



EMPLOYMENT TRIBUNALS

Claimant: Mr M Nutt

Respondent: DHL Services Ltd

Heard at: Reading by CVP **On:** 24-26 February 2026

Before: Employment Judge Findlay

Representation

Claimant: Miss S Chan, Counsel

Respondent: Miss L Kaye, Counsel

JUDGMENT having been sent to the parties on 10 March 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

The Issues

1. The claimant is making one claim of unfair dismissal pursuant to section 98 of the Employment Rights Act 1996.
2. The respondent says that there is a potentially fair reason for the dismissal, namely some other substantial reason within section 98(1), in that the respondent's client, the National Grid ("NG"), required the claimant's removal from their site at Didcot, citing clause 11.4 of their contract with the respondent. This meant that the claimant was unable to carry out his job.
3. The respondent was unable to find any alternative roles that were acceptable to the claimant within the notice period and an additional six week redeployment period. By the end of the hearing, Ms Chan did not seriously argue that this (the combination of the client's stance and the respondent's inability to find the claimant an acceptable alternative job) was not the respondent's genuine reason for dismissal and she withdrew the allegation that the respondent was in breach of any relevant ACAS Code of Practice.
4. Instead, the parties' closing submissions focused on fairness under section 98 (4) and the case law in respect of third-party pressure to dismiss, as set out below.
5. By the end of the hearing, Ms Kaye had withdrawn the allegation that the claimant had contributed to his dismissal but she maintained that even if the dismissal was unfair (which the respondent disputed) there should be a reduction to reflect the likelihood the claimant would have been

- dismissed in any case, if not at the time of the actual dismissal then at least at a later point as the respondent ultimately lost the NG contract at Didcot when the service provided was taken back “in house”.
6. So, the issues I had to decide were whether there was a potentially fair reason for dismissal, so far as that remained in dispute, and whether, if so, the dismissal was fair under section 98(4), bearing in mind the relevant case law. If I conclude that the dismissal was unfair, I have to consider whether a “Polkey” reduction is merited to reflect the chance that the claimant may have been dismissed in any event.
 7. **The hearing:** I heard evidence relating to the “Polkey” issue together with evidence on liability.
 8. I heard from three witnesses on behalf of the respondent, Mr Gary Parsons, who is the claimant's former line manager, Mr Christopher Atkins, the former General Manager for the respondent at the Didcot NG site, and Mr Ashley Albrighton, a Regional General Manager for the respondent from another part of the business, who dealt with the claimant's appeal against dismissal.
 9. I also heard evidence from the claimant, Mr Nutt.
 10. I checked at the start of the hearing whether any of the witnesses or representatives required any reasonable adjustments to assist them to participate in the proceedings. I was initially told that no adjustments were required, although on the second day Ms Chan pointed out that the claimant has a stammer and should be given time to answer questions if required, and this was done.

RELEVANT FACTS

11. The claimant was employed by the respondent as a “First Line Manager” in a warehouse owned by NG at its site at Didcot in Oxfordshire. The claimant managed 5 warehouse operatives. He was the only “First Line Manager” employed at that site by the respondent. He had worked at the site for 22 years by the time of his dismissal and transferred to the respondent's employment from the NG in April 2013, that is 11 years before his dismissal. The claimant was aged 56 at the time of his dismissal. The respondent is a well-known transport and logistics company.
12. Miss Kaye put to the claimant, and he accepted, that he had worked with Mr Parsons for six years and Mr Atkins for about five years before his dismissal, and that he had a good working relationship with each of them. During the redeployment and dismissal process the claimant reiterated that he had enjoyed working at the site for DHL.
13. Before the events which I will come to there was no issue with the claimant's work at NG for the respondent. Indeed, I have seen the certificates attached to the claimant's claim form from the NG. There were “Certificates of recognition” dated January and May 2023 as well as from earlier years and a certificate from DHL “Recognising excellence” in respect of the claimant's work dated March 2023. Indeed, Mr Atkins volunteered during his evidence that he had thought that the claimant had been an exemplary employee for 22 years. There were also testimonials to the claimant's work and character from NG staff attached to the claim form.
14. In or about late September/early October 2023, the respondent's client NG arranged an external audit of the strategic parts kept in the warehouse by

- a company called Accenture. The claimant was only at the warehouse for part of the time that Accenture were there carrying out the audit, and Accenture staff did a “walk around” the warehouse with warehouse operatives employed by the respondent to produce their audit. Both the claimant and Mr Atkins said that they believed that Accenture did not ask staff to move crates containing large parts so that they could check the stock that was in the shelves behind the crates. In other words, they do not accept that Accenture carried out a thorough audit.
15. As a result of this audit, however, Accenture reached the conclusion that certain items were missing from stock.
 16. The first time that the claimant was made aware of this conclusion was a day or two after Accenture had been on site. Mr Parsons came to the claimant and said that there were a “few issues” with the audit. I accept the claimant's evidence that Mr Parsons brought with him some spreadsheets which had been sent to him from the NG. The items on the spreadsheets were arranged according to a “traffic light” system, in that items coloured green were present, items coloured amber meant that there had been a stock adjustment and if an item was coloured red, it meant that Accenture thought it was missing. The claimant thought that the spreadsheet had come from a NG employee called Richard Edrop. The spreadsheet was forwarded by Mr Parsons to the claimant.
 17. On the same day, Mr Parsons came to the warehouse and looked around. He told the claimant that he thought he had found the items that were subject to queries in the Accenture audit, and that all the missing items were in a different location from where they should have been but were actually present. The claimant went with Mr Parsons to check, and they agreed that all the items coloured red or amber were now accounted for. The claimant told me that this exercise with Mr Parsons took less than half a day. The respondent did not challenge that. As far as the claimant was concerned, the matter was resolved at that stage. I should say that the claimant's unchallenged evidence is that regular stock checks were carried out by warehouse staff. The respondent does not suggest that the claimant was responsible for misplacement of stock or that he failed to follow any of its procedures, see below.
 18. NG, however, took a different view. As early as the 18th of October 2023, the respondent received a request from NG to remove the claimant from site because of the Accenture audit -see paragraph 9 of Mr Parsons' statement, which I accept. The information about this appears to have been received by Ashley Sulley, the respondent's Operations Director for NG at the relevant time and Mr Atkins' then line manager, see paragraph 8 of Mr Atkins' statement. Shortly afterwards, Mr Sulley told Mr Atkins that NG believed that there was some wrongdoing on the claimant's part due to the results of the Accenture audit.
 19. Although this is not dealt with in the respondent's statements, Mr Atkins gave evidence orally that when he became aware of the request from NG he argued, including with staff from NG, that instead of being excluded from the NG site the claimant should be put on a performance improvement plan (PIP). He suggested the PIP as a way of ameliorating the NG's concerns, although he personally regarded the claimant as being an exemplary employee.
 20. Mr Atkins suggestion of putting the claimant on a PIP was discussed with Mr Parsons during a one-to-one discussion with Mr Atkins at some point in October or early November. There is no note of this, and Mr Parson says

