JB1

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**Respondent**
Mr A Beluche	OTCex SA

HELD AT: London Central **ON:** 29 - 31 March 2017;
& 21 – 22 June 2017
(in Chambers)

Employment Judge: D A Pearl

Members: Ms L Chung
Mr D T Carter

Representation:

For Claimant: Ms C De Souza, Counsel
For Respondent: Ms N Motraghi, Counsel

JUDGMENT AS TO REMEDY

The unanimous Judgment of the Tribunal is as follows:

1 Had the Claimant not been unfairly dismissed, there is an 80% chance that he would have been dismissed by 17 June 2015.
2 The Claimant's losses end on or about 11 July 2015.
3 Start-up costs for the Claimant's business are irrecoverable.
4 Subject to paragraph 1 above, the Claimant might reasonably have expected to receive the Q1 2015 bonus, but for the dismissal.
5 The bonus would have been calculated on the basis of the Claimant's contribution.
6 No deductions should be made for contributory conduct.
7 No sum is awardable for loss of statutory rights.
8 Pursuant to section 207A TULRCA 1992 the compensatory award should be increased by 25%.

REASONS

1. This was the remedy hearing, the Claimant having succeeded:

(a) concerning his claim for commission for Q4, 2014; and

(b) in his claim of unfair dismissal. The judgment was promulgated on 3 February 2017.

2. On receiving the two sets of submissions from each counsel, it is clear that there is agreement between the parties that the basic award for unfair dismissal is £3,325.00. Second, the compensatory award is capped under the legislation at £50,000. Third, it is agreed that the Respondent shall pay to the Claimant the Tribunal fees in the sum of £1,200.00. The fourth agreement is that the compensatory award is to be grossed up.

3. It is also common ground that there are certain areas of the case on remedy where we have to give a decision in principle. Ms Motraghi has summarised them as follows:

(1) Polkey/date of termination (including by resignation).

(2) Mitigation.

(3) Whether the bonus was a benefit, the Claimant might reasonably be expected to have had but for the dismissal and if so the value of that bonus for Q1 2015.

(4) Contributory fault

(5) Loss of statutory rights

(6) ACAS uplift.

4. In resolving the remedy issues, we have heard evidence from the Claimant and also from Mr Kavaliauskas for the Respondent. The relevant bundle ran to over 380 pages.

Facts

5. We consider that we should start by making short reference to our liability decision. It is correct to note that there were aspects of the Claimant's evidence that we considered to be highly exaggerated or rationalised after the event. An example of this was the bribery allegation that he raised: see paragraph 29 of the Reasons. The events around the eventual termination

were not dealt with comprehensively in his own witness statement and we required all of the evidence in order to build up a picture that was as accurate as we could determine. We will return below to some of the findings that we made. The principal findings concerning dismissal and the reason why the Claimant was dismissed are contained in paragraphs 46 and 47 of our reasons. We found that: "The Respondent chose to dismiss, as we find, because it was convenient to do so and because the Claimant, in whom they had lost faith, had refused to settle his departure with them."

6. For the remedy hearing, the Claimant maintained, inter alia, the following points. He would have remained in employment had he not been unfairly dismissed on 17 June 2015. He would, he therefore contends, have earned the Q1 2015 bonus. That bonus, he maintained, was to be calculated on the one-third split that we have described in our earlier reasons.

7. He was dismissed on 4 March 2015 with an effective date of termination of 3 June 2015 and this period was spent on garden leave. After 3 June he was subject post-termination restrictions that expired on 3 September 2015. He maintains that these kept him out of the market. He further contends in his witness statement that he was unable to find new employment because "… the Respondent had completely blackened my name within the industry." The dismissal "has caused me enormous financial loss and has ruined my successful career and professional reputation. A number of my former good clients of many years' standing will no longer speak to me at all as the Respondent has clearly blackened my name." The final paragraph of the statement requests an award of compensation to compensate him for the loss of his career, the loss of the Q1 bonus and also the damage to his health.

8. Soon after the effective date of termination the Claimant married. In the witness statement he says that in September 2015, i.e. about 3 months after his marriage, he took the decision to set up as an appointed representative doing broking work through his own company. He has had to invest much time and capital in the start up of the company and some of these expenses are also claimed as compensation for unfair dismissal.

