EMPLOYMENT TRIBUNALS

Claimant: Ms G Giadom

Respondent: Northwest Associates Limited

Heard at: Watford Employment Tribunal (In Public; By Video)

On: **20 and 21 May 2026**

Before: Employment Judge Quill (Sitting Alone)

Appearances
For the Claimant: Dr A Belle, FRU
For the respondent: Mr M Onu, director

WRITTEN FULL REASONS

Introduction

1. Judgment with summary reasons was given orally. Written reasons were requested, and I am providing these written full reasons.

2. The Claimant was employed by the Respondent and was dismissed. The Respondent asserted (at the time and in the litigation) that the dismissal reason was redundancy.

The Hearing and The Evidence

3. I had a bundle of 557 pages, a chronology, a cast list, and an updated schedule of loss.

4. I had 5 written witness statements, 2 from the Respondent and 3 from the Claimant. The Claimant's additional 2 witness statements were Alex Giadom (her son) and Sara Royes-Gaynor, a friend. The Respondent's witness statements were from Chukwura Raphael Onu and Marvin Onu. I will refer to them as "Raphael" and "Marvin". Marvin is Raphael's son.

5. Each of the Claimant and Marvin and Raphael swore to the accuracy of their statements and answered questions from the other side and from the Tribunal. The Claimant's other two witnesses did not have to do this, as the Respondent did not seek to challenge their evidence and I had no questions for them.

6. At the outset of the hearing, Dr Belle confirmed that unfair dismissal was the only complaint still being pursued. The other complaints were withdrawn.

7. He highlighted that I would also need to decide if the Respondent had provided the statement of written particulars as required by Part I of the Employment Rights Act 1996 ("ERA") because, if the claim was successful, there would be any argument that an additional award under section 38 of the Employment Act 2002. An email dated 11 September 2025 [Bundle 193, 194] put the Respondent on notice of this argument.

8. Each side had submitted draft list of issues [Bundle 178 and 180].

9. There was no dispute about the dates of early conciliation, or the date the claim was presented, or that she was dismissed. There was a dispute about the identity of the employer and the duration of continuous employment.

10. Part of what I had to decide was whether the Claimant had at least two years' continuous employment.

11. As per the Claimant's draft list, the things to be decided included:

> 1. Does the claimant have standing to pursue this claim pursuant to section 108 ERA 1996 and section 230(1) ERA 1996?
>
> 2. Has the Respondent discharged its burden of proving the principal reason for dismissal, as required by section 98(1) ERA 1996?
>
> 3. If yes, what is the principal reason for dismissal and is this a potentially fair reason?
>
> 4. If, as the Respondent contends, the reason was redundancy was there a genuine redundancy situation pursuant to section 139 ERA 1996?
>
> 5. Was the dismissal a decision no reasonable employer would have made in the circumstances?
>
> 6. Pursuant to section 98(4) of the ERA 1996, was the Respondent's procedure for the dismissal fair in all the circumstances?

12. As per the Respondent's draft, the issues to be decided under the first of those questions included:

> 2. Did the claimant resign in May 2023, breaking continuity of employment, and was her later re-engagement a new employment contract?
>
> 3. Was the claimant employed by Northwest Associates Ltd, NorthPay Ltd, or both?
>
> 4. Was the claimant's role made redundant due to the closure of NorthPay Ltd?

The Law

Unfair dismissal

13. Part X of the Employment Rights Act 1996 ("ERA") contains provisions relating to an employee's right (specified in section 94) not to be unfairly dismissed.

14. Section 98 ERA states, in part:

> (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
>
> (a) the reason (or, if more than one, the principal reason) for the dismissal, and
>
> (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
>
> (2) A reason falls within this subsection if it—
>
> (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
>
> (b) relates to the conduct of the employee,
>
> (c) is that the employee was redundant, or
>
> (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
>
> (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.

15. Provided the Respondent persuades the tribunal that it has met the requirements of subsection 98(1), then the dismissal is potentially fair, which means that it is then necessary to consider the general reasonableness of that dismissal under section 98(4) ERA 1996.

16. In considering this general reasonableness, the Tribunal takes into account the Respondent's size and administrative resources. Typically, the tribunal's analysis includes deciding whether the Respondent carried out a reasonable process prior to making its decisions. The band of reasonable responses test applies not only to the decision to dismiss, but also to the procedure by which that decision was reached.

17. In carrying out the analysis, it is important for the tribunal to make sure that it does not substitute its own decisions for those of the employer. In particular, it is not relevant whether the tribunal would have followed a different process or

reached a different decision, so long as the employer's decisions were not outside the band of reasonable responses.

<u>"Redundancy" as alleged dismissal reason</u>

18. Section 139 ERA states in part

> (1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—
>
> (a) the fact that his employer has ceased or intends to cease—
>
> (i) to carry on the business for the purposes of which the employee was employed by him, or
>
> (ii) to carry on that business in the place where the employee was so employed, or
>
> (b) the fact that the requirements of that business—
>
> (i) for employees to carry out work of a particular kind, or
>
> (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.
>
> (2) For the purposes of subsection (1) the business of the employer together with the business or businesses of his associated employers shall be treated as one (unless either of the conditions specified in paragraphs (a) and (b) of that subsection would be satisfied without so treating them).
>
> (6) In subsection (1) "cease" and "diminish" mean cease and diminish either permanently or temporarily and for whatever reason.

19. Within subsection 139(1), there are 4 states of affairs described: (a)(i); (a)(ii); (b)(i) and (b)(ii). These are sometimes called "redundancy situations", though the phrase does not appear in the legislation.

20. In an unfair dismissal case, where the employer is relying on "redundancy" as the fair reason for dismissal, it is for the employer to demonstrate that (at least) one of these states of affairs existed. (ie that there was a "redundancy situation" as it is sometimes called). That is a question of fact for the tribunal to determine on the evidence.

