testing cooked food temperatures, recording temperature checks and food labelling. This policy had been provided to her by the claimant, and it is clear from the evidence before me that he understood that this was the process which Mrs Reynolds had in mind.

71. However, Mrs Reynolds' letter inviting the claimant to the reconvened disciplinary hearing stated, "failure to follow process – there continues to be confusion around processes in the kitchen which could result in public health being compromised." This indicates that Mrs Reynolds was mindful not just about the service of undercooked turkey, but also of further and continuing issues.

72. When asked about what she had taken into account in relation to this allegation, her evidence was inconsistent and unclear. She gave evidence that this was

not just about the cooking of the turkey, but was about a more general lack of control over the processes in the kitchen. Mrs Reynolds referred in oral evidence to further instances which she had come across in her investigation, which were not mentioned in the invitation letter. She gave an example of clotted cream being served even though it was out of date. She also gave evidence that she had not taken those other instances into account as she had been mindful that she did not have the evidence about them. She believed that the claimant was responsible for this as head chef.

73. I find on balance that what she meant – and the basis on which she reached her decision - was that she believed that the service of undercooked turkey and the other instances (including the clotted cream) had happened and could not have happened unless there was a general lack of control over the processes set out in the Alert 65 policy, including checking and recording food temperatures at key points. As such, this allegation had evolved from being about undercooked turkey into a broader allegation following Mrs Reynolds' investigation. However, this was not made clear to the claimant. I accept Mrs Reynolds' evidence that she had mentioned the clotted cream instance to the claimant after the conclusion of the first disciplinary hearing but had told him that she was not taking that into account. The other instances were not identified at the time and, even now, have not been identified. As such, the claimant was not able to respond to the broader allegation.

74. Mrs Reynolds had considered and discussed with Mr Sanghera the possibility of a sanction short of dismissal, including a final written warning or a demotion. There was no record of any previous disciplinary proceedings involving the claimant. Having heard Mrs Reynolds' evidence, and on the basis of the documents before me, I accept that she believed the claimant to have seriously and carelessly neglected his duties. Mrs Reynolds took the view that there was a clear risk to the public and the hotel's reputation and that the claimant had not taken responsibility for his role in what had gone wrong. She believed the claimant to have committed gross misconduct and that the appropriate sanction was summary dismissal.

75. The claimant was given the right of appeal. The claimant chose not to appeal against his dismissal.

76. On 8 April 2024, the Claimant commenced employment as a head chef at the same rate of pay with an alternative employer.

77. Although there is a dispute about how Anthony's engagement with the respondent terminated (whether Anthony or the respondent terminated the relationship), I accept that his engagement was also terminated shortly after the 10 March event.

78. The claimant accepted in oral evidence that the service of undercooked poultry from a commercial kitchen is a serious matter which posed a danger to guests' health and risked the reputation of the establishment. He confirmed that he did not solely blame Anthony for this, and that he had to take some responsibility as Head Chef. The claimant told the Tribunal that he had gone to the ballroom kitchen to check the meat and turkey shortly before service on the Sunday; he had also told Miss Bruns and Mrs Reynolds this and that he had only touch tested two of the three the turkeys, and had not checked the third. The claimant believed the dismissal process was a sham but did not know why the

respondent would want to dismiss him.

Findings relevant to remedy

79. The claimant was born on 17 August 1976 and was therefore 47 at the date of dismissal. His gross weekly pay was £692.31; this was not disputed.

80. It was common ground that the claimant's period of continuous employment with the respondent (preserved by TUPE) had begun by 10 June 2019. The claimant's case is that his start date was 1st October 2005 but this was disputed. On balance I prefer the date set out in the claimant's contract of employment; this document had been prepared by the previous owner of the respondent's business and had been given to the claimant. Both parties had disclosed the claimant's contract to each other as part of these proceedings. The contract records the claimant's continuity of employment to have begun on 1 October 2005. Although Mr Sanghera thought that there might have been a gap in the claimant's employment, I accept the claimant's evidence that he had moved to a different location for a time, but still within the previous owner's employment, and there was no break in his continuity of employment. I find the TUPE employee liability information spreadsheet to be unreliable as it does not reflect the claimant's age or date of birth.