- that he cannot recall why a PIP was being suggested. Mr Parsons accepted in response to a question from me that it would be highly unusual to have such a discussion about an employee with the claimant's good record.
21. I did not find Mr Parsons' suggestion that he could not remember why the PIP was being suggested to be credible, and I find it likely that Mr Atkins explained to Mr Parsons at that time that NG were unhappy following the Accenture audit and wished to exclude the claimant from their site, and that putting the claimant on a PIP might persuade them to change their minds.
 22. I accept Mr Atkins' evidence that NG refused the option of putting the claimant on a PIP and allowing him to continue to work at the warehouse, and so the claimant was not put on a PIP.
 23. I accept Mr Parsons' evidence that NG carried out their own audit of the warehouse on about the 11th or 12th of November 2023, and that there was a meeting on the 13th or 14th of November that year with representatives of the respondent. Mr Atkins initially said that he did not attend this meeting but later accepted that he did. Mr Parsons was not present. I accept that Mr Atkins attended. Sally Nulty, the most senior NG employee at the site, was there, together with a person (whose name Mr Atkins could not recall) from Accenture.
 24. There are no notes of that meeting, but I accept Mr Atkins' evidence that at the meeting Sally Nulty made it clear that NG suspected the claimant of some kind of wrongdoing or misappropriation of parts.
 25. As a result of that meeting, the respondent decided to suspend the claimant. Mr Parsons was told about it in a telephone call from Mr Atkins, and he deals with it at paragraph 12 of his statement, which I accept. He was told that NG believed that there had been misappropriation of its property and that the claimant may have been responsible.
 26. The report from the audit by NG has not been included in the bundle and I accept the claimant's evidence that he has never received a copy of it.
 27. After Mr Parsons was asked by Mr Atkins to suspend the claimant based on NG's allegations of misappropriation, Mr Parsons met the claimant and suspended him.
 28. That are minutes of the suspension meeting on the 14th of November 2023, which was attended by Mr Parsons, Mr Nutt and Olivia Cooper (a Logistics Coordinator for the respondent) who took the notes. The reason for suspension was stated to be misplacement of stock and not following process.
 29. The suspension meeting, according to the minutes, took only three minutes (between 15.58 and 16.01). The claimant was handed a letter which appears at pages 209 to 210. The claimant was told that he was suspended on full pay with immediate effect to allow a full and detailed investigation to be carried out into allegations of disciplinary offences raised against him which were described as misplacement of stock: "it is alleged that you misplaced stock and not following the process" [sic].
 30. The claimant was told that the allegation "constitutes a breach of gross misconduct in not following procedures", and that disciplinary action could follow, up to and including dismissal without notice. He was told that he would be invited to attend a further investigation meeting. He was told of his right to be accompanied by a work colleague or trade union representative.
 31. After the short suspension meeting, the claimant was asked to give up his

- pass to enter the premises and to hand over his work laptop. He was escorted from the premises. Mr Parsons accepted that this must have been humiliating for the claimant, but he said that is the respondent's normal process when suspending an employee.
32. As no information about NG's concerns had been passed on to the claimant in the month following communication of the results of the Accenture audit and his suspension, this must have been a very shocking experience for him. As can be seen from the notes of the suspension meeting and the letter that the claimant was given, he was not given any more details about the reason for suspension but he accepts that he did understand that it was somehow connected to the Accenture audit, in respect of which had previously been sent spreadsheets and which he thought had been resolved.
 33. Subsequent to the claimant's suspension, the respondent instructed its employee Helen Pennington, a site manager with stock expertise from another part of the business, to carry out an investigation. She met the claimant on the 13th of December 2023, and her notes start at page 36 of the bundle. At page 45, the claimant referred to the spreadsheets he had seen and the need for stock adjustments indicated by the spreadsheets. The claimant explained that the adjustments were done between the 12th and the 18th of October 2023, and that the allegedly missing components had been found quickly as soon as Gary Parsons had told him there was an issue regarding them.
 34. On the 15th of December 2023, Ms Pennington wrote to the claimant, stating that she had concluded that he had no disciplinary case to answer and that she could find no breach of the respondent's processes, explaining why. The letter is at pages 230 to 231 in the bundle. Ms Pennington had telephoned the claimant to confirm the outcome to him before issuing the letter. She found that there was no evidence that the claimant physically moved or instructed anyone to move stock away from location B27B. As there was no "system movement" of stock, there was no requirement to fill out a stock transfer form, therefore that particular process was not relevant. She could not find any evidence that processes were not followed by the claimant and confirmed that the respondent's disciplinary process would not be progressed any further.
 35. She confirmed that as the claimant had previously been informed by her, his suspension was ending on the 15th of December, and he could return to his full duties on Monday the 18th of December 2023.
 36. The respondent has always accepted the contents of Ms Pennington's report and considers that the claimant was not at fault in respect of the matters raised in the Accenture audit report.
 37. On the same day, that is, 15th of December 2023, Mr Parsons also phoned the claimant and said that the claimant could return to work immediately. The claimant asked for two days' leave to recover from the ordeal of being suspended, and Mr Parsons agreed, hence the return date of the 18th of December 2023. The claimant was intended to be "on standby" on the 18th of December 2023 and collected his laptop and pass from the site that day so that he could work from home as was expected.
 38. I accept that between October 2023 on the 18th of December 2023 Mr Atkins had attempted to persuade NG employees to change their minds about excluding the claimant from the site. This included him telling them that the Accenture audit was not sufficiently thorough.
 39. It is not clear to me how often Mr Atkins was able to speak directly to Sally