21. If there was such a state of affairs, then, as made clear by the House of Lords in <u>Murray v Foyle Meats Ltd</u> [1999] ICR 827, the tribunal has to go on to decide if the dismissal was, in the words of section 139(1), "*wholly or mainly attributable to*" the existence of that state of affairs. Again, in an unfair dismissal case, because of section 98(1) ERA, it is for the employer to satisfy the tribunal that that was the case. The issue is one of causation. Was the "redundancy situation" the reason that the employer decided to terminate the contract of employment.

22. The latter step is a crucial part of the reasoning. It is not merely sufficient for the tribunal to be satisfied that a redundancy situation existed. The reason in the <u>Abernethy</u> sense must be determined. See, for example, <u>Kellog Brown and Root (UK) Ltd v Fitton & Ewer</u> UKEAT/0205/16/BA UKEAT/0206/16 at paragraph 24.

In that case, the reason was found to be not the closure of a work location (though that would have been a redundancy situation) but the employees' refusal to move to a new work location. Thus, the dismissal was not "wholly or mainly attributable" to the redundancy situation, and the correct label for the dismissal reason was not "redundancy".

23. Subject to the points just mentioned, for the tribunal to be persuaded that the reason for the dismissal was redundancy, the employer does not have to prove:

23.1 why the "redundancy situation" existed. [Of course, where the Claimant's argument is that the employer is simply giving a "sham" reason, the Claimant is entitled to ask the Tribunal to decide that the employer has lied about the state of affairs that is said to have led to the dismissal; that is an argument that the dismissal was not "attributable" to a redundancy situation (if any).]

23.2 or that there was nothing that the employer could have done to avoid it. [That might come into the unfair dismissal considerations as part of section 98(4), but is not relevant to section 98(1).]

24. I note <u>Pillinger v Manchester Area Health Authority</u> EAT/225/79. On the facts of the case, the tribunal had decided that the employee had been fairly dismissed by reason of redundancy, but, if they were wrong about that, he had been fairly dismissed for "some other substantial reason" [often shortened to "SOSR"] as now defined in section 98(1)(b) ERA. The employee's appeal was successful. For the redundancy issue, the EAT's reading of the facts was that the employee had been replaced by another employee doing exactly the same work, for lower pay. This did not meet the definition of redundancy. In reaching its decision, it noted:

> Now, if it were possible to say on the evidence that the kind of work which this newly appointed more junior Scientist did was in some way different and, or intended to be different, from that which would have been done by Dr. Pillinger, then it might be possible to say here that the requirement for Dr. Pillinger to do his particular branch of the research had ceased or diminished.

25. As noted by the EAT in <u>Corus and Regal Hotels plc v Wilkinson</u> UKEAT/0102/03, when a business reorganises the way in which it conducts its business, and/or reallocates work amongst its employees, that does not necessarily mean there is a "redundancy situation" or that the dismissal of employees would be by reason of redundancy. Each case must be decided on its own particular facts: "*The mere fact of reorganisation is not in itself conclusive of redundancy or, conversely, of an absence of redundancy*."

26. In <u>Mitie Olscot Ltd v Henderson</u> UKEAT/0016/04 employees were dismissed for what the employer claimed was redundancy. The tribunal was not persuaded that there had been any diminution in the business's requirements for employees

to carry out work of a particular kind. The employer's appeal failed. The EAT observed:

> 'the tribunal were more than entitled to conclude that the real reason behind the dismissal was economic problems and an attempt to renegotiate contracts, which, if it had been successful, would not have resulted in job losses to any material extent. That does not meet the definition of redundancy since the need for the employer was not lack of work but economic improvement.'

27. The words of the legislation are paramount, and clear findings of fact needed. The question under Section 139(b)(i) is not whether the need for "work of a particular kind" has diminished, but whether the requirement for employees (to carry out work of a particular kind) has diminished. Thus findings of fact about exactly which "work of a particular kind" the Respondent is relying on, and analysis of the Respondent's arguments for asserting it has a reduced requirement for employees to do *that* work will be required.

Fairness of alleged redundancy dismissal

28. As regards fairness of a redundancy dismissal, Williams v Compair Maxam Ltd [1982] IRLR 83 set out guidance which is still relevant. Tribunals must remember that it is guidance, and does not replace the wording of section 98(4).

28.1 The employer should give as much warning as possible of impending redundancies so as to enable (the union, if any, and) employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment, either with the Respondent, with an associated employer, or elsewhere.

28.2 The employer should consult (with representatives, if any, or else directly with the employees) as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible. In particular, the employer should seek to agree the selection criteria (with the representatives, if any), and be willing to continue to engage about the processes for applying those selection criteria

28.3 The employer should seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service.

28.4 The employer should seek to ensure that the selection is made fairly in accordance with these criteria and consider any representations as to errors or unfairness in the selection.

28.5 The employer should consider whether it is possible to offer alternative employment instead of dismissing an employee

28.6 In Elkouil v Coney Island Ltd [2002] IRLR 174 at [14], it was noted:

> The warning, the giving notice of risk, that is spoken of there is an essential prerequisite of the consultation process, because without it the representatives of the employee will not be able to formulate a strategy or consider what suggestions they can put to the employer. In this case it is true that a single person was being made redundant and no union was involved, but the principles are exactly the same.

29. The nature of fair consultation was considered in R v. British Coal Corporation and Secretary of State for Trade and Industry ex parte Price and others [1994] IRLR 72 at [24]:

> It is axiomatic that the process of consultation is not one in which the consultor is obliged to adopt any or all of the views expressed by the person or body whom he is consulting. I would respectfully adopt the tests proposed by Hodgson J in R v Gwent County Council ex parte Bryant, reported, as far as I know, only at [1988] Crown Office Digest p.19, when he said:
> Fair consultation means:
> (a) consultation when the proposals are still at a formative stage;
> (b) adequate information on which to respond;
> (c) adequate time in which to respond;
> (d) conscientious consideration by an authority of the response to consultation.

30. In Compair Maxam, it was emphasised that

> The purpose of having, so far as possible, objective criteria is to ensure that redundancy is not used as a pretext for getting rid of employees who some manager wishes to get rid of for quite other reasons, e.g. for union activities or by reason of personal dislike.