9. We note some of the matters that arose in is cross examination. Dealing with the covert tape recordings that he made of a number of discussions that were devoted to potential settlement, before he was dismissed, he maintained that he did this in order to protect himself. He said that these discussions were "pre-negotiation." He did not realise that he could use these transcripts in the litigation. One of the reasons for making the recordings was that he was expecting to meet Mr Metz. It was at this point in his evidence that he told us that Mr Metz "has a history of having dishonest meetings" and that Mr Metz "gets others to do his dirty work, he has often done that in the past."

10. He was questioned about his allegation that the Respondent had been defaming him, or similar, after dismissal and he relied upon what he understood to be the reactions of some of the clients that he had approached. On this basis he considered that the Respondent had been blacklisting him.

He agreed that he did not have any evidence from clients; and when pressed, his evidence appeared to be that he felt that this had been going on because clients were not responding to his prices. It turned out that the number of clients in this category were two. He declined to name them and he has no further evidence. He was able to clarify that his case under this head was that his reputation had been seriously damaged with those two clients, although he then added "and also with employers." It is not clear on what basis this latter point is sustained.

11. The Claimant maintains that he has made perhaps nine applications for jobs, but we are unsure that he is accurate and consider that this number may be exaggerated. Certainly there was one realistic discussion in Paris. He agreed that he had a lot of contacts, both of his own and through his family. However, he could not, he contended, contact clients or potential clients between June and September because of the legal restrictions that have been imposed and this affected his job search. He also agreed that after September 2015 he did not approach any of these clients, but the reason he gave was that he had been trading on his own accounts since 1 October. By that date he had stopped pursuing any other job leads and was concentrating on his own business. He was, however, making efforts to find employment he said; and he told us about one application also to a business in Paris, although nothing came of it. He expressly said that he was not casting any blame at the Respondent in this instance. He then volunteered that his decision to concentrate on his own firm had solidified by 10 July 2015 on his return from honeymoon. He accepted that he set up the company on 14 July and not long afterwards posted his CV on Bloomberg. He was making no application for employment elsewhere at this time and he further agreed that throughout the whole of September he made no job applications, for the same reason.

12. Ms Motraghi makes various detailed criticisms of the Claimant's evidence and she describes his position as "… inconsistent, unreliable and exaggerated to suit his purposes." Some of these criticisms we consider to be well-founded and we need to indicate where we agree with her. First, the allegation that the Respondent has blackened his name and destroyed his reputation in the market is based on no reliable evidence at all. Fairly confident statements in the witness statement are based upon suspicions or feelings which are considerably more flimsy in evidential terms. It only boils down to two clients and it would be quite impossible for a Tribunal to find that these serious allegations are made out so far as those clients are concerned.

13. Second, the Claimant's evidence concerning the meetings on and after 2 March 2015 strikes us as being infected with hindsight or some wishful thinking on his part. He was not convincing when he testified that he had asked for another job within the company during these meetings. We are sceptical that his evidence is accurate when he tells us that he would not have resigned. We have to note that he told us that he was speaking truthfully in this tape recorded interviews and, as we have noted in the earlier reasons, he was saying in the interviews that he had no choice but to go. Various grounds

of discontent were put to him in cross examination and, perhaps confusingly, he tended to agree with them. He had had problems with his colleagues. He had been subject to violence. He was unhappy. In effect, we would characterise some portions of his evidence as riding two horses in opposite directions.

14. If we step back from the detailed cross examination and look at the matter as a whole, we come to the conclusion that the Claimant was thoroughly disenchanted and that disenchantment is reflected in what is recorded on the transcripts. To give just one example, and here the Claimant appears to agree, he felt that he was being pushed to engage in bribery and, as he told us, this was "one of the reasons I wanted to negotiate a departure." As he put it, he would not stay in a corrupt company for another pay cheque or bonus cheque. This evidence that he gave orally in cross examination dilutes the other strand of his evidence that he would have stayed in order to retain his Q1 bonus. If we add as further relevant factors: (a) his belief that his trades were being sabotaged (b) his belief that the others were front running him and (c) that he had reported these matters and nothing had been done, then the picture that we have of the circumstances obtaining on 2 March is one in which the Claimant was trying to leave, albeit with a financial package. Again, his evidence about Mr Metz is contradictory, although his allegations at the remedy hearing about Mr Metz suggest a further ground why he would wish to leave his employment. We could only conclude that he was prepared to stay in the company by ignoring significant answers that he has given in his evidence. We are disinclined to do that and, in any event, from all of the evidence and the transcripts in particular, we draw the inference that the Claimant had had enough and saw his future as lying elsewhere. The likelihood, we conclude, is that by this point, i.e. early March 2015, he had in mind starting his own business. He told us that as early as 22 January of that year, he had activated contacts with regard to finding jobs elsewhere and there were interviews in prospect. The strand in his evidence that we find impossible to ignore is the account of his repeated protestations at various times that he was unhappy working with the Respondent.