- Nulty, the most senior NG employee on site and the person who seems to have decided that the claimant should be excluded. Mr Atkins explained that after Mr Sulley became Operations Director at the respondent, Mr Atkins no longer had one to one meetings with Ms Nulty, although he thought that his previous good relationship with her persisted. I accept Mr Atkins' evidence that when he did try to broach the subject of the claimant's return to site with Ms Nulty, he did not seem to get very far, and he began to form the view that perhaps his working relationship with her was not as good as he had believed.
40. Mr Atkins told me that he thought that by this stage, November 2023, NG had already decided that they were going to take the warehouse operation in which the claimant worked back "in house" and were trying to take advantage of the situation to get the operation in the "best shape possible" (Mr Atkins' words) before their takeover. To paraphrase, Mr Atkins thought that the Accenture audit had given NG an excuse to remove Mr Nutt from the operation and so streamline the staff.
41. None of this is in the respondent's written evidence, however, and it was not even clear from the evidence before me when the warehouse operation did transfer back to NG. Mr Atkins said that one of the reasons why he no longer worked for the respondent was because the operation at the NG site had been taken back in-house, but he gave no further details. He thought that the transfer of the warehouse operation back to NG took place "about October last year" i.e. October 2025.
42. As a result, apart from Mr Atkins' suspicions, and the fact that a transfer did take place almost 2 years later, there is no evidence before me that NG's refusal to take the claimant back on site around the 18th of December 2023 had anything to do with the future transfer of the warehouse part of the operation back in-house at a later stage, and I do not find that is the case.
43. I did not hear any evidence from Mr Sulley, although as the more senior of the respondent's employees associated with the site, he had most of the dealings with Ms Nulty at this time.
44. On the 18th of December 2023 there was meeting via Microsoft Teams between Mr Atkins, Mr Sulley and Sally Nulty. Mr Atkins said that he "presented" Ms Pennington's report to Sally Nulty at this meeting, but under cross examination he accepted that he did not have actually have Ms Pennington's report – he said that he explained the outcome of the report to Sally Nulty. He said that he did not have the detail about where stock was or where it had been found etc., but that he had explained that there had been no case to answer found in respect of the claimant's conduct.
45. Mr Atkins described Sally Nulty's response to his communication of the outcome of Ms Pennington's report, and his further suggestion that it was "morally wrong" of NG to seek the claimant's removal from the site as being "angry" and "offended" and that the mood of the meeting changed. Her attitude was that she thought the claimant was responsible for any stock errors as he was the "First Line Manager".
46. Mr Atkins was not able to tell me the value of the stock that was originally thought to have been missing or misplaced, but he did say that it was NG's view that if the stock had not been found it would have been "catastrophic" for some of the projects they were carrying out.
47. There are no notes of this meeting with Ms Nulty. Mr Atkins said that because there were very regular meetings between him, Mr Sulley and

- various NG employees, they would not usually minute them.
48. Mr Atkins evidence that Sally Nulty appeared to be intransigent about the claimant's return in this meeting is corroborated by her e-mail which is at page 47 of the bundle, sent on the same day, 18th of December 2023, after the meeting. In it, she formally requests removal of the claimant as a result of "poor performance established through the recent Strategic Spares Stock check" (the Accenture audit).
 49. She also states "this individual is detrimental to NG". She quoted clause 11.4 of the contract between the respondent and NG, stating: "the supplier shall replace any supplier personnel if the customer makes a reasonable request for their replacement including as a result of their poor performance or their engagement in conduct that is, or is likely to be, detrimental to the customer".
 50. As a result of the events on the 18th of December, on the 19th of December 2023 Mr Atkins wrote to the claimant to invite him to a meeting to discuss his employment, to take place the following day, on the 20th of December 2023. This invitation letter is on page 233 in the bundle. The letter said that as the claimant was no longer able to access the NG site at Didcot and therefore could not carry out his role, the purpose of the meeting was to discuss his continued employment with the respondent. He was warned that if no suitable role could be found for him, he may be issued with notice of termination of his employment. He was given the right to be accompanied.
 51. On the same date, the 19th of December 2023, Mr Parsons told the claimant by telephone that he should not return to the site. Notes of the meeting (held on the 20th of December 2023) start at page 235 in the bundle. The notes are headed "Disciplinary Hearing Meeting Notes".
 52. Mr Parsons thought the meeting was about the claimant's conduct, but Mr Atkins explained that the respondent does not have a pro-forma to deal with redeployment or with the claimant's type of situation, where a client has asked that a staff member be removed from site. Mr Atkins did not consider it to be a conduct matter and I accept that.
 53. The claimant agreed to go ahead with the meeting without a companion. The meeting lasted 24 minutes, from 10:55 to 11:19 am. Mr Parsons took notes.
 54. Mr Atkins told the claimant that the next step was to find him an alternative role, in other words that the respondent had accepted the NG's position that the claimant had to be removed from site - page 237.
 55. Mr Atkins asked the claimant for his preferred location, and the claimant said Abingdon (where he lives) and a 20-mile radius from there. The claimant has caring responsibilities for his wife, who is disabled, and his son has a diagnosis which means that the claimant may need sometimes to leave work urgently to go to his son's school or to go home to look after his son.
 56. As a result of his caring responsibilities, the claimant asked for day shifts as per his current work pattern, and for a similar to current salary. He wanted to remain in a full-time role and he asked to be relocated as close as possible to home as he does not have regular access to a car. His wife requires the family car due to her own needs and to take their child to and from school.
 57. The claimant was told that the respondent would search for redeployment roles for him for six weeks, concluding on the 31st of January 2024, and that any alternative role would be on the terms and conditions applicable

- to that role. In other words, his own terms (including his salary) would not be protected. He was told that if the respondent could not redeploy him, he would be dismissed after the expiry of his notice period on the 30th of April 2024. The claimant was told that he was not required to attend the site at Didcot, and he was given a copy of Ms Nulty's 18th of December 2023 e-mail. He said that he wanted to bring a grievance against the NG.
58. On or about the 4th of January 2024, Mr Parsons contacted the claimant to offer him a role on day shift at respondent's other site in Didcot, known as the "Accord" site. Apart from the NG site itself, only this Accord site and two sites at Thatcham, for clients Southern and Scottish Electricity (SSE) and Scottish Gas, were within the claimant's preferred 20 mile radius of his home.
 59. On page 321/2 we can see an e-mail dated 5 January 2024 in which the claimant asked Mr Parsons to send him details of the job he mentioned "yesterday", including the description, title, job level/salary. The same day, about half an hour later, Mr Parsons replied saying this "is the detail I have at the moment. We will be advertising an FLM position at some point in Jan." [sic] He said that the job was grade N, so one level below the claimant's grade, and that the salary was £33,800, with a day shift pattern. The salary was £8-10,000 (gross) less than the claimant's current salary. The claimant was getting advance notice of the post's availability.
 60. In an e-mail at page 321, sent later on 5th of January 2024, the claimant tells Mr Parsons that the job would not be suitable for him due to the large pay cut and also because it meant dropping back down to "N" grade.
 61. I heard no evidence to suggest that Mr Parsons (or anyone else) had taken any further steps in relation to assisting the claimant with this particular role, for example discussing it further with the HR Business Partner involved, Francesca Williams. Although Mr Atkins had been discussing the claimant's situation with Francesca Williams prior to the meeting on the 20th of December 2023, he told me (and I accept) that Ms Williams had said that she did not need to attend the meeting on the 20th of December as there was no risk of the claimant actually being dismissed on that date. Although it is apparent that Ms Williams was also involved in later attempts to redeploy the claimant, she did not give evidence before me.
 62. Miss Chan asked Mr Parsons for how long a role such as that mentioned in the 5 January 2024 correspondence would remain available, and he said it would depend on the recruiters. He could not give a specific answer about this post. Likewise, Mr Albrighton was unable to give a definitive answer about the length of time such a post may remain available before being filled. He said it could be around a month or potentially longer.
 63. On the 26th of January 2024 the claimant presented a grievance, and this is at pages 240 to 245. The claimant complained that the respondent had failed to give him adequate or appropriate support. He repeated that he had only, so far, been sent one position to consider where he would have to take a drop in grade and an £8000 pay cut. He said that this was not a viable option and that he was the only wage earner in his family. He also complained that his initial suspension was not justified.
 64. On the 31st of January 2024, which was the end of the initial six-week redeployment period mentioned at the meeting on the 20th of December 2023, Mr Atkins wrote to the claimant to confirm his decision and to formally give the claimant notice to terminate his contract of employment-see pages 248/9. The claimant was told that the respondent would

