EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondent**
Mr D Paterek		Tesco Stores Limited

HELD AT Birmingham **ON** 1st and 2nd June 2017

EMPLOYMENT JUDGE Choudry

Representation:

For the claimant: In person

For the respondent: Ms L Hindley - Solicitor

JUDGMENT

1. The claimant's claim for unfair dismissal succeeds.

2. The claimant is awarded a basic award of £3,805.83 as calculated in the attached annex and an award of £450 for loss of statutory rights. The compensatory awarded falls to be determined. The parties have until 21st September 2017 in which to agree the compensatory award based upon the findings set out in this judgment. Should the parties not be able to agree the compensatory award between themselves they should ask for a further hearing to be listed for the compensatory award to be determined by me.

3. The Recoupment Regulations to not apply.

REASONS

Background

1. The claimant brought a claim for unfair dismissal following the termination of his contract of employment by the respondent on 1st December 2016 by reason of conduct.

2. The respondent is a major retailer and operates under a number of formats including Tesco Express, Tesco Metro, Tesco Superstore and Tesco Extra. The respondent also operates distribution centres.

Evidence and documents

3. I heard evidence from the claimant. The claimant also produced a statement from Mr Anton Vrabel a former colleague. However, this statement was not signed nor dated. Mr Vrabel did not attend in person either. As such I explained to the claimant that I would not be able to attach as much wait to Mr Vrabel's statement as I would to the evidence of the other witnesses as it had not been possible to test his evidence under oath. For the respondent I heard evidence from Mr Anthony Grant (Shift Manager) and Mr David Turner (Distribution Centre Manager).

4. I was also presented with an agreed bundle of some 214 pages.

Issues

5. The issues are as follows:

Unfair dismissal

5.1 Having regard to ss94-98 of the Employment Rights Act 1996 ("ERA"), was the claimant's dismissal unfair?
5.2 Was he dismissed for a potentially fair reason; that is conduct?
5.3 Did the respondent follow a fair procedure in dismissing the claimant?
5.4 Was the decision to dismiss within the range of reasonable responses?
5.5 If the tribunal determines that the dismissal was procedurally unfair, what difference, if any would a fair procedure have made?
5.6 Did the claimant contribute to his dismissal?
5.7 If the respondent is found to have unfairly dismissed the claimant, has the claimant mitigated his losses, and to what extent?

Facts on liability

6. I make the following findings of fact:

6.1 The claimant commenced employment with the respondent on 13th September 2007, based at the respondent's Lichfield Distribution Centre. The respondent employs some 1,350 employees at the Lichfield Distribution Centre.

6.2 The claimant was latterly employed as a Warehouse Operative until his employment was terminated on 1st December 2016 on the grounds of gross misconduct for being absent from work without leave.

6.3 The respondent's sickness absence policy, which forms part of an employee's terms of employment provides:

"Foreign Medical Certificates

When accepting a sickness certificate from doctors outside the UK (even if they are not written in English), Tesco should ask the colleague reasonable questions to establish its authenticity e.g. How did the colleague get in touch with the Doctor? Where did they see the Doctor? What treatment did the Doctor give? Has the colleague been to see their own GP since etc?

We should then take the colleague's assertion on face value unless we have reason to believe there is a problem, in which case it would be reasonable to investigate further. If we are satisfied that the sickness certificate is valid then we would pay sick pay in the normal way.

If there are doubts as to the validity of a foreign medical certificate, HMRC can provide a translation".

6.4 The respondent's absence reporting procedure requires employees to notify the duty cover or their own manager of their absence at least one hour before the start of their shift. It also requires employees to keep in regular contact even when covered by a Fit Note. The policy does not state what is meant by "regular".

6.5 Sickness absence is reported using a special telephone number ("sick line") which goes through to the manager on duty, provided that the manager has logged into the sick line. If a manager does not log on then they would not be aware that someone has called.

6.6 On or around 25th January 2016 the respondent changed its sick line number. This change was communicated to colleagues via team briefings and cards containing the new number which colleagues could put in their wallets.