31. In Teixeira v Zaika Restaurant Limited [2022] EAT 171, the EAT pointed out that it was established by Capita Hartshead Ltd v Byard [2012] ICR 1256 that the tribunal must not substitute its own views, for that of the employer, on the issue of the appropriate pool from which the employee to be dismissed might be selected. That applies even if the pool consists of just a very small number.

32. When deciding on whether the dismissal was fair or unfair, the tribunal's analysis might include, as well as the size and resources of the employer; whether it has relevant policies and procedures, and if so have they been followed; has it followed the same method and processes as in previous similar exercises, and, if not, was there a reason for acting differently this time; was there an urgent need to act quickly to save the business. There is no single uniform process for redundancies that must be followed by every single employer. It is the reasonableness of the employer's decisions (and specifically whether they were outside the band of reasonable responses) that is relevant.

33. Part XI of the employment rights act deals with the rights to redundancy payments. I mention Part XI because, even though no claims based on Part XI have been presented in this particular case (that is, there is no dispute about the entitlement or otherwise add to a redundancy payment), Part XI specifies, amongst other things, when an employee might lose entitlement to redundancy payment. Part XI describes suitable alternative employment, and the terms on which offers of suitable alternative employment have to be made if the employer is to argue that the has been unreasonably rejected so that the entitlement to statutory redundancy payment is forfeited. That is the context in which the rules about "trial periods" appear in ERA. "Trial periods" are not a direct feature of section 98 ERA, or of Part X at all.

Remedy

ACAS uplift

34. The ACAS Code of Practice on disciplinary and grievance procedures must be taken into account by the employment tribunal if it is relevant to a question arsing during the proceedings.

35. Section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 provides

> (2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—
>
> (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
>
> (b) the employer has failed to comply with that Code in relation to that matter, and
>
> (c) that failure was unreasonable,
>
> the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

36. So, a failure to complain with a Code has to be an unreasonable failure for this provision to have effect. Some failures might not be unreasonable, and so that is one of the decisions the Tribunal has to make.

Employment Act 2002

37. Part I ERA includes the requirements of section 1 to provide a statement including written particulars of the information mentioned below, and of section 4 to provide a written update when necessary.

> (3) The statement shall contain particulars of—
>
> (a) the names of the employer and worker,

(b) the date when the employment began, and

(c) in the case of a statement given to an employee, the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).

(4) The statement shall also contain particulars, as at a specified date not more than seven days before the statement … is given, of—

(a) the scale or rate of remuneration or the method of calculating remuneration,

(b) the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals),

(c) any terms and conditions relating to hours of work including any terms and conditions relating to—

(i) normal working hours,

(ii) the days of the week the worker is required to work, and

(iii) whether or not such hours or days may be variable, and if they may be how they vary or how that variation is to be determined,

(d) any terms and conditions relating to any of the following—

(i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the [worker's] 8 entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),

(ii) incapacity for work due to sickness or injury, including any provision for sick pay,

(iia) any other paid leave, and

(iii) pensions and pension schemes,

(da) any other benefits provided by the employer that do not fall within another paragraph of this subsection,

(e) the length of notice which the worker is obliged to give and entitled to receive to terminate his contract of employment or other worker's contract,

(f) the title of the job which the worker is employed to do or a brief description of the work for which he is employed,

(g) where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end,

(ga) any probationary period, including any conditions and its duration,

(h) either the place of work or, where the worker is required or permitted to work at various places, an indication of that and of the address of the employer,

(j) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made,

(k) where the worker is required to work outside the United Kingdom for a period of more than one month— …

(l) any training entitlement provided by the employer,

(m) any part of that training entitlement which the employer requires the worker to complete, and

(n) any other training which the employer requires the worker to complete and which the employer will not bear the cost of.

38. As per section 38 of the Employment Act 2002, if a complaint of unfair dismissal is successful, and if the employer was in breach of the Part I requirements as of the date the claim was presented, the Tribunal can make an additional award.

> (3) … the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.
>
> (4) In subsections (2) and (3)—
>
> (a) references to the minimum amount are to an amount equal to two weeks' pay, and
>
> (b) references to the higher amount are to an amount equal to four weeks' pay.
>
> (5) The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable.
>
> (6) The amount of a week's pay of a worker shall—
>
> (a) be calculated for the purposes of this section in accordance with Chapter 2 of Part XIV of the Employment Rights Act 1996 and
>
> (b) not exceed the amount for the time being specified in section 227 of that Act (maximum amount of week's pay).

<u>Monetary awards for unfair dismissal</u>

39. Apart from orders for reinstatement or re-engagement, a successful unfair dismissal complaint means that the Employment Tribunal will potentially make a basic award and a compensatory award.

40. Section 123 of the Employment Rights Act 1996 (“ERA”) provides tribunals with a broad discretion to award such amount as is considered just and equitable in all the circumstances, having regard to the loss sustained by the claimant because of the unfair dismissal. However, compensation for unfair dismissal under s.123(1) cannot include awards for non-economic loss such as injury to feelings.

41. When assessing alleged loss of earnings, the Tribunal applies the same rules concerning the duty of a claimant to mitigate their loss as apply to damages recoverable under the common law. Where the employee has mitigated, a tribunal should give credit for sums earned.

42. When assessing the amount of deduction for the employee's failure to mitigate their loss, the tribunal does not reduce the award that it would otherwise make by a percentage factor. The correct approach is to make a decision about the date(s) on which the Claimant would have found work (and/or work at higher income than they actually obtained) had they been acting reasonably to seek to

mitigate their losses, and then make an assessment of what income they would have had from such work.

43. So the approach is:

43.1 Consider what steps it would have been reasonable for the claimant to have had to take to mitigate their loss;

43.2 Ask if the claimant failed to take reasonable steps to mitigate their loss;

43.3 Decide to what extent would the claimant have mitigated their loss had they taken those steps

44. It is for the Respondent to prove that the Claimant has unreasonably failed to take appropriate steps, and that – on balance of probabilities - had those steps been taken, then the losses would have been mitigated.