- continue to look for opportunities to redeploy him.
65. There was no further meeting with the claimant to discuss his situation after 20 December 2023 and before notice was issued on the 31st of January 2024. The claimant says that, as he had been asked not to attend site, he was handed the letter containing notice of termination of his contract in a café (see p129). I accept this. At this point, he had not been given a copy of the Accenture audit or any other material that NG had relied upon which he could access from home, and he had been obliged to return his work laptop in December 2023.
66. The letter of termination refers to the meeting on the 20th of December 2023, and says that NG had decided that the claimant could not access the site at Didcot. It said there had been no alternative roles agreed, so notice was being given.
67. I have not heard any evidence from the respondent regarding its usual redeployment process, for example for redundancy situations, and I have not heard from any witness from its Human Resources department. There was apparently no written process applicable to the claimant's situation. Mr Albrighton, who heard the claimant's appeal against dismissal, did have some prior experience of redeployment in the context of redundancy situations and was aware that pay protection was sometimes available, but had not encountered a situation such as the claimant's before.
68. The claimant was given a right to appeal against the decision to give him notice of termination.
69. Mr Atkins then met the claimant to discuss his grievance on the 6th of February 2024, and the notes of this are at pages 250 to 256. During the meeting, the claimant was told of an opportunity at Northampton, but as Mr Atkins agreed, as this was 60 miles from the claimant's home and he did not have regular access to a car, the claimant would struggle to get there. Mr Atkins was also aware that the claimant had caring responsibilities and (although he did not have specific details of the claimant's finances) that he would have difficulty in obtaining another car. The claimant declined the role during the grievance meeting because of the distance from his home and the fact that sometimes he had to be available for his son during the day.
70. During the grievance meeting, the claimant asked if he could start looking for an alternative job with another employer. The claimant had understood from his discussion with Mr Atkins and Mr Parsons in December 2023 that he could not look for a job with another employer until they had given him notice. Mr Parsons denies having said that, and on the balance of probabilities I am not satisfied that the claimant was told that he could not look for a job with another employer until notice was given. I consider that, given the stressful situation on the 20th of December 2023, the claimant may have misunderstood what was being said.
71. On the 6th of February 2024 also, the respondent's Operations Director for the NG site at Didcot, Ashley Sulley, emailed Sally Nulty at NG. This e-mail, p364 of the bundle, was not disclosed until shortly before the final hearing of this claim.
72. The e-mail says:
- " Sally, I forgot to send this e-mail, and I've just caught up with HR this morning. Mick has subsequently been dismissed from the business, however there is potential backlash from an ER perspective and there is a live grievance that has been submitted(expected). I must ask part of the process and in anticipation for appeal for you to reconsider your request of

- Mick to be removed, if he could potentially be reinstated back into the business? If you can write back to me that'd be great." [sic]
73. Mr Atkins told me, and I accept, that during his deliberations in respect of the grievance hearing he had asked Francesca Williams if NG could be approached again to see if they could accept the claimant back on site. He was told that the client (NG) would not agree to this by Mr Sulley. I find it is likely that Mr Sulley's e-mail of the 6th of February was sent in that context, given his reference to HR, and that he had been advised to document the respondent's attempts to have the claimant reinstated. No other document has been disclosed in which the respondents asked their client, NG, to reinstate the claimant, and there is no evidence that anyone sent Ms Pennington's report, which exonerated the claimant, to NG.
 74. I agree with Ms Chan that this e-mail from Mr Sulley is a half-hearted attempt at persuading the respondent. It reads, as she says, as if Mr Sulley is attempting to document that attempts were made to change the client's mind rather than any meaningful or reasoned fresh effort being made to do so.
 75. Ms Nulty's Response is at page 363 and was sent the same day, 6th of February 2024. She states:
 "I have reconsidered Mick's removal from the contract, my position has not changed in light of the findings shared with respect to the significant differences found in our Strategic Spares holdings, I cannot accept Mick back on the NG contract." Ms Kaye put to the claimant that this e-mail sounded as if Ms Pennington's findings had been shared with NG, but the claimant understandably replied that he could not say, and I find that Ms Nulty's comments are ambiguous, and could equally refer to NG sharing its findings, or that of Accenture, with the respondent.
 76. The claimant appealed against his dismissal on the 6th of February 2024, see pages 122-125.
 77. Mr Atkins rejected the claimant's grievance on the 9th of February 2024, see page 257/8.
 78. Mr Ashley Albrighton, a Regional General Manager from another part of the respondent's business, heard the claimant's appeal against dismissal on the 6th of March 2023. He was accompanied by Francesca Williams, HR Business Partner. Notes of the discussion are at pages 259 to 264.
 79. Mr Albrighton checked that no further roles were available for the claimant. The actual appeal hearing - that is, the part of the hearing in which the claimant could make representations or seek to persuade the respondent to reverse its decision about giving him notice, lasted only 7 minutes from 10:45 to 10:52.
 80. Mr Albrighton spent the rest of the time considering the matter and discussing it with Francesca Williams before delivering his conclusion at 11.28. He did not approach NG himself, and he did not check if the role which had originally been offered to the claimant on the 5th of January 2024, at Accord in Didcot, was still available.
 81. Mr Albrighton said that the respondent had tried to mitigate the injustice to the claimant caused by NG's stance by trying to find alternative roles. The claimant said that he had only been offered three roles up to that point, the first one which was the role in Didcot on day shift was paid £10,000 per annum less than he received at NG and he was the only earner in his house. He said the one in Northampton (offered in the grievance hearing) was too far away and he said he had been offered another role on nightshifts, which he could not do.