6.7 The claimant was on parental leave and then holidays following the birth of his daughter on 1st November 2015. Subsequently he made a request to take shared parental leave with effect from 1st February 2016. The claimant's last day at work prior to taking shared parental leave was either 27th or 28th January 2016. The claimant gave evidence that he was not aware of the number

change and that he had not been briefed about the change prior to him commencing shared parental leave. The respondent has no record of any briefings being given to employees including the claimant. I note that the bundle contains an email from the respondent's systems manager dated 19th January 2016 which states that 'comms' had not been organised in relation to the number change at this point in time. In light of this I accept the claimant's evidence that he was not briefed and was not aware of any changes in the number for the "sickline" prior to his departure on shared parental leave.

6.8 On 9th June 2016, the claimant emailed Anne-Marie Pitcher in the personnel department indicating that his housemate had been disclosing details of his pay on social media. As such the claimant requested that the respondent kept hold of his pay slips. In his email the claimant also stated:

"*I would also ask you, if you can communicate with me just through email or phone, because I'm still in Slovakia with my daughter".*

6.9 Ms Pitcher responded on 13th June 2016 indicating *"I am sorry to hear about your complaint, I have let night shift know and the rest of the personnel department and from now on your payslips will be kept in file until you request them".*

6.10 On 13th June 2016 Ms Pitcher emailed a number of the respondent's personnel to inform them that the claimant's payslips should be kept on his personnel file until his return from paternity leave. Unfortunately, she did not communicate the claimant's request that communications with him should be via email or telephone.

6.11 On13th July 2016 the claimant emailed the respondent to request an extension to his shared parental leave. On 18th July 2016 the respondent emailed the claimant to indicate that he would need to return to work by 31st October 2016 and an extension could be authorised until then. Subsequently, on 22nd September the respondent emailed the claimant to indicate that payroll had advised that the maximum duration of his shared parental leave could only be 37 weeks and not 39 weeks as previously advised. The claimant was asked to confirm whether he wished to take 2 weeks unpaid leave or whether he wanted to return to work early. The claimant requested the former and also requested a letter confirming that he was still employed by the respondent. The claimant asked that this letter be emailed to him. This was duly done.

6.12 The claimant did not return to work on 31st October 2016 and instead submitted a self-certificate dated 2nd November 2016 indicating that he was suffering from knee pain.

6.13 The claimant tried to call the respondent's sick line on four occasions on 31st October 2016. However, he was unable to get through as he rang on the previous numbers he had in his phone being unaware that the sick line number had changed. I accept the

claimant's snapshot of his phone as evidence of his attempts to call the number line.

6.14 On 7th November 2016 the claimant submitted a further sick note which was in Slovakian.

6.15 On the same day the respondent wrote to the claimant asking him to attend a meeting on 10th November 2016 to discuss his absence. This letter was sent to his last know address in the UK and not by email as requested by the claimant. As such the claimant did not receive this letter and did not attend any meeting.

6.16 On 12th November 2016 an absence review meeting took place in the absence of the claimant but in the presence of a trade union official. On 15th November 2016 the claimant was invited to a further review meeting on 17th November 2016. Once again the letter inviting the claimant to this meeting was sent by post to his address in the UK. Once again the claimant did not receive this letter nor attend the meeting, which took place in his absence on 20th November 2016, with a union representative in attendance.

6.17 On 20th November 2016 Mr Peter Borton, one of the respondent's managers requested that a letter be sent to the claimant by recorded and ordinary mail inviting him to a first absent without leave meeting. Mr Borton also indicated that the sick note submitted on 7th November was under investigation as it was only a photocopy and the respondent did not accept that it was from a doctor.

6.18 Those investigations consisted of putting the name of the company at the top of the document into google and which showed that the name at the top of the document was "Social Insurance Agency". In addition, another Slovakian employee at the Distribution Centre was asked to confirm what these words meant. No effort was made to have the document translated as suggested by the respondent's own policy. The translation which has now been produced for the purposes of the Tribunal hearing confirms that the document produced by the claimant was a confirmation of temporary incapacity for work and that the claimant was suffering from an injury. Furthermore, this document also contained the claimant's address in Slovakia.

6.19 The claimant did not receive the letter sent at Mr Borton's requesting his attendance at a meeting and as such he did not attend the first absent from leave meeting. Accordingly, on 25th November 2016 the claimant was invited to attend a disciplinary hearing on 1st December 2016 to discuss his unauthorised absence. The claimant was advised that a potential outcome of the meeting was his dismissal. Once again the letter inviting the claimant to a disciplinary hearing was sent to his address in the UK only.