Polkey

45. Section 123(1) provides tribunals with a broad discretion to award such amount as is considered just and equitable in all the circumstances, having regard to the loss sustained by the claimant because of the unfair dismissal.

46. As part of the assessment, the tribunal might decide that it just and equitable to make a reduction following the guidance of the House of Lords in Polkey v AE Dayton Services [1987] IRLR 503. For example, the tribunal might decide that, if the unfair dismissal had not occurred, the employer could or would have dismissed fairly; if so, the tribunal might decide that it is just and equitable to take that into account when deciding what was the claimant's loss flowing from the unfair dismissal.

47. The Polkey assessment will usually be concerned with facts and matters known to the employer at the time of dismissal, but it is not necessarily limited to such facts. The tribunal may have to take into account facts which the employer might have found out if it had acted fairly, and/or future events which may have occurred if the employer had acted fairly. Polkey requires an assessment of the chances of different scenarios unfolding rather than to make decisions, on the balance of probabilities as to what would/would not have happened.

48. In making such an assessment the tribunal, there are a broad range of possible approaches to the exercise.

48.1 In some cases, it might be just and equitable to restrict compensatory loss to a specific period of time, because the tribunal has concluded that that was the period of time after which, following a fair process, a fair dismissal (or some other fair termination) would have inevitably taken place.

48.2 In other cases, the tribunal might decide to reduce compensation on a percentage basis, to reflect the percentage chance that there would have been a dismissal had a fair process been followed (and acknowledging that a fair process might have led to an outcome other than termination).

48.3 If a tribunal thinks that it is just and equitable to do so, then it might combine both of these: eg award 100% loss for a certain period of time, followed by a percentage of the losses after the end of that period.

49. There is no one single "one size fits all" method of carrying out the task. In Software 2000 Ltd v Andrews and ors 2007 ICR 825, the EAT noted that the relevant principles included:

49.1 in assessing compensation for unfair dismissal, the employment tribunal must assess the loss flowing from that dismissal, which will normally involve an assessment of how long the employee would have been employed but for the dismissal

49.2 if the employer contends that the employee would or might have ceased to have been employed in any event had fair procedures been adopted, the tribunal must have regard to all relevant evidence, including any evidence from the employee

49.3 there will be circumstances where the nature of the evidence for this purpose is so unreliable that the tribunal may reasonably take the view that the exercise of seeking to reconstruct what might have been is so riddled with uncertainty that no sensible prediction based on the evidence can properly be made. Whether that is the position is a matter of impression and judgement for the tribunal

49.4 however, the tribunal must recognise that it should have regard to any material and reliable evidence that might assist it in fixing just and equitable compensation, even if there are limits to the extent to which it can confidently predict what might have been; and it must appreciate that a degree of uncertainty is an inevitable feature of the exercise. The mere fact that an element of speculation is involved is not a reason for refusing to make a deduction

49.5 a finding that an employee would have continued in employment indefinitely on the same terms should only be made where the evidence to the contrary (i.e. that employment might have been terminated earlier) is so scant that it can effectively be ignored.

50. The tribunal must act rationally and judicially, but its approach will always need to be tailored specifically to the circumstances of the case in front of it. When performing the exercise, the tribunal must also bear in mind that when asking

itself questions of the type "what are the chances that the claimant have been dismissed if the process had been fair?", it is not asking itself "would a hypothetical reasonable employer have dismissed"? It must instead analyse what this particular respondent would have done (including what are the chances of this particular respondent deciding to dismiss) had the unfair dismissal not taken place, and had the respondent acted fairly and reasonably instead.

51. As the EAT noted in Granchester Construction Ltd v Attrill UKEAT/0327/12.

> *we accept that the Tribunal's approach in looking at a reasonable employer rather than at the actual employer was in error and was likely to understate the extent of the deduction that fell to be made*.

Findings of Fact

Start of employment

52. As per page 280 of the bundle, the Claimant received an offer letter which set out details of five duties which included credit control and included payroll management and included bookkeeping

53. A contract was signed by the Claimant and her employer and that appears at bundle page 281. The employer was to be Northwest Associates Limited, which is a company.

53.1 The contract said that the duties were payroll and credit control on behalf of the employer's clients

53.2 The offer letter specified working hours which were a total of 15, namely 5 hours per day Monday to Wednesday, from 9:30am to 2:30pm.

53.3 Clause 3 of the contract set out the right to terminate without notice but did not specify the notice requirements for termination

53.4 The contract stated that the Claimant would be paid for 15 hours a week but did not specify the amount.

53.5 It did include the names of the employer and the Claimant and the date on which continuous employment began (27 September 2021).

54. The written document neither stated that there were any terms and conditions about holiday or sick pay or other paid time off, and nor (as per Section 2 ERA) did it say that there were no such particulars to be included.

Dispute about May 2023 events

55. Within paragraphs 19 through 23 of Marvin's witness statement, there is a description of the alleged events between 11 and 18 May 2023.

56. I heard the evidence from both sides and considered the contemporaneous documents.

57. My finding is that, on 11 May 2023, the Claimant did communicate an unambiguous resignation to the employer and she did seek to be paid the sums she was due on termination.

58. Although the communication was unambiguous that it was a termination of the employment contract by resignation, it did not expressly specify whether the intention was for the end of employment to be with immediate effect as opposed to at the end of a period of notice.

59. As I have mentioned the written contract did not tell the Claimant what period of notice - if any - she was required to give. The parties do not appear to have addressed their minds to this at the time. However, in any event, she was not told that she was required to give any minimum period of notice (as per Section 86 ERA, or at all). There is now a disagreement about whether she resigned with immediate effect (so with last day of employment being 11 May 2023), or with notice (and the last day of employment not actually arriving, because there was a mutual agreement for the resignation to be revoked prior to the last day of employment).

60. There was a discussion the following week. The parties do not agree the exact details of what was discussed but - even on the Respondent's case - the Claimant resumed work on 18 May 2023.