81. It was common ground that the claimant's continuity of employment was preserved by the operation of TUPE when the business was sold to the respondent.

82. I have made findings as to the claimant's responsibilities as Head Chef. He had not told Anthony about the oven seals or the usual method of halving the turkeys before cooking them. The claimant had not checked with Anthony, who had cooked the turkeys, that the turkeys had been probed and met the required temperature prior to service. The claimant had checked on progress in the ballroom kitchen; his other duties and the distance between the two kitchens did not prevent him from doing this. I find that the claimant did neglect his duties by failing to properly supervise Anthony as a relatively new (albeit experienced) member of his kitchen staff, such that undercooked turkey was served to guests.

83. I accept that the service of undercooked turkey was evidence of the claimant's lack of control over the processes set out in the Alert 65 policy in that respect, but there was insufficient evidence on which to find that the second allegation was made out more generally.

Submissions

84. After the evidence had been concluded, the parties filed written submissions addressing the issues in this case. It is not necessary for me to set out those submissions in detail here because they are a matter of record and the salient points will be obvious from my findings and conclusions. It is enough to say that I fully considered all the submissions made, together with the statutory and case law referred to, and the parties can be assured that they were all taken into account in coming to my decision.

Relevant law

Unfair dismissal

85. Section 94(1) of the ERA provides that an employee has the right not to be unfairly dismissed by his employer.

86. Section 98 of ERA provides, so far as is relevant:

> *(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-*
>
> > *(a) the reason (or, if more than one, the principal reason) for the dismissal and*
> >
> > *(b) that is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
>
> *(2) A reason falls within this subsection if it…*
>
> > *(b) relates to the conduct of the employee…*
>
> *(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-*
>
> > *(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
> >
> > *(b) shall be determined in accordance with equity and the substantial merits of the case.*

87. Section 98(1) ERA requires the employer to demonstrate that the reason or, if more than one the principal reason, for the dismissal was for one of the potentially fair reasons listed in section 98(2) ERA or for 'some other substantial reason justifying dismissal'.

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

89. Once the employer has shown that there was a potentially fair reason for dismissal, the Tribunal must decide whether the employer acted reasonably under s98(4) in dismissing for that reason. The burden here is neutral. Section 98(4) poses a single question namely whether the employer acted reasonably or unreasonably in treating the reason for dismissal as a sufficient reason for dismissing the claimant. It requires the Tribunal to apply an objective standard to the reasonableness of the investigation, the procedure adopted and the decision itself.

90. However, they are not separate questions – they all feed into the single question under section 98(4). Whilst an unfair dismissal case will often require a Tribunal to consider what are referred to as 'substantive' and 'procedural' fairness it is important to recognise that the Tribunal is not answering whether there has been 'substantive' or 'procedural' fairness as separate questions. The Tribunal must not decide the case on the basis of what it would have done had it been the employer, but rather on the basis of whether the employer acted in a reasonable way given the reason for dismissal.

91. In misconduct cases, the approach which a Tribunal takes is guided by the well-known decision of *British Home Stores v Burchell [1978] IRLR 379, EAT*. Once the employer has shown a valid reason for dismissal the Tribunal there are three questions:

    (i) Did the employer believe that the employee was guilty of the conduct complained of?

    (ii) Did the employer have reasonable grounds for that belief?

    (iii) At the time the employer formed a belief on those grounds, had the employer carried out as much investigation into the matter as was reasonable in all the circumstances of the case?

92. The Tribunal must take as the starting point the words of s98(4). It must determine whether in the particular circumstances the decision to dismiss was within the band of reasonable responses which a reasonable employer might have adopted. In assessing the reasonableness of the employer's response, it must do so by reference to the objective standard of the hypothetical reasonable employer (*Tayeh v Barchester Healthcare Ltd [2013] IRLR 387, CA, para 49*).

Sanction

93. When determining whether dismissal is a fair sanction, it is not for the tribunal to substitute its own view of the appropriate penalty for that of the employer. Dismissal can be a reasonable step even if not dismissing would also be a reasonable step.