6.20 In the meantime, the claimant tried to make contact with his manager. He tried to call the general telephone number for the distribution centre but that number had changed too. He then rang the respondent's store in Litchfield and requested the new number for the distribution centre. Upon receipt of this the claimant called the distribution centre on or around 26th November 2016. He

managed to speak to someone in security who informed the claimant that a manager would call him back but no one did.

6.21 The disciplinary hearing duly took place on 1st December 2016 and was conducted by Mr Grant. Once again the claimant did not attend as he had not received the disciplinary invite letter. The meeting took place in the claimant's absence but with the attendance of a trade union official.

6.22 Mr Grant did not undertake any further investigations into the sick note submitted on 7th November 2016 but merely accepted, based on his conversations with Mr Borton, that the sick note which was submitted was not genuine. Mr Grant was also not aware of the claimant's request to the personnel department for any contact to be via phone or email. In his evidence Mr Grant indicated that attempts had been made to contact the claimant via phone without success. However, he was unable to provide any dates or times of such calls. I accept the claimant's evidence that he did not receive any calls from the respondent. The claimant indicated that he had received calls from his bank when he was in Slovakia so there was no reason why he should not receive calls from the respondent.

6.23 After considering the various attempts that the respondent had made to contact the claimant Mr Grant took the view that the claimant had been absent without leave since 8th November 2016 and that by failing to attend work, the claimant had committed a fundamental breach of contract. Mr Grant had no idea when the claimant would return to work and, as such, made the decision to dismiss the claimant for gross misconduct with effect from 1st December 2016. A letter confirming the decision to dismiss was sent on 2nd December 2016 to the claimant's address in the UK.

6.24 As no one had returned his call, on 9th December 2016 the claimant called the distribution centre again. However, he was told that his employment had been terminated. As the claimant had not received the letter of termination he requested that this letter was emailed to him. The claimant appealed on the same day.

6.25 The claimants grounds of appeal were (1) that he had produced his sick notes on time; (2) he had asked the personnel department to contact him via phone and email as he had spent his shared parental leave in Slovakia; and (3) that he did not have the number for the sick line.

6.26 Mr Turner was appointed to hear the claimant's appeal against dismissal. As the claimant was out of the country and had not notified the respondent of his return date, Mr Turner decided not to hold an appeal hearing, nor was the claimant offered a hearing. Instead, Mr Turner undertook a review of the information to date and discussed the case with Annette Altun, the People Manager. He undertook no investigations himself whether in relation to the validity of the sick note or the claimant's assertions that he had requested to be contacted by email. Based upon his paper review Mr Turner decided to uphold the decision to dismiss the claimant on the basis that he had failed to contact the sickline on 1st

November 2016 and he had failed to attend meetings on 25th November and 1st December 2016.

Applicable law

7. Section 98 (1) Employment Rights Act 1996 provides that 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 principle reason for the dismissal).*
>
> *(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.*
>
> *A reason falls within the subsection if it –*
>
> *(b) relates to the conduct of the employee,*

8. Section 98(4) provides that 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 reasons shown by the employer) -

> (a) *depends on whether in the circumstances (including the size and administrative resources of the employers 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.*

9. The guidelines set out in the case of ***British Home Stores Limited -v- Burchell [1978] IRLR 379*** applies to this case in that the test to be satisfied is that:-

- The respondent honestly believed that the claimant was guilty of the misconduct alleged;
- The respondent had reasonable grounds on which to sustain that belief; and

- The Respondent had carried out an investigation that was reasonable in the circumstances.

10. The Tribunal must finally consider whether dismissal was a reasonable sanction for the alleged misconduct. In determining whether the respondent's decision to dismiss for conduct is reasonable pursuant to Section 98(4) of the ERA, the Tribunal is assisted by the band of reasonable responses approach which is proved in the case of ***British Leyland (UK) Limited -v- Smith [1981] IRLR 91***. It was stated that:-

"the correct test is:

was it reasonable for the Employer to dismiss [the Employee?]. If no reasonable Employer might reasonably have dismissed him, then the dismissal was unfair. But if a reasonable Employer might reasonably have dismissed him, then the dismissal was fair. It must be remembered that in all cases, there is a band of reasonable responses within which one Employer might reasonably take one view whereas another might reasonably take a different view".