61. My finding is that it is not true that, at this time, the Claimant's employer ceased to be Northwest Associates Ltd, and became instead, NorthPay Ltd (or anyone else).

62. On the Claimant's case, before any termination of the employment contract took effect, she had discussions with Raphael in particular (and with Marvin) and an agreement was reached that she would remain as an employee.

63. I ultimately do not need to decide whether the Claimant's first contract ended on 11 May 2023 and a new contract began (with Northwest Associates Ltd) on 18 May 2023 for the following reasons

63.1 There was no change of employer in May 2023. The Claimant was still employed by Northwest Associates Limited after May 2023 just as she had been before that month

63.2 Even if there was any gap between two contracts it did not break continuity of employment.

64. I accept the Claimants recollection of the conversation (around 18 May 2023) as being most reliable of all of the witnesses. As far as she was concerned, nothing was said to her about being employed by a different company. No offer for her to be employed by a different company was made (and, therefore, no question of whether she accepted such an offer arises). There was no information given to her that what she had said on 11 May, 18 May or in the immediate aftermath, was being treated as a change of employer.

65. Given that I have decided that there was no change of employer in May 2023, it follows that, even on the Respondent's case (which is that she resigned on 11 May with immediate effect and started again on 18 May 2023 under a new contract of employment) there is no break in continuity.

66. This is because continuous employment is calculated by reference to Chapter 1 of Part XIV ERA, which includes:

> **212.— Weeks counting in computing period.**
>
> (1) Any week during the whole or part of which an employee's relations with his employer are governed by a contract of employment counts in computing the employee's period of employment.

67. So, even on the Respondent's case,

67.1 the week of Sunday 7 May to Saturday 13 May 2023 counts, because the Claimant had an employment contract between 7 and 11 May, and

67.2 the week of Sunday 14 May to Saturday 20 May 2023 counts, because the Claimant had an employment contract between 18 and 20 May.

68. In order for there to have been an effective termination of employment on 11 May 2026, it would not have been necessary for the Respondent to say that they "accepted" the Claimant's resignation. An employee can resign with immediate effect without the employer's agreement. [Although doing so might be a breach of contract.] However, correspondence at the time, including from employer to employee, is evidence of whether the resignation was being treated as with immediate effect, or as a resignation with notice. I am satisfied that the Claimant and Raphael did not regard the Claimant's employment as having terminated prior to their discussions. Had the discussions not resulted in agreement to revoke the resignation, then they might have agreed the last date of employment, or there might have been a dispute over it. However, neither of them regarded the last date of employment as being in the past.

69. The Claimant's pay slip for August 2023 shows that her taxable gross pay to date was £3650. That item and the other pay slips are consistent with the Claimant having received £730 per month and are consistent with the Claimant having received the same amount for May 2023 as for the other months in 2023. Thus the information to be inferred from the payslips is consistent with the Claimant's opinion and belief that there was no gap between 12 May and 17 May 2023 during which she had no contract of employment, but rather the single contract of employment (which commenced in September 2021) simply continued.

The Claimant's duties

70. It is not the case, however, that the Claimant's duties remained exactly the same from September 2021 until the end of her employment

71. The Respondent had an associated company, NorthPay Ltd.

72. The Claimant, although employed by Northwest Associates Limited was, as per the instructions from her employer, the main individual who performed the work required for the operations of NorthPay Ltd.

73. NorthPay operated payroll for its clients. The Claimant carried out the administrative arrangements for NorthPay's work and she authorised the payments that NorthPay handled on behalf of clients.

74. The Claimant was trained by a colleague, Md. He had done the work before it was allocated to the Claimantm and when the Claimant was absent Md covered for her.

75. The NorthPay work was the Claimant's priority. Firstly, when she was in the office, then it was the Claimant, rather than anyone else, who would do the NorthPay work. Secondly, as per her employer's instructions, she prioritised the NorthPay work over other duties.

76. Whenever there was no outstanding NorthPay work, the Claimant might be allocated other work by her employer. However, she was always required to do the NorthPay work first if there was any. Further, other than Md covering when the Claimant was absent, the Respondent's other employees did not do the NorthPay work.

Bookkeeping

77. The primary person responsible for doing the bookkeeping work which the Respondent required was Veronica.

78. From time to time, when there was no NorthPay work, the Claimant was allocated some bookkeeping work.

79. However, until NorthPay ran into financial difficulties this was not a frequent occurrence

Credit Control

80. The Claimant also did some credit control work for the Respondent.

81. In around May 2023, a worker called Mercy was engaged with the intention that Mercy would do credit control. The Claimant provided some credit control training to Mercy, but things did not work out as planned, and Mercy left within a few weeks

82. In around September 2023, Ms Escobar began doing work for the Respondent. I have not seen documents about the terms of her engagement, but she has been described as a contractor specialising in credit control.

83. The fact that I have not seen any written contracts between Ms Escobar and the Respondent (or any of its associated companies) is significant. The Respondent seems to use a loose definition - in some circumstances at least – when it refers to persons as “self-employed”, rather than as “employees” (as I discuss below when addressing the Claimant’s overtime arrangements).

84. The Respondent has not proven that Ms Escobar was a self-employed contractor as opposed to an employee, and I have taken that into account. Although, the for reasons stated below, Ms Escobar’s employment status it does not affect my relevant decisions one way or the other

85. I accept the Respondent’s oral evidence that Ms Escobar had a proven track record in credit control. My finding is also that the Claimant did not like doing credit control work and preferred not to do it. Some of the time she did do credit control work both before and after the date on which Ms Escobar started doing some credit control work for the Respondent.

Insolvency of NorthPay Ltd

86. Around 5 December 2023, HMRC presented a petition to the insolvency court to wind up NorthPay Limited.

87. The Respondent’s directors, Raphael and Marvin, each became aware of the petition at around the time it was presented. Raphael found out about it first and informed Marvin shortly afterwards

88. On the balance of probabilities, the company received correspondence - prior to the petition being presented - which warned them that, if they failed to take certain steps, such a petition would be presented.