94. Consequently, there is an area of discretion with which management may decide on a range of penalties, all of which might be considered reasonable. It is not for the tribunal to ask whether a lesser sanction would have been reasonable, but whether dismissal was reasonable. But this discretion is not untrammeled, and dismissal may still be too harsh a sanction for an act of misconduct. Where an employee has been dismissed for gross misconduct, the Tribunal needs to be satisfied that the respondent acted reasonably in characterising it as gross misconduct and then in deciding that dismissal was the appropriate punishment.

95. Even if the employee has committed an act of gross misconduct, the fairness or otherwise of any subsequent dismissal remains to be determined in accordance with the statutory test in S.98(4) ERA.

Fair procedures

96. A dismissal may be unfair because the employer has failed to follow a fair procedure. In considering whether an employer adopted a fair procedure, the range of reasonable responses test applies: *Sainsbury plc v Hitt [2003] I.C.R. 111, CA*. The fairness of a process which results in dismissal must be assessed overall. The Tribunal must take the ACAS Code of Practice on Disciplinary and Grievance Procedures into account where relevant.

97. All the above requirements need to be met for the dismissal to fall within the band of reasonable responses. If the dismissal falls within the band, it is fair. If it falls outside the band, it is unfair.

Remedy issues

98. If a dismissal is found to be unfair, section 122(2) ERA states that 'where the tribunal considers that any conduct of the complainant before the dismissal…was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly'. The tribunal has a broad discretion to reduce the basic award where it considers it just and equitable to do so on grounds of any conduct of the employee prior to dismissal. It is not limited to conduct which has caused or contributed to the dismissal.

99. According to the case law interpreting the similar (but not identical) conditions for reducing the compensatory award under s123(6) ERA, the conduct of the employee should be 'culpable or blameworthy' — *Nelson v BBC (No.2) 1980 ICR 110, CA*. The EAT in *Langston v Department for Business, Enterprise and Regulatory Reform EAT 0534/09* confirmed that the same criterion applies to deductions from the basic award.

100. Langstaff J offered tribunals some guidance as to the correct approach under section 122(2) in the case of *Steen v ASP Packaging [2014] I.C.R. 56, EAT*, namely that the following questions should be asked: (1) what was the conduct in question? (2) was it blameworthy? (3) to what extent should the award be reduced?

101. Unlike the position under section 98(4) ERA where the Tribunal must confine its consideration of the facts to those found by the employer at the time of the dismissal, the position is different when the Tribunal comes to consider whether, and if so to what extent, the basic award should be reduced to reflect the employee's conduct before dismissal. In this regard, the Tribunal is bound to come to its own view on the evidence before it. Decisions on whether to make a reduction and, if so, in what amount are for the Tribunal to make, if a dismissal is held to be unfair. It is the claimant's conduct that is in issue and not that of any others. The conduct must be established by the evidence.

Conclusions

102. The effective date of termination of the claimant's employment was 3 April 2024. ACAS conciliation started on 1 July 2024 and ended on 8 August 2024. The claim was presented on 6 September 2024. The claim was presented in time.

Reason for dismissal

103. The first question is whether the respondent has shown that the reason for the claimant's dismissal related to conduct and is thus a potentially fair reason. I have found that Mrs Reynolds made the decision to dismiss the claimant and that she believed the claimant to have been guilty of gross misconduct. I found that she believed the claimant to have seriously and carelessly neglected his duties, which is consistent with her finding of gross misconduct. I conclude that the sole or principal reason for the claimant's dismissal was related to the claimant's conduct, which is a potentially fair reason for dismissal pursuant to section 98(2)(b) ERA. In any event, there was no dispute between the parties in this regard.

104. Having reached that conclusion, the complaint of unfair dismissal turns on section 98(4). I must apply the law as per the guidelines in *Burchell* and not substitute my opinion for that of the respondent. The essential question is whether the respondent acted reasonably in treating the reason for dismissal as a sufficient reason for dismissal in all the circumstances.

Did the respondent genuinely believe that the Claimant was guilty of the misconduct for which he was dismissed?