15. Between March and June the Claimant's reason for not seeking further employment more energetically is that he was prevented by covenant from contacting clients. We again regard that in a somewhat sceptical light. It was not necessary to contact clients in order to make applications to brokers' firms; and it does not appear to have been a problem that deterred him in, say, January 2015 when he was putting out feelers. Ms Motraghi makes the point that these restrictions did not prevent the Claimant from searching for another job or contacting other brokers or speaking to his existing clients. She relies in any event, additionally, on the Respondent's evidence that any brokerage firm would conduct its own due diligence which would necessarily remove the need to contact clients so far as he was concerned. The firm would do it themselves. She further relies upon the documentary evidence that the Claimant submitted his CV five times on one day in March 2015 and made no further applications until 1 August 2016 and she describes these as woeful attempts to mitigate loss. We note page 297, the emails dated 26 May

2015, in which the Claimant said that he was getting married in a week, would not be in London for a while, was still employed on garden leave "so all a bit premature for me for now." Therefore, looked at in the round, we find that the Claimant made only minimal efforts to obtain employment elsewhere between March and June and by the time of his return from honeymoon he had decided to set up on his own.

16. It may well be that the Claimant, had he not been dismissed, would have resigned at a moment of his choosing and that he would have carefully done so in a way that preserved his Q1 bonus, i.e. that he would have been employed as of 17 June 2015. We have come to the conclusion that we do not need to make any further findings in this regard because there is, in our judgment, a larger question and that is the one posed by the Respondent in closing written submissions: "would the Claimant have been fairly dismissed before 17 June 2015?"

17. This brings us to the evidence of Mr Kavaliauskas. He begins by emphasising that he dismissed the Claimant because it was his view, and the Respondent's, that "it just was not feasible or good business to have someone continuing to work for a company in the industry where they have made clear they do not want to be there." He relies upon an essential breakdown in the employment relationship. He states that it was simply not possible that he could return to the desk and carry on as if nothing had happened, in circumstances where he had been saying he wanted to go and was arguing with his colleagues. His position is that the Claimant's continued presence in this business would damage it.

18. Our judgment is that he gave honest evidence. He went as far as to say that there was no possibility that in any notional investigation he would have found that the Claimant was the victim. He said that he had a pretty accurate picture of what had been going on and he recalled that others disputed the accuracy of what the Claimant had alleged. His position was that if the Claimant had insisted on leaving, but was not prepared to resign, the Respondent would have been compelled to dismiss him.

19. We are required to make findings as to the hypothetical position if the Claimant had not been dismissed in the way that he was. We have to judge whether in this part of the case the evidence given by Mr Kavaliauskas is (a) honest and (b) accurate and credible. We have come to the conclusion that it is reliable evidence on both these counts. He gave his evidence, in our view, firmly and fluently. Moreover, there are clear indications in the transcripts that support the view that he has asserted before us.

20. There is evidence from the transcripts that Mr Kavaliauskas (and he was supported here by Mr Buenavida) not only considered that it may be necessary to dismiss the Claimant but was expressing this sentiment fairly early on. At page 111 in the first transcript of the meeting there is a passage in which, to paraphrase, he said that he did not know what the Claimant had in mind but that it would be easy for the managers to explain to Mr Metz that it

has not worked out very well "… we can easily justify your departure and we can go our separate ways with a heavy heart." Later on in that first meeting there is express reference to the Claimant having to be fired. Thus, at the end of the meeting (page 120) two options were put to the Claimant both of which involved him being "fired."

21. The question arises whether, aside from these contentious passages in which the parties were negotiating, the Respondent genuinely believed that the relationship had broken down; and, if so, whether it is likely that they would have moved to a dismissal. Our view of the matter is that the opinion was held during this first meeting, and genuinely held, that the relationship was strained to breaking point. Subsequently the breakdown of relationship was even more apparent to the Respondent's witnesses and the notional dismissal with which we are concerned is overwhelmingly likely, in our judgment, to have taken place. Ms De Souza concentrates in her written submission on the timescale for such a dismissal and we will turn to this presently. At this point it suffices to record our finding of fact that in the hypothetical situation under consideration here, had the Claimant not been dismissed as he was, there are high probabilities that the Respondent would have moved to dismiss him and this would have occurred before the Claimant himself would have been likely to put in his own resignation.