89. However, the Respondent has not proven that the Claimant saw either the petition or any earlier related correspondence.

90. The company was wound up on 31 January 2024.

91. During the month of January 2024, the Claimant became aware that NorthPay's bank account was no longer accessible.

92. The Respondent did not tell the Claimant about the insolvency proceedings until - and my finding of fact is that the Claimant did not find out about it from other sources either - her discussion with Marvin at the end of January

93. The Claimant's evidence to me was, and I accept, that she did not wish to worry Raphael about NorthPay's banking problems, and so she waited until Marvin was available and she raised it with him towards the end of January 2024. In other words, this meeting was not arranged by the Respondent but took place at the Claimant's request.

94. It is common ground that, during the meeting, Marvin told the Claimant that he was investigating other opportunities for the Respondent to get replacement work if NorthPay Ltd was closed. He told her that this included setting up a replacement umbrella company if NorthPay limited was closed

95. My finding is that there was a discussion about NorthPay Limited potentially closing. However, Marvin did not warn the Claimant that, if NorthPay did close, the Respondent would have to make any redundancies. In particular, he did not warn the Claimant that the Claimant's job might be at risk.

96. During the meeting, Marvin sought to reassure the Claimant by stating that there would continue to be work even if NorthPay did close down. His comments about seeking to arrange new sources of work for the Respondent were genuine. That is what he was seeking to do. However, discussions with the bank and others led him to realise that it was not feasible for the Respondent to set up a new company to replace NorthPay. Further, the Respondent was not able to find any other replacement source of income to replace that which had previously been received from NorthPay.

97. From the point in mid January when it was no longer possible to make payments on NorthPay's behalf, the Claimant was doing other duties. The work she did in this period this included bookkeeping and credit control work.

<u>Dismissal</u>

98. Unexpectedly, the Claimant was called to a meeting on 29 February 2024. In the meeting, she was told that she was being made redundant with immediate effect.

99. There had been no warning or consultation prior to this meeting

100. During the meeting

100.1 The Claimant was not offered the opportunity to suggest alternatives to her dismissal.

100.2 She was not offered the opportunity to think things over and come back with some alternatives, or any comments at all.

100.3 Rather she was simply told what the decision was.

101. The Respondent did not offer the Claimant the opportunity to appeal against the dismissal decision.

102. My finding is that Northwest Associates Limited relied heavily for its income on NorthPay limited. The closure of NorthPay had a significant and immediate effect on the Respondent's income streams.

103. At the very latest, the Respondent knew around 5 December 2023 that there was a significant chance of NorthPay Ltd closing, because they knew about the petition. My finding is that Raphael and Marvin knew significantly earlier than December 2023 that NorthPay was at risk of being wound up by HMRC.

104. I do accept that the directors of Northwest Associates Limited were making efforts to avoid the closure of NorthPay limited and were also making efforts to set up alternative companies to replace NorthPay if it did close.

105. The directors had ample opportunity during December 2023 and January 2024 to warn its, employees and the Claimant, in particular, the Claimant that there might be dismissals by reason of redundancy if NorthPay closed.

106. Furthermore, in February 2024, once NorthPay Limited had been wound up, there was ample opportunity to commence discussions with employees prior to 29 February. The Respondent could have started a consultation exercise, including about the need to make savings, and the potential need to reduce salary costs to make those savings, and the potential need to dismiss people in order to reduce salary costs.

107. The Respondent did none of those things prior to 29 February, despite having ample opportunity to do so.

108. As mentioned above, on 29 February, it did not start any consultation exercise; it simply told the Claimant that she was dismissed.

Reason for dismissal

109. I have taken account of what the Claimant says in her claim form about being bullied and what the Respondent says in its response documents about the Claimant's alleged conduct. I have taken account of what all of the witnesses have said.

110. I am satisfied that the Claimant was not dismissed because of any reason relating to her own conduct and nor was she dismissed because of any breakdown in interpersonal relationships within the office or amongst the employees.

111. It is common ground that the Claimant was never subject to any disciplinary warnings or procedures during her employment.

112. My finding is that, in terms of how well or how badly the employees got on with each other, there was no particular change in the employer's attitude to the Claimant during the last few months of her employment.

113. I take into account what the Claimant says about Ms Escobar, but I do not need to make any findings of fact how well or how badly they worked with each other, or who was to blame. I am satisfied that the Claimant's interactions with Ms Escobar were not the reason that the Claimant was dismissed.

114. My finding is that it is true that, no later than around January 2024, the Respondent realised that it was in severe financial difficulties. Marvin and Raphael decided that they had no choice other than that the Respondent had to dismiss some of its employees because of the severe financial difficulties. The Respondent had literally reached the stage where it could not pay all the salaries.

115. The individuals who left the business in early 2024 included

115.1 the Claimant (whose work was almost entirely for NorthPay),

115.2 Alex Giadom (the Claimant's son, intern/work placement),

115.3 Rosiline Enone Ikpotor (part-time senior accountant),

115.4 Tochukwu Nwabuisi (intern, informed once he recovered from illness),

115.5 Nurissa Daniels (Senior admin staff),

116. Marvin and Raphael decided that 5 specific individuals were required to for the company to survive. They decided that (i) it was essential to keep each of those 5 and (ii) it was essential to end the employment of anyone other than those 5.

117. Marvin and Raphael decided that the essential employees were:

117.1 Senior Accountant- Required to ensure the company's financial obligations, taxes, and compliance were properly handled.

117.2 Bookkeeper - Essential for managing the company's remaining financial transactions.

117.3 Admin Staf f- Required for operational and client communication needs.

117.4 Marketing/Admin Intern (Apprentice Wage} - A low-cost employee supporting business outreach efforts.

117.5 Raphael - His expertise was crucial for navigating the company through its financial crisis

118. Marvin was not one of the essential 5 employees. (He had other work, outside of the Respondent)

119. I accept the truth of the Respondent's assertions that Marvin and Raphael genuinely believed that it was impossible to find a way to pay anybody else.

120. There was a discussion with Ms Escobar.

120.1 A priority for the company - in order to survive at all - was that it receive payments on some debts that were owed to it.