11. The Tribunal cannot substitute its own decision for that of the respondent (affirmed by the Court of Appeal in ***Sainsbury's Supermarkets Limited -v- Hit [2003] IRLR 23*** even if it believed that the decision to dismiss was harsh in the circumstances. The dismissal will be fair unless the respondent's decision to dismiss was one which no reasonable employer could have reached.

12. The case of **Polkey –v- A E Dayton Services Limited 1987 IRLR 503 HL** indicates that generally an employer will not have acted reasonably in treating a potentially fair reason as a sufficient reason for dismissal unless or until it has carried out certain procedural steps which are necessary, in the circumstances of that case, to justify the course of action taken. In applying the test of reasonableness in Section 98 (4) the Tribunal is not permitted to ask whether it would have made any difference to the outcome if the appropriate procedural steps had been taken, unless doing so would have been "futile". Nevertheless, the **Polkey** issue will be relevant at the stage of assessing compensation. **Polkey** explains that any award of compensation may be nil if the Tribunal is satisfied that the claimant would have been dismissed in any event. However, this process does not involve an "all or nothing" decision. If the Tribunal finds that there is any doubt as to whether or not the employee would have been dismissed, the **Polkey** element can be reflected by reducing the normal amount of compensation accordingly.

13. Tribunals are also obliged to take the provisions of the ACAS Code of Practice on Discipline and Grievance Procedures 2009 into account in that it sets out the basic requirements of fairness which are applicable in most cases of misconduct. Where the Tribunal is satisfied that a party has unreasonably failed to follow the ACAS Code of Practice it may, in an unfair dismissal claim, uplift the compensatory award by up to 25% - ***Kuehne And Nagel Ltd –v- Cosgrove UK/EAT/0165/13***.

14. Section 123(6) of the ERA states:

"where the Tribunal finds dismissal was to any extent the cause or contributed to by any action of the complainant, it shall reduce the amount of compensation by such proportion as it considers just and equitable having regard to that finding".

15. Section 123(4) of the ERA states :

"In ascertaining the loss…the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales…"

16. The case of ***Cooper Contracting Ltd –v- Lindsey UKEAT/0184/15*** sets out the guidance on a tribunal should take into account when considering the issue of mitigation of loss. It is for the respondent to prove that the claimant has not mitigated his loss. The burden of proof is on the respondent and the claimant does not have to prove that they have mitigated their loss. If the respondent does not put forward evidence to the tribunal that the claimant has failed to mitigate, the tribunal has no obligation to make that finding. The respondent has to prove that the claimant acted unreasonably. What is reasonable or unreasonable is a matter of fact for the tribunal to determine. Furthermore, the tribunal should not apply too demanding a standard on the claimant who is the victim of the wrong.

Conclusions on liability

17. In reaching my conclusions I have considered all the evidence I have heard and considered the documents in the bundle to which I have been referred by the parties. I also considered the oral submissions made by the claimant and Ms Hindley.

18. I am satisfied that the reason for the claimant's dismissal was conduct due to alleged absence from work without leave. I am

therefore satisfied that the respondent had a potentially fair reason for dismissal under Section 98(2) of the Employment Rights Act 1996.

19. The first issue is whether the respondent followed a fair procedure. In this particular case, whether the respondent had reasonable grounds for holding a belief that the claimant had committed an act of gross misconduct and having conducted as much investigation into the circumstances as was reasonable.

20. I am not satisfied that the respondent had reasonable grounds for holding that the claimant was absent from work without leave or that the sick note which he had submitted on 7th November 2016 was not genuine. I do not accept the submissions of Ms Hindley that the respondent undertook a reasonable investigation into the allegations against the claimant. An investigation which consists of merely putting the title of the document into google is wholly insufficient, not least given the size and substantial resources available to the respondent. I note that the respondent did not even follow its own policy which suggests that if there is any doubt as to the validity of a sick note a translation can be obtained from HMRC. Had a translation been obtained the respondent would have realised that it was genuine sick note and indicated that the claimant was suffering from an injury. Ms Hindley submits that attempts were made to contact the claimant but he did not respond to calls nor correspondence. I do not accept that calls were made to the claimant. In addition, the respondent failed to take into account the fact that the claimant had asked to be contacted via email or phone. I note that the respondent made contact with the claimant via email at the September 2016. Each time the claimant was contacted by email he responded promptly.