82. The night shift job refers to emails that are seen on page 325. Ms Williams had emailed a colleague at DHL Supply Chain on the 19th of February 2024 asking if the colleague had spoken to the General Manager at Accord regarding redeployment, presumably for the claimant. Her colleague, Rumbi Potter, says that there was a night shift role at grade N, paid around £33,000 per annum with a 30% shift allowance, which was currently vacant and due to be advertised in the next couple of days.
83. Francesca Williams referred this role to Gary Parsons on the 20th of February 2024. She asked if the claimant would be interested in the position or, because it was on nights, he wouldn't be. Mr Parsons replied the same day, asking if the working hours for the job could be confirmed. On page 324, Ms Williams confirmed that it was 40 hours a week, Sunday to Thursday, and was on night shift, 10:00pm to 6:00am. On the 21st of February, Mr Parsons passed the details of the role to the claimant. The following day, page 323, Mr Nutt said he had considered the role but felt it would not be suitable to do a night shift this far into his life. He also said there were considerations of his wife's health and his son's condition which he had to consider. There is some confusion in the evidence about where this role was located (Mr Parsons suggested it was Banbury), but it appears that it was located in Didcot, i.e. within the 20-mile radius.
84. After the e-mail exchange, Mr Parsons and Ms Williams expressed their disappointment to each other and referred to the claimant's "negative attitude". The respondent has not disputed, however, that the claimant's wife is disabled as described and that his son has the condition referred to, or that the claimant needed to be on hand to assist his wife due to her disability on occasion and that he sometimes needed to go home or to his child's school because of the effects of his son's condition. If the claimant's working pattern changed so that he was working at night and therefore having to sleep during the day, this would obviously impede his ability to care for his family and I do not consider that his attitude was unreasonable in those circumstances.
85. The claimant accepted that there were few roles available within his preferred radius. Mr Albrighton said that the business would continue to support him in finding a new role and if a role was found, the respondent would protect the claimant's pay and grade for two years. This was the first time the claimant has been told this was a possibility.
86. The letter dismissing the claimant's appeal against dismissal is at page 132-3.
87. On the 21st of March 2024, the claimant's grievance appeal was heard by Andy White, an Account Director employed by the respondent, and the notes are on page 112. At page 118, the claimant complained that when he was told about the first role on day shift at Accord in Didcot, he was not told that his salary might be protected and that is this was only mentioned in the dismissal appeal in March. He regarded this as "sneaky" behaviour on the part of the respondent. The HR Business Partner who was present on this occasion, a Ms Magyar, said that the reason this had not been stated before was because it needed to be "cleared" by the Compensation and Benefits Department of the respondent.
88. When Mr Albrighton was asked about this at the Tribunal hearing, he was not clear about the process (or how long it took) but said that he was aware that salary could be protected in certain cases as part of redeployment, it would depend on the circumstances. He said that the HR Business Partner had told him that he could protect the claimant's salary

- on the 6th of March 2024 at the appeal hearing. He did not know when the matter had first been raised but presumed that it had been cleared by the Compensations and Benefits department as he had been told to offer that protection by Ms Williams.
89. Mr Atkins said that he had not been made aware that pay protection was possible in situations like the claimant's when asked about this by Ms Chan. He said that no-one had suggested that it may be available, although he had been in contact with Ms Williams about the claimant's situation.
90. I did not hear from Mr. White or Ms Magyar. In the grievance appeal hearing, Mr. White told the claimant that reinstatement on site with NG was not a viable option.
91. At page 115, the claimant also states that pay protection was offered too late. He said that only the same 3 roles he had mentioned to Mr Albrighton had been offered to him by that stage. The claimant's grievance appeal was rejected and there is a letter confirming that at page 119. The claimant was told that if any further roles became available and were suitable would be offered to him.
92. Although there is no documentary evidence of this, the claimant agrees that Mr Parsons offered him a further role at Bicester; this was a Team Leader role located approximately 26 miles from his home. I accept the claimant's evidence that he could not accept this, as he did not have regular access to a car, and having previously tried this, public transport to Bicester took him between 90 minutes and two hours each way, which would cause difficulties in relation to his caring responsibilities for his wife and son.
93. There is also reference to a role at Banbury in Mr Parsons' statement. Again this is not documented, as the documents referred to by Mr Parsons apparently relate to the night shift role at Didcot, but Mr Parsons accepted that this role was further away from the claimant's home than Bicester, in fact about 40 miles from his home, and it is agreed that the claimant rejected it due to the distance.
94. During his evidence, the claimant was able to find an e-mail chain on his mobile phone. This e-mail chain had not previously been disclosed by either side and is not referred to in Mr Parsons' evidence. Ms Kaye agreed that the e-mail chain could be admitted in evidence and I gave her time to take instructions on it, but in the event, she did not need to ask further questions about it.
95. This e-mail chain referred to the claimant being sent a weekly national jobs bulletin by the respondent on one occasion, and that Mr Parsons and Ms Williams had directed him to a role in it located in Ebbw Vale in Wales, more than 100 miles from his home. Again, due to his lack of a vehicle and his caring responsibilities, the claimant could not accept this.
96. As the respondent was unable to find an alternative role which suited the claimant, his employment ended when his notice expired on the 30th of April 2024.

Relevant Law

97. Section 98(1) of the Employment Rights Act 1996 provides that in determining whether a dismissal is fair or unfair it is for the employer to show (a) the reason (or, if more than one, the principal reason) for

- dismissal and (b) that it is a reason falling within subsection (2) of section 98 or is some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the claimant held.
98. Section 98(4) provides that where the employer has fulfilled the requirements of subsection (1), the determination of the question of whether the dismissal is fair or unfair having regard to the reason shown by the respondent (a) depends on whether in the circumstances including the size and administrative resources of the respondent 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.
99. In the case of **Dobie v Burns** 1984 ICR 812 (CA), when the words of section 98 (4) were contained in section 57 (3) of the Employment Protection (Consolidation) Act 1978, Donaldson LJ said that in deciding whether the respondent acted reasonably or unreasonably: “a very important factor... on the facts known to him at that time, is whether or not there will be injustice to the employee and the extent of that injustice”.
100. For example, the employer will have to take account of length of service, satisfactoriness or otherwise of service, difficulties the employee may face in obtaining alternative employment and matters of that sort. None of these factors are decisive but they must be taken into account. This case is the foundation stone of the later case-law on third party pressure to dismiss.
101. In **Grootcon v Keld**, also decided in 1984, it was held that if the respondent is relying on third party pressure to dismiss it must show proper evidence about this.
102. In **Greenwood v Whiteguyll Plastics** 0219/07 EAT, the employer was a shop fitting company which was told by Morrisons Supermarkets that one of their employees could no longer work at Morrisons’ stores due to alleged poor performance. A manager at Morrisons had in each case signed off the claimants work as satisfactory, but the shop fitting company was a small company which could not stand up to Morrisons, an important customer. The appeal was on the basis that the Employment Tribunal failed to consider the nature and the extent of the injustice to the employee when considering the issue of reasonableness of the employer’s action in dismissing the claimant under section 98(4).
103. In that case, there was no evidence about injustice to the claimant adduced before the Employment Tribunal, and no evidence that the respondent had taken that factor into account either. At paragraph 24 of the appeal judgement, it is stated the Employment Tribunal did not make any finding about the claimant's work or his capability. It was said that perhaps the injustice to the claimant was so severe that the respondent might have been able to reorganise its business so that the claimant could have taken over the job of the person who was given his job, or a reorganisation of jobs could have happened so that the claimant could have worked for another customer in place of an employee who was given the claimant's job.
104. Miss Chan has not suggested that there was anyone else with whom the current claimant could have in effect have swapped jobs and the claimant told me in his evidence that he did not know who had taken over his job at the NG site.