120.2 The Respondent told Ms Escobar that they would not be able to pay her unless she was successfully able to recover some of that money.

120.3 Ms Escobar stated that she was willing to work on the basis that she would not be paid if she failed to recover anything, but would be paid from the proceeds if she succeeded.

120.4 In the event, Ms Escobar was successful in obtaining some of the money owed to the Respondent, and she received some payment(s).

120.5 She permanently ceased working for the Respondent a few weeks later.

Analysis and Conclusions on Liability

121. It is true that the Claimant was not offered the opportunity to stay on as a bookkeeper and no selection pool between the Claimant and Veronica for one person to stay as bookkeeper which created.

122. It is also true that the Claimant was not offered the same opportunity that was given to Ms Escobar, namely to work without pay but subject to being paid in the event that she, the Claimant, successfully received payment for some of the company's debts. So, if Ms Escobar was an employee, then no selection pool

was created for one of them to remain employed (for a short period) on an employment contract which meant that they got no pay (potentially). Whereas if Ms Escobar was not an employee, then the Respondent did not propose to the Claimant that it was willing to terminate the arrangement with its independent contractor, and offer the Claimant the chance to remain as an employee (for a short period) on terms similar to those it was willing to offer to Ms Escobar.

123. That being said this was a small business with few employees and the Respondent's directors, Marvin and his father Raphael, knew the employees well and had firm opinions about the employees' skills and abilities and they also knew what was necessary (in their opinion) for the business to survive.

124. If (whether on 29 February 2024, or earlier), they had asked the Claimant for her comments on the Respondent's financial situation, there is nothing that the Claimant could have said which would have changed their mind about which employees they needed to retain for the survival of the company or about the decision that the employees not on that essential list all had to be dismissed if the company was to survive.

125. There was a redundancy situation. The employer needed fewer employees doing work of the type which the Claimant had been doing for it. In particular they needed zero employees to do the NorthPay work going forward because that closed down.

126. In terms of the bookkeeping work, they had Veronica and they wished to retain her expertise. They could not afford a second employee (the Claimant) to do bookkeeping on an as and when required basis, and did not believe that dismissing their full-time bookkeeper and giving that role to the Claimant would give the business as much chance to survive as keeping on their experienced full-time bookkeeper.

127. For the credit control work, they regarded Ms Escobar as an experienced specialist who was the best person for what they regarded as a crucial task, namely rapidly obtaining payment of existing debts. Regardless of whether Ms Escobar was a contractor or an employee, the directors' assessment was that they did not need any employee to do the work as well as Ms Escobar. Furthermore, having the Claimant do the credit control work instead of Ms Escobar did not – in their assessment – give as much chance of enabling the company to survive.

128. The Claimant's dismissal was wholly attributable to the redundancy situation.

129. Applying the principles set out in the law section above, including Compair Maxam and Polkey, the Claimant is entitled to a declaration that the dismissal was unfair. That is, her complaint of unfair dismissal is well-founded.

130. The dismissal was unfair because there was no warning, and there was no consultation at a stage at which the consultation could be meaningful. In fact, there was no consultation at all.

131. I take into account the process as a whole. The lack of an appeal also contributes to the unfairness.

132. The process which the Respondent followed was one which no reasonable employer would have followed.

133. My decision that the process as a whole was unfair does not depend on the facts that, after the Claimant was informed about the termination of employment, the Respondent made errors made in calculations of the payments due to the Claimant and there were delays in supplying the termination letter and the P45.

134. That being said, it is a statutory requirement for employers to provide details of redundancy pay calculations to employees and that does not appear to have been done in this case. (I am aware that the Respondent says that it believes it arrived at the correct amount collaboratively with the Claimant.)

135. Polkey acknowledges the possibility of a fair dismissal if any procedure would have been futile.

136. In Williams v Amey Services Ltd EAT 0287/14 the EAT discussed the fact that there various methods by which, if the dismissal was unfair, the Tribunal can apply the Polkey guidance to the assessment of compensation.

> 'In making such an assessment the [employment tribunal] is plainly given a very broad discretion. In some cases it might be just and equitable to restrict compensatory loss to a period of time, which the [tribunal] concludes would have been the period a fair process would have taken. In other cases, the [tribunal] might consider it appropriate to reduce compensation on a percentage basis, to reflect the chance that the outcome would have been the same had a fair process been followed. In yet other cases, the [tribunal] might consider it just and equitable to apply both approaches, finding that an award should be made for at least a particular period during which the fair process would have been followed and thereafter allowing for a percentage change that the outcome would have been the same. There is no one correct method of carrying out the task; it will always be case-and-fact-specific. Equally, however, it is not a "range of reasonable responses of the reasonable employer" test that is to be applied: the assessment is specific to the particular employer and the particular facts.'

137. See also the comments in Software 2000 above.

138. In this case, my decision is that there is a 100% chance that the eventual outcome would have been that the Claimant was dismissed even if there had been consultation.

139. I must apply the words of section 98. The fact that consultation would not have resulted in the Claimant remaining as an employee does not mean that it was fair to dismiss her without warning on 29 February 2024 when all the circumstances (including the size and administrative resources of the Respondent) are taken into account, and when I make a decision in accordance with equity and the substantial merits of the case.

140. This is not a case where every single employee was to be dismissed, and nor is it a case where something unexpected had occurred which led to the requirement to terminate the employees (pretty much) immediately. In this case, the Respondent's directors had known for a long time that the company's survival was in doubt. While it is true that they hoped to replace the income lost when NorthPay was wound up by HMRC, that would not have prevented them starting consultation about the possibility of redundancies if (as turned out to be the case) the efforts to replace that income were unsuccessful.

141. I take into account the fact that it is a small business and its financial difficulties but I do not regard this as an example of the type of case mentioned in Polkey where, because of futility of consultation, the dismissal without consultation was fair.