21. Not only was the initial investigation inadequate but neither Mr Grant nor Mr Turner undertook any further investigations of their own and relied on the word of colleagues without question. Whilst I accept that Mr Grant was not aware that the claimant had requested contact via email this was due to an error on the part of the respondent's own personnel department and not due to any fault on the part of the claimant. However, even when the claimant indicated in his appeal letter that he had asked to be contacted by email or phone Mr Turner failed to investigate this. Had he done so he would have been made aware of the request made and agreed to by the personnel department.

22. Mr Turner further made an assumption that the claimant would not be in a position to attend an appeal hearing. The claimant was not offered the opportunity of an appeal hearing whether in person or by other means and was therefore denied a the chance to explain what had happened in detail.

23. Ms Hindley submits that the claimant was given several opportunities to attend meetings and did not attend. He was also advised that if he did not attend the disciplinary hearing a decision would be made in his absence. However, the claimant cannot be blamed for his non-attendance as he was not aware of the meetings as the letters requesting his attendance were sent to his address in the UK and he was in Slovakia. The claimant's dismissal was caused as a direct result of the personnel department not communicating the claimant's request in relation to how he should be contacted. I agree with the claimant that this was not his mistake and he should not be penalised for it.

24. On this basis, the Tribunal concludes that the procedure followed by the respondent did not fall within the range of reasonable responses that a reasonable employer might have adopted. For this reason, I am unable to conclude that the decision to dismiss the claimant was reasonable in all the circumstances. The claimant's complaint of unfair dismissal therefore succeeds.

25. In terms of adjustment to compensation, and to the issue of **Polkey** as explained above, if a Tribunal finds that there is any doubt as to whether or not the employee could have been dismissed, the **Polkey** element can be reflected by reducing the normal amount of compensation accordingly. The burden of proof is on the respondent in this respect.

26. The case of ***Software 2000 Limited -v- Andrews [2007] IRLR 568 EAT*** sets out the following principles:-

    26.1 The evidence from the employer is so unreliable that the exercise of seeking to reconstruct what might have been is too uncertain to make any prediction, although the mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence.

    26.2 The employer may show that even if their procedures had been complied with, the dismissal would have occurred in any event and at the same point, in which case, a compensatory award would be reduced to nil.

    26.3 The Tribunal may decide that there was a chance of dismissal in which case, compensation should be reduced accordingly.

    26.4 The Tribunal may decide that employment would have continued, but only for a limited period.

    26.5 The Tribunal may decide that employment would have continued indefinitely because the evidence that it might

have terminated at some point so as it can be effectively ignored.

27. The respondent submits that had a fair process been followed the claimant would have been dismissed in any event. I do not accept this assertion. Had a proper investigation been undertaken the respondent would have realised that the sick note was genuine and that the claimant had not failed to make contact with the respondent. On the contrary he had made numerous attempts to make contact without success and he had no knowledge of the requests to attend a meeting. Had a proper investigation been followed the respondent would not have had any grounds to take disciplinary action against the respondent. As such no deduction in compensation should be made under Polkey.

28. I next considered whether the claimant contributed to his dismissal in terms of a compensatory award. Under Section 123(6) of the ERA, three factors must be satisfied in this regard:

28.1 the relevant conduct must be culpable or blame worthy;

28.2 it must have actually caused or contributed to the dismissal; and

28.3 it must be just and equitable to reduce the award of compensation by any percentage specified. The burden of proof is on the respondent in this respect.

29. Based upon my findings above, I find that the claimant did not cause and contribute to his dismissal and that it would be not be just and equitable to reduce any compensation.

REMEDY

30. Prior to dealing with the issue of remedy I reminded the claimant that although he had ticked the box for compensation only he was not bound by this and I explained that the remedies available to him were re-instatement; re-engagement and compensation. I explained to the claimant what each of these entailed. I adjourned the hearing to enable the claimant to consider the options available to him. After the adjournment the claimant indicated that he did not wish to pursue re-instatement or re-engagement as he had lost trust with the respondent. As such he was only seeking compensation.

Facts in relation to remedy

31. I heard further evidence from the claimant in relation to remedy. The respondent did not call any evidence.

32. The parties agreed that the claimant's weekly pay based upon 36.5 hours per week was £422.87 gross and £336.36 net.

33. The claimant is a member of the respondent's pension scheme but neither party had details of the pension scheme, what contributions were made by either party nor whether the pension scheme was a defined benefit or defined contribution one.