22. Therefore, the question is when would they have done so in order to effect a fair dismissal? Much of the Claimant's submission is that a fair procedure would have taken longer than either 10 or 13 days. The Claimant's submission is that the likelihood of the procedure being fairly concluded in 10 working days is non-existent.

23. We consider that this puts the case too high for the Claimant. We find ourselves broadly in agreement with the contrary factors relied upon by Ms Motraghi. Since the settlement discussions had run their course, matters would have been relatively clear to the managers and further enquiries need not have taken more than a few days. There is nothing inherent in the facts of this case that lead to the conclusion that the Respondent would not have been able to act by 17 March 2015. What we can recognise is that there is no certainty here and that there is some small possibility that the procedure may have gone beyond this date and we will return to this in our conclusions when we address percentage reductions in accordance with Polkey.

24. The next question that we have to address as a factual matter is the extent or calculation of the Q1 2015 bonus that was never paid to the Claimant because of his effective date of termination, but which would notionally have been paid had he been in employment on 17 June 2015. We are addressing this because, as will be seen in our conclusions, we are applying a percentage reduction (albeit a high one) to the compensatory award and this has particular relevance for the Q1 bonus.

25. That bonus followed the quarter concerning which the agreed one-third bonus arrangement was in force. Our previous Reasons make all the necessary findings for that quarter, Q4 of 2014. The Q1 2015 position starts with the meeting of 22 December 2014 at pages 93-95 of the current bundle and in the discussion on page 95 there was a discussion of two changes. The first was a move towards calculating bonus based on the contribution of each individual. The second was the proposal that there should be a new profit and loss pot. In the event, nothing was done about the second proposal and the debate has centred on the first suggestion.

26. Mr Buenavida told us during the liability hearing that the Claimant did not generate sufficient profit and loss in January and February 2015 to be entitled to a bonus. This evidence assumes that the one-third basis for calculation was not being followed. None of the oral evidence he gave greatly assists with the question which we will frame below. During this remedy hearing, there was no evidence from him, but Mr Kavaliauskas told us that the basis of calculation of the bonus did change and he relies upon the current page 63 to show what actually happened in fact was that the Claimant's P&L was assessed at €31,157 for this quarter. This is made up of the figures for January and February and it is said that no calculation was made for March because the Claimant was not working.

27. In cross examination Mr Kavaliauskas confirmed that Mr Buenavida made the calculation that we have referred to immediately above. He believes that there was a variation after 22 December because Rachid and Mamadou were complaining that the Claimant was not performing. He also told us that he thought it unfair to allocate the profit and loss to someone who was on garden leave. He was questioned fairly closely on these matters and the following emerged. Profit and loss, he said had to be attributed to a person. Ultimately, in the event of a dispute about bonus, the decision would rest with him. He co-headed with Mr Buenavida and had trained him. Bonus should be based on individual performance. If the Claimant had stayed in employment and had during that period complained about the one-third agreement not being honoured, he would have gone to Mr Buenavida and also spoken to the others and he would have done "what was fair". "We would talk to everyone." He said that if there was an agreement for a one-third split he would apply it.

28. As a matter of evidence, and reserving further comments to the conclusions, we think it unlikely that the Respondent would (in this hypothetical situation) have applied the one-third split. This was a specific agreement that was reached for the first quarter after the others had joined and it was subject to protests by them in December. The overall evidence suggests that no equal division was being applied in Q1 of 2015. We think that the evidence from the Respondent points to an attempt being made to align bonus with the performance of the individuals. We need not descend to the further detail about these trades that was explored at in cross examination. The relevant fact finding at this stage is that by the beginning of 2015 the Claimant's position had significantly changed from that he enjoyed

earlier, when he was leading a team and was himself deciding on bonus. There are indications that the amount of trading that he was dealing with was declining. Beyond this, the team had changed and the bonus discussions were, on our findings, indicative of a clear desire by the employer to move away from any one-third equal division which was the initial agreement to cater for the new situation for the last quarter of 2014.

29. On the balance of probabilities, had the Claimant remained in employment, the Q1 2015 bonus would not have been calculated on that basis. Even if the Claimant had been aggrieved and had raised a grievance about this, we think it unlikely that the Respondent would have accepted that the calculation could remain based on the original one-third agreement. Further, as far as we can tell, the evidence shows that Mr Buenavida did assess individual trades and contributions in coming to the bonus calculation. This would confirm our opinion as to what would have happened, had the Claimant remained in employment.