105. The decision in **Greenwood**, however, shows the extent to which it is expected that reasonable employers will go in cases of real injustice, as well as establishing that the tribunal needs to make findings about the nature and extent of the injustice to the employee.
106. In **Henderson v Connect South Tyneside** 0209/2009, Mr Justice Underhill as President of the Employment Appeal Tribunal considered the question of dismissal at the behest of a third party generally, although the facts of that case are very different from the present.
107. In paragraph 13, the President noted that whilst an employee may have suffered an injustice, dismissal may still be fair within section 98(1) and (4). The focus is on whether it is reasonable for the respondent to dismiss, not whether it was reasonable for the third party to reject the worker.
108. In the same paragraph, he states: "If the employer has done everything he reasonably can to avoid or mitigate the injustice brought about by the stance of the client, most obviously by trying to get the client to change its mind, and if that is impossible, by trying to find alternative work for the employee but has failed, any eventual dismissal will be fair. The outcome may remain unjust but not because of unreasonableness by the employer."
109. In paragraph 18 of that judgement, the President considered the effect of **Dobie v Burns**, saying: "as we understand it, the effect of Dobie is that in a case where the client's stance appears liable to cause injustice, the tribunal must consider with special care whether the employer has indeed done all he could to avoid or mitigate that injustice: in a case of patent injustice it may be necessary for an employer to "pull out all the stops"."
110. Finally, in **Bancroft v Interserve Facilities Management** 2012 WLUK 448, a decision of Mrs Justice Slade in the EAT, a chef employed by the respondent was removed from work at a bail hostel at the behest of the Home Office. The Employment Tribunal found that the claimant had a difficult relationship with the manager of the bail hostel and the manager was overly keen to find fault with the claimant. The relationship between them broke down. There is no such history in the present case.
111. In that case, the respondent did not try to get the Home Office to change its mind. The tribunal had concluded it was reasonable for the respondent not to try in those circumstances, that is taking account of the breakdown of the relationship between the employee and the manager of the bail hostel.
112. The Appeal Tribunal found that the employment tribunal did not properly apply the principles to consider whether the respondent had done everything it reasonably could to mitigate the injustice caused by the third party's request for removal of the claimant, and that it had failed to make the necessary findings of fact regarding why the respondent had not tried to mediate the relationship between the claimant and the manager earlier, that is, before the relationship completely broke down.
113. This is a different situation from the present case, as there is no history of poor relationships between the claimant and staff at the NG - the claimant says quite the opposite, and I have seen various testimonials to his good work from NG staff - but the basic principles (of considering the nature and extent of any injustice to the claimant and whether the employer acted within the reasonable range given that context) remain relevant.

114. **Polkey:** The statutory basis of a Polkey reduction to compensation is **section 123 of the Employment Rights Act 1996** which relates to the compensatory award. Subject to certain other statutory provisions, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the claimant in consequence of the dismissal, insofar as that loss is attributable to action taken by the respondent. In the case of **Polkey v A E Dayton Services Limited**, 1988 ICR 142 HL, it was held that the Employment Tribunal was expected to consider a reduction of compensation under the **Polkey** principle whenever there is evidence to support the view that the employee might have been dismissed anyway, even if the respondent acted fairly.
115. It is necessary to consider both whether the respondent could have dismissed fairly and secondly whether **this** employer would have done so in all the circumstances, rather than considering what a hypothetical fair employer would have done-see **Hill v The Governing Body of Great Tey Primary School**.
116. I have to construct, based on evidence not speculation, a framework which is a working hypothesis about what would have occurred if the respondent had behaved differently (and fairly), in order to evaluate the chance that the claimant would have been dismissed - see for example **Gover v Property Care Limited**, 2006 ICR 1073 CA, approving HHJ McMullen in the EAT.
117. I also took account of the guidance in paragraphs 53 and 54 of the **Software 2000 v Andrews** case, while reminding myself that the case involved a previous statutory regime which has now been repealed, as well as considering the **Polkey** principle. I have discounted references to that regime, including the effect of the repealed section 98A(2).
118. I have to take account of all the evidence, including the claimant's evidence, in deciding whether and to what extent there should be a **Polkey** reduction, i.e. to reflect the chance that the claimant may have been dismissed by this respondent if it had acted fairly, or that his employment may not have continued indefinitely in any case, but the burden of proof is on the respondent in respect of this reduction.

Application of Law to Facts

119. **So, was there a potentially fair reason for dismissal within section 98(1)?** I accept the respondent's evidence, in particular that of Mr Atkins and Mr Albrighton, that the reason for the claimant's dismissal was that NG had asked for the claimant to be excluded from their site at Didcot under clause 11.4 of NG's contract with the respondent, and because no suitable work had been found for the claimant by the time his notice expired.
120. Although the notes of the meeting on the 19th or 20th of December 2023 are headed "disciplinary" meeting, I accept that the dismissing officer Mr Atkins did not regard this as a conduct matter, and neither did Mr Albrighton. The respondent simply had no pro forma template for this sort of situation, so Mr Parsons was given the note taking template normally used for disciplinary processes.
121. I accept that the client (NG's) demand that the claimant be excluded from their site, so that the claimant could not attend to do his work, is capable of amounting to some other substantial reason of a kind

such as to justify the dismissal of an employee holding the position which the employee held. Mr Nutt could not realistically manage the warehouse or the warehouse staff if he could not attend the site to do so. Ultimately, Miss Chan did not seriously challenge that this was the case, or that this was the reason for the claimant's dismissal.