105. I have found that Mrs Reynolds made the decision to dismiss the claimant.

106. I have found that the claimant was dismissed for:

a. Gross negligence, in allowing undercooked turkey to be served to guests on Sunday 10 March 2024, and failure to adhere to food safety guidelines about the preparation of the turkeys. Mrs Reynolds did not expect the claimant to have temperature tested the turkeys himself but to have had sufficient oversight and control over the processes in the kitchen to ensure that undercooked turkey could not leave the kitchen; and

b. Having a lack of control over the processes set out in the Alert 65 policy, including checking and recording food temperatures at key points. She relied upon undercooked turkey having been served to guests and other instances, including the service of out-of-date clotted cream, having happened and been allowed to happen.

107. I have found that Mrs Reynolds believed that the claimant was guilty of the matters for which he was dismissed. I found that Mrs Reynolds believed that the claimant had seriously and carelessly neglected his duties and that these matters amounted to misconduct on his part. I conclude that belief to have been genuine.

Did the respondent have reasonable grounds for that belief?

108. It was accepted that undercooked poultry was served to guests on Sunday 10 March 2024. It was also accepted that this had been cooked by Anthony but not successfully temperature probed by anyone in the kitchen prior to service to ensure the turkeys had reached the correct temperature.

109. As to the first and third allegations, Mrs Reynolds relied upon the claimant being responsible, as Head Chef, for ensuring the safety of all food leaving the kitchen. The claimant had not cooked the food himself and had relied on

Anthony as an experienced chef to do so. It was reasonable for Mrs Reynolds to conclude that the claimant had failed to tell Anthony about the oven seals and the usual method of halving the turkeys before cooking them. It was also reasonable for Mrs Reynolds to conclude that the claimant should have supervised Anthony – as a fairly new member of staff - to ensure his competency and that the turkeys had been successfully probed before service to ensure that it had reached the correct temperature. Her conclusion was consistent with the Head Chef's responsibilities under the Alert 65 policy, which included ensuring the effective implementation of the food safety management system set out in the Alert 65 policy (including temperature testing of poultry to ensure it is cooked). She did not believe that it was essential for the claimant to have temperature probed the turkeys himself, but to have ensured that the probing had been done prior to service.

110. However, Mrs Reynolds believed that Joel's concern that Anthony was cooking the turkey crowns whole, not halved as usual, had been raised with the claimant when this was not borne out by the evidence. She held the claimant responsible for failing to take insufficient action in response to this, when there was no evidence that he had been informed. Further, Mrs Reynolds believed that there was confusion about whether the turkeys were delivered fresh or frozen, but both the claimant and Anthony had consistently told Ms Bruns and Mrs Reynolds that the turkeys arrived frozen. If Mrs Reynolds was relying upon the claimant being reported as having told Mr Angus initially that the turkeys had arrived fresh, neither the claimant nor Mr Angus were asked about that before Mrs Reynolds reached her decision. It was not reasonable for her to conclude without further investigation that there was confusion about this. These beliefs were material to Mrs Reynolds' decision to uphold the first and third allegations; she took a holistic view and believed the claimant was responsible for a series of failures which included these matters.

111. As to the second allegation, I found that Mrs Reynolds reached her decision on the basis that the service of undercooked turkey and the other instances (only one of which has been specified, relating to clotted cream) had happened. In other words, those instances were used as evidence that there was a general lack of control over the processes set out in the Alert 65 policy (including checking and recording food temperatures at key points), for which Mrs Reynolds believed that the claimant was responsible. The service of undercooked turkey was not disputed and the claimant had accepted during the investigation that temperature checks were not recorded in the ballroom kitchen. However, Mrs Reynolds accepted that she did not have the evidence for the other instances (that is, other than the turkey).

112. Further, Mrs Reynolds had formed the view from her investigation that the Alert 65 app was not widely used to record temperature checks (even in the main kitchen). However, she had not checked the records on the app even though the claimant had told her that it was used daily.

113. For these reasons, I conclude that the respondent did not have reasonable grounds for believing the claimant was guilty of the allegations.

At the time the belief was formed, had the respondent carried out a reasonable investigation?

114. I found that Mrs Reynolds reached her decision during her discussion with

Mr Sanghera, the day before the reconvened disciplinary hearing.