142. In Zen Internet Ltd v Mr Paul Stobart [2025] EAT 153, the EAT discussed Polkey.

142.1 It was not a redundancy case but there was a dismissal.

142.2 On the facts, the Employment Tribunal had found that the Claimant had been dismissed with insufficient warning and opportunity to improve but that it was inevitable that the Claimant would have been dismissed two months later had there been a fair process

142.3 Polkey requires analysis of a counterfactual. In reality, there was a particular unfair dismissal, but Polkey requires assessment of what was likely to have happened – hypothetically - in the absence of that particular unfair dismissal, and, in particular, of the chances that there would have been a fair dismissal instead. When remitting the matter back to the tribunal the EAT observed that – for the Polkey assessment - an Employment Tribunal is not confined to accepting the reality up to the dismissal date, and only starting the hypothetical analysis of what could have happened (in the absence of the unfair dismissal) after the point in time at which the employee was dismissed. The assessment of the chances of a fair dismissal can also take into account what might have happened prior to the dismissal date had the employer been acting fairly.

143. On the facts of this case, the Respondent specifically told the Claimant in late January that they did not anticipate the need for any redundancies and that her

job was not at risk. Given that, my assessment is that – in this particular case - a fair dismissal could not have taken place until after the Respondent had informed the Claimant that that prior assurance was no longer applicable.

144. Given the size of the company and the number of employees involved and the directors' familiarity with what was required, I am satisfied that a fair consultation process (from first warning of potential redundancy, to the end of the decision-making) would have taken no longer than – at most - 7 days.

145. My assessment is that it is not just and equitable – on the facts of this particular case - to proceed on the hypothetical basis of a fair process which started on or before 21 February 2024 and finished on 29 February 2024.

146. Therefore the compensatory award which I make will be assessed on the basis that, if the Respondent told the Claimant on 29 February 2024 that the assurance was no longer applicable, the Claimant would have received one week's extra remuneration (until 7 March 2024) before the dismissal date.

Remedy Decisions

147. After the liability decision was announced, and following a break for her to make a decision, the Claimant did not seek reinstatement or re-engagement. There was a discussion about the remedy issues, including calculations, which finished about 4.30pm. After deliberations, I gave my decision with reasons.

148. Since the dismissal was because of redundancy the ACAS Code of Practice on Disciplinary and Grievance Procedures did not apply to the dismissal.

149. Since the Claimant would have been dismissed in any event she would have suffered the loss of having to start from scratch with no statutory rights with a new employer in any event

150. I am satisfied that the written particulars were deficient as identified above in the findings of fact. A lot of the required information was included. I do not think that this is the type of case in which I should treat it as exceptionally serious so as to award 4 weeks pay instead. However, I am not persuaded that it would be just and equitable to award anything less than the standard 2 weeks.

151. As well as the amounts stated in her payslip, the Claimant received the additional amounts identified on [Bundle 50]. So, for example, for December 2023, as well as what was stated in her payslip, she received an untaxed additional sum of £672.60. In January 2024, it was an additional £765.98.

152. The Respondent says that these sums were not earnings as part of the Claimant's contract of employment. It says that these were self-employed earnings.

153. I reject that argument. There was no separate written contract between the parties; there was only the written contract of employment. Although any contract can be oral rather than written, the Claimant was not in business on her own account, and the Respondent was not her client. She did not submit invoices to the Respondent (for overtime, or at all). Rather, there were periods of work which both sides treated at the time as "overtime" (so work in excess of the hours as per the written employment contract) and the method by which the Claimant was paid is that she did some handwritten calculations, took a photograph of the piece of paper and forwarded that to the Respondent. The calculation showed the hours she was asserting she had worked, and multiplied by what was (on my finding) the agreed hourly rate for overtime. Thus, there was an overall amount to be paid, which the Respondent then paid (and paid without PAYE deductions, it seems).

154. Regardless of the lawfulness or otherwise of the arrangement, there is sufficient evidence of these amounts. My decision is that they were income derived from the Claimant's contract of employment, and I take them into consideration.

155. The Claimant claims that there were other sums (paid in cash) as well. I am not persuaded that there is sufficient evidence of specific sums being paid in that way, or sufficient evidence of the reasons for such cash amounts being handed to the Claimant, and I do not add anything else on to the payslip amounts, other than what is stated in the column "WAGE TRANSFARES TO OTHER ACCOUNT" as per [Bundle 50].

156. I do not have evidence of which specific hours the Claimant worked (as "overtime") in each of the 12 weeks ending with the effective date of termination. I do not think that it is proportionate adjourn and to order the parties to collate documentary evidence, and to produce witness statements, to deal with that point.

157. Based on the information in the payslips, and the record of payments on [Bundle 50], the Claimant has demonstrated that her gross pay is at least the sum stated in the schedule of loss. Thus the remedy decisions are calculated treating one week's gross pay as £284.83 per week.

158. For net loss, I assess one week's loss at £262.60, including pension loss. This is taking account of the fact that the Claimant's has failed to prove that her net loss would have been any higher than that had the PAYE deductions been calculated on her actual gross earnings, and not on the incorrect figures which omitted the (sizeable) overtime payments.

159. The Respondent was ordered to pay the total sum of £1015.92, which was made up of the following components.

160. Ignoring redundancy pay, the entitlement to a Basic Award was 3 x £284.83. (Two complete years of employment, all after the Claimant's 41st birthday, yields a multiplier of 3, and the week's pay is less than the statutory cap). This is £854.49.

161. The Respondent paid £670.83 which it had asserted was the correct statutory redundancy payment. The Respondent receives credit for that: Section 122(4) ERA.

162. It has to pay the difference between £854.49 and £670.83, which is £183.66.

163. I assess the compensatory award at £262.60, taking into account all of the facts mentioned above.

164. In accordance with section 38 of the Employment Act 2002, I award 2 weeks pay, so 2 x £284.83, which is £569.66.

165. The effects of the Recoupment Regulations were explained at the hearing, and in the written judgment.

Approved by:

Employment Judge Quill

on Date: 27 July 2026

REASONS SENT TO THE PARTIES ON
29 July 2026

FOR EMPLOYMENT TRIBUNALS