122. Next, I must consider whether, in the circumstances (including the size and administrative resources of the respondent's undertaking), the respondent acted reasonably or unreasonably in treating this as a sufficient reason for dismissing the claimant, and I must determine this question in accordance with equity and the substantial merits of the case. I must not substitute my decision for that of the respondent, but must consider whether the respondent's response to this situation fell within the reasonable range of responses.
123. In deciding this, I must consider whether there was an injustice caused to the claimant by NG's request for his removal, and if so, the nature and extent of the injustice. Having done so, I must then consider whether the respondent acted within the reasonable range of responses in its attempts to mitigate that injustice.
124. In my judgment, there was a substantial injustice to the claimant by National Grid asking for his exclusion from site. The allegedly missing items from the Accenture stock check were located within days of that audit taking place, in a different part of the warehouse. Then, Helen Pennington did a review on behalf of the respondent and found that the claimant had not failed to follow any procedures, was not himself responsible for misplacing any stock and that the claimant had no case to answer in respect of any disciplinary allegations about misplacement or misappropriation of stock. Effectively, the respondents' investigation found that the claimant had done nothing wrong.
125. The claimant is an employee, as the respondent has accepted, with 22 years' exemplary service. He is a man in his fifties with caring responsibilities which would make it difficult for him to obtain another job at a similar rate of pay easily. The client NG's decision to request his removal from site therefore amounted to a substantial injustice, as, according to the respondent's investigations, the claimant had done nothing wrong.
126. The effect of NG's decision was to prevent the claimant for carrying out his work for the respondent and placed him at risk of dismissal. The respondent has not sought to argue that there was no injustice to the claimant, and indeed the dismissing officer Mr Atkins accepted that there was a severe injustice.
127. The next question is whether the respondent acted within the reasonable range of responses in seeking to mitigate the effects of this serious injustice to the claimant. I consider that this is one of those cases where the injustice to the claimant is so substantial that every reasonable employer in the respondent's position would want to do whatever it could, within reason, to assist him
128. I was not provided with evidence by the respondent about its size and administrative resources, but it is a household name and from questions asked it has a number of large scale clients; apart from the National Grid, I was told that clients included SSE and Scottish Gas, who have premises within the 20 mile radius mentioned by the claimant, and it has other substantial clients such as Morrisons Supermarkets over a wider area. It was also apparent from the evidence that the respondent is appropriately resourced for a large and well-known company with a

Human Resources department and has appropriate procedures for matters such as redundancy and discipline, although not for the claimant's situation. Mr Albrighton told me that he had dealt with redeployment for the respondent before in the redundancy context but if it has any written process in this regard, it was not provided.

129. The claimant initially complained that he should never have been suspended in November 2024, but given that a large and important client was at that time accusing him of misappropriation of stock based on an external audit, I consider that it was within the reasonable range of actions for the respondent to do that whilst it investigated further. As soon as Ms Pennington had reached her conclusion, exonerating him, the claimant was informed of that. As she was brought in to do that job from another part of the business I do not consider that the length of time it took to investigate (about one month) was unreasonable in all the circumstances, although I accept this was distressing for the claimant.
130. Although it is clear from Sally Nulty's emails of the 18th of December 2023 on the 6th of February 2024 that she had formed a view that the claimant was responsible in some way for stock errors found by Accenture, there is no direct evidence that she ever received a copy of Helen Pennington's investigation report, which exonerated the claimant and gave reasons for doing so. As I stated previously, the reference in the 6th of February 2024 e-mail to findings having been shared between the respondent and NG is ambiguous and could equally refer to a sharing of the Accenture's findings, which everyone accepts took place.
131. The respondent has not disclosed any emails or any other evidence which shows that Helen Pennington's report was sent or given to Ms Nulty. The meeting with Mr Atkins on the 18th of December 2023 took place virtually and Mr Atkins frankly said that he did not even have a copy of Helen Pennington's report at that stage. He did not send Ms Nulty the report, and I have not heard any evidence from Ashley Sulley or anyone else to suggest that it was sent. As a result, I conclude that the Pennington report was never sent to National Grid.
132. I consider that every reasonable employer, conscious of the injustice to a longstanding and good employee such as the claimant from NG's stance, would at least have forwarded the Pennington report to Ms Nulty and would have attempted to discuss its contents with her in detail, would have tried to understand why she was still concerned about the claimant given that report and would have attempted to meet those concerns.
133. There is no evidence that Mr Sulley, whom I accept had most of the day-to-day contact with Ms Nulty, ever attempted to discuss the claimant's situation or Ms Pennington's report with Ms Nulty after 18 December 2023 and before the 6th of February e-mail exchange, or indeed that anyone apart from Mr Atkins had tried to change NG's stance before 18 December 2023. Mr Atkins' attitude at the meeting with the claimant on the 20th of December 2023 was that NG's decision was a *fait accompli* which could not be changed. When he asked, during the grievance hearing, for NG to be approached again, Mr Sulley simply said that they would not change their minds.
134. If the respondent had sent a copy of the Pennington report to Ms Nulty and has Mr Sulley attempted to discuss the situation and its contents in detail with her, including the claimant's and Mr Atkins view that Accenture had not carried out a thorough check, I consider this would

have potentially softened Ms Nulty's attitude to the claimant, about whom she had raised no previous concerns. Indeed, National Grid as well as the respondent had recognised the claimant's contributions earlier in 2023. I have seen no evidence beyond speculation by Mr Atkins that Ms Nulty was taking advantage of the situation to get rid of the claimant in order to streamline the warehouse operation ahead of a later transfer to National Grid, and therefore I reject the suggestion that Ms Nulty would not have allowed the claimant back on site whether she had seen the Pennington report (or whether Mr Sulley had made serious efforts to persuade her to change her mind) or not.

135. I appreciate that there can be sensitivities in commercial arrangements which may limit the representations that can be made, but the only evidence I heard about this was from Mr Atkins, and it is clear that he made no further efforts after the meeting on the 18th of December 2023 and that he would not be in a position to have one to one meetings with Ms Nulty in any event. There was nothing in what he said that suggested that the respondent's relationship with NG was so poor or uncertain that it could not have made further representations after 18 December – clause 11.4 of their contract does, after all, say that the client's request should be "reasonable".
136. I do not consider that Mr Sulley's e-mail dated the 6th of February 2024 was a serious attempt to change Ms Nulty's mind. It simply pays lip service to Mr Atkins' request, during his deliberations about the grievance meeting, that National Grid be asked to change its mind, and probably reflects a request from Human Resources that Mr Sulley should document that he had asked National Grid to allow the claimant back on site when it was clear that the claimant was pursuing a grievance and, probably, a further appeal. It explicitly says that it is "part of the process" rather than being a reasoned attempt to change NG's stance.
137. For these reasons, I consider that the respondent's attempts to understand NG's concerns and to ameliorate them and persuade them to change their stance about the claimant returning to site fell within the reasonable range and the dismissal is unfair for that reason.
138. In addition, I consider that every reasonable employer faced with this situation would have involved the claimant more closely in its attempts to find him alternative work. The claimant was clear on the 5th of January 2024 that his objection to the role on day shift at Didcot was the substantially lower pay and the lower grade. He had been told by Mr Atkins that any job offered would be on the terms applicable to that role, not his current terms. There was no further attempt to talk to him about that role or to discuss ways in which it could be made more acceptable to him.
139. Then on the 6th of March 2024, the claimant was told that his pay and grade would be protected for up to two years. In the grievance appeal hearing before Mr. White, on 21 March 2024, the claimant queried why he was not told that his pay and grade could be protected at the time the Didcot role was offered in January 2024.
140. I asked Mr Albrighton about the respondent's attitude and ability to protect pay in a redeployment situation, and he said that it depended on the circumstances but it could be made available, subject to the agreement of the respondent's Compensation and Benefits Department, in appropriate circumstances. Mr Albrighton did not know when the