115. What amounts to a reasonable investigation must be viewed in the context of what was in dispute. As set out above, it was accepted that undercooked poultry was served to guests on Sunday 10 March 2024. It was also accepted that this had been cooked by Anthony but not successfully temperature probed by anyone in the kitchen prior to service to ensure the turkeys had reached the correct temperature.

116. However, I conclude that the respondent had not carried out a reasonable investigation at the time the above belief was formed.

117. Mrs Reynolds did not give the claimant the opportunity to review and comment on her further investigations before she reached her decision. She began the reconvened disciplinary hearing having already reached the decision – unless something overwhelming was presented to her. That is not what a reasonable employer would have done. By the time the claimant entered the reconvened disciplinary hearing, the decision-maker – relying on the investigation up to that point and the first disciplinary hearing - placed the onus upon the claimant to shift her from a firm view and to prove his innocence, without the information and evidence to be able to do so and without giving him the opportunity to do so before confirming her decision.

118. This prejudiced the claimant because he was deprived of the opportunity to respond to Mrs Reynolds' mistaken belief that he had been told that Anthony was cooking the turkeys whole.

119. This also prejudiced the claimant because the second allegation had evolved over the course of the disciplinary process such that the allegation related not just to service of undercooked turkey but a general lack of control on the claimant's part over the processes set out in the Alert 65 policy, including checking and recording food temperatures at key points. I found that Mrs Reynolds reached her decision on the basis that other instances had taken place, even though the claimant had not been informed of or given the opportunity to respond to all of them and she accepted that she did not have evidence for them. Moreover, Mrs Reynolds had told the claimant that she was not going to take into account the clotted cream incident but in fact she had gone on to do so.

120. Further, Mrs Reynolds had formed the view from her investigation that the Alert 65 app was not widely used to record temperature checks, but she had not checked the records even though the claimant had told her that it was used daily. The claimant was deprived of the opportunity to respond to this.

121. Although Mr Rodgers submitted that everyone understood the nature of the allegations, for these reasons the claimant simply could not have understood the second allegation. Even now, all of the alleged instances which Mrs Reynolds took into account have not been identified.

122. Further, the claimant was deprived of the opportunity to clarify what he was said to have told Mr Angus.

123. The notes of Mr Angus' interview with Mr Hillman and Mr Liddy were not available to Mrs Reynolds (and were not before me), and Mr Hillman was not

interviewed by her. It is unclear whether and to what extent the claimant might have been prejudiced by this and so I have not taken this into account in reaching my conclusions.

Did the respondent otherwise act in a procedurally fair manner?

124. Whilst an unfair dismissal case will often require a tribunal to consider what are referred to as 'substantive' and 'procedural' fairness it is important to recognise that the tribunal is not answering whether there has been 'substantive' or 'procedural' fairness as separate questions.

125. There was an investigation and two disciplinary meetings. These stages were conducted by different individuals. The claimant was offered the right to be accompanied to both disciplinary meetings, which he accepted.

126. However, the description of the allegations that the claimant was facing was vague. I found that the claimant understood the nature and basis of the first and third allegations against him, but that the claimant was not given sufficient information about the nature and basis of the second allegation. For the above reasons, he was also not provided with all relevant evidence to support the allegations and he was not given a reasonable opportunity to respond before the decision was reached. A reasonable employer would have provided a specific explanation of the allegations and supporting evidence to help the claimant to understand the case he was facing and prepare his response accordingly. This breached the ACAS Code of Practice on disciplinary and grievance procedures.

127. The decision to dismiss the claimant was confirmed to him orally and followed up in writing. He was given the right of appeal.

128. With those conclusions in mind, I conclude that the procedure was outside the band of reasonable responses.

129. I found that Mr Sanghera gave the claimant the opportunity to resign before his likely dismissal. Mr Sanghera was not the decision-maker and I do not consider that giving the claimant this option impacted on Mrs Reynolds' decision or the fairness or otherwise of the dismissal.

If all those requirements were met, was dismissal within the range of reasonable responses?