34. The claimant received company sick pay up to the date of his dismissal. As at the date of his dismissal the claimant had 102 hours of company sick pay remaining. There was a disagreement between the parties as to how much company sick pay was payable. The respondent asserted that company sick pay was £342.19 per week based on the claimant's basic pay but the claimant disputed this and argued he also received additional premiums as he worked on the night shift. The wage slips did not shed any further light and I was not able to make any final determination on this issue based upon the facts and evidence before me. As such I gave further directions in relation to this (see further below).

35. The claimant indicated that he had had problems with his knee since 2009 and the respondent had put in place adjustments to enable him to work without any loss of earnings since then.

36. The claimant also indicated that on a previous occasion when he had had an operation on the same knee he had been absent from work for 6 weeks and then returned to work on light duties. I accept the claimant's evidence in this regard.

37. The claimant has not received any state benefits since his dismissal nor did he pay an issue or hearing fee for his claim.

38. The claimant gave evidence that he has not make any attempts to seek alternative employment as he has been in Slovakia through out the whole of this time and only came back for the hearing and he had thought that the respondent would give him his job back.

Submissions on remedy

39. Ms Hindley argued that the claimant had failed to mitigate his loss as he had not made any attempts to seek alternative employment. She also argued that the claimant should not be awarded the maximum uplift as a result of the respondent's failure to follow the ACAS Code of Practice. Ms Hindley suggested an uplift of between 5 and 10%. The claimant made no submissions in relation to the uplift.

Conclusions on remedy

40. Based upon his age, length of service and gross weekly pay the claimant is entitled to a basic award of £3,805.83 as detailed in the attached Annex.

41. I also award the claimant £450 for loss of statutory rights.

42. In relation to compensation for loss of earnings, the claimant's evidence was that if he had received the respondent's letter of 7th November 2016 he would have attended the meeting on 12th November 2016 and would have been in a position to return to work on light duties until the planned operation on his knee. As the respondent had put in place adjustments in 2009 he submitted that the respondent would have been able to make adjustments this time. The respondent did not present any evidence to rebut the fact that adjustments had been put in place previously.

43. I do not accept the claimant's assertion that he would have been working on full pay with effect from 12th November 2016 not least because he submitted a further sick note on 7th November and by his own admission did not make further contact with the respondent until the end of November 2016. However, I take the view that had the claimant not been unfairly dismissed on 1st December 2016 a meeting would have been arranged to discuss his absence when he rang the respondent on 9th December 2016. The likelihood is that the meeting would have taken place shortly before Christmas and the claimant would have returned to work on light duties without any reduction in pay with effect from 1st January 2017. He then would have remained at work on full pay until his operation on 20th March 2017 following which he would have been off sick for 6 weeks to have his operation and to recuperate resulting in the claimant receiving the balance of his company sick pay and any SSP from 20th March 2017 to 28th April 2017.

44. I am also satisfied that the claimant, given the nature of the work he undertook for the respondent, would have been able to secure alternative employment on the same pay as he earned with the respondent within 6 weeks and as such he should be awarded his full loss of earnings from 29th April 2017 to 14th June 2017 and any compensation for loss of earnings should be to this point only.

45. I am also satisfied that the respondent's breach of the ACAS Code of Practice is sufficiently serious and unreasonable, particularly in relation to the failure to afford the claimant a proper

appeal hearing, that it would be just and equitable to uplift the compensatory award by 15%.

46. In light of the above conclusions, the parties have until 21st September 2017 to agree the claimant's compensatory award based upon the findings set out above. Should the parties not be able to agree the compensatory award between themselves by this date they should write to the Tribunal to seek a further hearing to be listed for the compensatory award to be determined by me.

_____

Employment Judge Choudry

Date: 11 August 2017

Judgment sent to Parties on

14 August 2017

Annex

Basic award

Age at dismissal = 34 years old
Length of service = 9 complete years
Weekly rate of pay (gross) = £422.87

9 x 1 x 422.87	=	£3,805.83

Compensatory Award

Loss of statutory rights	=	£450

Balance of the compensatory award to be determined.

Uplift to compensatory award – 15%