- suggestion that the claimants pay could be protected had first been raised, or why it had not been offered prior to the 6th of March 2024.
141. The respondent's Human Resources Business Partners must have known of the possibility of obtaining pay and grade protection in redeployment situations. I have seen correspondence involving Ms Williams, an HR business partner, whom I accept was aware of the claimant's situation no later than December 2023 and who was clearly involved in the offer of pay protection that was made in March 2024.
 142. I consider that every reasonable employer faced with this situation, where its own investigations had concluded that the claimant had done nothing to justify his exclusion from the client's site and who had received Mr Nutt's response on the 5th of January 2024 and who had protected other employee's pay and grade in redeployment situations before, would at least have looked into protecting his pay and grade at that point and would also have attempted to hold open the Didcot post for him until the issue of pay protection was clear.
 143. Every reasonable employer would also have wanted to inform the claimant of the steps it was taking to try and assist him, including investigating the possibility of pay protection, in order to reassure him that it was doing all it reasonably could. The respondent did not offer to protect the claimant's pay and grade if he took the day shift role at Didcot or even say that it would consider doing so, and, based on the evidence before me, did not even look into protecting his pay and grade in January 2024 when that role was available and met all the claimant's other needs. For those reasons also I consider that the respondent acted outside the range of reasonable responses and that the dismissal was unfair.
 144. So for the above reasons, I do not consider that the respondent acted within the reasonable range in treating the National Grid's exclusion of the claimant from its site as justification for his dismissal, taking account of its size as a well-known, large scale employer and its administrative resources, which included a substantial human resources department and access by managers to HR advice. So the claimant's dismissal was unfair.
 145. **Polkey/section123 ERA 1996:** I have to consider the likelihood of chance that the claimant would have been dismissed in any event by the respondent had the respondent acted fairly in response to these circumstances. This would have involved, as I have said, sending National Grid miss pennington's report, and senior managers such as Mr sully making more meaningful and detailed arguments that the claimant should be allowed to return to the National Grid site. As I have said, I appreciate that there is some commercial sensitivity to these arrangements, but on the evidence before me, Mr Sulley, as the most appropriate person to deal with Sally Nulty at the National Grid, only made a half-hearted attempt to persuade her to allow the claimant to return, failing to make a case at all beyond referring to the fact that the claimant had brought a grievance and may appeal in his e-mail dated the 6th of February 2024.
 146. A fair process would also have involved the managers involved, Mr Parsons and Mr Atkins as well as Mr Sulley, working closely with Human Resources to discover suitable alternative work for the claimant.
 147. In particular, when the claimant was told about the position that was due to be advertised in Didcot during January 2024, I consider that every reasonable employer would have looked into the possibility of getting him pay and grade protection at that point and would have tried to hold that job

open whilst the decision was taking taken about that. It would have also explained to the claimant that it was doing this.

148. Mr Albrighton, the only witness from whom I heard who had any experience of the respondent offering pay protection in a redeployment situation, did not suggest that it was a particularly difficult or time-consuming exercise in order to obtain that protection in an appropriate case, and there is no evidence that had it been sought in January 2024 that it would have taken a particularly long time or that the outcome would have been different from that on the 6th of March, that is that 2 years protection of pay and grade for the claimant would have resulted.
149. I have also noted above that on some occasions, roles that were offered to the claimant were not offered in writing, and on other occasions such as the day shift job in Didcot, the claimant had to ask for details of the terms on which the job was being offered rather than having it set out in writing to him. I consider that every reasonable employer in this situation, certainly one of the similar size to the respondent, would have notified the claimant properly of the various roles which may be available to him, including the terms on which they were being offered.
150. I consider that if they had done so, the claimant would have been more confident that the respondent was really trying to help him. It is apparent that by the time of the grievance appeal in front of Mr. White, the claimant was seriously concerned about whether the respondent wished to assist him to retain his employment or wished to be rid of him. I consider that explains his reticence at that stage, when he said that if a job was offered which was suitable he would have to think about it overnight and discuss it with his wife.
151. Miss Kaye suggested that this this reticence showed that whatever the respondent had done, the claimant would not have accepted any role that he was offered. I do not accept that. I accept the claimant's evidence that had the respondent told him it was seeking pay protection for the role in Didcot in January 2024, and had it held the job open for him whilst that was done, it is highly likely that he would have accepted that role subject to protection of pay and grade.
152. As two years protection of pay and grade was available by the 6th of March 2024, I conclude that, even if sending Ms Nulty the Helen Pennington report and making stronger representations to her did not result in the claimant's return to the Didcot NG site, there is no evidence before me to suggest that the respondent could or would not have offered the Didcot Accord role on day shifts to the claimant in January 2024 with two years' salary and pay protection had those involved (including the HR Business Partners) addressed their minds to this, and I accept the claimant's evidence that he would have been almost certain to have accepted that role had those steps being taken.
153. Given the claimant's good work history, there is nothing before me to suggest that if he had either been taken back to the National Grid site or had been given the role at Didcot Accord on protected salary/grade terms, he would not have continued to carry out his work in a satisfactory manner up to date or that his employment would have ended.
154. I have not been given any detailed evidence about the later transfer of the NG warehouse operation at Didcot back to National Grid, beyond the fact that it is one of the reasons that Mr Atkins no longer works for the respondent. There is no evidence before me to suggest that if such a

TUPE transfer had taken place and had the claimant still been working there, the claimant would not have transferred over to National Grid, as he transferred to the respondent more than 10 years prior to his dismissal, or that he would not still have been working there today.

155. Likewise, if he had been offered pay and grade protection for the role at the Accord site at Didcot in January 2024 on day shift, I consider that it is almost certain that he would have taken that job and that he would have continued to hold it to date. I have heard no evidence at all as to any reason why that role would not have continued.

156. Taking all these matters in the round, I acknowledge that there is always a slim chance that the pay/grade protection may not have been available in January 2024 or that the claimant may not have taken the job at that stage, but based on the evidence I have heard I consider that this chance is no more than 10%. The respondent clearly considered that it was appropriate to protect the claimant's pay and grade for two years in March 2024 and it has provided no evidence as to why it could not have done so when the day shift role was available at Didcot Accord site in January 2024.

157. There is no credible evidence before me that there is any significant chance that the claimant would have turned that role at Didcot (on day shift) down if it had come with two years pay and grade protection. I heard no evidence from the respondent about any difficulties that would have occurred in getting the claimant pay protection at an earlier stage, although it was apparent from the 20th of March grievance appeal in 2024 that the claimant was unhappy about the delay and was complaining about this.

158. So my conclusion is that there should be a reduction in the compensatory award of 10% only to reflect the slim chance that pay protection may not have been available at a point when the dayshift job at Didcot was still available or that the claimant may have refused to take it.

Approved by:

Employment Judge Findlay

9 March 2026

JUDGMENT SENT TO THE PARTIES
ON 10 March 2026

FOR THE TRIBUNAL OFFICE