130. Although the respondent did not have a dedicated HR department, it had appointed an HR consultant to deal with the disciplinary hearing. Mrs Reynolds concluded that the claimant was guilty of gross misconduct. Having considered relevant mitigating factors and that the claimant had not taken responsibility for the service of undercooked turkey, she concluded that dismissal was the appropriate outcome and that no lesser sanction was appropriate in the circumstances.

131. Mrs Reynolds' decision was based on the combination of the three allegations. I have concluded that the respondent had not carried out a reasonable investigation into the allegations. I have also concluded that the respondent did not, at the time Mrs Reynolds' belief was formed, have reasonable grounds for her belief that the allegations were made out. I

conclude that the dismissal was therefore outside of the range of reasonable responses.

132. Had I concluded that the respondent carried out a reasonable investigation and had reasonable grounds for its decision, I would have concluded that it was reasonable to classify the claimant's actions as gross misconduct and would have concluded that the sanction was within the band of reasonable responses.

133. However, as I have not so concluded, I find that the decision to dismiss the claimant was outside the band of reasonable responses.

Conclusion

134. I must consider whether, taking into account the size and administrative resources of the respondent, the decision to dismiss was fair in all the circumstances. On balance and taking my earlier conclusions into account I find the dismissal to have been unfair.

135. The complaint of unfair dismissal is, therefore, upheld.

Remedy

Basic award

136. I have found that the claimant was 47 years of age and had 18 years' complete continuous years of employment by the time of his dismissal. The amount of a week's pay was capped at £643 at that time. The basic award is £13,503 (21 weeks' entitlement x £643).

137. The respondent seeks a 100% reduction in this award to reflect the claimant's conduct prior to dismissal. Miss Hickin's submissions did not address the issue of a reduction pursuant to s122(2) ERA and I take from that that she was not advocating that a reduction should be made.

138. I found that the claimant neglected his duties by failing to properly brief and supervise Anthony as a relatively new member of his kitchen staff, such that undercooked turkey was served to guests. I also found that the service of undercooked turkey was evidence of the claimant's lack of control over the processes set out in the Alert 65 policy in that respect. This was neglect on the claimant's part of an important responsibility as head chef - to ensure the effective implementation of the food safety management system (which included checking temperatures of poultry using digital temperature probes to ensure that it was properly cooked and recording them). The claimant understood the importance of ensuring the safety of the food leaving the kitchen.

139. The claimant's behaviour was culpable or blameworthy in the sense described by the Court of Appeal in *Nelson v BBC*. This should be reflected in the remedy for unfair dismissal. Indeed the claimant accepted that as Head Chef he bore some responsibility for the service of undercooked turkey.

140. I have also concluded that the respondent dismissed the claimant, a long-serving employee with a clean disciplinary record, unfairly for the reasons set

out above. In those circumstances it would not be just and equitable to reduce this award by 100%. However, given the importance that the respondent rightly attaches to food safety, the claimant's understanding of the importance of ensuring food safety and the significance of his neglect of his duties, the reduction should be significant. Stepping back and considering the overall amount of the basic award and the impact of the reduction, I conclude that a reduction of 60% is just and equitable in this case. This reduction reflects the significance of the claimant's conduct without penalising him unduly. In my judgment that does justice to the claimant and the respondent on the evidence I have heard and seen. I award £5,401.20 in respect of the basic award.

Compensatory award

141. The claimant only seeks an award in respect of the loss of his statutory rights. He claimed £400 in respect of this in his schedule of loss. Mr Rodger did not argue against that amount, although he submits that a 100% contributory fault reduction is appropriate. This is dealt with by section 123(6) ERA, which states, "where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding." Miss Hickin's submissions did not address the issue of a reduction pursuant to s123(6) ERA and I take from that that she was not advocating that a reduction should be made.

142. For the same reasons as set out in relation to the basic award above, I conclude that the claimant's conduct contributed significantly towards the decision to terminate his employment and consider a reduction of 60% in respect of the compensatory award to be just and equitable.

143. Therefore, the Claimant's compensatory award is an award of £160 to compensate him for the loss of his statutory rights.

Approved by:

Employment Judge L Robertson

Date 5 June 2025

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

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