Submissions

30. We grateful for the two sets of submissions, which each include a reply submission, and for the industry that Counsel have shown in preparing these. Where relevant, we refer to them below.

Conclusions

31. In giving these conclusions we will also refer to the relevant law. Section 123(1) provides that the amount of the compensatory award shall be an amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal, in so far as that loss is attributable to action taken by the employer.

32. In light of the various factual findings that we have made above, and by reference to the agreed list of remedy issues, we are able to give the following answers to the parties. The first question arising under section 123(1) is in the question numbered 3.1: had a fair procedure been applied, would the Claimant have been dismissed by 17 June 2015?

33. Our findings are, in summary, that the Respondent genuinely believed that there had been a breakdown in the relationship and also that the Claimant did not wish to stay. There was a further belief, reasonably held, that in this trading environment the continued employment of somebody who had lost faith in his employer would pose a danger to the business. What in fact happened here was that the Claimant was dismissed with notice but put on garden leave, precisely for this reason. Had he not been dismissed in the way that he was, there is no good reason to doubt that the Respondent would have been as concerned about his continued employment, in the light of everything that he had stated during the taped interviews. The only question

here is whether he would have been dismissed with notice that expired by 17 June.

34. Our conclusion is that there is a high probability that this would have occurred but there is no certainty. This leaves two options for the Tribunal so far as assessing just and equitable compensation. The first option, which we do not find attractive, is to say that because the probability is over 50%, that the Claimant should fail entirely in terms of a compensatory award for future loss. We consider that in the assessment of just and equitable contribution it is preferable and fairer for the Tribunal to assess loss on a percentage basis. Our conclusion is that there is an 80% chance that the Claimant would have been dismissed by 17 June; and that the 20% chance that he would not have been dismissed by then fairly reflects the contingency that for one reason or another this might not have happened.

35. The next question is whether or not the Claimant's losses end at a fixed point in time, having particular regard to his decision to set up his own business. We consider this to be a relatively straightforward question to answer because the chronology shows that he returned to the UK after his honeymoon on 11 July 2017 and that he set up his own business 3 days later. We agree with the Respondent that the incorporation of the company imposes what is referred to as a long stop on the loss. As is realistically submitted, by that point he had made up his mind to choose to be his own boss and to trade on his own account. His various suggestions as to why he was not free to look for work in the period up to September 2015 do not strike us as being convincing. Further, we consider that the evidence discloses that the Claimant had had the thought of setting up in business at an earlier stage and also he had made some enquiries about obtaining other paid employment earlier in the year. The reality, in our view, is that he was mulling over his options post-dismissal and decided that setting up his own business was the best way forward for him.

36. The next question at 3.3 is whether he reasonably incurred expenses in consequence of the dismissal and what is the value of the same? This engages the wording of sub-section (2)(a) which provides that the loss referred to in sub section 123(1) shall be taken to include any expenses reasonably incurred in consequence of the dismissal.

37. It is notable that these expenses were incurred relatively soon after the effective date of termination. The position could be otherwise if he had decided on this route at a much later stage after having made reasonable efforts to secure alternative employment. That did not occur here. The start up costs, which include the purchase of computerised equipment, were incurred in order to implement a perfectly legitimate desire to trade on his own. While these costs followed his dismissal, we do not consider that it is right to say that they were in consequence of the dismissal. We consider that these costs lie outside the category of permissible expenses that can be recovered. If we were to agree with the Claimant it would mean that substantial costs of establishing his own business would fall at the feet of the

Respondent and our principal objection is that this is not a consequence of the dismissal, when the Claimant was incurring these costs at such an early point and before he had sought to obtain paid employment elsewhere. We would not allow this head of claim.

38. The next question at 3.4 is, having regard to our answer at 3.1, whether the Q1 2015 bonus was a benefit that he might reasonably be expected to have had but for the dismissal within the meaning of Section 123(2) (b). This provision refers to the loss of any benefit which the Claimant might reasonably be expected to have had but for the dismissal.

39. Having found that there was a 20% chance that he would have qualified for the Q1 bonus, he might reasonably be expected to have enjoyed this benefit and as a matter of compensation it should be awarded, at the rate of 20%.

40. The next question at 3.4.2 is to assess the relevant sum having regard to the above determination. It is important here to make the point in passing that this exercise is one of assessing compensation under Section 123 and does not involve the question of whether the Claimant was contractually entitled to the bonus. Even less does it involve asking whether there was a variation to the clear agreement for the one-third calculation which we found was reached in relation to the previous quarter's bonus. These questions lie outside our jurisdiction.[1] The bonus was discretionary, although we have departed from this and made specific findings about the contractual nature of the promise that was reached at the end of 2014. For purposes of compensation had the Claimant been employed on 17 June 2015, he could reasonably expect to receive a bonus.

41. The question is how such a bonus would have been calculated and we are entirely clear that it would not have been calculated on the basis of an 'equitable' one-third split or anything similar. By this point in time we are persuaded by the evidence that an attempt would have been made to assess the Claimant's contribution and to fix the bonus accordingly. In accordance with that approach, we think it unlikely that the Respondent would have contemplated paying any bonus for a period that the Claimant was on garden leave. The whole basis of what we consider to be the changed situation was that the employee's contribution should be linked to the bonus, and that contribution relied upon the volume of business transacted. If the Claimant was away on garden leave during this notional period then no business would have been transacted. Our conclusion, based on evidence we have heard and accepted, is that garden leave would have been very likely to have resulted from a decision to discipline and dismiss the Claimant, because the Respondent was of the view that he posed a threat to the business having decided that he could no longer stay and having communicated that to his

[1] This is not a matter of recent case law. We would follow the more recent authority in that regard. The point here is that we are carrying out the section 123 exercise in order to establish the Claimant's loss.

managers. The remainder of the evidence about the disputes that he had unfortunately been involved in, during the previous few months, only confirms that conclusion.

42. As we understand matters, the precise working out of the bonus is a matter that the parties will be turning to after this decision in an attempt to either seek agreement or a further hearing. We are not content merely to accept Mr Buenavida's calculation because there is a substantial dispute raised by the Claimant about the precise number of trades and their value. In Ms De Souza's submission, there could on a full liability basis be £27,000 odd pounds payable to the Claimant (although we have scaled this down above by 80%). Therefore at this point we make no further findings or conclusions. Question 3.4.3 asks whether the award should be reduced, possibly to nothing, because he would have been lawfully dismissed or he would have resigned. We have answered the question as to dismissal above. Although resignation is a possibility, there is doubt as to whether the Claimant would have resigned at all with an effective date of termination beyond 17 June and therefore we discount this as a further ground for reduction.

43. If we have understood question 3.5 correctly, no issues arise for determination here.

44. The next question at 3.6, is whether the Claimant caused or contributed to his dismissal within the terms of Section 123(6)? The short answer is that there has to be blameworthy conduct identified which caused or contributed to the dismissal before any reduction can be made. The covert tape recording of meetings cannot be relied upon as it was not known about by the Respondent and the initiation of discussions about termination could not be categorised as culpable behaviour. We agree with the Claimant's submissions that no reduction can properly be made under this head. The final question at 3.7 relates to unreasonable breach of the ACAS code. Section 207(A) of TULRCA provides that if it appears to the tribunal that (in relevant proceedings) the employer has failed to comply with the Code, and the failure was unreasonable, any award may be increased by up to 25% if we consider it just and equitable to do so.

45. This was a straightforward breach of the code in that there was no attempt made of any sort to apply any procedure; and the letter of dismissal that was eventually drafted for the Respondent went as far as to say nothing about the reason for dismissal. We see no reason why an uplift should not be awarded. The characterisation of the Respondent's default as "a wholesale failure" by Ms De Souza seems to us to be a fair one. We agree also that they were inevitably unreasonable failings and we have reflected that in our factual findings. She submits that there cannot be a stronger case for 25% uplift and although we might have reservations about that, we agree with Ms De Souza that 25% is the correct figure and that it is a just and equitable amount to factor in to the compensatory award.

46. The Tribunal's fees having been agreed, this leaves only the question of the sum that is sought for compensation for loss of statutory rights. The point is a novel one for this Tribunal, but in circumstances where it appears that the Claimant has chosen after dismissal to pursue self employment, we accept the argument of the Respondent that there is no loss of statutory rights that requires compensation.

Overall

47. We trust that these conclusions, which we have reflected in our judgment, will assist the parties and we invite them to write either jointly or individually within 14 days of the date of promulgation of these reasons as to how the matter should be progressed in order to bring it to a conclusion.

Employment Judge Pearl

18 July 2017